

Consensus Impossible? South Tyrol's Autonomy Convention and the issue of Self-determination

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Abstract

South Tyrol is an autonomous, predominantly German-speaking province in Italy with one of the most successful autonomy arrangements in Europe. The basis of autonomy and the main legal document is the Autonomy Statute of 1972. The autonomy of South Tyrol evolved during the last decades and the need for revision and adaptation became more striking.

Therefore, the Provincial Council (*Südtiroler Landtag*) in 2016 initiated a participatory democratic process to draft a proposal for the revision of the 1972 Autonomy Statute. One of the most controversial topics debated in the so-called 'Autonomy Convention' has been the right to self-determination.

This paper gives an introduction to South Tyrol's Autonomy model and proceeds with a description of the participatory process. This initial part is followed by a section analyzing the debates of self-determination in South Tyrol in general, and within the Autonomy Convention in particular. The final part argues that the debates in the Autonomy Convention show certain contrasts between the language groups living in South Tyrol. Nevertheless, the debates did not influence public life, nor the outcomes of the elections of the Provincial Council 2018.

Keywords

South Tyrol, Autonomy Convention, self-determination, participation

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1. South Tyrol's history and autonomy arrangement

South Tyrol was a part of the Austro-Hungarian Empire until the end of the First World War (WWI). In 1919, with the Treaty of Saint Germain, South Tyrol was annexed to Italy. Due to the annexation process the German-speaking inhabitants of the territory became part of Italy, and until this very day the population of South Tyrol, the northernmost province of Italy, is characterized by a German-speaking majority and a small Ladin community. According to the official language declaration¹ 2011, South Tyrol has a population composed of 69.4 percent German, 26.06 percent Italian, and 4.53 percent Ladin speakers.²

The fact that today most of the population is German-speaking is even more remarkable when learning about the difficult historical past of the territory.³ Especially after WWI, due to the Fascist repression and a diligent program to assimilate the German-speaking population and to 'Italianize' the territory, the German-speaking population faced difficult times. From one day to another, the German language had been pushed out of public life, it was forbidden to use German in schools and in the communication with public authorities. Strategically, teachers and public officials were dismissed or transferred and replaced by Italian-speakers. To enhance this process, the Fascist rulers have built impressive industrial zones and apartments for Italian workers from other parts of Italy in order to create jobs in South Tyrol. A strong Italian immigration had been initiated and the Italian population in South Tyrol rose significantly.⁴

The situation of the German-speaking population deteriorated further when Hitler and Mussolini reached an agreement of forced emigration, the so-called *Option*. The agreement forced German speakers to choose between moving to the *German Reich* and becoming German citizens or remaining in South Tyrol with the perspective of losing their identity and with an uncertain perspective to be displaced in the southern parts of Italy. The *Option* has split up many families and is for sure one of the darkest memories in South Tyrol. Due to Second World War, only around 80,000 people left South Tyrol and a great number returned home at a later stage.

1 Citizens aged 14 and residing in the province of Bolzano must declare their affiliation to one of the three language groups. The language declaration is important for the proportional system in South Tyrol, a system considering the strength of the language groups, especially for the distribution of public posts and public funds. Of course, the society in South Tyrol is much more diverse and according to data of the Statistical Office South Tyrol (2018) 9.5 percent of the population are immigrants.

2 ASTAT – Statistical Office South Tyrol, 2012.

3 The historical background given in the next paragraphs is to provide the reader with the necessary information on South Tyrol's past. To receive a far more detailed overview on the history of South Tyrol please see Grote, 2012, in the English language, or Steininger, 2016, in the German language.

4 While in 1910 7,339 Italian speakers lived in South Tyrol (2.9 percent of the population), in 1921 already 27,048 Italians lived in South Tyrol (10.6 percent of the population) and in 1961 128,271 Italian (34.3 percent of the population). See Astat, 1991.

After World War II (WWII) South Tyrol remained part of Italy, but with the Gruber-Degasperi Agreement⁵ the plan was to improve the situation of the German-speaking minority in Italy by guaranteeing the population autonomous rights and linguistic and cultural protection. In practice, the agreement foresaw equality of rights for the German-speaking population and equality of language, special provisions to safeguard the minority, autonomous legislative and executive powers, ethnic proportion in employment, and education in the mother tongue. Thus, the agreement guaranteed on one hand legislative and administrative autonomy for South Tyrol, and on the other, minority protection provisions.

Unfortunately, the provisions of the Gruber-Degasperi Agreement had been enacted only to a certain point with the so-called First Autonomy Statute of 1948. The First Autonomy Statute did not significantly improve the situation of the German minority in Italy. First, the Autonomy Statute granted territorial autonomy to the whole Region of Trentino Alto-Adige/Südtirol and not to the Province⁶. Therefore, the German-speaking population was still a minority and was overruled in important decisions by the Italian-speaking majority. The consequence has been unrest and protests, and even some bomb attacks and violence⁷. Because of the unrests, in 1960 and 1961, the Austrian government brought the conflict in South Tyrol to the United Nations' General Assembly where Italy and Austria were pressured to find a peaceful solution.

