

THE CONSTITUTIONAL
FRAMEWORK FOR THE
AUTONOMY OF ÅLAND

**A Survey of the Status
of an Autonomous Region
in the throes of European Integration**

Second revised edition

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*To Terhi, Erminia and Ilaria,
and in my father's memory*

INTRODUCTION

The purpose of this paper is to survey the constitutional status of the Finnish Province¹ of Åland.

The mentioned term “constitutional” needs a preliminary explanation, as it might appear twofold. Indeed, while it normally refers to the proper constitutional rules of a given country, as far as Åland is concerned, one might also speak of a broader constitutional status, in relation to the several sources of International Law, which refer to the Islands. In this respect, one might consider the international rules that have directly affected the status of Åland in the domestic order as a part of the “Ålandic constitution”. Within this paper, however – unless otherwise specified – the terms “constitution” and “constitutional” are only referred to rules, which are formally part of Finnish Constitutional Law.

According to the previous considerations, however, in order to understand the real scope of Åland’s autonomy, the subject matter of this paper involves consideration both of Finnish Constitutional Law and of certain international commitments.

Before starting the legal analysis, the first chapter of this work surveys Åland’s constitutional history. Constitutional history, indeed, is very useful, and not only for historical reasons, because it helps understanding the current legal situation.

¹The Swedish term “landskap” and the Finnish “maakunta” are mostly translated into English as “province”. Considering Åland in the European context, one might prefer to call it a “region”, since this term is generally used to define territorial units that enjoy legislative autonomy. The most relevant exception in this respect is that of countries with a federal structure, which are articulated into “states”. On the other hand, the term “province” is mostly used for smaller units, which – either led by locally elected bodies, or by civil servants – are only entrusted with administrative tasks. Although Åland’s autonomy is evidently much broader than that of other “provinces”, the well-established use of the term “province” in the legal literature concerning Åland is probably justified in the light of its relatively small population and territory. Thus, keeping these considerations in mind, it is possible to maintain the definition of Åland as a “province” without underestimating the scope of Åland’s autonomy, which remains unaffected by the legal definition adopted, and without hurting the Ålanders, who correctly consider themselves to be “less than a State, but more than a region” (Spiliopoulou Åkemark Athanasia, *The Åland Islands in International Law and Cooperation: the Legal Capacity of an Autonomous Region*, in *Autonomy and Demilitarization in International Law: the Åland Islands in a Changing Europe*, ed. by Lauri Hannikainen and Frank Horn, The Hague/London/Boston, 1997, p. 268).

The second chapter deals with some aspects of Åland's status, which – although deriving from a number of international legal instruments – do not strictly speaking concern the Islands' autonomy. In this context, a specific attention is given to the impact of the provisions on the military status of the Archipelago on the Province's autonomy.

The third and fourth chapters respectively focus on Åland's autonomy in the light of International and Constitutional Law. They survey the provisions of these two legal systems, together with their mutual interference and their impact on Åland's autonomy.

The fifth chapter, finally, deals with the situation following the 1995 accession of Finland to the European Union, which further entangled the autonomous status of Åland, with a special status recognized also by Community Law. More specifically, this chapter focuses on the legal impact of the will expressed by the Ålanders – and confirmed by the *Lagting*² – to join the Union along with the Finnish mainland. Since, however, European integration remains an unfolding process, a few remarks are also devoted to the possible developments of Åland's autonomy in the next stages of the European integration process.

The present research aims to provide a comprehensive survey of the basic aspects of Åland's autonomy. For this purpose it necessarily concentrates on the main and general features of Åland's autonomy. This means that a specific attention is given to the formal status and to the nature of the legal instruments on which autonomy is founded. On the other hand, the substantive aspects and the content of the norms are mainly treated as occasions for discourses on the main object of this paper. In this respect, there are at least two reasons not to engage in a deeper substantive analysis. First, several English articles of distinguished Finnish Constitutional and International scholars have already been written on specific aspects of Åland's status, but a comprehensive English study of Åland's autonomy is still missing. Second, a research made by a non-Finn in a matter which largely involves consideration of Finnish Constitutional Law might have little interest, unless it is supported by a comparative analysis and a special concern for legal theoretical discourses. The need of these discourses, evidently, forces to limit the space of substantive considerations to the most general aspects. However, it is hoped that a comprehensive

²Åland's Provincial Legislative Assembly.

general analysis serves as an interpretative tool in order to put the substantive provisions in the correct framework.

This paper is a fully revised and amended version of a text, which was written as LL.M. thesis at the Helsinki University in 1996. The title of the original work was “*The Legal framework for the Autonomy of the Åland Islands: a Comparative Analysis in International and Constitutional Law in the throes of European Integration*”.

On the occasion of the first edition, special thanks were given to Prof. Mikael Hidén and – for the useful comments – to Prof. Lars D. Eriksson and Prof. Lauri Hannikainen.

On the occasion of this second edition this paper has been revised once again and updated with the most recent events, mostly in relation to the enactment of the new Finnish Constitution.

1. ASPECTS OF ÅLAND'S CONSTITUTIONAL HISTORY: ORIGIN AND SETTLEMENT OF THE ÅLAND QUESTION

1.1. Preliminary remarks

For the purposes of this research, the historical survey may be limited to the most crucial events of the “Åland question” and to the other circumstances which are the most interesting in order to understand the legal settlement of the Archipelago as an autonomous and demilitarized area. This method is justified in a legal study also because the events which brought to Åland's autonomy have already been thoroughly studied by more qualified historians.³ In any case, as a useful support for a correct understanding of the facts mentioned below, a chronology of Åland's history is provided in the appendix.

1.2. Origin of the Åland question

1.2.1. The debate about the origin of the question

According to the aims of this historical survey, it basically involves the facts of the “Åland question”, which basically was about the right to self-determination invoked by the Ålanders around the end of the First World War, when they tried to separate from the newly independent Finnish State, to join the Swedish realm.

The reasons of these claims have been rather controversial. Trying to find a definite answer would need a thorough research in order to understand why the Ålanders repeatedly expressed an overwhelming majority in favour of their annexation to Sweden in the plebiscites, which they spontaneously held during those years in support of the initiatives undertaken by the local political leaders.

³The most comprehensive survey of the history of the Åland question is provided by James Barros, in *The Åland Island Question: Its Settlement by the League of Nations*, New Haven and London, 1968. This work will be repeatedly cited in the following pages.

The debate which took place at that time allows different conclusions. On the one hand, Finland charged Sweden with having given rise to the Ålandic separatist movement through direct action⁴ and propaganda. On the other hand, Sweden incessantly repeated that the Ålanders expressed a genuine and sincere desire for reunion with the “mother-country, from which [they] had been detached by force, but to which [they were] still united by the ties of a common origin, a common history and a common national spirit”.⁵

On their part, the Ålanders were overwhelmingly in favour of annexation to Sweden, but the Finnish authorities believed that their clamours were just a passing mood. The Finnish explanation was that the Ålanders’ position only expressed a great desire for safety in a very troubled moment of Finnish history. In this respect, Åland might have appeared safer under Swedish protection, since the independence and freedom of the very young Finnish State appeared

⁴Along with other charges against the Swedish government – and mostly against the Minister of Marine, Mr. Palmstierna – concerning interference in Finland’s internal affairs, the Finns accused Sweden of having occupied the Islands without their consent in February 1918. According to the Finns, this action was not as innocent as the Swedish government declared. According to the Swedish point of view, instead, the mission had humanitarian purposes, consisting in the protection of the local population from the excesses of the Russian garrison, which remained on the islands after the Russian revolutionary events and the Finnish declaration of independence.

⁵A statement of Mr. Branting – the representative of the Swedish government at the meetings of the Council of the League of Nations – pronounced on the 24th of June 1921 (*cf.* the minutes of the Council in the Official Journal of the League of Nations, September 1921 p. 699, now reported in *International Treaties and Documents concerning Åland Islands 1856-1992*, Mariehamn 1993, p. 19).

Barros’s idea is that the Ålanders’ “desire for union with Sweden appears sincere, and [that] the Finnish criticism loses sight of the fact that national self-determination, an idea unleashed by an American President, had captured the imagination of everyone” (Barros J., *The Åland Islands...*, *cit.*, p. 90). Still, he adds that “it cannot be denied that the Ålanders were in contact with Stockholm” (*ibid.*), and that the Ålanders “had been advised by Stockholm as early as the spring of 1918 that independence could only be acquired by developing their own self-governing institutions, by an act of will of the Ålanders themselves, as well as organizing public opinion for a union of the islands with Sweden and for a plebiscite at the proper moment which the Swedish government would request from Finland” (*ibid.*, p. 100). Barros also refers that in October 1918 [the Ålanders] were influenced by [the Swedish foreign minister] Palmstierna’s advice to contact the Entente directly before victory over the Central Powers was assured” (*ibid.*) and that, in the later stages of the question, the Swedes appeared to have guided the Ålanders step by step. For example, the visit of May 31 1920 of a delegation of Ålanders to the King is extremely interesting. In fact, during this visit – which was organized by Palmstierna – the Ålanders announced a declaration that was written for them by the Swedish Government in order to make a sort of performance, which could press the Åland question in the eyes of the international public opinion.

undermined internally and from outside, as a consequence, on the one hand, of the civil war between the “reds” and the “whites” and, on the other, due to the impending proximity of a great power like Russia (then Soviet Union).⁶

The Finnish view was apparently not shared by the Swedish Government, since it proposed to settle the question according to the results of two plebiscites, the second of which would have taken place two years after the first one.

1.2.2. Swedish policy towards Åland

If one wants to examine the reasons of the origin of the Åland question, the Finnish charges to the Swedish government lead to consider Swedish policy towards the Åland islands. In this respect, a certain shift occurred during the First World War, right in coincidence with the first discussions in Åland on the possibility to separate from Finland.

Since 1809 – when Åland and Finland, were separated from Sweden to become a part of the Russian Empire - Sweden’s ultimate political aim concerning Åland had been the demilitarization of the Islands. This measure was considered necessary for the security of Sweden itself and, mainly, of the capital-city of Stockholm. On the other hand, the Russian Government

⁶This view was already expressed by an editorial of *The Times* of 10 July 1920, which supported the Finnish position (Cf. Barros J., *The Aland Islands...*, cit., p. 274). According to Barros (*ibid.* p. 315), this view was also shared by the Commission of Inquiry of the League of Nations, which, later, examined and settled the whole Åland question.

The idea that the separatist movement was caused by those temporary difficulties and the worries for the future helps to explain why the Finns considered Åland’s separatism as a sort of treason. The explanation can be found in an article written in *The Åland* on 13 March 1918 by the islands’ governor, Colonel Hjalmar Bondsdorff. According to Bondsdorff “no one could ignore that at this very moment all Finland, whether Finnish-speaking or Swedish-speaking, was desperately battling the worst elements of the population allied with the Russians. Was this the moment for intrigues? he asked. Will it be said that only the Alanders deserted the country in its hour of danger?” (Quotation from Barros J., *The Aland Islands...*, cit., p. 91).

Later on, after the question had been settled, a publication of the Finnish Ministry of Foreign Affairs admitted the existence of a complex of reasons: “Ce mouvement s’explique comme une conséquence de l’incertitude politique qui régnait alors, comme une manifestation de la crainte que la Finlande ne réussisse pas à maintenir son indépendance en face de son puissant voisin oriental et aussi comme une expression du vif désir de la population de ces îles de préserver son particularisme et sa langue maternelle. Le mouvement alandais fut encouragé en Suède...” (*L’Autonomie de la Province d’Åland et son Application Pratique*, Publications du Ministère des Affaires Étrangères de Finlande, Helsinki, 1930, p. 3).

considered the obligation of non-fortification of Åland an intolerable limitation of its sovereignty and “a humiliating restriction on Russia”.⁷ Thus, it rejected its inclusion in the 1809 Peace Treaty of Frederikshamn.

The situation changed because of the Russian difficulties after the Crimean War (1853-56)⁸, which forced the Czar to uphold the old Swedish request and accept the demilitarization of the Islands. The decisive factor, however, was the British fear that the fortification of the Islands constituted a menace for the British interests, which were related to the importation of timber from the Baltic region. For this reason, during the war, an Anglo-French fleet had already bombed and destroyed the Ålandic Bomarsund fortress in 1854.

