REPORT FROM THE ÅLAND ISLANDS PEACE INSTITUTE

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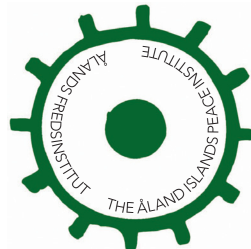
International guarantees for territorial autonomies. Legal mechanisms, global considerations and the Åland Islands

Internationella garantier för territoriella autonomier.
Rättsmedel, globala aspekter och fallet Åland.

Sia Spiliopoulou Åkermark



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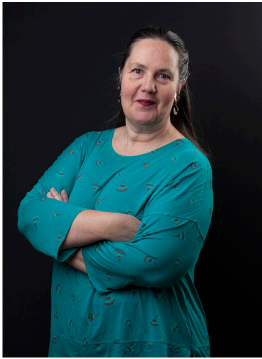

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Her work has focused on two strands: first, the legal position of minorities, indigenous people, language rights, diversity accommodation and territorial autonomy arrangements. Second, concepts and practices of security, the use of force and conflict prevention. Among her many works are the books: *Justifications of Minority Protection in International Law* (1997), *International Obligations and National Debates: Minorities around the Baltic Sea* (co-edited, 2006), *The Åland Example and its Components – Relevance for International Conflict Resolution* (ed., 2011) and *Demilitarization and International law in Context – The Åland Islands* (2018, co-authored with S. Heinikoski and P. Kleemola-Juntunen).

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Preface

This report focuses on the question of what mechanisms are available at the international level for monitoring of the status of territorial autonomies and for settlement of disputes between such substate entities and the state. It identifies sub-issues, key concepts, legal norms and dispute settlement instruments with a focus on international legal frameworks and international experience. The report focuses on the Åland Islands in Finland, which became an autonomous territory in the 1920's. The autonomous status, protection of the Swedish language and culture of the islands, as well as the demilitarization and neutralization of the islands, were all parts of a solution to a dispute between Finland and Sweden over the status of the Åland Islands, a dispute that also included claims for self-determination by the Ålanders. The dispute was resolved through an international process involving the League of Nations (LoN), with international guarantees for the status of Åland included from the outset.

In this report, the author clarifies that the term "international guarantees" has been used in two different senses. On the one hand, it can refer to substance, referring to the areas of law and policy that are considered to be in need of protection. On the other hand, it can refer to processes. In 1921, the autonomy of the Åland Islands was granted the right to appeal to the League of Nations if it considered that Finland had not respected the substance of the guarantees. However, the organization ceased to exist in 1946, and its role as guarantor was not taken over as such by the UN. The UN (in 1950) did not reject the guarantees, but the LoN mechanism was suspended and in the report the author calls the guarantees "frozen".

The question of whether the international guarantee mechanism can be "unfrozen" has been raised several times in Åland politics since the dissolution of the League of Nations, and since 2010 it has been one of the issues discussed in the ongoing revision of the Åland Autonomy Act. In this process, it has been discussed what international mechanisms there are which could potentially be used to monitor the status and settle disputes between Åland and the state. In this context, it is easy to understand why the Åland Government asked the author to investigate the subject of this report. While the report focuses on the Åland Islands, it also discusses how recent international research has approached the issue of dispute resolution and monitoring of autonomy settlements and minority issues both historically and today at the global level, and overall the report has much broader relevance than just in the Åland case, as the issues discussed are of interest to territorial autonomies and their host states worldwide.

The report is in line with the specialization of the Åland Islands Peace Institute, which focuses its research on issues related to territorial autonomy, minority issues, and demilitarization/neutralization, and which according to its statutes has the status of the Åland Islands as a vantage point. We are therefore pleased to publish this report in our report series. The report has been written by the former Director of the Åland Islands Peace Institute – Sia Spiliopoulou Åkermark, who led the institution with dedication for 17 years and at the same time contributed to the Ålandic community and international research with her profound insights into international law and territorial autonomy arrangements. Fortunately, as she has now moved on to a position as Professor of Law specializing in autonomy and self-government at the Åbo Akademi University in Turku, Finland, not too far from the Åland Islands – both the local society on Åland and the wider national and international audience interested in her fields of expertise can continue to benefit from her knowledge, perhaps also by reading this report to learn more about the mechanisms of international dispute settlement.

Susann Simolin, Director, the Åland Islands Peace Institute

Svensk sammanfattning

Rapporten som nu publiceras av Ålands fredsinstitut bygger på den utredning som jag presenterade för Ålands landskapsregering i juni 2024. I denna studie har jag:

- undersökt den historiska erfarenheten av rättsliga mekanismer för att hantera tvister mellan autonoma regioner och stater,
- analyserat de ”frysta garantier” som givits för Åland,
- redogjort för aktuella forskningsinriktningar, initiativ och tillvägagångssätt för att studera rättens roll och tvistelösning i territoriella autonomiarrangemang, och slutligen,
- kommenterat befintliga tvistelösnings- och övervakningsmekanismer och deras möjligheter och begränsningar.

Rapporten ger först en bakgrund till frågan om internationella garantier (avsnitt 1–2) och försöker besvara frågan om varför Åland inte utnyttjade de möjligheter som fanns före andra världskriget (avsnitt 3). Därefter behandlas situationen efter andra världskriget (avsnitt 4) följd av forskningens syn på frågan om tvistelösning och övervakning av autonomilösningar historiskt och idag (avsnitt 5) på global nivå. I avsnitt 6 och 7 återkommer vi till Åland och Finland för att till sist dra övergripande slutsatser i avsnitt 8.

Begreppet *internationella garantier* kan förstås på två olika sätt. En snäv tolkning av begreppet täcker endast klagomekanismer och olika länders och organisationers ställning som garanter. En bredare förståelse av samma begrepp täcker både dess processuella aspekter liksom de materiella regleringarna om Ålands ställning, inklusive territoriell autonomi, språkligt och kulturellt skydd samt demilitarisering och neutralisering. Genomgången konstaterar att de materiella regleringarnas folkrättsliga ställning inte ifrågasätts och har bekräftats många gånger. Ålands folkrättsliga ställning anses härmed ha uppnått sedvanerättslig status och i stor utsträckning blivit även en förpliktelse *erga omnes*. Den exakta utsträckningen av sedvanerättsliga regler och av förpliktelser *erga omnes* var inte en del av utredningen och är inte heller inkluderade i rapporten.

De processuella aspekterna i begreppet ”internationella garantier” rör Ålands möjlighet att föra fram klagomål eller att anhängiggöra frågor om de folkrättsliga dimensionerna beträffande denna ställning, samt staters och internationella organisationers möjlighet att aktivera liknande frågor inför rättsliga eller kvasi-rättsliga instanser. I rapporten används termen ”frysta garantier” om de processuella möjligheter som fanns för Åland inom Nationernas förbund (se avsnitt 2 och 3 i rapporten). Med garantier menas här möjligheten för Ålands lagting (då landsting) att aktivera en internationell behandling av de åtaganden som gjordes om Åland i juni 1921. Artikel 7 i Ålandsöverenskommelsen av den 27 juni 1921 löd enligt följande:

> Nationernas Förbunds Råd skall övervaka tillämpningen av dessa garantier. Finland skall till Nationernas Förbunds Råd, tillsammans med sina anmärkningar, vidarebefordra alla klagomål eller framställningar från Ålands Landsting som berör tillämpningen av ifrågavarande garantier, och Rådet bör, i det fall frågan är av juridisk karaktär, rådfråga den permanenta Internationella domstolen. Rådet godkände enhälligt villkoren i denna överenskommelse, och beslöt foga den till sitt beslut av den 24 juni.

Efter andra världskriget konstaterade flera utredningar att de folkrättsliga regleringarna om Åland var fortsatt giltiga, utan att för den skull tydliggöra hur dessa regler ska övervakas, granskas och utkrävas. Denna process beskrivs i fö-

revarande rapport (se avsnitt 4). Kunskap om och förståelse för de ”frysta garantierna” saknas internationellt, varför det är lämpligt att rapporten nu publiceras på engelska tillsammans med en svensk sammanfattning.

Jag drar slutsatsen att de steg som Åland redan har tagit, till exempel i förhållande till *inhemska rättsinstitutioner* (såsom Justitiekanslern), *övervakningsorgan för mänskliga rättigheter* och *UNESCO*, kan utvecklas ytterligare (se avsnitt 7 och slutsatserna i rapporten i avsnitt 8). I allmänhet är det så att ett internationellt klagomål förutsätter att de inhemska rättsmedlen är uttömda, om sådana medel existerar. Rapporten finner att det principiellt finns nya vägar att utforska när det gäller möjligheten att begära ett *rådgivande yttrande* från Internationella domstolen i Haag (International Court of Justice, ICJ), eller genom *skiljedom* vid Permanenta skiljedomstolen (Permanent Court of Arbitration). Andra möjligheter är att upprätta kontakt med *FN:s särskilda rapportör om minoriteter* (som dock inte har befogenhet att rättsligt granska enskilda saker) och med *Venedigkommissionen* inom Europarådet (vars uppgift är granskningen av lagstiftning av konstitutionell natur). Jämfört med Europadomstolen för mänskliga rättigheter, har *FN:s människorättskommitté* visat större intresse för autonomifrågor och minoriteters rättigheter. Valet av verktyg styrs av sakfrågorna som ska behandlas och aktörerna som involveras. Bedömningen underlättas av kunskap kring de bredare frågeställningarna som berörs och aktualiseras internationellt (avsnitt 5 och 6 i rapporten). En sådan aktion förutsätter ytterst en politisk bedömning om tidpunkt, tillgängliga resurser, målsättningar och risker. Under alla omständigheter är en ökad internationell medvetenhet om bakgrunden till och upplevda problem i förverkligandet av de internationella garantierna för Åland ett mål i sig.

Forsknings- och akademiska nätverk är engagerade i arbete som rör tvistelösning och motståndskraften (ibland kallad *resiliensen*) hos territoriella autonomiarrangemang, något som ger nya möjligheter till kunskaps- och kapacitetsutveckling även för territoriella autonomier. Forskningsresultat över tid och från olika samhällsvetenskapliga områden pekar på vikten av och komplexiteten i att säkerställa legitimiteten hos dem som innehar makten i sådana speciella territorier där det lokala, det nationella och det internationella är intrikat sammanflätade. Forskningen belyser också vikten av att det finns tillgängliga, legitima och effektiva verktyg för tvistelösning och därmed för ansvarsutkrävande i sådana fall (avsnitt 5).

Juridiken och dess processer för beslutsfattande och tvistelösning fyller många funktioner i samhället. *Reglering, främjande av legitimitet, hantering av konflikter och rättens performativa funktioner*, dvs att positioner och visioner framställs genom formaliserade kanaler, är alla centrala aspekter av juridikens roll. Ålands ”frysta garantier” är fortfarande relativt okända, åtminstone utanför Åland. En bredare diskussion kring begreppet ”komplex ansvarighet” (*complex accountability*) där mjuka och hårda internationella garantier och tvistelösningsmekanismer av juridisk och politisk karaktär på olika nivåer (nationellt, internationellt och genom olika juridiska eller politiska åtaganden) kombineras medvetet, är en fåra som kan föra vidare nuvarande diskussioner om flernivåstyre i en tid då relationerna mellan stater och deras autonoma regioner är ansträngda på många håll i världen, trots att det finns hundratals nya och gamla autonomilösningar.

Ett sådant brett åtagande förutsätter ett erkännande av idéer om rättslig och konstitutionell pluralism och om ansvarighet på flera nivåer som ett sätt att säkra politisk och samhällelig legitimitet både centralt och regionalt. I en svår omvärldssituation krävs trofasthet, fantasi, omdöme och långsiktighet för att hålla ett sådant projekt levande. Det faktum att Ålandslösning-

en nyligen har firat hundraårsjubileum, och att både Åland och Finland har ett gemensamt intresse i att upprätthålla rättsstatsprincipen nationellt och internationellt, är goda utgångspunkter för ett sådant arbete.

Att navigera i de grumliga vattnen av internationella frågor, auktoritära trender på hemmaplan och globalt, av polariseringar, nationalism och även minoritetshat är en krävande uppgift för politiker och förvaltningar i alla territoriella autonomier, i synnerhet de minsta av dem. Att hämta expertis från många olika kunskapsområden och föra breda och långsiktiga diskussioner som samlar de centrala politiska och administrativa aktörerna för att säkerställa kontinuitet och uppnå långsiktiga mål är, som jag ser det utifrån min långa erfarenhet i liknande frågor, den enda framkomliga vägen. I Ålands specifika fall, erbjuder de årliga utbytena mellan Självstyrelsepolitiska nämnden och Ålands landskapsregering en god plattform för att genomföra en sådan långsiktig strategisk analys och överläggning, för att överväga om och hur man eventuellt kan gå vidare med några av de verktyg och möjligheter som presenteras i denna studie. Under tiden kan kunskapsfrämjande och medvetandegörande insatser om Ålandslösningens tillkomst, struktur och förverkligande (eller inte) spela en nock så viktig funktion.

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1. Background to the present study

In early 2023 the present author was commissioned by the Åland Government to write a study entitled "International remedies and fora relevant for the relation between territorial autonomies and states". This project aims to identify sub-issues, key concepts, legal norms and dispute resolution tools with a focus on international law frameworks and international experiences on international dispute settlement mechanisms in the relationship between territorial entities (including autonomies) or minorities and the State. The project should result in a main report in English and a summary in Swedish. The report was submitted to the Åland Government in June 2024 and it was also presented at a public seminar in Mariehamn.[1]

The study is of importance for Åland, but also for global developments regarding autonomy arrangements, the position of minorities and more generally so-called sub-state actors. I am happy that the Åland Islands Peace Institute is now willing to publish the report in its report series.

On 19 September 2013, the Finnish government appointed a parliamentary committee (hereinafter named the Åland Committee 2013) 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. 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 division of competence (i.e. powers) between Åland and the Finnish government and to propose changes in competence provisions that have involved problems of interpretation".

In its final report "Åland autonomy in development", the Åland Committee 2013 (OM 33/2017) addresses the issue of "the proposal for a collective complaint mechanism for language issues".[2] Following the wording of the official summary of the report itself "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. As a result, Åland would have more say in the introduction of the reforms that are needed so that the region can adjust to continu-

1 There is no space here for a summary of the Åland Case as such. For a thorough analysis see Sia Spiliopoulou Åkermark (ed), The Åland Example and its Components, The Åland Islands Peace Institute (2011) and Spiliopoulou Åkermark, Sia et al. 2019. "Åland Islands". In *Autonomy Arrangements in the World*. www.world-autonomies.info. Most of the core international legal instruments, treaties, decisions etc. pertaining to the Åland Islands can be found in English and several other languages on the website of the Åland Culture Foundation (Ålands kulturstiftelse): https://kulturstiftelsen.ax/internationella-avtal/

2 Ålands självstyrelse i utveckling. Slutbetänkande från Ålandskommitté 2013. Justitieministeriets publikation, Betänkanden och utlåtanden 33/2017.

ous 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."

