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Group within a Unified Europe**
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Intersection points of International and European Law

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The Frisians as an Indigenous Minority Group within a Unified Europe

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1. Introduction

In September 2013, following years of preparation and competition, an international jury awarded the title of 'European Capital of Culture 2018' to Leeuwarden-Friesland (Ljouwert-Fryslân). The people of Leeuwarden, the capital of the Dutch province of Friesland, were elated. This would be their opportunity to present the unique Frisian culture to the world, and to play their part in demonstrating Europe's rich cultural diversity. In what sense can the Frisians claim greater autonomy for themselves and their region?

2. The Europe of the regions

It is not the politicians and bureaucrats in The Hague who know most about the region's language, culture and its finely meshed structure of eleven small cities and hundreds of villages: it is the Frisians themselves. Any claim to greater autonomy is, of course, not based on the 'purity' of the Frisians as a Germanic tribe. That would imply a questionable form of racism. Criteria such as race, bloodlines or any other biological characteristics should play no part in policy. Rather, the key factor is opposition to the idea of the 'cultural melting pot' and the mass culture of the major cities. Needless to say, cities such as Amsterdam do have a culture. In an organic sense, however, the strength of that culture is diluted because it seeks to be cosmopolitan in nature. The large cities are becoming ever more similar, their people, markets, shops virtually indistinguishable. In this respect, it is fitting that Leeuwarden-Friesland has been named European Capital of

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Culture. We might ask whether the title is an appropriate way to promote a *regional* culture. No previous holder has attempted to do so, and yet it was by virtue of its deliberate regional focus that Friesland's bid emerged victorious.

As the importance of national borders wanes and the opportunities for cultural individuality increase, there is a risk that nationalist factions will attempt to exploit separatist sentiments. It is not so very long ago that 'ethnic cleansing' was seen in Europe. In the light of the lowering of economic borders and the increasing mobility of European citizens, we must ask whether separatism is in keeping with the desire to foster stronger ties between the nations and people of Europe. Has adequate thought been given to the consequences for the member states which remain after a region has gone its own way? If Scotland wishes to declare independence, the entire British nation could fall apart, its constitutional stability destroyed along with the solidarity of the British people. Belgium is also at risk from the negative consequences of confederalization. The Belgian nation state is a unique marriage between the Flemish and the Walloons. It is, and should remain, the responsibility of both.

The development of the internal market has greatly diminished the significance of national borders. At the same time, a democratic juridification of power has taken place across those borders, with common legislation enacted by the European Commission, the Council of the European Union and the directly-elected European Parliament. The process has been bolstered by the concept of European citizenship, established in 1993 by Article 20 TFEU. This ongoing transnationalization at the expense of individual sovereignty does not chime with the concept of a 'Free State of Friesland', in which the Frisians themselves would take all decisions affecting their territory. Such an arrangement reflects a desire for a simple unity which has never actually existed and, given the increased individualization of society, now appears undesirable. Fortunately, one heart can have many loves. Prominent national politicians such as Jelle Zijlstra and Wim Duisenberg were proud Frisians, but they also regarded themselves as Dutch and as European. Moreover, the majority of Frisians recognize that the nation state of the Netherlands, as a member state of the Union, serves to uphold the ideals of rule of law. The Frisians are aware that the Union respects the territorial integrity of its member states, the 'masters of the treaties' (Article 4 (2) TEU). If a newly independent Scotland wishes to accede to the Union in its own right, all other member states must approve a change to their number.

3. The right of self-determination

A community is made up of people with a common history. It becomes a 'nation' when its members are aware of their specific individual characteristics and wish to preserve them. This ideal can be pursued at several levels: an exclusive national community within a larger constitutional whole, a nation state, a national community made up of the majority of citizens of that state, or a national group representing a minority of citizens. In each case, the constitutional system (and hence the government) must create conditions whereby the characteristics of the national identity, such as religion, language and culture, can be freely expressed and practised within the constraints of law, order and public safety. Within the nation state, there must be room and opportunity for the national communities to develop and prosper. However, this does not necessarily entail devolution or independence. After all, people are not tied to the state by virtue of common characteristics or national sentiments, but by the legal concept of citizenship.

The right of self-determination can be justly claimed where the state itself is oppressive, or there is an oppressive majority within the state. However, this right can never transcend or supersede the human rights of the people. Opportunities to exert the right of self-determination can be created in various ways.

-If the members of a minority live together as a group, as in the case of the Roma for example, the obvious course of action is to allow them to take responsibility for matters of religion, education, language and culture by means of their own non-governmental organizations, based on common interests and solidarity.