The British support made it easy for the Swedish delegate to the Paris Peace Conference to get the demilitarization of the Islands, which was laid down in a specific convention signed in Paris on 30th March 1856 and annexed to Article 33 of the Paris Peace Treaty. According to this Convention, Russia was not bound towards Sweden, which had not taken part to the war and was not a party to the agreement. Still, the situation clearly advantaged Sweden, which could always rely on the protection of the other signatory parties – namely Britain and France – against any Russian attempt to fortify the Archipelago.

As a matter of fact, the Swedish Government had in the first instance demanded the restitution of the Islands, but this claim would have probably required a more daring attitude during the war. In this respect, it is noteworthy that – in order to keep his country neutral – King Oscar had expressly refused the British and French offer of the islands’ possession in exchange for help against Russia.⁹ However, once it had obtained the demilitarization of Åland, Sweden did not have any other claim on the Islands for the following sixty years, that is until the first world war was at the end.

Again, during the first world war, the Swedish Government’s approach was very prudential as long as there was a certain risk of getting involved in the conflict. Thus, in view of

⁷Barros J., *The Åland Islands...*, *cit.*, p. 2.

⁸For a comprehensive survey of the war events and the diplomatic confrontations affecting Åland, including the relative settlement at the Paris peace conference, see Barros J., *cit.*, pp.3-12.

⁹Moreover, during the war, Sweden had even refused to occupy Åland after its clearance from the Russian troops, since this act would have likely involved Sweden in a conflict against Russia.

protecting its neutrality, Sweden did not show any interest in obtaining possession of the Islands and refused to support any of the conflicting parties, even when it was offered Åland as compensation.¹⁰

The only Swedish concern during the war was to have guarantees for the demilitarization and neutralization of Åland in order “to keep the conflict as far from Sweden’s shore as possible”.¹¹ This request was forwarded to Germany in 1915.¹² Similarly, after the Russians had fortified the islands with the Swedish consent¹³, the Swedes started to press Russia in order to receive assurances that the fortifications would be dismantled soon after the war.¹⁴

Only during the negotiations held at Brest-Litovsk – after the armistice between Russia and Germany – Sweden started to consider the possibility of recovering the islands to its sovereignty.¹⁵ But by that time, the first appeal from the Ålanders had already been received.¹⁶

¹⁰Although very close to Germany during the first months of war, Sweden “was not even moved to intervene after assurances that the Åland Islands would be returned to Sweden if she joined Germany’s side were given to a member of the opposition in mid-October by the German minister in Stockholm” (Barros J., *cit.* p. 20).

On the other hand, someone in the Swedish pro-Entente circles envisaged the possibility to grant Russia commercial or transit arrangements in order to get the islands back. Still, this position had no official outcome, since “for Sweden it was not a question of the acquisition of territory but a matter of security and international balance” (Barros J., *cit.*, p. 25).

The same happened to the proposals of the Finnish activists who wished a Swedish intervention in the war on the German side in order to advance the cause of the Finnish independence and envisaged the extension of Swedish sovereignty over Åland. Nor was a 1915 similar mission to Stockholm of a committee of members of the Finnish Diet successful (*cf.* Barros J., *cit.*, p. 24 and 31).

¹¹Barros J., *cit.* p. 20.

¹²Germany dismissed the proposal since it had no interest in the neutralization of the Baltic area, where German forces were in a much stronger position than its enemies’.

¹³Sweden was, indeed, given no real choice, unless she was ready to start hostility with Russia.

¹⁴For further details, see Barros J., *cit.*, p. 26-59.

¹⁵Still on November 13 and December 17 1917 – the latter time after the Russians had signed the armistice with Germany and Finland had declared its independence – Germany proposed that Sweden would occupy the islands on the understanding that it would never hand them to any other power. Such proposal was considered in Sweden as irreconcilable with its neutrality (*cf. ibid.*, p. 61).

Moreover, in the note, which Sweden addressed to Germany, Austria and Turkey on December 23, whereby Sweden requested the Åland question to be considered during the peace negotiations at Brest-Litovsk, the question of the sovereignty on Åland was not officially raised. Indeed, the only aim of the note seemed to be the safeguard of Sweden’s vital interests connected to the need

Then, after the peace treaty between Russia and Germany and the establishment of Finnish independence on a slightly more solid basis – being consequently excluded any risk of remaining involved in a conflict with greater powers – the Swedish Government became rather charmed by the idea of gaining Åland’s sovereignty, and started to use any available diplomatic means.¹⁷

In this respect, the Swedish actions were supported by an ever more active Ålandic separatist movement.¹⁸

to assure the demilitarization of the islands (*cf. ibid.*, p. 66). This diplomatic activity resulted in Article 6 of the Peace Treaty – signed on March 3, 1917 – which provided that the islands had to be cleared of the Russian troops and that the military installations built during the war had to be removed (*cf. ibid.*, p. 74).

Even during the Swedish military presence on Åland – from February 20, 1918 – Sweden ensured all the other Governments that the mission only had humanitarian purposes, being excluded any political aim. Consequently, the mission would have ended after the re-establishment of peaceful conditions on the islands. Nevertheless, the action created anxiety in Finland and mistrust towards Sweden, and contributed to endanger the good relations between the two countries (on these events *cf. ibid.*, pp. 78 ff.).

¹⁶The first signs from Åland came on August 20, 1917, when “an assembly was held on the islands to consider reunion with Sweden. After some discussion, a four-man delegation was chosen, with instructions to bring to the Swedish government and Parliament the knowledge that for special reasons the ‘population of Åland deeply desired the reincorporation of its islands with the Kingdom of Sweden.’ Though no representations were made by the islanders at this time, the resolution became known in Sweden” (Barros J., *cit.*, p. 62).

The second initiative of the Ålanders took place “from December 25 to 29 [when] a sort of plebiscite was held in the islands in which over seven thousand adult men and women signed a petition to King Gustaf and the people of Sweden expressing their intense desire to see the ‘reunion of the archipelago to Sweden’” (*ibid.*, p. 69).

As a result of these initiatives, “on February 2 [1918], a delegation of Ålanders presented King Gustaf with a petition asking for a reunion of the islands with Sweden and expressing the hope that the Swedish government in agreement with Finland would find a means of satisfying their desires” (*ibid.*, p. 77). However, at that stage, the Swedish Hellner-Edén Cabinet tried not to embarrass its relations with the newly independent Finland, which it wanted to welcome into the Scandinavian block and whose existence and friendship as a buffer state in the relations with Russia was considered very important for Swedish security. Accordingly, the King’s “noncommittal reply [to the Ålanders’ delegation] merely noted the warm feelings of the islanders for union with Sweden. He [further] expressed the hope that the Swedish government in agreement with Finland would be able to find a way of realizing the desires of the Ålanders” (Barros J., *cit.*, p. 77).

¹⁷James Barros supplies a comprehensive report of the Diplomatic activities in the much-cited text.

¹⁸In March 1918, the Ålanders made a new appeal “to the Finnish Diet, the Kaiser, and King Gustaf renewing their request that the island group be united with Sweden. They invoked the right of national self-determination, demanding that their desire for freedom be recognized as Finland’s

Trying to pursue its aims, the Swedish government first appealed to the Paris Peace Conference. Later on, it relied on the newly established League of Nations. At that stage it did not even avoid using an ambiguous tone – in its communications to the foreign diplomacy – which raised doubts as to whether Sweden was ready to use its military force against Finland in order to get the sovereignty over Åland.¹⁹ In this respect, the concealed menace of war was a clear means of bringing pressure upon the international community to resolve the Åland question in a favourable manner for the Swedish purposes. None of these attempts, however, let Sweden achieve its new main goal.

had. If this could not be done they wanted the question to be considered at the peace conference terminating the war” (Barros J., *cit.*, p. 90).

This request was renewed in a message “transmitted by the Åland Diet to the Allied governments through their diplomatic missions in Stockholm” on November 9, 1918, two days before the armistice (quotation from Barros J., *ibid.*, p. 100).

On 31 January 1919, the Ålanders appealed to the Paris Peace Conference, offering to hold a plebiscite as a means to pursue their right to self-determination (*cf. ibid.*, p. 117). The plebiscite was in fact spontaneously arranged by the Ålanders themselves in June, in an obvious attempt to influence the Peace Conference’s works. Its result proved that the “desire for union with Sweden had not slackened”, since “over 95 per cent of the Ålanders voted for union with Sweden. The fact, however that only about one third of those entitled to vote did so was lost sight of at the time” (*ibid.*, p. 152).

¹⁹*Cf.*, e.g., Barros J., *cit.*, p. 233, 278 and 255. There appears that the question had become so complicated that the British Foreign Office thought that referring it to the League of Nations was the only way to reach a peaceful settlement. This moved the United Kingdom to involve the League.

Later on, at a meeting of the League’s Council on July 10 1920, Mr. Branting, the Swedish Prime Minister, explained that “his Government and Swedish public opinion wished to keep the peace, but it was necessary to assuage the feelings raised in Sweden and to give satisfaction to what everyone there, regardless of party affiliation, ‘considered fair and reasonable’. If the tension was prolonged, he thought that ‘unfortunate incidents were bound to occur’” (quoted *ibid.*, p. 278). This statement wanted to prove that the question of Åland bore “threat to peace” as a precondition for the League’s competence to hear and settle the matter (see below).

Barros (*ibid.*, p. 308) also refers that when Baron Louis De Geer was offered by the King of Sweden to form a non-party Cabinet of civil servants, after the general elections held in Sweden in September 1920, he hesitated, because “he feared that a war with Finland over the Åland question was possible [and] under no circumstances did he want this responsibility”.

Finally, after the question was settled, Mr. Fisher – the British representative to the Council of the League of Nations – wrote that he thought to “have averted war between Finland and Sweden” (quoted *ibid.*, p. 331).

1.3. The question at the Paris Peace Conference

Although the Paris Peace Conference – under Swedish pressure – dealt with the Åland question on a number of occasions, it did not take any decision on this issue. The reason was that the Conference was already involved with several other contentious issues. In this respect, the Åland question would have further complicated the chances of ending the Conference's work in a short time. The Russian interests involved in the question and the unfolding and delicate Russian situation, indeed, made it inconvenient to deal with the Åland question in that moment.

On the other hand, since the Åland question concerned the Finnish borders with Sweden – a country that had remained neutral during the war – it could be concluded that it did not fall within the competence of the Conference itself. Thus, the outcome of the Peace Conference not to decide the question was easily grounded on the fact that the Conference only had to deal with questions arising from the war. In this respect, the appropriate forum for the Åland question was envisaged in the newborn League of Nations, an Institution that had been established for the purpose to achieve a peaceful settlement of any international dispute.

1.4. The settlement of the question by the League of Nations

1.4.1. The settlement as a preview of the new world order

The League of Nations was presented with the Åland question on British application²⁰ under Article 11 of the League's Covenant, as "a matter affecting international relations, which unfortunately threatens to disturb the good understanding between nations" and, therefore, bears a threat to peace.

The way the League approached the Åland question attracted considerable attention, because it was the first decision of an international organization on a matter, which – according to the traditional system of International Law – would have been previously considered as a typical "internal affair". In this respect, the settlement of the Åland question represented one of the first signs of a changing interpretation of the very concept of sovereignty.

As a matter of fact, the present level of interference in the domestic affairs and politics by international or supranational organizations was not usual by the time the Åland question was settled by the League. It was only after the tragic experience of two world conflicts, that the human kind developed a doctrine of International Law which – in order to have better chances of peace – changed the role of the States and the concept of sovereignty itself. The result was that this concept had to be restricted to a very great extent, mostly in relation to the need to ensure the respect of the basic human rights.

