

## One Hundred Years of Solitude: The Significance of Land Rights for Cultural Protection in the Åland Islands

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### Abstract

The aim of this research is to contribute to current debates surrounding Åland's autonomy regime by seeking a fuller understanding of the origins and the evolving role of rules restricting outsiders from acquiring landed property in the autonomous Åland Islands region of Finland. The autonomy and minority protection regime that prevails in Åland is of particularly long standing, and the conditions that have shaped the evolution of Åland's land rules have changed considerably during the nearly 100 years of their application. The article also briefly considers the relationship between the evolving Åland land rules and more recent efforts to articulate and justify exclusive rights to traditional homelands in other settings, and particularly those involving minorities and indigenous peoples. The article describes the way understandings of the role played by the land rules have evolved over time, proceeding from the fundamental significance of the rules in protecting Åland's cultural identity and examining their perceived economic significance, as well as the role they have played in Åland's ongoing political engagement with mainland Finland. The paper concludes that while the land rules have served to protect the Åland cultural identity, there will be continuing pressure for them to be implemented with greater predictability and clarity as the autonomy regime on Åland matures.

### Keywords

Land Rights, Indigenous Peoples, Minorities, Territorial Autonomy,  
Internal Self-Determination, Åland Islands

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## 1. Introduction

The aim of this research is to contribute to current debates surrounding Åland's autonomy regime by seeking a fuller understanding of the origins and the evolving role of rules restricting outsiders from acquiring landed property in the autonomous Åland Islands region of Finland. The autonomy and minority protection regime that prevails in Åland is of particularly long standing, and the conditions that have shaped the evolution of Åland's land rules have changed considerably during the nearly 100 years of their application.<sup>1</sup> The article also briefly considers the relationship between the evolving Åland land rules and more recent efforts to articulate and justify exclusive rights to traditional homelands in other settings, and particularly those involving minorities and indigenous peoples.

In analyzing exclusive land rights regimes in minority settings, this article proceeds from the view that they are significant in three key respects. First, and most existentially important, the relationship between a particular group and the land it inhabits may be fundamental to the formation, retention and transmission of the group's *cultural identity* from generation to generation. This dynamic builds on emotional and spiritual bonds with traditional homelands that can be manifested in ways such as the maintenance of religious sites, the presence of graveyards, memorialization of historical sites deemed to be cradles of a kin-group or nation, and the simple fact of longstanding residence, use and knowledge of the land. Second, land is frequently indispensable to the subsistence, livelihood and *economic wealth* of minority groups. Finally, maintaining control of traditional territories can be viewed as both a source and consequence of *political influence* exercised by minority groups within a larger state. In effect, control over land is a form of leverage that allows minorities to engage with other groups in society on a more equal basis.

The original intention of the land acquisition rules – which remains their current stated aim – is the protection of Åland *cultural identity* through discouragement of outsiders from permanently settling on Åland. During a period in which the population of the islands was small and largely agrarian, this was meant to counter a perceived risk that the archipelago could be demographically overwhelmed by Finnish speakers from the mainland of Finland. As such, the land rules are the most overtly exclusive among a range of minority protections designed to safeguard Åland's Swedish language and culture (including restrictions on the political and economic rights of outsiders and limitations on education in the Finnish language).<sup>2</sup>

However, the rules have frequently been understood in an *economically protectionist* sense as well, with the League of Nations experts that promoted the Åland regime predicting that its maintenance would require the development of a quasi-autarkic system in which

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1 Suksi 2008, 303.

2 Öst 2011.

the maintenance of Åland identity would come at a significant economic opportunity cost in the form of restricted access to outside investment and labour. While the rules have not in practice prevented Åland from developing a dynamic, regionally integrated economy, restrictions on land acquisition and establishment of businesses on Åland continue to give rise to tension between calls for legal certainty (in the form of clear, predictable rules governing land access) and discretion for individuals to freely dispose over their land, as well as for government to encourage strategically desirable outside investment.

The Åland land rules undoubtedly form a key plank of the established minority protection regime that has given the Ålanders the confidence to engage in a sustained *political relationship* with the rest of Finland, recently described as “a workable balance” between political and administrative separation from mainland Finland and a level of contact with its central authorities necessary to ensure effective coordination and governance.<sup>3</sup> The land rules in particular fall within a range of guarantees for cultural and language protection that also include prescriptions on language use in the public sector, rules regarding language and education, and other rules affecting the private sector and establishment of business.<sup>4</sup> The application of these rules has frequently been controversial.<sup>5</sup> Nevertheless, political engagement prevails in this area as well, with Åland repeatedly proposing, and Helsinki countenancing, expansions of even controversial measures such as the land rules. With the 1995 accession of Finland and Åland to the EU, any future expansion of the culture and language guarantees has effectively been capped; because these rules represent derogations from the European Community’s founding principles they were allowed to

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3 Spiliopoulou Åkermark 2011, pp. 12–13. As the contributors to the book note, this relational element pervades all aspects of the Åland regime. For instance, in describing Åland’s autonomy institutions, Sarah Stephan emphasizes the extent to which trust has developed, over time, between Ålanders and central institutions that have come to play a constructive bridging role, allowing Åland to “actively shape its position vis-à-vis the State and the international community over time.” *Id.*, p. 49. Stephan describes the challenges of Finland’s membership in the EU, which frequently rules on matters falling within the competence of autonomous regions such as Åland but without any formal mechanisms guaranteeing such regions separate representation. Although Åland has succeeded in negotiating a degree of representation via Helsinki, it is not clear that this achievement will fully offset the “disempowering” effect of the EU to date. *Id.*, pp. 46–8. Similarly, Sia Spiliopoulou Åkermark’s depiction of the demilitarization and neutralization regimes on Åland note that acceptance of the active engagement of Ålanders in the management of security issues – in spite of their lack of full formal standing in this area – presents “a confirmation of Åland’s status as a subject – rather than an object – as well as confirmation of Åland’s right to internal self-determination.” *Id.*, p. 60.

4 *Id.*, p. 73.

5 In the area of education, the rule that Åland is not obliged to subsidize schools in which Swedish is not the language of instruction was set up in order to avoid the establishment of Finnish language schools, and has been seen as discriminatory with regard to the Finnish-speaking ‘minority within a minority’ on Åland. *Id.*, p. 73. Meanwhile, the “private sector” rules restricting the rights of persons not domiciled on Åland to acquire property or do business there also present risks of arbitrarily restricting the rights of outsiders, or indeed Ålanders, in disposing over their property. See R. Williams, “Excluding to Protect: Land Rights and Minority Protection in International Law,” in S. Spiliopoulou Åkermark (ed.), *The Right of Domicile on Åland* (Estonia: A/S Paket, 2009).

remain in force, but explicitly only in the form they were in at the time and without the possibility of greater expansion.<sup>6</sup>

In analyzing the relevance of the Åland land regime, in its cultural, economic and political aspects, for other minority and indigenous communities, an important departure point is the fundamental practical and legal distinction between minorities, such as the population of the Åland Islands, and indigenous peoples per se. Many European minorities, in particular, may arguably have at least as much in common with their respective majority cultures as that which divides them. In the case of the Åland Islanders and the broader category of Swedish-speakers in Finland, a significant linguistic divide with the Finnish-speaking majority frequently obscures common cultural, political and religious traditions shaped by centuries of co-existence. While this co-existence is marked by past conflicts and ongoing tensions, it has left the parties with a shared set of historical and cultural reference points, as well as common normative expectations based on a shared legal culture. Without downplaying the fundamental nature of language to the formation of individual and group identity,<sup>7</sup> it is possible to say that many European linguistic minorities have grown up with their respective majorities in a shared political and legal framework that provides them with possibilities for genuine political representation, societal participation and redress.

Indigenous peoples, by contrast, tend to be defined by the fact that they have maintained an entirely distinct set of traditions – not only language, religion and culture, but also institutions and rules for self-government, dispute resolution and administration of land and common resources within their community and territory. Whether or not they are an actual numerical minority, indigenous peoples tend to occupy a non-dominant position in society, and frequently reject or seek to minimize contact with the majority or dominant group while questioning the legitimacy of its institutions and rules, as applied to them. These factors give particular urgency to indigenous peoples' claims to be able to control their own territories, but also pose particular challenges to both developing political consensus for and designing mechanisms that can achieve this purpose. International law has drawn an increasingly clear distinction between minorities and indigenous peoples based on the historically manifest vulnerability of the latter. As a result, while human rights law protects the language, culture and religious rights of minorities, the emerging law of indigenous peoples calls for no less than “internal self-determination”, or an extensive territorial autonomy allowing the preservation of traditional self-government institutions and control of land and territory. However, the type of protection promised in emerging legal standards remains elusive in practice for most indigenous peoples worldwide.

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6 Öst 2011, p. 83.

7 Arraiza 2015, 8.

This article begins with a brief multidisciplinary exploration of the debates surrounding the land rights of minorities and indigenous peoples in international law and practice. The article then goes on to describe in detail the origin of demands for protection of landed property on Åland and the evolution of the mechanisms subsequently adopted to restrict the acquisition of Åland land by outsiders under the League of Nations. This section of the article concludes by describing a decisive set of changes adopted in the 1970s and extended at the end of the Cold War that set the parameters for current debates about the future of the land rules. The conclusion of the article seeks to draw lessons from the historical processes that resulted in the current rules, noting that while they have almost undoubtedly served to protect the Åland cultural identity, there will be continuing pressure for them to move toward greater predictability and clarity as the overall autonomy regime on Åland matures.

