

On Autonomy and Law

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**GLOBALIZATION AND AUTONOMY
MONDIALISATION ET AUTONOMIE**



Preface

The concept of autonomy is a remarkably complex one. It can be spoken of in collective or individual and personal forms. It is an analytical concept employed for the investigation of various forms of self-government and self-determination in social science disciplines. Literary, cultural studies, and philosophy scholars have deconstructed the concept and its uses to question gendered, ethnic, racial, Eurocentric Enlightenment and other assumptions inherent in its use. As a part of societal discourse across the globe, it is also not surprising that the concept is incorporated in various ways into law. Incorporation into law can provide a basis for legal claims to rights, institutional supports, and other privileges, obligations, and statuses.

In this working paper, Dr. Natalia Loukacheva, who holds a postdoctoral scholar's award with the Major Collaborative Research Initiative "Globalization and Autonomy", investigates the status of the concept of autonomy in law. In particular, she examines its place in international public law and comparative constitutional law. She is interested here in a notion of autonomy as equivalent to self-government in the context of an internal right to self-determination. She is not focusing on an external right to self-determination as exercised through secession.

Her analysis is divided into two parts. In the first section of the paper, she considers general approaches to reflection on, and recognition of, autonomy in international law and in comparative constitutional law. She argues that there are weak grounds for recognition of autonomy as a principle of international law and somewhat stronger, but still very limited, grounds for its recognition in comparative constitutional law. She also notes that the normative arguments in favour of its recognition do exist to some extent in law. Finally, she comments on the ambiguity of the concept of law, suggesting that this ambiguity provides flexibility for adapting its use to the particular circumstances of groups making autonomy claims.

The second section of the paper turns to a specific consideration of the place of autonomy for indigenous peoples in law. Here Dr. Loukacheva argues that there is an emerging right to indigenous peoples' autonomy, which is slowly being considered and recognized by international bodies. She adds, however, that the concept of autonomy lacks clarity. This feature, she suggests, can be an advantage. There is no need for a single type or model of indigenous peoples' autonomy - different forms of autonomy can serve varying indigenous groups' aspirations. This analysis is based on a wide range of examination of cases of autonomy, particularly in Europe and in the Arctic region.

In her conclusion, Dr. Loukacheva sketches out some common characteristics that any autonomous arrangement should satisfy. This analysis arises from her studies of case law in the area. She also stresses that autonomy in law is not a static concept, but a dynamic one. It can be best comprehended by moving from a *de facto* analysis of autonomy towards its evolving *de jure* recognition. The idea is that despite existing legal instruments or legislation, analysis of autonomy from the bottom up reveals that the scope of the concept of autonomy is changing and gradually these changes lead to pressures for more recognition at the *de jure* level.

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On Autonomy and Law*

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Introduction

Extensive scholarly works on the issue of autonomy and indigenous self-governance show that legal concepts of autonomy suffer from much confusion. In the following study, I present a survey of the concept of governance in the legal scholarship in attempting to develop normative grounds for the right to autonomy. This paper is divided into two parts. At the outset it deals with general considerations of theoretical aspects of the concept of autonomy in public law¹ and examines the extent to which the right to autonomy can be defined and justified in light of international and comparative constitutional legislation.

Part two gives a brief overview of autonomy for indigenous peoples. By addressing the question of whether there is an emerging right to indigenous peoples' autonomy, I illustrate the ambiguity surrounding the right to autonomy in international law. I argue that, although it is contained in the concept of self-determination, one can best comprehend its content and scope in the context of a particular situation. Exploring different legal documents regarding autonomy and indigenous peoples, I argue that there is an emerging right to indigenous peoples' autonomy in international and constitutional jurisprudence. Finally the paper draws conclusions on understanding autonomy in the legal field.

A few qualifications are in order. Given that autonomy is a vague concept with multiple interpretations by different scholars and representatives of indigenous and non-indigenous peoples, it is important to define the sense in which I use it here. I employ the notion of autonomy as equivalent to self-government in the context of an internal right to self-determination. I do not explore a right to secession or other aspects of external self-determination as an attribute of autonomy. Further, I mostly examine the collective right to self-government and with my analysis focused on the territorial concept of autonomy. This focus narrows the scope of the paper to looking at some autonomous entities with constitutional powers transferred from unitary or federal state authorities to the institutions of territorial or regional public governance without going into detail about the context of local autonomy or municipal levels of government.² Moreover, this paper draws its examples primarily from European cases. I am aware that lessons can also be learned from self-determination processes in Asia, Africa, Australia, New Zealand and particularly from the growing scholarship in North America. Where possible, I incorporate some insights from these settings. Thus the relationship between the Canadian state and Aboriginal peoples' quest for autonomy is not a focus of this study. While questions can be raised in connection with the terms: "indigenous peoples," "minorities"³ or "autonomy," the development of theoretical definitions for these terms will not be explored here. Nor does this paper examine issues of economic sustainability and fiscal autonomy or social policies of autonomous regions. Rather, the paper's primary interest is in the legal framework of political autonomy.

I. Autonomy and Law: A General Discussion

In this first section, I aim to provide a theoretical basis for understanding autonomy in public law. At the outset, I deliberate on the notion of autonomy in legal and political science theory, showing that the concept suffers from much ambiguity and confusion. I argue that the lack of a precise legal definition of autonomy makes the concept more amenable to minority and indigenous peoples' aspirations, depending on each case. Next, this section explores why autonomy, despite being a "hopelessly confused concept," (Wiberg 1998, 43) is so attractive to different groups. It looks at how the concept of autonomy

is entrenched in the sources of international and constitutional law in relation to minorities and the right to self-determination. Although there is an emerging recognition of the right to autonomy or self-government, international law instruments and mechanisms are not sufficient for realizing these claims currently.

Recently, much has been written about autonomy and its implications.⁴ The term autonomy derives from the Greek *auto* – self, *nomos* – rule of law and has many synonyms in modern political, sociological, philosophical and juridical literature. In political science it is often seen as equivalent to “independence, self-government, self-determination, self-direction, self-reliance and self-legislation” (Wiberg 1998, 43). Similarly, in legal theory, it connotes self-government, self-rule, self-management, self-administration, home rule, and self-legislation.

Because of its diverse applications, autonomy is a vague concept and “almost all writers on the topic of autonomy do not make clear to the readers (or even to themselves!) what they actually mean with the notion” (Ibid., 43).⁵ As autonomy is used and interpreted in many different contexts, it is probably not a legal ‘term of art’ (Suski 1998a, 1) or a well-fitted *legal* concept.⁶ The concept exists in constitutional theory, and also in international law. However, the term “autonomy” lacks legal clarity and “no clear account of the concept of autonomy is available” (Wiberg 1998, 43).

Lindley draws the difference between the general concept and particular conceptions of autonomy.⁷ In his words, “a conception is a particular interpretation or analysis of a concept. Although there is no eternally true conception of autonomy, the concept being a tool invented by human beings to make distinctions thought to be useful, it may be possible to test rival conceptions for adequacy” (1969, 3). Lindley suggests that the concept of autonomy is a framework for specific conceptions of autonomy, but the content of any given conception will turn, in part, on the facts of each case. Lapidoth classifies the following approaches to the concept of autonomy. First, some “theories [...] compare autonomy to a right to act upon one’s own discretion in certain matters, whether the right is possessed by an individual or by an official organ” (1994, 277). Second, others approach autonomy as a synonym of independence, as akin to decentralization. Third, autonomy is synonymous with decentralization. According to a fourth approach, an autonomous unit “is one that has exclusive powers of legislation, administration and adjudication in specific areas.” (ibid., 277).

Autonomy also is often connected with federalism as in Lapidoth’s definition of “decentralization”⁸ and subsidiarity (Heintze 1998). Hannum (1996) considers a “full” autonomy.⁹ Nordquist defines *expedient* autonomies “that owe their status to practical reasons such as geographical distance, or other physical hindrances” (1998, 64).¹⁰ *Historical* autonomies “are areas, which from time to time, have had a *de facto* autonomous position *vis-à-vis* their (changing) political environment and now, although integrated into the modern state system, have remained autonomous” (ibid., 64).¹¹ *Organic* autonomies emerge by peaceful means when certain territories develop autonomy on the basis of “a growing awareness of the political relevance of the region’s specific identity and the need to create an institutional congruence between this identity and the local and national governmental structure” (ibid., 64).¹² And *seized* autonomies are “those that emerge out of a process of political mobilization leading to a conflict with the central government” (ibid., 64).¹³ Bernhard (1981, 25-6) denotes autonomy in a broader sense, which

[...] Means the autonomous self-determination of an individual or an entity, the competence of power to handle one’s own affairs without outside interference [...] autonomy describes the limits of State interference, on the one hand, and the autonomous determination and regulation of certain affairs by specific institutions on the other hand. In a more narrow sense, autonomy has to do with the protection and self-determination of minorities. And it is in this sense that the notion of autonomy is used in modern international law.

Thus, the question becomes whether there is a need to render the notion of autonomy more definite. The practice shows that there is not such a need. Because of its ambiguity in interpretation, the concept of autonomy can be better adjusted to the particular circumstances of each case. Its vagueness may even be attractive to those who are seeking autonomous arrangements. As Wiberg puts it, “it is not the clarity, but the ambiguity of the concept (of autonomy) that is the most important guarantee of its popularity” (1998, 57).

Within recent decades the right to autonomy has become an attractive slogan for different groups and especially for indigenous peoples, but there is no clarity on the scope and legal recognition of this right. Therefore, I turn next to examine autonomy in international law.

1. Autonomy in International Law

Is autonomy a principle of international law? In the words of Creifelds, “in international law, autonomy means that parts of the State’s territory are authorized to govern themselves in certain matters by enacting laws and statutes, but without constituting a State of their own” (quoted from Heintze 1998, 7). Hannum and Lillich conclude that the concept of autonomy does not have “[...] a generally accepted definition in international law [...] is a relative term that describes the extent or degree of independence of a particular entity rather than defining a particular minimum level of independence that can be designated as the status of ‘autonomy’ (1980, 885)¹⁴. The authors further stress that “autonomy and self-government are determined primarily by the degree of actual as well as formal independence enjoyed by the autonomous entity in its political decisionmaking process” (ibid., 860).

