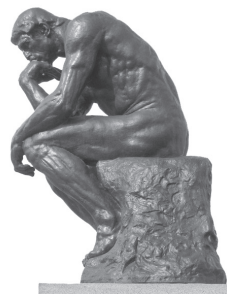


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ПОЛИТИЧКА МИСЛА

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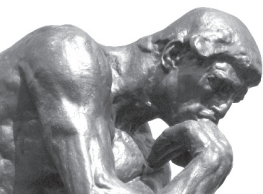
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► NON-TERRITORIAL AUTONOMY: EUROPEAN CHALLENGES AND PRACTICES FOR ETHNIC CONFLICT RESOLUTION

author: Marina Andeva

INTRODUCTION

The present article reviews the theoretical concepts of non-territorial autonomy (NTA) as a possible key 'resolution concept' for ethnic conflicts. The possible ethnic management strategies, according to John Coakley, may be examined with mechanisms for procuring conformity between state boundaries and ethnic frontiers.¹ Coakley classifies strategies for ethnic conflict resolution in terms of four dimensions: 1) physical; 2) territorial; 3) cultural; and 4) political. What we are going to focus on here is the second dimension. The crucial element of the territorial conflict resolution is the survival of territorial borders. Coakley also presents examples of ethnic management strategies from Europe. We are not going to examine the details of these strategies; however, their brief overview is of importance.

The first strategy is implied in the concept of 'indigenization'. He gives examples from Europe and the 'indigenization' policies based on affirmative action, a term translated from Russian, to refer to state policies of 'cultivation of ethnic minorities in general'.² In many cases this policy faced autonomy or independence demands by certain groups.³ The second strategy is the one of 'accommodation',

¹ John Coakley, "The Resolution of Ethnic Conflict: Towards a Typology" *International Political Science Review* 13, (1992): 344.

² John Coakley, "The Resolution of Ethnic Conflict: Towards a Typology", 346

³ He gives the examples of the former Soviet Union and the union republican status granted to the Belarus; of Yugoslavia, granting the status of a separate republic and a distinct language to Macedonia; of Italy and the regionalism policy of granting autonomy to five special regions; of Spain in the post-Franco period in response to demands from Basques and Catalans; and of Northern Ireland and the creation of the state in 1921.

where two issues arise: 1) the extent to which power remains concentrated between the state and the minority; and 2) the political or cultural domain in which concessions are made.⁴ As third, he distinguishes the policies towards group rights recognition and protection. In this case we have additional rights granted to groups on the basis of certain ethnic or cultural characteristics. The fourth one concerns the circumstances where ethnic minorities may be granted 'institutions whose whole jurisdiction is non-territorial'.⁵ In this case we talk about our central argument, the NTA approach to ethnic conflict resolution.

1. AUTONOMY: NON-TERRITORIAL CONCEPTUALIZATION

Autonomy as a concept applies to various kinds of social entities.⁶ According to Ghai, it represents an instrument allowing ethnic groups, claiming a distinct identity, to exercise direct control over affairs of special concern to them, granted in different legal forms.⁷ From a traditional view, the balancing by the State is between the interests of some members of a minority group as against that of other members with respect to the preservation of group identity. The new approach grants collective rights to a minority group and only grants those rights so that the group can protect the interests of the members of that minority group; in other words, autonomy is a collective right, but it generates an individual good which is the preservation of the collectivity.

Seen also as a strategy of preventing and settling ethnic conflicts, autonomy, while recognizing group-specific and individual concerns, endows an ethnic group with legislative, executive, and judicial powers to address effectively these concerns – a state construction element addressing the needs of diverse communities.⁸ The concept and notion of autonomy as a means of giving certain group the right to decide and administer certain affairs essential to their well-being is very old in European political culture. After being revived (from an irredentist claim to a potential solution to self-determination claims), it was considered as a possible instrument for accommodating separatist movements without in any way violating the states' territorial integrity.⁹

In terms of territorial dimensions, autonomy can be territorial and non-territorial. In this paper we discuss the forms and models of non-territorial autonomy. A non-territorial autonomy is distinguished by autonomy rights of a particular ethnic group

⁴ Here he refers to 'consociation', the power-sharing mechanisms, 'federalism' and the various forms of territorial autonomy.

⁵ John Coakley, 'The Resolution of Ethnic Conflict: Towards a Typology', 348.

⁶ Dunner B., 'Autonomy: What Do We Mean, and What Do We Know?', in *Power, Capabilities, Interdependence: Problems in the Study of International Influence*, ed., K. Goldmann & G. Sjostedt (London and Beverly Hills: SAGE Publications, 1979).