## **2. Territorial protection in international law**

Territorial protection measures for minority groups, such as the Åland land regime, can be subject to wildly polarized views. On one hand, they are frequently portrayed as xenophobic efforts to discriminate against outsiders. However, they can no less credibly be seen in a positive light as measures necessary to protect threatened cultural identity. This contradiction reflects a dilemma surrounding human social and political organization more generally, e.g. that communities are inherently formed by processes involving both exclusion and inclusion.<sup>8</sup> An important departure point in any discussion of minority issues is the recognition that minorities are, as groups, defined by their relationship with, and in opposition to, other groups.

While an authoritative legal definition of both minorities and indigenous peoples remains elusive, a central feature of all proposed definitions of either is the subjective desire of such communities to actively retain and transmit to future generations the cultural features that render them distinctive from other groups in society. For groups whose cultural identity is rooted in a particular territorial homeland, the arrival of outsiders and their acquisition of property can present an objective threat to the preservation of their identity. This can give rise to demands for the right to restrict entry and residence of outsiders, including controls on their right to acquire property in minority areas. As Hannum has noted, the introduction of such restrictions may in some cases and under some circumstances be of genuinely existential importance for the preservation of minority and indigenous cultures:

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8 Hylland Eriksen 2002, 12.

Where there is a dominant ethnic group, [...] the assertion of *its* identity seems unavoidable, and ethnic minorities, if they are unsuccessful in securing basic human rights of non-discrimination and equality, may be driven to reinforce their own ethnic identity—or perish. Indeed, even guarantees of equality and non-discrimination may be insufficient, as freedom of movement and residence may allow dilution of minority strength through immigration of majority group members into the minority’s traditional homeland [...]<sup>9</sup>

For minorities, international human rights law sets out a set of protections that relate primarily to physical integrity and cultural identity. For instance, Article 27 of the International Covenant on Civil and Political Rights safeguards the rights of minorities “to enjoy their own culture, to profess and practise their own religion, or to use their own language”.<sup>10</sup> While the Human Rights Committee has allowed that the right to culture may include “a particular way of life associated with the use of land resources”, it has limited this interpretation to minorities falling under the scope of Article 27 that can also be defined as indigenous peoples.<sup>11</sup> Similarly, at the regional level the Council of Europe’s Framework Convention for the Protection of National Minorities (FCNM) focuses primarily on protection of cultural identity as such.<sup>12</sup>

For indigenous peoples, the last decades have seen the culmination of a struggle to realize legal claims that go well beyond cultural identity as traditionally defined for minorities, to encompass self-determination, the maintenance of traditional rules and institutions and the preservation of ancestral territories.<sup>13</sup> Adopted in 1989, the International Labour Organization (ILO) Convention No. 169 on Indigenous and Tribal Peoples established a benchmark by requiring the adoption of special measures “for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned”.<sup>14</sup> Part II of the Convention is devoted to land, including an obligation to recognize “rights of

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9 Hannum 1996, 6.

10 International Covenant on Civil and Political Rights, General Assembly resolution 2200A (XXI) of 16 December 1966, Article 27.

11 UN Human Rights Committee, General Comment No. 23, UN Doc. CCPR/C/21/Rev.1/Add.5 (26 April 1994), para. 7. See also UN Human Rights Committee, *Ángela Poma Poma v. Peru*, Communication No. 1457/2006, Views of 27 March 2009, UN Doc. CCPR/C/95/D/1457/2006.

12 Framework Convention for the Protection of National Minorities, Committee of Ministers of the Council of Europe, H(95)10, Strasbourg, February 1995. The Convention does explicitly forbid “measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities”, but only where these are “aimed at restricting the rights and freedoms flowing from the principles enshrined in the present framework Convention” (Article 16). By implication, where such measures pursue legitimate ends but have the effect of hastening demographic change, little recourse exists.

13 While protection of land in the face of relentless incursions is frequently the most existential demand of indigenous peoples, it tends to be closely related to claims for recognition of customary rules and adjudicators. This is because a common feature of virtually all customary land tenure regimes is a prohibition on alienation of community land to outsiders, except in cases in which a decision to such effect has been taken by representatives of the entire community.

14 International Labour Organization Convention on Indigenous and Tribal Peoples Convention, 1989 (No. 169), Geneva, 76th ILC session (27 Jun 1989), Articles 2 and 4.

ownership and possession of the peoples concerned over the lands which they traditionally occupy” as well as rights to “participate in the use, management and conservation” of natural resources pertaining to such lands.<sup>15</sup>

Land protections subsequently played a central role in the UN Declaration on the Rights of Indigenous Peoples (DRIP) adopted by the General Assembly in 2007. The Declaration is perhaps best known for recognizing the collective rights of indigenous peoples, most notably to internal self-determination.<sup>16</sup> Within this context, indigenous peoples are accorded a broad range of rights intended to ensure that they are able to “maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources.”<sup>17</sup> Specifically, indigenous peoples are protected from forcible removal from their lands,<sup>18</sup> accorded the rights to “own, use, develop and control” their territories,<sup>19</sup> and to seek legal recognition of their rights from the state,<sup>20</sup> as well as redress for lands “which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.”<sup>21</sup> Perhaps most important – and most controversial – indigenous peoples are empowered to decide their own developmental priorities on their territories:

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.<sup>22</sup>

These broad global standards have arguably been eclipsed at the regional level by the extraordinarily detailed jurisprudence of the Inter-American Court of Human Rights on

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15 ILO Convention 169, Articles 14 and 15. The Convention also stipulates that indigenous peoples should not be removed from their lands except where necessary as an exception measure, and in such cases with the right to return as soon as feasible, or receive alternative land and compensation (Article 16); and that ratifying states are required to respect indigenous peoples’ own procedures for transferring land and consult them before transmitting rights to outsiders, prevent outsiders from “taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them” and penalize unauthorized intrusion or use of such lands (Articles 17 and 18).

16 Wiessner 2009, 4.

17 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), UN General Assembly 107th plenary meeting (A/61/L.67 and Add.1), 13 September 2007, Article 25.

18 UNDRIP, Article 10: “No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.”

19 UNDRIP, Article 26(2).

20 UNDRIP, Articles 26(3) and 27.

21 UNDRIP, Article 28

22 UNDRIP, Article 32(2). Article 32(3) goes on to state that states “shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.”

indigenous land rights.<sup>23</sup> This progress has been reflected in other regional mechanisms as well, most notably the African Commission on Human and Peoples' Rights, which heavily cited the Inter-American Court in finding a right to "indigenous title" in the 2010 "Endorois" ruling against Kenya.<sup>24</sup> In arriving at its decision, the Commission recognized not only the cultural and economic significance of land usurped from the Endorois tribe, but also the political significance of control over land:

The African Commission notes that if international law were to grant access only, indigenous peoples would remain vulnerable to further violations/dispossession by the State or third parties. Ownership ensures that indigenous peoples can engage with the state and third parties as active stakeholders rather than as passive beneficiaries.<sup>25</sup>

Despite numerous ongoing debates and the continuing failure of many states to take sufficient steps to protect indigenous peoples in practice, these developments, taken together, have fuelled the assertion of an emerging indigenous or even human right to land, even in cases where communities lack formal documentation but can demonstrate longstanding productive use of and dependence on their territory.<sup>26</sup> However, the emergence of this asserted right has coincided with economic factors that have placed unprecedented pressures on land and natural resources worldwide, dramatically worsening the situation of many indigenous peoples. The nature of such pressures range from intimidation and legal harassment to outright violence, with reports that an average of nearly four land and environmental defenders – many of them indigenous – were murdered every week during 2017.<sup>27</sup>

The Åland minority protection regime, including its land rules, predates most of the above international law developments by half a century. Ironically, the extensive cultural protections afforded to the Swedish speaking minority on Åland in 1921, including the land rules, go beyond the more basic cultural protections now protected for minorities in general by human rights. Indigenous peoples, by contrast, are now understood to have the right, then accorded to Ålanders, to maintain their territories in the hands of their own community. This distinction can be understood in relation to the historical persecution and greater vulnerability of indigenous peoples, the greater social distance between them and dominant groups in society, and the fact that these circumstances render them less likely to be able to negotiate adequate cultural protections without support from international law.

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23 Pentassuglia 2011, p. 170. The land rights of indigenous peoples were recognized in 2001 as falling within the right to property in Article 21 of the American Convention on Human Rights (ACHR).

24 African Commission on Human and Peoples' Rights (ACHPR), 276/03 Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) / Kenya.

25 ACHPR, Endorois ruling, para. 204, citation omitted.

26 Mennen and Morel 2012; Gilbert 2013.

27 Watts 2018.

By contrast, Ålanders have historically always been an integrated part of a larger state including the Finnish mainland (Sweden until 1809, then Russia until 1918, and finally Finland). Thus, there is no fundamental distinction between Åland's conception of property rights – or broader legal culture – and that of the Finnish speaking majority. Åland is in this sense representative of the broader expectation that minorities should generally be subject to the law of the land (with exceptions only as directly necessary to protect their culture), whereas indigenous peoples should be entitled to retain separate rules and institutions to the greatest extent possible.