After years of negotiation within commissions composed by representatives of the Italian and the Austrian governments and representatives of South Tyrol, the result was the enactment of a new Autonomy Statute: The Second Autonomy Statute of 1972. With the new Statute most of the legislative and administrative competences have been transferred from the Autonomous Region to the two Autonomous Provinces of Bozen/Bolzano and Trient/Trento. Since then, the two Autonomous Provinces have most of the competences and the Region can be described today as a 'toothless tiger' with very few competences. In concrete, the 1972 Autonomy Statute enshrines legal provisions concerning the Autonomous Region, provisions concerning the two Autonomous Provinces of Bolzano and Trento, and special provisions concerning only South Tyrol. As a result of the step-by-step implementation of the Autonomy Statute, in 1992, the South Tyrol conflict had been officially settled with a note from Austria at the United Nations.

5 The agreement was signed on 5 September 1946 by the Italian Prime Minister De Gasperi and the Austrian Minister of Foreign Affairs, Gruber.

6 According to the Italian Constitution, Italy is a centrally ruled state composed of 20 Regions. Out of these 20 Regions five Regions are Regions with a special form of autonomy: Friuli - Venezia Giulia, Sardinia, Sicily, Trentino - Alto Adige/Südtirol and Aosta Valley/Vallée d'Aoste. The Region Trentino - Alto Adige/Südtirol is composed of the two Autonomous Provinces Bolzano/Bozen and Trento/Trient.

7 To learn more of the unrests and the bombings and their influence on South Tyrol's political decision please refer to Peterlini, 2011.

Still today, the Second Autonomy Statute is seen as the basis of the South Tyrolean Autonomy, and many refer to it as South Tyrol's constitution. Legally speaking the Autonomy Statute is in the rank of a constitutional law. To revise it, a similar special procedure is needed as if the Constitution of Italy was to be changed. The right to make a proposal to amend the Statute is within the Regional Council after consultation with the Provincial Council of the Autonomous Provinces of Bolzano/Bozen and Trient/Trento.⁸ In order to change the Statute, both national parliamentary chambers have to approve the changes twice, with an interim period of at least three months and an absolute majority of votes.⁹

This does not mean that all the provisions of South Tyrol's autonomy will be found in the Statute. The autonomy powers of South Tyrol will be found in a variety of legal sources: constitutional regulations, ordinary law, and especially in a special form of legal source, the so-called enactment decrees. The enactment decrees, as the name says, are enacting or implementing the Autonomy Statute, and in recent years they are also complementing the Autonomy Statute. The enactment decrees gain their specialty by the process through which they are evolved. The enactment decrees are discussed, drafted and produced by special commissions (Commission of 6 on a provincial level, Commission of 12 on regional level) composed by members nominated by the State and the Province (Commission of 6) or Region (Commission of 12). Also, on a hierarchical level, the enactment decrees are special: they are in between constitutional law and ordinary law, which means that they cannot be amended by ordinary law of the provincial or the national parliament. Therefore, the legal design of South Tyrol's autonomy is very dynamic to this day, and new legislation enacts or influences the Second Autonomy Statute of 1972.¹⁰

The autonomy arrangement is characterized by a territorial autonomy for the Region and consociational power-sharing between the German, Italian, and Ladin speakers who live in South Tyrol. Nowadays, South Tyrol has many exclusive powers ranging from housing policy to local culture.¹¹ Aside from the institutional relations, the living-together of the language groups is regulated by balance of powers: political and administrative positions are allocated according to a declaration of linguistic affiliation. This means that in most

8 Art. 103 ASt.

9 Art 139 ItaConst.

10 To learn more on the special autonomy arrangement of South Tyrol please refer to Woelk and Palermo, 2008, and Marko, 2008.

11 To receive an overview of the competence of the Region please refer to the following articles (1) Article 8 ASt for the exclusive powers, http://lexbrowser.provinz.bz.it/doc/de/dpr-1972-670%c2%a720%c2%a7120%c2%a7130/dekret_des_pr_sidenten_der_republik_vom_31_august_1972_nr_670/i_abschnitt_errichtung_der_region_trentino_s_dtirol_und_der_provinzen_trient_und_bozen/3_kapitel_befugnisse_der_provinzen/art_8_span_span.aspx; (2) Article 9 ASt for the concurrent powers, http://lexbrowser.provinz.bz.it/doc/de/dpr-1972-670%c2%a720%c2%a7120%c2%a7140/dekret_des_pr_sidenten_der_republik_vom_31_august_1972_nr_670/i_abschnitt_errichtung_der_region_trentino_s_dtirol_und_der_provinzen_trient_und_bozen/3_kapitel_befugnisse_der_provinzen/art_9_span_span.aspx. Accessed October 31st, 2019.

political bodies or positions all language groups have to be represented in proportion to the strength of the language groups. The same goes for openings in public administration.