⁷ Ghai Y., *Autonomy and Ethnicity: Negotiating Competing Claims in Multi-Ethnic States* (Cambridge: Cambridge University Press, 2000).

⁸ S. Wolff & M. Weller, 'Self-determination and autonomy: A conceptual introduction' in *Autonomy, Self-governance, and Conflict Resolution: Innovative Approaches to Institutional Design in Divided Societies*, eds. S. Wolff & M. Weller (London and New York: Routledge, 2005).

⁹ Autonomy was embraced by some states as a way of maintaining their territorial integrity. In addition to the more established case of Belgium, Spain and the United Kingdom have also made startling progress in this direction. France has attempted to move towards autonomy as a means of addressing the Corsica conflict.

no matter their territorial concentration area in the host state. For some, another term for this type of autonomy is 'personal autonomy', linked to the members of the minority group.¹⁰ The crucial factor is not residence in an autonomous territory, but minority membership. The owner of personal autonomy is traditionally an association, a legal form able to organize a group of individuals. The 'personal autonomy' is not bound to public law: associations also may exercise any rights of a private nature for its members, and it is also possible to give public functions to private associations, such as in the case of a private school in the minority language, whose qualifications are recognized by the public schools and for the management of the association that receives public subsidies. Constitutional theorists such as Lijphart (associated with the consociational theory)¹¹ have perceived the NTA as an instrument when dealing with ethnic conflicts from its cultural dimension (education, language, and religion). Coakley believes that for a traditional state system to introduce 'non-territorial ethnic autonomy' two changes are required: 1) a state giving recognition to non-territorial groups definable in ethnic terms and 2) a minimum degree of autonomy conceded to these groups.¹²

The term *non-territorial autonomy* is not a specific model for the political organization of national and ethnic communities. Nimni points out that it is a generic term referring to 'diverse practices and theories of minority community empowerment and self-determination that does not entail exclusive control over theory'.¹³ Osipov explains that NTA lacks a uniform and consistent application both in theoretical and practical domains. Terms related to non-territorial autonomy are different and include such notions as 'cultural', 'personal', 'exterritorial', 'corporate' and 'segmental', as well as 'autonomy'. He calls for distinguishing between categories of practice used by social actors in real life and categories of analysis used by researchers to interpret empirical realities.¹⁴

The NTA has different forms, such as Conociationalism - following Lijphart's theory - and National Cultural Autonomy (NCA) - following the theory of Otto Bauer and Karl Renner¹⁵. The NCA exhausts all the aspect of NTA. As a model, it has its origin in the final days of the Habsburg Empire and the attempt by the Austrian

¹⁰ Georg Brunner & Herbert Küpper, "European Options of Autonomy: A Typology of Autonomy Models of Minority Self-Governance", in *Minority Governance in Europe*, ed., Gal K. (Budapest: Open Society Institute, 2002), 13-36.

¹¹ See Arend Lijphart, *Thinking about Democracy: Power Sharing and Majority Rule in Theory and Practice* (New York: Routledge, 2008).

¹² Coakley, John. "Approaches to the Resolution of Ethnic Conflict: The Strategy of Non-territorial Autonomy", *International Political Science Review* 15(3) (1994): 297-314.

¹³ Ephraim Nimni, "The Conceptual Challenge of Non-Territorial Autonomy" in *The Challenge of Non-Territorial Autonomy: Theory and Practice*, eds. Ephraim Nimni, Alexander Osipov and David J. Smith (Bern: Peter Lang, 2013), 1.

¹⁴ Alexander Osipov, "Non-Territorial Autonomy during and after Communism: In the Wrong or Right Place?", *Journal on Ethnopolitics and Minority Issues in Europe*. Vol. 12, No 1, 2013, 8.

¹⁵ The NCA original model, first outlined in Karl Renner's article *State and Nation* first published in 1899 and published in English in 2005, was designed to contain secessionist nationalism and manage the ethno-national conflict within the framework of a democratic multinational state. See Ephraim Nimni, "National-Cultural Autonomy as an Alternative to Minority Territorial Nationalism", *Ethnopolitics* 6:3(2007), 345 - 364. Otto Bauer introduces national cultural autonomy organized as a form of cultural self-government that does not require a nation state nor the devolution of extensive powers to the nation. See Piet Goemans, "National Cultural Autonomy: Otto Bauer's Challenge to Liberal Nationalism", in *The Challenge of Non-Territorial Autonomy: Theory and Practice*, eds. Ephraim Nimni, Alexander Osipov and David J. Smith (Bern: Peter Lang, 2013), 25-26.

