

# THE CASE OF SOUTH TYROL / SÜDTIROL AS A MODEL FOR THE SETTLEMENT OF ETHNIC CONFLICTS

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## 1. Introduction

Nowadays, the abstract ideal of ethnic homogeneousness as expressed in the slogan "one nation – one State" has long ceased to correspond to reality all over the world. Autonomy is being increasingly invoked as a solution for ethnic conflicts; and ever more often ethnic problems are at the basis of political claims for self-determination<sup>1</sup>. On the whole there is increasing interest in questions of autonomy as "an instrument for power-sharing aimed at maintaining the unity of the state and at the same time showing respect for diversity within the population"<sup>2</sup>.

Obviously claims for self-determination and the suggestions put forward vary from case to case, since they are influenced by a particular blend of different elements that comprise history, tradition, geography and the economy, the degree of democratization, the strategic target, the character of the group that is claiming autonomy, the events and the specific facts that lead to its award or regulation. For this reason there are no precedents that could be

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<sup>1</sup> See the proposal submitted by the Dalai Lama at Strasbourg in 1989 or the proposals concerning the status of Corsica within France. Cfr. Tomuschat (ed.), *Modern Law of Selfdetermination*, Dordrecht 1993.

<sup>2</sup> R. Lapidoth, *Autonomy. Flexible solution to Ethnic Conflicts*, Washington D.C. 1997, page 171.

automatically valid and applicable. As we have said, each situation is different. Therefore adopting models that have been successful elsewhere must be ruled out. The concept of autonomy offers a very wide spectrum of possible solutions, ranging from cultural autonomy to the simple decentralization of administrative functions, and to semi-independence. Consequently, although there are no models that could be directly applied to different situations, one could anyway proceed in a comparative manner, seeking lessons from "history" and from the experiences gained in "similar" conflicts. In this way, a case which is often quoted as an example for solving ethnic conflicts<sup>3</sup>, the case of Alto-Adige - Südtirol, shows that a conflict between minorities can be solved to the satisfaction of all the parties involved through self-government instead of secession<sup>4</sup>.

One must examine the factors which brought about the "success" of the system of the Autonomous province of Bolzano<sup>5</sup>. As a consequence one must ask whether one (possible) function of this model shall be attributed to the system as a whole, as it has been institutionalized in the 1972 statute of autonomy, or rather (and eventually) to only some of its elements. These observations reveal the evident sociological premise which is the starting point of this study that is the question whether a certain model can be adopted elsewhere. An analysis based on the view that the procedure for decreasing the power of a conflict and for the normalization of relations between the groups is the dependent variable, which requires constant explanations, clarifications and deeper investigation that also take into account non rational elements, while the judicial mechanisms for controlling the conflict and its subsequent

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<sup>3</sup> J. Woelk, "Südtirol ein Lehrbeispiel für Konfliktlösung?" In *Die Friedenswarte* 2001, pag. 101 ss.; S. Böckler, "Das Autonomiestatut für Trentino-Südtirol – Ein Modell für die friedliche Regelung des Kosovokonfliktes?" In J. Marko, (ed), *Gordischer Knoten Kososo/a: Durchschalgen oder entwirren?* Baden-Baden 1999, p. 87-104.

<sup>4</sup> This opinion is shared by the President of the Italian Republic Carlo Azeglio Ciampi, who mentioned the settlement of the South Tyrol problem as an example for solving a serious problem like the one in Kosovo; see *La Stampa* 16.06.1999; Alcock, Antony Evelyn: "South Tyrol", in: Miall, Hugh (ed.) *Minority Rights in Europe*, London 1994, p. 46-55.

<sup>5</sup> Cfr. M. Magliana, "The Autonomous Province of Bolzano-Südtirol: A Model of Selfgovernance", *European Academy*, nr. 20, Bozen/Bolzano 2000.

phases, and the various elements that constitute it, are the independent variable for the evaluation of the "exportability of a model". Only through such an analysis of the causes and effects will it be possible to "explain" how and why a certain mechanism for solving conflicts (together with other variables which are always present and relevant, that depend on the political, social, economic and cultural context) could have contributed to the "success" of an experience, such as the transformation of a conflict into peaceful forms of coexistence and even to "normal" situations between the groups. Anyway, when considering each hypothesis for solving conflicts, one must seek answers to two fundamental questions: firstly, how can a conflict be stopped from spreading by violent means? Secondly, after a conflict, especially a violent one, how can "coexistence" be made possible? From my own experience when comparing this case with others, I have concluded that it is not the individual elements of the institutional system of the Province of Bolzano that can be applied elsewhere, but above all it is the fundamental idea that inspired the statute for the complex process of its implementation, due to its general character. It is this idea which can become a "model" for other situations. It is precisely the complementary functionality between segregation and integration, their continuous balancing out and their suitability to offset one another, the one prevailing over the other and vice-versa in the two phases of the conflict's solution and reconciliation, that has guaranteed the coexistence of "effective and institutional equality" in the South Tyrol region. In my opinion its complementary functionality deserves to be examined in more detail.