Furthermore, the 2017 final report by the Åland Committee 2013 noted the following[3]:

> "From the Åland side, the request for the restoration of the guarantees of international law and the right of appeal has been reiterated during the preparation of the present proposal. The question has been touched upon in the Åland Committee in a 2014 report on the status of Åland under international law. In its interim report […], the Åland Committee took a positive view of the introduction of international mechanisms to safeguard Åland's Swedish-language status and it intended to investigate which international institution could be entrusted with such a task. In 2016, the Committee commissioned a special study on existing monitoring mechanisms. The Åland Committee notes that existing international organizations that monitor human and minority rights do not have such a monitoring and complaint monitoring nor a monitoring and complaint mechanism for collective linguistic rights, as is the case here. For the time being, international human and minority rights are based primarily on individual rights. Collective rights do exist and can be combined with a reporting system and in some cases with a right of appeal for organizations, such as non-governmental organizations (NGOs) like employers' and workers' organizations or similar. The substantive content of the Treaties unfortunately has no direct relevance to the protection of languages and nationality which is now at issue. There is therefore no existing organization that could directly take on the task of dealing with complaints concerning the international law guarantees for Åland. In the Committee's view, it is possible to return to the question of whether any international organization is given such tasks."

3 Translations of most texts are by the author, unless otherwise indicated.

Ahead of this final report, the Åland Committee had indeed commissioned a study entitled "The international supervision of the Swedish-speaking character of the Åland Islands – an examination of possible supervisory mechanisms". The study (submitted March 1, 2016) was conducted by Sarah Stephan. Stephan did a thorough mapping of "contemporary control mechanisms" and drew upon those, in order to determine what kind of mechanisms can provide international protection for the Swedish-speaking character of the Åland Islands, under which conditions and to what effect. The mapping included international non-adjudicative and adjudicative mechanisms dealing directly or indirectly with language rights under the institutional roofs of the United Nations (UN), the Council of Europe (CoE), the Organization for Security and Cooperation in Europe (OSCE) and finally the European Union (EU).[4]

Stephan concluded in the 2016 study that "there may be little added value in creating a new monitoring mechanism – the Swedish-speaking character of the Åland Islands can be and is indeed scrutinized by existing monitoring mechanisms, which can possibly be made greater use of in the future".

In other words, in connection to the monitoring of Finland's human rights obligations by international monitoring bodies, such as (in the United Nations) the Committee of the Rights of the Child, the Human Rights Committee or (in the Council of Europe) the Advisory Committee on the Framework Convention on Na-

4 S. Stephan, "The International Supervision of the Swedish-Speaking Character of the Åland Islands – An Examination of Possible Supervisory Mechanisms", Report submitted in 2016 to the Åland Committee 2013 which was preparing the revision of the Åland Autonomy Act, a revision which has still not been completed. The report is digitally available: https://www.lagtinget.ax/sites/www.lagtinget.ax/files/bilaga_2_sarah_stephan_supervisory_mechanisms_010316.pdf.

tional Minorities and the Committee of Experts of the Language Charter, it is possible for the Åland Islands to communicate directly with the bodies concerned, bringing forward possible complaints and even presenting so called 'alternative' or 'shadow reports', presenting the view of the Åland Government and Parliament on relevant matters.

Even though this possibility is not explicitly explored in the 2016 report, such an avenue allows for an international documentation, awareness-raising and examination of problems that the Åland authorities believe remain unaddressed in the domestic context in Finland. Indeed, several human rights monitoring bodies have received information from and occasionally met with representatives of the Åland government and, in some cases, they have also visited the Åland Islands for fact-finding purposes.[5]

5 See for instance Comments by the Åland Government, in relation to the 5th periodic report of Finland under the Framework Convention on National Minorities (ÅLR 2018/5249). In its comments the Åland Government raised especially problems related to the function of Swedish as language of the Åland Police as well as the absence of essential tools in Swedish in the medical, health and pharmaceutical fields. The Åland Government accounts in its comments also for complaints on these matters submitted by the Åland Government to the Justice Ombudsman in Finland. While the Justice Ombudsman endorsed the view that medical guidelines and pharmaceutical instructions should according to law be translated to Swedish, the competent Finnish authorities did not implement the decision of the ombudsman. These issues are also raised in the 5th Opinion of the Advisory Committee on the Framework Convention on National Minorities (ACFC/OP/V(2019)001), especially paras. 88 and 133. The Opinion notes i.a. deteriorating attitudes towards Swedish and bilingualism in Finland. More recently, in November 2023, the UN Special Rapporteur on the Right to Education visited the Åland Islands during her visit to Finland. See https://unric.org/en/finland-right-to-education/ (01.12.2024).

In its most recent Resolution on the implementation of the Framework Conventional on National Minorities, the Committee of Ministers of the Council of Europe indicated as a need for *immediate action* the following:

> "safeguard the societal consensus on Finnish-Swedish bilingualism through stepping up awareness-raising, underpinned by an explicit commitment at the highest political level. Without prejudice to their constitutional obligations, the Finnish authorities should engage in an open dialogue with the Swedish speakers about their priorities to ensure that commitments made regarding public services in the Swedish language are realistic, effective, matched with adequate resources, and regularly monitored."[6]

Language problems regarding the position of the Swedish language in Finland are here understood as one of the most prominent issues, why also the 2016 report by Stephan focused on linguistic rights.[7]

Secondly, Stephan noted that "if quasi-judicial or judicial protection is sought for a standard of protection corresponding to Chapter 6 of the Åland Act on Autonomy, inevitably a new international instrument, elevating this piece of domestic legislation into the sphere of international law, would have to be adopted. A range of options for the supervision of such an instrument are conceivable. Such arrangements would, however, run counter to the approaches currently dominating international human rights and minority rights law."

In May 2023 Professor Rainer Hofmann was

6 Council of Europe, Council of Ministers Resolution CM/ResCMN(2020)1 on the implementation of the Framework Convention for the Protection of National Minorities by Finland.

7 For reports on the deteriorating position of Swedish in Finland see e.g. various reports by Magma https://magma.fi/magmas-publikationer/

tasked by the Åland Government with a study on the international and European dimensions of the status of the Åland Islands. The report was presented by Professor Hofmann at a public seminar in Mariehamn in November 2023.[8] The report included three distinct parts. Part I on the Demilitarized and Neutralized Status of the Åland Islands; Part II on the International Guarantees for the Autonomy of the Åland Islands; Part III on European Union Law and the Åland Islands. Parts I and II were briefer and emphasis in the report was on EU-matters. It is Part II of the Hofmann report which is of direct relevance for the present enquiry. According to the delimitations adopted in that study, the main aim was to assess "whether Finland is under an international obligation to guarantee the 'Swedishness' of the Islands and whether such an obligation could be invoked under any internationally established mechanism". The report finds that "the autonomous character of the Åland Islands was established under dispute settlement under the League of Nations and implemented in good faith, inter alia, by Finnish domestic legislation, the essence of which grew into customary law."

Referring to the findings of the 1950 UN Economic and Social Council Study on the Legal Validity of the Undertakings Concerning Minorities[9] (see further below), Hofmann notes that "although, the 1950 Study clearly suggests that the international mechanism could be reactivated upon decision by the UN, it did not elaborate on the more detailed conditions for this to happen, nor are there any provisions in the procedural law of the United Nations in this matter." The Hofmann report then proceeds to an exploration of the possibilities provided by the UN Charter and suggests that the UN General Assembly, provided there is a corresponding competence provision, could decide on the re-activation at its own discretion. Such a competence could be construed through the general provision of Article 10 of the UN Charter. According to this provision, the General Assembly

> "may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters."

The conclusion is, according to Hofmann, that it could be argued that the *international mechanism for securing Åland's autonomy* (emphasis added), "as derived from the treaties of 1921, 1940 and 1947, can be linked to at least one of the statutory purposes of the United Nations, such as the peaceful settlement of disputes (Article 1 para. 1 UN Charter). A corresponding proposal could be submitted, in any case both by Finland and/or Sweden or possibly even by any other UN member state, for discussion in the Sixth Committee, which deals with legal issues". According to this report "the final decision to reactivate this special mechanism would have to be adopted by the UN General Assembly". As we shall see below, reactivating the old possibility may be one avenue, another is that the *UN General Assembly* requests or authorises the request of an advisory opinion from the *International Court of Justice.*

8 A revised version of the report has been published as Chapter 6, Rainer Hofmann & Mauritz Malkmus, "International Procedural Safeguards for the Åland Islands' Autonomy? Some Reflections on the (Re-)Activation of a League of Nations Mechanism", in G. Alfredsson & G. Lindholm (eds), The Autonomy of the Åland Islands, Brill, 2024, 59–70. https://doi.org/10.1163/9789004691117_008.

9 UN Doc. E/CN.4/367, 7 April 1950. Documents of the United Nations and League of Nations have been digitally retrieved with gratitude from the United Nations Archives at Geneva.

2. A Short Overview of the June 1921 Decisions in Context

It is worth summarising here the scope of the June 1921 discussions and decisions in the Council of the League of Nations. At its meeting of June 24th the Council "…having reviewed all the geographical, ethnical, political, economic and military considerations set forth in the memorandum of the Rapporteurs, who undertook a thorough enquiry upon the request of the League of Nations;… having recognised, on the other hand, the desirability of a solution involving a maximum of security both for the population of the Islands and the parties concerned" decided upon a resolution with the following wording:

> "1. The sovereignty of the Aaland Islands is recognised to belong to Finland;
>
> 2. Nevertheless, the interests 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.
>
> 3. The new guarantees to be inserted in the autonomy law should specially aim at the preservation of the Swedish language in the schools, at the maintenance of the landed property in the hands of the Islanders, at the restriction, within reasonable limits, of the exercise of the franchise by new comers, and at ensuring the appointment of a Governor who will possess the confidence of the population.
>
> 4. The Council has requested that the guarantees will be more likely to achieve their purpose, if they are discussed and agreed to by the Representatives of Finland with those of Sweden, if necessary with the assistance of the Council of the League of Nations, and, in accordance with the Council's desire, the two parties have decided to seek out an agreement. Should their efforts fail, the Council would itself fix the guarantees which, in its opinion, should be inserted, by means of an amendment, in the autonomy law of May, 7th, 1920. *In any case, the Council of the League of Nations will see to the enforcement of these guarantees.*
>
> 5. An international agreement in respect of the non-fortification and the neutralisation of the Archipelago should guarantee to the Swedish people and to all the countries concerned, that the Aaland Islands will never become a source of danger from the military point of view. With this object, the convention of 1856 should be replaced by a broader agreement, placed under the guarantee of all the Powers concerned, including Sweden. The Council is of the opinion that this agreement should conform, in its main lines, with the Swedish draft Convention for the neutralisation of the Islands. The Council instructs the Secretary-General to ask the governments concerned to appoint duly accredited representatives to discuss and conclude the proposed Treaty."[10]

The wording chosen by the Council and especially the emphasis on the role of the League in ensuring the enforcement of the guarantees, was surely not a coincidence. Carl Enckell, Finnish envoy to the League of Nations made the following statement on June 20th as summarised in the Official Journal of the League of Nations:

> "With regard to the proposal of the Rapporteurs dealing with *the right which would be granted to the Aaland Landsting*, to lay before the Council of the League of Nations, or before the International Court of Justice, any question concerning these

10 League of Nations, Official Journal, 2nd Year, No. 7, September 1921, pp. 691–705 (emphasis added).

> new guarantees which the Finnish Government intended to submit to Parliament for the purpose of embodying them in the Aaland Autonomy Law of May 7th, 1920, M. Enckell stated that the proposal of the Rapporteurs was in its essentials contrary to the Covenant of the League of Nations and to the statutes of the International Court of Justice. Taking his stand upon the fact that the Aaland Autonomy Law could not be amended, interpreted or abrogated except by the consent of the General Council of Aaland and according to the procedure laid down in the constitutional laws, M. Enckell expressed the conviction that the League of Nations, which in December last recognised Finland's sincere intention to fulfil her international obligations, would surely recognise that Finland offered the necessary guarantees of her sincere intention to fulfil her internal obligations."[11]

Finland did not seem entirely happy with the idea of international guarantees but declared its intention to fulfil "her international obligations". Enckell underlined, furthermore, that the Åland Autonomy Law "could not be *amended, interpreted or abrogated*" (emphasis added) except with the consent of the Ålanders.

The Council Resolution of June 24th 1921 covered thus the entire scope of the Åland Islands status, in its cultural, governance and security dimensions as was soon thereafter expanded by the agreement between Finland and Sweden of June 27th which specifies several of the "guarantees" and ends by the following 7th point:

> "The Council of the League of Nations shall watch over the application of these guarantees. Finland shall forward to the Council of the League of Nations, with its observations, *any petitions or claims of the Landsting of Aaland in connection with the application of the guarantees in question*, and the Council shall, in any case where the question is of a juridical character, consult the Permanent Court of International Justice."

The Council of the League of Nations unanimously approved the terms of this agreement and decided that it should be annexed to its resolution of June 24, 1921.[12]

At that time there were other similar but not identical solutions put in place by the League of Nations. When Erik Colban, Norwegian by origin, and director of the Minority Section of the League of Nations Secretariat, explored the various possibilities for the Åland dispute, should the matter reach the League, he referred in August 1919 specifically to the Free City of Danzig.[13] Colban thought that the position of the Åland Islands could come to follow the example of the *Free City of Danzig*, in which case a commissioner should be appointed "to assist the local authorities to establish the new conditions". Even if temporary, such a commissioner should ensure that new constitutional rules should be drawn up "by the duly appointed representatives of the population of the Islands". Such a role for the League would not be needed, however, should the islands be placed under "joint protection of Sweden and Finland", as had been proposed already earlier by the British and Americans, argued Colban.

The solution adopted incrementally for Danzig in the period 1919–1922 was, however, different, even though the need for guarantees by the League and for international involvement can be seen as somewhat similar. During the period 1919–1939, the League largely assumed control over the city of Danzig, which was separated from Germany and Poland and declared a "Free City" and an internationally administered

11 Ibid., p. 704. Emphasis added.

12 League of Nations, Official Journal, 2nd Year, No. 7, September 1921, p. 702.

13 Memorandum by Erik Colban, League of Nations Digital Archives, File S393/58/1, 26.08.1919.

territory.[14] The Free City had extensive rights of legal standing and signed the Convention of 1920 with Poland. A High Commissioner, appointed by the League, was granted considerable powers to fulfil his tasks, including the protection of the Danzig Constitution. The High Commissioner was able to veto treaties that were not in the interest of the city's independence, and amending the constitution was only possible with the consent of the League.

The Treaty of Versailles provided that the High Commissioner shall pronounce in the first instance on any disputes that may arise between Poland and the Free City regarding the Treaty itself or supplementary agreements and arrangements. The Danzig-Polish Convention of 1920 further provided that the authorities shall retain the right to appeal to the Council against a decision of the High Commissioner. In fact, one or other of the parties appealed to the Council against most of the decisions of the High Commissioner, so that, before December 1927, "there was hardly any session of the Council at which Danzig affairs did not appear on the agenda".[15]

So, Danzig was evolving in tandem to the Åland dispute settlement and there were many Danzig-related complaints being brought before the League Council. The Permanent Court of International Justice had also several occasions to engage with matters pertaining to the Free City of Danzig.[16] Following Ralph Wilde, Danzig (today Gdansk) was one of four cases of international territorial administration in the period after World War I and the League of Nations. The other three were: the Saar, the Memel Territory (today called Klaipeda in Lithuania) and Leticia (in Colombia, in Latin America).[17]

Markku Suksi has drawn a closer parallel between present-day territorial autonomy and the solutions to the status of the Memel Territory, without however looking closer to the guarantees incorporated in the system.[18] The autonomy of the Memel territory had also its roots in section X of the Treaty of Versailles (1919). Under the 1924 Convention of Paris, Britain, Italy, France and Japan transferred to Lithuania the Memel territory, which was then placed

14 Paris Convention between Danzig and Poland, 9 November 1920, 6 LNTS 189; Art. 39 of the same convention provided: "Any differences arising between Poland and the Free City of Danzig in regard to the present Treaty or to any other subsequent agreements, arrangements or conventions, or to any matter affecting the relations between Poland and the Free City, shall be submitted by one or the other party to the decision of the High Commissioner, who shall, if he deems it necessary, refer the matter to the Council of the League of Nations. The two parties retain the right of appeal to the Council of the League of Nations." Treaty of Versailles (1919); Part III, Section XI, Ann., Art. 103; Art. 49 of the Constitution of the Free city of Danzig (1922). See further A. Momirov, *Accountability of International Territorial Administrations*, Eleven International Publishing, 2011, pp. 103–106; R. Wilde, *International Territorial Administration – How Trusteeship and the Civilizing Mission Never Went Away*, OUP 2008, pp. 114–127.