Nevertheless, indigenous land regimes have in common with the Åland rules an element of collective management of land (in the case of Åland, via a regulatory administration serving an elected government, on the basis of duly adopted laws) with the specific aim of discouraging alienation of land to outsiders and the broader aim of protecting the cultural identity of the group. However, the degree of protection afforded by the Åland rules is limited to discouraging the permanent residence of outsiders without fundamentally impeding freedom of movement. This reflects the fact that while Åland has had genuine cause for concern about the maintenance of its culture in the past, it has never faced the existential threats presented to many indigenous peoples facing the outright loss of their land to development, natural resource extraction, or land-grabbing. A historical analysis of the Åland rules helps to illuminate both the nature of the threats facing Åland culture and the significance of the land rules in addressing them.

### **3. The Historical Evolution and Role of the Åland Land Rules**

The Åland Islands of Finland have long presented an international law anomaly. Despite a small population and economy, the archipelago's strategic location at the heart of the Baltic Sea (and near the maritime approaches to Stockholm, the Swedish capital) resulted in a demilitarization regime that has persisted since the end of the Crimean War in 1856. The demilitarization rule was supplemented under the auspices of the League of Nations with a wartime neutralization rule.<sup>28</sup> In 1917, Finland's newly won independence from Russia opened up a parallel debate on the question of self-determination for Åland's Swedish-speaking population. Although the Ålanders had sought unification with Sweden, the League of Nations instead brokered a 1921 agreement by virtue of which Åland remained under Finnish sovereignty but with a territorial autonomy regime including specific guarantees designed to safeguard its language and culture.

This "Åland Agreement" set out four key protections that the Finnish state undertook to respect in the so-called "Guarantee Law" passed the next year. Along with guarantees of Swedish as the language of school instruction, limitations on the right of outsiders to

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28 Spiliopoulou Åkermark 2011.

vote, and a consultative role for the speaker of the Åland legislature in the appointment of the Governor of the Islands,<sup>29</sup> the Agreement included an undertaking meant to ensure that landed property in the archipelago remained in the hands of the Ålanders:

When landed estate situated in the Aaland Islands is sold to a person who is not domiciled in the Islands, any person legally domiciled in the Islands, or the Council of the province, or the commune in which the estate is situated, has the right to buy the estate at a price which, failing agreement, shall be fixed by the court of first instance (Häradsrätt) having regard to current prices.<sup>30</sup>

As implied by this rule allowing “redemption” of land bought by outsiders, the aim of the Åland Agreement was to provide a proxy immigration regime, allowing Åland to discourage the entry and permanent residence of Finnish-speakers from the mainland who it was feared would demographically overwhelm the small local Swedish-speaking community. This becomes clear when the land preemption regime is set alongside the other elements in the Agreement:

The general aim of the whole agreement is to protect Ålanders, e.g. the traditional inhabitants on Åland, against an eventual migration of new inhabitants from the Finnish mainland that could change Åland’s Swedish-speaking character [...] It should however be noted that no part of the Åland Agreement sets up any direct obstacle for the exercise of freedom of movement. Instead, it sets up a series of thresholds that presumably could have been seen to have such an effect as to make migration to Åland and the initiation of legal residence there less attractive.<sup>31</sup>

All the elements of the original Åland Agreement, including the restriction on purchase of land, were confirmed and in some cases amended in subsequent legislation initiated both from Helsinki and the Åland capital Mariehamn.<sup>32</sup> The effect was to preserve Åland’s autonomy and minority rights regime even in the wake of the demise of the League of Nations at the end of World War II. Despite the incongruity of these rules with the freedom of movement principles at the heart of European integration, they also survived Finland’s accession to the European Union in the form of an exception negotiated as part of the 1994 accession agreement.<sup>33</sup> Today, nearly one hundred years after the League of Nations’ Åland Agreement, the land rules remain a mainstay of the Åland autonomy.

Laws restricting the right of non-citizens to buy property have long been a standard feature of national legislation in many countries worldwide. Along with other restrictions on the rights of foreigners, such rules are consistent with the broader discretion enjoyed by

29 The Åland Agreement in the Council of the League of Nations (1921), Articles 2, 4 and 5.

30 The Åland Agreement in the Council of the League of Nations (1921), Article 3.

31 Suksi 2008, pp. 276–7.

32 *Id.*, pp. 303–7.

33 Silverström 2013.

states to limit the entry and naturalization of non-citizens. In this sense, the inclusion of the land acquisition rule in Åland's autonomy regime put an unusual degree of substance into Finland's stated commitment to provide the islands "all possible powers short of actual statehood". However, it is difficult to understand why these restrictions would become and remain so central for Ålanders, and indeed why the Finnish state would accept and continue to honour them, without placing the Åland autonomy in its historical context.

### 3.1 Historical background prior to Finland's independence

From the late 1100s until the early 1800s Finland was an integrated part of Sweden, with the Åland Islands generally falling under the jurisdiction of Åbo (Turku in Finnish), the Swedish-era administrative and ecclesiastical centre in Finland.<sup>34</sup> Finland's early history was marked by its geographical position as a frontline for the frequent wars fought between Sweden and Russia. As a result, much of the country's territory remained a frontier during the early Swedish period, with territorial expansion driven by policies allowing ordinary people to gain rights to marginal lands simply by clearing and using them.<sup>35</sup> Although there was a tendency for ownership of arable land to concentrate in the hands of the nobility in the settled southwestern parts of Finland, a class of property-owning free peasants (*bönder*) flourished and was recognized as one of the four estates comprising the periodic Finnish assemblies, or *landtdagar* (the other three estates were the nobility, clergy and burghers).<sup>36</sup>

While Finland's peasants bore the brunt of Sweden's many wars against Russia in the form of both taxes and military service, their position was consolidated by reforms in 1789 that confirmed the ownership and enjoyment of their lands and provided them a pre-emptive right to purchase Crown lands.<sup>37</sup> However, during the same period, new categories of land-poor tenants (*torpare*) and landless agricultural workers began to grow in numbers and significance, eventually replacing landed peasants as the majority of the rural population.<sup>38</sup> When Finland fell to Russia in the Finnish War of 1808–1809, the existence of an established class of independent peasants played an important role in the decision of Russia to annex Finland permanently and incorporate it into the Russian Empire in the form of an autonomous 'Grand Duchy'. While the primary concern of Czar Alexander I was to secure a buffer zone for Saint Petersburg,<sup>39</sup> Finland also represented an example he hoped could help him achieve his modernizing aim of abolishing serfdom in the Russian Empire.<sup>40</sup>

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34 Modeen 1973, pp. 13–14. The author notes that Åland had been part of the Bishopric of Åbo since the 14th century.

35 Fagerlund, Jern and Villstrand, 1996, pp. 13, 47, 94.

36 Id, p. 14.

37 Id, pp. 387–8, 418.

38 Id, pp. 360, 390; Klinge 1997, p. 95.

39 Klinge 1997, p. 31. At the time, St. Petersburg was capital of the Russian Empire.

40 Id, p. 28 (translation by the author): "The question of serfdom was of burning importance ... For

Although the Czar was not ultimately successful in achieving this ambition, it induced him to annex Finland to the Empire on terms calculated to preserve the liberties of its citizens and win their loyalty.<sup>41</sup> In a speech to the Finnish estates in 1809, Alexander I declared that Finland's people would "henceforth be placed among the ranks of the nations", guaranteeing preservation of the Swedish laws (including those guaranteeing property rights) and the Lutheran faith.<sup>42</sup> In fact, the autonomy arrangements that would emerge for the Grand Duchy were progressive for their time, and in many respects foreshadowed those that would later be proposed and implemented on Åland.<sup>43</sup>

While subject to the ultimate authority of the Czar, Finland enjoyed significant domestic control in the early years of the Grand Duchy period, bolstered by several legal guarantees. Perhaps most important, Finland retained a separate citizenship, and while Finnish citizens could freely move to other parts of the Empire, Russian citizens were not permitted to settle in Finland without permission.<sup>44</sup> Moreover (as with modern Åland and Finland), the Grand Duchy was separated from the rest of Russia by a customs boundary.<sup>45</sup> With time, and particularly as successive Russian efforts to impose more centralized rule on the Grand Duchy intensified, these protections took on greater symbolic significance for both sides. For instance, despite the fact that the Finnish exclusionary rules did little to hinder a wave of villa construction along the Finnish coast north of St. Petersburg in the late 19th century, the sensation of being subject to the decisions of an essentially foreign authority awoke displeasure in nationalist Russian circles.<sup>46</sup> Finnish protestations of ongoing political loyalty to Russia notwithstanding, the maintenance of difference by exclusionary means itself came to be seen as an affront:

What was intolerable in nationalist eyes was the growth of a separate, internally integrated society within the boundaries of the empire, a society in which Russian citizens were outsiders both legally and socially. On this point denials of plans for political separatism were not a direct reply.<sup>47</sup>

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Alexander, who had already taken a decision to liberate the serfs of Estonia and Latvia, it was constantly significant. Finland was and would be made to be an example for Russia; its peasants were independent and possessed, together with the Swedish peasant class from whom they were now separated by history, a right of representation of ancient pedigree."