In this respect, the Åland question represented the first attempt of an international organization to affirm this new understanding of the role of the States and of International Law. Thus, one should not wonder about the position of the Finnish government within the League's discussions, when it mainly relied on the traditional argument that International Law left the question of self-determination of national minorities to the domestic jurisdiction of the state to

²⁰The Swedish Government did not want to be the formal applicant before the League, as it feared it would have been understood as an acknowledgement of defeat in relation to its previous requests to the Paris Peace Conference (*Cf. Barros J., cit., pp. 223 f.*).

which they belonged. Accordingly, Finland claimed that the whole question was an internal affair outside the scope of the competence of the League.

The Finnish claim was supported by paragraph 8 of article 15 of the League's Covenant, which provided that "if the dispute between the parties is claimed by one of them, and is found by the Council, to arise out of a matter which by International Law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement". This provision, however, failed to define the matters left to the "domestic jurisdiction" of the states. A logic consequence was that it had to be interpreted with reference to the existing International Law, according to which the issue of self-determination of a national minority could not fall under the jurisdiction of international bodies.

On the other hand, it goes without saying that the jurisdiction of the League of Nations on the Åland question could not be based on the argument that it fell into the scope of article 11 of the Covenant because there was a "threat to peace". Indeed, a coherent interpretation of Article 11 of the Covenant could not allow the conclusion that unilateral threats of war were grounds for the League's jurisdiction – with a view to a favourable pronouncement for the menacing State – where otherwise this jurisdiction ordinarily lacked. A similar reasoning would have apparently been inconsistent with the new order aimed by the League. In this respect, article 11 could only mean that, in case of a similar threat of war, a procedure of negotiations between the conflicting parties could have been opened under the auspices of the Council of the League, but the case could not be decided by the League without the consent of the parties. Accordingly, as far as traditional legal considerations are concerned, Finland's position on the issue of the League's jurisdiction should have been very strong, and the likely outcome of the question should have been the Council's denial of competence.

Notwithstanding the above considerations, the new understanding of the role of International Law and the increased sensitivity for the rights of peoples and minorities made things more complicated for Finland, to the point that the Council of the League eventually gave a highly innovative decision on which are the matters of exclusive domestic jurisdiction.

Already the Commission of Jurists appointed by the Council of the League could not resist the new trend, when it based its opinion on the existence of the jurisdiction of the Council

on its “finding” that only definitively established nations had the sovereign right to dispose of its national territory. As far as the Åland question was concerned, this new principle meant an extremely artificial research on whether the question itself had arisen a few days before or after Finnish independence. No wonder, therefore, that the following legal discussions concentrated on extremely formal elements, like the date of the Finnish declaration of independence, its recognition (and whether it was unconditional) by the foreign powers (first of all Russia and Sweden), the lasting and the effects of the Finnish civil war on Finland’s international status, the support received from Germany by the Finnish Government in order to settle the internal disorder and get possession of the Åland Islands, and, finally, the Finnish theory that Finland – although lacking sovereignty – had already been a State since 1809.²¹ All these arguments – which formally raise interesting legal questions – had nothing to do with the real problem at stake, which simply concerned the existence of the right of the Ålanders to decide a secession from Finland, and, on

²¹On this last theory cf. *The Åland Question and the Rights of Finland. A Memorandum by a number of Finnish Jurists and Historians, Helsingfors 1920, p. 8*. The theory was based on the fact that the autonomous Finland had her own “fundamental laws” since 1809. These laws were the old Swedish constitution, which – although suffering certain limitations during the period of autonomy – was still in force during the autonomy and revived without limitations after Finnish independence.

The weak point of this theory is that sovereignty, not autonomy, is the necessary attribute of states under International Law. Furthermore, the fact that Finnish autonomy was enshrined in constitutional documents is not unusual in modern comparative constitutional law. Several examples of more or less autonomous regions of the world might be quoted in this respect, from the German *Länder* – each having its own constitution – to the Spanish and Italian regions with a “special autonomy”, and to Åland itself. Finally, the idea that the provisions of the Finnish “constitution” had suffered limitations during the period of autonomy, and that these limitations automatically ended once Finland became independent needs to be briefly commented. In this respect, in fact, it seems more correct to hold that the provisions that were inconsistent with the “constitution” of an autonomous Grand Duchy were never enacted as the fundamental laws of Finland when the Czar granted Finland the right to keep own “constitutional laws”. On the other hand, the fact that they revived after Finland’s independence must be seen as the consequence of an implicit will of the Finnish constituent bodies.

This construction implies that a new constitutional enactment occurred in 1917. Indeed, historical events like those of 1917 are such that a constitution cannot survive without the will of the new sovereign power. This is also the case of 1809, in which case, after all, the constitutional documents involved had never been “the Finnish Constitution”, but the Constitution of the Kingdom of Sweden, of which Finland had ceased to be a part.

the other hand, the content the sovereign rights of a state. In other words, it concerned the existence and the extent of the right to self-determination of national minorities.

Instead, the fact that the Commission of Jurists – as well as later did the Commission of Inquiry and the Council of the League – decided to take into account those formal arguments shows its intention to favour a compromise solution, which could have safeguarded both the sovereign rights of the already established nations²² and the expectations of all the parties to that particular case. In this sense the decision of the League – might it or not have really averted war between Sweden and Finland – was a fair political solution, as the satisfaction of all the parties proved in the long run.

1.4.2. The decision of the League of Nations

As far as the final stages of the discussion of the Åland question within the League of Nations are concerned, the following considerations are noteworthy.

First, the Commission of Jurists delivered its report to the Council on September 5, 1920. The Commission found that the question fell within the competence of the Council. Thus, the Council decided to proceed by requesting a Commission of Inquiry to “present the Council with the necessary factors on which it might base a recommendation for the settlement of the dispute”.

Obviously, the jurists’ report did not satisfy the Finnish government, which – worried about the possible future developments – made an express reservation meaning that it was not able “to consider at any time whatsoever a recommendation of the Council of the League of Nations, the direct or indirect result of which would be to deprive Finland of its right of sovereignty over the Aland Islands”.²³ The reservation was pleonastic from the legal point of view, as recommendations are non-binding instruments, and the Council only had the power to make a recommendation to the parties. Thus, it just was a way to enhance the idea that the League had to make every possible effort in order to reach a negotiated solution which would not sacrifice the

²²Otherwise the decision might have had disruptive effects on world peace, since most nations had some kinds of minorities.

²³League of Nations, *Official Journal*, 2 (Jan.-Feb. 1921), 78, quoted by Barros J., *cit.*, p. 297.

Finnish basic right of sovereignty over a part of its national territory. Finland, however, had nothing to worry about, as the League's interest also lay in the direction of a negotiated compromise, which would not override Finland's minimum request.

Second, the political reasons of the final outcome of the case have attracted a lot of attention. Of course, the internal motivations of the Commissioners and of the Members of the Council of the League might have been very odd. For example, some of the Members of the Council might have favoured Finland for strategic reasons, if they wanted to support the young Finnish Republic, which had strenuously fought against Bolshevism and could again result an important ally in this respect. On the other hand, other strategic reasons might have favoured Sweden, since it was a wealthier and more solid democracy.

Whatever was the political position of the parties, the settlement given to the question was the innovative solution of a completely new problem faced by the new world organization without the support of written rules or legal precedents.

As mentioned above, this legal gap could have actually been interpreted as the lack of jurisdiction of the League of Nations. But time was ripe for a new solution, which would have filled up the legal gap by recovering on new substantive principles to be found within the system of International Law itself.

In this sense the League had a "political" approach, insofar as it decided to widen the scope of the International Law. However, although the creation of new law implies a greater discretion than the simple application of available clear rules, the decision of the League still applied certain legal principles deduced – if not by the League Covenant itself – from the ideas underlying the establishment of the League: an Institution which was meant to establish a new world order.

In this respect, the formal legal reasoning followed by the League of Nations may be considered as an attempt to find traditional grounds for a rather new legal solution. For these reasons, it may be concluded that it was a fair and equitable solution, although its authors might not have been fully aware of its legal basis.

As far as the final stages of the Åland question at the League of Nations are concerned, the report given by the Commission of Inquiry started considering the geographical, historical,

economic and ethnic factors involved, and insisting on the same formal arguments previously considered by the Jurists' Commission. In this respect, the compromise searched by the Commission consisted in the fact that, although the mentioned elements led to confirm sovereignty upon Finland,²⁴ further guarantees had to be granted to the Ålanders in order to preserve the Swedish character of the population. These new guarantees had to be included in a new Autonomy Act.

Finally, without taking any standing on the question of the fairness of each of the guarantees granted to the Ålanders, one may conclude that the correct spirit imbued the final texts, which settled the question. Indeed, according to the preamble of the resolution of 24 June 1921, "The Council [...] after consideration of the Report of the Jurists [...] and having reviewed the geographical, ethnical, political, economic and military considerations set forth in the memorandum of the Rapporteurs [...]; But having recognized, 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; decides 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 ensued unless a) certain further guarantees are given for the protection of the Islanders; and unless b) arrangements are concluded for the non-fortification and neutralization of the Archipelago".

Thus, the Council resolution of June 24 – which was binding upon Finland and Sweden because they had agreed to abide by it – set forth a few basic points to be further implemented. Its basic elements were the following ones:

1) New guarantees had to be included in the Autonomy Act. These measures had to be possibly agreed by Finland and Sweden, if necessary with the assistance of the Council. If this attempt failed, the Council was entitled to fix itself the guarantees. Finally, either agreed or not, these measures would have been enforced under the supervision of the Council.

²⁴Interestingly enough, the same elements had previously led the Commission of Jurists to favour Sweden's position and, consequently, hold the League's jurisdiction.

2) As for the military status of the Islands, a new treaty had to be concluded, in order to replace the 1856 Convention with “a broader agreement” encompassing the demilitarization and neutralization of the Archipelago “under the guarantee of all the Powers concerned, including Sweden”. For this purpose an international conference had to be convened, to discuss the matter on the basis of a Swedish draft Convention.²⁵

Consequently, the implementing measures were adopted in a short time:

1) The final agreement on the guarantees to be given to the Ålanders was reached three days later, and is enshrined in the Council Resolution of June 27. Although it is sometimes referred to it as the “Åland Agreement”, it cannot be viewed as a Treaty. Instead, as it will be considered in the third chapter of this work, its binding character depended on the previous resolution of June 24;

2) The Convention for the non-fortification and neutralization of the Åland Islands was signed in Geneva the same year, on October 20, in the context of an international conference to which Sweden, Finland, the great European Powers and the other Baltic states interested to the settlement were invited. Russia-Soviet Union was not, however, invited to the Conference. This absence soon proved to be a weak point of the achieved settlement, because this Power never recognized the existence itself of the Convention.

²⁵Paragraph 5 of the 24 June Council Resolution.

2. PRELIMINARY CONSIDERATIONS ON ÅLAND'S STATUS UNDER INTERNATIONAL AND CONSTITUTIONAL LAW

2.1. Preliminary remarks on the legal bases of Åland's autonomy

A survey of the relation between the systems of International and Constitutional Law is very complex and exceeds the scope of the present research. Several theories have been developed in this respect. They either press for the supremacy of Municipal Law, or for that of International Law.

A third choice is to exclude a hierarchical relation between the two systems and accept their complete separation. It implies the validity of both the legal systems and their binding character upon those who are concerned. According to this solution, in case of a normative conflict between the two legal systems, a given behaviour may be lawful for one of the two systems and – at the same time – unlawful for the other.

This last approach is followed within this work, because it is the most pragmatic and useful in order to understand the real scope of Åland's autonomy, which is clearly based both on International and Finnish Constitutional Law. In this respect, this choice concerns the method of the present research, and is not to be taken as a solution to the mentioned theoretical question of the relation between International and Municipal Law.

As a consequence of the mentioned approach, this paper provides a different consideration of Åland's autonomy according to its two "constitutional" bases. To start with, the scope of Åland's autonomy will be considered in the light of International Law.

2.2. The international legal framework for Åland's autonomy

The Åland Islands have been the direct object of several international regulations,²⁶ but not all of these international legal instruments directly concern Åland's autonomy.

In addition, since the basic aim of Åland's autonomy is the protection of a national minority, also the international Conventions on human rights, and specifically minorities' rights, may be considered as indirectly concerning Åland.²⁷

²⁶A collection of these sources is provided in *International Treaties and Documents...*, *cit.*

Because the object of the present study is Åland's autonomy, it is not possible to examine in full depth all these legal instruments. Instead, it is necessary to concentrate on the international sources, which directly concern Åland's autonomy.

