



Journal of Autonomy and Security Studies

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a New Act on the Autonomy of Åland
– An analysis of three parliamentary
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About JASS

The Journal of Autonomy and Security Studies (JASS) is a peer-reviewed, open access e-journal published by the Åland Islands Peace Institute (AIPI), Mariehamn, Åland, Finland. The journal addresses its overarching theme of peace and security from the perspectives of autonomy, demilitarisation, and minority protection.

Each issue of JASS will include scholarly articles that in some way deal with the subjects mentioned above. Before being accepted, all articles have been subject to a double-blind peer-review process. JASS issues may also include other types of contributions such as project notes, book reviews, and information on pending conferences. JASS is published twice a year – in the late spring and fall.

The editorial board invites articles and other contributions to JASS via the email address submissions@jass.ax and looks forward to proposals on articles, thematic issues, and other suggestions to make JASS a relevant and accessible scholarly journal in its field. It is appreciated if manuscripts sent to us have undergone language editing.

Foreword

A major issue for any settlement of a political conflict is the extent to which the principles of a given settlement should be maintained even if the contextual circumstances for the settlement are changing, and at worst are making the principles less relevant or even irrelevant. Autonomy legislation and other forms of formal regulations are not an exception to this problematique. The present issue of JASS provides an update on legislative and political developments on the Åland Islands through a comparative study that examines the work of three distinct committees which form part of the ongoing revision process of the Autonomy Act within the Republic of Finland. The two entities – the Finnish state and the Åland Islands parliament – have earlier revised thoroughly, and on two occasions, the Autonomy Act, which was first installed in 1920 and expanded in 1922. The ambition on the islands is to update the legislation with the occasion of the centenary of the Åland Islands' autonomy.

An important dimension of the Åland autonomous system, with its minority and identity-related dimensions, is the regulation of the right to ownership of property. Few, if any, aspects of identity have such strong connotations to territoriality and security. It fits well in the context of autonomy revision to focus particularly on the right to property ownership and its development in recent times. In particular, it is interesting to study the difference, and maybe similarities, between a rights' discussion based on international conventions on the rights of minorities, on the one hand, and the rights that the Åland Islands inhabitants enjoy – rights originally formulated long before the human rights system started to develop into its modern forms.

Kjell-Åke Nordquist
Editor-in-Chief

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Susann Simolin

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Abstract

The main question of this article is what intentions Åland and Finland hold regarding the self-government of Åland, and how this is mirrored in the ongoing process for a revision of the Åland Autonomy Act. This matter is studied through a comparison of three central documents in the revision process, issued by three parliamentary committees, one Ålandic, one Finnish, and one joint. The article analyses how the parties describe the background and development of Åland's autonomy, the original purpose of the autonomy, and the aims for the fourth generation of autonomy legislation. Some concrete proposals for changes in the Autonomy Act are discussed in order to see if the intentions of the two parties coincide or differ. The article concludes that the committees mainly agree on the foundations of the autonomy. The principle of protection of language and culture seems to be rather unproblematic, whereas it is unclear how far the parties are willing to go regarding the right of Åland to manage its own affairs. For instance, the committees have identified the division of legislative competences and the economic system as two crucial domains in the revision. Åland is interested to extend its mandate in those spheres further than at least the Government of Finland seems to be willing to allow.

Keywords

Autonomy, Revision, Åland Islands, Parliament, Economy, Language,
Cultural Guarantees, Internationalisation

About the author: Susann Simolin is Head of Information at the Ålands Islands Peace Institute. She holds an MA in political science and a BA in journalism. In her work she meets people from all over the world interested to discuss the Åland Example (self-government, demilitarisation and neutralisation, protection of language and culture). Her attempts to understand why the Åland Example is of international interest and more precisely what it is that is of interest, have motivated several research efforts, among them a study on the usage of the Åland Example in international contexts to be completed in 2019.

1. Introduction

From 2020 to 2022 the centenary of the crucial steps for the establishment of the autonomy of Åland will be celebrated. Finland and the Åland Islands will then have one hundred years of experience of balancing state sovereignty with autonomy, of continuous renegotiation of a compromise, or, to put it differently, of dealing with an institutionalized or constitutionalized conflict. At present, the parties are engaged in the process of a revision of the Act on the Autonomy of Åland, which is to lead to a fourth generation of autonomy legislation. It is hoped that a new Act will enter into force in conjunction with the centenary celebrations.

In this paper, the revision process will be studied through a comparison of three central documents in the process, issued by three parliamentary committees, one Ålandic, one Finnish, and one joint.¹ By analyzing these reports, a small-scale assessment is made of the status of the autonomy today. What questions are topical for the autonomy and the state at present? Are they the same questions as one hundred years ago, or has the focus shifted?

The main question of this paper, however, is what intentions Åland and Finland have regarding the self-government of Åland, and how this is mirrored in the process for a revision of the Autonomy Act.²

In order to find a context in which to study the intentions of Åland and Finland with regard to the autonomy of Åland, the present article will first briefly describe the background and development of the autonomy. The article goes on to assess how the parties describe the original purpose of the autonomy and how they describe the aims for the present revision. Some of the main concrete proposals for changes in the Autonomy Act are discussed to see if the intentions of the two parties coincide or differ in those domains. The analysis also tries to discern how the parties perceive their relationship, how they each perceive their own role and the role of their counterpart in revision negotiations. Finally, the results are discussed and some conclusions are drawn.

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- 1 Joint committee 2017. Åland självstyrelse i utveckling. Ålandskommitténs 2013 slutbetänkande – Ahvenanmaan itsehallinnon kehittäminen. Ahvenanmaa-komitean 2013 loppumietintö. The permanent address of the publication is <http://urn.fi/URN:ISBN:978-952-259-600-0> (accessed 1.2.2018)
State committee 2013. Betänkande från arbetsgruppen ledd av Alec Aalto: Ålands självstyrelse i utveckling – Ahvenanmaan itsehallinnon kehittäminen. 24.1.2013. http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/76418/omml_04_2013_aland.pdf?sequence=1 (accessed 1.2.2018)
Provincial committee 2010. Betänkande från kommittén ledd av Gunnar Jansson: Betänkande från parlamentariska kommittén om förslag till reformering av självstyrelsesystemet och självstyrelselagen för Åland. 29.10.2010 https://www.lagtinget.ax/sites/www.lagtinget.ax/files/gunnar_jansson_kommitten_2_2010_betankande.pdf
The three reports will be further introduced later on in the paper.
 - 2 The paper uses “Finland” as a synonym for “the state” as one of the actors, the other being “Åland” or “the autonomy”. Since the paper analyses Åland and Finland as separate actors, it uses the term “Finland” rather than “the rest of Finland” or “mainland Finland” when contrasting or describing a relationship to Åland.

1.1 Methodological reflections

There is of course not one single Åland opinion regarding the autonomy, based on one single perception of matters, but rather many and varied opinions, and the same holds true for Finland. The variety of actors and perspectives involved can be seen in the ongoing revision process, where at the time of writing comments on the proposed law have been submitted by ministries and other stakeholders both in Finland and on Åland.³ Still, in the present article the state of Finland and the self-governed Åland Islands are considered as separate and distinct univocal actors. The three reports investigated have been presented by parliamentary committees, and hence represent a compromise of the views of the representatives of the voters in Åland and Finland respectively. For the purposes of this paper, the suggestions expressed by the committees are viewed as the official positions of Åland and the state, respectively, when their respective reports were published.⁴ As will be clear, the two core actors have partly overlapping, partly differing intentions with regards to the self-government of Åland.

This paper uses central parts of the three committees' reports as its material to try to assess how they relate to the purpose of the autonomy and the aims for its development, especially regarding the present revision process. However, the analysis is limited to what is written in the three reports examined, and does not take into account previous positions, policies or reports formulated by the parties. Nor does the analysis engage in legal debates regarding what is to be considered as binding for the parties or what is considered to be customary law, domestic or international, or not. The analysis is thus focused on what the three reports express or do not express regarding purposes and aims for the autonomy and for the revision of the Autonomy Act.

It is outside the scope of the present paper to discuss all the proposed changes; in fact, besides discussing the perceptions of the purpose of the autonomy and the aims for the revision, it will only deal with three of the main proposals for concrete legislative changes. These proposals regard the legislative competences, the economic system and the issue of legislative control. Changes in those domains were first proposed by the provincial committee, and have been discussed or ignored by the two other committees. The aim of the analysis is to try to discern the intentions of the three committees regarding the autonomy, rather than to elaborate on the content of the suggestions as such. The international dimensions that concern, for example, international guarantees for the autonomy and the

3 Ministry of Justice. Utlåtande.fi This is the Finnish government website for comments to legislative projects (accessed 05.04.2018)

4 Information about the revision including links to all relevant reports (in Swedish) can be found at the Parliament of Finland home page: https://www.eduskunta.fi/SV/tietoaeduskunnasta/kirjasto/aineistot/kotimainen_oikeus/LATI/Sidor/ahvenanmaan-itsehallintolain-uudistaminen.aspx. Only one report per actor has been analyzed in this paper, why a follow-up report, issued by the Åland Parliament 2013 is not included. However, the major arguments of Åland are expressed already in the report from 2010.

relationship between autonomy law and EU law are questions that will not be elaborated upon in this paper, even though they are extensively discussed in the joint committee report.⁵

1.2 Some conceptual observations

In this paper, the terms “autonomy” and “self-government” are used interchangeably, even though autonomy might be considered a broader concept than self-government. Hannikainen maintains that in legal terminology the terms are often treated as synonyms. According to him, “the holder of the right to autonomy can exercise a certain level of self-government”. The extent of this self-government is, however, limited in comparison to the right to self-determination. Indeed, according to Hannikainen, autonomy might be perceived as a substitute for self-determination.⁶

Suksi characterizes the self-government of Åland as a constitutional order that creates a legal framework that is separate, exclusive and parallel to that of the state of Finland.⁷ In a section entitled “The hierarchical position of the Autonomy Act” the joint committee report discusses the relationship between the Constitution of the Republic of Finland and the Autonomy Act of Åland, without however taking into account the international basis of the Autonomy Act, a subject dealt with earlier in the report. The joint committee report notes that even though the Autonomy Act of Åland cannot, formally, be labelled as a constitutional act, it is in some respects at the same hierarchical level as the constitution. The Autonomy Act of Åland can also be described as a ‘sui generis law’ (one of a kind), according to the joint committee report.⁸

Suksi has argued that Åland fulfils three of the four criteria found in the Montevideo convention that are often considered to characterize a state. Åland has 1) a permanent population, 2) a defined territory, and 3) a government. The third criterion is only partly fulfilled, since legislative and executive power in the territory is shared with the state. Regarding the fourth criterion, the capacity to enter into relations with other states, such a capacity is not developed in Åland’s case, but is mostly exclusive to the state of Finland.

5 The relationship between EU law and the Autonomy Act is indeed a complex matter. Among others, Sjölund 2016 has shown how when Finland and Åland joined the EU, both actors (Finland and Åland) gave up elements of their own legislative competences in favor of the EU. At the time, it was concluded that the EU membership would not change the delimitation of competences between Åland and Finland, but in practice the issue has proven to be more complex. The question as to how the delimitation of competences between Åland and Finland should be interpreted when it comes to implementation of EU law has been raised on several occasions. Sjölund concludes that it is a main challenge in the current review of the Autonomy Act to ensure an advantageous development of Åland’s autonomy while ensuring respect for Finland’s responsibility under international law. Sjölund, 2016. See also Suksi 2005, p. 530.

6 Hannikainen 1998, p.79. For a discussion on the concepts of autonomy and self-government see also Lapidoth 1997, pp. 53–54.