Within the public administration bilingualism (and in the Ladin valleys¹² even trilingualism) must be guaranteed. This means that public officials must be able to speak both German and Italian (and in the Ladin valleys also Ladin). To guarantee the language proficiency officials must be in possession of a certificate confirming their knowledge of the languages.¹³ Every language group also has a high degree of cultural autonomy, and funds in sectors such as culture or housing are distributed according to the strength of the language group.

These aspects, bolstered by good economic development, clearly helped to improve the situation in South Tyrol significantly. The living-together of the linguistic groups can be described as peaceful, and the Autonomy Convention, which will be explained in the next paragraphs, strengthens this view.

2. The Autonomy Convention¹⁴

As described in the previous part, in the past, consultations regarding the Autonomy Statute were of elitist and exclusive character. Since 1972 not only South Tyrol's autonomy has changed significantly. From a legal perspective, the Statute has been affected by new legislation and jurisprudence of the constitutional court, but especially due to the reformation of the Italian Constitution in 2001.¹⁵ Furthermore, since 1972 South Tyrol has also changed on socio-economic aspects due to the improvement of the economic situation and due to political and demographic changes.

Thus, already in the coalition program for the 2013–2018 parliamentary term,¹⁶ the newly-elected South Tyrolean government envisioned the establishment of a participatory

12 The Ladin population in South Tyrol is concentrated mostly in two valleys: Grödnertal/Val Gardena and Gadertal/Val Badia.

13 In order to guarantee the right of bilingualism a special examination on a Provincial level was introduced. The so-called exams of bi- and trilingualism had to undergo different reforms. While at the beginning comprising two translations, since 2014 the exam has consisted of four modules: listening comprehensions, reading comprehensions, cloze test and writing, and speaking. There are four different exams according to the Common European Framework for languages. Since 2017, South Tyrol recognizes also equivalent international language certificates of the same level.

14 The Autonomy Convention was scientifically supervised by EURAC Research. The author was one of its coordinators, and observations made in this section are based mostly on direct observation made during the process and the documentation of the proceedings.

15 Extremely relevant regarding the Autonomy Statute was the reformation of Section 5 of the Constitution by the introduction of institutional changes regarding Regions, Provinces and Municipalities and the introduction of federal aspects.

16 Koalitionsabkommen zur Bildung der Landesregierung für die Legislaturperiode, 2013. <http://static1.squarespace.com/static/514dcba2e4b023ca28fbed3e/t/52c1d57ce4b0491644559b2b/1388434812383/Koalitionsabkommen+DE.pdf>. Accessed October 31st, 2019.

process tasked with the elaboration of a proposal for the reformation of the Autonomy Statute. The government wanted to express a more participatory approach in contrast to the elitist negotiations of the past and involve South Tyrol's citizens in the process of revision of the Statute right from the start. The main goal of this initiative was to revise the Autonomy Statute, together with the engagement of the South Tyrolean population, and to make considerations for the future autonomy arrangement in South Tyrol in order to receive legitimization for future considerations and negotiations with Italy from the population.

Finally, to implement the process, in April 2015 the governing parties *Südtiroler Volkspartei (SVP)*¹⁷ and the Italian *Partito Democratico (PD)* adopted a law to introduce a participatory process to revise the Second Autonomy Statute of 1972, the so-called 'Autonomy Convention'. As already mentioned in the coalition program, the Provincial Law No. 3/15 had the aim to guarantee the full participation of the civil society of South Tyrol in the revision of the Autonomy Statute. The main task foreseen in the law was the submission of a written proposal dealing both with institutional adjustments and necessary revisions of the Autonomy Statute. Accordingly, the outcome of the Process had to be submitted to the Provincial Council. The law was adopted by 18 votes by the two government parties only, while the opposition parties either voted against or abstained from voting.

At this stage it needs to be underlined that the Autonomy Convention was a participatory process with some peculiarities. The fact that it took place on a subnational level in a minority area with consociational institutions had to be considered when designing the Convention. Needless to say, it was essential for the legislator to guarantee the participation of all three language groups. Besides that, the Convention should work in full transparency, therefore all working documents and minutes of the meetings were published on the Convention's website, and all meetings had to be open to the public.

The Autonomy Convention continued for almost two years. The first meetings of the Autonomy Convention took place in January 2016, and the results of the Convention were handed over in September 2017 to the Provincial Council. To involve South Tyrol's population, at the beginning of the process nine Open Space events were organized in different locations over the territory. The main aim of these meetings was to give South Tyroleans the opportunity to express their opinion and make proposals for the revision of the Statute of Autonomy, but also beyond. Therefore, the guiding question at the meetings did not mention the Autonomy Statute explicitly, but the participants were invited to discuss the future of South Tyrol in general.¹⁸

17 The Südtiroler Volkspartei (South-Tyrolean Peoples Party) was founded after WWII and defines itself as representative party of the German and Ladin minority in South Tyrol. The SVP governed South Tyrol for the past year and has held the absolute majority of votes since 2013. For an overview of the political landscape in South Tyrol, see Pallaver, 2018.