41 Id, p. 26.

42 Id, pp. 17, 19.

43 For instance, in a manner roughly analogous to the current Åland-Helsinki relationship, the Grand Duchy had an appointed representative in the Russian capital, St. Petersburg, with its self-government institutions subject to a Governor appointed to represent the centre. McRae 1999, p. 29.

44 Id, p. 30.

45 Ibid.

46 Klinge 1997, p. 348. The author lists other Finnish prerogatives that awoke resentment in Russia, including its Diet, the maintenance of a separate army and currency system, and debates over the introduction of a Finnish flag in the 1860s, noting that "the power of symbols over politics has always been great." Id.

47 McRae 1999, p. 41.

Eventually these feelings came to a head in the form of a 1910 law asserting Russian legislative supremacy in all matters of “imperial interest”, including the rights of Russian subjects and business enterprises in Finland, followed by a 1912 “Equality Law” explicitly granting Russians all the same legal rights as Finnish citizens.<sup>48</sup> Klinge notes that “by virtue of the language situation and specific culture in Finland, no great immigration was to be expected, nor did it come.”<sup>49</sup> However, fears of Russification played into new political tensions resulting from Finland’s modernization, with concerns highest on the part of the old, propertied classes that had been represented in the four Estates of the Diet; for the new ranks of rural land-poor and urban industrial workers, issues such as agrarian and workplace reforms were arguably of more direct significance.<sup>50</sup>

### 3.2 Significance of land in the “Åland movement”

Finland’s achievement of independence from Russia during the throes of the Bolshevik Revolution in 1917 was followed by a short but brutal civil war pitting conservative “White” forces supported by a German military expedition against Bolshevik-influenced “Reds” backed by sympathetic Russian troops who had remained in Finland. After the White victory in May 1918, the flight of the remaining Russian troops and Finnish Red leadership to Russia was followed by retaliatory measures ranging from a lethal internment program for supporters of the Reds to legislative proposals allowing for the identification and expropriation of property previously purchased by Russians in Finland.

In the early independence period, Finland’s internal linguistic divisions and their territorial manifestations became more salient, deepening a debate that had begun as Finland’s Swedish-speaking elite had earlier faced the prospect of permanent integration into Russia. The relative influence of the Finnish language had increased with an 1863 decree guaranteeing formal language equality and a 1906 parliamentary reform that removed an effective veto held by Swedish-speakers under the previous regime.<sup>51</sup> Mounting tensions erupted into two decades of full-blown ‘language strife’ after independence in 1918, with Swedish-speakers guaranteed language equality in the country’s 1919 Constitution, but facing an increasingly resentful and nationalistic Finnish-speaking majority.<sup>52</sup>

In addition to linguistic equality, the Swedish speakers in Finland also secured a provision in the 1919 Constitution foreseeing a degree of territorial autonomy for the main Swedish speaking enclaves (including Åland and areas along the western and southern

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48 Id, p. 44–5.

49 Klinge 1997, p. 464.

50 Id, pp. 464–5.

51 McRae 1999, pp. 34–43.

52 Regeringsform för Finland (“1919 Constitution”), 17 July 1919 (FFS 94/1919), Article 14 (“Finnish and Swedish are the Republic’s national languages.”) (translation by author).

coasts of the mainland) via the drawing of internal administrative borders to maximize linguistic homogeneity.<sup>53</sup> Such measures reflected demographic anxieties on the part of the Swedish-speakers, who declined from 14 to 11 percent of the population between 1880 and 1920.<sup>54</sup> Throughout this period, widespread emigration from the Nordic countries to North America had become a general demographic and political issue, but one perceived as most threatening by smaller communities such as the Ålanders.<sup>55</sup>

Such demographic concerns in Finland were compounded by fear of encroachment by Finnish speakers in areas that had traditionally been inhabited by “Swedish” populations. During the period prior to independence speculation and rent-seeking inflated prices, resulting in defaults and the eviction of Swedish-speaking tenant farmers. The main culprits were seen to be large landowners and members of Finland’s new industrial elite who were, ironically, frequently Swedish speaking themselves. Fears for Swedish land were most eloquently expressed by the Swedish-speaking author Arvid Mörne, who in a 1915 novel depicted the eviction of longstanding Swedish-speaking tenants whose rights to land on coastal estates were “built on custom, not law.”<sup>56</sup>

In contrast to the mainland, Åland remained overwhelmingly Swedish speaking at the time of Finland’s independence, albeit with an increase of Finnish speakers from a very small base of some 200 in 1880 to over 1,300 by 1914.<sup>57</sup> However, similar speculative pressures on Åland’s land led to discontent regarding the prospects for local farmers, as well as the risks of both further emigration of Ålanders and immigration to Åland by Finnish speakers. In a 1915 speech the Åland farmer and political activist Johannes Holmberg described how this dynamic was viewed locally.

There are other landowners than the farmers. These, who wish to live richly on others’ work, on the exhaustion of the soil and the clear-cutting of the forests, are parasites of society whose ‘work’ is the ruination of the land. Foremost among this group are property and forest speculators [...] By exploiting the soil, cutting the forests, liquidating goods and chattels ... and eventually selling the land to the highest bidder without any thought to who will come into possession of it, they have driven the price of land to a level far exceeding its yield. We can find the most implacable obstacle to agriculture on Åland in these circumstances. As speculation values rise, so do the prices of properties not yet in the hands of speculators. This unnatural inflation is usually reflected in the pricing of land for people with honest intentions to work it.<sup>58</sup>

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53 1919 Constitution, Articles 50 and 51.

54 McRae 1999, pp. 85–6.

55 Id, p. 334.

56 Mörne 1959, p. 51 (translation by the author).

57 *Ålandsfrågan inför Nationernas Förbund II: Den av Nationernas Förbund tillsätta Rapportörkommissionens Utlåtande* (Stockholm: Kungl. Boktryckeriet, P.A. Norsted Söner, 1921), p. 11.

58 Jansson 1997, pp. 20–21 (translation by the author).

Here again, the main concern expressed is the loss of land by Swedish-speakers, albeit with the risk that this also brings an intrusion of the Finnish-speaking majority population into Swedish enclaves. In Holmberg's words: "As a necessary consequence of these developments, a foreign national element is gradually injected into our Åland settlements, which in most cases (happy exceptions exist) leads to disorder and often unrest in the communities affected."<sup>59</sup>

As in the rest of mainland Finland, concerns on Åland about speculation and loss of land were closely tied to fears of "Finnishization" (*förfinsking*) and the loss of Swedish culture and language. However, whereas the mainland Swedish-speakers tended to identify with Finland and sought legal rather than territorial guarantees for the protection of their linguistic and cultural rights, leading figures on Åland increasingly viewed the Helsinki government as a hostile force bent on the assimilation and 'denationalization' of Swedish speakers. This led to a split, in which mainland Swedes accused the Ålanders of betraying Finland and, by threatening to leave, undermining the viability of Swedish culture there.<sup>60</sup> The Ålanders countered that the mainland Swedes had lost any genuine leverage in their struggle for linguistic rights when they failed to join Åland in threatening outright secession.<sup>61</sup> As these debates intensified, a series of land reforms were adopted to counter the threat of speculation; ironically, these had the effect of speeding Finnishization on the mainland, where owners of large estates targeted by the laws tended to be Swedish-speaking and many of the tenant beneficiaries Finnish speakers.<sup>62</sup>

The gap between Åland and the mainland Swedish speakers widened as the former began to view outright secession from Finland and reunion with Sweden as the sole way to preserve Åland's language and culture. Sweden supported Åland's cause and the matter was effectively internationalized by 1919 through its inclusion in the discussions at the Paris Peace Conference. By the next year, the resulting tensions between Finland and Sweden had grown to the point that the matter was referred to the newly minted League of Nations for resolution. At this point, the central significance of land to the "Åland question" was clear. Preventing speculation to ensure access to land for Åland farmers was a key economic issue related to Åland's cultural identity. According to one observer at the time, securing control of land was the only issue that mattered; although the political elite on Åland remained committed to reunion with Sweden, the broader population remained more pragmatic:

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59 Id, p. 21.

