Self-Determination and Sovereignty in International Law: The Legal Status of Semi-Autonomous Regions

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I. Introduction

The legal status of semi-autonomous regions is debated in both modern politics and international law. Semi-autonomous regions are defined as regions within a nation that have been granted some degree of self-governance and control over their own political, economic, and social affairs by the sovereign state of which they are a part. Semi-autonomous regions are distinguishable from other constituent units of a nation, such as a state or a province, because they exercise a degree of autonomy in administrative and legislative rights and possess "some ethnic or cultural distinctiveness."[2] These distinctions could include a unique language, traditions, history, and customs. The predominant political difference between semi-autonomous regions and federal units of a nation is the extent of oversight the central government exerts over the region. Comparatively, semi-autonomous regions have a greater degree of self-governance and less central government interference than states or provinces. Examples of semi-autonomous regions include Hong Kong, Macau, Northern Ireland, Scotland, Catalonia, and Kurdistan.

The right of self-determination did not become a focal point in international law until the end of World War II when the former colonies of Asia and Africa were freed from colonial possession. Domestic agreements and

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[2] Yoram Dinstein, *Autonomy Regimes and International Law,* 56 Vill. L. Rev. 437 (2011).

constitutions were made thereafter, laying the foundation for the establishment of semi-autonomous regions that would grant distinct minority groups the right to self-govern. Despite the constitutional agreements made, there have been recent tensions as sovereign states seek to broaden their authority. This is partly due to the absence of international guidelines dictating the establishment and organization of semi-autonomous regions. International institutions, including the United Nations (UN) and the International Court of Justice (ICJ), have not developed international laws defining semi-autonomous regions' rights and governance structure, which has contributed to unresolved conflict between these regions and the central states to which they belong.

This article will examine the legal issues inherent to the administration of semi-autonomous regions and highlight case studies in two distinct geographic regions: Hong Kong and Catalonia. The article will then analyze the historical role of international and domestic law in establishing semi-autonomous regions, considering how the interests of distinct ethnic or cultural groups contrast with the authority of the federal governments. Finally, the article will discuss how the absence of an international framework has influenced the current status and governance of these regions, contributing to contemporary conflicts between autonomous regions and sovereign states.

II. A Brief History of the Principle of Self-Determination

Self-determination has been considered a critical focus of international law since the term was first used publicly by Woodrow Wilson in 1918.[3] The concept of self-determination was affirmed by Article 1(2) of the UN Charter, which states that one of the main purposes of the UN is to "develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples."[4] The International Covenant on Civil and

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[3] Michla Pomerance, *The United States and Self-Determination: Perspectives on the Wilsonian Conception,* 70 AJIL 1, 2 (1976).

[4] Stilz, Anna. "Decolonization and Self-Determination." *Social Philosophy and Policy* 32, no. 1 (2015): 1-24. https://doi.org/10.1017/S0265052515000059.

Political Rights likewise declared that "all peoples have the right to self-determination" by which they can "freely determine their political status and freely pursue their economic, social and cultural development".[5] These foundational documents have cemented self-determination as a fundamental principle of international law that all people are entitled to. International law has continuously emphasized the role of decolonization in the emergence of self-determination. Decolonization efforts dramatically increased in the two decades following the Second World War, with almost all of the former colonies in Africa and Asia gaining independence. The emergence of international human rights regimes, such as the UN in 1946, speaks to the anticolonial efforts and the development of self-determination in the post-World War II period.[6] The UN's Resolution 1514 (XV), also known as the Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted on December 14, 1960, proclaimed that all forms of colonialism should be ended and that all people had an innate right to self-determination.[7] However, early resolutions made by the UN asserting self-determination as a fundamental human right in international law failed to create a framework for the principle of self-determination to be exercised. This framework would require establishing clear criteria and procedures for determining whether a group qualifies for independence, including guidelines for negotiation, dispute resolution, and international oversight. The current absence of such a framework is a result of the political discord surrounding state sovereignty, and the reluctance by

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[5] UN General Assembly, Resolution 2200A (XXI), International Covenant on Civil and Political Rights (December 16, 1966), https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covennt-civil-and-political-rights

[6] Eckel, Jan. "Human Rights and Decolonization: New Perspectives and Open Questions." *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 1, no. 1 (2010): 111-135. https://dx.doi.org/10.1353/hum.2010.0008.