## **2. The context: history and the changing global environment**

After six centuries in which it belonged to the Austrian part of the Habsburgs' monarchy, the treaty of Saint Germain detached the South Tyrol from the newly-formed Austrian Republic and its Ladin and Germanic population became part of Italy<sup>6</sup>. This was

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<sup>6</sup> See F. Scarano, "Di chi è l'South Tyrol? Una disputa fra storici italiani, austriaci e tedeschi" in *Limes* 1/ 2003, pp. 199 ss.

followed by sad events, especially the deportations under the Fascists and Nazis, with their dramatic consequences for many individuals, before and after 1945<sup>7</sup>. By means of the agreement between De Gasperi and Gruber, signed in Paris on the 5<sup>th</sup> September 1946 and attached to the Italian peace treaty as attachment IV, the Italian government undertook to guarantee the maximum autonomy possible to the German-language minority, besides safeguarding its culture and language. Thus the question of the South Tyrol did not remain an Italian issue; it became an international issue on account of the implementation of the fundamental rights of minority groups. The Austrians were able to take up the role of Protective Power (*Schutzmacht*) and to support the South Tyrol cause on an international level. In 1960 and 1961 the issue regarding the implementation of the De Gasperi-Gruber agreement was brought to the UNO. Resolutions nr 1497 and nr 1661 were approved unanimously, that is by Italy as well, and confirmed Italy's obligation to seek a peaceful solution to the South Tyrol controversy. The first positive result that followed the UNO appeal was the setting up of the so-called "commission of the 19" by the Italian Government on the 1<sup>st</sup> September 1961. The first proposals drawn up by this commission up to April 1964 were adopted as the first measures during the bilateral negotiations at the experts' and the Foreign Ministries' levels. In 1969 some measures for more autonomy were approved in the so-called "Package". In its turn the Italian Government approved the measures and later the Austrian Nationalrat favourably considered them. This Package of measures – later called simply "the Package" – contained 137 implementation measures: 97 of which could be implemented by means of an amendment to the 1948 statute of autonomy, 15 by a ordinary State law, nine by a administrative decree, the others through administrative regulations<sup>8</sup> or by the approval of a new one, which was effected by the constitutional law n. 1 of the 10<sup>th</sup> November 1971 (which came into effect on the 20<sup>th</sup> January 1972), followed by the publication of a consolidation act in 1972 (DPR n. 670 of the 31<sup>st</sup>

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<sup>7</sup> See R. Steininger, *Südtirol im 20. Jahrhundert. Vom Leben und Überleben einer minderheit*. Innsbruck 1997.

<sup>8</sup> Cfr. G. Pallaver, "South Tyrol, the 'Package' and its ratification", in *Politics and Society in Germany, Austria and Switzerland*, Vol. 2, 1990, pp. 70 ss.

August 1972), which contains the measures still in force of the former statute as well as those of the new statute. The remaining measures contained in the "Package" were practically all applied in due course. Twenty more years had to pass till all the measures contained in the Package were implemented and, in actual fact, the conflict was formally resolved as late as 1992. Three years later Austria joined the European Union and in 1997 the Schengen treaty was adopted, an event that transformed the frontier between Austria and Italy, which had been a rigid demarcation line that separated cultures, languages and peoples, into a simple administrative border.

### 3. The model and its different levels

#### 3.1 *The point of departure: recognizing (cultural) differences*

In the past, once the road of safeguards and guarantees was chosen, the juridical treatment of minority groups by a State always resulted from a compromise between maintaining sovereignty and territorial integrity and the creation of sufficient and necessary conditions for the existence and development of the minority groups within the State. History has shown that the quest for such a compromise is difficult, and often presents insoluble problems due to the intrinsic contradiction between, on the one hand, the demands of the State which legitimates its sovereign power over its territory on the population, precisely in virtue of the intimate link between that territory and that population, and on the other hand the claims of a minority group for an exceptional position within that State, both as regards territory and population. Obviously this contradiction in principle did not make it impossible to find solutions, albeit sometimes minimal, for balancing these two vital interests<sup>9</sup>. This is up to a certain extent evident in the basic compromise that was found in the negotiations between the majority South Tyrolese People's Party (SVP) and the Italian State which led to the "Package". The compromise solution consisted of the explicit recognition of the (cultural) diversity and in the division of the areas of competence on the legislative and executive levels. As a fundamental requisite both