18 The guiding question of the Open Spaces in the Autonomy Convention was „Südtirol mitdenken: Welche Zukunft für unser Land?“ (Re-thinking South Tyrol: What future for our territory?).

The meetings followed the Open Space Technology introduced by Harrison.¹⁹ In concrete terms, the participants had the opportunity to discuss all those topics that were of importance to them following the general guiding question. The Open Space Technology foresees a pre-defined structure of workflows: for each topic introduced by the participants, a working space and a time window of 45 minutes were provided. The results of the discussions were recorded by the participants of the working group according to the principle of consensus. The topics were freely chosen by the participants at the beginning of the working day, therefore there was neither a planned agenda nor the need for the participants to register. Participation in the individual working groups was completely free.

Trained facilitators and researchers followed the single Open Space events but did not analyze or filter the results. All minutes of the workshops have been collected in the plenary hall and were published on the Autonomy Conventions Website for transparency reasons²⁰. On the website, the public could comment on the minutes or write a blogpost with considerations and concrete recommendations for action. The minutes and online posts varied a lot, but the following topics were the most recurrent and discussed prominently:

Topics	Number of discussion rounds
Expansion of provincial competences/autonomy	64
Self-determination/independence	28
Educational System	24
Multilingualism and Proportional System	17
Relations between language groups	14
Environmental sustainability	14
Social issues	13
European Region Tyrol–South Tyrol–Trentino	13
Civic participation	11
Toponymy	10
Ladins	9
Culture	8
Relationship with Austria	7
Immigration	5
Politicians/politicians' salaries	2
Pardoning militants 1960/bombings	2

Note: Author's own elaboration by considering the data of the Open-Space brochure by the Autonomy Convention

¹⁹ See O. Harrison, 2008.

²⁰ The Autonomy Convention Website is still online, but only as an archive: www.konvent.bz.it. Accessed October 31st, 2019.

In total, around 2,000 people participated in 258 discussion rounds²¹ and 181 online posts²² were written. Participants differed demographically and politically across the venues at this stage of the process, but in general it was observed that the Italian-speaking population, which according to the language group affiliation in South Tyrol accounts for 26 percent of the population, was significantly underrepresented in the roundtable discussions.²³ Further evidence has been provided by the online posts on the Autonomy Convention's website: out of the 181 posts, 162 have been written in German, 18 in Italian and 1 in Ladin. According to the observations of the author, not only was the Italian language group underrepresented, but also younger generations.

The results of the Open Space discussions were then collected and handed over to the two main bodies of the Autonomy Convention: the Forum of 100 and the Convention of 33. The Provincial law for the Autonomy Convention regulated that both bodies have only an advisory role in the revision of the Autonomy Statute, and no decision-making powers. The Provincial council will review their proposal for the revision of the statute and then decide to what extent to take the results into account.

According to the law, both bodies had to follow the principle of consensus. This means that provisions and measures not having the consensus of every single member should not find their way into the final documents. Nevertheless, for the Convention of 33 the law foresaw the possibility to hand over minority reports aside to the final document. This provision of course weakened the principle of consensus, and as we can see at a later stage influenced the discussions very much, especially regarding self-determination.

The composition of both bodies had to respect the proportional representation of the language groups in South Tyrol. The more prominent body, the Convention of 33, was appointed directly by the South Tyrolean Provincial Council and was composed as follows: four persons proposed by the Council of Municipalities; two persons proposed by the employers' associations; two persons proposed by the trade unions; five legal experts; 12 persons representing both the political majority and minority; and eight persons elected by the Forum of 100 and sent to the Convention of 33. The Convention of 33 met on average twice a month over an entire year. Similar to the Open Spaces, all meetings were public in the interests of transparency, and the meetings of the Convention of 33 were streamed on the website of the Autonomy Convention.

Instead, the Forum of 100 was intended by design to be the connecting element between the Convention of 33 and the South Tyrolean citizenship. Therefore, as already mentioned,

21 Autonomy Convention, *So denkt Südtirol*, 2016.

22 See www.konvent.bz.it. Accessed October 31st, 2019.

23 Taking into consideration that no registration was foreseen, there is no possibility to verify these observations. Nevertheless, according to different media outlets equivalent observations have been made by journalists, see Alto Adige, 2016a, Adige, 2016b, Pitro, 2016.

eight representatives of the Forum of 100 were part of the Convention of 33. To guarantee that the Forum of 100 will represent South Tyrol, the members of the Forum of 100 were chosen by a sample, considering language group, age and gender. All residents of South Tyrol over the age of 16 could register for the Forum and were eligible for the sample.²⁴ The final composition of the Forum of 100 according to the sample taking into account the criteria was the following: 51 women and 49 men between the age of 16 and 83, 69 Germans, 26 Italians and five Ladins.