socialists to convert the Dual Monarchy from a conglomerate of bickering cultural communities into a democratic federation of individuals.¹⁶ The main aim of this model was to keep the Empire integrated, resting on the idea that autonomous cultural communities could be organized as autonomous collectives whatever their residential location within a multinational state. As a model, it suggests management in a two-tier system, comprising all participating national communities endowed with a collective persona in the form of legally guaranteed autonomous corporations.¹⁷ In Renner's view, NCA is based on the personality principle, reflecting the legal relationship of an individual with a certain public autonomous institution, wherein this relationship is based on this individual's characteristics other than residence. The elements of the Renner model of NCA are well depicted by Porter.¹⁸ He illustrates five principles, which 'go beyond the existing literature and may be adapted to provide a practical way forward from the complexities of realisation of minority rights'.¹⁹ The first principle states that the minority should assure the state that it does not seek to secede; the second principle is the acknowledgement by the nation state that the national minority is entitled to maintain its distinct cultural identity; the third is the fact that a state should publicly acknowledge the freedom of the minority to maintain its identity and commit to protect it from discrimination; the fourth principle implies that the law should not impose an obligation on the state to expend its resources to assist the minority. However, minorities should have greater ownership over the process and resources required for enjoying their rights; and the fifth principle requires legal influence on the part of minorities to supplement the administrative leverage granted to them through effective participation in the decision-making process, particularly for establishing laws which have an impact on the recognition, protection and promotion of the distinct minority culture.²⁰

2. EUROPEAN CHALLENGES AND PRACTICES FOR A NON-TERRITORIAL ACCOMMODATION OF MINORITY GROUPS

Many examples which reflect the model of NCA can be found in practice and which do not necessarily fulfill all NCA requirements, but are certainly under the umbrella of the term *non-territorial autonomy*. Here, some examples of NTA models will be briefly presented in practice and as ideas and thoughts for future ethnic conflict resolution. Smith, for example, explores in detail the challenges of

¹⁶Ephraim Nimni, "The Conceptual Challenge of Non-Territorial Autonomy" in *The Challenge of Non-Territorial Autonomy: Theory and Practice*, 15.

¹⁷Idem, 16.

¹⁸K. Porter, "The Realisation of National Minority Rights", *Macquarie Law Journal*, 3 (2003), 51-72.

¹⁹Idem, 66.

²⁰On Porter's principles and their implications for the Republic of Macedonia see Marina Andeva, "Challenging National Cultural Autonomy in the Republic of Macedonia" in *The Challenge of Non-Territorial Autonomy: Theory and Practice*, eds. Ephraim Nimni, Alexander Osipov and David J. Smith (Bern: Peter Lang, 2013), 218-222.

NTA present in the contemporary Central and Eastern Europe (CEE).²¹ He points out that little research has been carried out on the actual practice of NTA within CEE. He underlines that the most fully-developed system of minority NTA has been developed by Hungary.²² The Hungarian minority framework in general, and particularly the system of minority self-government, according to Krizsan, bears a clear resemblance to the model of personal cultural autonomy.²³ The important characteristic of the Hungarian minority protection system is the 1993 Minority Act and the right of ethnic and national minorities to establish self-government as a special community right that can be either at local or at a national level. These minority self-governments are entitled to make decisions regarding their own affairs, free to establish institutions and formulate rules, to participate in legislative and administrative work, express views on draft legal regulations and request information from public authorities on issues affecting the minority they represent and propose and initiate measures, and have veto rights in some cultural matters.²⁴ In the case of interwar Latvia, as discussed by Germane, the experience of a cultural autonomy for Latvian minorities faced many difficulties in its practical implementation.²⁵ The NCA idea in Latvia was introduced by the Social Democrats, inspired by Renner and Bauer. The difficulty in the Latvian case is, as Germane points out, the single interests of the Latvian minorities and their powerful kin-states, namely Russia, Germany and Poland. The Estonian case, as Smith underlines, introduced cultural autonomy on paper which, however, "does not function in any meaningful sense".²⁶ He argues that the established NTA for the Finish and Swedish minorities is a broad framework, not defining the legal status, competences or funding of the minority institutions of these groups. Romania was also inspired by the Estonian NCA Act of 1925; however, transcending nationalizing discourses on state and nation-building within Romania has somehow pressed the issue.²⁷ In the case of Russia, over 700 minority bodies were established by January 2009;²⁸ the NTA Act in Russia was understood as more symbolic than a practical law. Bowring states that there has been little differentiation between NTA organizations and regular non-governmental organizations.²⁹

²¹ See David J. Smith, "Challenges of Non-Territorial Autonomy in Contemporary Central and Eastern Europe" in *The Challenge of Non-Territorial Autonomy: Theory and Practice*, eds. Ephraim Nimni, Alexander Osipov and David J. Smith (Bern: Peter Lang, 2013), 118-132.