[7] UN General Assembly, Resolution 1514 (XV), Declaration on the Granting of Independence to Colonial Countries and Peoples, A/RES/1514(XV) (December 14, 1960), https://documents.un.org/doc/resolution/gen/nr0/152/88/pdf/nr015288.pdf

powerful states to cede authority over these self-determination processes to international bodies. There is also a fear that formalizing the process for self-determination could destabilize existing states by legitimizing secessionist movements. This lack of an international framework has led to ongoing ambiguity and modern-day tensions over people's right to access self-determination.

III. Sovereignty and Autonomy in the Post-World War I Age

After World War I, semi-autonomous regions first emerged as a political solution to address internal conflicts within sovereign states. These arrangements aimed to balance the interests of a nation's central government with its ethnically or culturally distinct populations. Granting a region semi-autonomy was often a strategic compromise by the central government to maintain the state's stability and satisfy the minority group's goal of self-governance without granting full independence. The issues of self-determination and autonomy became prominent in the period after the First World War for three distinct reasons. First, the collapse of empires like the Austro-Hungarian and Ottoman Empires led new nations to be formed; second, the colonies and territories of the defeated Central Powers were redistributed among the victorious Allied Powers; third, there was an increased emphasis on protecting minority groups and establishing autonomous arrangements as part of the peace agreements.[8]

Determining which newly established regions post-World War I would receive sovereignty was based on two different belief systems about the standards necessary to become an independent state. Nationalism asserted that each distinctive culture should be entitled to the formation of its own state; however, European international law held that only specific cultures deemed "civilized" should be granted sovereignty. In response to the differing ideas of

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[8] Lauri Hannikainen, "Self-Determination and Autonomy in International Law" in Markku Suksi (ed.), *Autonomy: Application and Implications,* op. Cit., p. 79.

how sovereignty should be determined, the League of Nations developed two distinct systems: the Minority Treaties System and the Mandate System. Under the Mandate System, a single Allied power, acting on behalf of the League of Nations, was given temporary administrative control over a former German or Ottoman territory deemed not yet capable of self-governance.[9] The Minority System was a series of treaties intended to protect the rights of ethnic or religious minorities within established nation-states. The Minority System required states to guarantee basic rights to all the citizens, regardless of birth, nationality, race, or religion.[10] The purpose of this system, according to the Permanent Court of International Justice, was to allow for "the possibility of living peaceably alongside [the majority] population and co-operating amicably".[11] However, the protections offered by the Minority System were poorly enforced, causing some states to mistreat their minority populations and escalating tensions between majority and minority groups.[12] In addition, the organization of Eastern Europe in the post-World War I agreements combined all of the newly-formed states into a model of a "unitary or joint *national* state, thereby eliminating their minorities' claims to partnership".[13] Ultimately, these territorial adjustments, which grouped together people of varying ethnic and cultural backgrounds under one governing body, in conjunction with the inefficiency of the Minority System, laid the foundation for future political conflicts, including the rise of nationalist movements. The unresolved issues

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[9] Antony Anghie, "Nationalism, Development and the Postcolonial State: The Legacies of the League of Nations," Texas International Law Journal 41, no. 3 (Summer 2006): 447-464

[10] Helmer Rosting, "Protection of Minorities by the League of Nations," American Journal of International Law 17, no. 4 (1923): 641-660

[11] *Minority Schools in Albania* (1935), PCIJ Ser.A/B. No.64, p.17.

[12] Thornberry, Patrick. "Self-Determination, Minorities, Human Rights: A Review of International Instruments." *The International and Comparative Law Quarterly* 38, no. 4 (1989): 867–89. http://www.jstor.org/stable/759918.

[13] Fink C. Minority Rights as an International Question. *Contemporary European History*. 2000;9(3):385-400. doi:10.1017/S0960777300003052

from the First World War prompted a strategic shift in post-World War II agreements, leading to the development of semi-autonomous regions as a solution to minority groups' demands for autonomy.

IV. The Development of Semi-Autonomous Regions

While World War I primarily addressed the status of regions in Eastern and Central Europe, World War II focused on national self-determination in Asia and Africa. The end of World War II was marked by the creation of the United Nations, which differed from the League of Nations due to its emphasis on national self-determination. Chapter XI of the Charter of the United Nations declares that it is the responsibility of member nations "to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions".[14] It is important to note that the United Nations Charter does not encourage nor grant independence—it speaks only of a territory's right to self-governance. The guiding principle of self-determination was crucial to the establishment of semi-autonomous regions in the post-World War II period. The arrangements that led to the creation of semi-autonomous regions often arose from historical circumstances, peace agreements, or constitutional reforms. Such was the case for the formation of Spain's autonomous communities, which resulted from constitutional reforms that occurred in the 1970s. The Spanish Constitution, enacted in 1978, established a system of seventeen autonomous communities, including Catalonia and the Basque Country, to accommodate distinct regional identities while maintaining the unified nation of Spain.[15]

V. The Effects of the Absence in International Law

[14] United Nations, *Charter of the United Nations*, 1945, 1 UNTS XVI, https://treaties.un.org/doc/publication/ctc/uncharter.pdf.
[15] Colomer, Josep M. "The Spanish 'State of Autonomies': Non‐Institutional Federalism." West European Politics 21, no. 4 (1998): 40–52.