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<sup>9</sup> Y. Dinstein, *Models of Autonomy*, Tel Aviv 1991, pp. 291 ss.

parties had to give up incompatible positions: the South Tyrolese had to give up the issue of secession from Italy and annexation to Austria with the purpose of "mending" the "historical injustice" of the violation of their right to external self-determination, and the Italian party had to concede guaranteed territorial autonomy and to abandon all the policies, even democratic ones, of centralization and assimilation based on numerical proportions.

For the people of the South Tyrol the most important objective was obtaining better guarantees, in consideration of their being a minority; better relations with the Italian linguistic group was a natural development of this, but it was not the aim of negotiations. On the other hand Italy's aim was to find a solution to the conflict. Neither party, therefore, had a fundamental idea or project for the constitution of a multicultural and multilingual society. For these reasons the agreement has been compared to a Pact between Church and State<sup>10</sup>, i.e. a pact for mutual recognition, respect and non-interference<sup>11</sup>. This is reflected exactly in the basic structure of the "Package", a compromise between the principles of the protection of individuals who belong to the German/Ladin group and of the said group/s on the one hand, and the principle of territoriality on the other.

### 3.2 *The method of negotiation*

A notable characteristic of the South Tyrol process which is particularly relevant – and useful – to other situations<sup>12</sup>, results from foreseeing a series of institutional and procedural contexts in which special autonomy itself is structurally fitted in and is able to manifest its consent according to its own consolidation and its own development: this consists of requests for participation in the functions for which other bodies are qualified by the method of negotiation, which turns out to be formally and historically suitable to contribute in a definite manner to the best use possible of

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<sup>10</sup> A. Langer, "Miteinander, Nebeneinander", in Bauer/Dello Sbarba (eds.) *Scritti sul Sudtirolo 1978 – 1995*, Merano 1996.

<sup>11</sup> S. Baur/I. v. Guggenberg/D. Larcher, *Zwischen Herkunft und Zukunft. Südtirol im Spannungsfeld zwischen ethnischer und postnationaler Gesellschaftsstruktur*, Meran 1998, pp. 27 ss.

<sup>12</sup> S. Böckler.; *Das Autonomiestatut für Trentino-Südtirol*, cit.

autonomy. This conventional method, already embedded in the text of the Treaty of Paris (article 2) where it says that "the frame within which the said provisions of autonomy will apply will be drafted in consultation also with local representative German-speaking elements", and later perfected during the negotiations, led to the approval of the Package which can be considered as the corner-stone of the special autonomy that is now in force. The first factor that, without any doubt, allows the best use possible of the management of the pact of special autonomy lies in the setting up of a joint and binding institutional headquarters and of an atypical legislative source for implementing the Statute. This consists of a special joint commission made up of twelve members (of whom six represent the State, two the Regional Council and two represent each Provincial Council while three members must belong to the German language group) and a special joint commission composed of six members set up purposely "for the regulations for implementation concerning subjects assigned to the competence of the Province of Bolzano" (three members of which represent the State and three represent the Province, specifying that "one of the representatives of the State must belong to the German language group; one of the representatives of the Province must belong to the Italian language group")<sup>13</sup>. Naturally the formal setting up of the commissions just mentioned is not, in itself, one of the strong points of this kind of special autonomy, what matters is the political use that has been made of it: actually the successful outcome of the negotiations' process in that institution precisely results from the virtual availability of the instrument, defined by the particular legal effectiveness of the source (which is above the ordinary law and therefore cannot be changed unilaterally by the State) and also by the outline which lacks publicity (that is transparency as well as political responsibility), both of which are ideal conditions for the correct application of the method of negotiation.

The second factor, which is relevant due to its influence on the constitutional source, concerns the possibility of amending certain articles of the Statute, peremptorily specified by means of ordinary

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<sup>13</sup> A. Lampis, "Autonomia e convivenza", *Quaderno* n. 17, Accademia Europea di Bolzano, 1999; P. Hilpold, "Die rechtliche Stellung der Deutsch-Südtiroler in Italien", in *Europa Etnica* 1996/3, pp. 117 ss.