The place of autonomy in international law can be evaluated through analysis of sources of international law, like customs, treaties, conventions, and the practices of international organizations, doctrines, reports and documents. Analysis of these sources shows that there are weak grounds for recognition of autonomy as a principle of international law.

Sanders argues otherwise. He claims that autonomy is a principle of international law because first, “autonomy for specific populations is a principle of customary international law, based on an assertion of a common practice of leading states” (1986, 17). Second, it is a principle because “autonomy (is) a distinctive right of minorities” (ibid., 17). He bases his third argument “on the principle of self-determination of peoples” (ibid., 17).

With respect to his first argument, Sanders asserts, “there is a developing international consensus that political autonomy is the proper response to the phenomenon of territorial minorities, particularly territorial indigenous minorities” (ibid., 19). He deliberates on a historical approach and shows the examples developing of different autonomous arrangements and their perception “in the international intellectual milieu” (ibid., 19). By using a non-historical approach, he tries to identify common patterns in the existing examples of autonomies on the basis of factors of geography, population, cultural difference, and existing institutions (ibid., 20).

It is not clear, however, whether there is a common practice of autonomy. It is also not convincing that autonomy for specific populations is a principle of international customary law. Arguably, as Oeter (1994) puts it, “minority status is then equated with the right to autonomy. This alleged right is said to be customary law derived from the frequent occurrence of autonomy. However, forms of self-government and autonomy vary so much from case to case that their specific content remain doubtful and a customary rule has not evolved” (quoted from Heitze 1998, 13). Custom as a source of international law assumes that the subject of the action repeats in the same manner and form for it to be continued as a custom.

Most scholars on the topic stress that there is no certain model or type of autonomy. They emphasize that, “autonomy is, therefore, a general legal term that has to be given concrete content”(Heitze 1998, 8). Its content would depend on the particular circumstances of each country. Thus, even some sort of recognition of autonomies by the “international intellectual milieu” and existence of autonomous entities in the historical perspective are not sufficient for arguing that autonomy is a principle of customary international law.

Further, there are few examples of formation of autonomy in international documents¹⁵ or treaties. Heitze suggests that there is no right to autonomy entrenched in the treaties. No treaty has been concluded with general reference to the necessity of granting of autonomy (ibid., 13). He further concludes that the objections against accepting autonomy as a “principle” of international law stem from the likelihood that it is conceivable only as a group right. This notion is hardly acceptable “as long as minority protection under international law is a strictly individual right”(ibid., 32).

1.1 Autonomy and minorities

Can autonomy be justified as a principle of international law, based on Sanders’ second argument, autonomy as a distinctive right of minorities? Autonomy is often considered as a mechanism that assists in ethnic conflict resolution as a result of its potential for protecting minorities. Like “autonomy”, there is no commonly accepted definition of “minority,”(Lapidoth 1997) and scholars have examined relevant international materials, which indicate some cohesion between minority rights and autonomy.¹⁶ The crucial provision for minority rights, Article 27 of the United Nations (UN) International Covenant on Civil and Political Rights, does not cover or mention the right of minorities to autonomy. The Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Cooperation (CSCE/OSCE since 1995) in Europe of June 29, 1990,¹⁷ underlying the importance of minority rights (Articles 31-34), does not indicate a legal right of minorities to autonomy. It mentions, however, autonomy as one of the options for minorities. Thus Article 35 paragraph 2 reads:

The participating States note the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of certain national minorities by establishing, as one of the possible means to achieve these aims, appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the State concerned.

[Emphasis added].

Other international documents do not mention the distinctive right of a minority to autonomy. These include the Report of the CSCE Meeting of Experts on National Minorities (Geneva, 1991); Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (Moscow, 1991); UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (1992);¹⁸ The European Charter for Regional or Minority Languages (1992); Framework Convention for the Protection of National Minorities, Council of Europe (1995); and the European Convention on Human Rights (1995).

In her analysis of the right to autonomy in Article 3 of Protocol 1 of the European Convention on Human Rights (1995), the European Charter of Local Self-Government (1985, in force since 1988), and the Draft Charter on Regional Self-Government (1996), Lewis-Anthony (1998) comes to the conclusion that Article 3 of Protocol 1 does not expressly protect or guarantee territorial autonomies. However,

case law suggests that this article is applicable to the legislatures of existing autonomies with constitutional status. She further concludes that the Council of Europe, through Charter 1985 (Article 4 (3) and Draft Charter of 1996 (Article 2) began to demonstrate its commitment to regional self-government.¹⁹

In his study of autonomy and the European Union (EU) states, Bullain notes that sub-state political autonomy is not specifically recognised by the European Union. He adds “the Committee of Regions [...] neither by its composition, nor by its powers, can be understood as an institutionalization of the autonomous units of the EU”(1998, 347). He further suggests that from the standpoint of European integration, sub-state autonomous authorities only represent an administrative level (ibid. 352). Therefore, to deal with EU autonomies, one has to conclude “participatory” agreements with the states (ibid. 355). The state plays the role of the mediator. From Sohn’s (1980; 1981) analysis of autonomy and the UN Charter and practice it is clear that the right of a minority to autonomy is not specified, though some general ideas of self-government are expressed in a number of UN documents.²⁰

In sum, the right to autonomy is not expressed in major international documents regarding minority rights nor in the practices of the Council of Europe, the European Union or the United Nations, or some universal minority rights treaty. As Thornberry concludes, “in the context of minority rights, autonomy appears as hortatory or pragmatic politics, refusing to convert itself into a coherent norm or perhaps dissolving into conceptual sub-constituencies before our eyes”(1998, 123). Thus, there is no distinctive right of a minority to autonomy as a principle of international law.

1.2 Autonomy and the Right to Self-determination

Could autonomy be qualified as a principle of international law based on Sanders’ third argument – the right to self-determination? To understand autonomy in these terms, it is useful to draw a distinction between the right to external self-determination (usually referred to as “secession” but may include other aspects)²¹ and internal self-determination or internal self-governance (which refers to territorial and non-territorial autonomy and to the right of effective governance within sovereign States), as it is indicated in the practice of the UN and developed by numerous scholars.²²

For example, in Lapidoth’s words “more and more authors seem to consider autonomy as a valid means of self-determination”(1997, 23). Heintze stresses that the distinction between an internal and an external right to self-determination brings a new perspective on the relationship between self-determination and autonomy. Therefore many scholars “now claim that the right to internal self-determination is ‘almost synonymous with local autonomy’”(1998, 9). In the opinion of Hannikainen, in international law the right to autonomy is narrowed to a certain limited level of self-government, but the right to self-determination is more promising. Compared to a limited right to self-government, “the holder of the right of self-determination may have the right to determine its status without external interference and may opt for full independence – not only limited self-government”(1998, 79).

Accordingly, the right to autonomy or internal self-determination is a part of the concept of the right to self-determination which, because of its external dimensions, is broader than just self-governance. Thus, international law allows for certain subjects in some cases to interpret self-determination as independence by means of secession, which is sometimes called full self-governance.²³

For the purposes of this paper, I assume that the right to autonomy (territorial or non-territorial) can be considered as a realization of the principle of internal self-determination in the form of self-governance if several conditions exist: a strong voluntary will of the population to achieve autonomy; ethnic, cultural linguistic differences (cultural factor); some geographical and historical conditions relevant to each par-

ticular case; the existence of a legislative body elected by the local population, as well as an executive organ (democratic participation), and economic sustainability or a financial base.

Nevertheless, from the point of view of existing international law, both concepts of autonomy or self-governance and self-determination are confusing and ambiguous. Thus, the question becomes, whether autonomy can be regarded as a principle of international law based on a vague notion of self-determination. Thornberry argues that self-determination is a right, while autonomy is not. In his words, “autonomy is essentially a gift by the state (grudgingly offered, ungratefully accepted)²⁴ though it can be entrenched. Autonomy may be a good idea, but it does not flow freely from the sources of international law as an obligation on states [...] People would lay down their lives for self-determination; they might not do so for autonomy” (2000, 56-57). Thus, autonomy may be conceptualized within the right to self-determination, but the latter might be more preferable for different groups’ claims because of its recognition in international law.

Harhoff suggests that rather than substantiate the contents of self-determination, “this concept should be understood as a procedural norm,” (1994-1995, 66) which includes the state’s duty to promote autonomy for their peoples in good faith, and to guarantee that “self-determination arrangements, once established, can never be withdrawn, reduced or amended unilaterally by states” (ibid., 66). As he further notes, “the idea is to enable the international community, by means of a simple international legal principle, to exert pressure on states that in word or practice simply refuse to establish any form of self-determination for their local people” (ibid., 66). This idea might be hard to implement. It is questionable whether the right of peoples to self-determination is a binding principle for states that have not ratified international covenants. Each state and people have their own interpretation of self-determination. The concept is far from universal. A clear legal definition might be required for implementation of self-determination as a procedural norm.

To conclude, in contemporary interpretations of the principle of self-determination, autonomy can be regarded as a form of its internal realization even though it does not constitute a distinct international norm on its own account. But this situation does not resolve problems with respect to ambiguity. Practically, “[...] both customary and treaty law on *internal* self-determination have little to say with respect to the possible modes of implementing democratic governance [...] Still less do they furnish workable standards concerning some possible forms of realizing internal self-determination, such as devolution, autonomy or ‘regional’ self-government.”²⁵

In short, there is no consensus among scholars on the existence or definition of a right to autonomy in international law. The definition of autonomy and its relation to minorities and peoples’ right to self-determination suffer from ambiguity. In some cases autonomy serves as a mode of international conflict resolution. The practice of existing autonomies makes the right to autonomy more feasible even without having a strong status in international law.

1.3 Autonomy in International Human Rights law and international judicial/quasi-judicial organs

International human rights law offers some possibilities for our understanding of the right to autonomy and grasping it as a legal relationship between a rights-holder and an obligation-bearer. One such possibility is to look at the right to autonomy in the framework of peoples’ right to self-determination as it is enshrined in common Article 1 of the International Covenant on Civil and Political Rights (ICCPR)²⁶ and the International Covenant on Economic, Social and Cultural Rights of 1966. Another option is Article 27 of the ICCPR dealing with the rights of minorities to “enjoy their culture” by means of effective participa-

tion. A minority's right to autonomy flows from its right to enjoy its culture, with autonomy being one of the forms in which effective participation can be realized. Further, there might be a situation in which the multiethnic territorial units of a state aspire to autonomy as a right of a whole population of the territory. International law gives little support to this scheme.