The lack of internationally defined standards regarding the establishment and governance of semi-autonomous regions has significantly contributed to the legal ambiguity surrounding their status. Firstly, the organization of semi-autonomous regions has largely been left to the discretion of individual countries. While agreements such as the Spanish Constitution address regional autonomy at the national level, there is an absence of an international framework for organizing these regions. Furthermore, while the UN has declarations regarding the protection of ethnic or culturally distinct groups—which can intersect with issues of regional autonomy and self-governance—they are not explicitly focused on the governance of semi-autonomous regions as political entities. For instance, the Declaration on the Rights of Indigenous Peoples, which aims to defend the rights of indigenous groups, clarifies that "Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States."[16]

This clarification underscores that the Declaration is intended to protect the rights of indigenous peoples within existing state structures, rather than to establish new semi-autonomous regions or challenge state sovereignty. What is needed to fill this gap in international law is a comprehensive framework that addresses the political and legal status of semi-autonomous regions, providing clear guidelines on their rights, responsibilities, and relationship with sovereign states. The absence of such a framework has led to the legal ambiguities and challenges faced by semi-autonomous regions today.

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[16] United Nations General Assembly, United Nations Declaration on the Rights of Indigenous Peoples, September 13, 2007, A/RES/61/295, Article 46.

The following studies will illustrate how these challenges have presented themselves in two distinct geographic regions and political contexts.

VI. Case Studies

a. Hong Kong

The status of Hong Kong as a Special Administrative Region within the People's Republic of China (PRC) is governed by a complex legal framework, whose foundation is situated in the Sino-British Joint Declaration of 1984. This international treaty, registered with the United Nations, established the principle of "One Country, Two Systems" and provided for the return of Hong Kong to the PRC by the British government.[17] Under this agreement, Hong Kong would "enjoy a high degree of autonomy" and would be endowed with "executive, legislative and independent judicial power".[18] According to the Joint Declaration, the social and economic systems that had previously existed in Hong Kong would continue, and rights and freedoms—including "those of the person, of speech, of the press, of assembly, of association, of travel, of movement, of correspondence, of strike, of choice of occupation"—would be protected by law.[19] The policies outlined in the Joint Declaration was promulgated by a Basic Law enacted by the National People's Congress of the PRC, and would remain unchanged for fifty years after 1997.[20] The Basic Law is a constitutional document that provides the framework for the legal, political, economic, and social structures in Hong Kong.

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[17] Langer, Lorenz. "Out of Joint?–Hong Kong's international status from the Sino-British Joint declaration to the present." *Archiv des Völkerrechts* 46, no. 3 (2008): 309-344.

[18] People's Republic of China and United Kingdom of Great Britain and Northern Ireland, "Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong," UNTS 1399 (1985): 33-61, Articles 3(2) and 3(3).

[19] People's Republic of China and United Kingdom of Great Britain and Northern Ireland, "Joint Declaration" UNTS 1399 (1985): 33-61, Article 3(5).

[20] "The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China", ILM 29 (1990), p. 1519–1551.

Despite the autonomy granted, the Joint Declaration sets certain limitations. Articles 3(2) explicitly limit Hong Kong's autonomy in two crucial areas: foreign affairs and defense.[21] Hong Kong does not have the authority to conduct independent foreign policy or engage in state diplomacy. In regards to defense, the defense of Hong Kong is the responsibility of the central government in Beijing, as Hong Kong does not maintain its own military forces. Beyond foreign affairs and defense, Article 3(3) also introduces limitations on Hong Kong's political autonomy. While the Chief Executive of Hong Kong is selected based on local elections or consultations, the final appointment is made by the Central People's Government. The central government has the power to appoint principal officials based on nominations from the Chief Executive. These measures grant Beijing a degree of control over the administration of Hong Kong.