State laws – instead of by a law for constitutional revision – following a joint request by the State and the autonomous Province: although this is an institution which is also present in other systems with special autonomy, and although the matter is governed by the derogatory procedures through which it may be modified not only technically (and it therefore corresponds to a process of simplification with reference to the heavy procedure of the revision of the statute according to the provisions of article 118 of the Constitution)<sup>14</sup>, the desire for autonomy is a requisite that confirms its vocation for giving guarantees through those modifications that could have a more consistent political validity: in fact the consent of the Province works as one of the integrative assumptions of the joint request, which in its turn acts as a condition for the legitimacy of a derogatory normative procedure which should be applied in parliament.

Even the exclusion of the subordination of the statutory modifications (approved by Parliament by a majority which is less than two-thirds) by means of a national referendum, which on application could also, as a last resort, legitimize parliamentary options which are not in agreement with special autonomy and have eluded an improbable “appeal to the people”, actually protects the agreement reached. Another joint commission needs to be remembered here, the so-called “Commission n. 137”, already set up with the closure of the Package and so named because provided for by article 137 of the Package, with the duty to discuss issues concerning the protection of the minority group and of the cultural, social and economic development of the ethnic groups that live in South Tyrol, to suggest solutions and indicative future perspectives. This Commission, which is set up within the Cabinet’s Chairman’s Office, should be a “workshop of ideas for autonomy”.

This procedure of agreement and collaboration among the various participants – representing the minority group, the majority and Austria, a foreign State – on which autonomy is based, as well as the possibility of further checks, ensured that the process of safeguarding the minority, with its long-term orientation, did not evaporate at the last ring of the chain, that is in its concrete

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<sup>14</sup> F. Palermo, “Ruolo e natura delle commissioni paritetiche e delle norme di attuazione”, in *L’ordinamento speciale della provincia di Bolzano*, Cedam 2001 pp. 826 ss.



implementation. Besides, the process also allowed the possibility of flexible adaptation and did not hinder the further evolution or development of autonomy<sup>15</sup>.

### 3.3 *The Content: a "blend" of different principles*

In answering the question about which provisions of the South Tyrolean Autonomy Statute could be usefully applied to other situations, one must distinguish different levels. These will be briefly described in order to give an idea of the attention and the principal intentions which were followed in settling the conflict in South Tyrol.

#### a. The Relations between the Minority group and its kin-State.

The Autonomy Statute does not contain any decree that concerns contacts between the German-language group and its kin-State, Austria. However there are some bilateral treaties that promote economic relations and the recognition of educational and vocational diplomas. Economic activities across the frontier with the Austrian *Land* of North Tyrol were already possible and actively pursued even before Austria joined the European Union, and they have now become more intense in the framework of the "Europa Region" which includes the Trentino<sup>16</sup>.

#### b. The influence of the Minority Group / Autonomous Entity on the decisions of the Central State.

Due to its relatively small size, concerning both territory and population, there are very few articles that provide for regulating participation and representation in South Tyrol at the central level. Here one may point out the participation (but without the right to vote) of the President of the Provincial Council at the meetings of the Italian Cabinet "when treating issues concerning" the Province's autonomy – although in this context the real importance of this provision does not go beyond an essentially symbolic nature – the participation of the autonomous Province at the Conference on the

<sup>15</sup> M. Feiler, "South Tyrol – Model for resolution of minority conflicts?" In *Review of international affairs*, vol. 28, 1997, pp. 10 ss.

<sup>16</sup> P. Pasi, "L'euroregione. Basi storiche, normativa e prospettive di sviluppo", in *L'ordinamento speciale della Provincia di Bolzano*, Cedam 2001, pp. 922 ss.

State and its Regions, besides the committee of the Regions in the European Community.

Because of Italy's political instability during these last years, the Members of Parliament elected in the Province of Bolzano have often enjoyed strong political influence, because their support was potentially decisive for the survival of the Italian Government. Besides, there's no doubt that the autonomous Province of Bolzano actually invented and built regionalism in Italy, and has contributed in a decisive manner to the development of the "constitution of the minority groups" in the Italian system; without it constitutional law in Italy and in Europe would have been the poorer.

### c. The powers of Autonomy

Since the protection of linguistic minority groups can be ordered according to different degrees of intensity, from the least one, which is only of a cultural nature, to the one which provides for legal and institutional measures, one can affirm that in the legal set-up of autonomy in South Tyrol the full range was considered to build an advanced and complete system.

### 3.4 *The areas where Legislative and Administrative autonomy intervenes.*

The different legislative and administrative competences of the autonomous Province are primarily concentrated on economic, social and cultural topics, for example place-names, local customs and habits, urban studies and planning, the environment, mining, agriculture, tourism, communications and transport (an area in which the Province has a primary competence), elementary and secondary education, commerce and public health (the Province has a secondary competence here). The Provincial Council is the law-making body and elects the Provincial Government which carries out the executive functions<sup>17</sup>.