15 "Ten Years of World Cooperation" (League of Nations, 1930), pp. 382–387.

16 Permanent Court of International Justice, Advisory Opinion of 4 December 1935 on Consistency of Certain Danzig Legislative Decrees with the Constitution of the Free City; Advisory Opinion of 4 February 1932 on Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory; Advisory Opinion of 11 December 1931 on Access to, or Anchorage in, the port of Danzig, of Polish War Vessels; Advisory Opinion of 3 March 1928 on Jurisdiction of the Courts of Danzig; Advisory Opinion of 26 August 1930 on Free City of Danzig and ILO; Advisory Opinion of 16 May 1925 on Polish Postal Service in Danzig.

17 Wilde, loc. cit., 111–129.

18 M. Suksi, *Sub-State Governance through Territorial Autonomy*, Springer 2011, see Chapter 2.

under the sovereignty of Lithuania, in contrast to Danzig which was internationally administered.[19] While it has been argued by Wilde that the Memel arrangement involved a "sliver of international involvement in administration", this is correct insofar as the focus of Wilde's attention has been on the direct administration of territories by international actors.[20] Following Art. 2 of the Memel Convention, the territory "shall constitute, under the sovereignty of Lithuania, a unit enjoying legislative, judicial, administrative and financial autonomy within the limits prescribed by the Statute set out in Annex I". The sovereignty of the Memel Territory could not be transferred without the consent of the High Contracting Parties.[21] Memel had its own local police. As regards the supervision of the arrangements, the High Contracting Parties declared that *any member of the Council of the League of Nations* shall be entitled to draw the attention of the Council to any infraction of the provisions of the 1924 Convention, something which also included the annexes of the Convention, i.e. also the Memel Statute.[22]

One of the best accounts of the institutions and problems of the Memel Territory has been written by American political scientist and professor Thorsten Kalijarvi.[23] He noted that Lithuania had been accused of breaking, more or less, all articles of the Memel Statute. Particularly difficult was the situation as regards the introduction in 1926 of martial law in Lithuania and including in the Memel Territory against the explicit views of the Memel population and authorities. The Memel Territory was caught between the increased authoritarianism in both Germany who wanted to defend the case of the "inarticulate Memellanders" and Lithuania.[24]

Kalijarvi's final words in his 1937 book are worth reproducing as a whole:

> "No single plan so far proposed is free from serious objections. Even the changing of the Convention is ruled out because no means of amending it are provided in that instrument. It is noteworthy that all three of the annexes contain amending Articles. The omission in the Convention must therefore have been intentional, with the thought that the annexes would be the only parts, which would need alteration. The Statute itself may be changed by a joint process in which Memel and Lithuania have both a part. Today, however, the authorities of Memel and Lithuania cannot agree on the meaning of the article. *A special court has been created by Lithuania to interpret just such questions; but here again there is serious doubt as to the validity of the decisions of this tribunal, where Lithuania is both judge and party. No hope therefore lies in this direction.*
>
> Under these circumstances the logical and rational thing to do is to appeal to the League of Nations for aid under Article 19 of the Covenant. It reads:
>
> 'The Assembly may from time to time advise the reconsideration of Members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world.'"[25]

The authors writing from slightly different angles on accountability and sub-state governance, namely Kalijarvi, Wilde and Momirov seem to

19 Convention concerning the Territory of Memel, 8 May 1924, 29 LNTS 87.
20 Wilde, loc. cit., p. 128.
21 Memel Convention (1924), Art. 15.
22 Memel Convention (1924), Arts 16–17. See also the two Judgments of the PCIJ on the Interpretation of the Memel Statute, 24 June and 11 August 1932. Memel authorities were not granted any *locus standi* as such.
23 T. Kalijarvi, "The Problem of Memel", 30 AJIL 2 (1936), 204–215 and the book *The Memel Statute. Its Original, Legal Nature and Observation to the Present Day* (1937).
24 The wording is from the 1926 LNOJ as quoted by Kalijarvi in 30 AJIL 2 (1936) p. 209.
25 Kalijarvi, The Memel Statute … (1937), pp. 243–244 (emphasis added).

agree on the importance, first of all, of the *legitimacy* of those holding power in such special territories where the local, the national and the international are inextricably intertwined. They also all highlight the importance of availability, legitimacy and efficiency of *dispute resolution tools and thereby of accountability* in such cases.

This is not clearer in any other case than in the work of the Upper Silesian Mixed Commission established by the Geneva Convention between Germany and Poland relating to Upper Silesia of 15 May 1922.[26] After a number of uprisings in 1919–1922 and a plebiscite in favour of Germany, the Inter-allied Conference of Ambassadors under a French general, decided on 20 October 1921 that Upper Silesia would be a part of Poland under considerable conditions. The Geneva Convention finalised this settlement. This bilateral treaty was highly detailed, with more than 600 articles (longer even than the Treaty of Versailles) regulating most aspects of life in Upper Silesia. Its main downside was its timeframe; it was only to last for a transitional period of 15 years, starting from its entry into force in June 1922. The Upper Silesian Mixed Commission was a quasi-judicial body located in Katowice/Kattowitz to settle disputes between the two States Parties, whereas individual claims came under the jurisdiction of a second international supervising agency, the Upper Silesian Arbitral Tribunal situated in Beuthen/Bytom. The president of the Mixed Commission was given the power to issue non-binding opinions regarding the compliance with minority rights in individual petitioners' cases, thus bridging the tasks of the two monitoring bodies. Michel Erpelding has thoroughly documented the case law available.[27] Calonder received 2,283 minority petitions of which 1,929 were settled amicably, thus underlining the conciliatory nature of the Commission's work.[28]

Felix Calonder, a lawyer and politician, had served both as a judge in the Swiss Armed Forces and later on as a member in the Federal Council and also as President of the Swiss Confederation. Calonder had defended a doctoral thesis in international law in Bern, and in 1920 he served as one of the members of the Commission of Rapporteurs appointed by the League Council for the Åland dispute. In 1921 he joined the negotiations for a convention in Upper Silesia and thereafter he was, as mentioned, the president of the Mixed Commission throughout its lifetime.

Due to the reluctance of the states concerned, i.e. Germany and Poland, to make use of the inter-state complaints mechanism and thanks to the personal activism of the Mixed Commission's President, Felix Calonder, the protection of minority rights in Upper Silesia was the activity most prominently associated with it. Only 18 inter-state complaints reached the Mixed Commission while its president handled more than 3,400 cases, of which 127 resulted in formal opinions, which, although non-binding, resembled judicial decisions. These numbers have been compared by Erpelding to the League of Nations centralised procedure which resulted all in all in 950 petitions, 758 declared admissible while only 16 reached the agenda of the Council.

The Mixed Commission was composed of two Polish and two German members, who in contrast to what was the case for the Members of the Arbitral Tribunal, did not need to be jurists. However, they had to show sufficient ties to Upper Silesia. They were not granted guarantees of judicial independence and could, in fact, receive governmental instructions. So, the

26 Geneva Convention, 9 LNTS 465 (15 May 1922).

27 M. Erpelding, *Mixed Commission for Upper Silesia*, Max Planck Institute Luxemburg for Procedural Law, in Max Planck Encyclopedia of International Law, Oxford University Press (last updated 2017).

28 Article 149 Geneva Convention.

Commission had a somewhat diplomatic character.[29] The president of the Commission had to be of another nationality. The States Parties quickly agreed to appoint Felix Calonder. Calonder had been involved in the negotiations of the Geneva Convention and he was to remain as president of the Commission during the whole 15 years of its existence.

According to the Geneva Convention, the president of the Commission had the right to draw the attention of the competent State representative to "any facts, circumstances, or situations" which had come to his attention and which, "in his opinion" were not in keeping with the convention.[30] Felix Calonder used this provision actively and extensively. Furthermore, the Mixed Commission had a function as a filtering instance before bringing cases to the Permanent Court of International Justice (PCIJ). Under Article 2 of the Geneva Convention, the German representative had two months to refer to the Commission a new Polish law his government deemed unfit. If the Commission decided that the law was susceptible to be submitted to judgment by the PCIJ, then the German government would have two months to file a complaint before the international court.

The Geneva Convention provided also that members of minorities were allowed to send individual or collective petitions directly to the Council of the League of Nations.[31] Such petitions from Upper Silesia were privileged in the system of the League, since the Council had to consider them in public in contrast to what was the case for other minority petitions. The Council "had trouble handling the many petitions from Upper Silesia" and Germany was soon accused of exploiting the procedure. For such reasons the quasi-judicial activism of Felix Calonder, using the Geneva Convention (Article 585) to also include minority issues, resulted in a more efficient and locally entrenched procedure, something particularly useful in situations needing an urgent solution, such as cases of use of violence against minorities or discriminatory measures against Jews in the German part of Upper Silesia after 1933. Erpelding cites here Kaeckenbeck (who had been the secretary of the Commission of Jurists in the Åland islands dispute). According to Kaeckenbeck "Government officials dislike and distrust international organs not amenable to the same kind of considerations and pressure which are apt to carry victory in national administrative circles", whereas members of a minority "whenever under a sense of being wronged, [are] only too prone to appeal to international protection".[32]

Several other studies in recent years have indicated that the complaints mechanisms for minorities in the League of Nations were important and innovative for the protection of minorities and the creation of various institutions but rendered however, as a whole, limited results.

Already in the 1920 report presented to and adopted by the League of Nations Council by the Italian representative Tittoni concerning "the guarantee of the League of Nations" in relation to minority treaties and more specifically on minority petitions it was said:

> "The right of calling attention to any infraction, or danger of infraction, is reserved to the members of the Council. This is, in a way, a right and a duty of the Powers represented on the Council. By this right, they are, in fact, asked to take a special interest in the protection of Minorities.

29 M. Erpelding, loc. cit.

30 Article 585 of Geneva Convention allowing the president of the Mixed Commission to examine matters pertaining to the convention *ex officio*. The procedure under this provision led to 1,180 petitions according to the data by Erpelding, loc. cit.

31 Art. 147 of Geneva Convention. This provision established a right to petition individually or collectively for persons belonging to a minority.

32 As cited by M. Erpelding, loc. cit.

> Evidently, this right does not in any way exclude the right of the Minorities themselves, or even of States not represented on the Council, to call the attention of the League of Nations to any infraction, or danger of infraction. But this act must retain the nature of a petition, or a report pure and simple; it cannot have the legal effect of putting the matter before the Council and calling upon it to intervene.
>
> Consequently, when a petition with regard to the question of Minorities is addressed to the League of Nations, the Secretary-General should communicate it, without comment, to the Members of the Council for information. This communication does not yet constitute a judicial act of the League, or of its organs. The competence of the Council to deal with the question arises only when one of its Members draws its attention to the infraction, or the danger of infraction, which is the subject of the petition or report."[33]

This is the reason why various authors have argued more recently that there was not a genuine formal legal standing for minorities in the League of Nations, even though the system had many innovative elements, including the endorsement of a collective dimension of recognised minority rights. Nathaniel Berman argues, with reference to the report of the Commission of Rapporteurs in the Åland dispute, that minority protection was then understood not as a "one-shot affair like a plebiscite". Rather, "it effected the *permanent* embroidering of the sovereign into the fabric of the international legal community".[34] Following Berman the interwar system tried innovative and with highly variable institutional and procedural ways to allow for upward (e.g. from minorities) and downward (from states and the international community) forces to meet, for nationalism and for an internationally ruled order to be balanced. In my understanding, this need persists.

Mark Mazower, who sees the settlement of the Åland Islands dispute as one of the League's major achievements, critically concludes as regards the minority petitions system and guarantees[35]:

> "The League of Nations came to stand for a system that, on the one hand, accepted the nation-state as the norm in international relations and, on the other, made a considered effort to tackle the minority issues that were thus created. […] But the role of the League itself in this system was ambiguous. It was difficult to bring cases to the League's attention, and even more difficult to push them through the Geneva machine and have them taken up by the Council. Although the League had the power to refer cases to the Permanent Court of Justice in The Hague, it rarely acted on it. On the other hand, it jealously guarded this power and blocked proposals to allow minorities to appeal to the Court directly. The League Secretariat did not see itself as a 'champion of minorities' but more modestly as an interlocutor helping governments carry out their own obligations. The League also had few sanctions against egregious offenders. Thus the notoriously repressive behavior of Yugoslav gendarmes in Macedonia went unchecked, as did the Polish government's bloody 'pacification campaign' against the Ukrainians in 1930."

Finally, Mark Mazower laments the fact that at the end of the League of Nations era "…despite the obvious importance of safeguarding minorities, strong arguments were advanced in favor of demolishing rather than improving the *collective-rights approach* pioneered by the League".[36]

33 1 LNOJ Nov. Dec. 1920, 8–9.

34 N. Berman, "But the alternative is despair: nationalism and the modernist renewal of interntional law", *Harvard Law Review*, vol. 106, no. 8, 1993, 1792–1903, at 1873 (emphasis added).

35 M. Mazower, "Minorities and the League of Nations in Interwar Europe". *Daedalus*, 1997, vol. 126(2), 47–63, at 51.

36 Ibid. at 58. Emphasis added.

In her work focusing on minorities in the Balkans, anthropologist Jane Cowan has shown that, in the cases examined by her, and contrary to the dominant view promulgated both by League insiders and by scholars that the conditions of receivability were simple, reasonable and straightforward, in fact their exact meaning and import were often the object of intense negotiation. Looking closer into the role and work of the League of Nations Secretariat she notes:

> "Sacred tenets about state sovereignty, and the anxieties generated within the institution by the 'threat' to sovereignty that minority treaties constituted for the 'minority states', strongly influenced the reading of petitions and judgements about their receivability. The League procedure concerning receivability structured the field of the sayable within this domain, at least for those who hoped their petitions would reach the ears and eyes of states, and not just of bureaucrats."[37] However, "[t]hrough the League's minority petition procedure, the community of states widened, though ambivalently, the space for non-state actors to articulate claims and appeal for rights and justice. Processes of negotiation around the procedure existed, and must be acknowledged. Yet then, as now, the international institution set the terms by which such claims and appeals had to be formulated if they were to be heard".[38]

It is worth then highlighting at this point some of the important differences between the Åland guarantees and other modes of minority protection in the interwar period. The guarantees for the Åland islands were mentioned both in the League of Nations decision and resolution of June 24th as well as in the agreement endorsed on June 27th, so that they were not dependent solely on a bilateral agreement or a unilateral action of Finland. In domestic Finnish legislation the guarantee was to be found in Article 6 of the so-called Guarantee Act of 1922.