The lack of an international framework and legal parameters for the governance of semi-autonomous regions like Hong Kong makes it difficult to discern whether the PCR is violating the autonomy of Hong Kong, enabling the creation of laws that could lead to political suppression. The absence of comprehensive international guidelines means that there is no external oversight to ensure that the autonomy promised to Hong Kong is being upheld. This has allowed the PCR to interpret the Joint Declaration and the Basic Law in ways that expands its control over Hong Kong, and makes it difficult to hold the central government accountable for actions that may undermine Hong Kong's autonomy.

For example, one of the most contentious provisions in the Basic Law is Article 23, which has continued to be a source of controversy because of its potential to limit autonomy and civil liberties in Hong Kong. Article 23 requires Hong Kong to enact laws to "prohibit any act of treason, secession, sedition,

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[21] "Joint Declaration" UNTS 1399 (1985): 33-61, Article 3(2).

subversion against the Central People's Government".[22] There is a fear that these offenses, particularly "subversion" and "theft of state secrets," could be used as instruments for political suppression and a tool to infringe on the freedom of speech of Hong Kong inhabitants.[23]

In more recent years, the limitations on Hong Kong's autonomy have expanded beyond the original agreements found in the Joint Declaration. The Hong Kong National Security Law, enacted in 2020 by the National People's Congress, criminalized four offenses: acts of secession, subversion, terrorism, and collusion with foreign or external forces to undermine national security.[24] Most importantly, this law allows for certain criminal cases to be tried in mainland China, allowing for Chinese authorities to apply mainland procedural laws to Hong Kong cases.[23] This law has been used by the PCR to broaden Beijing's control over Hong Kong, under the pretext of national security, and encroach on its judicial independence.

The international response to the PCR increasing their authority over Hong Kong has been significant. The United States, for instance, enacted the Hong Kong Human Rights Democracy Act in 2019, which mandates the U.S. government to annually assess whether "Hong Kong is sufficiently autonomous from China," and impose sanctions on individuals that undermine Hong Kong's autonomy or violate internationally recognized human rights.[25] While this act highlights the role of individual countries in attempting to maintain Hong

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[22] Lotz, Benjamin. "Article 23 of the Hong Kong Basic Law: Whither Media Freedom?" *Verfassung Und Recht in Übersee / Law and Politics in Africa, Asia and Latin America* 45, no. 1 (2012): 56–71. http://www.jstor.org/stable/43239765.

[23] Dapiran, Antony. "HONG KONG'S NATIONAL SECURITY LAW." In *Crisis*, edited by Jane Golley, Linda Jaivin, and Sharon Strange, 59–66. ANU Press, 2021. https://doi.org/10.2307/j.ctv1m9x316.11.

[24] Wong, Lydia and Thomas E. Kellogg, "Hong Kong's National Security Law: A Human Rights and Rule of Law Analysis," Georgetown Law Center for Asian Law 25, no. 7 (2021): 1-25.

[25] U.S. Congress. *Hong Kong Human Rights and Democracy Act of 2019*. Public Law 116-76. U.S. Statutes at Large 133 (2019): 1161-1167.

Kong's autonomy, international legal institutions have largely neglected to intervene. Under the current system, the rights and status of Hong Kong cannot be adequately defended because there is no international law granting protection or ensuring that sovereign states respect the autonomy of semi-autonomy regions.

b. Catalonia

Catalonia's status as an autonomous region within Spain was established by the Spanish Constitution. The Constitution includes Article 2, which "recognizes and guarantees the right to self-government of the nationalities and regions of which it is composed" while maintaining national unity.[26] Under the Constitution, Catalonia has a legislative assembly and the responsibility of providing public services, though this responsibility is often more administrative than political in nature.[27] Catalonia's regional government, Generalitat de Catalunya, consists of a Parliament, a presidency, and an executive council. The Catalan Parliament has the ability to write legislation concerning healthcare, education, culture, and internal organization.

Still, the Spanish central government exerts broader authority over Catalonia in terms of political and economic issues. Section 149 of the Constitution outlines the matters in which the central government has exclusive competence over, which includes international relations, defense and armed forces, administration of justice, criminal and penitentiary legislation, labor legislation, civil legislation, monetary systems, and financial affairs.[28] The Statute of Autonomy of Catalonia in 2006 attempted to expand the Catalonian government's powers, including granting the region increased authority in areas such as taxation, judicial matters, and infrastructure.

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[26] Spanish Constitution, Article 2 (Madrid: Boletín Oficial del Estado, 1978).
[27] Castells, Antoni. "Catalonia and Spain at the Crossroads: Financial and Economic Aspects." *Oxford Review of Economic Policy* 30, no. 2 (2014): 277–96. http://www.jstor.org/stable/43664607.
[28] Spanish Constitution, Article 149 (1978).