60 Sederholm 1920; McRae 1999, pp. 60–62.

61 Jansson 1997, p. 65.

62 McRae 1999, pp. 64–66.

If Finland can and wants to do right by the Ålanders, the main thing is to let them be the masters of their own house. The Finnish immigration to the islands presents a threat that grows day by day; the Ålanders are beginning to feel concerns about the transfer of land inherited from their fathers into alien hands, and as a result of that, concerns that their Swedish nationality will gradually be eroded by immigrants and that Åland will become Finnish. To completely forbid migration to Åland is obviously unthinkable ... but it would surely be enough to generally give the Ålanders the feeling of being masters of their house.<sup>63</sup>

Finland, fearing the loss of its territory, was quick to pass a law granting the Åland Islands significant administrative autonomy (as initially foreseen for all Swedish-speaking areas in the Constitution) as an inducement to remain.<sup>64</sup> This “first autonomy law” of 1920 set out to “guarantee Ålanders the possibility to take care of their affairs in as free a manner as is possible for a region that is not an independent state”, providing for a regional assembly with legislative powers.<sup>65</sup> However, a broad list of legislative competences reserved to Helsinki left Åland with no means to prevent migration or limit the purchase of land by Finnish-speakers.<sup>66</sup> Moreover, those Finnish-speakers who did move to Åland were entitled both to vote and to receive Finnish-language education.<sup>67</sup>

In his memoirs, Åland Museum founder Matts Dreijer claims both that the issuance of the Law was motivated solely by Finnish panic over a French declaration of support for Åland’s cause, and that the actual working of the Law would have allowed Finland to subjugate Åland by precisely the same means that Russia had once attempted to subjugate Finland:

The content of the law was based on experiences from the efforts to Russify Finland at the beginning of the century. Rich Russians bought up landed property in the Karelian peninsula [north of St. Petersburg] and replaced the Finnish inhabitants with Russians. ... Russian was introduced by Imperial decree as the first official language in Finland. Under the well-known motto that it is good to know foreign languages, demands were made for ‘complete knowledge of the fatherland’s language’, e.g. Russian. The intention was to gradually introduce Russian as the language of instruction in schools.<sup>68</sup>

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63 Jansson 1997, p. 65 (translation by the author).

64 Lag om självstyrelse för Åland, 6.5.1920 (FFS 124/1920).

65 Proposition for the first autonomy law, *Ålands Lagsamling* (Mariehamn: Ålands Landskapsstyrelse, 2001), 741 (translation by author).

66 Lag om självstyrelse för Åland, Article 9, paragraphs (1) and (8). Matters such as freedom of movement, choice of residence, inheritance law, and private law were reserved exclusively to state-level legislation. Both the state authorities and the Åland authorities were accorded the right to expropriate property subject to constitutional safeguards. *Ibid.*, Article 9, paragraph (1).

67 *Id.*, Articles 5 and 9(b).

68 Dreijer 1984, p. 311 (translation by author).

In its observations before the League of Nations, the Åland Legislature (*Landsting*) rejected the autonomy law, alleging that its “weaknesses lie naturally in the fact that it did not arise from [considerations of] what would be best for Åland but in order simply to remove a temporary difficulty and reach an important political goal.”<sup>69</sup> The Legislature then portrayed a Finnish majority government allegedly bent on using its “brutal energy” to denationalize Åland in order to retain the islands under Finnish sovereignty.<sup>70</sup>

Many methods exist for such a de-nationalization. The fastest and most effective, albeit quite expensive, would be the purchase of a number of small properties on Åland (of which a large number already belong to Finnish-speaking settlers) and the setting up on each property ... of large-scale industrial enterprises. This advance force of Finnish workers, employed in these enterprises, would provide an excellent means of excluding from the Legislature the native-born Åland population who live scattered on islands and archipelagos and would never be in a position to exercise their voting rights to the same extent as the newly-arrived workers, who would constitute a compact group together with their spouses and children. The immediate result of this situation would obviously be the creation of a Finnish majority in the Legislature with the natural consequences thereof. Beyond the difficulties of an election campaign under these circumstances, the first detrimental consequence would be the creation of a feeling of disunity and discomfort among the Islands’ inhabitants, which would naturally lead to a significant increase in emigration to Sweden and America.<sup>71</sup>

In its report, the Rapporteur’s Commission of the League of Nations responded by rejecting the accusation that the Finnish Government was intent on the de-nationalization of Åland, instead finding that “[t]he Finnish State is ready to provide satisfactory guarantees to the inhabitants [of the Åland Islands] and to honestly take into account the obligations which they will undertake as a result...”<sup>72</sup> The offer of the first autonomy law in 1920 was held out as a sign of good faith commitment to protect the Swedish language and culture on Åland,<sup>73</sup> and the lot of the Ålanders under Finland was contrasted with that of the Finlanders under Russia:

Finland has been oppressed and persecuted, her tenderest feelings have been wounded by the disloyal and brutal conduct of Russia. The Ålanders have neither been persecuted nor oppressed by Finland. We have asked the Executive Committee of the Landsting what were its grievances against the Finnish administration before the war. It was able to formulate only insignificant

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69 “Anmärkningar beträffande självstyrelselagen, framställda av Ålands landsting den 12 december 1920” (Observations related to the Autonomy Law, forwarded by Åland’s Legislature, 12 December 1920), Annex 5 to *Ålandsfrågan inför Nationernas Förbund II*, p. 169 (translation by author).

70 Id., 167 (translation by author).

71 Id., pp. 165–7 (translation by author).

72 *Ålandsfrågan inför Nationernas Förbund II*, p. 105 (translation by author).

73 Id., pp. 121–123; Hannikainen 1997, pp. 58 and 76.

reproaches [...] It is true that as a result of quite exceptional conditions, the Åland population is threatened in its language and culture. But this is not the result of a policy of oppression; on the contrary, we feel certain that it is possible to appeal to the good will of the Finnish Government to preserve and protect the language and culture, which are so precious to the Ålanders.<sup>74</sup>

Thus, while rejecting any intentionality on the part of the Finnish government, the Rapporteurs nevertheless gave credence to the risk presented to Ålanders' national identity by the prospect of unhindered migration by Finnish-speakers:

It would, however, be a grave mistake to assign purely political grounds for the wish of the Ålanders: that would be a misconception of its true character. For them reunion with their former mother-country is above all a question of nationality. In Sweden they see the natural guardian of their language, their customs, their immemorial traditions, of which they are proud and to which they are attached above everything else. Even more than Russian domination they fear Finnish domination, which would lead to their gradual denationalization, the absorption of their population, which has remained free from all ethnical mixture, by a race of whose language they are ignorant and whose invasion they abhor. Statistics, which are very suggestive, have been shown to us regarding the expansion of the Finnish race, which advances regularly towards the west, towards the coast and the neighbouring island groups where there is a shortage of labour.<sup>75</sup>

The Rapporteur Commission cited the declining proportion of Swedish-speakers in the mainland population and the higher contemporary birth rates of Finnish-speakers in confirming the risk of denationalization: "We concede also that the fears held by the Ålanders of being gradually submerged by a Finnish invasion are completely justified, and that effective measures should be taken with the purpose of avoiding that danger."<sup>76</sup> In introducing the idea of land purchase restrictions as a means of meeting the threat, the Rapporteurs lent some credence to the Åland Legislature's concern about an "influx of Finnish workers" but attributed this possibility to the working of markets rather than any intention or policy on the part of the Finnish government:<sup>77</sup>

To preserve for the communes and their inhabitants the exclusive ownership and enjoyment of their property the right of pre-emption should be accorded to them on every occasion that offers of purchase are made by a person or

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74 Report Presented to the Council of the League of Nations by the Commission of Rapporteurs, League of Nations Council Doc. B7 21/68/106 (1921), 3, available at: <https://www.ilsa.org/jessup/jessup10/basicmats/aaland2.pdf>.

75 "Report of Commission of Rapporteurs on the Åland Islands Question", League of Nations Council Doc. B7 21/68/106 (1921), reprinted in H.J. Steiner and P. Alston, *International Human Rights in Context: Law Politics, Morals*, 2nd Ed. (Oxford: Oxford University Press, 2000), 1261.

76 *Ålandsfrågan inför Nationernas Förbund II*, p. 103 (translation by author).

77 *Ålandsfrågan inför Nationernas Förbund II*, p. 119 (translation by author).

company foreign to the Islands. It may be asked why such a restriction on the liberty of business should be necessary. The Islands do not contain mineral riches capable of tempting foreign capitalists, and their wealth in timber is not comparable to that of the neighbouring countries. This is true. But Aaland, by its situations in the middle of the Baltic and by the excellence of its harbours, is destined to become a shipbuilding centre. The development of this industry is to be foreseen, as it has already been successfully established by the Islanders. Finnish Companies will seek to acquire land for the construction of more important building yards there. This would involve the influx of Finnish workmen into the country, and with them all the consequences feared by the Aaland Islanders.<sup>78</sup>

The Rapporteurs ended their recommendations on a cautionary note, pointing out that the measures of cultural protection proposed for Åland would not, on their own, result in protection of Åland's culture. Instead, the Rapporteurs argued that in order to prevent migration to Åland the Ålanders would need to engage in a quasi-autarkic policy of self-sufficiency, and in doing so accept the economic consequences of not being open to outside investment and labour:

In conclusion, we will venture to address some words of advice to the Aalanders. The prevention of Finnish Immigration depends greatly on them and their strength of will. Legislative Measures alone would be powerless. The first Finnish workmen were called to Aaland by Aaland Islanders, owners of saw-mills, because Finnish labour was cheaper, or because this manual labour was uncongenial to the natives. Finns will not go the Archipelago if they find no work there and if they are not attracted by the enticement of certain gain. Instead of seeking their fortunes afar, the inhabitants must apply all their energy and all their efforts in making the most of their own soil and their own industries. In this way they will have much less to fear from the invasion of foreign workmen.<sup>79</sup>

In 1921, the Council of the League of Nations largely accepted the recommendations by its Rapporteurs, finding that Finland should retain sovereignty over Åland. The Council sought to reassure Sweden both through regional security undertakings involving Åland's demilitarization and neutralization (summed up in a new regional "Åland Convention"), and the guarantees for preservation of the Swedish language and culture on Åland set out in the Åland Agreement. These guarantees went considerably beyond those in the 'first Autonomy Law' of 1920 by including protection of the Swedish language in schools,

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78 Report Presented to the Council of the League of Nations by the Commission of Rapporteurs, League of Nations Council Doc. B7 21/68/106 (1921), p. 11. The Rapporteurs went on: "To prevent out-bidding, the purchase price could be equitably fixed according to current prices by a Commission to be appointed by the General Council, the provincial Assembly instituted by the law of autonomy."

