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AUTONOMOUS TERRITORY IN THE LIGHT OF INTERNATIONAL LAW

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Abstract. The essence of autonomy involves independence perceived in relation to other entities, that occurs in domestic and international law. In the latter case, it is related to a complex state that acts either as a federal state or a diversified state. In the first and second case, it refers to an area that may be an integral part of the above-mentioned types of states, or may extend to a territory not included in the state on which it is dependent. This status may be enjoyed by colonial areas, and territorial autonomy may be a form of their decolonization. A separate category of geopolitical units accommodates territories that are also not part of a given state, but are associated with it and enjoy the status falling within the sphere of territorial autonomy. The above-mentioned categories of territorial units, with limited treaty powers, cannot therefore be considered as states in the international legal sense, but at most as creations of a quasi-state nature, because full treaty capacity, in addition to sovereignty, is the criterion of subjectivity in international law.

Keywords: autonomy, federal state, complex state, diversified state, sovereignty, autonomous territory, associated state, treaty capacity

INTRODUCTION

The study addresses the concept and essence of territorial units other than states since the concept of the exclusive legal and international subjectivity of the state is now obsolete. The question then arises: what are these territorial units other than states, and how are they formed?

The above has also been raised at diploma seminars at the Faculty of Law and Administration and triggered questions from year four and year five full-time and part-time students about the classification of states in the context of international law, as well as the types of territorial units that are not states. Thus, the following discussion may provide a teaching aid and an answer to these questions.

When answering them, it should be emphasized that although there is no positive norm cataloging actors under international law, practice shows that states, by regulating mutual relations, may expand the circle of subjects of that

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law as seen in Article 3 of the Vienna Convention on the Law of Treaties of 23 May 1969[1] (headed: "International agreements not within the scope of the present Convention") which also covers entities other than states [Antonowicz 2015, 22–24; Brownlie 1998, 98; Menkes 2014, 335ff; Mielnik 2008, 51ff]. Nevertheless, the ability of states, as basic subjects and creators of international law, to establish additional categories of subjects of this law is limited. This is due to the fact that international legal norms, by their nature, are adjusted first of all to the relations between organized sovereign communities and then to other entities, including those that are autonomous.

Given that this study deals with an autonomous-type territorial unit, it calls for an explanation of concepts that are fundamental for this discussion, i.e. the terms "territory" and "autonomy." The first one, derived from Latin, is used in various meanings since this word itself has multiple meanings. One time it may be understood as a certain area distinguished due to its economic, geographic or linguistic, national, religious or natural features, another time it is a certain space in which public authority is exercised.

Nowadays, the center of gravity of statehood rests on the territorial element. Thus, it may be concluded that a territory is a specific section of the earth's surface in which states and territorial units operate. These units are not states under international law but have a specific status in the international legal space (in the light of the Charter of United Nations – overseas territories), such as: international zones, non-self-governing territories, no man's land or neutralized zones.

On the other hand, "autonomy," derived from Greek, means independence, and when understood in relation to other entities, it indicates separate properties or a separate function it performs in society. It is noticeable, inter alia, in the sphere of constitutional law, where it means guarantees of powers given by states to a specific creation to independently regulate its internal affairs within the framework specified by the law of a given state [Banaszak 2001, 535].

Turning to the international sphere, it should be noted that the concept in question refers to an organized community and the area inhabited by it, which is either an integral part of the state, or a part not formally included in the state to which it belongs and has certain systemic differences. Together, both concepts constitute a phrase that functions in the intra-state space which is because there are territories with the status of autonomy or with a status defined by another synonymous term [Antonowicz 2012, 43]. This makes it necessary to distinguish the essence of autonomy from the status of ordinary administrative units of the state due to internal affairs of a given territory, which may be the responsibility of the authorities of the autonomous area, unlike foreign affairs, which are, in principle, the competence of the central authorities of the

[1] United Nations, Vienna Convention on the Law of Treaties, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331–439.

home state. However, this does not exclude the fact that the internal affairs of such a territory may be the domain of the central authorities, while the powers in the foreign sphere may be vested in the authorities of the autonomy, which therefore raises the question of whether this territory may be considered a subject of international law.

1. GEOPOLITICAL UNITS WITH THE STATUS OF AUTONOMY

In order to answer the question from the last section, it is necessary to characterize the essence of an autonomous territory in the context of international law, taking into account the different scope of its autonomy, which sometimes results from this territory being an integral part of a given state, and sometimes a part outside the state with which it is legally and politically interrelated. We must consider whether in addition to the aforementioned category of a territory there are still other types of areas with an autonomous status.

The legal analysis of the concept discussed here should start with an observation that international space accommodates alternatively states and other territorial units that are not states. States, on the other hand, appear in two forms: as uniform and indivisible structures, i.e. as unitary states (for example: the Republic of Poland) and as complex states for which the division criterion is the ratio of its constituent parts to the entire country.