Prominent human rights scholars (Scheinin 2000a and 2000b; Myntti 2000) have already elaborated on these scenarios. Based on a human rights approach, the right to autonomy applies to all groups whether they are considered minorities or indigenous peoples. At the same time, the right to autonomy is rooted in the right of peoples to self-determination (Article 1) and linked to the right of persons belonging to ethnic, linguistic and religious minorities to enjoy their own culture (Article 27). Thus, the right to autonomy covers elements of effective participation in power-sharing and democratic institutions. It also extends to culture, including the ability of the minority group to maintain its culture, language, and religion and may extend to preserving the way of life or indigenous livelihood, including land rights and economic structures of indigenous peoples.²⁷ As well, it may require, when necessary, positive measures by States to protect the identity of the minority and its rights to enjoy and develop its culture.²⁸

Analyzing the procedural positions of autonomous regions before the International Court of Justice, the European Commission, the European Court of Human Rights, the European Court of Justice and the Human Rights Committee, Åkermark concludes that "autonomous regions, in fact, play an important role in international judicial and quasi-judicial proceedings and that international law has started taking steps needed to accommodate this trend"(1998, 149-50). However, there are no clear procedural provisions in international law regarding such participation. Thus, Åkermark points out that, under the Statute of the International Court of Justice (Articles 34/1 and 35/3), "an autonomous region does not have the right to bring a dispute to, or to be a respondent before the ICJ. The autonomous regions have to act through the sovereign State to which they belong, or to draw the attention of one of the UN organs which may ask for the Court's advisory opinion"(ibid., 141-2).

With respect to the European Commission and the European Court of Human Rights, Åkermark finds "that autonomies, their inhabitants and their representative organs and authorities may play a very active role both as applicants and as respondents before the organs supervising the European Convention for Human Rights,"(ibid., 144) and that "the regions of the Member States of the Communities have been active before the European Court of Justice both as complainants and as respondents"(ibid., 144). Finally, Åkermark notes that autonomous regions can be involved in cases before the Human Rights Committee, despite the fact that the precise procedural modes for this are under-developed (ibid., 149).

Alfredsson underscores that "international human rights instruments do not expressly provide for a right to autonomy"(1997, 34). He adds, "autonomy is yet to be firmly anchored in international and regional human rights instruments"(ibid., 40). Representatives of autonomous authorities can apply before the Committee on the Elimination of Racial Discrimination, which can examine petitions from individuals and groups concerning possible violations (Article 14 of the Convention on the Elimination of All Forms of Racial Discrimination) (ibid., 43). Alfredsson examines different UN procedures for enforcing minorities and indigenous peoples' rights, such as: state reporting obligations, and fact-finding and investigative procedures.²⁹ These procedures only work, however, if the country has ratified the above-mentioned Conventions.

To conclude, there is only some indication in the international documents, procedures and practice of international organs and the main sources of international law to support the existence of a right to autonomy. Therefore, Eide, a Special Reporter of the Sub-Commission on Prevention of Discrimination

and Protection of Minorities reported that, “even if international organizations are ready to propose autonomy as the solution for existing inter-ethnic and intra-State conflicts, they lack any coherent policy to promote it.”³⁰ As a result and with some exceptions,³¹ there is no guarantee to existing autonomous arrangements in international law.

As a possible solution, Hannikainen suggests the development of a multilateral convention capable of taking various autonomy arrangements under its umbrella. Consequently, states would be obliged to submit autonomy arrangements existing within their jurisdiction to supervision of the international organ. This body “should perhaps be quasi-judicial in nature similar to the UN Human Rights Committee” (1998, 95). Thus, he proposes a universal Convention on autonomy and the creation of an international organ for the supervision and establishment of regional autonomies. The idea of a special international body, which could supervise and clarify autonomy arrangements, is possible, as there are precedents of that kind.³² There might be a problem, however, with implementation because of a lack of clarity on the legal definition of autonomy and weak support for the right to autonomy as a principle of international law.

As mentioned earlier, Harhoff offered to interpret the right to self-determination as a procedural norm. He also suggested considering it as a duty of a state to grant autonomy and the state’s burden to prove its loyalty to and implementation of the autonomous arrangement. Analysed suggestions raise difficult questions: is it within the jurisdiction of international law to decide and to provide for the right to autonomy? Is autonomy a universal right to be entrenched in a separate international Convention? Is there any legal principle or legal theory on autonomy, which would form a basis for such documents and more importantly, is there a need for them? Obviously modern international law and practice do not give us a definite answer in this regard.

2. Autonomy and constitutional law

Arguably, comparative constitutional law can reduce ambiguities surrounding the concept of autonomy in international law. Can constitutional law assist in clarifying international legal ambiguities? Indeed, is autonomy the legal domain of constitutional jurisprudence? Some authorities maintain that, “the legal basis for autonomy can be a constitutional arrangement, devolution by statutory law, or customary law” (Eide, Greni and Lundberg 1998, 256). Others propose the constitutional entrenchment of autonomy (Suksi 1998b, 168-9).

Suksi (1998b) identifies three types of autonomous entities: those organized on the basis of the national constitutions of their host countries with special jurisdiction including exclusive law-making powers (e.g., Åland Islands/Finland before 1994, Gagauzia/ Moldova, Spain, Italy, and Portugal;³³ those that lack the formal constitutional delegation of law-making powers, but make their own laws (e.g., Greenland and Faroe Islands);³⁴ and those that have a certain constitutional status limited to regulative or administrative jurisdiction and subordinated to the ordinary legislation of the country concerned (e.g., Crimea and Croatia). In addition, he distinguishes cases that should not be described in terms of autonomy, but rather as administrative regions with special status (e.g., Corsica). Analyzing European autonomies, Suksi concludes that Spain is the only country where autonomy is recognized as a constitutional right; “other constitutions would seem to settle for an *ad hoc* type of regulation concerning autonomy without using rights language” (1998b, 155). Notably, most Constitutions do not indicate the right to autonomy as a constitutional right.³⁵ Countries that have some autonomous arrangements typically do not regulate the right to autonomy, its structure, and scope of jurisdiction or institutions in the national Constitution. Analysis

of sources of constitutional law of different states reveals that there is some constitutional recognition of the right to autonomy. Based on this analysis, the following different sources were identified. Autonomous arrangements are regulated by:

- Constitution (Italy, Spain, Åland Islands/Finland, Azores Islands, Madeira/Portugal)
- Constitutional custom (Faroe Islands/ Denmark)
- Partial recognition in the constitution (cultural autonomy for Saami in Finland)
- Ordinary legislation (Greenland, Faroe Islands/Denmark)
- Organic law (Corsica/France)
- Legislation of the substate entities/autonomies (some autonomous regions in Italy)
- Constitutional laws, federal laws (“About national-cultural autonomy” 1996, the Russian Federation)
- Can be regulated by national agreements between the subnational entity and the mother state and by bilateral or trilateral agreements of neighbouring countries
- Constitution of an autonomous entity (Crimea/Ukraine) or Charter of the autonomous region (Italy)
- Treaty between Indigenous peoples and the state

Identifying the legal foundation for the relationship between the state and Indigenous peoples, Rehof (1994, 25-26) defines the following forms of constitutional recognition: independence of the Indigenous peoples; treaty relationship (Waitangi Treaty in New Zealand); constitutional recognition of distinct status (Norway); statutory agreement of a more or less irrevocable nature (Greenland); other de facto arrangements; and non-recognition of a distinct status. As he correctly states, the present arrangements in this scheme may increase or decrease their status or they will stay the same.

To conclude, in those countries that I have considered, constitutions do not recognize, with the exception of Spain, the right to autonomy. However, the institution of autonomy is mostly regulated by means of constitutional law, which can be seen in the modes of entrenchment and regulation of autonomous regimes on the domestic level. Importantly there are some precedents of constitutional recognition of autonomous status to some groups and territories and international law is starting to consider some elements of autonomous jurisdictions. Does this developing practice manifest an emergent right to Indigenous peoples’ autonomy? To explore this crucial question, I turn to an examination of the connection between autonomy and Indigenous peoples’ rights.

II. Autonomy and Law: Indigenous Peoples

3. Discourse

What is autonomy for Indigenous peoples? This section of the paper examines the existence of Indigenous peoples’ right to autonomy. It argues that the vague concept of autonomy can be rendered more determinate by employing comparative constitutional analysis of measures that secure Indigenous peoples’ autonomy. Further, a detailed analysis of the connection between autonomy and Indigenous peoples’ rights is given from a legal-historical and minority rights perspective with a particular focus on the right of Indigenous peoples to autonomy in international law. It raises the question whether autonomy is applied in the same way to Indigenous peoples as it is to minorities. This analysis reveals that there is an emerging right to Indigenous peoples’ *autonomy*, which is slowly being considered and recognized by international bodies. However, the concept of autonomy lacks clarity. Furthermore, the varying forms of autonomy for

Indigenous peoples are explored. I argue that there is no need for a single type or model of Indigenous peoples' autonomy – different forms of autonomy can serve Indigenous groups' aspirations.

The way in which the right to autonomy comes to be exercised or expressed in each jurisdiction has been heavily influenced by the interaction between indigenous forms of social organization and opposing legal and political regimes introduced by colonial and contemporary authorities. Dramatic differences in understandings and livelihood between Indigenous and non-Indigenous populations require approaches to the development of Indigenous autonomy more in consonance with indigenous values and knowledge. Due respect should be paid to Indigenous peoples' expectations for expanding their legal capability to exercise jurisdiction in areas traditionally non-transferable to subnational regions. Accordingly, the right to autonomy should comprehend or protect Indigenous jurisdiction in legal systems and the administration of justice. It should allow direct Indigenous participation in international affairs when it concerns their homelands, and include Indigenous involvement in security issues relevant to the development of their lands (Loukacheva 2004a and 2004b).