> In the event of complaints or objections being made by the Åland *landsting* in connection with the application of the provisions of this Act, the Government of the Republic shall submit them, together with its own objections, to the Council of the League of Nations, so that the Council may supervise the application of the said provisions and, if the matter is of a legal nature, obtain the opinion of the Permanent Court of International Justice.

So, also the domestic legislation recognised the Åland landsting (Åland Parliament) as the legitimate representative organ of the new autonomy. The Guarantee Act seems to have been given a potentially narrower interpretation as it did not refer directly to the League of Nations decisions and resolutions nor the Finnish-Swedish agreement annexed thereto.[39]

Guarantees came also to be included in the 1921 Convention on the Non-Fortification and Neutralisation of the Åland Islands, where Article 7 is the lengthiest of provisions. Here, however, Åland was not granted an international legal standing.

37 J. K. Cowan, "Who's Afraid of Violent Language? Honour, Sovereignty and Claims-Making in the League of Nations", *Anthropological Theory*, vol. 3, no. 3, 2003, pp. 271–291, at 286–287.

38 Ibid., at 288.

39 The early commentators of legislation pertaining to the Åland Islands, Artur Tollet and John Uggla, also seem to imply a narrowing down in the incorporation process. See, A. Tollet & J. Uggla, *Lagstiftningen angående självstyrelse för Åland*, Helsingfors, 1930, pp.146–147. Tollet and Uggla refer repeatedly and solely to the works of Rafael Erich, who was at the same time professor of constitutional and international law in Helsinki, as well as a prominent Finnish diplomat and politician, including as negotiator for Finland in the League of Nations and prime minister of Finland (1920–1921).

> Article 7.
> I. In order to render effective the guarantee provided in the Preamble of the present Convention, the High Contracting Parties shall apply, individually or jointly, to the Council of the League of Nations, asking that body to decide upon the measures to be taken either to assure the observance of the provisions of this Convention or put a stop to any violation thereof. The High Contracting Parties undertake to assist in the measures which the Council of the League of Nations may decide upon for this purpose.
>
> When, for the purposes of this undertaking, the Council is called upon to make a decision under the above conditions, it will invite the Powers which are parties to the present Convention, whether members of the League or not, to sit on the Council. The vote of the representative of the Power accused of having violated the provisions of this Convention shall not be necessary to constitute the unanimity required for the Council's decision. If unanimity cannot be obtained, each of the High Contracting Parties shall be entitled to take any measures which the Council by a two-thirds majority recommends, the vote of the representative of the Power accused of having violated the provisions of this Convention not being counted.
>
> II. If the neutrality of the zone should be imperilled by a sudden attack either against the Aaland Islands or across them against the Finnish mainland, Finland shall take the necessary measures in the zone to check and repulse the aggressor until such time as the High Contracting Parties shall in conformity with the provisions of this Convention be in a position to intervene to enforce respect for the neutrality of the islands. Finland shall refer the matter immediately to the Council.

What is of particular interest so far is that *the Åland parliament was given a role as a public entity* not simply as a minority association of private character. This standing was accompanied by an obligation for Finland to forward complaints to the Council of the League of Nations.

3. Why then did the Ålanders not complain to the League of Nations?

As we have seen in the above section the legal standing and right to petition by minorities was not as straight forward as one might assume. Three levels of binary conceptual and institutional distinctions created problems for sub-state entities with a legally acknowledged standing, such as autonomous regions. First, the private – public divide meant that minorities were mainly regarded through the lens of minority associations with private rights rather than as public entities (but this was different in the case of Åland); secondly, the international – domestic divide created obstacles for the legal standing and acknowledgement of the collective dimensions of minorities at an international level, with few exceptions (Upper Silesia and Åland for instance). Finally, the gap between collective and individual dimensions came to be accentuated after WWII when the choice by the United Nations and also the Council of Europe favoured an individualised attention to minority rights as human rights only.[40]

The Ålanders who monitored regularly international affairs must have been aware of these developments. But they had a heavy task at home. Ida Jansson has found, based on archival materials, that the landsting "felt compelled to adopt the Guarantee Act despite its flaws".[41]

As regards the role of the Secretariat of the League of Nations, the Minorities Section of the Secretariat included in the early 1920s also a Finnish diplomat, Aarne Wuorimaa (until 1906 Blomberg) who had served in the Finnish air force, at the Finnish consulate in London and the Finnish mission in Paris, before joining the League of Nations Secretariat for a brief period 1923–1925.[42] Not only did Wuorimaa have a lengthy and successful, albeit controversial, career in Finnish diplomacy, he was also son to Artur Wuorimaa (born Blomberg), a priest and member of the Finnish parliament 1917–1921 for the agrarian party (Agrarförbundet/Maalaisliitto), which was the leading party in the first parliament after the declaration of independence and a party that was generally seen as endorsing the more nationalist pro-Finnish views in the struggles for bilingualism and for a constitution affirming the position of both Finnish and Swedish identities. The focus in Aarne Wuorimaa's work in the Secretariat of the League concerned mainly Poland, Lithuania, Latvia and Estonia, as well as Upper Silesia.[43] The views and role of Wuorimaa during his position in the League of Nations have, to my best knowledge, not been examined in research.

Meanwhile in Finland and on the Åland Islands the years 1923–1924 meant intensive work to materialise the League of Nations agreement and the legislation that was enacted concerning the status of the Åland Islands. The Åland Delegation that had been established between the Finnish authorities and the Åland autonomy to mediate and supervise legislation started its operations, but an initial annual report appeared first in 1924, covering legislation from May 1923.[44] The year 1924 was particularly intensive, indeed the most intense, in the legisla-

40 Berman, loc. cit.; S. Spiliopoulou Åkermark, *Justifications of Minority Protection in International Law*, Kluwer (1997), 117–123.

41 I. Jansson, "The Implementation of an International Decision at the Local Level: The League of Nations and the Åland Islands 1920–1951", *Journal of Autonomy and Security Studies*, 4(1) 2020, 32–62, https://jass.journal.fi/article/view/142873/90302

42 See also https://www.uppslagsverket.fi/sv/sok/view-170045-WuorimaaAarne (as of 08.01.2025).

43 See League of Nations Document R1693-41-33232 (1924) concerning use of press reports concerned with the protection of minorities.

44 Ålandsdelegationens framställningar och betänkanden jämte bilagor, I–III serien, 1923–1927.

tive work of the recently established autonomy. According to a study by Ida Jansson, as many as 62 bills (law drafts) reached the President of the Republic in 1924.[45] In the system created for the examination of constitutionality of bills adopted by the Åland Parliament (then called *landsting* nowdays called *lagting*) such constitutionality was to be examined originally only by the President of the Republic after an examination by the Supreme Court (Article 12 of the 1920 Act of Autonomy). A bill could be rejected only for encroaching upon the competence of the Parliament of Finland, or because it was contrary to the "general interest of the republic" (*republikens allmänna intresse*). Originally then, there was no Ålandic representation in the examination and discussion of such matters. The role of the bilateral organ of jurists from both sides called the Åland Delegation (see above), came to be formalised as regards the legislative process of the Åland autonomy first in the 1951 Autonomy Act. Its involvement can however be traced already back to 1923–1924.[46] Nearly half of the acts that reached the President of the Republic were rejected in 1924, i.e. 30 out of the 62 bills.[47]

The worries and frustrations on the Åland Islands are reflected in several articles of the local newspaper *Tidningen Åland*, which was run by a prominent Åland politician Julius Sundblom. In January 1924 an editorial, most likely written by Sundblom himself, comments upon an article that had appeared in of the largest Swedish newspapers "Dagens Nyheter" concerning complaints by the Ålanders about deficiencies in the implementation of the Åland settlement and the need for accommodation of the Åland autonomy decisions and ensuing legislation:

> "Dagens Nyheter" recalls that the Ålanders have been assured the right to appeal to the League of Nations. Quite right. But the paper can be convinced that such an appeal will not be made until all other avenues have been tried and proved impracticable. If, however, it becomes necessary to appeal to the League of Nations *as a last resort*, then the role of Sweden, with regard to the autonomy of Åland, can hardly be regarded as played out. In Finland such a view is adopted with apparent readiness. But on Åland it is not accepted as correct."[48]

45 I. Jansson, *Att sätta självstyrelsens gränser. Av laggranskarna underkänd åländsk lagstiftning 1922–2018* (2020).

46 Ålandsdelegationens framställningar och betänkanden jämte bilagor, I–III serien, 1923–1927.

47 Jansson, *Att sätta självstyrelsens gränser...*, p. 20.

48 Tidningen Åland, 19.01.1924. Translation by the author, emphasis added. See also same newspaper 06.02.1924 concerning i.a. the complex relations with parts of the Swedish speakers on mainland Finland, pressure in media on Ålanders not to complain "because Finland had a strong position in the League of Nations", and the vulnerability of the Swedish speakers in the Finnish parliament and otherwise vis à vis "the overpowering Finnish nationalists"; 05.03.1924 about problems of continuity of the first radio station in Mariehamn (indeed the first radio station in Finland) after the Maritime administration authority (*Sjöfartsstyrelsen*) had assumed responsibility as well as questions regarding the funding system for the Åland autonomy; 11.06.1924 concerning the use of veto by the President of the Republic so as not to promulgate legislation adopted by the Åland Parliament including in land rights matters; during summer 1924 issues about the right of the Åland autonomy, about communications on land and at sea and about the exemption from military service appear repeatedly. In autumn 1924 (12, 15 and 19 November) the newspaper reprints a speech given on November 9th by Ernst Estlander, professor of legal history and member of the Finnish parliament for the Swedish speaking party at a meeting of the board of directors of the party (*Svenska folkpartiets centralstyrelse*). Estlander, who was a strong proponent of the rule of law and constitutionalism and a critical voice against nationalism, highlighted in his speech various gaps and delays in the implementation of the decisions of the League of Nations in Finnish legislation concerning the Åland Islands. See also, E. Estlander, *Ålands självstyrelse*, Helsinki, 1925.

One would have also expected reactions on the side of the Åland *landsting* and politicians at the time. Ida Jansson refers to the many doubts of Carl Björkman and to archival documents of the Åland parliament and concludes that neither the drafting of the Autonomy Act, nor of the Åland Agreement "had been given enough time for the legislative process and the cooperation between Ålandic and Finnish authorities to function smoothly." The League of Nations Council decisions had not produced a solution that could be implemented as such and straight away. Early debates and the legality review process indicate, according to Jansson, that some steps could have helped to set the autonomy off to a smoother start. Such steps would have meant, firstly, that Ålandic representatives could have been properly included in the negotiations in Geneva. Second, more time and thought could have been given to the drafting of the Agreement. Third, the Autonomy Act itself could have been scrutinized and corrected. Fourthly and finally, the Ålandic politicians could have been helped by a competent explanation of how the Agreement and the appeal process was supposed to work. It was perhaps impossible to completely satisfy the disappointed Ålandic politicians, who had hoped for reunification with Sweden, but, according to Jansson, some disputes between Ålandic and Finnish authorities "could surely have been avoided. Some kind of forum for negotiation, implementation and development – possibly with involvement from Sweden and the League – could also have contributed to a more stable relationship in the long run".[49]

For sure, the political realities of the 1920s were complex for the Åland parliament. Ålandic politicians were following international affairs surprisingly well, as we see in the reports of the local newspaper and in parliamentary discussions. As mentioned above, the Åland parliament was legislating intensely in order to put in place a functioning autonomy. There were several differences of opinion between the Åland Parliament and the responsible organs in Finland and an intense climate of negotiation and tension. The Ålanders, as well as politicians on mainland Finland and jurists such as Ernst Estlander, refer in such discussions repeatedly to the international decisions in the League of Nations and the Finnish obligations including the Ålanders right to petition through the Åland Parliament, seen often as an avenue of last resort.

Meanwhile the situation in Europe was deteriorating with strong nationalist, authoritarian and fascist movements.[50] On mainland Finland the nationalist movement that was dissatisfied with the bilingual constitution and the language provisions recognising both Finnish and Swedish as national languages became institutionalised through the so-called True Finn Club (*Aitosuomalainen kerho*) which was established in Helsinki in 1923 and soon expanded its activities throughout the country. The True Finn Club did not establish any political party but tried instead to influence existing parties, finding most support in the Center Party (*Agrarförbundet*) and to some extent the Conservatives (*Samlingspartiet*).[51]

The League of Nations had, as we have seen above, a lot to cope with too, for instance as regards the Free City of Danzig, Memel and Upper Silesia but also the Corfu Dispute between Greece and Italy under Mussolini (1923), the

49 Jansson, *The Implementation …* (2020), loc. cit., p. 47.

50 Kalijärvi (1936) and Suksi (2011) give thorough accounts of the effects of the authoritarian turn and their legal repercussions in the Memel Case. Loc. cit.

51 The concept used among the militant pro-Finnish nationalists was "äktfinskhet" (could be translated as "authentic Finnishness"). See https://uppslagsverket.fi/sv/sok/view-170045-Aektfinskhet (as of 13.05.2024).

Balkans (e.g. the dispute between Bulgaria and Greece in 1925), the Spanish dictator Primo de Rivera's effort to gain a permanent seat in the League of Nations by leaving the League in 1926 (and later rejoining), the Manchuria crisis in 1931 and Japan's withdrawal from the organization in 1933, while economic turmoil and the Great Depression had repercussions throughout the world. Not very far away from Finland, in Germany, in January 1933 Hitler was appointed as Chancellor, the first concentration camp was established in Dachau and more than 60.000 German Jews were to be transferred to Palestine following an agreement (referred to as the Transfer Agreement or *Haavara* Agreement) between Nazi Germany, the Zionist Federation of Germany and the Anglo-Palestine Bank. In October 1933 Germany announced its intention to leave the League of Nations. The United States of America had never joined the League of Nations. The period leading to the Second World War meant that the Ålanders had to refocus on aspects of security and the integrity of the Åland solution and of the demilitarization and neutralization regime.[52]

How did Ålandic leading politicians look at the issue after WWII? According to an account on the issue of the international guarantees for the Åland Islands submitted by Alarik Häggblom, then head of the Åland Government, to Finnish Prime Minister Kalevi Sorsa during the latter's visit to Mariehamn on 25–26 November 1974, the main outstanding issue still in the mid-1970s was that of the provisions on land ownership, provisions which were part of the Åland decisions of 1921 but which had not been implemented in Finnish legislation.[53] But the international guarantees were not without importance, wrote Häggblom.

> "By their very existence, they [i.e. the international guarantees] helped to smooth out the differences between Åland and the mainland and contributed to the normalisation of relations after the harrowing years of fighting. The Ålanders dared to believe that their national future was secure even within the borders of the new Finnish Republic. The importance of the guarantees became increasingly clear in the 1930s, when ultra-nationalist movements were gaining ground in Finland. The high value that Ålanders placed on their international guarantees is also reflected in their behaviour after the dissolution of the League of Nations in April 1946", he argued.[54]

The telling analysis by Alarik Häggblom reveals not only the political importance and conciliatory effect of the international guarantees but also the two modes of the use of the term "the international guarantees". On the one hand, the term refers to the substantive areas of law and politics that need to be addressed and be given satisfactory accommodation. At the same time, the term refers to the procedural standing of the Åland parliament as the legitimate political organ representing the Ålanders, including through the possibility to address "petitions or claims" to the Council of the League of Nations, albeit through and together with com-

52 S. Spiliopoulou Åkermark, et al. *Demilitarisation and International Law in Context: The Åland Islands*. Routledge, 2018, 35–39.