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<sup>17</sup> The constitution takes place by means of an election, which follows its own procedure, but through the election of a Regional Council of the Trentino-South Tyrol region. The members of the council elected in the constituency of the Province of Trento automatically make up the Provincial Council of the autonomous Province of Trento, and the same goes for those elected in the constituency of the Province of Bolzano.

a. Language

In South Tyrol the German language enjoys the same status as the Italian language, which is the official language of the State. All the Regional and Provincial laws are therefore published both in Italian and in German. In order to reach the objective of a bilingual public administration, all public officials in the Province must have to pass a compulsory exam in bilingualism to prove their knowledge of both Italian and German, and the citizens enjoy the right to use any one of the two languages (or, in a limited way, Ladin) in their dealings with courts and authorities<sup>18</sup>.

b. Proportional representation of linguistic groups

The Statute of autonomy contains numerous provisions that, in certain sectors, give the German, Italian and Ladin language groups the right to be considered according to the strength of their numbers. This mechanism is usually called the "ethnic proportionality", and it is a mechanism for protecting the two ethnic minorities, German and Ladin, who live in South Tyrol region. Its purpose is to avoid that these minority groups be side-lined – in their original territory – by the nationally-dominant population in certain areas of public life; areas which, as the past has shown quite evidently, may easily suffer injustices, and on the contrary it will help them to gain a position which is their due, on the basis of their numerical strength.

However, considering that the proportionality does not only give the two ethnic minorities, German and Ladin, the right that due consideration be given to them according to their numerical strength, but it also extends its protection to the Italian language group which lives in the Province, the proportional principle also safeguards the latter, particularly in those areas where the ethnic minority groups, German and Ladin, are the majority. In virtue of the Statute, the proportional system must be applied to all state and semi-state bodies operating in the Province, in the composition of the organs of local public boards and in the distribution of funds from the Provincial budget that are allocated for welfare and social and cultural aims.

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<sup>18</sup> D.P.R. 15<sup>th</sup> July 1988, n. 574. Regulations on the implementation of the Statute have widened the scope of the application of this measure to include private bodies that provide services of a public nature (cfr. decree-law of the 24<sup>th</sup> July 1996, n. 446).

Consequently, every ten years the citizens residing in the Province of Bolzano must declare their belonging to one of the three linguistic groups (or their membership in order to enjoy the relative rights). The declaration can only be changed on the occasion of the following census<sup>19</sup>.

### c. Education

The Treaty of Paris in 1946 established the fact that primary and secondary education be imparted in the child's mother-tongue as one of the fundamental principles of autonomy. Consequently the education system in the Province of Bolzano adopted the separatist principle, by which two different school set-ups are established, which differ also in their organization, in one of which only German is the medium of instruction while in the other only Italian is used, obviously except for the fact that the study of the other language as the children's "second language" is compulsory. The principle of the parents' free choice is upheld: a child may be refused entry only if his command of the medium is considered below standard and this in order to guarantee the proper functioning of the school. However in the Ladin schools they adopt the method of immersion which offers instruction in all three languages<sup>20</sup>.

### d. Finance

The essential issue of autonomy is its financial self-sufficiency. The noblest guarantees of autonomy are worthless if the means to consolidate and empower autonomy are lacking. The degree and the quality of autonomy can be calculated through a number of autonomous tasks and assignments only with reference to the financial means available. Sufficient financial allowances are the indispensable condition to effect and empower autonomy; they are the necessary basis for creating a stable autonomous structure. Insufficient financial means would not only compromise the general

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<sup>19</sup> G. Poggeschi, "Il censimento e la dichiarazione di appartenenza linguistica", in *L'ordinamento speciale della Provincia di Bolzano*, Cedam 2001, pp. 922 ss.

<sup>20</sup> For further details see G. Rautz, *Die Sprachenrechte der Minderheiten. Ein Rechtsvergleich zwischen Österreich und Italien*, Baden-Baden 1999, A. Lampis, "Recenti sviluppi dello speciale ordinamento scolastico in Provincia di Bolzano", in *Rivista giuridica della scuola*, 1997, pp. 23 ss.

characteristics of autonomy, which can be defined also in South Tyrol, like the autonomous legislative and administrative competences, the organs' independence and so on, but also the existence and development of the German and Ladin ethnic minorities.