The Forum of 100 met six times and decided to work in groups considering the topics raised in the Open Space events. Therefore, on the initiative of the one hundred members the following eight working groups were formed:

1. culture, education, and toponomy
2. democratic participation
3. environmental sustainability, economy, research, labour
4. expanding autonomy, role of Region, relations with Rome and Vienna, dual citizenship
5. group affiliation, proportional system, languages in public administration, Ladins
6. migrants, cohabitation, multilingualism
7. self-determination, European region, 1960s militants
8. social welfare, health care, sports

The members could freely choose their participation in the group discussions. Only the eight members elected in the Convention of 33 took the positions of group leaders and were therefore distributed in different groups. The Convention of 33 instead preferred to discuss all the topics in plenary. Both bodies had the possibility to invite experts and organize hearings on different topics.

The main goal of both bodies was to elaborate a proposal for the Provincial Council. According to the law of the Autonomy Convention, South Tyrol's Provincial Council must find a common proposal for the amendment of the Autonomy Statute with the Provincial Council of Trentino²⁵. According to Article 103 of the Statute, the initiative to amend

24 According to the organizers 1,829 people registered for the sample. Out of these 1,331 were men (73 percent) and 498 women (27 percent). In addition, 1,518 registrations were made by the German language group (83 percent), 245 of the Italian language group (13 percent) and 66 by the Ladin (4 percent). In total, citizens out of 112 of the 116 South Tyrolean municipalities are among the registered. See also Autonomy Convention, *So denkt Südtirol*, 2016.

25 In the neighboring Province Trentino, a similar process took place, the so-called 'Consulta'. The process was less participatory and from the design quite simple. One body, the 'Consulta', worked for more than a year on a proposal on the Statute. The members were nominated by the Provincial Council and were mostly politicians and legal experts. After the proposal was drafted it was proposed to the public in different occasions. After these presentations, the body revised its proposal and handed it over to the Provincial Council. Because of the design the 'Consulta' was not only less participatory, but the discussions also more technical and less controversial. For an analysis and the design of the 'Consulta' please see Alber, Röggl, Ohnewein, 2018 and Woelk 2018.

the Statute is with the Regional Council, which is composed by the members of both Provincial Councils.

The Forum of 100 and the Convention of 33 presented their final reports jointly on 22 September 2017 and handed them over to the Provincial Council. While the working groups of the Forum of 100 managed to produce a final document based on a high consensus²⁶, the Convention of 33 produced a final document with four minority reports. Especially, on the topic of self-determination consensus was politically impossible. But also, to not include it in the final document was not an option for the majority within the Convention of 33. Therefore, the inclusion of the proposals in the final document made in reference to the right to self-determination triggered the elaboration of four minority reports by members of the Italian linguistic group.

3. Self-determination in South Tyrol

Self-determination is a principle in international law and was guaranteed internationally in 1945 by the Charter of the United Nations.²⁷ The principle allowed people to freely choose their political status and their sovereignty. Nowadays, the right to self-determination is widely accepted, although there are some unclarities in the adoption and meaning of the norm. It can be applied in different forms, varying from internal self-determination in the form of autonomy and political participation or in the external form such as secession, independence or integration in another state.

When we look in the past, self-determination was often connected with power, and often with the geopolitical and strategic interests of the winning parties in wars. Other factors such as political instability, the definition of the concept ‘people’ and the mere consequence that new borders create new minorities²⁸ often prevented a universal application of the principle.²⁹ Internationally the principle has developed as a result of growth of nationalism in the ex-colonies, while in Europe it has been seen, for a long time, more as a political concept than a legal formulation.³⁰

This changed in 1976, when the International Covenant on Civil and Political Rights came into force and the right to self-determination was included by the UN in Article 1 of the ICCPR,³¹ and with the Helsinki Declaration in 1975 where the present states confirmed

26 Only the working group “culture, education, and toponomy” did not find consensus and therefore presented two different proposals.

27 Article 1, 2 and Article 55.

28 As can be seen very well in the dissolution of former Yugoslavia.

29 Hannum, 1990, pp. 27-31.

30 Musgrave, 1996, p. 96.

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

the “principle of equal rights and self-determination of peoples, all peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status ...”³²

Nevertheless, the formulation and the missing definition of ‘people’ affects the adoptability of the right to self-determination and gives room for interpretations. Legal scholars and state practice were and are very reluctant in defining people. In literature, on the one hand the term people has been seen in the contextualization of colonialism in the sense of the population of a non-self-governing territory, and on the other hand the universal definition of people in the sense of the population of sovereign, independent states or non-self-governing territories.³³ Both definitions lack the ethnic affiliation and identification of groups. Therefore, other definitions take into account ethnic elements such as language or religion and therefore reflect a distinct character.

The literature is still unclear whether people can exercise the right to self-determination and under what circumstances, especially when expanded to a context beyond decolonization. Some scholars argue that the right to self-determination can be seen as a last resort to prevent the abuse of minority rights and to preserve human rights and democracy.³⁴ Others underline the evolving character of the right to self-determination and its dynamic applicability “to match the needs of time”³⁵. If we combine these two premises, besides that minorities should be a distinct group which occupy a distinct territory,³⁶ it is difficult to argue that South Tyrol, at this moment of history, sustains discrimination or oppression.