53 A. Häggblom, Ålands internationella garantier, 25.11.1974, published in Åländska perspektiv 2011:1 with a commentary by Lars Ingmar Johansson (former Director of the Åland Parliament secretariat).

54 Ibid. In Swedish: "Genom sin blotta existens verkade de utjämnande på motsättningarna mellan Åland och riket och bidrog till att relationerna normaliserades efter de uppslitande kampåren. Ålänningarna vågade tro att deras nationella framtid var tryggad även inom den nya finska republikens gränser. Garantiernas betydelse framstod efter hand allt klarare under 1930-talet, då ultranationalistiska strömningar gjorde sig breda i Finland. Hur högt ålänningarna värderade sina internationella garantier visar också deras ställningstaganden efter det Nationernas förbund hade upplösts i april 1946."

ments from the Finnish Government.[55] Häggblom makes clear in his memorandum for the attention of the Finnish prime minister the importance of the "guarantees" in both their dimensions.

The historical examples and experiences reviewed above make the point that complex dispute resolution tools, combining domestic and international actors and input, and allowing for individual as well as collective representation have been in place since the interwar period. While they could not compensate for the decrease in commitment among increasingly authoritarian regimes (as in the cases of Danzig and Memel), nor for the limited framework they were sometimes given (as in the case of Upper Silesia), they dealt with thousands of small and large issues that could have been detrimental, and they had an important conciliatory psychological effect (as was the case on Åland too). As well shall see below, this conclusion confirms with recent research on dispute resolution concerning territorial autonomies (see section 5 below).

55 See above.

4. The international guarantees after the Second World War

After the end of WWII, in autumn 1945 (a few months before the formal dissolution of the League of Nations), the Ålanders took initiative for a revision of the Autonomy Act and confirmation of the "guarantees".[56] In a memorandum submitted to the Finnish government they referred to the "continuous differences of opinion" between the Finnish and the Åland authorities resulting in "irritation and feeling of insecurity" in particular as regards the regulations on land rights. The memorandum notes further that "real concern has been caused by the fact that the international guarantees of Åland's autonomy have been weakened by the dissolution of the League of Nations".[57] In November 1945 the Finnish government appointed a committee (the so called von Hellen Committee) to examine the revision of the Autonomy Act. The Bill (1946:100) provided for an effort to ensure an international guarantee (in section 46 of the Bill) and the minister of Justice Eino Pekkala, informed when presenting the Bill to parliament that the Ålanders wished that the Finnish government "promptly, as soon as there is possibility, [would] make an effort to ensure an international guarantee".[58]

According to Modeen, the main reason why the Bill was not finalised was a demarche by the Soviet Union arguing that such an international guarantee would entail a limitation to Finnish sovereignty, which had been reinstated after the war through the 1944 Armistice Agreement and the 1947 Treaty of Peace between Finland and

56 Tore Modeen has given a most thorough account (in Swedish, with a summary in French) in his book "De folkrättsliga garantierna för bevarandet av Ålandsöarnas nationella karaktär", Mariehamn 1973.
57 Ibid., pp. 62–63.
58 Ibid., p. 67.

the allies (including the Soviet Union).[59] During that period, the Soviet Union also opposed membership of Finland in the Nordic Council (until 1955).[60] Similarly, Finland submitted its application for membership in the United Nations in 1947, but was admitted as a member only in December 1955, due to the Cold War disagreements between the Super Powers.[61] Any kind of international involvement was seen as entailing the possibility of (Western) intrusion and was looked with suspicion by the Soviet Union. Only in 1989 was Finland able to join the Council of Europe. So, Finland tried after independence to minimise international influence, while after World War II, integration in international organizations was seen as a useful counterbalance to Soviet ambitions.

In August 1948 the Finnish government appointed a new committee to continue work on the revision of the Autonomy Act. It was headed by the minister of justice and doctor of laws Tauno Suontausta.[62] It resulted in a new Bill (1948:37) which did not include any provision concerning international guarantees. However, the explanatory wording concerning this matter, is highly interesting and relevant:

"The proposed Autonomy Act does not seek to interfere in any way in the question of the international status of the Åland population; ... Just as the international arrangements relating to demilitarisation have not been able to affect the autonomy granted to the people of Åland, so the Autonomy Act as a domestic measure cannot affect the demilitarisation of Åland or the international aspects of Åland's autonomy. If some would argue that the draft autonomy law is intended to affect the international status of the people of Åland, such an assertion is not correct."[63]

This wording supports the understanding, also in Finland, that *the existence of domestic legislation does not affect the international dimension of the regime*.

In 1950, while the process for a revision of the Act of Autonomy for the Åland Islands had been going on for several years, the United Nations published two studies of relevance for the Åland Islands.[64] The first one, specific to the Åland Islands, expressed the view that it may well be doubtful whether the international guarantees will have any legal or practical value, but that it "was felt that it should not be repealed because the Aalanders attach great importance to it" something which could result in the Bill being rejected by the Åland *landsting*. It has been argued, notes the memorandum, that "the new law should not contain provisions which would modify the international status of the Islands".[65] The second study treated the status of the Åland Islands in its final pages as last of the cases examined. It examined aspects of situations of extinction of obligations and change of circumstances, referring to "an obligation entered into by Finland in this matter before the Council of the League of Nations" as well as to the "agreement between Finland and Sweden". It concludes that there had not been any specific changes of circumstances regarding the Åland Islands and that "[t]he special regime for the Aaland Islands concerns particularly Sweden, Finland and the population of the

59 Ibid., p. 68.
60 The Nordic Council had been established by Denmark, Iceland, Norway and Sweden in 1952.
61 For a summary of that process see, Finland in the United Nations, https://finlandabroad.fi/web/un/history#An%20eight-year-long%20wait (as of 13 May 2024).
62 Modeen, loc.cit., pp. 69–70.
63 As quoted by Modeen, p. 71. Translation by the present author.
64 "Memorandum on the population of the Aaland Islands", UN Doc. E/CN.4/Sub.2/101 (1950) and "Study of the legal validity of the undertakings concerning minorities" UN Doc. E/CN.4/367 (1950).
65 As quoted by Modeen, p. 93.

Aaland Islands". The conclusion in this study is that "Finland's obligation towards Sweden still exists. The obligation undertaken by Finland towards the Council of the League of Nations as representative of the international community is suspended until such time as an express decision has been taken by the United Nations to put it back into force".[66]

In October 1951 the Finnish Parliament voted for the revised Autonomy Act, following the procedure prescribed. In November 1951 the legal committee of the Åland parliament noted that the international obligations of Finland towards Åland had not been questioned but "when there is such possibility" the Åland parliament should address the Finnish government as to ensure that "guarantees of real value for the implementation" of the Autonomy Act are ensured. The new Autonomy Act was thereafter endorsed by the Åland parliament by 17 votes for and 10 against.[67]

According to Modeen, both Finland and Sweden could approach the UN General Assembly, the International Court of Justice or finally the UN Security Council (should a situation concern a matter pertaining to peace and security).[68] Finland would not be entitled to oppose such a process, argued Modeen, "since *Finland's relationship with Åland is not a domestic internal matter* but rather a matter of international concern" (emphasis added). Modeen, writing in the early 1970s, was aware of the limited interest of the United Nations in minority matters and he reminded that Finland at the time was not a member of the Council of Europe.[69] The last section in Modeen's study has the subtitle "A new international system of control for the Åland agreement?" Modeen briefly mentions the possibilities existing through reference to the human rights provisions available also to Ålanders as a minority (Article 27 of the International Covenant on Civil and Political Rights and the UNESCO Convention against Discrimination in Education). Following Modeen's view (writing in autumn 1972) the correct implementation of the Åland agreement by Finland did not give reason at the time to mobilise anew an international system of control.

As mentioned previously, two years later, in November 1974 the Åland government raised through its head Alarik Häggblom, once more, the issue of international guarantees during the visit of the Finnish prime minister Kalevi Sorsa in Mariehamn. Häggblom wanted to flag for the issue of international guarantees ahead of a (new) revision of the 1951 Autonomy Act.[70]

Lars Ingmar Johansson, former director of the Åland Parliament secretariat, wrote the introduction to the publication of Alarik Häggblom's memorandum.[71] At the time the memorandum was written and presented to the prime minister of Finland, he served as head lawyer of the Åland government. According to Johansson, shortly after the meeting between Kalevi Sorsa and Alarik Häggblom, he was contacted by Klaus Törnudd, diplomat at the Ministry for Foreign Affairs. Törnudd described that it was not to be expected at the time (i.e. in mid-1970ies) that the position of the Soviet Union would change, and that it was difficult at the time to engage the United Nations (UN) in the issue of the guarantees for the Åland Islands. Törnudd's understanding was that the UN was dominated at the time by third world issues, which is why European matters where not high on the agenda.[72] Törnudd seems to agree

66 UN Doc. E/CN.4/367 (1950), p. 69.
67 Modeen, p. 75.
68 Ibid., p. 173.
69 See above.

70 A. Häggblom, *Ålands internationella garantier*, 25.11.1974, published in *Åländska perspektiv* 2011:1.
71 Ibid.
72 This account has also been confirmed by archival work by Lauri Hannikainen, *Ahvenanmaan itsehallinon ja ruotsinkielisyyden kansainoikeudelliset perusteet*, Åbo Akademi, 1993, pp. 61–62.

with Häggblom that the international guarantees had a psychological importance and thereby also a political value. He expected that the Ålanders would maintain their wish to reactivate some form of international guarantees and noted that they wished

> "that the Finnish government should announce on the appropriate occasion that Finland is prepared to submit disputes concerning the autonomy and Swedish-speaking status of Åland to the International Court of Justice in The Hague. In their opinion [i.e. the Ålanders'], such an announcement would have mainly psychological significance, because in practice it would not change the legal situation."[73] Hannikainen notes also the great secrecy prevailing in the Finnish Ministry for Foreign Affairs on matters concerning Finland's international obligations concerning the Åland Islands until the 1980's.[74]

As regards the role of the International Court of Justice (ICJ) we may agree with Törnudd that Finland has accepted the jurisdiction of the court in 1958 under conditions of reciprocity for contentious disputes.[75] This means that, since the position of the Åland Islands has attained the position of customary law, and very possibly also an *erga omnes* position, any state may have an interest to initiate proceedings, in particular states around the Baltic sea and states parties to the various conventions and decisions concerning Åland.[76] The range of states concerned is fairly large. More generally the customary international status of the Åland Islands has been confirmed repeatedly across time. In the introduction to a recent report by the Finnish Ministry for Foreign Affairs it is noted:

> The Åland Islands (hereinafter Åland) have a recognized status under international law as a demilitarised and neutralised area. This status is based on treaties binding upon Finland and on regional European customary international law. No State is known to ever have questioned *the special status of Åland, which includes regional autonomy of the province and the constitutionally safeguarded language rights and cultural rights of its residents*. The Åland decision taken by the League of Nations, which also formed the basis for the Åland Convention of 1921 (Finnish Treaty Series (FTS) 1/1922), is often held up as a textbook example of how disputes between States can be settled peacefully and sustainably.[77]

73 Ibid.

74 In the original Hannikainen notes: "Julkisuudessa tietoa Suomen ulkopoliittisesti merkittävien viranomaisten vuoden 1921 sopimuksen olemassaolon hyväksymisestä saatiin vasta 1980-luvun lopussa Ahvenanmaan uuden itsehallintolain valmistelun yhteydessä" (i.e. "public knowledge of the foreign policy significance of the acceptance of the 1921 treaty by Finland was only made public in the late 1980s in connection with the preparation of the new autonomy act for Åland." Unofficial translation by the author).

75 In its declaration upon acceptance Finland's representative made the following declaration: "On behalf of the Finnish Government, I hereby declare that I recognize as compulsory ipso facto and without special agreement, in relation to any other State accepting the same obligation, that is to say, on condition of reciprocity, the jurisdiction of the International Court of Justice, in accordance with Article 36, paragraph 2 of the Statute of the Court, for a period of five years from 25 June 1958. This declaration shall be renewed by tacit agreement for further periods of the same duration, unless it is denounced not later than six months before the expiry of any such period. This declaration shall apply only to disputes arising in regard to situations or facts subsequent to 25 June 1958."

76 On the obligations concerning Åland as *erga omnes* see U. Linderfalk. "International Legal Hierarchy Revisited – The Status of Obligations Erga Omnes", *Nordic Journal of International Law, 2011, 80*(1), 1–23.

77 Finnish Ministry for Foreign Affairs, *Report on the special status of Åland under international law and on the legal issues related to the Russian Consulate in Mariehamn*, 2023:22. Emphasis added.

However, states are seldom inclined to initiate contentious procedures against another state unless vital for them interests are concerned. Article 34 of the Statute of the International Court of Justice provides that only states may be parties in cases before the Court.

Advisory Opinions can be given by ICJ "on any legal question at the request of whatever body may be authorised by or in accordance with the Charter of the United Nations to make such a request" (Article 65, ICJ Statute).

Advisory Opinions can be requested by the General Assembly or the Security Council as well as by other organs of the United Nations and specialised agencies "which may at any time be so authorised by the General Assembly" on legal questions arising within the scope of their activities. In this regard one may recall that UNESCO is among the specialised agencies that have requested an advisory opinion from the ICJ.

Furthermore, one may add that the United Nations have established several special rapporteurs, among them a special rapporteur on issues pertaining to minorities. The mandate of the *Special Rapporteur on minority issues* was established by the Commission on Human Rights in its resolution 2005/79 of 21 April 2005.[78] It was extended by subsequent resolutions for periods of three years, most recently in 2023 in resolution 52/5. There is now in place a newly appointed Special Rapporteur on minorities, namely professor Nicolas Levrat, from Switzerland. In addition to longstanding research on minority issues, understanding of European minority law and experience, inter alia from complex and asymmetric systems in Switzerland and Belgium, Levrat has previously served in the Council of Europe Advisory Committee on the Framework Convention on National Minorities.

Special procedures of the UN can utilise the tool of *Communications* by which letters are addressed to governments on problematic issues. This is not a judicial or quasi-judicial procedure. The purpose of communications is to draw the attention of Governments and others on alleged human rights violations; ask that the violations are prevented, stopped, investigated, or that remedial action is taken; report to the Human Rights Council on communications sent and replies received, therefore raising public awareness on individual, and group cases as well as legislative and policy developments they have addressed in a given period.

After this historical and empirical account, I shall now turn to the frontlines of research and international debates concerning territorial autonomy and, in particular, concerning the role of law and dispute resolution in making territorial autonomy arrangements a viable solution.

78 For more information on the mandate and work see https://www.ohchr.org/en/special-procedures/sr-minority-issues

5. Insights in recent research – trying to understand the role of dispute resolution mechanisms in territorial autonomy arrangements

While the local, national and international legal and political processes are pursued, research and recent works have shown interest for new perspectives and questions situated on the interface of the previously mentioned divides of the *national – international, private – public* and, finally, *individual and collective dimensions* of processes of constitutional nature and of territorial arrangements. We shall look a little closer at three strands of works. They are presented in chronological order following the year of publication of the main publication referred to.