In recent years significant attempts have been made to promote different autonomous arrangements for Indigenous peoples. However, it is not clear in the legal or political science scholarship whether the right to Indigenous peoples' autonomy exists in international or domestic law and how it can help Indigenous peoples to preserve their livelihood, traditional culture, and values. The scope of this section is limited to elucidation of the right to Indigenous peoples' autonomy in constitutional and international legal documents. It does not cover Indigenous peoples' views from a framework of Aboriginal law or native cosmology. Nor does this section deliberate on debatable issues such as the definition of Indigenous peoples³⁶ and Indigenous rights, differences between minorities and Indigenous peoples (Thornberry 1995), the scope of their rights, grounds of collectivism versus individualism (Galenkamp 1998), or human rights and Indigenous peoples.

In recent decades considerable effort has been made by various scholars, politicians, and representatives of Indigenous peoples³⁷ to develop a more concrete legal concept of Indigenous rights. The question becomes whether Indigenous peoples are entitled to the right to autonomy in public law and if so, what are the applicable forms of this autonomy. In other words, assuming that it is not clear whether autonomy is a principle of international or constitutional law, are there nevertheless grounds for recognition of an Indigenous right to autonomy?

3.1 The right to Indigenous Peoples' Autonomy from a legal, historical perspective

Analyzing the constitutional position of Indigenous peoples in a historical perspective, Harhoff states that after World War I "indigenous peoples were [...] recognized at the time as collective subjects of national law with inherent rights to protection and self-government" (1988, 289). Therefore, the prevailing view was to protect Indigenous peoples in their own culture and livelihood and to maintain their traditional forms of government.

After the Second World War, this affirmative approach was replaced by general abolition of Aboriginal rights and introduction of highly ambitious programmes of integration of all nationalities into the new industrialized society with its Western values (ibid., 289-290). Consequently, as Harhoff adds, in the subsequent era, demands for revitalized Indigenous autonomy have been raised by the Fourth World. It was a reaction against previous national policies of integration and assimilation, and an expression of "*new emerging perceptions of indigenous peoples' legal status in the human rights perspective* [...]" (ibid., 290). A substantial level of political autonomy for Indigenous peoples was required "for full

and final completion of the post-war decolonisation process” (ibid., 290).

One more dimension can be added to this process: the development of the right of Indigenous peoples to autonomy in the new millennium. The trend is that more and more Indigenous groups are looking forward to some form of self-governance through self-determination. It gives them a sense of control over their own destiny and a chance of becoming masters in their own home and an ability to preserve indigenous culture, language, livelihood, and values. From a historical perspective, most Indigenous peoples consider their right to autonomy as an inherent right because they were the owners of their lands before contact with colonizers and they had their own forms of self-governance.

Despite these trends, Anaya is of the view that “international law cannot easily embrace claims of ethnic or nationality group autonomy primarily based on accounts of the pre-existence and wrestling of sovereignty” (1990, 841). He argues that “the historical sovereignty approach” under which, “self-determination is invoked to restore the asserted ‘sovereignty’ of an historical community that roughly corresponds to the contemporary claimant group” (ibid., 838) is limited in international law by “doctrine of *intertemporal law*,”³⁸ by the matter of recognition,³⁹ and by “a normative trend within international legal process toward *stability through pragmatism* over instability” (ibid., 840). He believes that international law “can best accommodate ethnic autonomy claims if they are justified on human rights grounds and avoid absolutist assertions of independent statehood” (ibid., 844)⁴⁰

Other scholars (Heintze 1997; Alfredsson 1997) also support the idea of protection of minorities and Indigenous peoples via human rights instruments. In the words of Erica-Irene Daes, “for Indigenous peoples, autonomy and self-government are prerequisites for continuing their struggle in order to achieve full equality, freedom of racism and racial discrimination, human dignity, and effective enjoyment of all human rights and fundamental freedoms” (2001, 267).

Given the divergent views on the topic, it is necessary to explore the relation between Indigenous peoples’ autonomy and minorities. It is questionable whether the international law regime for the creation of autonomous arrangements for minorities is akin to Indigenous peoples’ autonomy.

3.2 Indigenous peoples’ autonomy and minorities

In the words of Thornberry, “autonomy and collective rights in the case of indigenous peoples provides a different set of parameters than those for minorities. Among many indigenous peoples, the imprint of individualism may be much less than for non-indigenous societies” (1998, 119). That raises the question about the nature of the right to autonomy. Most scholars argue that it is a group right⁴¹ and “it is incoherent to describe autonomy as a congeries of individual rights: the essence is group control over a territory, or a collective legal framework” (Thornberry 1995, 85).

Usually, it is a collective entity – the group – that claims and enjoys the right to autonomy. Generally, Indigenous peoples are looking at autonomy as a collective, group right. It can also be asserted as non-territorial, personal autonomy,⁴² which can be of particular interest to urban Indigenous peoples. Thus, the right to autonomy is not just a group right and although collectivism is more inherent to implementation of Indigenous rights, this characteristic cannot be the main criterion for distinguishing between minority and Indigenous peoples’ right to autonomy. What is the difference between an Indigenous peoples’ and a minority right to autonomy? It is debatable whether Indigenous peoples should be regarded as minorities⁴³ or as different types of minorities (cultural, ethnic, religious, or linguistic) for the purpose of grounding a right to autonomy. For example, Kymlicka, underscoring the uniqueness of Canadian policies, considers Aboriginal peoples in Canada as “ ‘national minorities,’ since the latter constitute themselves as

‘nations’ within Canada and have historically sought various forms of self-government so as to maintain their status as culturally distinct and self-governing societies within the larger state” (1998, 7). As national minorities, in contrast to ethnic minorities, Aboriginal peoples have a right to collective governmental powers with inherent rights of self-government⁴⁴ and the right to external self-determination. There might be objections to this view, however, because a distinction can be drawn between national minorities and Indigenous peoples.

Lapidot qualifies Indigenous groups as ethnic minorities and states that they “can enjoy the rights granted by international law to minorities” (1997, 5). Alfredsson suggests that “when indigenous peoples number less than one half of the state population, they can benefit from minority rights if they so choose, as evident by the case-law of the Human Rights Committee under Article 27 of the Covenant on Civil and Political Rights and its Optional Protocol” (1998, 125). Though from the legal perspective, it is asserted that Indigenous groups that are in a minority situation (e.g., subject to subordination or a certain degree of dispossession by a dominant group) and are thus entitled to protection as minorities under Article 27. The debate is a complex one. This complexity is underpinned by the fact that some Indigenous peoples claim that they are not minorities (Sanders 1993).⁴⁵ and stress that they have different rights going beyond minority rights. For example, as it was put by representatives of the Inuit Circumpolar Conference:

Indigenous peoples are not mere ‘populations’ or ‘citizens’. Nor should we be viewed as ‘minorities’ under international law. We are distinct peoples or nations. In order to defend our rights and interests, we must increasingly be considered as subjects under international law.⁴⁶

Furthermore, Alfredsson underlines that regardless of “the comparison with minority rights, the international debate about autonomy is different in the case of indigenous peoples” (1998, 125). He argues that the case for Indigenous peoples’ right to autonomy is stronger than that presented by most minorities: “[H]aving been colonized, outnumbered and often overwhelmed by subsequent settlers, autonomy can contribute to the achievement of dignity and raise indigenous peoples to an equal footing with other parts of society” (ibid., 125). Finally, Alfredsson notes that self-government in its internal affairs is crucial for Indigenous peoples as “probably the most effective means of protecting group identity, group equality and group dignity within States” (ibid., 125). How is the position of Indigenous peoples on autonomy stronger than for minorities?

3.3 The right of indigenous peoples to autonomy in international law

What, if any, is the basis for Indigenous peoples’ autonomy in international law? Notably, all international documents suggestive of a right to autonomy for minorities are relevant to Indigenous peoples. The Human Rights Committee has interpreted Article 27 of the International Covenant on Civil and Political Rights 1966 as protecting the right of Indigenous groups to preservation of their livelihood, language, values, and traditional economic activities.⁴⁷ By analysing additional international documents that speak directly of Indigenous rights, this section attempts to find some solid grounds for Indigenous peoples’ autonomy.

The Draft Declaration of Principles for the Defence of the Indigenous Nations and all Peoples of the Western Hemisphere (1977), developed by the NGO Conference on Discrimination Against Indigenous Populations, does not mention a general right to autonomy. However, in Section 1 it refers to the right of Indigenous peoples to have a government as a fundamental requirement of nationhood and in Section 7 it

underlines Indigenous nations' or groups' right to self-determination.⁴⁸ The UNESCO 1981 Declaration of San José, in Article 3 noting the elements of the Indian groups' right to ethno-development, refers to the exercise of self-determination and authority of an ethnic group over its own territory and "decision-making powers within the confines of its development project, in a process of increasing autonomy and self-management."⁴⁹ Interestingly, the right to ethno-development describes some elements of self-governance but does not refer to self-government itself as a distinct right. It connects ethno-development with self-determination and identifies autonomy with self-management.

The Declaration of Principles of Indigenous Rights, adopted by the World Council of Indigenous Peoples (NGO status) in 1984, in Principle 1, recognizes Indigenous peoples' right to self-determination, by virtue of which they may freely determine their political status and freely pursue their economic, social, religious and cultural development. Principle 2 mentions the states' obligation to recognize Indigenous institutions.⁵⁰ The 1987 Declaration of Principles on the Rights of Indigenous Peoples, adopted by representatives of Indigenous peoples and organizations in Geneva, goes further and recognizes in Article 2 that "all indigenous nations and peoples have the right to self-determination, by virtue of which they have the right to whatever degree of autonomy or self-government they choose."⁵¹ In this formula the phrase "to whatever degree of autonomy or self-government they choose" may be interpreted as internal and external self-determination. It also indicates that there may be varying types and degrees of autonomy. Importantly, the right to autonomy, as specified by Article 2, includes citizenship, which is not typical for internal forms of self-governance for Indigenous peoples or minorities.⁵²

The provisions of the 1989 International Labour Organization Convention No 169, Concerning Indigenous and Tribal Peoples in Independent Countries, do not encompass a right to autonomy for Indigenous peoples.⁵³ However, some of its Articles (6, 7, 8, 16, 27) are suggestive of a right to Indigenous peoples' autonomy because they refer to the establishment of indigenous institutions and participation in national events that affect Indigenous interests and development of their identities, languages, religions, ways of life, and land rights (Articles 13-19).