Still, before analyzing the debates of self-determination within the Autonomy Convention, it is crucial to underline that self-determination has been an issue in South Tyrol since the annexation to Italy. In 1969, the *Südtiroler Volkspartei* had to vote for a set of 137 measures (*Paket*, package) which was proposed by the Commission of 19, a commission with Austrian and Italian representatives, as a solution to settle the conflict. These measures became the basis of the Second Autonomy Statute of 1972. By voting in

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

32 Conference on Security and Co-Operation in Europe, Final Act, Helsinki 1975, art. 1 VIII.

33 *Ibid*, p.149-153.

34 Knop, 2002, p. 77.

35 Ghanea and Xanthaki, 2005, p.32.

36 See also Brilmayer, 1991.

favor of the *Paket*,³⁷ the South Tyrolean Peoples Party opted for the path of internal self-determination and a strong autonomy within the Italian State and gave up the claims for external self-determination. Nevertheless, since then there have been repeated claims that South Tyrol would be better off as an independent “*Freistaat*” or even a reunification with the kin-state Austria had been promoted. Especially towards the end of the 1980s, new secessionist movements emerged and claims for secession became more prominent.³⁸

These claims have been promoted mostly by two other parties of the German minority, the *Südtiroler Freiheitliche Partei* and the *Süd-Tiroler Freiheit*. The *Freiheitlichen* can be defined as a patriotic-right wing party with very close links to the Austrian *Freiheitliche Partei Österreich*. The *Süd-Tiroler Freiheit* instead is promoting the idea of a reunification with Austria or an independent country by referendum. In 2013, the party even held an unofficial referendum, where people could decide about the future of South Tyrol. The party announced that the voting participation was 15 percent and that 92.17 percent of South Tyroleans voted for self-determination. Of course, this referendum cannot be taken as a representative referendum.

At the last elections in 2018 the *Freiheitlichen* received 6.2 percent of the votes (two mandates in the Provincial Council) and the *Südtiroler Freiheit* 6.0 percent of the votes (also two mandates in the Provincial Council). This means that since 2013, when the last Provincial elections before the Autonomy Convention took place both parties lost votes: the *Freiheitlichen* in 2013 received 18.0 percent of the votes (6 seats) and the *Südtiroler Freiheit* 7.2 percent of the votes (3 seats).³⁹ It remains difficult to say how many South Tyroleans would opt for external self-determination, but the voting results of these two parties may give evidence that within the current political situation there is no realistic majority for these claims in South Tyrol.

Nevertheless, distinct from the party level there is an organization which is very active in promoting the claims for external self-determination. This organization was very active during the Autonomy Convention, as will be explained in the following paragraphs: the so-called *Schützen*.

The *Schützen* define themselves as an organization which promotes traditions and the preservation of the *Heimat* (the homeland) and the German and Ladin Minority. They honor the Christian roots of the territory and they are promoting a reunification with the Northern Part of Tyrol in Austria or, as mentioned, self-determination. The *Schützen*

37 In 1969 the voting of the *Paket* ended with a close result: 583 in favor, 492 against and 15 abstentions. At that time, the *Paket* and its measures for full autonomy had been seen by a few as a feasible alternative to independence. For historical insights on the voting and an evaluation of the bombings in South Tyrol, see Peterlini, 2011.

38 Scantamburlo and Pallaver, 2015.

39 The results of the Provincial elections 2013 and 2018 can be accessed and compared at http://www.buergernetz.bz.it/vote/landtag2018/results/dlistvt_ld_vg.htm . Accessed October 31st, 2019.

are well-organised over the territory, as in almost every municipality there is a branch of the *Schützen*. They number around 5,000 members, and, although not having a party affiliation, they still have clear political goals.⁴⁰

In general, it is difficult to show representative numbers of how many South Tyroleans would be in favor of an independent South Tyrol or a ‘return’ to Austria. This is so in particular because percentages could change quickly due to the development of the political contexts in Italy, Austria and Europe in general. On the other hand, the election results may suggest that at this moment in history there is no majority for external self-determination in South Tyrol.

4. Self-determination in the Autonomy Convention

In the Autonomy Convention the issue of self-determination was quite prominent, especially compared to the general political discourse in South Tyrol over the last years. Especially in the nine Open Space⁴¹ events organized within the first two months of the Convention, it was discussed in numerous discussion rounds. In concrete, members of the *Schützen* strategically brought the topic of “self-determination” or “independence” to the table. According to the minutes, self-determination was at the center of the discussion in at least 28 sessions. This was not only because the *Schützen* recognized the Autonomy Convention as a valuable platform to promote the right to self-determination in South Tyrol and sent hundreds of their members to the different Open-space events.⁴² Consequently, after the topic of self-determination was prominent in the Open-Space events it has been discussed prominently also in the Forum of 100 and in the Convention of 33, where not only members of the *Schützen* but also members of both *the Südtiroler Freiheitlichen* and *the Süd-Tiroler Freiheit* were present.