The same relevance may not be given within this work to the remaining international sources. Thus, for example, the impact of the International Human Rights Conventions on Åland's autonomy may only be considered as evidence of the overlaps between International and Municipal Law, and of the impact, which these overlaps may have.

As a matter of fact, the impact of the human rights Conventions – either concerning the rights of minorities or of individuals – must not be underestimated. For instance, insofar as Conventions on national minorities are binding upon Finland, it may be argued that the Legislative Assembly of Åland might refer to them as an instrument to protect the Islands' autonomy. In this respect, it may be submitted that the *Lagting* might raise claims against the Finnish Government on the basis of these Conventions, even if the matters concerned would not otherwise fall within the authority of the Province. In fact, according to Section 3 of the Autonomy Act the Legislative Assembly “represents the people of the Åland Islands in matters relating to its autonomy”. And, for sure, the need to protect the Swedish-speaking population of the Islands is a “matter relating to Åland's autonomy”, since it is the basic reason underlying it.

While the previous example shows that human rights Conventions may sometimes broaden the scope of Åland's autonomy, other examples may also show how they might also have the effect to reduce the scope of the legislative and administrative discretion of the Provincial authorities. Indeed, although Åland itself is not a party to any human rights Convention, it might be bound to respect them in relation to the minority groups residing on Åland's territory.

In this respect, one has to distinguish the legal conflicts among norms belonging to the system of International Law – which involve the problem of choosing the applicable law – from

²⁷The interference between Åland's autonomy law and the international Covenants on human rights has been the object, among the latest English publications, of two comprehensive researches by Lauri Hannikainen (*Cultural, Linguistic [sic] and Educational Rights in the Åland Islands, an Analysis in International Law*, Helsinki, 1992) and Kristian Myntti and Martin Scheinin (*The Right of Domicile in the Åland Islands in the Light of Human Rights Treaties and the European Integration Process*, in *Autonomy and Demilitarization...*, cit. pp. 131-149).

the conflicts between the applicable international norm and the constitutional provisions on Åland's autonomy and Swedish character.

As far as the first case is concerned, the following discourse may help understanding the point.

It is obvious that – in Åland's case – the problem of protecting a local minority refers mainly to the Finnish-speaking inhabitants of the Islands. Since they belong to the national linguistic majority, the question arises whether the members of a national majority, which constitutes a local minority, may profit of the human rights Conventions on minorities' rights.

This question has been thoroughly dealt with by Frank Horn, who has concluded that “the duty to provide guarantees increases as the State minority forming a local majority acquires wider competences and powers”.²⁸

The arguments used by Horn may be subscribed. Moreover, the rights of minorities may never be construed so as to override fundamental rights of individuals, such as those enshrined in the Universal Declaration of Human Rights and Fundamental Freedoms or in other universal declarations of human rights. In this respect, even if the international agreements specifically aiming at the protection of the Ålandic community might be considered as a *lex specialis* within the context of International Law on the rights of minorities, fundamental rights of the individuals would remain a *lex superior*. Therefore, they should prevail over inconsistent constructions of any – whether *generalis* or *specialis* – right of minorities.²⁹ Consequently, it should not be possible to

²⁸*Minorities in Åland with Special Reference to their Educational Rights*, in *Autonomy and Demilitarization... cit.*, p. 166.

²⁹Apparently in favour of this argument is Hannikainen L., *Cultural... cit.* p. 25, in relation to provisions on equality and non-discrimination. Moreover, this author also claims that “it appears to be a widely shared view that human rights conventions have law-making character and are very restrictive in tolerating the parties' commitments which conflict with them” (Hannikainen L., *The International Legal Basis of the Autonomy and Swedish Character of the Åland Islands*, in *Autonomy and Demilitarization..., cit.*, p. 68).

Hannikainen also contends that the principle *lex posterior derogat priori* could apply as well, to the effect that the special status of Åland and its Swedish character would be partly repealed by subsequent inconsistent agreements (namely human rights conventions) ratified both by Finland and Sweden (*ibid.*). However, according to the opinion of the present author, the “Åland agreement” may not be considered as a real treaty between Finland and Sweden. Thus, insofar as Hannikainen's statement refers to a formal repeal of norms of the “Åland agreement” by

rely on the “Swedish character of the Islands”³⁰ in order to override universally recognized fundamental rights. In the light of the above considerations, the opinion of the Committee for Foreign Affairs of the Finnish Parliament that “argumentation based on the special status of Åland may in the future prove insufficient” – although presently groundless – appears totally congruous.³¹

The previous considerations only answer the first of the mentioned problems, namely the identification of the applicable rule of International Law. As far as the second issue is concerned, the binding character of any international treaty or convention on the Ålandic authorities has to be considered according to Section 59 of the Autonomy Act. In this respect, the relation between the international Covenants and Conventions on human rights and Åland’s legislative and administrative power is not different from the one, which generally applies to the other sources of International Law. Thus, the whole problem may be later considered, in the context of the interpretation of Section 59 of the new Autonomy Act.³²

Set aside the international sources which indirectly concern Åland, those which regard it directly include the regulations on the military status of the Islands, and on its autonomy. In the first group are:

- a) The 1856 Convention on the demilitarization of the Åland Islands;³³

subsequent agreements between Finland and Sweden, this view may not be shared. Still, one may agree on the substantive consequences of new agreements between the two countries. In this respect, neither Sweden – to which Finland is still at least morally committed – nor any other subject of international law who has acceded to the human rights conventions (or is otherwise called to enforce them) could call for the enforcement of the “Åland Agreement” against a provision included in the later Conventions.

³⁰From the point of view of International Law, the Swedish character of Åland fundamentally rests on the wording of paragraph 1 of the League’s resolution of the 27th of June 1921, “Finland resolved to assure and to guarantee the population of the Åland Islands the preservation of their language, of their culture, and of their local Swedish traditions...”.

³¹Statement of the Committee for Foreign Affairs to the Committee for Constitutional Law on the Proposal no. 73 for a new Act on the Autonomy of Åland (in *Constitutions of Dependencies and Special Sovereignties*, ed. by Albert P. Blaustein, Dobbs Ferry, New York, 1993, p. 143).

³²See, below, in the fifth chapter of this work.

³³The 1856 Convention has never been formally abrogated. However, whether it may still be considered to be in force, its present importance is limited to the mutual relations between France and the United Kingdom, on the one hand, and Russia, on the other, since the latter is not a party to the other documents to which Britain and France have acceded.

- b) The 24th June 1921 Resolution of the Council of the League of Nations;
- c) The following 1921 Convention for the non-fortification and neutralization of the Åland Islands;
- d) The 1940 Treaty between Finland and the Union of Socialist Soviet Republics concerning the Åland Islands, and, finally,
- e) The 1947 Peace Treaty, which, referring to the military situation of the Åland Islands, merely confirmed the *status quo ante*.

In the second group of international legal instruments, until the issue of Finnish accession to the European Union came about, remained only the two Resolutions of the League of Nations of the 24th and 27th of June 1921 had dealt with it.

2.3. Delimitation of Åland’s autonomous position under International Law: Åland’s demilitarization and the other international sources affecting its autonomy

The mentioned distinction among the international legal instruments which directly concern Åland is apparently inconsistent with a view, which circulates in Ålandic circles, according to which the demilitarized and neutralized status of the Islands is “part of their autonomous arrangement”.³⁴

The legal basis for this view is generally found in the June 24 Resolution of the Council of the League of Nations. Indeed, according to the second paragraph of the Resolution, “the

³⁴Jansson G., *Introduction to Autonomy and Demilitarization...*, *cit.*, p. 6. This view resembles the official position of the Ålandic authorities. Jansson – who is a lawyer and a prominent Ålandic politician – while acknowledging that the Finnish Military Forces do not agree with the Ålanders on this issue, also admits that “even if *the Ålandic authorities are not the subject in the matters of demilitarization and neutralization*, it could not be argued that the Ålandic people are” (*ibid.*, emphasis added).

Susanne Eriksson, in somewhat different and cryptic terms, states that “demilitarization and neutralization are components of an indivisible ‘trinity’ together with autonomy and national status” (*Åland - a Demilitarized, Neutralized Region*, in *The Åland Islands Demilitarized Region*, Mariehamn, 1995, p. 21).

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 neutralization of the Archipelago”.

As a matter of fact, the above-mentioned sentences gather together the institutions of autonomy and military status, which would be part of the “indivisible trinity” of Åland’s status.³⁵ In addition, it also mentions together all the interests protected by the Resolution (cordial relations, prosperity, happiness) and all the subjects which might be said to hold those interests, so that one might think that each of the subjects mentioned in it – that is Finland, Sweden, Åland and even the whole world – had a legal interest both in the recognition of the Islands’ autonomy and their demilitarization.

If this view were correct, it could be said that Finland was committed to assure Åland’s demilitarization in the interest of the Ålanders themselves. Consequently, lacking Finnish support, the Ålanders would have been entitled to set into action the available international legal mechanisms for the legal protection of their military status under International Law. Yet, this conclusion would be quite surprising in the light of the events which brought to the League’s decision, since the Ålanders had never sought the demilitarization of their Archipelago, but only its reunion with Sweden.³⁶

A deeper consideration of the whole decision leads to a different conclusion. The problem is that the mentioned provision forgot to link each envisaged measure to the interests respectively protected, and to the relative holder. This derives from the fact that the second paragraph of the Resolution is nothing more than a preamble of its real outcome, which – except for the preliminary decision on the issue of sovereignty over the Islands – was provided in the

³⁵This view seems to be shared by the Ålandic Provincial Government. In this respect, according to Niklas Fagerlund, during the EU accession negotiations, “The [Ålandic] Government’s overall conclusion was that the international legal rules relating to the autonomous, demilitarized and neutralised status of Åland comprised a single regime under regional customary law” (cf. Fagerlund N., *The Special Status of the Åland Islands in the European Union*, in *Autonomy and Demilitarization...*, cit., p. 194).

³⁶On the contrary, as considered above, only Sweden had been seeking guarantees on this purpose for more than a century.

following paragraphs. Thereby the issue of autonomy is sharply distinguished from that of the military status.

To start with the autonomy, the relevant provisions are the third and fourth paragraphs of the Resolution. According to the fourth paragraph, the Autonomy Act of 1920 had to be supplemented so as to include provisions aimed “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”.³⁷

On the other hand, the demilitarization of the Islands is based on the fifth paragraph of the decision, according to which “an international agreement in respect of the non-fortification and the neutralization 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”.³⁸

³⁷As far as the Swedish character of Åland is concerned – the third element of the “trinity” – the June 24 Resolution, aiming “at the preservation of the Swedish language in the schools”, was further developed by the “Åland agreement” and incorporated in the June 27 Resolution. According to this last Resolution, “1. Finland, resolved to assure and to guarantee to the population of the Aaland Islands the preservation of their language, of their culture, and of their local Swedish traditions, undertakes to introduce shortly into the Law of Autonomy of the Aaland Islands of May 7th 1920, the following guarantees: 2. The Landsting and the Communes of the Aaland Islands shall not in any case be obliged to subsidise any other school than those in which the language of instruction is Swedish. In the scholastic establishments of the State, instruction shall also be given in the Swedish language. The Finnish language may not be taught in the primary schools, supported or subsidised by the State or by the commune, without the consent of the interested commune...”

In the light of the combined provisions of the 24th and 27th June Resolutions, it is clear that the preservation of the Swedish character of Åland – in the meaning of the same provisions – is an essential element of Åland’s autonomy under International Law.