7 Suksi 2005, p. 527.

8 Joint committee pp. 202–203.

According to Suksi, this means that Åland exercises an internal sovereignty in certain domains.⁹ Spiliopoulou Åkermark, in turn, discusses sovereignty not as a zero-sum game, but as a resource that can be shared, and in the same vein, Lapidoth thinks that the central government and the autonomous authorities could each be the lawful bearers of a share of sovereignty.¹⁰

Suksi has described the self-governed status of Åland, as well as other autonomies, as a conflict that has been institutionalized or constitutionalized, in other words made manageable under the rule of law.¹¹ A conflict exists, since the aims and ambitions of the state and the autonomy have not been abandoned, which may thus be a source of tension. In the best case, such tensions can be dealt with through co-operation and negotiation if there is a will to consider the views of the other parties and to compromise – something that has been described by Vesa and Spiliopoulou Åkermark as “responsiveness”.¹²

According to Spiliopoulou Åkermark, compromise can be considered the essence of autonomy solutions. For her, the so called Åland Example starts off from the basic premise of accepting a compromise and learning to live with it.¹³ The concept of “The Åland Example” is described by Spiliopoulou Åkermark as a notion that understands the autonomy as one component and the demilitarisation and neutralisation as another, and finally the guarantees for language and culture as a third component included in one and the same regime of Åland. The notion further considers that a conflict between Finland and Sweden over Åland was peacefully solved in the 1920’s, something that takes into account the longevity of the arrangements. The term is used to emphasize that the regime of Åland might work as a source of inspiration, a platform for constructive discussions and even concrete negotiations in crisis management elsewhere in the world.¹⁴ The concept is thus rather broad, and at an overarching level it also alludes to an example of factors important when attempting to solve ethno-political conflict of sovereignty disputes – or to put it differently, an example of how a minority can live in peace within a majority, in this case, the Swedish speaking population of Åland within Finland.

Spiliopoulou Åkermark describes how the settlement of the Åland issue concerned four core problems. Firstly, the power-sharing problem was dealt with by establishing autonomy, including exclusive legislative competences. Secondly, the security problem was met through reconfirmation of the demilitarisation of Åland from 1856, to which neutralisation was added in 1921. Thirdly, the issues of identity and minority culture were met with language

9 Suksi 2005, p. 527.

10 Spiliopoulou Åkermark 2013, p. 7, Lapidoth 1997, p. 47.

11 Suksi 2005, p. 8.

12 Spiliopoulou Åkermark 2011, p. 196.

13 Spiliopoulou Åkermark 2011, p. 20, p. 196.

14 Spiliopoulou Åkermark 2011, p. 8.

guarantees and legislative competence in relevant domains. Finally, the economic issue and the question of economic viability of the autonomy were ensured through allowing Åland the control of land and by limiting the right of establishment of business.¹⁵

The autonomy of the Åland Islands might be the oldest still functioning autonomy arrangement in the world, and has as such attracted much attention from scholars.¹⁶ The autonomy, its history and institutions has often been studied in detail, but mostly in a rather static manner, where institutions and mechanisms were taken for granted and fixed.¹⁷ In the publication “The Åland Example and Its Components – Relevance for International Conflict Resolution”, Spiliopoulou Åkermark et. al. go beyond a static interpretation, and study the autonomy of the Åland Islands as “a dynamic and adaptable, yet continuous regime”.¹⁸ This dynamic nature, it is argued, can be observed not the least in the legislative sphere, where several major revisions of the Act on Autonomy have taken place during its history. The Act, first presented in 1920, was thoroughly revised in 1951 and in 1991 and, in addition, smaller revisions have occurred in 2005 and 2009. For this type of legal document this indicates a dynamic relationship between the two parties.

The Finnish statesman Harri Holkeri, when President of the UN General Assembly, has referred to Åland as “a way of thinking”.¹⁹ Keeping the theoretical observations above in mind, this paper is in line with Holkeri’s ambition in its wish to gain an insight into the ways of thinking of Åland and Finland respectively regarding the autonomy of Åland, as well as regarding the relationship between Åland and Finland.

2. A background to the autonomy of Åland

Before addressing the current revision and the work of the three committees, the history of the autonomy will be discussed. The purpose of this brief historic review is to describe what the original conflict concerned, what actors were involved, and what solutions and compromises were made. How the autonomy has evolved over time, up until today, will also be discussed.

Against this background, it can later be assessed if and how the historical conflict issues, solutions, compromises, actors and purposes of the autonomy are still relevant today, and if they are visible in the present revision.

15 Spiliopoulou Åkermark 2013, pp. 21–22. In her works from 2011, the same author uses only three “components” to describe the legal and political regime that pertains to Åland, omitting economy. Spiliopoulou Åkermark 2011, p.9.

16 In fact, Åland has been used as a model when scholars are elaborating criteria for or characteristics of autonomies, see for example Hannikainen, 1998, p.91.

17 For summaries of previous research, see Spiliopoulou Åkermark 2011, p.10–11 and Spiliopoulou Åkermark 2013, p. 16.

18 Spiliopoulou Åkermark 2011, pp. 11–12.

19 United Nations, 2001.

2.1 The conflict

From the year 1809, when Sweden lost Finland, including Åland, to Russia, Åland formed a part of the “Grand Duchy of Finland”, an autonomous entity within Russia. At the end of the Russian period Finland started its quest for independence, and predominantly Swedish speaking Åland had a popular movement for a reunion with Sweden. At this time there was turmoil all around, with the First World War, a revolution, and a communist takeover in Russia, and after Finland’s independence in late 1917 also a civil war in Finland. This made prospects for the future very unclear for the Ålanders. Among others, the Ålanders perceived a risk of being linguistically and culturally marginalized through Finnization in an independent Finland, and decided to more prominently claim the right to self-determination. This was in line with the thinking of the League of Nations at the time. On Åland, secret meetings were held, an address and other messages and messengers were sent to the Swedish king, a self-organised collection of signatures (sometimes referred to as a ‘referendum’) was held, and a self-constituted Ålandic Assembly was formed. The leaders of the Åland movement established bilateral contacts with several countries and engaged in various ways with the Paris Peace Conference of 1919 to promote their cause.²⁰

While Sweden promoted the right of Ålanders themselves to decide their future status, in line with the principle of self-determination, Finland – which became independent in December 1917 – demanded that its sovereignty over the Åland Islands be recognized. In 1920, Finland proposed that Åland should become autonomous, and even adopted in the Finnish Parliament an Act on Autonomy for Åland.²¹ The Ålanders, however, rejected the Act. Subsequently, the matter was conveyed to the Council of the League of Nations, a move which both Finland and Sweden agreed to. A Commission of Jurists established that the matter was within the jurisdiction of the League of Nations, after which a Commission of Rapporteurs was established, with the mandate to find a solution to the dispute.²²

2.2 The solution

The Commission of Rapporteurs found the Ålanders’ fear of Finnization to be legitimate, but when summing up all arguments it still concluded that regarding sovereignty the status quo should be upheld. If a state gives guarantees for the preservation of a social, ethnic and religious identity, there is no reason for a minority to secede, according to the rapporteurs.²³

Subsequently, the Council of the League of Nations on 24 June 1921 took a decision that was in accordance with the recommendations of the Commission of Rapporteurs.

20 Stephan 2011, p. 29, Bring 2002, pp. 9–11.

21 Autonomy Act 1920.

22 Stephan 2011, p. 29, Hannikainen 1997, p. 57.

23 League of Nations 1921.

The Council established that Åland should remain part of Finland, that Ålanders should be given guarantees to protect their language and culture, and that the islands should remain demilitarised – which they had been already in 1856 after the Crimean war – and furthermore also be neutralised, meaning that they should remain outside of military action also during war time.²⁴ A separate international convention regulating the demilitarisation and now also neutralisation of the Åland Islands was signed by eleven countries later in the same year.²⁵

The states parties to the dispute, i.e. Finland and Sweden, were assigned the task to agree on how to formulate the details of the guarantees. The agreement between the two parties was presented to the Council on June 27. This agreement was called the “Åland Agreement”, where Finland was to introduce six guarantees into its Act on Autonomy of the Åland Islands. The six guarantees stated:

- The language of instruction in Ålandic schools should be Swedish.
- The province, the municipalities in the province or private persons in the province should have the right to redemption of real estate that had been transferred to persons residing outside of the province.
- Finnish citizens moving to the province will be granted the right to franchise in municipal and provincial elections only after they have resided in the province for five years.
- The Governor of Åland shall be nominated by the President of the Finnish Republic in agreement with the speaker of the Lagting (Parliament) of the islands. If an agreement cannot be reached, the President of the Republic shall choose the Governor from a list of five candidates nominated by the Parliament of Åland, possessing the qualifications necessary for the good administration of the Islands and the security of the State.
- The Åland Islands shall have the right to use for their needs part of the taxes collected in the province.
- The Council of the League of Nations shall watch over the application of these guarantees, and the Parliament of Åland will have the right to have any petitions or claim in connection with the application of the guarantees put forward to the Council.²⁶

24 League of Nations 1921.

25 Convention on the demilitarisation and neutralisation of the Åland Islands 1921.

26 League of Nations, 1921

In 1922, an informal regional assembly on Åland approved the Autonomy Act as it had been amended also by a proposed Guarantee Act to be adopted by the Finnish parliaments.²⁷ After general elections had been held, the Parliamentary Assembly of Åland convened for the first time on June 9, 1922. The Finnish Parliament, in turn, introduced the guarantees in a new Guarantee Act, passed in August 1922, as a complement to the Autonomy Act from 1920.²⁸

2.3 Implementation and development of the autonomy

After the autonomy was established in 1922 disappointment and frustration remained on Åland, where hopes for reunification with Sweden had been high.²⁹ To start with, the implementation of the autonomy did not go very smoothly, and Mariehamn-Helsinki could not always agree on how the autonomy should be interpreted and implemented.³⁰

In a government bill for a revised Autonomy Act from 1946, it is said that even if Ålanders saw benefits with the autonomy, they also thought that there were many ambiguities, and that Finland was unnecessarily restrictive in assessing which Åland laws could be approved or not.³¹

Discussions on a major revision of the Autonomy Act had started already in 1938, but after war broke out between Finland and the Soviet Union, the question was left pending.³²

In 1945, after the Second World War, the Åland Parliament raised again the question of a reunion with Sweden, claiming that the protection of their “Swedish nationality” did not function satisfactorily and that Finland lacked interest in the matter.³³ Sweden then issued a statement which made clear that Sweden wanted to retain status quo.

The revised Autonomy Act of 1951 might be considered a turning point, since after this Ålanders have focused on developing the self-government, and reunification with Sweden has not been called for since.³⁴ In the revised Act of 1951, The Guarantee Act was repealed, and the guarantees from 1921, except the supervisory function of the League of Nations, were incorporated in the revised Act on Autonomy.³⁵ The Act of 1951 entailed new stipulations on economic equalization, and the legislative competences of the autonomy were extended.³⁶

27 Åland Agreement 1921

28 Bring 2002, p. 21.

29 Bring 2002, pp. 21–22, Modeen 1973, p. 58.

30 State committee 2013, p.20, Joint committee 2017 p. 32.

31 State committee 2013, pp. 20–21. Bill RP 100/1946rd proposing a revision of the Autonomy Act fell since it was not processed on time.

32 Bring 2002, p. 24.

33 Bring 2002, pp. 25–26, Modeen 1973, p. 62.

34 Stephan 2011, p. 32, Modeen 1973 pp. 62–64.

35 Provincial committee 2010, p. 8, Stephan 2011, p. 32, Act on Autonomy of Åland 1951. The supervisory function of the League of Nations disappeared with the demise of the organization. However, the issue of restoring the international guarantees has been a recurring theme, and is one of the suggestions in the provincial committee report 2010.