Nowadays, since the international quarrel with Austria has been solved thanks to the implementation of "the Package" (1992), and since the commencement of the so-called "dynamic autonomy" phase (the progressive putting into effect of the Provincial competences through the particular mechanism set up for the issuing of regulations for implementing the special statute for autonomy), the State only has competence for matters of defence, the police, the administration of justice and the collection of revenues. With the exception of the army and, partly, the police, this competence is exercised by means of local personnel (proportional in the civil service) or anyway possessing the certificate in bilingualism. Considering the high cost of such an institutional structure and of the competences, as well as of the whole legal system (suffice it to mention the translation costs in a bilingual or trilingual administration), the State guarantees the devolution of nine tenths of the direct or indirect revenues collected in the territory of the Province to the territory itself, besides the revenues of the Local Council and the Provincial Council itself<sup>21</sup>.

### *3.5 Relations between the different groups residing in the autonomous entity*

As to the relations between the various linguistic groups, one must distinguish between two different types of conflict: the first one concerns the German/Ladin language minority in South Tyrol and the State, the second one concern relations within the Province itself. In the second

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<sup>21</sup> The system is actually rather more complicated. The pattern is that of fixed quota devolution (9/10), to which an annually-fixed variable quota is added of a general tax on income and various other taxes on business transactions. Then quotas are established for annual funds allocated in the State budget for increasing industrial activities, the allocation of funds for exercising the functions delegated by the State and special contributions. Cfr. F. Debiassi, "Finanza della Regione e delle Province in Regione autonoma Trentino-South Tyrol", Università degli studi di Trento (a cura di), *Commentario alle norme di attuazione dello statuto speciale di autonomia*, Trento 1995, pp. 295 ss.

is still justified by recalling historical experiences, especially the prohibition of the use of German in public and the consequent underground founding of secret schools during the period when the fascist regime attempted forced assimilation.

One must recognize the importance of language, which becomes a criterion for establishing ethnic identity and the demarcation line that determines the socio-cultural identity of individuals who speak it to assert their belonging to a culture and as a factor which allows the recognition of this belonging to a specific social group. Although the Autonomy Statute (article 2) refers to the ethnic and cultural characteristics of the various South Tyrol populations, it also refers to the "linguistic groups" to denote the groups speaking Italian, German and Ladin which live in South Tyrol.

In the same way one must take into account the **geographic and demographic situation** to establish which form of autonomy should be applied. In the case of South Tyrol the suitable form was that of territorial autonomy: that is the members of a territorially compact minority were given the power to govern their own territory, thus actually switching over the relation between the majority and the minority: in fact the more decentralization is conceded to that territory, the less are the aspirations for secession of the minority from the national State that hosts it<sup>24</sup>.

In the case of South Tyrol the following factors have proved to be of fundamental importance for the settlement of the conflict:

a. The political conditions

Italy was a democratic country, based on the rule of law that was striving to reach internal political stability. The process of the development of South Tyrol's autonomy was initially meant to evolve step by step with the implementation of the whole Title V of Part II of the Republic's Constitution, therefore side by side with

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<sup>24</sup> This was not an obvious choice. The international bond established by the De Gasperi-Gruber agreement in 1946 essentially refers to the safeguard of the rights of the "German-language inhabitants of the Province of Bolzano". Although the agreement provides for the concession of "autonomous legislative powers", one must remember that this recognition is given to the "populations" not to the territory. The option of a solution which favoured the personal autonomy of the group instead of the territory's autonomy would have been equally possible.

development of the entire regional system. Besides, the Südtiroler Volkspartei represented – and still represents – an impressive majority of the German-language group, making it a natural and legitimate participant in the negotiations with the Italian government. Again, both Austria and Italy were interested in keeping good relations between them, and European integration was making its first steps.

#### b. The economic situation

Besides the almost total absence of unemployment, in South Tyrol there's a flourishing productive activity, based on agriculture, tourism and handcrafts, there is (international) trans-frontier cooperation, but there are also residues of large industries and a heavy public administration: all of which are benefits deriving from its geographical and geo-political position. Economic stability and an ever-increasing prosperity are essential characteristics of the region's development, most of all to create the right environment that would lead to even more cooperation between the various linguistic groups.

#### c. The international links

The international links of the South Tyrol issue, arising from the 1946 agreement between De Gasperi and Gruber confirm its international importance. Considering the involvement of Austria, particularly as one of the signatories of this treaty, the Austrians were able to take up the role of Protective Power (*Schutzmacht*) and to support the South Tyrol cause at the international level.

#### d. The time gap

Thirty years had to pass before the tension subsided and for the institution and gradual implementation of the legal system provided for in the second Statute of Autonomy. In spite of the delay, this gradual approach had already been agreed on beforehand, during the negotiations that led to the Package and that were listed in detail in the so-called "Operative Calendar".