-Where there is a clear concentration, as in the case of Frisians in the province of Friesland, the right of self-determination can prompt greater autonomy for the region as a whole. It may be appropriate to give the Frisians primary decision-making responsibility in areas such as religion, education, language and culture, again based on common interests and solidarity. Given the open nature of today's Europe, however, this should be subject to the proviso that pluriformity must be preserved at the regional and local levels. Not everyone who lives in Friesland is a Frisian. Even among those who are, there are differences in dialect which must be respected. The way in which autochthonous minorities are allowed to preserve their culture can be seen as an important measure of the democratic character of Europe.

-If a community forms part of a larger society in which it is oppressed by the majority, whereby it is impossible for its members to express their own identity, the right of self-determination may

indeed give just cause for independence and liberation, provided the due democratic process is observed. That process should be undertaken under the auspices of an international organization such as the Council of Europe.

That the Frisians do indeed have a national identity has been apparent for some two thousand years. A version of the *Lex Frisionum*, the Law Code of the Frisians, is purported to have been produced on the orders of the emperor Charlemagne. There is some dispute regarding the exact provenance; some scholars date the Code to 793 AD, others to 802, while some contend that it actually dates from the twelfth century.

Based on the principle of self-determination, and in the context of a 'Europe of the regions', it is understandable that the identity of the Frisians calls for some definition if it is to be duly acknowledged. The same applies to their territory, the 'Frisian Lands by the Sea'. Frisians are not 'Hollanders' and they are not (only) Dutch. The Frisians form a national minority in the sense intended by the Framework Convention on National Minorities. They are entitled to describe themselves as Frisian in official documents, a right conferred by Article 15 of the United Nations Universal Declaration of Human Rights. Despite the dominance of the far more prosperous and densely-populated Holland to the west and south, Friesland has always devoted attention to its regional culture. It has steadfastly resisted being subsumed by the mass culture. With regard to the role of the European Union, Article 3 TEU states: "[The Union] shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced". Similarly, Article 22 of the Charter of Fundamental Rights of the European Union states: "The Union shall respect cultural, religious and linguistic diversity." Minority languages within the Union will become a matter of increasing importance in the years ahead, not least for NGOs.¹

The idea of regarding the state and the nation as a single, inseparable entity gained prominence in the nineteenth century. Efforts were made to introduce a standard 'civilized' Dutch language. Minority languages were seen as irrational, part of an obsolescent tradition which should be consigned to history. The European Charter for Regional or Minority Languages now establishes the position and rights of their speakers. The Dutch government is obliged to respect and protect the use of the Frisian language in the province of Friesland. It

¹ <http://epthinktank.eu/2013/05/25/eu-minority-languages-in-danger> (accessed 11 June 2014).

appears on road signs and is taught in schools. Pop groups who sing in the Frisian language have achieved nationwide success.

In the quest for a definition or description of the Frisian minority, the *Groep fan Auwerk*, invited to an expert meeting with the Council of Europe on 25 February 2009, proposed the following: 'An autochthonous, national minority (ethnic group or minority) with its own cultural characteristics (nature, history and language[s]), living in two countries on the south-eastern coasts of the North Sea.' The *Groep fan Auwerk* is a movement which champions an independent state of Friesland and supports federalism because it brings people closer to each other and to their region.² An interesting feature of the Frisian culture is that it is not confined to the province of Friesland. While the province is its main focus in the Netherlands, the Frisian nationalists lay claim to parts of the provinces of Groningen and Drenthe, and perhaps even part of Noord-Holland, originally extending as far as Dunkirk to the west. Eastern Friesland is a coastal region in the northwest of the German federal state of Lower Saxony, while there is also a Northern Friesland in Schleswig-Holstein. It can be argued that the Frisian territory extends into southern Denmark.

Historic claims or arguments of a geographic nature are no justification for redrawing the borders. One factor which may be of significance, however, is the manner in which the Dutch government has responded to the Province of Groningen's legal claim for compensation further to gas exploration in the region. The Dutch state profits from Northern gas but invests primarily in the west and south: the Randstad conurbation. The Dutch state is being accused of creating its own poor regions. The *Groep fan Auwerk* contends that the Frisian regions do not enjoy equal opportunity for growth and development.³

Will the Frisians make independence an electoral issue as the Scots and Catalans have done? Ever since the signing of the Union of Utrecht in 1579, the Frisians have been citizens of the state of the Netherlands and, as such, are important bearers of both the Dutch national identity and that of Friesland. Even the Dutch royal family is descended from the Frisian 'stadthouders'. The Eleven City Tour, a skating race held whenever conditions permit, has become a key

² See Article 1 of the European Charter for Regional and Minority Languages: "[the term] 'regional or minority languages' means languages that are: 1) traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State's population; and 2) different from the official language(s) of that State. It does not include either dialects of the official language(s) of the State or the languages of migrants."