36 State committee 2013, p. 21.

A second major revision of the Autonomy Act came about in 1991, and this version of the law remains in force today (1144/1991). Major changes in the revision of 1991 were that several domains of legislative competence were transferred to Åland and that a new financial system, according to which budgetary competences rest with the Åland Parliament, was introduced.³⁷ The Autonomy Act of 1991 has been adjusted several times, most notably in relation to EU matters.³⁸

3. The committee reports on the third revision of the Autonomy Act

The currently proposed fourth version of the Act is meant to modernize legislation and adapt it to changes in the surrounding world. In 2013, a joint Finland-Åland parliamentary committee called the Åland committee, under the chairpersonship of former president of Finland, Tarja Halonen, was appointed and tasked with drafting a proposal for reforming the autonomy of Åland.³⁹ In its work, the committee took into account two preceding reports, one written by an Åland parliamentary committee under Gunnar Jansson, then member of the Åland Parliament and former member of the Parliament of Finland, published in 2010 (hereafter the “provincial committee” and the “provincial committee report”) and one written by a state parliamentarian working group under Ambassador Alec Aalto (hereafter the “state committee”, the “state committee report”), published in 2013.⁴⁰ The “joint committee” presented a final report in the form of a government proposal in June 2017.

The three reports differ in their composition, both on a general level and in terms of how topics have been systematized. While the reports mainly agree on what topics are the most important, there are also deviations. The provincial committee report introduces several topics for discussion, the state committee report discusses those suggestions and adds several new ones, while the joint committee report, which makes up the proposition, is much more extensive and adds further topics and proposals, which are dealt with in much more detail than in the preceding reports.

37 State committee 2013, pp. 21–22. Autonomy Act 1991 Chapter 4 (Authority of Åland) section 18, chapter 5 (Authority of the state) section 29 and chapter 7 (Financial management of Åland).

38 Provincial committee 2010, p. 9, Stephan 2011, p. 47.

39 Details from the joint committee report: “On 19 September 2013, the Finnish government appointed a parliamentary committee tasked with drafting a proposal for reforming the autonomy of Åland. The committee had representatives from all parliamentary groups and the groups represented in the Lagting regional parliament of Åland. The committee was chaired by Tarja Halonen, former President of the Republic of Finland. The committee was mandated to prepare an interim report laying out the guidelines for further preparation by the end of 2014 and to present its final report in the form of a government proposal by 30 April 2017.” See the joint committee report 2017, in “description”.

40 The provincial committee has also been called “The Åland committee”, and the formal name of the state committee was “The Parliamentary Åland working group”. For clarity and coherence, in this report the committee of Parliamentarians from both the Åland and Finland Parliaments, under the lead of president Halonen, is called the joint committee, while the Åland parliamentary committee is called the provincial committee and the Finnish parliamentary committee is called the state committee.

The task of the provincial committee, pursuant to its report, was to propose a reform of the self-government system and a reform of the Autonomy Act, taking into consideration new needs, the general development of society, the globalized economy, the European integration, and the new constitution of Finland.⁴¹

The state committee in turn describes its task as assessing the Åland self-government and the potential needs for changes from the perspective of the state. In particular, the committee was to assess the proposals of the provincial committee.⁴²

In a summary in English in its final report, the joint committee describes its task as follows:

“The main task of the committee was to propose reforms in the autonomy and the Act on the Autonomy of Åland necessitated by changes in society and to draft a proposal for up-to-date autonomy legislation. The committee was also tasked with proposing measures on how the economic autonomy of Åland could be developed. Furthermore, the committee was mandated to review the allocation of competence between Åland and the Finnish government and to propose changes in competence provisions that have involved problems of interpretation.”⁴³

3.1 The origins of the autonomy and the aims of a revision

The background of the autonomy is very briefly described in all three reports. Insofar as these texts are able convey, there is a reasonable agreement in their views of the history of the Åland Islands autonomy process.⁴⁴ In their chapters on the historical background, both the provincial committee report and the state committee report mention the role of the League of Nations, the guarantees for the protection of the nationality of the Ålanders⁴⁵, the Åland Agreement, and the autonomy act suggested by Finland in 1920. However, there are some discrepancies in what is mentioned and what is not included in these chapters, especially regarding the demilitarisation and neutralisation of Åland. Whereas the provincial committee report starts with the demilitarisation of 1856 – which is often described as the opening for an international status of Åland – the state committee report starts in 1809 when Sweden lost its eastern half, Finland and Åland, and does not mention the demilitarisation of 1856. Returning to the demilitarisation, the provincial committee report finishes the chapter by mentioning the “Åland protocol”. This protocol is included in the accession treaty of Finland to the EU. In this protocol, the particular status of Åland under international law is mentioned. The provincial committee report explicitly highlights

41 Provincial committee 2010, p. 3

42 State committee 2013, pp. 17–18

43 Joint committee 2017, description (in English).

44 Provincial committee 2010, pp. 7–8, State committee 2013, pp. 19–20, Joint committee 2017, pp. 31–32.

45 In Swedish: ”Garantier för ålänningarnas nationalitetsskydd”.

the interpretation that the demilitarisation and neutralisation should be considered as included in this status. The state committee report, by contrast, does not refer to the EU protocol. In the joint committee report, the protocol is later discussed in relation to the right of domicile⁴⁶, but is not mentioned in the historic overview, or otherwise, in relation to the demilitarisation or neutralisation.

Besides short chapters on the background of the autonomy, and in some instances reviews of former developments, the committees mostly discuss the present and the future and do not elaborate on the past. Still, all three reports describe the origins of the autonomy in similar ways, and it is here that the original purposes of the autonomy system can be found. The reports refer to the Åland Agreement from 1921 where Finland declares its preparedness to “... assure and to guarantee to the population of the Åland Islands the preservation of their language, of their culture and of their local Swedish traditions ...”.⁴⁷ A sentence from the government bill for the first Autonomy Act in 1920 is also quoted in all three reports. It states that the “... Ålanders should have the opportunity to arrange their own lives as freely as is possible for a region that is not a state”.⁴⁸

Moreover, the state committee and the joint committee are alluding to a sentence from the League of Nations decision of 24 June 1921, according to which “... the interest of the world, the future of cordial relations between Finland and Sweden, the prosperity and happiness of the Islands themselves cannot be ensured unless (a) certain further guarantees are given for the protection of the Islanders; and unless (b) arrangements are concluded for the non-fortification and neutralisation of the Archipelago”.⁴⁹ This is however not mentioned in the provincial committee report. The statement does not explicitly mention the autonomy, but it can of course be interpreted as encompassing all the components in the Åland solution, or the Åland Example, if you wish.

It will now be discussed how each committee describes the original purpose of the autonomy as well as the aims for the present revision. In these respects, the reports use a variety of formulations. For instance, terms such as purposes, aims, general aims, goals, foundations and core idea are used in relation to either “the autonomy”, “the autonomy system” or “the Autonomy Act”. Still, both the provincial committee and the joint

46 The right of domicile is a sort of regional citizenship that will be briefly discussed later.

47 “Säkerställa och garantera Ålandsöarnas befolkning bevarandet av dess språk, dess kultur och dess lokala svenska traditioner”. The Åland Agreement. Referred to in the provincial committee report 2010 p. 7, quoted in the state committee report 2013, p. 19.

48 “Sålunda skulle ålänningarna tillförsäkras möjlighet att själva ordna sin tillvaro så fritt det överhuvudtaget är möjligt för ett landskap som icke utgör en egen stat” Government bill 1919, quoted in provincial committee 2010 p. 10, and in state committee 2013, p. 19.

49 State committee 2013, p. 19. In Swedish “Trygga freden, det framtida goda förhållandet mellan Finland och Sverige samt öarnas egen välgång och lycka”. The French version of the League of Nations’ decision uses the word “paix” (“peace”), whereas the English version uses the expression “the interest of the world”. The committees are using in Swedish the word “fred” (“peace”).

committee are rather lucid on what they consider to be the purposes of the autonomy and aims for the revision, whereas the state committee report is less explicit.

Origins of the autonomy – three central sentences from official documents

Finland declares its preparedness to assure and to guarantee to the population of the Åland Islands the preservation of their language, of their culture and of their local Swedish traditions.

The Åland Agreement from 1921.

Ålanders should have the opportunity to arrange their own lives as freely as is possible for a region that is not a state.

Finnish government bill for the first Autonomy Act in 1920

... the interest of the world, the future of cordial relations between Finland and Sweden, the prosperity and happiness of the Islands themselves cannot be ensured unless (a) certain further guarantees are given for the protection of the Islanders; and unless (b) arrangements are concluded for the non-fortification and neutralisation of the Archipelago.

League of Nations, decision of 24 June 1921

3.1.1 Provincial committee

The provincial committee maintains that the purpose of the 1991 Autonomy Act is to guarantee the population of Åland its Swedish language, culture and local traditions, as well as to make it possible for the population to arrange their lives by themselves, within the framework of the given constitutional status.⁵⁰ The provincial committee does not elaborate on the question of language, culture and traditions, but repeatedly claims that the autonomy system is based on the principle that it is primarily the Ålanders themselves that are to decide how the autonomy be organized. That Åland should take responsibility and decide for itself is a recurring theme all through the report. In fact, this is one of the main arguments of the provincial committee report.⁵¹

Pursuant to the provincial committee, the aim for a new autonomy system for Åland is that the population of Åland better than previously should have the possibilities to manage their lives according to their own wishes. The foundations of the autonomy should be kept and are to be strengthened while adapting to the changes that result from internationalization and integration, as well as to general developments of society.⁵²

The provincial committee further writes that the self-government can and should be continuously updated and developed.⁵³

50 Provincial committee 2010, p. 10.

51 See for example the provincial committee 2010, pp. 5, 10, 17, 21, 28.

52 Provincial committee, 2010, p. 5.

53 Provincial committee 2010, p. 10

The provincial committee's suggestion for a text for the programme of the next government of Finland summarizes rather well the aims of the committee. The text states that the current Autonomy Act is outdated both regarding structure and content and thus needs to be reformed, with focus on the financial autonomy. The division of competences between the state and the autonomy should be overhauled, as well as the system for transfer of legislative competences and the legislative control. Experiences from other autonomous areas should be considered for the Åland autonomy to be a role model for autonomous areas with legislative powers.⁵⁴ The provincial committee also proposes to restore a supervisory function, similar to the original right of Åland entrenched in the guarantees, to communicate complaints to the League of Nations.⁵⁵

The provincial committee further argues that politics should have precedence to law in the relationship between the state and the autonomy and that control should be exchanged for political dialogue. Suspicion should be replaced with trust, and legislative fights with negotiation.⁵⁶ The provincial committee also points out that the autonomy system seems to be based on the premise that Åland and Finland are equal parties.⁵⁷

3.1.2 State committee

The mission of the state committee is to look at the autonomy from the point of view of the state, and consequently, the committee establishes aims of the state, besides those of the autonomy. Looking at the autonomy in a wider national and international perspective, the committee points out the mandate of the state and considerations such as the requirements of the EU membership and other international undertakings of the state, as well as the rights of the individual.