The UN Draft Declaration on the Rights of Indigenous Peoples in Article 3 repeats the wording of common Article 1 of the two human rights covenants of 1966 and states that:

Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 3 is important for understanding of Article 31 which might be still in force with adoption of the Draft declaration in the future⁵⁴ and provides for a right to autonomy:

Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources management, environment and entry by non-members, as well as ways and means for financing these autonomous functions.⁵⁵

This formula specifies the content of the right to autonomy or self-government, which is a specific form of exercising the right of self-determination. Autonomy and self-government are indicated with the disjunctive "or," which makes these notions synonymous.⁵⁶ Importantly, the suggested article retains the right of Indigenous peoples to autonomy or self-government in matters relating to their internal and local affairs. It underlines that the right to autonomy is a specific form of exercising their right to self-determination.⁵⁷

The Inter-American Draft Declaration on the Rights of Indigenous Peoples 1995, in Article XV, Right to Self-Government, Management and Control of Internal Affairs, does not mention the right to autonomy in its title.⁵⁸ The second part repeats Article 31 of the UN Draft Declaration. However, the first part draws an interesting conclusion in that the source of autonomy and self-government is the right of Indigenous peoples to freely determine their political status and freely pursue their economic, social, and cultural development.

The essence, scope, and features of autonomy for Indigenous peoples were framed in The Nuuk Conclusions and Recommendations on Indigenous Autonomy and Self-Government, adopted by the UN Meeting of Experts in Nuuk, Greenland, in 1991. These recommendations have no binding force on any state but they feature some important elements of Indigenous autonomy. Thus, the Recommendations underline that an integral part of Indigenous peoples' right to self-determination "is the inherent and fundamental right to autonomy and self-government" (Article 2). Article 4 states, that "self-government, self-administration and self-management of Indigenous peoples constitute elements of political autonomy." Article 4 further provides that "the realization of this right should not pose a threat to the territorial integrity of the State."

Article 4 also notes "autonomy is meaningful for indigenous peoples because it is a prerequisite for achieving equality, human dignity, freedom from discrimination and the full enjoyment of all human rights." From the Nuuk Conclusions it further follows that autonomy is "[...] beneficial to the protection of the natural environment and maintenance of ecological balance which helps to ensure sustainable development" (Article 6). Autonomy is the way of popular participation in public affairs (Article 7) and participation in decision-making in the matters of a given jurisdiction (Article 12). Autonomy is essential for Indigenous peoples' survival and further development (Article 9). It forms the basis for international cooperation and bilateral and multilateral legal arrangements (Article 9) and contributes within states "to peaceful and equitable political, cultural, spiritual, social and economic development"(Article 11).

The Nuuk Conclusions do not provide a definition of Indigenous peoples' autonomy or its specific forms. Importantly, they point out that self-government, self-administration and self-management constitute critical aspects of political autonomy, and that territorial and resource bases are crucial to the construction and effective exercise of Indigenous peoples' autonomy (Article 5). They also note in the Preamble, that "[...] indigenous peoples are historically self-governing with their own languages, cultures and traditions." This statement means that Indigenous peoples had some form of autonomy, which had a different interpretation for each particular Indigenous group.

To conclude, in the examined documents, the scope of the right of Indigenous peoples to autonomy is far from lucid. It is questionable whether Indigenous peoples' autonomy can become a principle of international law,⁵⁹ based merely on the frequent occurrence of this right (Sanders 1986). However, the right to Indigenous autonomy is becoming recognized at least in the Draft documents of the UN, recommendations of NGOs, and other international documents, which form the basis of sources of modern international law. These documents show that the right of Indigenous peoples to autonomy is a stronger case than for minorities. Arguably, the emerging right of Indigenous peoples' autonomy would be based on an outgrowth of the right to self-determination. Moreover, on the level of national legislation, the right of Indigenous peoples to autonomy may derive from its inherent nature, which could be recognized as a customary clause.

3.4 Indigenous peoples' autonomy and the right to self-determination

Eide underlines that the “right to self-determination” of Indigenous peoples must be understood to mean some form of autonomy. In his view, “in spite of the use of the word ‘self-determination’ the indigenous people are assumed to remain within the existing sovereign state” (1995, 365-6). He argues that a degree of autonomy is required to enable Indigenous peoples to preserve their political, economic, and cultural characteristics.

In the most cited documents, the right of Indigenous peoples to autonomy is connected with the right to self-determination or considered as an integral part of this right. Notably, Indigenous peoples, like all peoples, have a right to self-determination (Art. 1(2) of the UN Charter, and Articles 1 of the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights 1966). Sanders situates their right in the context of state sovereignty:

If the people is a colonized people within the boundaries of an existing state, then their right to self-determination must be balanced against the right of the State to territorial integrity. This balancing means that the people have the right to choose the extent of autonomy or self-government which is appropriate to their situation within the particular state. A denial of equality or human rights or self-government would give the people an option for independence. This position begins with the proposition that “self-determination of peoples” applies equally to all peoples, including indigenous peoples (1993, 79).

As noted earlier, it is questionable whether Indigenous peoples should be classified with cultural, ethnic, national or other minorities.⁵⁹ Sanders, however, states that Indigenous peoples, as cultural minorities, “require some autonomy to maintain and develop their distinctiveness. Particularly for Indigenous peoples, where cultural difference is often very great, this requires autonomy or self-government” (ibid., 80).

The practice of international law thus shows that the idea of self-determination in the case of Indigenous peoples has a different connotation than in the case of minorities or other peoples. As regards Indigenous peoples' autonomy, numerous discussions on these issues can be summarized in the following conclusions.

Indigenous peoples have a right to internal self-determination and internal autonomy as an integral part of this right.⁶⁰ This means that autonomy can be expressed internally and does not imply secession. Furthermore, Indigenous peoples can be beneficiaries of external self-determination in certain cases. From the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples, 1541(XV) General Assembly Resolution, it follows that Indigenous peoples of the colonized territories may choose independence via realization of their right to self-determination. Arguably, Greenland as an overseas territory is qualified to make such a choice (for details see Alfredsson 1982 and 2004). Although there are many legal arguments for and against this right,⁶¹ Indigenous peoples can apply external self-determination in some cases. Autonomy may mean the right to full self-governance and independence. Finally, Indigenous peoples have a right to self-determination without artificial division on external and internal aspects. They are free to choose between independence and internal self-governance. As Alfredsson states:

Demands for autonomy have been presented as claims to the right of internal self-determination. The self-determination label certainly does not improve indigenous' peoples chances of obtaining autonomy; on the contrary, it is more likely to alien-

ate states, and at some point to disappoint the groups themselves. Autonomy under the banner of self-determination, while avoiding the claim of external self-determination (which would include the option of secession and independence), is misleading and likely to create unrealizable expectations. Special measures such as group autonomy should be called by their proper names, and their image should not be overly enhanced by popular labels (1997, 40).

From Alfredsson's statement, it follows that there is no need to divide the right into internal or external self-determination, as it relates to Indigenous peoples. Such division makes the already ambiguous concept of self-determination more confusing and leads to higher expectations for autonomy among Indigenous peoples. The more they ask for under the banner of external self-determination, the less likely they are going to get any form of self-governance.

The experience of the Inuit of Nunavut, who had refrained from using extreme formulas, shows how Indigenous peoples can be successful in their quest for governance (Hicks and White 2000). The major arguments against external self-determination are connected with the issue of state integrity, sovereignty, and ethnic conflict. Alfredsson (1998) points out that the exercise of a right of external self-determination by Indigenous peoples under existing law is not encouraging due to the maintenance of peace and security as a way to avoid ethnic conflicts based on the disruption of state borders or connected with the creation of new states. The exercise of external self-determination is also complicated by the fact that the international legislative process is made by states seeking to preserve their interests of integrity, governments, and majorities.

Arguably, the right to Indigenous peoples' autonomy as an integral part of the right to self-determination should possess both external and internal dimensions. The prohibition of an external right causes misunderstandings and disappointments. The grant of it would not necessarily lead to Indigenous peoples seeking secession or independence. In contrast to minorities' demands, most Indigenous peoples do not interpret self-determination as separatism (Lâm 1996).⁶² They often affiliate with the national states in question.⁶³ Indigenous peoples understand that "self-determination does not constitute secession, but merely the exercise of inherent sovereign powers that have never been relinquished" (Morris 1992, 78). They speak about self-determination in the sense of a "new partnership" (Assies 1994).

As expressed by the representative of the Aboriginal and Torres Strait Islander Commission to the UN Working Group on Indigenous Populations in 1993:

[...] Self-determination is an aspirational [sic] concept which embraces a widening spectrum of political possibilities, from self-management by indigenous peoples of their own affairs to self-government by indigenous peoples of their own communities or lands [...] recognition of self-determination does not provide a mandate for secessionist separatism [...] rather, self-determination represents the conceptual basis for progressive empowerment of indigenous peoples (quoted from Thornberry 1998, 119).

To summarize, autonomy can be regarded as a part of Indigenous peoples' right to self-determination without constituting a threat to state disintegration or secession. Could internal self-governance as a form of internal self-determination answer indigenous peoples' aspirations?