³⁸Also this provision raises some problems of interpretation, when it refers to “all the countries concerned”. In this respect, it seems that, apart from the express reference to Sweden, the Council of the League wanted to avoid an advance restriction of the parties that could benefit from this clause. There can be many reasons for this approach. First, Russia – whose Government was in a problematic situation at that stage from the point of view of International Law – was considered to have strategic interests in the military position of the Islands. Second, the strategic importance of the Archipelago was recognized for the whole Baltic area and, therefore, the Åland’s servitude had to be imposed on Finland – as the state whose sovereignty on the Islands was thereby definitely established – for the security of the whole region. In this respect, it may be said that the drafters of

According to this last provision, it is clear that demilitarization and neutralization were envisaged for the common interest to peace of the other nations of the Baltic region – first of all Sweden – for which military installations on the Islands might represent a menace. This explains why the Resolution wanted to ensure that “the Aaland Islands [would] never become a source of danger from the military point of view”.³⁹ In this respect, the League followed the same pattern of the 1856 Convention between Russia, Britain and France, which, although expressly binding only Russia towards Britain and France, had soon been understood as binding not only on these parties. In other words, Russia’s obligations was construed as to establish the so called “Åland servitude”, which had to constitute a burden for any country whose sovereignty extended over the Islands, for the benefit of any other state interested in their demilitarization.⁴⁰

In the light of the events which brought to the 1856 Convention, it could be doubted that the mentioned pattern reflected the real goal of the signatory parties to the Convention.⁴¹ However, any doubt must be cancelled in the light of the opinion on the status of the 1856 Convention expressed by the Commission of Jurists in its report to the Council of the League of

the decision wanted to allow a flexible interpretation of the decision, in order to adapt it to the changing political circumstances, like the independence of new countries, or improved offending possibilities in consequence of possession of new kinds of weapons.

³⁹This approach is confirmed by the following Convention signed in Geneva on 20th October 1921 by ten countries – including Finland and Sweden – whose purpose was “la non-fortification et [...] la neutralisation des îles d’Åland, afin de garantir que ces îles ne deviendront jamais une cause de danger au point de vue militaire.

⁴⁰Because of the way the 1856 Convention was implemented by the concerned parties, it was understood by the Commission of Jurists appointed by the League of Nations as constituting a “settlement regulating European interests”. On this view, modern legal scholars have built the theory that the military status of the Islands represents a “permanent settlement” on an “objective regime” under International Law. On this point, see Hannikainen L., *The International Legal Basis... cit.*, pp. 71 ff. and, critically, Rosas A., *The Åland Islands as a Demilitarized and Neutralized Zone*, in “*Autonomy and Demilitarization, ... cit.*”, pp. 27 ff.

⁴¹The position of Sweden in relation to the Convention provides evidence that the mentioned pattern existed *ab initio*. Indeed, Sweden, although having an obvious interest in the demilitarization of the Åland Islands in Russian possession, was neither a party to the Convention nor to the Paris Treaty to which the Convention was annexed. Nevertheless, it never considered this fact as an obstacle for insisting on the enforcement of the agreement with the parties to it. Moreover, this attitude “was never questioned by the 1856 signatories” (Barros J., *cit.* p. 292).

Nations.⁴² According to this report, “the 1856 convention had the character of a settlement regulating European interests [and, therefore,] such settlement could not be abolished or modified by the acts of one particular Power, [thus] the convention was still operative and [...] any interested state could insist on its compliance, with the state in possession of the archipelago also being bound”.⁴³

The report of the Commission of Inquiry was the starting point of the discussion within the League of Nations, and permeated the spirit of the 24^h June Resolution, and of the following 20th October 1921 Convention. Thus, it must be given the relevance of the *travaux préparatoires* in the interpretation of the two mentioned documents. Thus, it helps understanding that only the main parties had changed in 1921 in respect of the 1856 Convention. Eventually, the servitude was imposed on Finland – the new sovereign state over the Islands – while the beneficiary parties became Sweden and “all the countries concerned”.

If the above considerations are correct, in spite of the imprecise wording of the second paragraph of the decision, it may be concluded that demilitarization and neutralization of the Archipelago were not provided either for the interests of the Ålanders or of Finland.⁴⁴ Instead, when considering Åland’s and Finland’s positions with respect to the Convention, it may be submitted that:

a) As the legal sovereign over the Islands, Finland only has an obligation to keep them demilitarized. The Convention does not grant any right to Finland in relation to the military status of the Archipelago, at least until its neutrality is not endangered. Only if the latter situation occurred, Finland would acquire the right to ask the other signatory states to intervene;

b) Similarly, under International law, the Ålanders and Åland’s Provincial Government are not the holders of a right to the neutralization and demilitarization of the region. Even apart of the consideration that such a right would presuppose the possession of an international legal

⁴²In *League of Nations, Official Journal, spec. sup. no. 3 (Oct. 1920) pp.1-19*, quoted by Barros J., *cit.*, p. 288 ff.

⁴³Barros J., *cit.* pp. 291-2.

⁴⁴This conclusion is valid regardless of the possible *de facto* interests of Finland and Åland in the preservation of the military status of the Islands. However, these interests are not protected as such by the 1921 Convention or by the decision of the League’s Council.

personality, a more limited right would have been the right to invoke the enforcement of the Treaty provisions. However, while the Ålanders were expressly reserved the right to make complaints to the Council of the League of Nations under paragraph 7 of the Council resolution of 27th June 1921, no right was accorded to them by the 1921 Convention in respect of the military status of the Islands.

If the previous considerations are correct, a conclusion might be that, according to the existent International Law, the Province of Åland is the *subject* holding all the rights which pertain to the Islands' autonomy. On the other hand, the territory of the Archipelago – as delimited by certain international agreements – is the *object* of the international commitments undertaken by Finland in relation to the Islands' military status.

After all, although the two issues of autonomy and military status were preliminarily dealt with by the Council of the League of Nations within a single resolution, they were definitively settled according to two different documents.⁴⁵ From the legal point of view, these documents have a clearly distinct scope and a different nature. Thus, it seems worthless trying to find common characters in a legal study on the constitutional aspects of Åland's autonomy.⁴⁶

The fact is that, as Ahlström puts it, the Ålanders themselves view “the autonomous status and the restrictions on military uses of the Islands as an indivisible whole”. Still, as this author concludes, “the actual linkage between the two is not as strong as was the case with some

⁴⁵Although they both implement and develop the Resolution of the 24th of June, the instruments which definitively settled the Åland question are the Resolution of the 27th of June – as far as the Islands' autonomy is concerned – and the mentioned Convention – for the military status.

⁴⁶Hannikainen implicitly agrees with this opinion, since he refers the elements of autonomy – including the Swedish character – to the “Åland Province”, and those of the military status to the Åland “region” (See Hannikainen L., *Cultural, Linguistic...cit.*, p. 7).

The distinction between the concept of “Åland region” (or rather “area”) – which is relevant in the light of the treaties on the military status of Åland – and that of “Province of Åland” has an actual bearing since, according to Section 2 of the Autonomy Act, the Province of Åland extends to the limits of the Finnish “territorial waters directly adjacent to its land territory according to the enactments in force on the limits of the territorial waters of Finland”. On the other hand, as far as the treaties on the military status of Åland are concerned, the territorial waters of the “region of Åland” cover only three nautical miles and are not liable to extend further as a consequence of enhancements of Finnish sovereignty. Therefore, the two areas do not presently coincide, and the distinction may have further developments according to the second paragraph of Section 2 of the Autonomy Act.

of the other examples of demilitarised and neutralised zones in which the population had autonomy”.⁴⁷

As for the alleged third element of the “trinity”, finally, it may be recalled that the Swedish character of Åland surely is an element of Åland’s autonomy under International Law.

Indeed, the guarantees for the preservation of this character had to be introduced into the Law of Autonomy of the Åland Islands in the interest of the Ålanders themselves. Moreover, the Ålanders had been granted the right to forward to the Council of the League of Nations any petition or claim concerning the enforcement of these guarantees. Furthermore, the Council of the League reserved to itself the right to “watch over the application” of the “Åland agreement” also in this respect. Therefore, no distinction of regime existed between the guarantees concerning the “Swedish character” of Åland and the ones concerning its autonomy.

If the above mentioned considerations are correct, rather than talking about a non-existent “indivisible trinity”, the rights of Åland under International – and similarly under Constitutional – Law are better described by making exclusive reference to the mentioned aspects of Åland’s autonomy (and “Swedish character”) enshrined in the resolutions of the League’s Council of 24th and 27th June 1921. In this respect, these resolutions are correctly understood when it is stated that “none of the three parties to the conflict was bypassed: Finland received sovereignty over the Åland Islands, Sweden received guarantees that Åland would not be a military threat, and the Ålanders received their autonomy plus guarantees for the protection of their language and culture”.⁴⁸

2.4. Implications in Constitutional Law

The previous considerations concerning the international status of Åland are perfectly reflected in the domestic constitutional sphere. Indeed, the fact that the military status of Åland is outside the scope of Åland’s autonomy under International Law is perfectly consistent with the

⁴⁷ Ahlström Christer, *Demilitarised and Neutralised Zones in a European Perspective*, in *Autonomy and Demilitarization...*, cit., p. 53.

⁴⁸Eriksson Susanne, *Åland...*, cit., p. 13.

fact that – according to the present domestic distribution of competence between the State and the Provincial authorities – military matters and foreign relations (still) fall within the complete domain of the State.

This does not mean, however, that the Ålanders have no say in military matters, as far as their Islands are concerned. As a matter of fact, any democratic system, which supports local autonomy, must somehow afford the local communities the opportunity to manifest their will. Thus, even if the provincial authorities lack the power to decide similar matters alone, they have the possibility to influence the decisions of the competent bodies. Indeed, the democratic principle implies that all local authorities, which represent the people, may pursue a generality of aims, according to the institutional chances provided to them.⁴⁹

As far as matters in which the Ålanders have an actual interest are concerned, several institutional mechanisms may be used in order to influence the State decision-making process also in the fields of the external security and foreign relations. In this respect, the main resources in Åland's hands are:

a) The right of the Legislative Assembly to “submit initiatives on matters within the legislative power of the State [which] the Government of Finland shall present [...] for consideration of the Finnish Parliament”⁵⁰;

b) The similar right of the Government of Åland to submit initiatives on matters within the competence of the State “for the issuance of administrative provisions and regulations for Åland”⁵¹;

c) The right of the Government of Åland to be heard “before the enactment of an Act of special importance to Åland”⁵²;

d) The right of the Government of Åland to “propose negotiations on a treaty with a foreign State to the appropriate State officials”⁵³;

⁴⁹Cf. Marino I., *Servizi Pubblici e Sistema Autonomistico*, Milano, 1987, *passim*.

⁵⁰Autonomy Act, Section 22 paragraph 1.

⁵¹Autonomy Act, Section 22 Paragraph 2.

⁵²Autonomy Act, Section 28 paragraph 2.

⁵³Autonomy Act, Section 58 Paragraph 1. Where appropriate, the other instruments provided by Section 58 Paragraph 2 shall also apply, not to mention the mechanisms which allow Åland to

e) The possibility to take initiatives and influence the decision-making in the Finnish Parliament through the Representative elected in the Åland constituency;

f) The general right of the Legislative Assembly, in its capacity as the legal representative of the people of Åland in matters related to its autonomy, to express the will of the people in all of these matters. Indeed, according to the Report of the Government on the Government Proposal to Parliament for a new Act on the Autonomy of Åland⁵⁴, “it is the duty of the Legislative Assembly to express the will of the people in matters relating to autonomy. The duty is performed by using the right of the Legislative Assembly to make decisions, *submit motions and express opinions*, as referred to various provisions of the Autonomy Act. In connection with autonomy it may become necessary to address issues that do not directly relate to the autonomy matters referred to in the Autonomy Act, but rather to the bases of autonomy or the sphere of Åland authority. The Legislative Assembly represents Åland in these situations”.⁵⁵

Should it be concluded that these mechanisms are too weak insofar as the actual power to decide the matter does not fall into Åland’s hands? The present author would not share such a conclusion, mostly in the light of the fact that Finland has based its relations with its autonomous Province on the principle of consensus.⁵⁶ In such a situation, similar “weak mechanisms” can result much stronger than one could believe after a *prima facie* evaluation. In this respect, it is noteworthy that the Åland authorities and the Finnish Ministry of Defense have “agreed that the Governor of Åland (who represents the Finnish Government) will be informed about each visit [of Finnish warships] in advance, and he in turn will pass on the information to the Åland authorities”.⁵⁷

take part in the works of the European Community according to Chapter 9A of the Autonomy Act.