A complex state may be either a federal state, in other words a confederation state (consisting of two or more geopolitical units, formally equal to one another and which are this state's integral parts) or a diversified state, albeit essentially uniform, also having one or more autonomous territories associated with it, sometimes defined as state fragments which are constitutionally distinct. Therefore, when highlighting the differences between the above-mentioned forms of a complex state, reference should be made to the opinion of L. Antonowicz, who emphasizes that these differences essentially boil down to the fact that a federal state has a symmetrical structure, while a diversified one – asymmetric [Antonowicz 2015, 61].

In the light of international law, constituent parts which usually have specific powers in the foreign sphere are an important element of the federal state, as seen in the example of Switzerland or the Federal Republic of Germany.

The first of them, i.e. Switzerland, is a federal state with a cantonal structure. Its cantons, as laid down in the Swiss Constitution of 1999,[2] have cantonal constitutions and legislative bodies, and the relations between them and the federation are governed by the principle that powers not expressly granted to the Confederation are cantonal competences, including: the right to enter

[2] Federal Constitution of the Swiss Confederation of 18 April 1999, https://www.fedlex.admin.ch/eli/cc/1999/404/en [accessed: 28.03.2021].

into agreements with other states in economic, neighborly or political matters, provided that they do not contain provisions detrimental to the Confederation as a whole or other cantons [Antonowicz 2012, 45; Berezowski 1966, 128; Favez 1982, 85ff; Shaw 2011, 157; Sutor 2019, 116–17]. The second example is the Federal Republic of Germany composed of federal states (Länder) which, under the 1946 Federal Basic Law, have the right to conclude, upon the consent of federal authorities, international agreements within the scope of their internal (national) competence [Berezowski 1966, 128; Krasuski 2001, 118ff; Schulze 1999, 125ff; Peaslee 1956, 35], but without prejudice to the Federation as a whole.

Given the above, it may be emphasized that although constituent parts of a federal state have certain foreign competences, in practice this power is insignificant. It is the federal state that is a subject of international law. The component state, even if under domestic law it does have legitimation to conclude international agreements, does so only as an organ of the federal state, and not as a separate subject of international law.

Components of a diversified state which have certain rights in the foreign sphere may also participate in foreign trade. However, a question then arises: what is their nature in foreign space? It must be said that they operate apart from the home state, which gives them a dual legal status. They act as quasi-separate entities before third countries, while they are bound by constitutional rules before the home state, whereby their status is similar to autonomy [Antonowicz 2015, 87].

In international practice, the above solution occurred in the past in the case of the British Commonwealth of Nations, which in the interwar period of the last century was an institutionalized form of cooperation between the states of the former British Empire. One time they participated actively in international relations a whole and on other occasions as its constituent parts (dominions). This applied, inter alia, to Australia, India, Canada or New Zealand, which are, for example, original members of the League of Nations [Berezowski 1966, 130; Klafkowski 1964, 338–43; Jennings and Watts 1992, 256; Gelberg 1958, 312–19; Shaw 2011, 157].[3]

Another example is the former Union of Soviet Socialist Republics (USSR). Between 1944–1991, its union republics had the status of constituent units of the union and at the same time they had a general competence

[3] The functioning of the British Commonwealth of Nations was regulated by the Statute of Westminster of 11 December 1931, confirming the provisions of the Imperial Conference of 1926 with regard to the definition of the relations of Great Britain and the dominions as the British Commonwealth of Nations, and from 1949 the Commonwealth of Nations. It should be noted that the parliaments of the dominions had legislative powers. Currently, members of the Commonwealth of Nations are also overseas territories and associated states. See also Grabowska 2014.

in foreign affairs. However, two of them: Belarus and Ukraine could act on the international forum in a broader scope than the other union republics and were, inter alia, original members of the United Nations [Antonowicz 2012, 46; Banaszak 1999, 157; Sutor 2019, 116–17].[4] Nevertheless, the USSR's constituent parts did not have the right to maintain separate diplomatic relations with other countries, which was the domain of the Union's central authorities [Antonowicz 2015, 87].

The ultimate 1991 collapse of the USSR as a subject of international law transformed its union republics into sovereign states, and Russia became the legal continuator of the former Soviet Union under the name Russian Federation by adopting a new Constitution in 1993. Pursuant to this Constitution, the Federation consists of republics, territories, autonomous regions or autonomous areas as equal entities, but with a diversified degree of autonomy, making the territorial system a structure of a diversified state [Antonowicz 1992, 21ff; Miller 1991–1992, 31; Müllerson 1994, 140–45].

When discussing the issue of autonomous territory, we cannot ignore territorial units that constitute an autonomous part of a country but are located outside such country and which in international relations act separately and alongside their home states, for example the Aland Islands, the Faroe Islands and Greenland [Olafson 1982, 29ff; Seyersted 1982, 23ff; Słaboszyński 2002, 450–51].

The first of them, located in the northern part of the Baltic Sea, at the entrance to the Gulf of Bothnia, granted to Finland in 1921 by the decision of the Council of the League of Nations, constitute its autonomous province outside the home state. Since 1957 they have been participating in the work of the Plenary of the Nordic Council. At the same time, by a 1994 referendum the residents of the islands agreed to join the European Union with Finland as their home state.