As Alfredsson puts it: "[...] if external self-determination is not available [...] and not politically feasible, the question arises whether another form of self-determination can substitute wholly or partially for the external application" (1998, 135). Internal self-determination in the form of extensive self-govern-

ment can partially compensate for what is not obtained by external self-determination. For most Indigenous peoples some form of internal self-government instead of external self-determination is the only possible solution because of territorial disputes, cultural and linguistic assimilation, or integration with the majority. Ironically, as Russell states, federal and provincial governments' "willingness to negotiate self-government arrangements with Aboriginal peoples is based less on respect for the principle of Indigenous self-determination than on fear of provoking Aboriginal resistance that could be both economically disturbing and internationally embarrassing" (2001, 3). However, in some cases, internal self-determination would never replace the desire and will for independence. For example, fascinating changes are taking place in Greenland's political agenda today. They show that even though the Home Rule jurisdiction in some areas is broader than the competence of federal units, and the prospect for economic sustainability of the Island is grim, there is a movement towards independence and a new constitutional arrangement and partnership with the Danish state.⁶⁴

3.5 Forms of autonomy for Indigenous Peoples

Exploring the models, types, or classifications of autonomy that can be applied to Indigenous peoples, I argue that there is no need for a special form of Indigenous peoples' autonomy as long as existing schemes of autonomous arrangements are suitable for Indigenous peoples' modes of self-governance. And the particular circumstances of each Indigenous group are considered, including characteristics which are of special significance for Indigenous governance.

Legal and political science scholarship has developed two significant approaches for classification of autonomy: territorial and non-territorial.⁶⁵ Territorial autonomy can be identified as political, organic, administrative, cultural, or ethnic-based. Some authors include political devolution of powers in this approach. Non-territorial autonomy can be corporate, personal,⁶⁶ and cultural. Both of these approaches are applicable to Indigenous peoples. In each case, preference for territorial or non-territorial principles will depend on the geographical location and concentration of the Indigenous population, its cultural and linguistic integrity, the will of the population in question, and the ability to define the territory in question.

Analysing the example of Åland Islands' Swedish minority and the Inuit of Greenland, Myntti concludes that "a person may change his language, but it is not possible to change one's ethnic origin. Therefore, the principles of territoriality and ethnicity arise in particular in relation to indigenous peoples" (1998, 280). In the words of Sanders, "for self-government, territoriality is a crucial factor" (1993, 70). For non-territorial Indigenous populations, in his view, self-government is not suitable language.

Considering the relationship between ethnicity and territoriality, Assies proposes the following forms of self-government systems. First, he mentions:

Cases of local or regional autonomy where ethnicity formally does not play a role. Administrative boundaries are drawn in such a way that the indigenous population constitutes a majority within them and thus effectively can realize a degree of self-government within the nationally established administrative framework, e.g. municipal councils, provincial councils, federal states (e.g., the Nunavut territory in Canada, Greenland) (1994, 45).

Assies is referring to territorial autonomy in general, which is applicable to Indigenous peoples but does not form a distinctive type of Indigenous peoples' autonomy. Secondly, Assies describes:

Cases where ethnicity and territoriality are formally linked in self-government arrangements, where within certain limits as to scope and content, only the indig-

enous (peoples) may partake in the government of a territory (e.g., Colombia, the Kuna in Panama or the Indian reserves in the USA) (ibid., 45).

Finally, he describes cases where ethnicity is a criterion without being linked to the territory of Indigenous peoples' domiciles (example of Saami parliament in Norway) (ibid., 45).

The Danish anthropologist Jens Dahl (1992; 1993) defines three types of Indigenous peoples' autonomy:

1. *Regional self-government*. Although the carving out of an autonomous territory is usually done so that the Indigenous group or groups will make up a majority of the population, the self-governing territory is defined in geographical terms rather than in ethnic terms. Thus, in relation to territorial self-government, no ethnic group is given preferential rights within the political region (Greenland, Nunavut) (Dahl 1992, 183-4).
2. *Ethno-political self-government*. Assigns specific rights to specific groups of people as being the Aboriginal inhabitants of a certain territory. The Indigenous peoples are conceded specific rights, which are not given to the immigrant majority of the said territory. These Aboriginal rights are not defined in geographical terms, but in ethnic terms, although they relate to a specific territory as the homeland of the pertinent Indigenous group or groups. Sometimes, these rights can be exercised even in the case that an Indigenous person resides outside his/her traditional homeland (Saami in Norway, Finland) (ibid., 185).
3. *Land claims*. Land claims refer to certain ethnic groups and to a specified territory, but are far more limited in scope than territorial self-government. Land claims agreements are entered into by governments and groups of Indigenous peoples. The main focus of these settlements is on economic ownership rights to selected territories (Alaska native settlement Act of 1971) (ibid., 186).

Both authors describe the same types of autonomy. Land claims can be included into Assies' second type. The argument that a land claim settlement is a form of Indigenous peoples' autonomy is disputable because of its very narrow scope and orientation toward economic ownership rights. However, in some cases, for example in Canada, according to the comprehensive lands claims policy, modern treaties address not only land issues but often provide for territorial and civic Indigenous governance.⁶⁷ Furthermore, by means of treaty federalism, Indigenous peoples via elected or appointed bodies of their representatives (which may include self-administration or co-management⁶⁸), realize one of the important features of autonomy, including the possibility of the population to participate in key decision-making processes on matters of central importance to their community.

Henriksen identifies the following types of autonomy granted to Indigenous groups. First, he mentions autonomy arrangements based on contemporary Indigenous political institutions, the Sami Parliaments in Finland, Norway, and Sweden. Second, he speaks about autonomous entities based on the concept of an Indigenous ancestral territory, the arrangement for the Comarca: Kuna Yala in Panama. Finally, he defines regional autonomy within the State, such as Nunavut and the Indigenous autonomous regions in the Philippines (Henriksen 2001 quoted in Magnarella 2001, 442-43).

These types of autonomy are also common for minorities and other peoples. This brings us to the conclusion that there is no singular form of Indigenous peoples' autonomy. Legal scholarship and practice have developed some schemes for territorial and non-territorial forms of autonomy. Though they may vary from case to case, they are applicable to Indigenous peoples and minorities. In the case of Indigenous peoples, land rights and issues relating to renewable and non-renewable resources would

have a special significance in the quest for self-government. This is because Indigenous culture tends to manifest a specific spiritual connection with the land, and typically is based on traditional lifeways and occupations such as reindeer herding, fishing, hunting, and gathering. As Daes puts it:

Land is not only an economic resource for Indigenous Peoples. It is also the peoples' library, laboratory and university; land is the repository of all history and scientific knowledge. All that the Indigenous Peoples have been, and all that they know about living well and humanly is embedded in their land and in the stories associated with every feature of the land and landscape (2001, 264-5).

In a similar vein, Anaya (1996) speaks to an important element of autonomous Indigenous governance: the capacity to develop institutions of governance securing ongoing self-determination and consideration of distinctive Indigenous cultures, usage of land, and resources. Thus, the issues of land and its resources, cultural ceremonies, oral traditions, and the system of customary regulations put a special imprint on the institutions of autonomy. Indigenous peoples' autonomy differs from minority autonomy on historical grounds and on self-government being an inherent right linked to their prior settlement in the territory in which they live (continuing occupation of their original territories and special relationship with their lands).⁶⁹

Furthermore, in the case of Indigenous self-government, often Western patterns pre-determine the framework of autonomy. However, Indigenous customs, traditions, and views may influence the exercise of autonomy in practice. Thus, the question becomes: how to reconcile Indigenous systems of governance with Western patterns of self-governance. Indigenous peoples have to adjust and integrate the structures of majority societies because of continuous technological and social changes and the necessity for communication with the national and international community. Arguably, at the municipal level of governance it is easier to entrench indigenous traditions, as municipal legislation is the jurisdiction of autonomous, territorial or provincial levels. When we deal with regional, territorial, or non-territorial autonomy levels, the idea of public governance obtains a special state support.

Concluding remarks

Analysis of the concept of autonomy and existence of the right to autonomy in the main sources of international and constitutional law as they bear upon the cases considered in this paper reveals that there is a weak normative basis for this right. However, it is emerging and gradually obtaining a greater *de jure* support in the practice of international organizations, documents, the Draft UN Declaration on the Rights of Indigenous Peoples and in constitutional jurisprudence. Eventually the right to autonomy will get explicit recognition in the sources of public law. The concept of this right is evolving and to date it has a stronger ground for its legal justification and implementation as regards the right of Indigenous peoples to autonomy compared to other groups.

There are numerous approaches to the concept of autonomy in the public law scholarship. All of the above mentioned legal documents and instruments indicate that there is an emerging recognition of the right to autonomy in international law and it is further shaped by means of constitutional jurisprudence. The form, type and scope of autonomy vary in each case. I have argued that there is no need for a rigid legal definition of autonomy. The lack of clarity makes the concept of autonomy more attractive to many groups and flexible in response to their aspirations to self-governance. I also have shown that there is no need for a special form of Indigenous peoples' autonomy as long as existing schemes of autonomous arrangements: meet Indigenous peoples' aspirations of self-governance and take into consideration the

particular circumstances of each Indigenous group including features of special significance for autonomy of the Indigenous group as defined by the group itself.

There is an evolving understanding of autonomy in law. Depending on the methodological grounds, there are several ways on approaching the legal concept of autonomy. The traditional one was followed in this paper. It employed the contextualist and textualist interpretations of autonomy in the framework of existing legislation, documents, instruments, court decisions, publications, opinions of prominent scholars and indigenous representatives. Thus, based on a human rights approach, the right to autonomy is housed in the right to self-determination. It embraces cultural differences and effective political participation in the institutions of democratic governance. Regardless of its ambiguity even in legal terms, theoretically, every autonomous arrangement in the framework of internal self-determination should be responsive to the following characteristics:

- a strong voluntary will of the population to achieve autonomy;
- existence of particular geographical, demographic or historical factors;
- cultural, linguistic, ethnic distinctiveness;
- creation of a legislative body elected by local residents in a democratic way and capable to enact its own legislation; as well as the establishment of an executive body;⁷⁰
- provisions of conditions for economic sustainability and a financial base versus fiscal dependency on central/federal authorities and pragmatic expectations of future financial independence and liability for managing its own affairs;
- Autonomy starts with “self,” the desire and ability of all residents of the autonomous entity to be a part of existing or building structures and institutions, making them more amenable to peoples’ aspirations and needs.