79 Report Presented to the Council of the League of Nations by the Commission of Rapporteurs, League of Nations Council Doc. B7 21/68/106 (1921), 12.

limitations on the electoral rights of newcomers to the Åland Islands, and measures for “the maintenance of landed property in the hands of the Islanders ...” in the form of the ‘right of redemption’ (*inlösningsrätt*) by Ålanders of land purchased by outsiders.<sup>80</sup> The relative importance attributed to the right of redemption was indicated by the fact that it was meant to be regulated in a special law that was not to be “modified, interpreted, or repealed except under the same conditions as the Law of Autonomy.”<sup>81</sup>

### 3.3 Implementation of the Åland land rules – from redemption to restriction

The Finnish Parliament subsequently passed the 1922 “Guarantee Law” incorporating most of the new protections into Åland’s autonomy regime.<sup>82</sup> Ironically, this law together with the first autonomy law of 1920 would constitute both the first and last attempt to implement the articles of the 1919 Constitution implying territorial autonomy for Swedish speakers generally; concerns about further “separatism” left the Finnish speaking majority unwilling to discuss further territorial arrangements for other Swedish-speaking areas.<sup>83</sup> However, a conflict developed between the Finnish Parliament and the Åland Legislature regarding the “special law” to be passed regulating the right of redemption of land, and a further sixteen years would pass until the 1938 adoption of a Law on the Exercise of the Redemption Right in cases of Sale of Real Estate in the Province of Åland.<sup>84</sup>

The 1938 Redemption Law specified that where property on Åland was purchased by non-domiciliaries who were unwilling to agree to transfer it to persons domiciled on Åland these persons, as well as the municipality in which the property was located or the Åland government, enjoyed the right to redeem the property, subject to timely submission of a written claim.<sup>85</sup> This new law was accompanied by a change to the Guarantee Law to tighten the requirements for purchasers to be exempt from the risk of redemption: rather than mere legal domicile, which at the time required little more than moving to Åland, the law now required five years unbroken residence.<sup>86</sup> This was proposed as a measure necessary to give effect to the nationality protection promised in the Åland Agreement. However, it is interesting to note that there is little evidence of the redemption right having

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80 League of Nations, Council Decision, Point 3. The fourth protection called for by the Council involved a mechanism to ensure “the appointment of a Governor [the representative of the Finnish state on Åland] who will possess the confidence of the population.”

81 *Id.*, Point 3, paras 2 and 3: “Detailed regulations will be drawn up in a special law concerning that act of purchase, and the priority to be observed between several offers. This law may not be modified, interpreted, or repealed except under the same conditions as the Law of Autonomy.”

82 Lagen innehållande särskilda stadganden rörande landskapet Ålands befolkning 11.8.1922 (“Guarantee Law”) (FFS 189/1922).

83 McRae 1999, p. 63.

84 Lagen om utövande av lösningsrätt vid försäljning av fastighet i landskapet Åland (FFS 140/1938).

85 *Ibid.*, Articles 1 and 2.

86 Suksi 2008, p. 299.

actually been put to use during the years between the Åland Agreement and the passage of the first Redemption Law.<sup>87</sup>

A new autonomy law passed in 1951 introduced, for the first time, the concept of a “right of domicile” (*hembygdsrätt*), to be conferred by the Åland Government to persons with Finnish citizenship and residency on Åland.<sup>88</sup> Attainment of this right became the central precondition for the exercise of the rights restricted for non-Ålanders under the 1921 Åland Agreement, including the right to purchase land located on Åland without being subject to the risk of redemption.<sup>89</sup> Legal persons that had either been based on Åland for at least five years or that had a board entirely composed of persons with the right of domicile were also exempted from the risk of redemption. A new Redemption Law accompanied the 1951 *Autonomy Act*, but did little more than reproduce the rules and procedures set out in the prior 1938 law.<sup>90</sup>

The most significant turning point in the application of Åland’s land-related nationality protection regime came in 1973, when the Åland legislature initiated a proposal that resulted in the adoption of a new 1975 Law on the Restriction of the Right to Acquire or Possess Real Estate in the Province of Åland.<sup>91</sup> As signalled by the name of the new legislation, it replaced the old system of post-hoc, discretionary “redemption” in cases of already concluded sales with a new administrative procedure that put the burden on purchasers to seek permission in advance of the transfer of title. Applicants were now required to seek approval within three months of the conclusion of a contract, failing which any purchased property would be sold at forced auction.<sup>92</sup> In another significant expansion of the land rules, the new regulations applied to lease contracts sought by persons without the right of domicile, as well as purchase contracts.

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87 Ibid.

88 Självstyrelselag för Åland (1951 Autonomy Law) 8.12.1951 (5/1952; FFS 671), Article 3.

89 Id, Article 4 (1) (emphasis added by author).

90 Lagen om utövande av lösningsrätt vid överlåtelse av fastighet i landskapet Åland, 28.12.1951 (671/51). The 1951 law amended the 1938 law to exempt those with the new right of domicile or those who had received specific permission from the Åland government from the risk of redemption (Article 1, paragraphs 1 and 2, respectively). However, no procedures for seeking or granting such permission were set out. Finally, the Law amended the 1938 Law by replacing the Governor appointed to Åland by the Finnish State (Landshövsding) with the Åland Government as the body responsible for accepting and deciding claims for redemption (Article 2).

91 Lag om inskränkning i rätten att förvärva och besitta fast egendom i landskapet Åland (Land Acquisition Law), 3.1.1975 (3/1975), Article 4.

92 Id, Articles 5–6 (regarding purchase contracts) and 7 (regarding leases). Lease contracts without permission would subject to termination, resulting in the eviction of the occupants. Similar consequences applied for those who failed to comply with the terms of conditional grants of permission or who set up dummy purchases in order to bypass the law. Id, Articles 8 (allowing the authorities to condition permissions on terms compatible with the purpose of the Law, 10 (on the consequences of failure to comply with such conditions), 15 (requiring those granted conditional permission to demonstrate compliance upon inquiry) as well as Article 9 (on dummy sales).

In justifying the proposal, the Åland legislature referred extensively to the spirit of the nationality guarantees in the 1921 Åland Agreement.<sup>93</sup> The 1973 proposal asserted that flaws in the redemption system had been evident early, including the possibility of using long-term or indefinitely extended lease contracts to secure effective ownership by foreign individuals and companies.<sup>94</sup> The proposal also pointed out that redemption comes too late in the purchase process, allowing purchasers to undertake significant modifications of properties prior to a redemption process that would serve to reduce its value for those entitled to intervene. Finally, the proposal described increasing demand for weekend houses and rising prices for attractive waterfront properties, noting that these trends made it less likely that Ålanders with the right to redeem properties purchased by outsiders would have the means to do so.<sup>95</sup> In summarizing, the Åland legislature noted the audacity of its initiative, but framed it firmly within the spirit of the agreement fostered by the League of Nations:

In order that Åland soil should continue to be preserved in the hands of the Åland population, the Åland legislature presumes to count on the cooperation of the state authorities in shaping such guarantees as were anticipated in the League of Nations decision of 24 June 1921. For this purpose, the current redemption system should be replaced with a process that would require the permission of the Åland government in every individual case in which a person without the right of domicile acquires or, on the basis of a rental contract, possesses real estate in the province.<sup>96</sup>

In abandoning the redemption model for an administrative process, the 1975 law effectively reset the model for the Åland land rules based on a reassessment of how their underlying purpose could most effectively be met. As such, this legislation created the fundamental model which is still applied today on Åland with minor alterations. The proposal for the 1975 law contained a number of observations that remain of relevance in an analysis of the current system.

First, the proposal acknowledged that while the highest purpose of the law must be securing the nationality protection guaranteed by the League of Nations in 1921, a second priority was respect for the constitutional rights of landowners to dispose over their property.<sup>97</sup> Although it was clear that the proposed law could be applied relatively liberally,

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93 Ålands Landsting, “Lagmotion till Finlands riksdag med förslag till lag angående ändring of självstyrelselagen för Åland, till lag om vissa inskränkningar i rätten att förvärva och besitta fast egendom i landskapet Åland och till lag angående ändring av lagen om kommunala kollektivavtal (Nr. 29/1973), p. 332.

94 Id., p. 333. The Legislature points out that efforts to include leasehold contracts were also made during the preparation of the 1951 Autonomy Law but not ultimately adopted. Id, p. 334.