In turn, the Faroe Islands (Faroese Islands), located in the Norwegian Sea, between Great Britain, Iceland and Norway, an external territory of the Kingdom of Denmark, have been exercising their autonomy since 1948. At the same time, they have had their own representation in the Nordic Council since 1969 [Słaboszyński 2002, 451].

Finally, Greenland. A part of Denmark since 1953, with extensive autonomy, and since 1984, like the Faroe Islands, with its own representatives in the Nordic Council. Since 1985 it has been enjoying the status of an overseas territory associated with the European Union [Antonowicz 2012, 88].

Another example is Macao and Hong Kong, territorial units located on the South China Sea. They were transformed into special administrative regions under the Portuguese-Chinese Agreement of 1994 and the Anglo-Chinese

[4] It needs to be noted that in 1948–1949 Ukraine was a non-permanent member of the US Security Council.

Agreement of 1987, respectively, with certain autonomy and law, and a socio-economic system for the next half a century [ibid., 47].

In addition to the above-mentioned types of autonomous territories that constitute parts of a given state, there are autonomous areas that are also not part of a state but which are associated with it. However, this is not a legal obstacle for such an entity to achieve the status of a state under international law. When it comes to associations, such a territory becomes a geopolitical unit whose status corresponds, in fact, to territorial autonomy. These include: the Cook Islands, the Niue Island [Crawford 1979, 372–74],[5] the Northern Mariana Islands, Puerto Rico or the Netherlands Antilles.

The first of them, i.e. the Cook Islands and Niue Island, located in the southern part of Oceania–Polynesia, are entities associated with New Zealand, have independence in internal affairs, while their foreign policy as well as defense is the exclusive competence of the New Zealand authorities.

The next large territorial units, i.e. the Northern Mariana Islands and Puerto Rico, are territories associated with the United States. The Northern Mariana Islands, located in the eastern part of the Pacific, became a United Nations trust territory under the American administration after World War II. In 1986 it became a territory associated with the United States. Puerto Rico, located in the in Greater Antilles archipelago on the Atlantic Ocean and the Caribbean Sea, has had internal autonomy since 1952 and a status of an entity-state associated with the USA. When it comes to these archipelagos, foreign affairs as well as defense and finance remain the exclusive domain of the US Congress [ibid.].[6]

[5] It should be emphasized that the Cook Islands have the right to declare independence at any time. They have had autonomy since 1965, they also belong to some specialized organizations of the United Nations: the Food and Agriculture Organization (FAO), the International Civil Aviation Organization (ICAO), the United Nations Educational, Scientific and Cultural Organization (UNESCO) or the World Health Organization (WHO). Niue Island, on the other hand, has been autonomous since 1974.

[6] At this point, it should be noted that the legal status of Puerto Rico has been under discussion for many years. Among other things, in November 2020, in a non-binding referendum, nearly 55% of the island's inhabitants voted in favor of recognizing the island either as a US state, or in favor of independence, or in favor of the current legal status, which was reflected in draft legal acts of 2021: the Puerto Rico Statehood Admission Act and the Puerto Rico Self-Determination Act. Source: Słabisz 2021.

CONCLUSIONS

When formulating conclusions, it should be stated that autonomy in the legal sense means a situation where a state guarantees a specific entity the right to certain independence in regulating its internal relations under the law and system of a given state. This involves, for example, the right to appoint local organs with competence to adopt normative implementing acts, though limited to internal affairs of a given part of the territory of the state. Moving on to the international legal sphere, it should be noted that the concept in question is defined here as an autonomous territory, referring to a geopolitical entity that is not sovereign, but at the same time is either an integral part of a federal state or a diversified state, or possibly stays outside a given state, or is associated with it, or, finally, dependent on it.

In the latter case, it is about colonial areas (also known as dependencies), and autonomy may take the form of decolonization, leading to their reaching statehood in the international legal sense or integration with a neighboring state, and finally association with a specific state, becoming an entity with a status that falls within the concept of an autonomous territory.

The examples of the status of various geopolitical units raise questions about their contemporary raison d'être and the possibility of their participation in the international sphere. Taking into account the increase in social and national awareness of the populations of autonomous areas, which boils down to, inter alia, rejecting the presumption that their current status satisfies self-determination, and at the same time bearing in mind that the degree of their development depends largely on external technical and organizational assistance that stabilizes their further economic and political development, it should be assumed that, despite this, efforts should be made for the populations of autonomous territories to achieve independence, and a transitional status of autonomy may be a stage leading to this.

As for the second issue, it should be stated that if it is examined in the light of treaty capacity, such a possibility exists, although it is limited in practice to non-political agreements, and the affirmation of a positive answer may be sought in, for example, the 1982 UN Convention on the Law of the Sea[7] which lays down that apart from states, non-sovereign geopolitical units that fall within the concept of territorial autonomy may also be parties to it.

[7] Cf. Journal of Laws of 2002, No. 59, item 543; see also Przyborowska–Klimczak 2006, 414–15.

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