The state committee, after having presented the historical aims of the autonomy, does not dwell on the purposes of the autonomy much further. It refers to the words of the programme of the government of Finland, which maintains that the autonomy of Åland should be developed and protected.⁵⁸ The committee notes that the programme does not give any information about what "development" means in this context. The state committee has chosen to look at development from the perspective of how the autonomy is working. In this context, the committee asserts that the original aims of the autonomy have been well met.⁵⁹ The committee writes that development means that the responsibility of Åland is growing in terms of managing its own affairs, especially as regards the economy.⁶⁰ While

54 Provincial committee 2010, pp. 11–12.

55 Provincial committee 2010, p. 37.

56 Provincial committee 2010, pp. 14, 34, 37.

57 Provincial committee 2010, p. 32.

58 Programme of the Katainen Government 22.6.2011

59 State committee 2013, p. 51.

60 State committee 2013, p. 68.

the state committee acknowledges that “development” can be understood as if the autonomy should be expanded as far as possible within the constitutional system of Finland, it also highlights that development might imply other things than only transfer of competences. Although it observes that it is natural to expand the legislative competences of Åland over time, the state committee report stresses that it needs to be ensured that such an expansion is purposive and functional from an economic and administrative point of view.⁶¹

The state committee maintains that a general aim that can be found in the motivations to the present Autonomy Act is to strengthen the autonomy without changing the constitutional status of Åland. The committee considers that this objective is still relevant and states that a continuous development of a well-functioning autonomy lies in the interests of both Åland and the state. Thus, it should be a mutual endeavor to strengthen the ties that unite Åland and Finland, and avoid border obstacles. For the Ålanders, it is extremely important that the self-government works and that the islands are well, and as Finnish citizens, the Ålanders have the right to assume that the state observes its responsibility to ensure this.⁶²

The state committee agrees that there have been changes in the surrounding world, including in Finland, that call for changes in the Autonomy Act. Technically, parts of the law are somewhat outdated. Hence, the law needs to be modernized and made more flexible.⁶³

The committee further mentions that Finland’s EU membership in 1995 brought a new dimension to the relationship between the state and Åland. This shift has implications for the development of the self-government, and requires that Åland’s insight and influence in EU matters must be ensured.⁶⁴

The state committee assesses that cooperation between the autonomy and the state has mostly functioned without friction and in a spirit of consensus.⁶⁵ It supports the idea that the political dialogue in the relations between the state and Åland should be expanded, both on a governmental and parliamentary level. In addition, it needs to be assured that contact between the authorities works well. At the same time, it should be noted, claims the state committee, that the guarantees of the autonomy rest in the legislation, which should be clear and leave as little room for interpretation as possible.⁶⁶

The state committee briefly mentions that for the system to work it is important that ministries and central authorities in Finland are sufficiently fluent in the Swedish language, and have knowledge about the autonomy of Åland. On the other hand, the authorities of Åland similarly need to be knowledgeable of the Finnish judiciary and society, according to this committee.⁶⁷

61 State committee 2013, p. 51.

62 State committee 2013, p. 8, 52, 68.

63 State committee 2013, p. 52.

64 State committee 2013, p. 68.

65 State committee 2013, p. 52.

66 State committee 2013, p. 52.

67 State committee 2013, p. 52.

3.1.3 Joint committee

The joint committee rather clearly assesses that the most important purpose of the autonomy has been, and still is, to preserve the Swedish language, culture and local traditions of the population.⁶⁸ It also maintains that the core idea of the self-government is that the inhabitants of Åland should be ensured the opportunity to arrange their own lives as freely as is possible for a self-governed region that is not a state.⁶⁹ The two principles combined can be found in a passage in a chapter where the relationship between the Åland Autonomy Act and the Constitution of Finland is described. Here, it is said that ever since the establishment of the autonomy the Autonomy Act has contained deviations from Finland's constitutions. The most important of these deviations is that Åland has its own legislative assembly with authority to establish its own laws within specified areas, as well as the fact that the inhabitants of Åland are guaranteed certain special rights for the protection of their language and their local culture. The passage further mentions that these provisions have their background in international agreements and guarantees.⁷⁰

In a summary in English, the aims of the committee are described: “In the final report, the committee proposes that a new Act on the Autonomy of Åland should be introduced. The new act would be the fourth such act, replacing the previous act adopted in 1991. The intention is to introduce an up-to-date piece of legislation and to provide a basis for more flexible development of the autonomy. The main aim of the reform is to provide Åland with an autonomy that is more dynamic and that would, over the years, permit a more flexible transfer of areas of competence to Lagting.⁷¹ As a result, Åland would have more say in the introduction of the reforms that are needed so that the region can adjust to continuous changes in different sectors of society. It is also proposed that the equalisation system concerning the funding of the autonomy-related costs should be made more flexible.”⁷²

The description above summarizes well the joint committee's main aims for the revision of the Autonomy Act. However, in its comprehensive final report, more aims can be discerned both regarding the long-term development of the autonomy and the relationship between the autonomy and the state.

One of the other objectives of the reform is to ensure the interaction between the Åland authorities and the government of Finland. It is emphasized that sufficient contact, sensitivity and dialogue between Åland and the state is needed in order to jointly be able to solve possible disputes. Also, because of its small size, in some instances Åland is dependent upon the expertise of state authorities.⁷³

68 Joint committee 2017, p. 74, p. 115.

69 Joint committee 2017, p. 68.

70 Joint committee 2017, p. 202.

71 “Lagting” is the Parliament of Åland.

72 Joint committee 2017, in section entitled “Description” (in English).

73 Joint committee 2017, p. 89.

In relation to the discussion on the financing of the autonomy, the joint committee writes that the interplay between the Parliament of Finland and that of Åland should work in a way that allows for both parties to achieve their political goals within their respective areas of competence without political friction arising and without compromising the legal security of individuals.⁷⁴

In the report, the joint committee also relates to the original purpose of protecting the language and culture of Åland. Among others, the need for access to information in Swedish is discussed in relation to privatization of public services.⁷⁵

The joint committee considers the possibilities to reintroduce international guarantees for language and culture. However, it maintains that there is no international organization with a suitable mandate that might work as a guarantor, which is why the proposal from the provincial committee cannot be fulfilled.⁷⁶

Summary of the committees' aims for revision

Provincial committee	State committee	Joint committee
Give Åland better possibilities to manage life according to its own wishes. Development of autonomy.	Strengthen autonomy without changing constitutional status of Åland. Autonomy to be developed and protected.	More dynamic autonomy that permits more flexible development and transfer of areas of competence. Åland would have more say in introduction of reforms needed.
Modernize, update, adapt to internationalization, integration and general developments of society	Development might imply other things than transfer of competences. Expansion must be purposive and functional from an economic and administrative point of view.	Ensure interaction, sufficient contact, sensitivity and dialogue between Åland and the state. Both parties to achieve their political goals without political friction and without compromising the legal security of individuals.
Politics should have precedence to law in the relationship between state and autonomy, control to be exchanged for political dialogue, suspicion to be replaced with trust, legislative fights and control replaced with political dialogue.	Law needs to be modernized and made more flexible.	Financial system that ensures that the autonomy can function in accordance with its aim and provide an acceptable financial outcome for both parties.
Division of competences, system for transfer of legislative competences, the legislative control and economic system to be overhauled.	Mutual endeavor to strengthen ties that unite Åland and Finland, avoid border obstacles	Equalisation system concerning funding of the autonomy-related costs to be more flexible.
	Åland's influence in EU matters to be ensured.	
	Political dialogue in the relations between the state and Åland to be expanded, still guarantees of the autonomy rest in legislation	

74 Joint committee 2017, p. 68.

75 Joint committee 2017, p. 88.

76 State committee p. 65, Joint committee p. 110.

3.2 Legislative competences of Åland

Åland is the only region in Finland with exclusive legislative powers in certain domains. In those domains, its competences are not concurrent with those of the state, and state laws in the domains where Åland has legislative competence do not apply on Åland.

The original Autonomy Act from 1920 contained only one list of legislative competences, in which the state competences were listed. In principle, the autonomy had the competence to legislate in all other domains, except for a stipulation that new domains of legislation should become the competence of the state. In the long run, this meant an excavation of the autonomy.⁷⁷

In the 1951 Autonomy Act the principle of enumeration was implemented, and both Finland's and Åland's legislative competences were listed.⁷⁸ In the Autonomy Act of 1991, the system of one list for the state and one for the autonomy remains, but the act includes also a third list, a so-called B-list, which contains six domains of state competences that might be transferred to the autonomy by ordinary state law. This technique differs from the general principle saying that changes in the division of competences can only happen by changing the Autonomy Act – which in the Parliament of Finland is done pursuant to the provision for the amendment and the repeal of the constitution, and which also requires a qualified majority in the Åland Parliament.⁷⁹

3.2.1 *The provincial committee*

The provincial committee suggests that the current system with two lists of legislative competences, one for the state and one for the autonomy, should be replaced with one list only, which lists the competences of the state. Those competences are foreseen to be related to national sovereignty, and all other competences should be the competence of the autonomy without being listed in the law. At the same time, the procedures for transfer of competences should be simplified. This means Åland should have the main responsibility for future transfer of competences from the state to the autonomy. The pace of factual takeover of legislation that currently is resting with the state should be decided by the Åland Parliament and the voters.

The provincial committee argues that a system with only one list should be more lucid and clear than today's system. It would furthermore be more flexible and make room for future development of competences of the autonomy, while it is too complicated to make changes of competences in current law. The committee further argues that one list should not be more complicated to interpret than two. It would also be logical to have only one

77 Joint committee 2017, p.62. Autonomy Act 1920.

78 State committee 2013, p. 21, Joint committee 2013, p. 32, Stephan 2011, p. 34, Autonomy Act 1951.

79 Joint committee 2017, pp. 62–63.

list, since the other follows automatically. Furthermore, a simpler system has a democratic value in itself. Besides such arguments of usefulness, the committee points out that two lists are unusual internationally and also refers back to the original Autonomy Act of 1920, which had only one list of state competences. It also repeatedly points out that Åland itself is responsible for the development of the self-government and should take the main responsibility in this domain.⁸⁰

3.2.2 The state committee

While the state committee endorses the idea of a more flexible system for transfer of competences, it maintains that it needs to be flexible in both directions and precludes the idea that Åland alone would decide on transfer of legislative competence, since it would not be consistent with the legislative mandate of the Parliament of Finland. The state committee fears that a system with one list only might impair transparency by making it more difficult to see how the legislative power is divided, and would rather see other solutions.⁸¹

The committee claims that each transfer of competences should be based on a “real need” and a thorough evaluation of the consequences. It is also important to assess whether Åland has the capacity to deal with new competences, or for that part, those competences that it already has. The committee further brings attention to many other concerns that need to be taken into account, such as the EU membership, international cooperation, administrative costs, and linguistic rights.

Pursuant to the state committee, the need for changes in the allocation of legislative competences should consider how the self-government functions, and in this section the committee assesses that the aims of the autonomy have been fulfilled well. Furthermore, it assesses that Åland has its own particularities, and cannot be compared directly with other autonomous regions.⁸²

3.2.3 The joint committee

In its proposal, the joint committee suggests that the present delimitation of competences between Åland and the state remains unchanged. Future transfer of competences should depend on changes in society. However, such future changes of the allocation of legislative competences should be facilitated, which is why the proposition suggests simplified

80 Provincial committee 2010, pp. 16–17.

81 The state committee suggested one list for state law that cannot be transferred, one list of current legislative competences of the autonomy, and one list of law that is currently under state authority but might be transferred. Alternatively, transfers could be made through legislation by the autonomy that is approved by the state.

82 State committee 2013, pp. 53–55

procedures for transfer of competences. The joint committee refers to the Faroe system as a model in this respect. Regarding the lists of competences, the joint committee proposes one list for state law that can be transferred only by changing the Autonomy Act, one list for state competences that can be taken over by Åland after consultation with the state, and one list of state law that can be transferred through the same procedure as for ordinary state legislation, with the consent of the Åland Parliament. The last type of list already exists in the 1991 Act, but would now be extended to many more areas.⁸³

The committees' proposals regarding the legislative competences

Provincial committee	State committee	Joint committee
Current system with two lists of legislative competences, one for the state and one for the autonomy, to be replaced with one list only, which lists the competences of the state.	A more flexible system for transfer of competences needs to be flexible in both directions.	Present delimitation of competences remains unchanged.
Procedures for transfer of competences should be simplified.	Åland should not decide alone on transfer of legislative competence, not consistent with legislative mandate of the Parliament of Finland.	One list for state law that can be transferred only by changing the Autonomy Act, one list for state competences that can be taken over by Åland after consultation with the state, and one list of state law that can be transferred through the same procedure as for ordinary state legislation, with the consent of the Åland Parliament.
Åland should have main responsibility for future transfer of competences from the state to the autonomy	A reform is required in order to make the Act more modern and flexible. There are several different alternatives and models to be applied in the reform. Consider making the Act more general when it comes to division of competence. Provisions on the details could be laid down in ordinary acts with the assent of the Åland Parliament.	Future changes facilitated through simplified procedures for transfer of competences.