95 Id, p. 333.

96 Id, pp. 333–4.

97 Id, p. 304.

“so that permission would generally be given in such cases where no evident reason would have been seen for the government to try to exercise its right of redemption of the area under the current legislation”, it was also apparent that a stricter interpretation could harm Åland landowners by severely limiting the circumstances under which they could sell or lease their land.<sup>98</sup>

Accordingly, the proposal recommended the development of a system of “compensation to individual landowners for losses occurring as a result of the permission anticipated in the current draft law being refused in some cases.”<sup>99</sup> Despite the fact the many of the instances consulted in the development of the bill expressed concerns about this issue, a decision was taken to handle it via a separate inquiry.<sup>100</sup> The question was not subsequently taken up again, either as a free-standing law proposal or in subsequent processes of amendment to the land rules.

Second, one major aim of the 1975 law was to bring the Åland land rules into line with the Finnish national law governing purchase of land by foreigners, the Law on Foreigners’ and Some Associations’ Right to Own and Possess Real Estate and Stocks.<sup>101</sup> Indeed the Finnish law provided the model for the Åland bill, with some half of the articles in the original Åland bill directly modelled on the state law.<sup>102</sup> Under the Finnish law, foreigners seeking to acquire property in Finland were required to apply to the Finnish Government for permission. In approving permits, the Finnish Government had the right to attach specific conditions, failing which the permit could be revoked.<sup>103</sup>

However, in practice in relation to Åland the Government had generally approved permits where the applicant could demonstrate a degree of connection (*anknytning*) to the Åland Islands, and the Åland legislature proposed to continue applying this test in approving applications to acquire land by non-domiciliaries under the proposed law.<sup>104</sup> The application of such a broad criteria in administrative proceedings raises concerns about legal certainty, and given that the application of the Åland land rules is still subject to criticism for lack of specificity, these concerns remain salient.<sup>105</sup>

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98 Id, p. 305.

99 Ibid.

100 Id, pp. 306, 328.

101 Lagen om utlänningars samt vissa sammanslutningars rätt att äga och besitta fast egendom och aktier. Id, p. 327. One concern raised in arguing for the proposal was that foreigners might have been using pretextual lease contracts not only to bypass the Åland redemption system but also the relevant provisions of the national law. Id, p. 333.

102 Id, pp. 315–17.

103 Id, p. 316.

104 Id, p. 304.

105 In Finland, the permit system for foreigners to buy property was abandoned in 2000, and foreigners can now buy property in all parts of the country other than the Åland Islands on largely the same terms as Finnish citizens.

In 1991, the Autonomy Law was revised once again, with a new law clarifying the criteria for acquiring the ‘right of domicile’ by adding a requirement of “adequate knowledge of the Swedish language” to the pre-existing criteria of Finnish citizenship and five year residency on Åland.<sup>106</sup> Amendments to the Land Acquisition Law that were also passed in 1991 limited inheritance without the right of domicile to direct descendants and surviving spouses, meaning that all other heirs to real estate property were required to seek permission from the Åland authorities.<sup>107</sup> In 2003, a further law was passed regulating in more detail both the *right* to acquire land (for those with the right of domicile, as well as direct descendants, surviving spouses and other groups) and the circumstances under which *permission* to acquire land would be granted.<sup>108</sup> Whereas the criteria for acquisition by right are quite precise, however, those governing acquisition by permission have been criticized for a level of vagueness that allows the Åland government broad discretion in such cases.<sup>109</sup>

#### 4. Conclusions

The overall scope of the Åland rules restricting land acquisition by foreigners has expanded significantly during the near century since their conception, arguably along three main axes:

To begin with, where the restriction once merely imposed the risk of discretionary redemption on primarily private law property sales, it now constitutes a new administrative procedure with respect to which almost any land transaction involving outsiders is automatically subject. The basic assumptions underlying the process seem to have changed as well, with land sales to outsiders previously permitted, in principle, unless the redemption right was exercised, but now presumptively illegal unless specific permission is given. Finally, the substantive scope of the restriction has been broadened to encompass possession as well as purchase of landed property on Åland, through the inclusion of rights under rental contracts and inheritance proceedings as well as those under sales agreements.<sup>110</sup>

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106 Självstyrelselag (1991:71) för Åland, Article 7, paragraph 2 (3). In relation to land, the 1991 Law simply referred to the 1975 Land Acquisition Law, noting that the restrictions contained therein “do not apply to those with the right of domicile.” Ibid., Article 10 (“Om inskränkningar i rätten att med ägande- eller nyttjanderätt förvärva fast egendom och därmed jämförbar egendom i landskapet stadgas i jordförvärvslagen för Åland (3/1975). Inskränkningarna gäller inte den som har hembygdsrätt.”). It is interesting to note that no explicit requirement of Swedish language mastery has ever been made in relation to acquisition of land. Sören Silverström, written comments, 13 February 2017.

107 Land Acquisition Law, Article 3 (as amended on 16.8.1991 (1145/1991)).

108 Landskapslag om jordförvärvsrätt och jordförvärvstillstånd, 68/2003.

109 Id, Article 12: ” In making its determination, the government should take into account the applicant’s connection to Åland and intention to reside permanently here, as well as the size of the real estate, its condition and the purpose it is to be used for.” See also Landskapsförordning om jordförvärvstillstånd, 70/2003.

110 Williams 2009, pp. 101–2.

These expansions in the scope of the restriction took place during a period in which demographic pressures from the mainland peaked and gradually receded. Some of these pressures were of a political nature. Most controversially, during the post-World War II period the Åland Islands were completely exempted from a program to facilitate the resettlement throughout Finland of some 422,000 mainly Finnish-speaking refugees from areas in eastern Finland ceded to the Soviet Union.<sup>111</sup> Swedish-speakers on the mainland received only guarantees that the resettlement would not significantly change local linguistic proportions, an undertaking that proved impossible to keep.<sup>112</sup> Controversies surrounding Swedish-speakers' reluctance to accept resettlement of refugees presented an exception to the general post-World War II rule that linguistic relations became "relatively free from major conflicts."<sup>113</sup> This applied less to Åland due to a number of factors, ranging from the Ålanders refusal to accept refugees to their indignant reactions to well-founded rumours that the Finnish government offered Russia the use of Åland territory as a military base as part of its war reparations.<sup>114</sup>

In addition to political factors, a range of economic and social issues created new demographic pressures on Swedish-speaking areas. These trends served to highlight the crucial function that the principle of territoriality – including the land rules – played in retaining not only the primacy of the Swedish language on Åland but also Åland's ability to participate in Finnish politics on a basis of relative equality. In a comprehensive 1999 survey of Finland's language politics, the Canadian linguist Kenneth D. McRae concluded that the lack of "firm" territorial protections accorded to the Swedish-speakers on the Finnish mainland, and their acceptance of a "flexible" territoriality (in the form of local cultural autonomy protections contingent on the retention of minimum threshold percentages of Swedish speakers in any given locality) helped to ameliorate language conflict but contributed to a steady erosion of the numbers, status and political influence of the Swedish speakers.<sup>115</sup>

During the post-World War II period, McRae points out that the principle of free mobility throughout mainland Finland has meant that "the chief threats to the survival of Swedish Finland have arisen not so much from hostile political pressures as from the insidious effects of silent sociological and demographic forces."<sup>116</sup> These have taken the

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111 McRae 1999, p. 326.

112 Id, p. 79. According to some studies, the ultimate effect of the resettlement in some Swedish-speaking areas was a six percent increase in the number of Finnish speakers, or three times the two-percent limit that had been agreed as an informal guideline. Id., 334.

113 Id, p. 80. The author cites reasons including solidarity arising from the shared experience of the Winter War against Russia, the fact that Finnish-speakers had effectively achieved equitable political representation, overcoming previous Swedish-speaking dominance, and the context of broader Nordic cooperation.

114 Skogsjö and Wilen, 1997, p. 31.

115 McRae 1999, pp. 373–6.

116 Id, p. 80.

form of long-term migration patterns involving both a general movement from the largely Finnish-speaking north of the country to Swedish majority areas in the south, as well as urbanization trends with similar effects:

The population shift to the towns [reduced] the Swedish-speaking proportion of the urban population from 38 per cent in 1880 to 29 per cent in 1900, 23 per cent in 1920, and 6 percent in 1980, the same percentage that it had in the country as a whole. In the process, several historically Swedish-speaking coastal towns ... lost their majorities of Swedish speakers [...] On the other side, increasing urbanization gradually reduced to the point of invisibility the Swedish-speaking communities in towns located in predominantly Finnish-speaking areas.<sup>117</sup>

The exception to this pattern has been Åland. By virtue of its “firm” territoriality, including the ability to limit mobility from the mainland via devices such as the land acquisition rules, and its physical remoteness as an archipelago, Åland has effectively remained outside of mainland Finland’s demographic trends. In the early period after World War II, risks for “de-nationalization” along the lines feared in the 1920s still seemed credible, leading to the introduction of new restrictions on economic activities by outsiders in the 1951 Autonomy Act that reinforced the restrictions on land acquisition.<sup>118</sup> As described by Åland politician Gunnar Jansson, one case in particular posed a threat to local identity:

Limitations of the right of trade were considered necessary after the Second World War when the Chrington Vulcan shipbuilding firm in Turku was preparing to build a shipyard in Åland to deliver ships as reparations to the Soviet Union. The plans involved recruiting 5,000 shipyard workers, most of whom were Finnish-speakers. This would, in one stroke, have shifted the linguistic balance in Åland. The project was abandoned.<sup>119</sup>

Nevertheless, by the time of the passage of the 1991 Autonomy Law, the justifications for further expansions of the land rules arguably related as much to economic as to demographic pressures. Although fears of denationalization and loss of identity remain the primary justification, concerns surrounding speculation and the use of Åland land in a manner that brings few benefits to Ålanders have gained salience. In the 1980s, studies found an increase in the overall number of waterside summer homes, as well as a trend for them to be owned by persons not resident on Åland.<sup>120</sup> In addition, as much as one-third of agricultural land, pasture and forest was found to be owned by the beneficiaries

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117 Id., p. 93.