This latter human development factor is closely connected with another way of studying the right and the concept of autonomy, a “bottom to top” approach or moving from *de facto* understanding of autonomy to a *de jure* one. Despite a relatively weak legal ground for normative recognition of the right to autonomy, an empirical analysis of some governance systems (e.g., Nunavut in Canada’s Eastern Arctic and Greenland (Denmark)⁷¹ shows that autonomy is not a static phenomenon. It is a dynamic concept constantly evolving towards more recognition at the *de jure* level. Although the right to autonomy is a logical consequence of the concept of self-determination, one can comprehend its content and scope in the context of a particular situation or the actual self-governance process from the bottom up. This “factual autonomy” in the experience of each autonomous entity in question advances the legal comprehension and notion of autonomy in law. This development is already happening in regard to areas of “non-transferable” jurisdiction which are typically not granted to autonomous units by their respective states and would require a restructured or evolved interpretation of autonomy in law. Because of the lack of clarity and the particular circumstances in each case, the legal definition of autonomy may remain ambiguous for a long time. This leaves the door open to further changes in the legal and factual image of autonomy.

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NOTES

¹ This includes Public International law and Comparative Constitutional law.

² Frederik Harhoff (1986, 31-32) gives a good explanation of the difference between autonomy in constitutional legal terms and local autonomy. This paper does not aim to look at municipal self-administration or local Aboriginal self-government arrangements in Canada or elsewhere in which through treaty-making some aboriginal communities may enjoy constitutionally recognized native title and exercise local and regional levels of self-governance. See for example (McNeil 1997, 135).

³ The complex question of the terms “minorities” and “Indigenous” is addressed in “Prevention of Discrimination against and the Protection of Minorities.” Working paper on the Relationship and Distinction between the Rights of Persons Belonging to Minorities and those of Indigenous Peoples. 19 July 2000. UN/Economic and Social Council. Commission on Human Rights. Sub-Commission on the Promotion and Protection of Human Rights. 52 session, item 8 of the provisional agenda (UN Document No. E/CN.4/Sub.2/2000/10). In this document Ms. Erica-Irene Daes specifies some factors which have been asserted as characteristics of either Indigenous peoples or minorities. Those include: numerical inferiority; social isolation, exclusion, or persistent discrimination; cultural, linguistic or religious distinctiveness; geographical concentration (territoriality); aboriginality (i.e., being autochthonous). Point 28. These features do not solve the conceptual problem of the terms but are helpful in understanding the subject. There is also a widely used definition of “indigenous communities, peoples and nations [...]” as formulated by José Martínez Cobo in 1987. See “Study of the problem of discrimination against indigenous populations.” UN Document No. E/CN.4/Sub.2/1986/7/Add4. For the purposes of this paper, I also consider the definition of “Indigenous” as it is formulated in Article 1 (b) of the ILO Convention No. 169, which reads: “peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.” Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries, Geneva, June 27, 1989. Adopted by the General Conference of the International Labour Organization. In force 5 September 1991. See also (Niezen 2003, 18-23).

⁴ See (Lindley 1969), (Dinstein 1981), (Hannum 1993; 1996), (Lapidoth 1997), (Hannikainen and Horn 1997), (Suksi 1998a), (Petersen and Poppel 1999); (Welhengama 1999; 2000), (Cook and Lindau 2000).

⁵ Besides, as Lapidoth writes, “there exists some confusion as to the difference between autonomy and other schemes aimed at diffusion of power, such as federalism, decentralization, self-government, devolution and associated statehood” (1994, 276).

⁶ Harhoff explains that: “In fact, this concept was originally derived from sociology, but has been applied as well in legal science because of the need to approach decolonisation in a constitutional legal context as well, and because of its highly appealing and motivating force” (1986, 31).

⁷ Lindley argues that, “[...] disputants may disagree about how ‘autonomy’ is to be analyzed, but they do share the same basic concept” (1969, 3).

⁸ See (Lapidoth 1994, 284-85); (Bernhardt 1981); and (Lakoff 1994). Lakoff argues that coupled with federalism autonomy is a constructive alternative to sovereignty.

⁹ Hannum (1996, 467-8) talks about “fully autonomous” territory and uses the term full autonomy. According to Hannum, “fully autonomous territory” possesses: a locally elected legislative assembly; local administrative powers, and independent courts. Besides, the issues of common jurisdiction may become a subject to special arrangements for the division of power between the state and the autonomous entity. The term “full autonomy” was used in the Camp David Agreement relating to a Framework for Peace in the Middle East, of 17 September 1978. See (Sohn 1980).

¹⁰ The author gives an example of Falkland/Malvinas Islands.

¹¹ The author gives an example of the Isle of Man.

¹² Greenland is an example.

¹³ Cases are Nicaragua/Atlantic Coast, the Philippines/ Mindanao and Finland/ Åland Islands.

¹⁴ See also footnote in 165 in Hannum and Lillich 1980 about the scholars.

¹⁵ For example, Åland autonomy of 1920 has been guaranteed by the League of Nations. See: Minutes of the meeting of the Council of the League of Nations June 24, 1921 incorporating the Åland decision, in International Treaties and Documents Concerning Åland Islands 1856-1992, Mariehamn, 1993 and the Agreement between Finland and Sweden to guarantee in the Law of May 7, 1920 on the Autonomy of Åland Islands, June 27, 1921 (Hannum 1993). The autonomy of the South Tyrol has been guaranteed by the Agreement between Austria and Italy. September 5, 1946 Annex IV of the Treaty of Peace with Italy,

February 10, 1947. UN Treaty Series No. 49.

¹⁶ Regarding ethnic minorities Steiner (1991) argues that autonomy regimes find indirect but significant support in several prominent norms of the human rights movement. As bases of autonomy regimes in human rights instruments, he looks at Articles 1, 25, and 27 of the Civil-Political Rights Covenant and Article 1 of the Universal Declaration of Human Rights).

¹⁷ The document can be found in Hannum (1993). See also comments by Lapidoth (1997, 12-3) and Heintze (1997, 85-86).

¹⁸ Thornberry (1998) notes that the Minority Right Group offered to the drafting group of the Human Rights Commission which was charged with the preparation of the Declaration, a proposal to establish a right of minorities to autonomy in internal matters but it was not inserted. Patrick Thornberry. "Images of Autonomy and Individual and Collective Rights in International Instruments on the Rights of Minorities."

¹⁹ The text of the European Charter of Local Self-Government is published in the European Treaty Series, No. 122 (1985) Strasbourg, Council of Europe.

²⁰ Article 73 of the Charter. Sohn (1980) concludes that the concept of internal self-government has evolved through the years in the practice of the UN.

²¹ Some scholars argue that there are external aspects of the right to self-determination which do not entail secession. For example, Indigenous peoples' international representation and participation in activities that transcend state boundaries can be regarded as an external dimension of this right. This aspect of the right to self-determination is reflected in the Draft of the Nordic Saami Convention, which will be released to the public on 16 November 2005. See also (Henriksen 2001).

²² See (Tomuschat 1993), in particular (Rosas 1993) and (Thornberry 1993). Also see (Cassese 1995); (Knop 1999 and 2002); (Welhengama 2000); (McCorquodale 2000); (Castellino 2000); (Gilbert 2002); (Miller 2003); and (Skaale 2004).

²³ The right of peoples to self-determination is entrenched in: the UN Charter Articles 1(2) and 55; the 1960 Declaration on the Granting of Independence to Colonial Peoples and Countries; Resolution 1514 (XV) by the UN General Assembly (deals with self-determination for colonial peoples); the first article of the two 1966 Human Rights International Covenants on Civil and Political Rights and Social and Economic Rights, the ambiguity of which provokes numerous discussions and contradictions among scholars, politicians, and people, including different ethnic, minority, and Indigenous groups; and UN General Assembly 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (Resolution 2625 (XXV)).

²⁴ In the common law countries this formula can be contested due to the recognition of native title, the inherent right to self-government, and the consideration of treaty-making with Aboriginal peoples as a nation-to-nation relationship and partnership.

²⁵ Cited from Hannikainen (1998, 85). He quotes Cassese (1995, 347 and 311).

²⁶ See General Comment 12 (21), Article 1, Human Rights Committee, 21st Session, 1984. Reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.5, 2001.

²⁷ Although Article 27 does not use the term "Indigenous peoples," they generally fall under its protection. The applicability of this article regarding Indigenous peoples has been emphasized in General Comment No. 23 of the Human Rights Committee (paragraph 3.2. and 7). It is also advanced by the case law developed under this provision which mostly deals with claims by indigenous groups: HRC General Comment 23 (50) reproduced in UN doc. HRI/GEN/1/Rev.5 at 147.

²⁸ In General Comment 23, the Human Rights Committee concluded that the exercise of cultural rights under Article 27 especially in the case of Indigenous peoples "may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them." Paragraph 7.

²⁹ When referring to fact-finding and investigative procedures, Alfredsson has in mind Special Reporters and working groups of the UN Commission on Human Rights.

³⁰ Asbjørn Eide. The Special Reporter of the Sub-commission on Prevention of Discrimination and Protection of Minorities. Possible Ways and Means of Facilitating the Peaceful and Constructive Solution of Problems Involving Minorities. UN Docs. Nos.E/CN.4/Sub.2/-1990/46, 1991/43, 1992/37, 1993/34 and its Add 4. Quoted from (Hannikainen 1998, 94).

³¹ One of the exceptions would be the autonomous status of Åland Islands, which was guaranteed by the decision of the League of Nations in 1921.

³² The League of Nations could be an example of that kind of body. Existing until 1924, it played a crucial role in the international dispute between Sweden and Finland on the Åland Islands, and the League Council was the international supervisor.

³³ Suksi names them autonomies proper.

³⁴ These are autonomies for all practical purposes.

³⁵ In Canada it is debatable whether recognition of Aboriginal rights in s. 35 of the *Constitution Act*, 1982, includes Aboriginal peoples' right to autonomy.

³⁶ John H. Bodley (1997) deliberates on the problem of terminology in definition of Indigenous peoples

³⁷ Some legal scholars on that account are: (Anaya 1981 and 2003); (Lawrey 1990); (Turpel 1992); (Sanders 1983, 1994 and 1996); and (Venne 1998).

³⁸ As Anaya explains, “this so-called doctrine of *intertemporal law*, which judges historical events according to the law in effect at the time of their occurrence” (1990, 838).