⁵⁴Manuscript of an unofficial translation, p. 109.

⁵⁵Emphasis added.

⁵⁶*Cf.* Johansson Lars Ingmar, *The Autonomy of Åland - Background and Present Situation*, in *The Åland Islands Demilitarized Region*, *cit.*, p. 56.

⁵⁷Rosas A., *The Åland Islands as a Demilitarized... cit.*, p. 33.

3. ÅLAND'S AUTONOMY ACCORDING TO INTERNATIONAL LAW

3.1. The scope of Åland's autonomy according to International Law

For the purposes of the present research it is not necessary to provide a general definition of the notion of autonomy. As far as Åland is concerned, it is enough to consider the positive legal sources on which its autonomy is based, both in the system of International Law and of Constitutional Law.

As far as International Law is concerned, Åland's autonomy must be defined in the light of the Resolution of the Council of the League of Nations of the 27th of June 1921 – which incorporated the so-called Åland Agreement – and of article 3 of the previous Resolution of the 24th of June. In this respect, it may be said that the international legal protection of the autonomy of Åland concerns the guarantees listed in the Resolution of the League of Nations of the 27th of June. However, a few considerations are still needed in this respect.

To start with, the text of the 27 June Resolution did not expressly mention the right of the Ålanders to have representative institutions empowered to take the decisions pertaining to their autonomy, but it presupposed also this specific guarantee. Moreover, this unexpressed guarantee must conceptually and legally be considered the first one granted by the League to the Ålanders. In this respect, the lack of a similar express provision must be viewed as a consequence of the fact that it had already been laid down by the Finnish Parliament in the 1920 Autonomy Act, so that the Council Resolution only concerned the “further guarantees” to be introduced to the Autonomy Act. Thus, it may be said that the League's Resolution implicitly assumed in International Law the domestic provision of the Autonomy Act, which provided for the legal personality of Åland under Finnish Law, and for its right to be governed by representative institutions elected by the local people.⁵⁸

⁵⁸In relation to these conclusions, a couple of further considerations are noteworthy. First, in spite of a certain international subjectivity consisting in the right of the Legislative Assembly to have its claims and petitions forwarded to the Council of the League, the legal personality of the Province of Åland was recognized as pertaining only to the domestic sphere of Public Law. Second, International Law guarantees the right of the Province to its internal legal personality, as

Secondly, a similar conclusion may be reached also in relation to the right of the Province to its own territory. Indeed, also this right may be considered internationally safeguarded in spite of the silence of the League's Resolutions, which implicitly referred to the delimitation of Åland's territory provided by the 1920 Autonomy Act. Therefore – leaving for the moment aside the constitutional arrangements required to amend the Autonomy Act – any modification of the territory of the Province against the will of the Ålandic Legislative Assembly would infringe Finland's international commitments to respect the autonomy of Åland.

Finally, one might more generally wonder whether all the guarantees granted by the 1920 Autonomy Act should be similarly regarded as internationally protected. This question basically involves the legislative and administrative powers granted to the Ålanders according to that Act. In this respect, the answer may be found in the Resolution of the 24th of June, according to which “certain further guarantees [had to be] given for the protection of the Islanders”. In the light of these provisions, it may be submitted that the League wanted to achieve a global settlement of the Åland question, and that the inclusion of further guarantees into the 1920 Autonomy Act was the instrument envisaged to achieve this goal. In this respect, a general conclusion may be that also the provisions of the 1920 Autonomy Act on the legislative and administrative authority of Åland fell into the scope of the international guarantee. However, as it will be considered below, this conclusion should not be understood too strictly.

A different standing should be taken with regard to the guarantees provided by the Autonomy Acts enacted after 1921 with the approval of the Ålandic Legislative Assembly. In this respect, one has to distinguish the provisions which directly implemented the international commitments undertaken by Finland in 1921 from any other provision. Only the latter could be “freely” amended or revoked according to the domestic procedure provided for the amendments to the Autonomy Acts. Thus, in theory, these guarantees would seem to have a more limited protection. Practically, however, this distinction is about pointless for two basic reasons:

well as the right of the Province's governing institutions – as established by the 1920 Autonomy Act – to exist and to exercise all the rights pertaining to the autonomy of the Province.

- 1) The procedure to amend the Autonomy Act requires in any case the consent of the Legislative Assembly by a two thirds majority;
- 2) The Ålanders are free to give up part of their international guarantees by approving the amendments to the Autonomy Act with the necessary qualified majority.

3.2. The present status of Finland's international commitments

3.2.1. The nature of the "Åland Agreement"

After the dissolution of the League of Nations, the autonomous status of Åland under International Law has raised a certain debate. The question arose because the United Nations Organization did not undertake to succeed to the League by assuming its position as the guarantor of the "Åland Agreement".⁵⁹

Professor Modeen, one of the first scholars who more thoroughly surveyed this question, concluded that Finland's obligation toward Sweden was still valid in spite of the loss of its international guarantor.⁶⁰ This author grounded his conclusions on the following premises:

- 1) The so-called Åland Agreement had to be understood as a treaty between Finland and Sweden. In this settlement, the League of Nations had the role of an arbiter and of the guarantor of the agreement;
- 2) Sweden and Finland have always respected the agreement.

As a consequence of this reasoning, Sweden could be regarded as the present guarantor of Åland's autonomy in the international sphere. In this respect, Sweden might recover on the following instruments:

- a) The right to make representations to Finland;
- b) The right to bring a case against Finland's infringements to the International Court of Justice under article 36 of the Statute of the Court.⁶¹ In hearing a similar dispute, the Court would

⁵⁹*Cf., i.a., Modeen T., Constitutional Problems of Territorial Decentralization in Federal and Centralized States - Finland, Helsinki 1984, p. 9.*

⁶⁰Modeen T., *The International Protection of the National Identity of the Åland Islands, in Scandinavian Studies in Law 1973, pp. 177 ff.*

⁶¹The jurisdiction of the Court would be binding both upon Finland and Sweden since both of them have declared to be bound by the optional clause of article 36 of the Statute.

have no difficulty in applying the “Åland Agreement” according to article 38(1)(a) of the Statute. Nor could Finland claim the issue to be a matter of domestic jurisdiction under article 2(7) of the Charter of the United Nations, since the matter would involve the enforcement of a Treaty.⁶²

As it clearly appears from the foregoing considerations, the whole construction was built upon the premise that the “Åland Agreement” was a real treaty between Finland and Sweden. This point was obviously taken in due consideration by Modeen, who considered that:

1) Although there was no official text of the agreement – which was only included in the minutes of the Council’s meeting of the 27th of June 1921 – and, therefore, there was no signature on the Swedish and Finnish part, there would not be any impediment to the establishment of a treaty “in view of the freedom of form which characterizes documents of this nature”,⁶³

2) The Swedish and Finnish representatives had full powers to conclude an agreement on the matter;

3) No condition of ratification was provided as to the entry into force of the agreement itself.

Still, the aforementioned arguments do not prove that Sweden and Finland did, in actual facts, conclude an international agreement. On the contrary, one has to consider that, if the “Åland Agreement” were a treaty, Sweden and Finland must have been the parties to it. In this respect, Modeen held that “Sweden was, without doubt, party to the agreement in so far as she took part in its creation”.⁶⁴ Moreover, “Sweden pledged herself to withdraw its claims to sovereignty over the Åland Islands”.⁶⁵

⁶²The fact that the dispute was found by the League of Nations to have an international character – rather than lying exclusively within the Finnish domestic jurisdiction – does not imply that Åland’s relation with Finland shall forever remain an intrinsically international issue. According to the reasoning of the Commission of Jurists, indeed, the jurisdiction of an international body in the issue of a State’s sovereignty on a certain part of its territory was justified under totally exceptional circumstances – namely the fact that, by the time the question had arisen, “Finland had not yet acquired the character of a definitely constituted State”.

⁶³*Ibid.*, p. 185.

⁶⁴*Ibid.*, p. 199.

⁶⁵*Ibid.*, p. 200.

However, these statements may be easily rebutted, provided that taking part in the creation of a text does not necessarily imply the status of a party to it, and that Sweden's commitments to recognize Finnish sovereignty over the Åland Islands cannot be deduced from the "Åland Agreement". Indeed, Finnish sovereignty over the Archipelago had already been established by the Council resolution of the 24th of June, which – as considered above – was already binding on Finland and Sweden because both countries had accepted to abide by the Council's decision.⁶⁶ Thus, the following agreement on the guarantees – the so called "Åland Agreement" – only involved Finland's obligations without any Swedish counterpart.⁶⁷

If the previous considerations are correct, the possibility to consider these unilateral obligations as the content of a treaty seems rather problematic. A treaty, as any contract, must indeed include mutual obligations of at least two parties. This is not the case of the "Åland Agreement". Sweden was, indeed, a party to a controversy. But this controversy was not settled by a treaty. Instead, as already mentioned, the binding force of the League's settlement of the Åland question rested on the fact that both Sweden and Finland had accepted to abide by the League's decision. Therefore, the only conceivable international agreement between the two countries may have concerned the League's jurisdiction on the issue. This agreement would have given to the League's settlement the form of an arbitration, in which the League – rather than the "arbiter" – could be seen as the arbitrator.

It is noteworthy that this view is not inconsistent with the fact that the task of defining part of the content of the award was left to the parties. This fact, indeed, does not imply that the binding character of the June 27 Resolution had to be inferred from the agreement on these clauses. In fact, while the decision to involve Finland and Sweden to the settlement aimed at

⁶⁶The June 24 Resolution, after establishing that "the sovereignty of the Aaland Islands is recognized to belong to Finland" and that "certain further guarantees are [to be] given for the protection of the Islanders", provided that, if no agreement had been achieved between Finland and Sweden on the content of the guarantees, "the Council would [have] itself fix[ed] the guarantees" and that, "in any case, the Council of the League of Nations will see to the enforcement of the guarantees".

Thus, the binding character of the June 24 decision on the sovereignty over Åland may not raise any ado.

⁶⁷This argument is also decisive in order to rebut the reasoning of Frank Horn, who provides further evidence to uphold the view of Modeen (*Cf. Horn F., Minorities in Åland..., cit., p.157*).

relaxing the relations between the parties, the League Council could have settled the whole question with its own authority. In any case, the core of the “Åland Agreement” had already been decided by the Resolution of June 24th,⁶⁸ which provided that the guarantees should have been discussed and agreed by the parties “in accordance with the Council’s desire”.⁶⁹

3.2.2. The present status of the “Åland Agreement”

In the light of the dissolution of the League of Nations, should it be concluded that, because the “Åland Agreement” was not a real treaty between Finland and Sweden, any international guarantee has been lost?

This question shall undoubtedly have a negative answer because, according to current International Law, the States are not exclusively bound by treaties. For example, the binding resolutions of the Security Council of the United Nations Organization must also be considered as sources of International Law.⁷⁰ In this respect, similar conclusions should also apply to the binding resolutions of the Council of the League of Nations. If this consideration is correct, there is no difficulty in sharing the conclusion of the United Nations’ study, according to which Finland’s

⁶⁸Cf. article 3 of that resolution.

⁶⁹After all, even Modeen recognizes that “the Åland Agreement, however was born as an arbitration agreement to solve a dispute as to the sovereignty of the Islands” (Modeen T., *The International Protection of the National Identity...*, cit., p. 202).

The different view of Modeen is reflected in his conclusion that also the outcome of the arbitration constituted an agreement. From this conclusion he deduces that Sweden would be still entitled to interfere in Ålandic issues. In this respect, however, Modeen’s view results in consequences opposite to the aim of the League’s Resolutions of the 24th and of the 27th of June. Indeed, as also Modeen agrees, these resolutions provided the Ålanders with the right to bring themselves complaints to the League of Nations and put their implementation only and completely in the hands of the Ålanders, the Finnish Government and the League of Nations. No active role was, instead, envisaged for Sweden, as it would have probably “hinder[ed] the resumption of good relations between the Finns and the Swedes” (Modeen T., *The International Protection of the National Identity...*, cit., p. 200).