118 Öst 2011, pp. 82–3.

119 Jansson 2009, pp. 137–8.

120 Regerings Proposition 73/90, p. 23. During the period 1970–1985 the number of summer cottages on Åland increased by 70%, with one third of such properties owned by persons resident outside Åland.

of undistributed estates in Åland's more isolated archipelago municipalities.<sup>121</sup> This led to concerns that the land rules were being bypassed via inheritance proceedings, allowing non-Åland residents to speculate in and exploit waterside plots while removing less attractive fields and forests from productive use.<sup>122</sup>

Thus the new restrictions in the 1991 Law were described as necessary to “protect the resident population’s livelihood possibilities (*utkomstmöjligheter*), which are dependent on the possibility to retain land in Alandic ownership.”<sup>123</sup> Preventing speculation had taken on a central role again:

Land is needed to build hotels, vacation cottages, yacht harbors, etc. If the provisions related to acquisition of landed property would be completely revoked, land prices would be likely to shoot up. Åland is a very popular area for summer tourism, both from abroad and from the Finnish mainland. It is therefore reasonable to assume that land plots appropriate for leisure activities in the Åland archipelago would be attractive purchase objects for tourists from urban areas with high purchasing power. Relaxation of the land acquisition legislation would presumably invite land speculation. This would, in turn, quickly lead to such high prices that the resident population would no longer be able to buy land.<sup>124</sup>

Nevertheless, as Suksi points out, the principle of nationality guarantees set out in the 1921 Åland Agreement continues to be cited as the overriding principle justifying the continuation and gradual expansion of the Åland land regime.<sup>125</sup> The Åland land rules emerged from a mixture of economic and cultural concerns that conflated the risk that speculation would prevent Ålanders from accessing Åland land with the risk that this would pave the way for a wave of migration by Finnish speakers from the mainland. These concerns were shared with Swedish-speakers on the Finnish mainland. However, unlike the mainland Swedes, who had few realistic options but to settle for legal guarantees of their cultural rights, the Ålanders sought a radical solution in the form of secession to Sweden, and received territorial guarantees for the retention of their language and culture.

While the importance of the economic and cultural rationales for the Åland land rules have varied in relation to each other during various points in recent history, the arguments made for successive modifications of these rules since the original League of Nations decision have tended to portray these two rationales as inherently complementary. By restricting use of Åland land by outsiders, the rules are seen to both prevent the watering

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121 Id, p. 24.

122 Id., p. 7 (justifying expanded land restrictions on the need to prevent the circumvention of the rules on land acquisition), 24 (concluding that a significant and growing proportion of land on Åland was owned by non-residents) and 39.

123 Holm-Johansson 1991, p. 16 (author’s translation).

124 Ibid (author’s translation).

125 Suksi 2008, p. 301.

down of Åland culture and to maximize the ability of Ålanders to make economic use of their land. As described in a 2007 editorial in the Åland newspaper, the rules thus present a win-win scenario: “it is to be assumed that it is more important for the Ålanders to retain their culture than for the country’s Finnish-speaking majority to be able to buy summer homes in the Åland archipelago.”<sup>126</sup>

There is little doubt that the land rules have contributed, as part of the broader minority protection regime, to the cultural aim of maintaining the Swedish language and nationality on Åland. Historically, the Åland population has remained about 90 percent Swedish speaking, with a stable 5 percent minority of Finnish speakers and a small (albeit increasing) proportion of residents who speak a third native language.<sup>127</sup> By contrast, the mainland Swedish speakers dropped from fourteen to six percent of the population during the century between 1880 and 1980, with current trends offering little prospect of reversal.<sup>128</sup> Although the Åland minority protection regime will continue to raise human rights concerns, it appears to have been effective in discouraging the mass immigration of Finnish speakers to the archipelago.

The Åland Government retains discretion to allow the purchase, lease or inheritance of property on Åland by persons who do not have the right of domicile. In the past, the process for applying these rules was criticized both for being much more vague than that applicable to persons entitled to acquire land (e.g. those with the right of domicile, as well as direct descendants or surviving spouses of decedents), and for being set out in administrative instructions, rather than a law.<sup>129</sup> Concerns about legal certainty were heightened by rejection decisions issued without reference to how these criteria were applied,<sup>130</sup> as well as similar questions surrounding the application of criteria for acquisition and loss of the right of domicile, the precondition for exemption from Åland’s land restrictions.<sup>131</sup>

Since the adoption of a law and implementing regulations in 2003, the criteria for allowing such land acquisitions has been based on “the applicant’s connection to Åland and intention to reside permanently here, as well as the size of the real estate, its condition

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126 Lampi 2007.

127 Statistics and Research Åland, ‘Population by language, 31.12.2000–2013’ (updated 22.4.2014), *available at* <http://www.asub.ax/text.con?iPage=281>.

128 Statistics Finland, ‘Foreign-language speakers account for 90 per cent of the population growth in 2013’ (21 March 2014), *available at*: [http://tilastokeskus.fi/til/vaerak/2013/vaerak\\_2013\\_2014-03-21\\_tie\\_001\\_en.html](http://tilastokeskus.fi/til/vaerak/2013/vaerak_2013_2014-03-21_tie_001_en.html).

129 In light of the Finnish Constitution’s protection of property rights, the use of an instruction to set out criteria for curtailing property rights may in itself constitute a formal breach of legality. Suksi, 2005, p. 329.

130 *Id.*, pp. 331–2. The passage of legislation and an instruction setting out criteria for such determinations in 2003 appears to have improved the situation. Moreover, the fact that such decisions are generally capable of being reviewed for legality in the Finnish administrative law system militates in favor of a finding of overall compatibility with the principle of legal certainty. *Id.*, p. 334.

131 Sjölund 2009.

and the purpose it is to be used for”.<sup>132</sup> However, it is not clear that the new rules constrain the Government significantly more than the old criteria, despite their inclusion in a law rather than a regulation. Meanwhile, parallel concerns about excessive discretion and arbitrariness have dogged the application of the criteria for outsiders to start businesses on Åland. However, part of the reason for the failure of the Åland political system to produce unambiguous criteria for applying the land acquisition rules may lie in the exceptional nature of these rules themselves.

Anywhere else in the EU, freedom of movement of people and capital would apply by default, allowing ‘outsiders’ to invest freely, developing land and doing business without obstacles. In Åland, the situation is the opposite, creating a clear incentive for both the public sector and private individuals to seek to maximize the discretion available to them to facilitate investment by outsiders in cases where it is perceived as particularly important. This is not to say that the Åland economy is rendered unsustainable by the economic effects of the land rules; despite the effects of the 2008 financial crisis Åland remains well-off, even by Nordic standards. But while the Åland land rules have not prevented the development of a healthy local economy, the argument that they nevertheless continue to impose a cost is bolstered in part by a pattern of tolerating and perpetuating legal ambiguities that appear calculated to reduce their impact.

Beyond the cultural and economic effects of the land regime, however, there is an argument that the most important effect of land rule is the galvanizing effect it has on the Ålanders in asserting their right to self-determination. In the perceptive words of an observer to the 1920s Åland dispute, the sense that Ålanders control their land has arguably contributed decisively to their feeling of being the “masters of their own house”.<sup>133</sup> This, in turn, has contributed to a confidence that has allowed Åland to shape its destiny within Finland, both asserting its prerogatives and engaging constructively with the Helsinki Government via bridging institutions and sustained dialogues on issues such as the demilitarization regime.

The importance of this aspect of the land rules is perhaps best demonstrated by the cases in which Åland has fended off policy decisions that would have implied large-scale immigration by Finnish speakers. In the post-war cases of both the resettlement of refugees from eastern Finland and the proposed new shipyard on Åland to deliver ships as reparations to the Soviet Union, Åland was able to assert its rights, exempting itself from policies that were of existential importance to the authorities in Helsinki. Moreover, although these cases both involved demands made on Åland land, they were not resolved by the direct application of the land rules in a legal process, but rather by the assertion

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132 Landskapslag om jordförvärvsrätt och jordförvärvstillstånd, 68/2003, Article 12; Landskapsförordning om jordförvärvstillstånd, 70/2003.

133 Jansson 1997, p. 65.

of their underlying principle in political negotiations; where Åland land is at stake in a manner that threatens to undermine the Swedish language, the decision must belong to the Ålanders themselves.

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