3.3 The economic system of Åland

The first Autonomy Act and the Guarantee Act specified what kind of taxes Åland had a right to collect.⁸⁴ However, the tax system in Finland developed in such a direction that the taxes that could be collected on Åland were not sufficient to cover the cost of the autonomy. In practice, means were transferred from the state. A system of tax equalization was developed and was codified in the Autonomy Act of 1951.⁸⁵

Pursuant to the 1991 Act, Åland has only limited authority to collect taxes. Instead, the state levies taxes, duties and fees on Åland, and returns to Åland a lump sum which equals

⁸³ Joint committee 2017, pp. 90–91 as well as §§26, 28 and 30 in the proposed Autonomy Act

⁸⁴ Autonomy Act 1920 chapter 5, Guarantee Act 1922 §4.

⁸⁵ Autonomy Act 1951, chapter 5, §27, Provincial committee p. 22.

0.45 per cent of total Government income, excluding Government loans. In addition to this, Åland may have an additional state transfer in case the income and property tax levied in Åland during a fiscal year exceeds 0.5% of the corresponding tax in Finland. In this case, the excess is returned to Åland.⁸⁶

3.3.1 The provincial committee

For the provincial committee, changes in the economic system are an important part of the revision process. The provincial committee gives two independent recommendations in this domain. Firstly, it suggests that the system for tax equalization be updated. Secondly, it suggests that Åland would take over a larger share of taxation rights from the state. The provincial committee refers to the original aim, which was that the costs of the autonomy should be covered by its own revenues. The committee states that competence in the domain of taxation is to a certain extent anchored in international law, through the Åland Agreement. The Committee considers that the current tax jurisdiction of the province should be developed in order to restore this original intention. The provincial committee refers to statements from previous investigations and committees, among others a conclusion that if Åland would take over all taxation this would probably be the most cost efficient system. The committee also refers to other autonomies, and maintains that, generally, an autonomy has both taxation rights and an allowance/contribution from the state.

The provincial committee refers to the Åland Government that has assessed that even if the revenues have been sufficient for the needs of the autonomy, the current system is too closely linked to changes in the economy of Finland, and hence not necessarily in line with the needs of Åland. The Åland Government is of the opinion that the current system for calculations of the lump sum is not flexible enough in relation to the budgetary policies of the state and the changes in the size of the population of Åland.⁸⁷

3.3.2 The state committee

Regarding takeover of competence in the domain of taxation, the state committee is far from convinced that it should be taken over by the autonomy. The committee maintains that the autonomy has long sought for such a change, but that the state has responded in the negative. The committee thinks that the present system has mainly worked out well, even if it has its flaws. For instance, the committee notes that the system is organized in such a way that it might be perceived as if the state supports the autonomy with taxes. Another problem is that the economic pre-requisites and needs for Åland at a certain period of time may differ from that of the state as a whole, and this might not be sufficiently considered with the present system.

⁸⁶ Autonomy Act 1991.

⁸⁷ Provincial committee 2010, pp. 22–30.

The state committee refers to the tax department of the Ministry of Finance, which has commented on the provincial committee suggestion. The Ministry assesses that the provincial committee suggestion would put Finland in a difficult position in relation to its duties in relation to other states and to the European Union. The Ministry also fears a national or international tax competition and that a transfer of taxation rights to Åland would create costs and make taxation of trade more complicated.

The state committee does not discuss the equalization system in detail, but refers to an ongoing investigation carried out by a working group appointed by the Ministry of Finance.⁸⁸

3.3.3 The joint committee

As can be understood from the provincial committee and state committee reports, the autonomy and the state are rather far apart in their views on economic autonomy for Åland. The joint committee maintains that the basic idea of self-government is that the population on Åland shall be ensured at all times the opportunity to arrange for their own lives as freely as is possible for a self-governing region which is not a state. It further asserts that the design of the financial system should both ensure that the autonomy can function in accordance with this aim and provide an acceptable financial outcome for both parties. The interaction between the self-government and the state should work so that both Parliaments can achieve their political goals within their respective areas of competence without political friction and without compromising the legal security of the individuals.⁸⁹ The joint committee acknowledges the long-term wish of Åland to take over a larger share of the taxation, but observes that the state has not been willing to approve of this.

The committee thinks that it would be important that the economic system is flexible enough to adapt resources to changed circumstances and that it should take into consideration the earning capability and the growth in population.⁹⁰ The joint committee also agrees with the state committee that there is a risk that the system of transfer of funds from the state to Åland implies a risk for misconceptions. The committee observes that there is sometimes a mistaken public perception that Åland receives funds without contributing to the state's incomes.⁹¹

The joint committee describes four alternative models that might work as compromises between the state and the autonomy. In the end, the system proposed is similar as the one in the Act of 1991, although some adaptations have been made to make the system more flexible regarding the financial equalization. The system for the calculations of money

88 State committee 2013, pp. 61–63.

89 Joint committee 2017, p. 68.

90 Joint committee 2017, p. 89.

91 Joint committee 2017, p. 68.

transferred from the state to Åland will be somewhat modified. However, the competences regarding taxation remain with the state. Such competences are listed in the proposal §30, among competences that belong to the Parliament of Finland, but can be transferred to Åland through ordinary state legislation.

It can also be noted that the words of the Act that the committee proposes does not make it any easier to understand how the system works.

The committees' proposals regarding the economic system

Provincial committee	State committee	Joint committee
<p>Åland to take over a larger share of taxation from the state</p> <p>System for tax equalization to be updated.</p>	<p>Not convinced that competence in the domain of taxation should be taken over by the autonomy.</p> <p>No suggestions on system for tax equalization</p>	<p>Competences regarding taxation remain with state. Listed in proposed act as competences that can be transferred to Åland through ordinary state legislation.</p> <p>System for the calculations of money transferred from the state to Åland will be somewhat modified.</p>

3.4 Legislative control of autonomy law and state law

Åland is the only region in Finland with exclusive legislative powers in certain domains. In those domains, its competences are not concurrent with those of the state, and state laws in the domains where Åland has legislative competence do not apply on Åland. Suksi maintains that the constitution of Finland applies on Åland, but the Autonomy Act also contains deviations from Finland's constitution. The system is at times described with the term "sui generis", it is one of a kind.⁹² In essence, Finland has two separate legal frameworks that exist side by side, but sometimes also meet, which is why it is necessary to have a system of control of where one legislative competence ends and the other starts.⁹³ The system for legislative control is asymmetric, i.e. state laws and autonomy laws are not controlled by the same procedures or organs.⁹⁴

92 Joint committee report, pp 202.

93 Suksi 2005, p. 528.

94 Suksi 2005, p. 537.

3.4.1 The provincial committee

The provincial committee finds the procedures for legislative control of acts of Åland to be in order, and suggests that these procedures are kept, although with a slight adjustment in the time allowed for the procedure. However, the committee points out that the control of the allocation of legislative competences is organized asymmetrically.⁹⁵ That is, there is a thorough system for controlling that Åland laws stay within their jurisdiction, but there is not a corresponding system to check that state laws do not neglect or violate the jurisdiction of Åland. The committee maintains that in cases where there are competing parliamentary systems it is necessary to have independent expert organs that can determine what is established law. On this ground, the committee suggests that the roles of the Åland Delegation, as well as that of the Supreme Court, be strengthened within the legislative control system. More specifically, it proposes that the President of the Republic should have the possibility to ask the Åland Delegation for opinions regarding the compatibility of state law to the Autonomy Act.⁹⁶

There is no constitutional court in Finland, instead the Constitutional Law Committee and the Parliament of Finland are to check the constitutionality of legislative proposals. The provincial committee points out that the Constitutional Law Committee has taken the role of deciding whether a piece of state legislation is consistent with the Autonomy Act. This has been questioned as it may imply that the Parliament of Finland through the Constitutional Law Committee decides on the limits of its own competence. The provincial committee argues that this asymmetry is remarkable, since otherwise the autonomy system seems to be based on the premise that Åland and Finland are equal parties. The provincial committee points out that such decisions should be referred to an independent body, and recommends that the role of the Supreme Court and the Åland Delegation should be strengthened in this respect.⁹⁷

3.4.2 The state committee

The state committee does not engage in a discussion on the symmetry of control of autonomy law or state law, nor does it discuss the role of the Constitutional Law Committee in this context. It only states that it does not oppose the suggestion that the President of the Republic should have the possibility to ask the Åland Delegation for opinions regarding the compatibility of state law to the Autonomy Act, although the committee thinks it might be more natural that the Åland Delegation would give its opinions to the Supreme court.

95 The system for legislative control of acts of Åland is rather complex, and involves the Ministry of Justice in Helsinki and the Åland Delegation, an expert body of which half of the members are appointed by the Finnish Government and half by the Åland Parliament. It can also involve the President of the Republic and the Supreme Court. For a description of the systems, see Stephan 2011, pp. 42–44.

96 Provincial committee 2010, pp. 31–33.

97 Provincial committee 2010, pp. 31–32.

This is already possible within the framework of current legislation. The state committee further discusses the compatibility of autonomy law and EU law, and thinks that this should be further investigated.⁹⁸

3.4.3 *The joint committee*

Similar to the state committee, the joint committee is more concerned about the aspect of the relation between the Autonomy Act and the EU law than by the legislative control of state law in relation to the Autonomy Act. The joint committee does not discuss the provincial committee report's questioning of the role of the Constitutional Law Committee in relation to the system of legislative control. The committee concludes that in relation to most new autonomy laws the division of competences is clear, which is why the process of legislative control can be sped up in those cases. The committee suggests that the role of the Åland Delegation – which in the proposal is renamed the Delegation for Åland issues – be strengthened. If the delegation has the opinion that there is no ground for a Presidential veto the delegation may, according to the proposal, decide that the act in question can enter into force without being referred to the President. However, the President would still have the right to decide that the law in question shall be referred to the President.⁹⁹

The committees' proposals regarding the legislative control

Provincial committee	State committee	Joint committee
Procedures for legislative control of acts of Åland are in order, but control of the allocation of legislative competences is organized asymmetrically	Does not oppose strengthening of the Delegation for Åland matters or the Supreme Court to check that state laws are compatible with Åland Autonomy, but thinks this is already possible.	More concerned about relation between Autonomy Act and EU law than with legislative control of state law in relation to the Autonomy Act.
Need for a system to check that state laws do not neglect or violate the jurisdiction of Åland.	More concerned about relationship between the Autonomy Act and the EU law	Role of Delegation for Åland matters to be strengthened.
Strengthen the role of the Delegation for Åland matters and of the Supreme Court in this respect.		

3.4.4 *Summary of findings in the three reports*

The present chapter has studied how the parties describe the background and development of the autonomy, the original purpose of the autonomy, and the aims for the present revision. Some of the main concrete proposals for changes in the Autonomy Act have been discussed to see if the intentions of the two parties coincide or differ in those domains.

⁹⁸ State committee 2013, pp. 59–60.

⁹⁹ Joint committee 2017, pp. 97–99.