Other scholars believe that the so-called Åland Agreement “constitutes both a treaty between Finland and Sweden and a binding decision by the Council of the League” (Seyersted F., *The Åland Autonomy and International Law*, in *Nordisk Tidsskrift for International Ret*, 1982, p. 25).

⁷⁰Seyersted prefers to speak, in this respect, about valid international instruments (cf. Seyersted F., *The Åland Autonomy...*, cit., p.28).

obligation to respect its 1921 commitment is still valid.⁷¹ No impact on this conclusion may have, indeed, the fact that the provisions of the resolutions have lost their guarantor.⁷²

The worries of Modeen seem to derive from the fact that a construction of the “Åland Agreement” as a Finland’s unilateral commitment towards the League of Nations might imply its end as a legal rule of International Law after the dissolution of the only legal person upon which it had conferred authority.⁷³ In his reasoning, indeed, a primary importance is given to the fact that the UN, which might have undertaken to succeed to the League in the exercise of its rights in relation to the Åland Agreement”, have never undertaken to do so, nor does it show any interest in this respect.⁷⁴

The above reasoning, however, does not consider the special position of the League of Nations as a subject of International Law, and, consequently, the special features of the legal interests pursued by the League itself. Also, it does not consider that, in Law, there are no obligations without an underlying legal interest. Now, the League of Nations was not an ordinary subject of International Law, but it represented the whole international community of States – which were also subjects of International Law. In this respect, its position closely resembles that of corporations under Private Law. In this respect, the case of corporations is interesting because, the legal interest of corporations must at the same time belong also to – at least – part of their members. And, as a matter of fact, a corporation whose interests do not correspond at all with those of any of its members is hardly conceivable. Now, under Private Law, when a corporation is

⁷¹See the Study of the Legal Validity of the Undertakings Concerning Minorities, U.N. Publications E/CN.4/367, 1950, quoted by Modeen T., *The International Protection of the National Identity...*, cit., p. 195.

⁷²Cf. Seyersted F., *The Åland Autonomy...*, cit., p.26, who concludes that, “the UN could also, if it so wished, take over the functions of the League in respect of the Åland Islands”, and that, “The substantive obligations of international law arising out of the league [*sic*] decision continue to exist”. In this respect, the fact that the UN has not undertaken to replace the League of Nations in relation to the settlement of the Åland question is due to the fact that, “The UN has only handled such matters when complaints have been brought to it” (*ibid.*).

⁷³The same might be said also for the scholars who, more recently, have tried to base the present validity of Finland’s international obligation on a rule of regional customary International Law.

⁷⁴Cf. Modeen T., *The International Protection of National Minorities in Europe*, Åbo, 1969, p.73, and *The International Protection of the National Identity...*, cit., p.197 f.

dissolved, if no other corporation succeeds to it, its legal relationships are generally taken over by some of its members. This happens because the systems of Private Law generally do not recognize only the legal interests of corporations, but also those of their members. Indeed, considering that any obligation, which linked the corporation to other legal subjects, would lapse only because of the corporation's dissolution would lead to extremely unfair results.

Would it be fair to arrive at similar results in the system of International Law? Or are there in International Law compelling rules or general principles which prevent the application of the reasoning followed by the systems of Private Law? In the view of the present author the answer to these questions must be negative. Consequently, the fact that the League of Nations has been dissolved, and that the UN has not expressly undertaken to succeed to it, may not be considered as a hindrance to the survival of the Finnish legal commitment undertaken under the two Resolutions of the League of Nations. In this respect, for the moment, the problem of identifying the holders of the right to succeed to the position of the League loses significance. In fact, as long as a legal subject interested to Finland's abidance of the League's resolutions exists, Finland is anyhow bound to comply with the relevant rules of International Law. These rules, it is submitted, might be enforced according to the general rules of International Law itself, on the initiative of a party who may prove its legal interest in initiating such a case.

Only after every possible interested legal subject had somehow renounced to its rights in such a relationship, one could agree that the legal obligation has ended. This is obviously not the case of Finland's commitment under the "Åland Agreement", since Sweden has always shown her persisting interests.⁷⁵

⁷⁵Of course, all this discourse mainly – if not solely – refers to Sweden, whose legal interest is inherent in the fact that she was the Finnish counterpart in the Åland question. In this respect, in case of a violation, it would not be possible to deny Sweden's right to invoke the Resolutions of the League before the UN as a new dispute, under the appropriate provisions of the Charter (*cf.* Seyersted. F., *The Åland Autonomy...*, *cit.*, p. 26).

In more general terms, any other member of the League of Nations – and even any members of the present international legal community of states – might have an indirect interest to Finland's compliance to its legal obligation. The legal interest of these parties might be found in the maintenance of the international legal system to which they belong. However, in this respect, it might be argued whether they could really rely on such a general interest in order to enforce the "Åland Agreement" without involving the UN, which has the institutional task to pursue the

After all, the Finnish Government has never denied the persistence of certain international obligations.⁷⁶ In this respect, the Finnish position on the status of the “Åland Agreement” is perfectly consistent with the conclusions reached above. For example, a certain analysis was carried out by the Parliament Committee for Foreign Affairs in the recent *Statement on the Proposal no. 73 for a new Act on the Autonomy of Åland*.⁷⁷ The Committee held that “the guarantees referred to in the decision of the League of Nations were formulated in Finnish-Swedish talks and approved by the Council of the League of Nations on 27th June 1921 in the form presented by the Finnish representative in writing”. Hence, the Committee concluded, “the Åland Agreement is, by form, not a regular and signed treaty, but it may be deemed to be continuously binding in Finland’s relation with Sweden”.

As a matter of fact, insofar as this conclusion refers to Finland being directly bound in its relation with Sweden, it might be viewed as representing a partially new position of an authoritative Finnish body in relation to the nature of the “Åland Agreement”. Nonetheless, one should also consider that the Committee also stressed that “the Åland Agreement is, by form, not a regular and signed treaty”.

As far as such a direct obligation towards Sweden is concerned, some Finnish scholars have also considered the possibility to envisage its basis in a new rule of customary International Law.

Also, it has been submitted that the direct obligation of Finland towards Sweden would have moral – rather than legal – grounds. In this respect, such a moral obligation would be particularly significant after the dissolution of the guarantor to the “agreement” and the consequent end of the right of the Ålanders to make representations to the League of Nations. In fact, it would be a matter of principle for the Finnish government to consider the “Åland

enforcement of International Law.

⁷⁶On the occasion of the enactment of the second Autonomy Act in 1951, the Finnish government replied to previous Swedish notes reassuring the Swedish Government that Finland did not mean to (nor could it) affect its international obligations (*cf. Modeen, T., The International Protection of the National Identity..., cit., p.195*). On the other hand, while recognizing the continuing validity of its international obligations concerning the Åland Islands, the Finnish Government never admitted the existence of any treaty between Finland and Sweden.

⁷⁷Unofficial English translation in: *Constitutions of Dependencies..., cit., pp. 135-146*.

Agreement” still binding in the direct relations with its counterpart in the old international controversy.

Also the Parliamentary Committee for Constitutional Law has expressed its view on this point in its Report no 15/1990. While reporting conclusions already achieved in the previous statement 2/1990, the Committee was even more explicit than the Parliament Committee for Foreign Affairs in denying the existence of a treaty (and a direct obligation) between Finland and Sweden. According to the Committee “several factors point [to the “Åland Agreement”] being a unilateral commitment by Finland to the League of Nations”. However, the Committee went a bit further, by adding that, “regardless of the stand taken in the matter one may all the same take it as given that at least relevant customary rules of public international law have come into being on the basis of the Åland Agreement”.⁷⁸

As mentioned above, this last possibility – to envisage the existence of rules of customary International Law – has been lately considered by several scholars. For example Jyränki wrote that “the understanding reached between the Governments of Finland and Sweden in 1921 certainly cannot be regarded as an international treaty, but the legal status may be construed in a way that Finland is obliged either by a unilateral commitment or by international customary law to respect the basic principles of the Ålandic autonomy, as laid down in the decision of the Council of the League of Nations”.⁷⁹

More explicitly, Hannikainen⁸⁰ believes that Finland’s international obligation to respect the autonomy of Åland is based “on the Resolution of the Council of the League of Nations and on customary international law”.⁸¹ In spite of the interesting and thorough analysis of Hannikainen, however, it seems rather problematic to find in Finland’s international relations any evidence of an established practice, which – associated with the belief of its compulsory character (*opinio juris ac necessitatis*) – would be the grounds for the rise of rules of customary

⁷⁸Quotations from the *Report of the Committee for Constitutional Law no. 15 on the Government Proposal for a new Act on the Autonomy of Åland*. Unofficial English translation in *Constitutions of Dependencies...*, *cit.*, p. 124.

⁷⁹Jyränki A., *Autonomy of the Åland Islands: A Federal Element in the Constitution of a Unitary State?*, in *Constitutionalism in Finland*, *cit.*, p. 8.

⁸⁰*Cf. The International legal Basis...*, *cit. passim*.

⁸¹*Ibid.*, at p. 65.

International Law. Indeed, while abiding to the Resolutions of the League, Finland has always handled every issue concerning the autonomy of Åland as an internal affair. In this respect, the Finnish authorities have always applied the relevant domestic constitutional provisions, rather than rules of International Law. For example, as Hannikainen recognizes, “when Åland’s autonomy and the rules protecting Åland’s Swedish character have been modified (...), the modifications have been agreed upon by the Finnish Government and Åland authorities. No external State has participated in these modifications”.⁸² Moreover, as considered above, when similar issues have arisen in international contexts, Finland has never gone further than a vague recognition of the existence of certain international commitments.⁸³

In the light of the above considerations, it may be submitted that the present status of the Finnish international commitments in respect to the Åland Islands encompasses a continuing legal obligation towards the international community. In this respect, however, with the only exception of Sweden, the international community has, so far, not proved much interest in assuming the role of a guarantor of Finland’s obligation. In addition, also a direct moral obligation towards Sweden may be envisaged. This moral obligation could give rise to customary international rules, if associated with a more direct participation of Sweden to the development of Åland’s autonomy, provided that this participation were accepted by the Finnish government. The Finnish authorities have undoubtedly felt this moral obligation. Still, deriving positive rules of customary International Law from this obligation remains quite problematic, due to the lack of sufficient international practice.

In spite of the end of the petition mechanism provided by the League’s resolutions, since Finland’s international legal obligation is still valid, it may also be concluded that the international guarantee for the autonomy of Åland has not been completely lost. Moreover, since

⁸²Cf. Hannikainen L., *The International Legal Basis...*, cit., p.77.

⁸³A further practical difficulty in the theory that Åland’s autonomy would be part of regional customary international law consists in the fact that it is not clear which provisions of the “Åland Agreement” would have become customary law. Indeed, even the scholars who advocate this theory do not apply it to each and every provision of the “Åland Agreement”. For example, Hannikainen refers that “Finland has customary obligations to respect the principles and the spirit of the solution made within the League of Nations on 24-27 June 1921.” (Hannikainen L., *The International Legal Basis...*, cit., p.67).

Finland's obligation derives from binding resolutions of the League of Nations, and not from a unilateral undertaking, Finland herself may not revoke *ad nutum* her commitment. Only a substantial change in circumstances might allow a similar withdrawal.⁸⁴

In relation to the lack of a guarantor, finally, one should also notice that a distinctive characteristic of the international legal system is to work out mostly on voluntary bases. In this respect, given the entrenchment of Åland's autonomy under domestic law, one should ask whether this international protection is actually so important.