### 4.2 *Lessons to be learned*

As I have already said the applicability of any model for autonomy that was developed in particular economic, social and demographic

situations may appear over-ambitious<sup>25</sup>, however a few lessons can be learnt from the case of the South Tyrol.

The compromise reached through the negotiations that led to the "Package" is of fundamental importance: the explicit recognition of cultural diversity and the abandonment of incompatible positions by both sides. The reciprocal renunciation of the "maximum" requests and the "extreme" positions by the linguistic groups, transformed the "negative" part of the agreement into a positive one, thanks to the reciprocal recognition of minority positions. This is easily deduced when one compares the first and the second statute of autonomy. In fact, since with the 1948 Statute the German language minority had been given a minority position within the region, territorial autonomy could not have any effect to defuse the conflict., because the minority continued to perceive the continuation of the assimilationistic policy of the Italian State (although this was effected democratically) and it therefore felt that its existence as a collective entity was threatened. It was only after the baricentre of the provinces was shifted and after the transfer of relevant cultural and economic competences to them, that the German-speaking minority became aware of its demographic majority in the territory where it exercised self-government and was now feeling safe. In this way the foundations were laid to guarantee the effectiveness of the protective functions of territorial autonomy, because the minority group was now in a position to "believe" in its survival as a group, and this conviction was not only kept but it also increased during the implementation of the Package, thanks to the procedural mechanisms for the implementation of the Statute, so much so that it became a certainty. By means of proportional linguistic representation in the legislative, administrative and legal spheres, faith was instilled in (and by means of) equal treatment, and with the transfer of further competences to the Province, by guaranteeing autonomy in education and finance, the minority group acquired the feeling that it was once more "at home".

One of the particular aspects of this method of settling the South Tyrol conflict which could be important – as well as especially useful

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<sup>25</sup> U. Schneekener, "Making Power-sharing work. Lessons from success and failures in ethnic conflict resolution", *Quaderno InIIS*, n. 19/2000.



for other ethnic conflicts – is the creation of a platform of institutions and procedures aimed at negotiations which, in the case of South Tyrol, has allowed both parties to find common solutions on controversial issues. Therefore the process of de-escalation by means of which the parties have succeeded – together – in transforming a conflict which up till then had only been through negative stages into a positive road which could guarantee peace and stability both in the short and long term. The individual procedures might also offer interesting examples for other conflicts: the operative calendar, with its detailed pre-planned time-frame, the negotiations which were institutionalized in special joint commissions of the State and the Province, the special procedure of enactment decrees, which cannot be unilaterally modified by the State and, last of all, the guarantees and particularly the possibility of bringing disputes to the Italian Constitutional Court.

Besides this procedural machinery another successful element of the South Tyrol experience is found in the so-called “institutional equality”,<sup>26</sup> which went beyond the opposition between formal and substantial equality.

The principle of formal equality, aimed at equality among citizens “without distinction” of sex, race, skin colour, language, religion, political or ethical convictions, national or social origins, membership of a national minority, and so on (as the French text says in article 14 of the European Convention for the protection of human rights and liberties – unlike the English version), as well as the principle of substantial equality cannot provide full solutions to the “dilemma of differences”.<sup>27</sup> Only institutional equality can allow the members of a minority group joint participation with the others in determining their own destiny from the beginning that is from the moment of the “identification of their difference”, independently of the “magic formula of numbers”. The point of departure for an effective and lasting (juridical) solution of conflicts must not and can not be tolerance as a moral imperative, but “tolerance through law”. It is therefore not a question of preaching “peace to all men of goodwill”,

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<sup>26</sup> Cfr. J. Marco, *Gordischer Knoten*, cit.

<sup>27</sup> Cfr. M. Minow, *Making all the difference. Inclusion, exclusion and American law*, Ithaca/London 1991, pp. 51 ss.

which indirectly implies that peace is possible only among these people, but creating goodwill on a legal basis, that will from the very beginning give everybody the "feeling" of being treated equally and of enjoying the same rights. The South Tyrol experience shows that from the beginning the concept of institutional equality was taken into consideration in the relativization of relations between the majority and the minority. In fact the German group, the majority in the Province, is the minority with regard to the competences exercised by the State, while the said minority status belongs to the Italian group with regard to the competences of the autonomous Province. In this way individuals belong to the majority or to the minority according to context. A member of the German group residing in Bolzano belongs to the majority in the territory of the Province, but he/she belongs to the minority in the Italian State and in the city of Bolzano, while an Italian-speaking South Tyrolean belongs to the majority in the national and local council context and to the minority in the Province. Besides, thanks to the fact that both Italy and Austria are members of the European Union, one has to take into account, not only another level of government but also a new dimension in belonging to majority or minority groups, because on the European level both German and Italian are official languages, but their speakers are anyway a minority with regard to the other citizens of the Union<sup>28</sup>.