³ Groep fan Auwerk, 'Frisian National Unity', 25 February 2009, Expert meeting Council of Europe, www.groepfanauwerk.com/homelharksitting.html (accessed 30 May 2014).

element of the national culture. Nevertheless, the Frisian identity should be better described in official documents and the national Constitution. This is something that the Provincial Authority of Friesland might usefully pursue, supported by a referendum among all residents of the province. It also seems appropriate for representatives of Friesland and the Frisians to take a more prominent role at all levels of government: local, regional, national and European.

Efforts to establish the regional identity are necessary because the position of national minorities has been seriously eroded. There has been an ongoing process of centralization, driven in part by the development of the welfare state. That state leaves no one to their own devices, not even the cultural minorities. The preservation and transfer of cultural values has, if anything, become even more difficult as families and villages are dispersed. The Dutch state has a duty to ensure that the unique Frisian culture is preserved

4. Free Frisians within the Kingdom

In principle, each member state is free to organize its own constitutional matters as it sees fit. If part of a member state becomes independent and the resultant new state seeks accession to the Union, it must accept and observe all the fundamental treaties agreed and ratified by the member states in the past. A newly independent Friesland would not be bound by the terms of those treaties until it becomes a member state in its own right. Rather, it would be what is termed a 'third country'. Following independence, the Frisians would lose their European citizenship and the rights it confers, unless the Netherlands allows them to retain Dutch citizenship.

As a third country, independent Friesland would be eligible to apply for EU membership under the procedure established by Article 49 TEU, provided it respects the values set out in Article 2 TEU. The application must be approved by all members of the European Council, including the recently 'decapitated' Netherlands. The resulting agreement must then be ratified by each individual member state and by the prospective member state itself. In short, it is a lengthy process beset by many uncertainties, including those of an economic nature. Scotland intends to pursue a different route, invoking Article 48 TEU which allows the original treaties to be amended. However, this approach takes insufficient account of the overall objectives of the treaties and the vision of the European Council.

The Frisians form a national minority and are sometimes subject to discrimination. A shop assistant was compelled to speak Dutch even though she was working in a 90% Frisian speaking area.

Parents are advised not to speak Frisian to their children as it may 'damage' them. Some children are 'losing' the language because they feel that it's not useful or that they will be seen as impolite if they do not speak Dutch.⁴ In this respect, it will be appropriate for the Netherlands to extend the decentralization process to allow the Frisians greater autonomy. In view of the potential problems, however, and in order to counter any undue influence on the part of nationalists, populists and Eurosceptics, an interesting option may be to consider a form of autonomy which allows the people of Friesland to retain their Dutch citizenship. There is a precedent in the form of the relationship established between Aruba and the Kingdom of the Netherlands following the former's secession from the Netherlands Antilles on 1 January 1986. Aruba then became 'a free state within the Kingdom'. In time, Friesland might opt to develop its own constitution, whereby the degree of independence will be determined by the people themselves through a series of referenda. However, because the region would remain part of the Kingdom, and its people protected by the Statute for the Kingdom of the Netherlands of 1954, the citizens of Friesland would remain full citizens of the Netherlands, entitled to consular protection. As such they will also be citizens of the European Union, with all the rights and privileges that entails in terms of equal treatment, free movement and the right of representation at the European level.⁵ Based on this concept of 'special status' within the Kingdom of the Netherlands, the Dutch government will be obliged to do more to protect the Frisian culture. Central government might, for example, opt to reinstate the ancient University of Franeker, founded in 1585 and in existence until 1811, to replace the Leeuwarden campus of the University of Groningen.

5. Conclusions

Centuries of cooperation have established a very close bond between Friesland and the Netherlands. Within a unified Europe, Friesland is in a position to pursue further development as a cultural region in its own right. Regionalization must not be viewed from the perspective of a 'people' in the ethnic sense, but more in terms of public justice, respect for democracy, human rights, solidarity and shared responsibility. In

⁴ Kinga Gál, Davyth Hicks and Kata Eplényi, *Traditional Minorities, National Communities and Languages. The issues raised in the European Parliament's Intergroup, 2009-2011*. Brussels-Budapest: Kinga Gál, 2011, p. 37. See <http://www.poliglotti4.eu/docs/Publis/2255.pdf> (accessed 11 June 2014).

⁵ That Brussels does allow changes is demonstrated by those enacted by the Kingdom of the Netherlands on 10 October 2010.

the international context, this entails the ongoing pursuit of peaceful relationships between states and regions, cooperation, collaboration, interdependence and integration. Solidarity implies an attitude of openness rather than isolation, respect rather than rejection. Solidarity and respect must weigh more heavily than separatism *unless* a national minority is subject to actual oppression. The Frisians, as well as their language and culture, are entitled to greater respect and protection. Central government should support Frisians in their communication with public authorities. It should promote the use of the regional language in the media, in education and in the courtroom. Separatism will then be entirely unnecessary. In the forthcoming referenda in Scotland and Catalonia, the electorate must look beyond the immediate regional interests. They must also think in terms of greater unity between all the member states, peoples, communities and citizens of the European Union.