²² David J. Smith, "Challenges of Non-Territorial Autonomy in Contemporary Central and Eastern Europe", 121.

²³ Andrea Krizsan, "The Hungarian Minority Protection System: A Flexible Approach to the Adjudication of Ethnic Claims", *Journal of Ethnic and Migration Studies*, Vol. 26, No. 2 (2000), 247-262.

²⁴ *Idem*, 253.

²⁵ Marina Germane, "Paul Schiemann, Max Laserson and Cultural Autonomy" in *The Challenge of Non-Territorial Autonomy: Theory and Practice*, eds. Ephraim Nimni, Alexander Osipov and David J. Smith (Bern: Peter Lang, 2013), 114.

²⁶ David J. Smith, "Challenges of Non-Territorial Autonomy in Contemporary Central and Eastern Europe", 124.

²⁷ *Idem*.

²⁸ See Bill Bowring, "Burial and Resurrection: Karl Renner's Controversial Influence on the National Question in Russia", in *National Cultural Autonomy and its Contemporary Critics*, ed. Ephraim Nimni (London: Routledge, 2005), 201; Alexander Osipov, "National Cultural Autonomy in Russia: A Case of Symbolic Law", *Review of Central and East European Law*, 35: 42.

²⁹ Bill Bowring, "Burial and Resurrection: Karl Renner's Controversial Influence on the National Question in Russia", 203.

There are NTA examples in the Western Balkan countries as well. More specifically, Serbia introduced a national minority council, with the law adopted in 2009. In terms of their legal status, scholars explain that they are constituted as bodies of self-governance for the entire territory, representing and protecting the interests of minority members no matter where they live within the country.³⁰ They have competences in the fields of education, culture, use of language and media, but no real opportunity to influence the decision-making process.³¹ Croatia also introduces National Minority Councils as non-profit legal persons for the protection, advancement and preservation of minority rights, in those self-government units in which minorities account for a minimum of 1.5% of the total population, in local self-government units in which over 200 members of a given national minority live, and in regional self-government units in which over 500 members of a national minority live.³² The same trend is also followed by Montenegro, where the Albanian community has established a National Council in 2008 with the main aim to preserve the identity and culture of the community financed by the state budget.³³

The NCA model imposes many challenges; scholars have recently started to explore the possible application of this model for resolving either the status of some minority groups or the present ethnic conflicts. The legal approach adopted by Slovenia in regards to the status and protection of the Roma community, according to some scholars, is introducing NTA in some aspects concerning this community.³⁴ The Roma Community Act established the organization of the Romani representation; local self-governments have to have at least one Romani councilor and a working body in charge of the issues concerning the Roma in the Roma settlement areas, whereas in the other municipalities there is no such obligation. Moreover, this act introduced the Council of the Roma community, having recognized officially only this body and the Romani Union of Slovenia as representative bodies of the Roma community in Slovenia. In the case of the Kurdish minority in Turkey, scholars propose NCA as effective in accommodating Kurdish demands within Turkey. Under this setting, the geographically dispersed Kurds could maintain and develop their identity and culture without endangering their status as 'citizens' and 'residents' of Turkey.³⁵

³⁰ Katinka Beretka, "National Councils of National Minorities in Serbia" in *The Challenge of Non-Territorial Autonomy: Theory and Practice*, eds. Ephraim Nimni, Alexander Osipov and David J. Smith (Bern: Peter Lang, 2013), 185.

³¹ *Idem*, 190.

³² Art. 23 of the Constitutional Law on Human Rights and Liberties and the Rights of Ethnic or National Communities or Minorities from 1999. See more in Marina Andeva, "Trends of minority rights' protection in the countries of the Adriatic area and the Republic of Macedonia: A comparative analysis and perspectives", *EU Policy Briefs*, No.1 (Skopje: KAS, CRPM, 2012), 7-9.

³³ Marina Andeva, "Trends of minority rights' protection in the countries of the Adriatic area and the Republic of Macedonia: A comparative analysis and perspectives", 11.

³⁴ Julija Sardelic, "The Roma Community Act in the Republic of Slovenia," in *The Challenge of Non-Territorial Autonomy: Theory and Practice*, eds. Ephraim Nimni, Alexander Osipov and David J. Smith (Bern: Peter Lang, 2013), 206.