Christine Bell's work and seminal book "On the Law of Peace" (2008) bridges three intellectual and legal tensions and questions in the field of peace agreements. What is the position and role of peace agreements across the divide of the particular or the general, international or domestic law and process in relation to substance in the effort to promote peaceful societal relations?[79] Bell argues that law's role in compliance needs to be reconceived in the peace agreement context, so as to address the particular challenges of transiting from a concept of the agreement as international contract-treaty, to social contract-constitution.[80] The key dilemma is to balance the precision of (short-term) commitments with parameters, especially wording, form and procedures that enable a deeper constitutional consensus to emerge. Instead of pushing parties to forms of third-party interpretation and enforcement which is as court-like as possible, Bells suggests enforcement and compliance monitoring through "overlapping domestic/international political/legal mechanisms which would enable the respective spheres of law and politics to work together to build a mutual independence."[81] The importance of monitoring, enforcement mechanisms and thereby of political and legal *accountability* is central in Bell's work. She merges in this effort multiple strands of law such as self-determination, human rights, international law, transitional justice and constitutional law.

Through the concepts of *lex pacificatoria* and *complex accountability* Bell can address problems of overlapping legal regimes with competing constituencies of legitimacy. As beautifully put:

> "The wide strategic blanket of conflict resolution is interwoven with the normative threads of constitutionalism and human rights. The *interweaving of the state's internal and external legitimacy*, of constitutional commitments to both substance and process, and of *competing visions of how community is constituted*, finds resonance in constitutional dilemmas of how to reconcile the constitution's authorship with its community and with its particular territory and institutional arrangements."[82]

Mixed accountabilities (domestic, international and internal constitutional) can operate to hold each other in balance, argues Bell inspired by previous work by Nico Krisch, Benedict Kingsbury and Neil Walker.[83] Indeed, she notes that such type of "accountability-through-challenges-of-legitimacy" can be used with reference to third party actors who appear beyond the reach of international law's regulatory framework. While the example given here is NGOs, one can envision that internationally grounded territorial entities, whether regions or territorial autonomies, but also minority institutions of public-

79 Ch. Bell, *On the Law of Peace*, OUP, 2008, pp. 15–21.
80 Ibid., p. 286.
81 Ibid.
82 Ibid., p. 217. Emphasis added.
83 Ibid., pp. 277–278.

private national-international character would fit the description. There is "something quite dissatisfying and intangible about this form of accountability, that slithers between the descriptive 'is' and the normative 'ought'", admits Bell. The underlying problem and challenge is that of bringing together "multiple and competing sites of governance which have competing theatres of legitimacy and competing constituencies to whom accountability is owed".[84] Indeed when a territorial autonomy or federal sub-state is established, whether this is done through domestic processes and law, but even more so when they are "co-created" through domestic and international action, these competing theatres of legitimacy and political constituencies become apparent. The tools of accountability, dispute resolution and enforcement need then to also consider this complexity.

Bell does not refer to the Åland Islands as an example in her discussion of the interwar period.[85] Here she looks closer, however, at the cases of Upper Silesia and the Saar. In any case, Bell's analysis corresponds well with the substance, process and experiences of the Åland Islands and Finland too. Multiple processes at local, national and international levels coalesced in the bringing about of an independent Republic of Finland, with constitutional bilingualism and affirmation of the foundational, constituent role of Swedish-ness (equally with and alongside the Finnish language) and eventually territorial autonomy for the Åland Islands, while at the same time trying to ensure legitimacy, rule of law and inclusion interrupted by the atrocities and human loss during the civil war, also referred to as the independence war.

Territorial autonomy as such holds a prominent position in Bell's argument as a tool of state redefinition, disaggregated and dislocated power, collectively described as *hybrid self-determination*.[86] Territorial autonomy and other forms of self-government have been found to be a component of very many post-1990 peace agreements, including in Bougainville, Northern Ireland, Chittagong Hill Tract/Bangladesh, New Caledonia-France and several other examples.[87] Redefinitions of the state "as based on inclusion and equality" is the attempt in these agreements and proposed agreements. While many of the peace agreements contain statements affirming the sovereignty and unitary nature of the pre-existing state, the arrangements, which include not only disaggregation but also dislocations of power, move beyond the confines of traditional concepts of federalism or regionalism as coherently hierarchical as between state and sub-state entity, even as these concepts are themselves changing. Mechanisms such as autonomy and power-sharing, "aim to move the state away from a concept of *legitimacy* as automatically attaching to the state, to a concept of legitimacy that depends on the ability of the state to deliver *pluralistic participation* and *equality*, regardless of identity or political allegiance", argues Bell.[88]

In the case of the Åland Islands, the institutions of territorial autonomy were accompanied by substantive provisions on language, education, culture, demilitarization and neutralization, as well as by procedural guarantees found in the constitution, the Autonomy Act as well as in the role of the League of Nations as guarantor of the decisions and agreements. This seems,

84 Ibid., p. 278.
85 The only mention of Åland is alongside South Tyrol as successful examples of situations where "[d]evolved power can convincingly be argued to consolidate the unitary state by dissipating the drive for secession because it delivers most of its day-to-day benefits". The nature of the benefits envisioned is not clarified by Bell in this instance, but we shall return in the main text to issues of representation and participation.

86 Bell, loc. cit., especially pp. 108–123.
87 Ibid. p. 113.
88 Ibid, pp. 114–115 (emphases added).

in other words, to be a case of hybrid self-determination involving state-redefinition with Finland as an independent bi-lingual and bi-national republic recovering from a bloody war and affirming its internationalist vision; there was also disaggregation of power through the autonomy for the Åland Islands but also a combination of the personality and the territoriality principles in language rights and legislation; there was dislocation of power both in the (however reluctant) acceptance of the role of the League of Nations and the checks and balances, separation of power, encapsulated in the constitutional order. As we saw above, this order was challenged and questioned throughout the 1920s and 1930s by authoritarian and ultra-nationalist voices and forces in Finland. The precarious situations in which the Finnish state found itself before, during and after World War II, entailed grave loss of human lives and resources, that had to be recovered slowly and painfully throughout the Cold War. The redefinition of the state, the combination of constitutional and internationalist elements put in place in the early 20th century, was strong enough to carry the project through the post-war tough times and continued when Finland became an active part in European integration (in the Council of Europe and soon thereafter the European Union) and more recently a member of NATO.

State redefinition, disaggregation and dislocation of power continues then, on the premise and assumption that the original hybrid and complex constitutional order, which stretches across domestic and international commitments, holds and delivers what it promised to deliver for the many core actors involved in it. The hybrid and complex nature of the original compromise cannot be easily wiped out, not only, nor mainly for formalist legal reasons of constitutional and treaty continuity (even though predictability and trust are hugely crucial in domestic as well as for international affairs), but because there is (still) historical political conscience, in Finland, on Åland, in Sweden and internationally, of the dire consequences of the alternative, experienced under the harsh years of the turn of the 20th century, the wars, the fears and threats of extremism in the interwar period. This is also why any such complex compromise can be viewed as a social contract at constitutional and international level and needs to be fine-tuned and adjusted while maintaining the essence of the original compromise.

Bell chooses not to give prescriptive normatively oriented recommendations as to what needs to be done to ensure the resilience of peace agreements and ultimately of peace itself. The thick contingencies of every conflict do not permit such a narrow approach, she argues. Below, in the conclusions to this report we shall return, however, to the principles she has deducted through the study of the post-1990s peace agreements. Many of those principles have a bearing also in a situation such as the one pertaining to the Åland Islands, and I shall return to them also in the final conclusions of the present study.

Before that, we shall look at other recent work by political scientists Dawn Walsh and of Felix Schulte and Gene Carolan. Walsh is an expert in the way guarantees are incorporated in agreements concerning territorial self-government, while Schulte and Carolan focus on the effect of legalization on the survival of peace agreements.

Following Dawn Walsh, who has studied the use and functioning of territorial self-government in Northern Ireland, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Moldova and Iraq, all three dominant conflict resolution schools (i.e. consociationalism, centripetalism, and power-dividing), to differing degrees, advocate for the creation of territorial self-government through the diffu-

sion of state power to different levels of government.[89] Both institutions and perceptions have an impact on the success of such institutions. Perceptions that the other side is not trustworthy, i.e. that it prefers to exploit you rather than cooperate, are advanced by conflicting interpretations of past interactions and by ethnic, or other identity differences.[90] Trust and the concept of credible commitments is centre stage in the work of Walsh. Domestic or international guarantees may be important to overcome this "inherent lack of trust".[91] Territorial self-government (TSG) can only act as a conflict management mechanism if the self-government arrangements are expected to remain in place for the foreseeable future, argues Walsh. This is vital both from the perspective of states wishing to inhibit centrifugal forces, but especially from the side of asymmetrically weaker actors, groups and regions, that need to mitigate against "what appears to be a tendency towards re-centralisation, which would fundamentally undermine TSG".[92] Walsh examines the role of domestic and international guarantees.

The ability of constitutions and other domestic guarantees to provide protection for TSG arrangements "is dependent on the ability of the domestic courts to enforce the norms included in them".[93] Matters of judicial review, independence and neutrality of the judiciary come then at the forefront. International involvement in peace agreements is a widespread practice. Walsh distinguishes between *soft and hard international guarantees*. Soft international guarantees involve international actors partaking in the negotiation, implementation and operation of TSG agreements, even if a firm legal commitment is absent. The primary function of soft guarantees is norm development and shaping preference and opportunity structures for the parties. Soft guarantees can generate some of the pressures for compliance as hard law or formal ones and can be equally effective.[94] Soft guarantees are often provided as part of a policy of conditionality, which ties important benefits such as donor assistance or membership of a regional organization, with agreement compliances. Hard international guarantees entrench legally the TSG solutions in international instruments, such as resolutions or treaties. The continuity and perseverance of international involvement is generally higher when international actors have already been engaged, in other words there is higher likelihood of re-engagement.[95] Walsh has found that disputes over which level of government possesses a particular competency is a common phenomenon when territorial self-government is in place. Guarantees are seen as necessary to assure both the TSG and the central government sides.[96] Domestic constitutional guarantees and both hard and soft international guarantees convince parties that the territorial self-government agreements will not be manipulated. Ordinary legal guarantees are greatly weakened by their dependence on shifting central government majorities. The legitimacy of the actors offering guarantees and of the tools therefore influence the support given to them, and thereby affect also the trustworthiness of relations.

The ability of domestic guarantees to stabilise territorial self-government is undermined by the

89 D. Walsh, *Territorial Self-Government as a Conflict Management Tool*, Palgrave, 2018, p. 7.
90 Ibid, p. 12.
91 Ibid., p. 13 ff with reference to the work of Barbara Walter, "Designing Transitions from Civil War: Demobilization, Democratization, and Commitments to Peace." *International Security*, vol. 24(1) 1999, 127–155, https://doi.org/10.1162/016228899560077.
92 Ibid, p. 15.
93 Ibid., p. 18.
94 Ibid, p. 20 and note 49 referring to Chr. Bell, "Peace Agreements: Their Nature and Legal Status", *American Journal of International Law*, Vol. 100(2), 2006, 385–401.
95 Walsh, loc. cit., p. 25.
96 See conclusion, ibid., pp. 219 ff.

inability of domestic courts to act as protectors of domestic territorial self-government laws, including constitutions. Across the five cases studied by Walsh, Constitutional or Supreme courts "struggle to be effective arbiters of disputes between TSG units and the central government" and "there are difficulties with using judicial review as an arbitration mechanism".[97] Evidence of centralization undermines the alleged neutrality of courts. In four of the cases studied by Walsh (Northern Ireland, Bosnia and Herzegovina, Former Yugoslav Republic of Macedonia and Moldova) there is evidence that using the constitutional or supreme court as the arbiter has provided the central government with an advantage where disputes between the TSG unit and the central government have occurred.[98] Following the analysis of the Supreme Court case law in the United Kingdom, Walsh concludes that especially in the so called Brexit case (2016), the Supreme Court is illustrative of a Court which views the regional parliament and assemblies, in Northern Ireland, Wales and Scotland, as "utterly subservient to the central Westminster parliament and which is reluctant to interpret devolution laws in a manner which recognises the legal and political conventions which regulate the division of powers". This ruling suggests that difficulties facing TSG regions "are seen as secondary to the 'real problems' facing the state as a whole", argues Walsh. This happens then not only in transition periods following violent conflict as in Iraq and Bosnia, but also in states considered as established democracies, or where violent conflict between the central state and the autonomous regions has not occurred. "Where there is no political will to compromise, simply delegating decisions to courts does not ensure issues are resolved", concludes Walsh.[99] More importantly, the establishment of "alternative dispute resolution commissions" would be helpful, argues Walsh. Following this line of thought, she believes that such commissions would be composed of the actors with the leverage and authority to ensure decisions are executed. In Bosnia and Herzegovina, the role of the international judges is seen as having aggravated the tendencies of centralization and ethnicization, since they often voted for centralization, tipping majority decisions in favour of centralization over objections of the majority of domestic judges. So, international involvement can in some cases even fuel centralization.

As regards the functioning of other international guarantees, a basic problem seems to be that they often are more focused towards protecting the state and fencing off secession than preventing re-centralization. Centralization "simply does not present the same threat to the international order", as compared to the disintegration of states, and as such centralization received generally less attention. The use of international guarantees across the five cases in Walsh's study indicates that where the territorially self-governed regions result from low-level

97 Ibid. pp. 224–225.

98 These findings coincide with the analysis of F. Palermo and K. Kössler of federal systems and, in particular, of asymmetric solutions. They note that, from a comparative perspective, in a number of federal countries subnational entities are faced with the problem that their formal constitutional autonomy has been "considerably eroded". India, the Russian Federation and Malaysia are the examples mentioned. F. Palermo & K. Kössler, *Comparative Federalism – Constitutional Arrangements and Case Law*, Hart Publishing, 2017, p. 130. The role of courts is also discussed in D. Walsh, "Constitutional courts as arbiters of post-conflict territorial self-government: Bosnia and Macedonia", *Regional and Federal Studies*, 2019, Vol. 29(1), 67–90, where she concludes that judicial review can have centralizing tendencies and if this occurs, it usually depends on the shared preferences of the judges selected and those who selected them. Issues of independence and neutrality of judges and courts appear also in this study as of paramount importance.

99 Walsh, loc. cit, p. 227.

conflict or conflict with strong central state, "minorities will not be able to rely on strong international guarantees to support them".[100] In addition, and as is known through many previous studies, states, including kin-states and neighbouring states, are often reluctant to make use of interstate complaints and formal, legal tools and guarantees. According to Walsh, the international community needs to recognise that centralization represents a serious threat to peace.[101] Combining domestic and international guarantees offers, in her analysis, the best possibility of ensuring that territorial self-government arrangements are stable and operate as an effective conflict management mechanism. Strong domestic guarantees, such as constitutional entrenchment, combined with international intervention, which is flexible to address the shifting domestic environment, can convince domestic actors that the autonomy arrangements will not be unilaterally altered and can avert such actions when they appear imminent. Walsh concludes that international actors need to be constantly vigilant and consider the impact of any policies on territorial self-government.[102]

To the work of Bell and Walsh concerning the role of law and the interaction of law and politics in realising complex constitutional and international compromises one can also add a recent article by Felix Schulte and Gene Carolan, on the degree of legalization and how it affects the durability of post-conflict autonomy agreements.[103] Their core question is: to what extent does the law and legal language influence the success of territorial autonomy agreements? Their working hypothesis is that highly legalized territorial autonomy arrangements (TAA) strengthen the credibility of commitments and raise the cost of violating autonomy arrangements, thus rendering more durable agreements. Using the PA-X Database, Schulte and Carolan identified territorial autonomy provisions in 245 peace agreements concluded between 1990 and 2022.[104] Of those, they excluded agreements concluded after the beginning of 2019, in order to be able to study the implementation and development of more recent agreements at least through a full year. This method resulted in the coding and analysis of 236 TAA cases in 66 different peace processes, in 60 countries. In my view, this quantitative finding is significant as it adds to the earlier studied overviews of functioning territorial autonomies, where it has been found that there are some 65 functioning territorial autonomies around the world today.[105] This new finding also indicates that at least a third of States today, and their populations, are concerned and affected by the success or failure of territorial autonomy arrangements. Both the states, minorities and actors concerned, as well as the international community (should) have thereby a great interest in addressing particular and structural issues concerning territorial autonomy as an institution and the contingent experiences of functioning or proposed territorial autonomy arrangements. If we to these numbers add also the number of groups and processes claiming territorial autonomy arrangements where such do not exist, then the relevance of the questions discussed in the present study go far beyond the contingent

100 Walsh, loc. cit., p. 230.

101 Ibid., p. 237.

102 Ibid.

103 F. Schulte & G. Carolan, "What's law got to do with it? How the degree of legalization affects the durability of post-conflict autonomy agreements", *Ethnopolitics* (2023), 1–26, https://doi.org/10.1080/17449057.2023.2207876

104 The PA-X database has been developed by a team headed by Christine Bell at the University of Edinburgh and is found here: https://www.peaceagreements.org/

105 M. Ackrén, *Conditions for Different Autonomy Regimes in the World: A Fuzzy-set Application*. Åbo Akademi University Press, 2009.

and particular circumstances of the Åland Islands, or any singular case studied.