The right to self-determination was discussed in the Autonomy Convention mostly under political or legal aspects:

- 1. The legal ‘right’:** On several occasions the UN Human Rights Pacts of 1966 were mentioned as a legal basis. As Italy has signed and ratified the human rights pacts in 1977, the right to self-determination is seen as an international legal obligation. In addition, the term “peoples” was discussed. It was mentioned that not states,

40 *Schützen* website, www.schuetzen.com. Accessed October 31st, 2019.

41 The following sections are taking into account the suggestions made within the Open Spaces, the Forum of 100 and the Convention of 33. They focus on the Open-Space brochure as the final document of the Forum of 100, 2017 and the minutes of the Convention. The single minutes can be accessed partly at the website of the Autonomy Convention www.konvent.bz.it. Accessed October 31st, 2019.

42 Press release of the *Schützen*, <https://schuetzen.com/2017/06/27/autonomiekonvent-setzt-zeichen-fuer-ein-selbstbewusstes-suedtirol/>, 27 June 2017. Accessed October 31st, 2019.

but rather peoples and ethnic groups have the right to self-determination. South Tyrol's autonomy can only be an intermediate stage to external self-determination. The people are free to decide on their political status. The South Tyroleans have never had the right to decide whether South Tyrol should stay with Italy or not. The right to self-determination of the South Tyroleans is therefore not consumed for the sole reason that it has not been exercised. As a permanent right, however, the right to self-determination is basically not consumable, but always applicable. On the other hand, it was pointed out that in South Tyrol there are no human rights violations and that South Tyrol's situation can never be compared with colonized peoples, and that for South Tyrol the Gruber-Degasperi Agreement and its international obligations are more relevant.

2. Self-determination as a democratic process: On several occasions it was underlined that self-determination should be seen as an open, democratic process in which the whole population of South Tyrol should be involved. The possible outcomes may include maintaining the status quo, integration or re-integration in another sovereign state (e.g. Austria), forming a sovereign state of its own, or any future political status.

As a possible design of a referendum, a two-step process was proposed. First, the population should decide whether a change of the status quo is necessary. If the result would be positive, a second referendum on the future status should be initiated. Before the first referendum, the populations should be informed about the procedure and the effects of their decision. On different occasions there have been references made to the independence movements in Catalonia and Scotland.

3. Self-determination and the European Union: Critiques and skepticism were raised regarding EU membership: before starting a process of self-determination the relationship with the EU should be clarified. Some participants feared isolationist tendencies and questioned the economic feasibility of an independent South Tyrol.

4. Self-determination in the preamble of a future Autonomy Statute: In the final document of the Convention of 33 the right to self-determination was introduced in the proposal for a preamble of a future Autonomy Statute.⁴³ If, from a legal

43 The wording of the proposal: "to include a reference to the right of self - determination of peoples as in Article 1 of the Charter of the United Nations, ratified by the Italian Republic and implemented by Law No. 848 of 17 August 1957, in Art. 1 of the International Covenant on Civil and Political rights and in Article 1 of the International Covenant on Economic, Social and Cultural rights, ratified by the Italian

perspective, this is not realistic because it would stand against the principle of unity of the Italian Constitution, from a political standpoint it can be seen as the main achievement of the supporter of self-determination for South Tyrol. This is because within the Convention of 33, members of the governing party *Südtiroler Volkspartei* bolstered the proposal to introduce the right to self-determination in the preamble. This is particularly interesting, as the *Südtiroler Volkspartei* has been promoting internal self-determination in the sense of a dynamic autonomy since 1969. This does not mean that the *SVP* ever resigned on the right to self-determination, but they never gave it such a prominent space in their political discourse.⁴⁴

It has been seen that the right to self-determination was the most controversial topic in the whole Autonomy Convention. To include it in the final document of the Convention of 33 was against the principle of consensus foreseen in the law of the Autonomy Convention, because on the issue of self-determination no consensus had been reached. It was not the only point of the discussion which found its way in the final document without the necessary consensus, but it was certainly the most controversial one. As the law of the Autonomy Convention foresaw the need of consensus with a possibility to draft so-called ‘minority-reports’ the principle of consensus was weakened by the legislator right from the start. In particular, towards the end of the discussion the members of the Convention no longer tried to find consensus, but already announced that they would make use of the minority reports.