To sum up, the committees mostly agree on the history and foundations of the autonomy. There is nothing in the reports that contests the guarantees found in the Åland Agreement, but rather the original purpose of the protection of the Swedish language and culture is endorsed and cherished by all. Even if the state committee is not explicit on this issue, there seems to be no doubt that this is considered as an original purpose of the autonomy. It is also clear that such issues are still very pressing.

The state committee report and the joint committee report also refer to a sentence from the League of Nations decision in 1921 regarding the link between the guarantees, the demilitarisation and neutralisation of the islands to peace. However, this sentence seems to be used mostly as a background.

All reports quote the text from the Finnish government bill for the 1920 Autonomy Act about the right of the Ålanders to decide for themselves, which indicates that these words are considered significant. However, it seems there are some differences in how these words are interpreted and variations in what weight they are given in the three reports. The words as such are not encoded in the proposed words of the new Act.

In the provincial committee report, the principle that Ålanders should decide for themselves is the most prominent argument and the reason given for why the authority of Åland should be expanded. The state committee report takes a more functional approach, assessing “needs”. Such an approach could possibly be linked to the ambition expressed by the League of Nations in 1921 to take into account the prosperity and happiness of the Islands themselves. However, such an approach raises questions on who is to define needs, and how such needs can be measured.

All the committees agree that the direction of the previous revisions has been such that the competences of Åland have been expanded, and that the general trend has been that Åland has suggested more comprehensive transfers of competences than what has finally been realized. This is true not least regarding the economic system. While development of the autonomy is a significant issue for all three committees, their views on what is the end goal for development and how much the autonomy should be developed in the present revision show some variations. At a general level, the committees are all in favor of development, but it is quite clear that the provincial committee goes the furthest, both regarding development as a purpose and aim of the autonomy and regarding the concrete proposals.

All committees agree that the foundations of the autonomy should be kept, and at the same time the autonomy should be developed. However, there may be slightly different interpretations regarding what development really implies, at what pace it should happen, and who should decide when to develop what. Whereas one of the main ideas of the provincial committee reports is that Åland should manage its own affairs as much as

possible, the state committee establishes also aims of the state, which may not always correspond with this wish from Åland. Rather than defining the exact content or an end point for development, the joint committee opens up potential for future changes and more flexible procedures.

Regarding the aims for the ongoing revision, the three committees seem to agree that there is a need for a revision of the Act on Autonomy of Åland, at least to some extent, to be in line with the developments in society and other legislation. They all ascribe to this need due to changes in the surrounding world, including domestically in Finland, developments which all call for an up-to-date legislation. All three committees also see a need for a dynamic development which provides room for greater flexibility.

The committees have identified the legislative competences and the economic system as two crucial domains in the revision. Åland would be interested to extend Åland's mandate in those spheres more than what the state is willing to allow. While the provincial committee proposes a fully residual system, that is, only state competences would be listed in the Autonomy Act, and Åland would have the authority to take over all other domains of legislation, the state committee resists and seems to prefer a subject by subject approach where the Parliament of Finland should have the last word. The joint committee proposes a compromise that goes quite far in the residual direction and allows future changes.

Regarding the economic system, Åland wants taxation rights and an update of the system for the calculations of money transferred from the state to Åland. The state committee, referring to the Ministry of Finance, is not in favor of an Åland takeover of taxation rights. The joint committee expresses understanding for the Åland situation, but in the end is not proposing a takeover, yet agrees to some adjustments in the system for economic equalization.

As regards the legislative control, the provincial committee wants a more symmetrical system which not only supervises legislation issued by the Åland Parliament, but also supervises how state law complies with the autonomy. Neither the state nor the joint committee discusses this suggestion in their reports. Instead, they highlight the issue of the relationship between EU law, Åland, and the state.

It is thus clear that, as regards these three concrete proposals for development in terms of enhancing the autonomy of Åland, the provincial committee is the most ambitious, the state committee the most restrictive, while the joint committee ends up somewhere in between the other two.

4. Discussion

In this section, three dimensions of interest that have been found in preceding chapters will be further discussed. Firstly, the dimension of language and culture, secondly, the dimension of development of the autonomy, and finally, the dimension of the relationship between Åland and Finland. Within these dimensions, examples of proposals from the reports that have made it into the words of the proposed Act will be given.

4.1 The issue of language and culture

As has been described, the original purpose of protecting the Swedish language and culture on Åland is not contested but rather cherished by all the committees, and this purpose is also explicitly entrenched in the proposed Act. In the introductory chapter of the proposed revised Autonomy Act, the heading of the first paragraph in the Act of 1991, “Autonomy of Åland”¹⁰⁰, has been supplemented by the new heading “The autonomy and its purpose”¹⁰¹. The text of this paragraph has been expanded in the proposed Act. In paragraph 2 it is stated that the autonomy is to guarantee that the Swedish language and culture and the local traditions of Åland are preserved. This is a new provision in the Act, which is a codification of the principle from the Åland Agreement mentioned above. It is also stated that the official language of Åland is Swedish, which is a new way of phrasing a provision that is found also in the Act of 1991.

Interestingly, besides establishing that the original purpose of the autonomy is to preserve the Swedish language and culture, the provincial committee does not discuss the Swedish language and culture at all in its report. This may seem surprising, knowing that the issue of maintaining and developing a functional autonomy in Swedish in a state that is officially bilingual, but predominantly Finnish speaking, is perceived as a demanding task.¹⁰² However, there is agreement among scholars that the legal base for the protection of the Swedish language in Finland and especially on Åland is well entrenched, and the committee might have considered language matters to be a question of implementation and policies rather than of legislation.¹⁰³ However, the linguistic situation may have changed

100 In Swedish “Självstyrelse för Åland”.

101 In Swedish “Självstyrelsen och dess syfte”.

102 See for example Suksi 2005 p.533, Ahtisaari/Folktinget 2012, p.6.

103 Finland is bilingual according to the constitution. Chapter 2, Section 17 in the Constitution of Finland, that deals with issues of the right to one’s language and culture states the following: “The national languages of Finland are Finnish and Swedish. The right of everyone to use his or her own language, either Finnish or Swedish, before courts of law and other authorities, and to receive official documents in that language, shall be guaranteed by an Act. The public authorities shall provide for the cultural and societal needs of the Finnish-speaking and Swedish-speaking populations of the country on an equal basis.” The Autonomy Act of Åland 1991, Chapter 6, section 36, states that the official language of Åland shall be Swedish, which is the language to be used in State administration, Åland administration as well as municipal administration on Åland. In some debates, the protection of language and culture

somewhat, and in a negative direction since 2010.¹⁰⁴ However, language issues are discussed to some extent in the state committee report, and thoroughly in the joint committee report.

Some changes regarding language and culture have been introduced in the proposed legislation. For example, it is stipulated that the language of the air traffic control on Åland is to be Swedish and English, and that state-owned companies should use Swedish in communication with Åland.¹⁰⁵ In the Act of 1991 it is stipulated that the language for written communication between authorities in Finland and on Åland is to be Swedish. In the proposed Act, the stipulation is extended to include also oral communication, which is a codification of practice.¹⁰⁶ In addition, one of the motivations for transferring more competences to Åland is the difficulties to have service in Swedish in certain domains.¹⁰⁷

4.2 Development of the autonomy

The three committees seem to agree that the autonomy is a dynamic regime that has evolved over time in such a direction that the legislative competences as well as the capacities of Åland has grown. The joint committee writes that the previous and present Autonomy Acts have been adapted to the preparedness, knowledge and resources to manage public tasks available on Åland. It describes that over the years Åland has learnt from its experiences and developed its abilities to meet new requirements resulting from social change, internationalization and globalization.¹⁰⁸ Key objectives of the two previous revisions, in 1951 and 1991, have been to continue to ensure the Åland population the strong guarantees for their nationality that were included in the Åland Agreement, as well as to modernize the law and resolve interpretation problems that had arisen regarding the division of competences. Both revisions resulted in more legal areas being transferred to the competence of Åland.¹⁰⁹

The committees also agree that the general trend has been that Åland has been more eager to take over new domains of competence, while the state has been more hesitant. For instance, the provincial committee report describes that the direction of the previous revisions has been such that the competences of Åland have been expanded, and also that the general trend has been that Åland has suggested more comprehensive transfers of

has even been considered as too far reaching, as notes Hannikainen 2004, p 83. For a discussion on how questions about the balance between human rights and the mechanisms for protecting the language and culture on Åland have arisen in the debate from time to time, not least when Finland has ratified various declarations and conventions, see Öst 2011, 78–81.

104 The think-tank Agenda has published a worrying recent assessment of the situation of the Swedish language in Finland, including on Åland. See Suominen 2017.

105 Joint committee 2017, p. 75, p. 167.

106 Joint committee 2017, p. 190, §87.

107 Joint committee 2017, p. 91, 139.

108 Joint committee 2017, p. 89.

109 Joint committee 2017, p. 88.

competences than has finally been realized.¹¹⁰ As another example, the state committee writes that over the years Åland has repeatedly wished that competence in the domain of taxation should be transferred to Åland, while the state has been negative to such proposals.¹¹¹

It is evident that the provincial committee considers the principle that Åland should decide for itself to be one of the purposes of the present Autonomy Act, as well as the main principle for the development of the autonomy into the future. As a matter of fact, this principle is repeatedly stated in the report, and appears to be both the main aim for, and the main argument of, the provincial committee.

This is not the case in the state committee report, which takes a more functional stance, assessing the needs for a revision from the perspectives of functionality, adequacy and possibilities. The state committee finds it natural that the authority of the autonomy should expand over time and refers to the government program aim that the autonomy should be strengthened, but also points out that development could mean other things besides taking over competences. In its discussion on competences, the state committee report also points out that it is important to take into account the capacities of Åland. Regarding the words from the proposition of 1920, the state committee is quoting them, but does not connect to these words in the rest of the report.¹¹² It may be the case that, while the provincial committee regards the words from the proposition of 1920, that Ålanders should have the opportunity to arrange their own lives as freely as is possible for a region that is not a state, as one of the fundamental principles for the autonomy; it is less clear to what extent the other two committees are supporting such a view.

At the level of concrete proposals, the state committee precludes the idea that Åland alone would decide on transfer of legislative competences, since it would not be consistent with the legislative mandate of the Parliament of Finland. It also establishes that competences in the domain of taxation cannot be transferred to Åland to such an extent that the state would completely refrain from its possibilities to affect the substantive contents of Åland's legislation on taxation.¹¹³

As can be expected, the joint committee is balancing the views of the state and those of the autonomy. The joint committee assesses that over the years Åland has enhanced its competences, and that through a dynamic system Åland can take more responsibility for the development of the autonomy in relation to changes in the surrounding world.¹¹⁴ Rather than proposing measures for immediate and extensive development of the autonomy, the

110 Provincial committee 2013, p. 10.

111 State committee 2013, p. 37.

112 State committee 2013, pp. 17–18, 51, 55.

113 State committee 2013, p. 63.

114 Joint committee 2017, p. 89.

joint committee is open for possible future development, while also ensuring that the state will retain influence.

By contrast to the guarantees for language and culture, the statement from the proposal for the first Autonomy Act regarding that Ålanders should have the opportunity to arrange their own lives as freely as is possible for a region that is not a state has not been codified as such in the proposed act, but can only be discerned in parts that are specifying the authority of Åland.¹¹⁵

The proposed Act on Autonomy, Chapter 1, §1, para.3, in its first sentence states that legislative competence, taxation rights as well as economic self-determination belong to the autonomy within the framework of what the autonomy legislation specifies. Such a phrase has not previously been included in the Autonomy Act, but is considered by the joint committee as a fundamentally important introduction to the law.¹¹⁶

As concerns the concrete proposals, the fully residual system for delimitation of legislative competences proposed by the provincial committee has not made it into the proposed Act. Instead, the proposed Act contains one list of state competences that can be transferred only by changing the Autonomy Act, one list of state competences that can be taken over by Åland after consultation with the state, and one list of state competences that can be transferred through ordinary state legislation with the consent of the Åland Parliament.