It is precisely through procedural elements that the recognition of the existence of the minority group becomes the recognition and legitimization of a situation of contrariety endowed with equal dignity, not only for drawing up the "basic compromise" but also for the implementation and management of autonomy. And yet, even thirty years after the approval of the Package and of the second Statute of autonomy, this reciprocal recognition of the legitimacy and equivalence of rights between the groups is still precarious, as shown by the importance that is still attached to names and symbols (the South Tyrolean, for example, have recently obtained that Piazza della Vittoria in Bolzano, where the

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<sup>28</sup> Cfr. S. Ortino, "Dalla tutela delle minoranze all'autonomia funzionale", in *Die Südtiroler Autonomie in europäischer Perspektive*, a cura dell' Accademia Europea di Bolzano, quaderno n.1, Bolzano 1998.

monument built by the Fascists to mark the Italian victory in the First World War stands, be changed to Piazza della Pace [that is from Victory Square to Peace Square], but this has provoked a reaction by Alleanza Nazionale who have proposed a referendum to bring back the old name of the square, which is considered the symbol of Italianity; the referendum did bring back the old name, although only by a low percentage of voters).

All in all in South Tyrol an environment for the "promotion of peace" between the two ethnic-linguistic groups has been created: in Switzerland such a context is the foundation for the peaceful system of compensation of reciprocal interests among the different language groups, so much so that it is the essence of the Swiss nation and of the Swiss "people". The opposite seems to be the case in Northern Ireland, where economic, religious and ethnic-national rifts meet and overlap, and this contributes to the permanence of the so-called "sectarian violence" in that land. Only by relativizing the positions of the minority and the majority will it be possible to create the willingness of the individuals to become aware of the need for a compromise. Only this would allow peaceful coexistence, seen as the permanent and convincing alternative to violence. Segregation and "ethnic" proportionality are institutional instruments which create security, which is the essential condition for peaceful coexistence, but this does not necessarily bring about trust among the groups, which is the essential condition for integration through cooperation. On the contrary, segregation and proportionality are actually expressions of "institutionalized lack of trust". In other words, the legal recognition of the ethnic factor cannot by its own nature be confined to the State or to the public sector, but it tends to embrace the private sphere again, in a kind of spill-over effect. One may therefore ask how can it be sufficiently open and flexible in order to make the creation of positive consensus possible to interethnic cooperation, and even to allow it to pass on to the following phase in reconciliation? Nowadays, in actual fact, the situation in South Tyrol is marked by "parallel societies", that is there is peaceful coexistence (*Nebeneinanderleben*) but one cannot speak of the communities living together (*Zusammenleben*). Both the German/Ladin group and the Italian group have built their own organizational structures and society subsystems; nurseries, schools, political parties, public libraries, trade unions, youth clubs, sports clubs,

mass media and churches are mono-ethnic<sup>29</sup>. Contacts between the groups are not many, because of structural reasons (the urban-rural contrast and separate economic structures) and of linguistic difficulties (fluency in both languages has not yet been reached, especially in the older generations).

If some time ago they used to say "the more we keep separate, the better we understand one another", the time has come to turn the motto upside down and say: "the more we understand one another, the less should we be divided".

Besides, the fundamental question remains to be answered: how can we move on from a multi-national institutional system to a multi-ethnic society, or else from the prevalence of ethnic segregation which is institutionally recognized and imposed to de-ethnicization where the elements for integration prevail? The responsibility of the whole local ethnic group, identified historically and territorially, will in future be expressed in the guarantee that local values and traditions will be preserved, also through the inclusion of the group's territory in the new global scenario<sup>30</sup>. And this should happen in such a way that the identity of the whole local group will be preserved and at the same time its participation in the global circuit will be guaranteed.

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<sup>29</sup> In South Tyrol, as in Switzerland, it is apparently necessary to ask up to what point, for example the school system effectively safeguards against the possible risks of assimilation. Today assimilation is seemingly no longer based on the ethnic conflict of the Italian and German groups, but rather, in this era of globalization, on the lure of English. Cfr. B. Czernilofsky, "Momentaufnahme: Sprachenpolitik in Südtirol – Muss die Trennungspolitik überdacht werden?" in *Europa Ethnica*, 4 1998, pp. 140 ss.

<sup>30</sup> Cfr. S. Ortino, *Dalla tutela delle minoranze all'autonomia funzionale*, cit.