Accordingly, four minority reports were drafted, all by members of the Italian language group. Therefore, the final document has not been perceived as a document based on consensus, but as the document of the German majority. The withdrawal from the right of consensus in favor of the right to self-determination by the German majority led to a general de-valuation of the Autonomy Convention’s work. In addition, South Tyrol’s media landscape was reporting intensively on the discussions within the Autonomy Convention on self-determination with the consequence that other prominent topics, where a consensus was found, did not find their way in the media and did not receive the necessary attention.⁴⁵

The fact that the four minority reports were written by members of the Italian language group is remarkable. In particular, the four reports heavily criticize the inclusion of the right to self-determination in the preamble of a future Statute. The authors of the reports mention that it would go against the chosen South Tyrolean model of internal self-governance and it could lead to tensions between the language groups and the dominance

Republic and implemented by Law No. 881 of 25 October 1977.’

44 See also Scantamburlo, 2016.

45 Röggl, 2018.

of the German majority in South Tyrol.⁴⁶ It would conflict with the agreement taken within the Gruber-Degasperi agreement and therefore be a paradigm shift in the consociational model in South Tyrol.⁴⁷ This does not mean that self-government was the only issue where there were huge discrepancies between the language groups.

The results of the Autonomy Convention were handed over to the Provincial Council in September 2017, and since then they have been swept under the carpet. For the last two years no steps have been taken by the Provincial Council to find an agreement with Trento, and it seems unlikely that this will happen soon. It remains highly doubtful that the Autonomy Statute of 1972 will be revised in the near future. The failed constitutional reform 2016 in Italy has stolen some thunder in the need of reformation. In addition, as the Convention is finished, the population will not be involved anymore, and it is foreseeable that the next steps in this long journey will again be marked by elitist negotiations with Italy and sensitive political debates in the Provincial Council. In October 2018 elections were held in South Tyrol and the political spectrum changed. The *Partito Democratico (PD)* lost significantly and is no longer part of the government. As mentioned above, the *Freiheitlichen* and the *Südtiroler Freiheit* also lost significantly. These political changes have been related mostly to other topics, the Autonomy Convention was not an issue in the electoral debate. Therefore, also after the elections, the results of the Convention and the intensively discussed topic of self-determination neither had a major impact on the electoral campaign during the Provincial elections 2018, nor on the living-together in the Province.

5. Conclusions

In conclusion, what remains is the fact that some groups and parties took a participatory process, namely the Autonomy Convention, as a chance to promote external self-determination in South Tyrol. This issue was always present in South Tyrol, but was not a pressing one. According to how politics dealt (or did not deal) with the result in general and the outcome of the Provincial Elections, at least three things can be learnt from the Autonomy Convention and the discussions on self-determination:

The Autonomy Convention is evidence for a resolved conflict in South Tyrol and the peaceful co-existence of the language groups⁴⁸ due to the autonomy arrangement.⁴⁹ The mere fact that the Autonomy Convention took place and topics such as the right to self-

46 Minority Report Bizzo, Final Document C33.

47 Minority Report Dello Sarba/Polonioli, Final Document C33.

48 See Larin and Röggl, 2019.

49 See Schulte, 2019.

determination were openly discussed gives evidence of the peaceful situation in South Tyrol. The discussion on the right to self-determination within the Convention shows that the situation in South Tyrol permits the discussion of very controversial topics in a respectful manner, without fueling new tensions between the language groups or South Tyrol and Italy.

Nevertheless, the Convention also showed that there are still dividing lines between the language groups, and South Tyrol's consociational system may hinder the integration of society⁵⁰. The fact that the minority reports have been drafted by the Italian members of the Convention and the 'final document of the Convention of 33' was drafted by the German majority in the Convention clearly indicates that there are some topics where these dividing lines in South Tyrol are still in place, consensus is impossible, and considerations on the future development of South Tyrol vary. This underlines the necessity that new considerations must be made to further overcome these dividing lines, and new solutions to make South Tyrol more inclusive have to be addressed.⁵¹

The results of the Autonomy Convention did not receive much political attention after the end of the Convention. Until now the results mostly remained under the carpet, and no concrete action to deal with the results of the Convention has been undertaken by the provincial government. The results of the Autonomy Convention will remain under the carpet. Because of the strong institutionalization of the participatory process and the Provincial Council's role as organizer, a citizens' movement to pressure the politicians to action is lacking. In sum, there is no bottom-up pressure to take the results of the Autonomy Convention into consideration. Especially, the Provincial Elections and the newly elected government will not give the results of the Convention a lot of credit. In order to revise and to re-elaborate the Autonomy Statute the next step would be to find a common proposal with the Autonomous Province of Trient/Trento and to start negotiations with Italy. It goes without saying that this would be a Herculean political task, and therefore is not a pressing issue for the government.

This may be one reason why the discussions of self-determination remained a minor issue in South Tyrol, and in general the discussions within the Convention did not have an impact on the society and the co-existence of the language groups. In addition, as explained above, the debates on self-determination have been present in South Tyrol for a long time, but it has never been an issue the majority of South Tyroleans would support. For the moment any claims for external self-determination seem off the table and are not perceived as relevant in South Tyrol. This does not mean that it will not become relevant in the future, depending mostly on the dynamics of Italy's political situation.

50 See Pallaver, 2014 and Carlá 2016.

51 See Larin and Röggl, 2016.

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