Schulte and Carolan use the concept of "legalization" as employed previously by Kenneth Abbott and others, a concept based on three attributes: *obligation, precision* and *delegation*.[106] In brief, obligation tries to capture the expected level of normative compliance; precision measures the level of detail of norms included in the agreement, while delegation measures the extent to which the agreement has delegated power to implement, interpret and enforce the provisions of the agreement to executive bodies, supervisory organs or other dispute resolution mechanisms. Such a role can be given to specialised bodies as regards technical aspects. Interpretative authority can also be vested in courts, arbitrators and ad hoc tribunals. It is this last aspect of delegation which is most pertinent for the present study. Previous studies have found that high levels of delegation increase the costs of opportunism and the incentives for cooperation as well as, conversely, that low levels of delegation lead to inferior outcomes.[107] Schulte and Carolan have included provisions concerning binding third-party decisions, binding arbitration, conciliation, mediation, institutionalised bargaining and pure political bargaining under the concept of delegation and have also studied whether access to such methods of dispute resolution is limited or consensual.

The overall results of this quantitatively oriented study are, firstly, that territorial autonomy is a persistent feature of contemporary conflict resolution; secondly, that highly legalized TAA tend to survive longer than weakly legalized autonomy agreements, even in cases with high susceptibility to the recurrence of violence; thirdly, that delegation adds to the level of legalization but does not seem to be essential to autonomy success. A strong role for interpretative authorities enhances the combination of legally binding obligations and relatively unambiguous wording and thereby the overall legalization of arrangements. This is then the forefront of quantitative research efforts as regards the role of dispute resolution and enforcement mechanisms in territorial autonomy research. A lot remains to be done.

This far we have encountered the concepts of complex accountability and hybrid self-determination, we have engaged in the uses of domestic and international guarantees and as regards the use of judicial and quasi-judicial organs between the state and territorial autonomies, and, finally, we have learned about the complementary role of dispute-resolution in strengthening the resilience of peace agreements, following adequate commitment (obligation and precision). We have also identified that many of these phenomena are present in the case of the establishment and century-long development of the Åland autonomy.

106 K. W. Abbott et als, "The Concept of Legalization", *International Organization*, 2000, 54(3), 401–419.

107 Schulte & Carolan refer here to work by S. Gopalan and Abbott & Snidal.

6. Back to discussions in and on Finland

Writing in 1993, Lauri Hannikainen asserted that Åland is “one of the best-functioning autonomies in the world… the autonomy has continued to develop in a relatively positive atmosphere: when in 1991 a new, improved Åland Autonomy Act was enacted, The Parliament of Finland approved it by overwhelming majority and the Åland Provincial Parliament unanimously. The Ålanders have no fear that the Finnish State has any plans to jeopardize the autonomous status of the Åland islands.”[108]

When the Åland Government (then of a liberal – social democratic inclination) in spring 2019 summarised in its annual report to the Åland Parliament the process towards the next revision of the Åland Autonomy Act, the wording was more nuanced. It is worth quoting the entire introductory section:

> “On 16 June 2017, the [bilateral] Åland Committee submitted its final report, after which the Ministry of Justice organised a consultation round. After discussions with the Autonomy Committee in the Åland Parliament, the Government of Åland issued its commenting statement on 27 September 2017 (ÅLR 2017/4970). After the end of the consultation period, the legislative drafting group operating under the Åland Committee began work to review the comments received. A political dialogue was maintained in parallel during the autumn between the head of the Åland Government, Katrin Sjögren, and Anne Berner [Minister responsible for Åland Affairs in the Finnish government]. However, the issues raised in the comments received proved to be of such a nature that it was not possible to resolve them either in the law drafting group or within the time that [Berner and Sjögren] could reasonably allocate to the matter. The Ministry of Justice and the Government of Åland therefore agreed that a high-level working group headed by Judge Niilo Jääskinen would be set up to continue the preparations.
>
> The task of the working group was to identify, on the basis of the feedback received on the Committee’s report and the discussions that had already taken place, the themes and issues requiring further preparation and political discussion, and to make proposals on the issues requiring political guidance. On 20 March [2018], the working group presented its proposals. Several issues were resolved during the working group’s deliberations. Among other things, the working group proposed a revised proposal for an economic system, including a proposal for the basis of the calculation of the amount of equalization. However, several major issues remained unclear, including the question of which areas of law could be subject to takeover or transfer to the competence of the *Lagting* [i.e. the Åland parliament], the size of the amount of equalization and how common resources are distributed.
>
> The description of the Autonomy Act’s relationship to the Constitution and the international anchoring of the autonomy also became an increasingly important issue in the hardening political and legal climate between Åland and the state.”[109]

In addition to the process of revision of the Autonomy Act, the report included information among others on the overall poor understand-

108 L. Hannikainen, *Cultural, Linguistic and Educational Rights in the Åland Islands – An analysis of international law*, Publications of the Advisory Board for International Human Rights Affairs, No 5, 1993, p. 7.

109 The report covers the period up to 08.03.2018 and is signed by Katrin Sjögren (Liberal), head of the Åland Government and Camilla Gunell (Social Democrat), deputy head of government. Ålands landskapsregering, Redogörelse nr 1/2018–2019 (01.04.2019).

ing of matters pertaining to Åland in government ministries in Finland. On language issues, digitalisation has often resulted in Finnish being the only language available in databases, software, informational and educational activities of State authorities even on Åland but also in the medical field and health sector and as regards availability of health services in Swedish: Gaps and delays in legal drafting on the mainland results in draft bills being prepared without the real and effective possibility of the Åland Autonomy to give comments.

The next annual report by an Åland Government to the Åland parliament was presented by a coalition government headed by the Center Party on Åland. The introduction to the report had a similar wording as the previous one:

> "On 16 June 2017, the Åland Committee submitted its final report. This was followed by extensive preparation at both political and official level, including in an official working group led by judge Niilo Jääskinen. However, several major issues remained unclear, including the question of which areas of law could be transferred to the competence of the Parliament, the size of the tax base and the allocation of common resources. The description of the Autonomy Act's relationship to the Constitution and the international anchoring of self-government also became an increasingly important issue in the hardening political and legal climate between the autonomy and the state. In the political negotiations that followed, it proved very difficult to make progress with a comprehensive revision of the Autonomy Act."[110]

As an example of a controversial case concerning the interrelation of the Åland Autonomy Act, EU law and Finnish legislation as assessed by the Åland Government is the following passage from the next annual report by the Åland Government to the Åland Parliament:

> "The role assumed by the Supreme Court in assessing the relationship of Ålandic laws to EU law has again been relevant after the Supreme Court ruled that a private company is to be regarded as an authority referred to in section 59 b§ 3 of the Self-Government Act (see Supreme Court decision No. 1367 of 16 September 2020). The Government of Åland agrees with the Åland Parliament Autonomy Committee's view that such an extensive interpretation of the concept of administrative authority is not compatible with the Autonomy Act."[111]

The above quotes and examples do not give a full and systematic account of perceptions on Åland concerning the relationship between Ålandic and Finnish decision-makers nor about the legal aspects of the manifold issues raised in the annual reports of the Åland Government. They are examples of core issues raised by the Åland Government in its reports and information about the evolution of developments in the relation between the central state and the autonomous region. They may also help us understand why the issue of international guarantees is once more being raised in Ålandic politics now. In the introduction to the above-mentioned publication concerning the international guarantees for Åland, Lars-Ingmar Johansson noted when writing in 2010 that more than 70 years had passed since the guarantees disappeared and they were anew a matter included in the

110 The report covers the period up to 01.04.2019. It was signed by Veronica Thörnroos and Harry Jansson, head and deputy head respectively of the Åland Government, both from the Center Party. Ålands landskapsregering, Redogörelse nr 2/2019–2020 (12.03.2020).

111 Ålands landskapsregering, Redogörelse nr 2/2020–2021 (08.04.2021). The report further illustrates the increased legal and political complexities and disputes because of the COVID-pandemic pressures and measures as well as discrepancies and gaps in legal drafting in Finland and in Finnish legislation in the Swedish language.

proposals then put forward for a new autonomy act.[112] Fourteen years later, this is still the case.

It is not the task of the present report to expand on domestic discussions on the revision of the autonomy act or constitutional matters more broadly.[113] However, the brief examples below illustrate well the entanglement of domestic and international dimensions of the Åland regime as well as problems in the norm hierarchical structures.

Among the more recent and wider discussions in Finland on constitutional issues that also affect the interpretation and implementation of the Åland arrangements in relation to domestic and international legislation is that on the effects and possible revision of Section 106 of the Finnish Constitution and the absence of a constitutional court in Finland. In the Finnish legal system, the assessment of the constitutionality of laws relies mainly on the oversight of legality of the constitutionality by the legislator, i.e. Parliament, and in particular by its Constitutional Law Committee. The courts must respect the will of the democratically elected legislator. The constitution that entered into force in 2000 included Section 106 on the primacy of the Constitution for the first time. According to this provision a court has the possibility – and also the obligation – to refrain from applying a provision of the law under certain conditions *if it is in evident conflict* with the Constitution.[114] The hierarchical position of the Åland Autonomy Act as a quasi-constitutional legal act which requires special procedures for its enactment and amendment, would seem to imply that the abstract constitutionality of legislation is left in the hands of the Constitutional Law Committee, leaving the role of the Åland Parliament aside. Or, is there ground to believe that the courts could leave aside also an act adopted by the Finnish Parliament and running counter to the Åland Autonomy Act as a quasi-constitutional act of a *sui generis* character, since it has its foundations not simply in Finnish legislation but also in the international undertakings concerning the Åland islands? While the Finnish parliament did not want to recognise the Åland Autonomy Act as a constitutional act before the adoption of the most recent constitution, the parliament went as far as calling it "comparable to a constitution".[115] So far, the broader legal discussion in Finland has largely ignored the implications of this matter for the Åland autonomous status.

112 Introduction in A. Häggblom, *Ålands internationella garantier*, 25.11.1974, reproduced and commented in *Åländska perspektiv* 2011:1.

113 The latest report in this process was presented by a bilateral group of government experts in October 2024. Justitieministeriet, *Betänkande av Ålandsarbetsgruppen 2023 Utredning av vissa frågeställningar i anslutning till Ålands självstyrelse i utveckling*, 2024:37, http://urn.fi/URN:ISBN:978-952-400-033-8

114 On the discussions in Finland concerning the primacy clause of the Finnish constitution, see Human Rights Centre, *Primacy Provision of the Constitution and the Requirement of Evident Conflict – is it time for a change?* Publication 5/2021. The report does not mention issues pertaining to the Åland Autonomy Act.

115 See draft Bills 73/1990, p. 96; 1/1998, pp. 73 & 127; and Constitutional Committee Opinion 5/1991 where the committee found that the Autonomy Act for Åland "is comparable to the constitution" for purposes of a priori control of constitutionality, while not exploring the court's role in constitutionality control. See also M. Suksi, Ålands Konstitution, Åbo Akademis Förlag, 2005, pp. 461–518. Suksi argues that the Åland Agreement has the status of customary law internationally and that it internally holds a "high norm hierarchical position" ("hög normhierarkisk nivå") but is, however, not legally binding ("ingen juridiskt bindande verkan") in the Finnish or Ålandic legal order (loc. Cit., p 485). The question then is whether states and their organs, including courts can consider international obligations as binding only externally, but not internally, even when the content of the obligations has both domestic and international components. I believe this is precisely the insight offered by Bell in her arguments concerning complex accountability.

However, the question was briefly addressed by the so-called Venice Commission in its 2008 report on the Constitution of Finland.[116] The Venice Commission found problematic the dual roles of the Supreme Court in relation to Åland, i.e. both assessing Ålandic legislation as well as adjudicating. The Venice Commission engaged also with the unique power given by Section 106 to the Constitutional Committee of the Finnish Parliament, without however addressing particularly matters relevant for Åland, but only more generally international human rights obligations.[117] It could be argued that there are several human rights components (in today's terminology) in the constitutionally oriented international decisions and agreements on the Åland islands.

Since it is relevant for the present examination the Venice Commission comments regarding the dual position of the Supreme Court are here reproduced as a whole:

> Moreover, the entrenchment of the Aaland Islands autonomy, which is expressly covered by Section 75 of the Constitution, provides for the participation of the Supreme Court in the procedure aimed at organising the control of the Aalandic legislation: an Aalandic act – when it is presented to the President of the Republic – is submitted for an opinion to the Supreme Court which has to judge on its compliance (or not) with the division of legislative competence between the Aaland legislative assembly and the Finnish Parliament. Even when following the generally accepted opinion that the Supreme Court expresses an authoritative interpretation of the question concerning the compliance with the division of legislative powers, the incompatibility between the judicial functions of the Supreme Court and its role in the control procedure of the Aalandic legislation must be underlined. This concern could be bypassed only by supporting the opinion that Section 106 does not concern the Aalandic legislative acts, but in this case there would be a flaw in the system of judicial review of legislation.

This report which engages broadly with issues of constitutional review in Finland, as well as similar work done by the Venice Commission on minorities and more specifically on cases such as Crimea/Ukraine, Gagauzia/Moldova, Republika Sprska/Bosnia and Herzegovina and Kosovo, allow for the conclusion this is an international forum where some of the constitutional-international entanglements concerning the Åland Autonomy have been raised and could be raised again in the future, for instance in light of the persistent problems in the revision of the Åland Autonomy Act. Article 1(2)(c) of the Statute of the Venice Commission makes it a priority for the Commission to work among others on issues concerned with "the contribution of local and regional self-government to the enhancement of democracy".