However, at the time of writing it is clear that in their commentaries several ministries have objected to the expansion of competences of Åland. It will be interesting to see if in the end these objections will have an impact on the legislation.

Regarding the economic system, the proposed Act is more restrictive in granting Åland competences regarding taxation than the provincial committee had wished for. The system for the calculations of money transferred from the state to Åland will be somewhat modified. However, in the end, the words of the Act that the committee proposes does not make it any easier to understand how the system works, and the changes proposed are rather moderate in relation to the original wishes of the provincial committee. At the time of writing, however, it is said that the system proposed by the joint committee will not work in practice, which is why stakeholders are looking at possible other varieties.

As indicated, all the committees agree that the autonomy of Åland is a dynamic regime, and that it is natural that it should develop over time. Interestingly, this is encoded in the proposed legislation in a new provision, according to which the objective of the legislation is to strive for a system where the Åland autonomy can be strengthened and changed as society develops.¹¹⁷ Pursuant to the joint committee report, the means to accomplish

115 Joint committee 2017, pp. 114–115.

116 Joint committee, 2017, pp. 114–115. In Swedish: “Lagstiftningsrätt och beskattningsrätt samt ekonomiskt självbestämmande hör till självstyrelsen inom de ramar som självstyrelselagstiftningen anger.”

117 “Genom denna lag eftersträvas en ordning där det åländska självbestämmandet kan stärkas och förändras

dynamic development is to give the Åland authorities more leeway to determine the rate at which Åland's jurisdictions can be extended.¹¹⁸

4.3 Relationship between Åland and Finland

In essence, all sections and themes in the three reports, at least implicitly, relate to the issue of the relationship between the state and the autonomy. The topic is introduced by the provincial committee, which expresses the wish that politics should have precedence over law in the relationship between the state and the autonomy, so that suspicion should be replaced with trust and legislative fights and control with political dialogue.¹¹⁹ The committee also introduces “third parties” into the equation when proposing that international guarantees should be reintroduced and that the control of whether a piece of state legislation is consistent with the Autonomy Act should be referred to an independent body. Besides these claims, the provincial committee report is mostly centered around Åland as an actor, rather than on the state or other actors in a multi-level-governance system. As has been noted above, the provincial committee report repeatedly claims that Åland should have more authority, and that Åland should decide for itself.¹²⁰ However, the committee acknowledges that national effects of the proposed changes must be evaluated and that consultation with the state is needed.¹²¹ The provincial committee report also highlights that it seems that the autonomy system is based on the idea that Åland is considered equal to the state.¹²²

The state committee explicitly forwards the perspective of the state. It takes into account the state responsibilities in relation to international agreements, to the EU membership and in relation to individual citizens.

The state committee is in favor of enhanced political dialogue, but also points out that autonomy needs to be based in legislation. Just like the provincial committee, the state committee maintains that the autonomy of Åland should be based on trust. In the state committee this is mentioned in the context of the provincial committee proposal to restore a supervisory function, similar to the original right of Åland entrenched in the guarantees, to communicate complaints to the League of Nations. The state committee considers such international guarantees to be superfluous, and instead refers on the one hand to trust between Åland and Finland, and on the other to the constitution of Finland.¹²³

i takt med samhällsutvecklingen.” Joint committee 2017. Proposed Act §1.

118 Joint committee 2017, pp. 114–115.

119 Provincial committee 2010, pp. 14, 34, 37.

120 Provincial committee 2010, pp. 14, 34, 37.

121 Provincial committee 2010, p. 31, 21.

122 Provincial committee 2010, p. 32.

123 State committee 2013, p. 66.

As expected, the joint committee balances the perspective of the autonomy and that of the state. The joint committee recognizes that Åland could take more responsibility for its own development, and also stresses the importance of contact, responsiveness and dialogue in between Åland and Finland.¹²⁴ The committee also highlights the interests of the state, saying that both parties shall have the opportunity to achieve their political goals within their respective areas of competence, without political friction arising and without compromising the legal security of individuals.¹²⁵

An illustrative passage can be found in the detailed motivations, where it is said that on the one hand, the most important instruments for the development of the self-government are different forms of consultation and cooperation between the authorities of the state and those of the autonomy, and on the other hand, the possibility of taking over areas of legislative competence.¹²⁶ It is difficult to assess how much weight should be given to the order of the two parts of this sentence. The part about consultation and cooperation comes first, so does this mean that it is seen as the more important of the two parts, or are they considered to be of equal importance? The paragraph highlights the question of separation and contact, or perceptions about how close or how far apart Åland and Finland should be.¹²⁷ The provincial committee proposals for more competences for Åland, as well as the call for trust and less control in the relationship, might be interpreted as a wish for a more separate relationship. The state committee, on the other hand, wishes to strengthen the ties between Åland and Finland. In addition, the joint committee emphasizes the need for good contacts and cooperation. Whereas the state committee thinks that it would be unnecessary to reintroduce international guarantees for Åland, the joint committee has considered the possibility of reintroducing international guarantees for language and culture. However, it has been found that there is no international organization with a suitable mandate that might work as a guarantor.¹²⁸

In the introduction of the joint committee report, summarizing the proposal of the committee there is a section on “cooperation” which includes two proposals for development of the co-operation between the two parties. In this section it is firstly established that when authorities are planning for measures that are of significance for Åland there is need to inform, and if needed, also negotiate with Åland on these matters. This is encoded in the proposed Act, §50. Secondly, the joint committee suggests a mechanism to coordinate Åland issues in the government of Finland, which is encoded in §52.

124 Joint committee 2017, p. 89.

125 Joint committee 2017, p. 68.

126 Joint committee 2017, p. 115.

127 Related concepts are “segregation” and “integration”, which are discussed in Spiliopoulou Åkermark 2013, p. 25.

128 State committee p. 65, Joint committee p. 110.

Furthermore, the provincial committee describes Åland as an equal to the state. Since Åland has exclusive legislative powers in certain domains and the relation between the autonomy Act and the constitution is so particular, the claim of the provincial committee that Åland is an equal with the state, at least within certain domains, seems to be legitimate.¹²⁹

The functional approach of the state committee report, trying to assess needs, raises questions regarding what Åland really is and to what Åland can be compared, if indeed it can be compared to anything at all, or if it is a case of “sui generis”. As has been described, it seems that the state committee aspires to measure needs for a revision on the basis of comparisons with other entities. Even though the committee acknowledges that Åland has its own particularities, and cannot be compared directly with other autonomous regions, it compares Åland both to autonomous regions in other parts of the world and to regions without legislative power in Finland.¹³⁰ The provincial committee, as well as the joint committee, make comparisons to other autonomous regions, but not to other regions within Finland. Comparing Åland to regions in Finland without legislative powers would imply that Åland is qualitatively similar to any other region in Finland. By contrast, comparing Åland to other autonomies in the world would underline the uniqueness of Åland within Finland.

The functional approach of the state committee report also raises questions of who is to assess and determine the needs, as well as to assess when Åland is ready to take over one domain of competences or another. This question is clearly answered in the provincial committee report – it is Åland itself. The state committee, however, taking the state perspective, gives priority to judgements made by the state in relation to the EU, to other international undertakings and to the responsibility of the state towards the individual.

An interesting new feature in the Act proposed by the joint committee, and one which may be seen as an indication of a view of Åland as an actor that is at least in some respects equal to the state, is the stipulation regarding on what grounds a member of the Åland government can be prosecuted. The committee states that since the authority of the Åland government, within the frame of the competences of Åland, is fully comparable to that of the government of Finland, the grounds for protection of a member of the Åland Government should be similar to what applies to a member of the Government of Finland. It is said that the aim of this provision is to obstruct the possibilities to use reporting to the police of members of the Åland Government for political purposes.¹³¹

Another initiative that points in the same direction is the proposal to strengthen the mandate of the Delegation for Åland issues in the process of legislative control, as well as in dispute resolution between the autonomy and the state regarding economic matters. The

129 See Suksi 2005, pp. 530 and 534 for a legal assessment.

130 State committee 2013, pp. 53–55.

131 Joint committee 2017, p. 121.

Delegation is a joint body with representatives of both the autonomy and the state, and may as such be considered as impartial.¹³²

5. Concluding remarks

The main question in this article has been what intentions Åland and Finland, respectively, hold regarding the self-government of Åland, and how this is mirrored in the ongoing process for a revision of the Åland Autonomy Act. This has been studied through a comparison of three core documents in the revision process, issued by three parliamentary committees, one Ålandic, one Finnish and one joint. The article has analysed how the parties describe the background and development of the autonomy, the original purpose of the autonomy, and the aims for the fourth generation of autonomy legislation. Some of the main concrete proposals for changes in the Autonomy Act have been discussed in order to see if the intentions of the two parties coincide or differ in those domains. Finally, the analysis has tried to discern how the parties perceive their relationship and what is the perception of their own role and the role of one another.

The paper started out with some conceptual observations made in previous research, and will now return to some of these vantage points. This analysis can confirm the narrative of Åland as a dynamic and adaptable, yet continuous, regime. It is easy to endorse the earlier mentioned description of the autonomy of Åland as a conflict that has been institutionalized or constitutionalized – made manageable under the rule of law.

The Åland Example is a concept that relates to three or sometimes four core problems and their respective solutions, i.e. regarding power-sharing, security, identity and minority culture, and finally economy (which is sometimes excluded from the analysis). It can be noted that the three central sentences from historic documents, used by the committees to describe the origin and original aim of the autonomy, mirror three of the components of the Ålands Example. The sentences relate to minority issues, self-government and peace and security in the region.

132 Half of the members of the Delegation are appointed by the Finnish Government and half by the Åland Parliament. In addition to the members, the Delegation has a chairperson, who by tradition is the Governor. The Governor represents the state of Finland on Åland, but is appointed in co-operation with the autonomy.

Origins of the autonomy – three central sentences from official documents

<p>Finland declares its preparedness to <i>assure and to guarantee to the population of the Åland Islands the preservation of their language, of their culture and of their local Swedish traditions.</i></p> <p>The Åland Agreement from 1921</p>
<p><i>Ålanders should have the opportunity to arrange their own lives as freely as is possible for a region that is not a state.</i></p> <p>The Government bill for the first Autonomy Act in 1920</p>
<p><i>The interests of the world, the future of cordial relations between Finland and Sweden and the prosperity and happiness of the Islands themselves cannot be ensured unless certain further guarantees are given for the protection of the Islanders and the islands are demilitarised and neutralised.</i></p> <p>League of Nations' decision of 24 June 1921</p>

The principle of protection of language and culture found in the Åland Agreement seem to be unproblematic to the committees, whereas it is more unclear how far the parties are willing to go regarding the right of Åland to manage its own affairs. For instance, the committees have identified the division of legislative competences and the economic system as two crucial domains in the revision. It is clear that Åland would be interested to extend its mandate in those spheres more than what the state is willing to allow.

It can be maintained that the principles described above are still relevant today, and that they are discussed in relation to the revision of the Autonomy Act and are covered in the proposed Act, even though external security issues are not within the competence of Åland.

In this context, it is interesting to note that a new feature in the proposed Act is that the demilitarisation and neutralisation of the islands has been mentioned. The joint committee maintains that this provision is of a declaratory nature and does not change status quo. It can however be interpreted as a codification of an understanding of the demilitarisation and neutralisation as a part of the Åland Example. In the detailed explanatory comments, the joint committee maintains furthermore that the neutralised and demilitarised status of Åland have over time become significant matters for the Ålanders, which seems to be the motivation as to why the provision is introduced in the act.