However, the Constitutional agreement between Spain and Catalonia has progressively deteriorated over the years, most significantly when the Spanish Constitutional Court ruled several articles of the Statue of Autonomy unconstitutional in 2010. As a result, the region's autonomy has been limited, and Spain's sovereignty has taken precedence over Catalonia's autonomous rights.[29] The general desire in Catalonia is to hold a referendum that would allow the Catalan people to determine the relationship between Spain and Catalonia. Attempts made by the Catalan government to hold an independent referendum in 2017 were ruled illegal by the Spanish Constitutional Court. The subsequent declaration of independence by the Parliament in Catalonia led to a constitutional crisis that resulted in the Spanish government invoking Article 155 of the Constitution. Article 155 allows the Spanish government to "take all measures necessary to compel the [Self-governing] Community" to fulfill the obligations imposed by the Constitution or other relevant laws.[30] In this context, the Spanish government threatened to temporarily suspend Catalonia's autonomy.[31] This imposition on the right to self-determination has led to an internal struggle between the Spanish government and Catalan society, with many Catalonians no longer considering the Constitution an appropriate framework for self-governance.[32]

The tensions between Spain and Catalonia illustrate the complex relationship between sovereign states and the semi-autonomous regions that exist within them. The European Union (EU) has, in general, regarded the Catalan situation as an internal issue for Spain, but this has not proven to be successful thus far. The EU's "hands-off" approach has been criticized for

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[29] Castells, Antoni. "Catalonia and Spain at the Crossroads" (2014).
[30] Spanish Constitution, Article 155 (1978).
[31] Cetrà, Daniel, and Malcolm Harvey. "Explaining Accommodation and Resistance to Demands for Independence Referendums in the UK and Spain." Nations and Nationalism 25, no. 2 (2019): 607-629.
[32] Castells, Antoni. "Catalonia and Spain at the Crossroads" (2014)

allowing Spain to curtail Catalonia's autonomy amid increasing concerns about human rights violations—most notably, the violent suppression of Catalon voters by Spanish police during the October 2017 referendum. The EU's heightened focus on state sovereignty and its prioritization of member states in recent years has caused the EU to be reluctant in defending the interests of the Catalonia citizens.[33] Had an international framework existed that clearly distinguished between the powers and responsibilities of the State, and those of the semi-autonomous regions, there would not be as prevalent a conflict between regional autonomy and national sovereignty.

VII. The Implications of the Absence of an International Legal Framework

The absence of a clear international legal framework has affected semi-autonomous regions' governance, protection of their rights, and international recognition for trade and foreign policy. The absence of standardized practices for the interpretation and administration of self-determination in the context of semi-autonomous regions has led to conflicting claims between states' central governments and regional inhabitants about the rights that semi-autonomous regions are entitled to.[34] This vacuum in international law has contributed to modern-day conflicts between sovereign states and their constituent regions in various geographic locations, including the aforementioned regions of Hong Kong and Catalonia. Recent disagreements between these regions and the sovereign state to which they belong include the enactment of the National Security Law in Hong Kong in 2020 and the independence referendum in Catalonia in 2017. These incidents highlight how

[33] Cashell, P. A. "Understanding the EU Response to Aspirations for Regional Autonomy in Catalonia." Master's thesis, 2018.
[34] Weller, Marc, and Stefan Wolff, eds. Autonomy, Self-governance and Conflict Resolution: Innovative Approaches to Institutional Design in Divided Societies. London: Routledge, 2005.

fragile the arrangements between the state and their semi-autonomous regions are, and how easily affected they are by domestic politics.

The most effective way to address these ongoing sovereignty conflicts is through the development of a comprehensive international framework. This framework should clarify the rights and responsibilities of both the central government and their semi-autonomous regions; it should also establish a procedure for the resolution of conflicts between the state and semi-autonomous regions; finally, it should provide guidelines for the protection of the rights of ethnic or cultural minority groups in semi-autonomous regions. Existing international institutions including the UN and the ICJ should establish specialized bodies to address issues regarding semi-autonomous regions. These legal bodies would conduct decennial evaluations to determine whether the sovereign states and their semi-autonomous regions are abiding by the international guidelines set in place. Future research in this field of international law should focus on developing proposals for legal frameworks through analysis of the long-term outcomes of different autonomy agreements. The issue of the legal status of semi-autonomous regions remains an important area in international law, and will hold a significant place in global politics until a formal legal framework is enacted.