³⁵ Cengiz Gunes, "Accommodating Kurdish National Demands in Turkey" in *The Challenge of Non-Territorial Autonomy: Theory and Practice*, eds. Ephraim Nimni, Alexander Osipov and David J. Smith (Bern: Peter Lang, 2013), 81.

CONCLUDING REMARKS

Most of the states fear autonomy models as a possible means for the minorities' protection; as a first step on a slippery path it could lead to secession and then the change of borders. Only in rare cases the legal basis of territorial autonomy can be found in bilateral or multilateral treaties. These agreements are, however, framework agreements by their nature; they must be effectively implemented in the respective state. The next step, their internal implementation which is often long and difficult, is a problem, and failures are frequent. In the case of territorially compact groups, autonomy can be attributed to the territory of settlement of the minority, with the creation of autonomous territories: in these cases, self-government is achieved through a public sub-state status (one or more municipalities, a province or region, a Member State in a federal system), usually characterized by more competences than others. According to Palermo and Woelk, the deep significance of territorial autonomy as a means of protection of minorities is, in fact, the transformation of a national minority into a regional one, granting self-government to its settlement territory and thus ensuring the existence of the group as such, safeguarded against possible modification imposed from the outside.³⁶ The autonomy solutions for the minorities' accommodation and protection need to be realized without touching upon the question of the integrity of the state, which needs to be unharmed and in a political systems that recognizes diversity as such. The territorial autonomy model alone, in many cases, cannot give the solution. As some scholars emphasize, a combination of the territorial and non-territorial model of autonomy could be the key.³⁷ These scholars propose three essential pre-conditions for a combination framework: 1) ethnic groups should be prepared to grant the respective other(s) the same degree of non-territorial autonomy as they desire for themselves; 2) acceptance of the framework as a mutually beneficial and conflict-preventing set-up; 3) the willingness to make a compromise in the process of negotiating and administering the institutional arrangement of autonomy.³⁸ Special territorial autonomy can be granted depending on the minority composition in one or more geographic areas in a unitary state,³⁹ whereas in cases where the composition is not compact and present in defined geographical areas, the question on whether and how to protect and enhance the minorities' right could be addressed by introducing elements of NTA.

³⁶ Francesco Palermo and Jens Woelk, *Diritto Costituzionale comparato dei gruppi e delle minoranze [Comparative Constitutional law of groups and minorities]*, (Milano: CEDAM, 2011), 175.

³⁷ S. Wolff & M. Weller, "Self-determination and autonomy: A conceptual introduction", 1-25

³⁸ Idem.

³⁹ In the case of Corsica in France or South Tyrol in Italy. For more on the Italian case see Marina Andeva, "Accommodating minority groups: The politics of minorities' protection in Italy, *New Balkan Politics*, 13 (2013), 115.

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РЕЗИМЕ

Автономијата, како концепт, се однесува на различни видови општествени субјекти (Dunper, 1979). Како генерички поим (Ghai, 2000), претставува инструмент доделен во различни правни форми, кој им дозволува на етничките групи, тврдејќи посебен идентитет, да имаат директна контрола над прашања од посебен интерес за нив. Како што укажува Ghai (2000), автономијата почива на три главни принципи: 1) малцинските права; 2) домородните права и 3) право на самоопределување. По ова, ние во овој труд ќе се фокусираме на малцинските права, со истражување на автономијата базирана на „персоналниот принцип“, преку анализа на концептот на нетериторијална автономија (НТА), модел усвоен во последните две децении, особено од страна на неколку земји од Западниот Балкан и Централна и Источна Европа. Концептот на НТА сè повеќе е поздравен од страна на академските институции, активистите и, исто така, од владите. Затоа овој труд се обидува да ја илустрира научната дебата, со особено внимание на современата мисла изразена од страна на неколку научници. Со цел да ги претстави

систематски елементите од моделот на културната автономија на Карл Ренер, ќе се презентираат петте принципи развиени од разбирањето на овој модел и прикажани од страна на Портер (2003). Тие одат подалеку од постоечката литература и можат да бидат прилагодени за обезбедување практичен начин за решавање на комплексноста од реализацијата на правата на малцинствата. На крајот, ќе се презентираат примери каде што нетериторијалната автономија е применета во практика, особено во земјите од Централна и Источна Европа и во земјите од Западен Балкан.

Клучни зборови: малцинства; нетериторијална автономија; национална културна автономија; ЦИЕ; Западен Балкан.