Among the conceptual observations, compromise has been discussed as the essence of autonomy solutions, and it has also been said that the Åland Example starts off from the basic premise of accepting a compromise and a learning to live with it. It is often said that after the League of Nations decision in 1921 all three parties, Åland, Finland and Sweden,

were at least partly unhappy with the solution, but they learned to live with it and have made it work since. Sweden has kept a very low profile regarding Åland, which may be one of the success factors. Finland has been very apt to stick to the rule of law and keep to its international undertakings – among others as regards Åland.

The provincial committee emphasizes the status of Åland under international law and the original agreements. It also wishes to restore the international guarantees and proposes a symmetrical legislative control of state law and autonomy law. Åland would wish to have external and impartial involvement, which is not prioritized by the state. Such proposals remind us that when the Åland matter was settled at least three parties were directly involved and concerned: Åland, Finland, and Sweden. In addition to this, the great powers Great Britain, France and Russia had an interest in the security political dimension.¹³³ In the revision process, in contrast, only two actors are involved – Åland and Finland. What actors are involved and what position they have will affect the outcome of negotiations, and probably also the quality of the compromise.

It has been mentioned several times in this paper that the joint committee report is balancing the proposals and perspectives of the provincial committee and the state committee, or in other words those of Åland and those of the state. However, there has not been any attempt to quantitatively assess how much of the provincial committee and the state committee proposals and perspectives respectively have been included in the final proposal. It is also outside the scope of this paper to do so. However, one of the premises of this paper has been to consider the state of Finland and the self-governed Åland as distinct actors. It was stated in the introduction that this is a simplistic view, since there is always more than one single actor or one single agenda. It has been found that such an assumption needs to be problematized, also in respect of the position of the actors in a process of negotiation, especially in terms of equalities or inequalities in status, resources and power.

It may be said that within the framework of the autonomy system Åland is an equal to the state. However, the revision regards the framework itself, and in this case the positions of the parties are not as easy to establish. Hannikainen points out that after all, an autonomous status only gives a partial right of self-determination, the sovereign is above the autonomy and has the highest authority.¹³⁴ Even if Åland is an equal to the state within the framework of the autonomy, the question remains who is to decide when the framework itself is to be changed and on what grounds the influence of the parties respectively should be determined. If needs assessments are made as a basis for deciding on changes of the system, it needs to be established who is to define those needs. It can be added that it is not enough to look only at the quality and quantity of the self-government within the autonomous

133 For discussions on the role of external actors, including kin-states, see Ghai 2011, p. 103, and Spiliopoulou Åkermark 2013, p. 20–21.

134 Hannikainen1998, p. 86.

territory – in order to protect language and culture, it is also necessary that the state is able to accommodate the linguistic minority and provide services and communication to the extent needed.¹³⁵ For the autonomy, this aspect is much more difficult to influence than the content of the autonomy itself, since again, it is outside of the framework where the autonomy might be considered as an equal.

135 Spiliopoulou Åkermark 2013, p. 24.

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

Rhodri Williams

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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

About the author: Rhodri Williams is an international lawyer with twenty years of experience working on human rights, rule of law and transitional justice issues in conflict-affected countries. He grew up and studied law in the United States but has lived on the Åland Islands and in Stockholm, Sweden, since 2004, and currently works as Senior Legal Expert for the International Legal Assistance Consortium. Mr. Williams wishes to thank the Åland Islands Cultural Foundation (*Ålands kulturstiftelse*) for funding the research for this report, and the Research Council of the Åland Islands Peace Institute, as well as Sören Silverström, Chema Arraiza and José-Maria Arraiza, for their invaluable support and advice in writing it.

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.¹ 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).²

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

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.³ 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.⁴ The application of these rules has frequently been controversial.⁵ 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

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.⁶

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,⁷ 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.

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.⁸ 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:

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 [...]⁹

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”.¹⁰ 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.¹¹ 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.¹²

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.¹³ 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”.¹⁴ Part II of the Convention is devoted to land, including an obligation to recognize “rights of

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.¹⁵

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.¹⁶ 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.”¹⁷ Specifically, indigenous peoples are protected from forcible removal from their lands,¹⁸ accorded the rights to “own, use, develop and control” their territories,¹⁹ and to seek legal recognition of their rights from the state,²⁰ as well as redress for lands “which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.”²¹ 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.²²

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

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.²³ 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.²⁴ 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.²⁵

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.²⁶ 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 2017.²⁷

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.

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.²⁸ 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

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,²⁹ 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.³⁰

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.³¹

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.³² 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.³³ 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.³⁴ 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.³⁵ 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).³⁶

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.³⁷ 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.³⁸ 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,³⁹ Finland also represented an example he hoped could help him achieve his modernizing aim of abolishing serfdom in the Russian Empire.⁴⁰

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.⁴¹ 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.⁴² 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.⁴³

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.⁴⁴ Moreover (as with modern Åland and Finland), the Grand Duchy was separated from the rest of Russia by a customs boundary.⁴⁵ 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.⁴⁶ 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.⁴⁷

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.⁴⁸ 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.”⁴⁹ 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.⁵⁰

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.⁵¹ 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.⁵²

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

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.⁵³ 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 1920.⁵⁴ 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.⁵⁵

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.”⁵⁶

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 1914.⁵⁷ 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.⁵⁸

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 tillsatta 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."⁵⁹

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.⁶⁰ 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.⁶¹ 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.⁶²

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:

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.⁶³

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.⁶⁴ 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.⁶⁵ 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.⁶⁶ Moreover, those Finnish-speakers who did move to Åland were entitled both to vote and to receive Finnish-language education.⁶⁷

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.⁶⁸

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.”⁶⁹ 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.⁷⁰

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.⁷¹

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...”⁷² 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,⁷³ 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

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.⁷⁴

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.⁷⁵

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."⁷⁶ 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:⁷⁷

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

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.⁷⁸

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.⁷⁹

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,

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.⁸⁰ 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.”⁸¹

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.⁸² 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.⁸³ 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.⁸⁴

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.⁸⁵ 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.⁸⁶ 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

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.⁸⁷

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.⁸⁸ 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.⁸⁹ 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.⁹⁰

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.⁹¹ 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.⁹² 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.

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.⁹³ 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.⁹⁴ 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.⁹⁵ 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.⁹⁶

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.⁹⁷ Although it was clear that the proposed law could be applied relatively liberally,

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.⁹⁸

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.”⁹⁹ 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.¹⁰⁰ 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.¹⁰¹ 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.¹⁰² 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.¹⁰³

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.¹⁰⁴ 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.¹⁰⁵

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.¹⁰⁶ 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.¹⁰⁷ 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.¹⁰⁸ 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.¹⁰⁹

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.¹¹⁰

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.¹¹¹ 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.¹¹² 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."¹¹³ 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.¹¹⁴

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.¹¹⁵

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."¹¹⁶ These have taken the

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.¹¹⁷

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.¹¹⁸ 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.¹¹⁹

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.¹²⁰ In addition, as much as one-third of agricultural land, pasture and forest was found to be owned by the beneficiaries

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.¹²¹ 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.¹²²

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.”¹²³ 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.¹²⁴

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.¹²⁵ 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

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.”¹²⁶

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.¹²⁷ 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.¹²⁸ 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.¹²⁹ Concerns about legal certainty were heightened by rejection decisions issued without reference to how these criteria were applied,¹³⁰ 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.¹³¹

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

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.

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”.¹³² 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”.¹³³ 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

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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Duration: 5.10.2018 – 07.01.2019

Format: The course will be taught online on a digital e-learning platform through a rich selection of resources including course literature, audio and video material, and a discussion forum. All participants will get log-in details and further instructions upon registration. The course presupposes an interactive use of the digital course platform by the students. The language of instruction is English. The course is offered in a cooperation between the Åland Islands Peace Institute and the Open University/Åland University of Applied Sciences.

Prerequisites: The course approaches territorial autonomy from an interdisciplinary perspective, focusing on law and political science. A bachelor's degree in the humanities (political science, peace and conflict studies, international law, public administration or other relevant disciplines) or equivalent experience and a proficient command of English are prerequisites for successful participation. Each module includes obligatory tasks that need to be fulfilled in order to proceed to the next module.

Learning objectives: The course is an introduction to territorial autonomy in theory and practice, and draws on the so-called "Åland Example". The aim of the course is to provide participants with a broad academic framework for discussing territorial autonomy from different perspectives, among others against the background of concepts such as self-determination, power-sharing and minority rights. After completion of the course the student should:

- have a solid knowledge about territorial autonomy and the Åland Islands case based on a broad academic framework of different perspectives
- be able to relate the concept of autonomy to related concepts such as power-sharing, self-determination and minority rights
- be well acquainted with the characteristics of the Åland Islands' special status regarding demilitarisation, neutralisation and cultural and linguistic safeguards
- have knowledge about the processes of development of the Åland autonomy within the Finnish national political system
- be able to critically analyse and employ mechanisms of territorial autonomy to different international situations, and
- be able to formulate, analyse and discuss central theoretical concepts of territorial conflict management.

Contents: The course encompasses 5 modules, as well as introductory reading materials and a final essay of 4,000 words.

Module Themes

- Political power-sharing and institutional solutions for autonomy
- Linguistic safeguards, the 'right of domicile' and diversity issues
- Security perspectives: demilitarisation, neutralisation, collective security
- The challenge of multi-level governance and regional Integration
- Tools for conflict resolution and case studies

Approach: The Åland Example is used as the main case study. We will discuss the demilitarisation and neutralisation, the autonomy regime, as well the cultural and linguistic safeguards pertaining to Åland. A focus will be on the development of the regime over time, including more recent shifts in the regime. The course will also discuss the relevance of territorial autonomy as a possible tool for conflict resolution. Students shall be encouraged to critically reflect upon the relevance of autonomy as a potential solution to ethno-political conflicts.

Successful participants will be awarded 5 credit points based on the European Credit Transfer and Accumulation System (ECTS). The workload thus corresponds to approximately 132 hours of

work. Student work includes compulsory reading, audio and video material, regular participation in forum discussions, and short essays to be completed within every module. A final essay (4,000 words) is due at the end of the course.

Examination: A final grade on grading scale A-E (where A is the highest possible grade) will be awarded for the final essay upon completion of the course and its compulsory tasks. Regular and substantive participation within deadlines across all modules is a prerequisite for being able to submit the final essay. A certificate is issued by the Open University/Åland University of Applied Sciences for those that have successfully completed the course.

Readings: All compulsory course material will be provided on the e-platform. Prior to the start of the first Module, participants will be required to read two introductory texts (approximately 40 pages).

Contact person: Please contact the main course teacher Sia Spiliopoulou Åkermark (sia[at]peace.ax) if you have questions about the course. The homepage of the Åland Islands Peace Institute can be accessed here: www.peace.ax

Registration: You can register for the course by sending an email to open@ha.ax with the name of the course, your name, birthdate, brief information about your education and relevant professional experience at the time of application and your contact details. Registration opens on 7th June.

Call for Papers

The editors welcome submissions of manuscripts that focus on, or relate to, the topics and intersections of security, autonomy arrangements, and minority issues. Apart from reviewed articles JASS also welcomes other kinds of contributions, such as essays, book reviews, conference papers and research related project notes.

Articles should not exceed 12 000 words (excluding references) and be written in British or American English. For other contributions, such as book reviews, conference reports, project- and research notes, the maximum length is 4 000 words. The layout of the text should be in single-column format and kept as simple as possible.

Manuscripts to be considered for Issue II/2018 are invited for review by 1st of September 2018. The core theme for this Issue shall be demilitarisation, neutralisation and contemporary peace and security trends.

The deadline for Issue I/2019 is 15th of January 2019.

Further details on the submission process can be found at:

www.jass.ax/submissions