³⁹ Anaya suggests that the matter of recognition is one more aspect of international law that limits its capacity to embrace ethnic autonomy claims. “Recognition is a phenomenon of international legal process which “may validate solutions of dubious origin.” That is, when a preponderance of states, international organizations and other relevant international actors recognize a state’s boundaries and corresponding sovereignty over territory, international law upholds the recognized sovereignty as a matter of traditionally held foundational principle. International legal process thus hardly questions whether the territory was acquired by lawful means, leaving little room for groups within the cloak of a recognized sovereign to assert competing sovereignty solely on the basis of historical conditions or events” (1990, 839).

⁴⁰ In this sense, Anaya advocates for the human rights approach to indigenous rights and autonomy.

⁴¹ As Alfredsson argues “Group rights are the foundation of autonomy considerations” (1997, 36).

⁴² For example, the Sámi in Norway, Finland and Sweden can exercise certain cultural rights even if a Sámi person resides outside his or her traditional homeland. In the meantime, the concept of territorial rights is also applicable. For example, the recently adopted Norwegian “Finnmark Act” of 2005 aims to secure the material basis for Sámi culture, reindeer husbandry, traditional use of natural resources, livelihoods, and social life. In paragraph 5 it recognizes that: Sámi people have established rights both individually and collectively to the lands and resources through their immemorial usage of lands and resources. It is expected that approximately 96 percent of the Crown land would be transferred from a state owned company to the new Finnmark Estate. Importantly in paragraph 3 the Act recognizes the priority of the norms of the ILO Convention 169 as a measure of protection of Sámi self-determination and land rights. Personal communication with Láilá Susanne Vars, Sámi political activist. Sommarøya, Norway, 8 June 2005. See also the article “Finnmark Act approved in Norway,” *Nunatsiaq News*. 3 June 2005.

⁴³ For a detailed analysis see the Working Paper on the Relationship and Distinction between the Rights of Persons belonging to Minorities and those of Indigenous Peoples, prepared by Ms. Erika-Irene Daes and Mr. Asbjørn Eide. Also see (Gayim 2001) and (Kinsbury 2001).

⁴⁴ Kymlicka notes, “national minorities claim that they are distinct ‘peoples’, with inherent rights of self-government. While they are currently part of the larger country, this is not a renunciation of their original right of self-government. Rather it is a matter of transferring *some aspects* of the powers that remain in their own hands” (1995, 181).

⁴⁵ Prof. Sanders points out that Indigenous peoples became minorities as a result of a history of colonialism or state expansion. If their positions are argued purely as minority rights, the colonial origins of their situation become unimportant. He further notes that Indigenous peoples are cultural minorities, which require some autonomy to maintain and develop their distinctiveness. There are different arguments whether Indigenous peoples are minorities or not, but from the point of view of some Indigenous peoples they are not minorities.

⁴⁶ Reprinted in E/CN.4/Sub.2/AC.4/1988/5 at 12. Quoted from (Gayim 2001, 52).

⁴⁷ Peter Russell notes “though article 27 does not recognize the distinctive position of Indigenous peoples, nevertheless its reference to rights that are to be enjoyed “in community with others” has given an opening for individual members of Indigenous societies to raise issues that pertain to collective rights” (1998, 108). The Human Rights Committee has decided a number of complaints under Article 27 by Indigenous peoples. See, for example: *Lovelace v. Canada* (Communication No. 24/1977) 1HRC: Selected Decisions (New York: UN, 1985) at 83; *Kitok v. Sweden* (Communication No. 197/1985). II Official records of the HRC 1987/88 (New York: UN, 1995) at 442; *Bernard Ominayak, Chief of the Lubicon Lake Band v. Canada* (Communication No. 167/1984) II Official Records of the HRC 1989/90 (New York: UN, 1995) at 381.

⁴⁸ Encl. (Anaya 1996, 185).

⁴⁹ Encl. (Anaya 1996, 188).

⁵⁰ Encl. (Anaya 1996, 188).

⁵¹ Encl. (Anaya 1996, 190).

⁵² For example, the inhabitants of the Faroe Islands, who are arguably considered an indigenous-minority, have a passport with nationality Faroingur. It is a sort of an island citizenship, which was done for strengthening of Faroese identity. In Canada the Nisga’a Agreement recognises Nisga’a citizenship. However, in most cases of autonomy, minority or indigenous citizenship is not included. Regarding the Faroe Islands see (Rógvi 2004).

⁵³ For some considerations on that account see (Myntti 2000).

⁵⁴ The Report of the working group established in accordance with Commission on Human Rights Resolution 1995/32, Chairperson-Rapporteur: Mr. Chavez (Peru) contains a summary of debates held at the ninth session of the working group on the Draft UN Declaration on the Rights of Indigenous peoples. As its basis the Commission considered the draft contained in the annex to resolution 1994/95 of August 26, 1994, which was endorsed by the Economic and Social Council in resolution 1995/32 of July 25, 1995. In this report various proposals for amendments are included. However, consideration of these proposals does not imply their acceptance or diminish the preference shown by Indigenous peoples' representatives and some governmental delegations to enact the draft in its present form. Thus, the formula of Article 31 might be unchanged and enacted according to the 1994/95 draft. See: Report of the working group established in accordance with Commission on Human Rights Resolution 1995/32.

⁵⁵ Encl. (Anaya 1996, 214).

⁵⁶ Patrick Thornberry and Benedict Kingsbury deliberate briefly on the content of Article 31. Thornberry (2000) emphasizes that self-determination is a broader concept than autonomy. Kingsbury (2000) draws attention to the unclarity of the meaning of autonomy in the frames of Article 31. The concept of the latter is not even expressly connected with an issue crucial for Indigenous peoples - a land base.

⁵⁷ In the Report of the working group established in accordance with Commission on Human Rights Resolution 1995/32, two versions of Article 31 are included. The first reads, that: Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs [as well as/ including ways and means for financing these autonomous functions]. Or "Indigenous peoples have the right to self-government of their internal and local affairs, including through their institutional structures. The exercise of this right shall be a matter for arrangement/agreement/negotiation/resolution between Indigenous peoples and States." It is not clear which formula might be enacted in the future.

⁵⁸ Encl. (Anaya 1996, 223-4).

⁵⁹ Myntti argues that "although there are several examples of national autonomy solutions for minorities and Indigenous peoples, Indigenous peoples do not seem to have a right to autonomy under international law, at least not a right to 'a fully autonomous territory'" (1998, 280). He further claims that based on UN and state practice "territorial autonomy (or ethno-territorial autonomy) are not yet rights of Indigenous peoples under customary international law" (2000, 117-8).

⁶⁰ Sanders states that "Indigenous peoples within States have a right to 'internal self-determination' as do all other individuals or groups within the State [...] In most cases this will require some decentralization, autonomy or self-government" (1993, 79). See also Article 31 of the UN Draft Declaration on the Rights of Indigenous Peoples.

⁶¹ See Alfredsson (1993); Sanders (1993); (Morris 1986); (Johnston 1986); (Magnarella 2001); and (Wolfrum 1999). For a historical account see (Morris 1986); (Wiessner 1999); and (Barsh 1994).

⁶² Magnarella (2001) notes that only few Indigenous peoples have campaigned for complete independence, namely Kurds of Turkey and Iraq.

⁶³ For example, Peter Russell (2001, 9) underscores that "the attachment of Aboriginal peoples to Canada may be based as much on economic prudence as patriotic sentiment." "[...] as a practical matter there are few Aboriginal leaders or groups with separatist aspirations" (ibid.). However, there might be objections in this regard.

⁶⁴ See The Commission on Self-governance - a Presentation. www.nanoq.gl (accessed 19 July 2005).

⁶⁵ Regarding non-territorial autonomy generally see (Coakley 1994).

⁶⁶ The idea of cultural personal autonomy or the principle of personality was developed by Austrian social democrats Otto Bauer and Rudolf Springer (Karl Renner). For analysis of that see (Hanf 1991).

⁶⁷ The Nisga'a Final Agreement (1998). www.gov.bc.ca/arr/negotiation/nisgaa/docs/fact_general.htm (accessed 19 July 2005).

⁶⁸ There is extensive literature on this matter. See, for example, (Henderson 1994); (White 2002); and (Scott 2005).

⁶⁹ For a detailed analysis of these issues see Working paper on the Relationship and Distinction between the Rights of Persons Belonging to Minorities and those of Indigenous Peoples. 19 July 2000. UN/Economic and Social Council. Commission on Human Rights. Sub-Commission on the Promotion and Protection of Human Rights. 52 session, item 8 of the provisional agenda (UN Document No. E/CN.4/Sub.2/2000/10).

⁷⁰ There might be objections to that matter, especially when we deal with customary governance that does not readily conform to standard electoral-bureaucratic models of governance.

⁷¹ About this approach and empirical study of these governance systems see (Loukacheva 2004a and 2004b).

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Institute on Globalization and the HUMAN CONDITION

The Institute on Globalization and the Human Condition was created in January 1998 following the designation of globalization and the human condition as a strategic area of research by the Senate of McMaster University. Subsequently, it was approved as an official research center by the University Planning Committee. The Institute brings together a group of approximately 30 scholars from both the social sciences and humanities. Its mandate includes the following responsibilities:

- a facilitator of research and interdisciplinary discussion with the view to building an intellectual community focused on globalization issues.

- a centre for dialogue between the university and the community on globalization issues

- a promoter and administrator of new graduate programming

In January 2002, the Institute also became the host for a Major Collaborative Research Initiatives Project funded by the Social Sciences and Humanities Research Council of Canada where a group of over 40 researchers from across Canada and abroad are examining the relationships between globalization and autonomy.

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The WORKING PAPER SERIES...

circulates papers by members of the Institute as well as other faculty members and invited graduate students at McMaster University working on the theme of globalization. Scholars invited by the Institute to present lectures at McMaster will also be invited to contribute to the series.

Objectives:

To foster dialogue and awareness of research among scholars at McMaster and elsewhere whose work focuses upon globalization, its impact on economic, social, political and cultural relations, and the response of individuals, groups and societies to these impacts. Given the complexity of the globalization phenomenon and the diverse reactions to it, it is helpful to focus upon these issues from a variety of disciplinary perspectives.

To assist scholars at McMaster and elsewhere to clarify and refine their research on globalization in preparation for eventual publication.

On Autonomy and Law

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