116 European Commission for Democracy through Law (Venice Commission), Opinion on the Constitution of Finland, CDL-AD(2008)010, para. 120. The Statute, Opinions and other documents from the Venice Commission are available here: https://www.venice.coe.int/WebForms/pages/?p=01_Presentation&lang=EN

117 Ibid., para 118.

7. Some reflections on human rights monitoring mechanisms of relevance for the Åland Islands

Above we have had occasion to address aspects pertaining to Åland and, more generally, to sub-state entities in relation to the United Nations, the International Court of Justice, the UN Special Rapporteur on National Minorities and UNESCO. Some further details should be added as we approach the conclusions of the present study. Within UNESCO there are various monitoring processes linked to specific treaties as well as the World Heritage List. The connection between peace and cultural heritage and the founding instruments of this organization, may be a fruitful avenue for deepening international insights about the status of the Åland Islands which is an associate member of UNESCO since 2021. The Gustaf Eriksson Company archives, describing the Ålandic windjammers of the early 20th century are part of the provincial archive of the Åland Islands and the Maritime Museum in Mariehamn, and were registered in 2023 by UNESCO as Memory of the World upon submission by Finland for the Åland Islands. The group of associate members of UNESCO consists of islands with particular sub-state and autonomous status, including the Faroe Islands and New Caledonia. This is a group that may have a special interest in enhancing international dispute resolution methods and complex accountability systems.

It has been found in previous studies (see section 1 above) that existing international human rights monitoring mechanisms are not equipped for nor intended to deal with disputes between territorial autonomies and central states, disputes which often combine constitutional aspects, diverging constitutional visions and human rights. In the European context this is particularly so the case, since the European Convention on Human Rights does not include much in terms of positive obligations for minorities and the European Court of Human Rights has been reluctant to engage deeply and proactively with such matters. In the study mentioned above concerning international complaints mechanisms, Sarah Stephan uses as an example the case of *Birk-Levy v. France* where the applicant complained that representatives of the Assembly of French Polynesia, a French autonomous overseas (i.e. colonial) entity, "were prohibited from expressing themselves in Tahitian, and contended that the obligation to speak French in the assembly chamber amounted to discrimination both against her and against all Polynesians, who used Tahitian on an everyday basis, relying on Articles 10 (freedom of expression), 11 (freedom of assembly and association) and 14 (prohibition of discrimination)".[118] The European Court of Human Rights "reiterated that the European Convention on Human Rights did not guarantee 'linguistic freedom' as such, or the right of elected representatives to use the language of their choice when making statements and voting within an assembly," thereby confirming its longstanding opinion that the European Convention for Human Rights cannot be invoked to guarantee the language of one's choice in administrative matters.[119] There

118 Stephan, loc. cit.

119 *Birk-Levy v. France*, application no. 39426/06, Press Release no. 727 (06.10.2010), 1. In a similar vein the ECtHR did not find any violation of the right to vote in the case of *Py v. France*, application 66289/01, Judgment 06/06/2005 concerning New Caledonia, accepting a ten-year residence requirement and referring to "local circumstances" while not examining closer the views and actions of New Caledonian authorities and referring solely to the positions of the central state, i.e. France. However, as found in earlier work, there is a possibility of enhancing the role of territorial autonomies in the implementation of ECtHR judgements concerning them. See, S. Spiliopoulou Åkermark, "Kan en hundgård vara viktig för demokratin?" in S. Spiliopoulou

is no reason to repeat here in greater length the thorough study by Sarah Stephan, discussed earlier (see in particular section 1).

However, it should be noted that we do find a more open attitude in other international judicial or quasi-judicial institutions, in particular as regards indigenous autonomy in the Interamerican Court of Human Rights, as well as – more importantly for the Åland islands – the *UN Human Rights Committee*, why it is not possible to preclude the usefulness of this latter avenue, even though its primary goal is to examine specific cases and complaints and not to examine the overall justice and effects of domestic dispute resolution tools nor of constitutional compromises and solutions as such.[120] Issues of access to justice, participatory rights, the right of minorities to culture and also of health have been recurring issues in such litigation. Bringing a strong case before the UN Human Rights Committee, may therefore be a way to document grievances, spread knowledge about them and enhance international discussions, even if the outcomes of an assessment by the Committee may be uncertain.

Stephan's two main conclusions were: firstly, there may be little added value in creating a new monitoring mechanism – the Swedish-speaking character of the Åland Islands can be and is indeed scrutinized by existing monitoring mechanisms, which may be made greater use of in the future. Secondly, that if quasi-judicial or judicial protection is sought for a standard of protection corresponding to Chapter 6 of the Åland Act on Autonomy, inevitably a new international instrument elevating this piece of domestic legislation into the sphere of international law would "have to be adopted, be it an international agreement or a unilateral declaration placed under the protection of an international organization as guarantor."

As regards the first conclusion by Stephan, we have seen in the above analysis that the Ålandic authorities have strengthened their international presence and communication with monitoring organs domestically and internationally, among others the Justice Ombudsman in Finland and the Advisory Committee on the Framework Convention on National Minorities in the Council of Europe, as well as in UNESCO. Stephan noted that such work can expand, and I believe this is a correct observation.

While I agree with the first conclusion, I believe that Stephan's second conclusion is partly wrong. There is already a firm international status for protection, from a formal legal point of view, not simply of the culture and language of the Åland Islands, but also about all other elements included in the decisions, agreement and convention adopted in connection to the 1921 dispute settlement, including about autonomy, and as thereafter implemented domestically and internationally and as repeated in internation-

Åkermark, *Styr ålänningarna sitt öde? Demokratiperspektiv på Åland*, Cavannus förlag (2021), 243–258.

120 See for instance references to safeguarding indigenous autonomy in Order of the Inter-American Court of Human Rights of April 3, 2009, Provisional Measures Regarding the Republic of Colombia Matter of Pueblo Indígena de Kankuamo and Case of the Maya KAQCHIKEL indigenous peoples of Sumpango et al. v. Guatemala, Judgment of October 6, 2021. The UN Human Rights Committee has recently issued far reaching Opinions for instance with regard to culture, lands and health of the *Torres Islands* inhabitants in Australia in its Views adopted in 2023, UN Document CCPR/C/135/D/3624/2019 and also in cases concerning to right to vote in the *Sámi Parliament* in Finland, UN Document CCPR/C/124/D/2668/2015 (Views issued 2019) and UN Document CCPR/C/124/D/2950/2017 (Views issued 2019). Problems of autonomy in relation to the Finnish legal system are thereby in principle known already to the UN Human Rights Committee.

al pronouncements and in preparatory works in the Finnish parliament. So, there is no need for any new agreement or unilateral declaration about the status of the Åland Islands as such to ensure international guarantees in the substantive sense. The status is firm. Klaus Törnudd was correct when he noted that a unilateral declaration by Finland accepting the Jurisdiction of the ICJ would only have a psychological effect but would not change the legal situation.[121]

What there may be a need for is either that actors authorised to initiate international proceedings before the ICJ are actively sensitised or, more structurally, an initiative towards the creation of complex accountability systems which address the specificities of multilevel regimes for territorial autonomies, without questioning the territorial integrity of states which is always seen as the red line in international affairs. Such a system would have the advantage of being able to address disputes from around the world with greater neutrality and objectivity and gather legal expertise.

In both cases, the Åland authorities, preferably the Åland government and Åland parliament in cooperation, would have to make the broader case why and how the respect of international obligations concerning the status of the Åland Islands is lagging behind and in what ways this status is (possibly) considered by Åland in violation of such legal undertakings. For a small territorial autonomy, with many everyday challenges in administration, legislation and finance, this would most likely need to be a long-term endeavour. It could be narrower, or broader in its substantive coverage, but it would need to explain why domestic tools of dispute resolution have proven not to be sufficient or are not available to the Åland Islands. For that purpose, it would be necessary to expand evidence from and arguments over a longer period. A cost-benefit analysis would have to be made by the Åland authorities to indicate what the concrete advantages and end goals could be. The central state, in this case Finland, has per definition a huge advantage in its knowledge, administrative and communicative capacities, through ministries, court system, access to media, university education, research funds etc, as shown also by Walsh in her research (see section 5 above).

Meanwhile following, participating in, and promoting European and global discussions on complex accountability and the combination of domestic and international guarantees for territorial autonomies may give important insights and create new avenues in the future.

121 See above text in connection to footnotes 66–70.

8. Final comments and conclusions

None of the regional (autonomous), national or international actors and sites of justice can alone hold per definition the prerogative of legitimacy nor being "the sole good ones". They have all their respective constraints and agendas, politically and materially. Multilateralism is today being questioned and is often weak and underfunded.[122]

The UN Secretary General has repeatedly warned about the economic crisis of the United Nations including the risk of the UN being bankrupt, as only about half of the member states pay regularly their dues, while the two largest economies of the world, the United States of America and China, are not always among them. We have also seen the inability of the United Nations and other international organizations and states to react efficiently when powerful states violate international law. International organizations exhibit often, and perhaps unavoidably, the weaknesses found in their member states. There are centralising tendencies in many countries and those have been accentuated through the reactions of the recent pandemic and the global geopolitical situation, in addition to the general centralization risk that has been studied in connection to dispute resolution in territorial autonomy arrangements.[123]

There are global authoritarian trends that may reinforce the above phenomena. A possible positive thing about such a trend is that Finland, a small country with a complex history and a commitment to multilateralism, democracy and the rule of law, has (or, at least should have) an interest in strengthening such rule of law domestically as well as internationally.

Under such circumstances it may be useful to keep in mind some of the core sensitivities and commitments identified by Christine Bell in all such entangled situations. In my understanding, these commitments are important and useful both for autonomous regions and for central states, both for Åland and for Finland, as well as for territorial autonomy arrangements in recent peace agreements and for long established territorial autonomy arrangements.

In place of normative pronouncements on how law and dispute resolution tools can assist implementation of peace agreements, Bell has offered six "commitments" that should be considered in this task: firstly, *commitment to legal pluralism*, which requires that law continually negotiates its own claim to a distinctive legitimacy and space from political power while, simultaneously, politics should be enhanced as a space of real deliberation and decision-making; secondly, *commitment to constitutional pluralism*, recognising that "there is no constitutional default position" and that international as well as domestic processes in different constellations provide authority and legitimacy of the ongoing inter-constitutional dialogue which includes competing constitutional visions. This often requires the use of overlapping and hybrid institutions and a "certain amount of mess", something that may go against the instincts of the lawyers. In my understanding, this also presupposes that dispute resolution tools and courts are open to various sources of law and constitutional visions coming from a regional, national or international direction; *commitment to recognizing law's*

122 H. Ahn, "Clock's Ticking: What Does International Law Have to Do with the UN's Liquidity Crisis?" in *EJIL: Talk! Blog*, May 30th, 2024, https://www.ejiltalk.org/clocks-ticking-what-does-international-law-have-to-do-with-the-uns-liquidity-crisis/. The recent commentss by US President Trump on Greenland (as well as Panama and Canada), including even a possible use of force, is an example of great powers being prepared to disregard and even violate international law. See BBC News "Trump ramps up threats to gain control of Greenland and Panama Canal", 7 January 2025 (from bbc.com).

123 See above, section 5.

performative dimension requires us to pay attention to legal claims and counterclaims both at the technical and at the narrative level. It is the narrative that reveals possible competing constitutional visions; *commitment to negotiated justice* which requires that there is will and ability to adhere to existing normative standards and also recognize that justice must be negotiated at multiple levels (regional, domestic and international) in an "ethic of diversity" transgressing the divide between necessary normativity and political struggle as well as the divide between universalistic and particularised justice claims; finally, a *commitment to complex accountability*, as mentioned above, entails reciprocal monitoring and mutual constraint of constitutional and metaconstitutional sites across and between the local, domestic and international levels and a nascent new conceptualisation of separation of powers. All together they can be condensed into a bundled *commitment of moral and political imagination*, argues Bell.[124]

In the present study I have examined the historical experience of legal mechanisms to address disputes between autonomous regions and states, analysed the "frozen guarantees" given for the Åland Islands, given a brief account of current strands of research, initiatives and approaches to the study of the role of law and dispute resolution in territorial autonomy arrangements, and, finally, I have commented about existing mechanisms and their possibilities and limitations. I conclude that steps already taken by the Åland Islands, vis à vis human rights monitoring organs, domestic justice institutions, and UNESCO, can be further developed. For instance, the story of the "frozen guarantees" for the Åland Islands is barely known internationally. There are new avenues to be explored as regards the possibility to ask for an advisory opinion by the ICJ, engage with the UN Special Rapporteur on minorities or the Venice Commission of the Council of Europe. In 2009, the Permanent Court of Arbitration administered a unique case through a five-member tribunal in the *Abyei Arbitration* between the Government of Sudan and the Sudan People's Liberation Movement/Army.[125] This was possible following an agreement between the government and the liberation movement. While the outcomes have not offered a lasting peace to the region, the effort indicates that it is well possible to envisage international arbitration as an avenue in disputes between governments and regional actors, at least when all other means have been exhausted.[126] The circumstances, conditions and goals for such an effort would need to be explored thoroughly by the parties. Finally, as mentioned above, research and academic networks are engaging in work concerning dispute resolution and the resilience of territorial autonomy arrangements, something which gives new opportunities for knowledge and capacity development.[127]

Research results across time, comparatively, and from different fields of social sciences agree on the importance and complexity of ensuring *legitimacy* of those holding power in such special territories where the local, the national and the international are inextricably intertwined. Such research also highlights the importance of availability, legitimacy and efficiency of *dis-*

124 Bell, loc. cit., 295–301.

125 *Government of Sudan v. Sudan People's Liberation Movement/Army*, Final Award, PCA No. GOS-SPLM/A, 22 July 2009 (hereinafter Abyei-Arbitration). https://pca-cpa.org/en/cases/92/ (as of 08.01.2025).

126 Freya Baetens & Rumiana Yotova, "The Abyei Arbitration: A Model Procedure for Intra-State Dispute Settlement in Resource-Rich Conflict Areas?" *Goettingen Journal of International Law* 3 (2011) 1, 417–446.

127 See for instance the initiative of a Global Autonomy Network Group (GANG) initiated by the present author and the Åland Islands Peace Institute in 2023 https://peace.ax/global-autonomy-network-group/ (as of 08.01.2025).

pute resolution tools and thereby of accountability in such cases. The present study supports the conclusion of Nathaniel Berman (1993) as regards minority protection and the Åland dispute resolution. As Berman put it: "it effected the *permanent* embroidering of the sovereign into the fabric of the international legal community".[128]

Navigating the murky waters of international affairs, authoritarian trends domestically and globally, of polarisation, nationalism and xenophobia is a demanding task for all societies and for decision-makers in territorial autonomies, in particular the smallest of them. Drawing expertise from many sites of knowledge and having broad long-term discussions bringing together the core political and administrative actors to ensure continuity and achieve long-term goals is, as – I see it, based on the above study – the only feasible way forward. In the specific case of the Åland Islands, the annual exchanges between the Self-Government Committee of the Åland Parliament (*Självstyrelsepolitiska nämnden*) and the Åland Government offer a promising platform for the conduct of such long-term strategic analysis and deliberation, to consider if, and when, to pursue any of the tools and knowledge presented in the present study. Finland and Åland, as small actors on the international scene, share an interest in enhancing predictability, trust and the rule of law, domestically as well as internationally. Issues of legitimacy, of political will to find and adhere to practicable solutions and compromise, and of the constant interplay between law and politics and between domestic and international dimensions remain as salient global characteristics of territorial autonomy solutions.

128 See above footnote 34.

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Peace, conflict and conflict resolution are the three main areas of activity for the Åland Islands Peace Institute (ÅIPI). These wide areas are mainly considered through the special status and competencies of Åland: autonomy within Finland, minority rights, demilitarisation and neutralisation. The ÅIPI is an independent foundation, established in 1992, and specialises in research, education and information. A Board of Directors and a Research Council are responsible for the activities of the Institute. The Åland Islands Peace Institute has consultative status with the UN Economic and Social Council, ECOSOC. The Åland Islands Peace Institute:

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