This question is not given much importance by the Ålanders, who have always attached great political relevance to the international guarantee. Thus, for example, they started to seek a new international supervision as soon as the one afforded by the League of Nations appeared to have lapsed. These expectations produced several initiatives, including a proposal for a Finnish Government commitment to seek a new international guarantee "as soon as a suitable opportunity presented itself".⁸⁵ All such initiatives did, however, fail because, according to Modeen, they met the Soviet opposition, justified on the grounds that any such proposal would limit the Soviet Union's "controlling power over Finland".⁸⁶

For sure, the Ålanders are very proud of the international relevance of their autonomy. Moreover, from a political point of view, it may be said that the so-called national character of Åland is also based on the League's Resolutions, and receives a great emphasis from this international relevance of Åland's autonomy. However, from a technical point of view, after the overall entrenchment given to Åland's autonomy under Finnish Constitutional Law – by anchoring the revision of the Autonomy Act to the approval of the Ålandic Legislative Assembly by a two thirds majority, and by requiring the procedure for constitutional enactments in the

⁸⁴If it is possible at all to speak of a unilateral undertaking, then it committed Finland towards the League of Nations, which represented the international community. In any case, it would not have been a voluntary, but a compulsory commitment, derived from an autonomous decision of the League – although its jurisdiction had been voluntarily accepted by the parties. In this respect, it is not possible to share the view of Frank Horn, according to which, "If the arrangement of 1921 was to be construed as a unilateral commitment by Finland, she would be free to withdraw it" (*Minorities in Åland...*, *cit.*, p. 159).

⁸⁵Government bill 1946: 100, quoted by Modeen T., *The International Protection of the National Identity...*, *cit.*, p. 189.

⁸⁶*Ibid.*, pp. 189 ff.

Finnish Parliament – it seems that, under ordinary circumstances, there remains no space for claims to be brought under International Law.

Only in rather hard-to-imagine legal and political situations, whereby the whole Finnish constitutional system would collapse, one might envisage grounds and interest for an international protection. In similar situations, indeed, also the constitutional entrenchment of Åland's autonomy might be challenged.

Apart of these unlikely circumstances, the only possibility to override Åland's autonomy, without challenging the entire constitutional system, might be connected to an evident negative attitude of the State organs which are called to cooperate for the correct functioning of Åland's autonomy according to the provisions and the spirit of the Autonomy Act. Similar deadlocks could be figured out, for instance, in situations whereby the President of the Republic repeatedly vetoed Ålandic bills which are clearly in accordance with the Autonomy Act, or if he appointed a Governor, who would not enjoy the confidence of the Legislative Assembly (as provided by Section 52 of the Autonomy Act), or in other similar breaches of the Autonomy Act. It is clear, however, that these breaches and situations are rather theoretical and, therefore, the actual importance of international protection remains unneeded under ordinary circumstances.⁸⁷

A revival of interest on the issue of the international protection seems to have occurred in connection with the Finnish – and Ålandic – accession to the European Union. This matter is analyzed in the fifth chapter of this work. However it is worth anticipating that the status which the Province of Åland enjoys under International Law was repeatedly referred to on the occasion of the accession negotiations. This fact produced an express mention of Åland's international status in the Protocol on the Åland Islands, which is annexed to the Act of Finnish Accession. Indeed, according to the Preamble of the Protocol – which aims at ensuring certain derogations to the application of European Community legislation in the Åland Islands – the European Union takes “into account the special status that the Åland islands enjoy under International Law”.

⁸⁷In most of the countries, which have federal elements, a constitutional court is usually entrusted with these kinds of dispute-settlement tasks. The Finnish system does not provide a Constitutional Court or equivalent institutions that could enforce the Autonomy Act against the will of the Constitutional bodies of the Country.

The interpretation of this provision has attracted the attention of several scholars, particularly in relation to its effects on the issue of the international protection of Åland's autonomy. In this respect, Hannikainen holds that, since "the EU has recognized that Åland enjoys a special status under international law and Finland has made a unilateral declaration to the EU to that effect [,] the EU might consider that, on the basis of general international law, it has a public legal interest to speak for respect of Åland's existing status". Moreover, this author concludes that "the ECJ has the authority to rule that Finland has violated its obligations".⁸⁸

In the light of the purpose and of the wording itself of the "Åland Protocol", it is not possible to share this last view. Although the Ålanders had to approve Finnish accession to the EU in order to follow the Country into the Union, Åland may not be considered a party to the Treaty of Accession. Thus, the derogations provided by the Protocol, though beneficial for Åland, were not granted to the Province, but to Finland. In this respect, the new international agreement enshrined in the Protocol may only mean that under Community Law Finland has the right – not the duty – to maintain certain provisions which would otherwise conflict with Community Law itself.

Thus, it is submitted that the "Åland Protocol" has not had the effect to further entrench the autonomy of Åland. At least if one wants to derive from this entrenchment the consequence that the ECJ could give a ruling to the effect that Finland would be obliged to respect the present international legal status of Åland. In respect to the EU, the autonomy of Åland is, therefore, a purely internal matter. Moreover, the provisions of the Åland Protocol may not imply that the European Union has decided to undertake the role of guarantor of Åland's autonomy. Furthermore, the Protocol may not be even considered as recognition of Åland's status by the European Community, as it is not a matter for the European Community to decide on the international status of a region of a Member State.

On the other hand, the Protocol does represent a further and renewed Finnish recognition of Åland's status under International Law.

⁸⁸Hannikainen L., *The International Legal Basis...*, *cit.*, p. 73.

3.3. Final remarks: The content of the Finnish international obligations

The content of Åland's right to autonomy under International Law consists of the guarantees provided by the first Autonomy Act of 1920 and by the Resolution of the Council of the League of Nations of 27th June 1921 in the light of the previous Resolution of June 24th.

However, the "Åland Agreement" did not mean to crystallize Åland's autonomy to the provisions, which had already been passed up to that moment, with the addition of the further guarantees envisaged by the "Agreement" itself. On the contrary, it allowed the Ålanders and the Finnish Government to update the scope of Ålandic self-government without making a new international affair of it at each amendment.⁸⁹

Indeed, under the "Åland Agreement", the only requirements needed for the enactment of a new Act on the autonomy of Åland concern the fact that the procedure for constitutional amendments be followed, and that also the Ålandic Legislative Assembly give its consent by a qualified majority.

Since 1921 this possibility has been repeatedly exploited. Thus, the first Act on the autonomy of Åland – to which the "Åland Agreement" referred – as well as the Safeguards Act – which implemented the "Åland Agreement" – and the other similar constitutional enactments directly concerning the Province have been replaced several times.⁹⁰ These Acts have greatly developed the autonomy of Åland and have been passed in compliance with the necessary procedure, which includes the consent of the Legislative Assembly.

The above considerations lead to conclude that any guarantee which would have been given up by the Ålanders along this process since the settlement of the Åland question might not be claimed any more under International Law. Neither the Ålanders or any other State or international body would be entitled to enhance similar claims in the light of the old international

⁸⁹This argument is also derived from the third paragraph of Article 3 of the League Resolution of 27th June 1921, which lays down: " This law [on the right to purchase real property in the Archipelago] may not be modified, interpreted, or repealed except under the same conditions as the Law of Autonomy".

⁹⁰See the following chapter.

provisions. Therefore, international obligations may only survive for those prerogatives, which have never been given up according to the required amendment procedure.

Finally, as far as the 1920 Autonomy Act is concerned, the international protection should not be considered as covering each and every devolution of authority to the Province. Instead, it is submitted that it covered the basic idea underlying that Act, that is that Åland had to be granted a “quite extensive autonomy [that is legislative and administrative authority, so that] the Åland people would be ensured the opportunity to organise their affairs as freely as generally possible for a Province which does not constitute an independent State”.⁹¹ In addition, also the guarantee of the procedure for amending the domestic statutory provisions on the autonomy of Åland should be considered as enjoying international protection.⁹²

For any other guarantee provided by subsequent Acts, there may be no international – but only domestic constitutional – protection.

⁹¹Government proposal 73/1919 for an Act on the Autonomy of Åland. Quotation from the unofficial English translation included in *Constitutions of Dependencies...*, *cit.*, p. 170.

⁹²Also this argument can be derived from Article 3 of the League resolution of 27 June 1921, quoted above.

4. ÅLAND'S AUTONOMY UNDER CONSTITUTIONAL LAW

4.1. The status of the Autonomy Act under Constitutional Law

According to the aim of this paper, the present chapter will mainly focus on the formal analysis of the legal sources on which autonomy is founded. Thus, only some *orbiter dicta* will be reserved to the survey of material aspects of Åland's autonomy.

Åland's autonomy under constitutional law is currently based on the Act on the Autonomy of Åland (16th August 1991/1144)⁹³ and on the 1975 Act on the Acquisition of Real Property in Åland (3rd January 1975/3)⁹⁴. These laws are the result of a legislative evolution occurred in almost eighty years.

The first Autonomy Act was passed in 1920.⁹⁵ It was implemented by the Act 1920/125⁹⁶ and reinforced by the Safeguard Act (1922/189), which implemented the guarantees provided by the "Åland Agreement". It constituted the basis for the internal settlement of the Åland question, making the Ålanders to accept the arrangement of their Islands as a Finnish autonomous Province. Only, the guarantee concerning land property on the Islands was implemented – with a certain delay – by a separate Act in 1938.⁹⁷

In 1951 there was a complete renewal of the domestic sources on Åland's autonomy. A new Autonomy Act replaced the 1920 Autonomy Act, the Implementation Act and the Safeguards Act, and a new Act on the Use of the Expropriation Right upon Conveyance of Real Property in Åland (Act 1951/671) supplanted the 1938 Act. This last discipline was, finally, renewed once again with the mentioned 1975 Land Acquisition Act, which is still in force. The 1951 Autonomy Act, instead, remained in force until the enactment of the new Autonomy Act in 1991.

All the mentioned Acts share the characteristic to have been passed according to the procedure for Constitutional amendments. Moreover, except for those of the first round, they have all been approved by the Ålandic Legislative Assembly by a qualified two-thirds majority. Indeed,

⁹³Hereinafter the Autonomy Act.

⁹⁴Hereinafter the Land Acquisition Act.

⁹⁵Act of Parliament 6 May 1920/124.

⁹⁶The so-called Implementation Act.

⁹⁷The Act on the Use of the Expropriation Right upon Conveyance of Real Property in Åland (1938/140).

according to provisions included in these Acts, they could only be amended, repealed, expounded, or receive exceptions according to this reinforced procedure.

The particular procedure required for the approval of these Acts raises doubts concerning their legal nature and their place in the Finnish hierarchy of legal sources. The answer to these questions involves arguments derived both from the Finnish Constitutional system and from general legal theory. In this respect, since a single procedure has been followed for the enactment of all of these laws, in the following discourse it will only be referred to the Autonomy Act. Nonetheless, the conclusions reached on this Act may be extended also to all of the other ones.⁹⁸

A first element to be considered is quite obvious: notwithstanding the requirement of the approval by the Ålandic Legislative Assembly by qualified majority, and the fact that the Act is also published in the Ålandic Law Bulletin, the Autonomy Act is a State Act.

It is slightly more problematic to reach a conclusion on the correct place of the Autonomy Act within the hierarchy of the State legal sources. To begin with, one must recall that, until the entry into force of the new Constitution – right at the end of the last millennium – Finland had a multi-documentary Constitution, consisting in the Constitution Act (17th July 1919/94), the Parliament Act (13th January 1928/7), the Ministerial Responsibility Act⁹⁹ (25th November 1922/274) and the Act on the High Court of Impeachment (25th November 1922/273).

The basis of the Finnish multi documentary constitutional system lay in the first Section of the 1919 Constitution Act, according to which “Finland is a sovereign Republic. Its constitution is established in this Constitution Act and in the other Constitutional Acts of Parliament”.¹⁰⁰ In this respect, two methods might hypothetically be followed in order to understand the reference made to the “other Constitutional Acts of Parliament”. The first one could be to refer to the formal

⁹⁸However, the inclusion since 1994 of a specific reference to the Autonomy of Åland and – more specifically since 2000 – to the Autonomy Act, calls for a peculiar consideration of the two Acts currently in force, which will be carried out below.

⁹⁹The complete title of the Act is “Act on the right of Parliament to inspect the lawfulness of the official acts of the Members of the Council of State, the Chancellor of Justice and the Parliamentary Ombudsman”.

¹⁰⁰For each quotation of the Finnish Constitutional Acts, see *Constitutional Laws of Finland, Procedure of Parliament*, published by the Parliament of Finland, Ministry for Foreign Affairs, Ministry of Justice, Helsinki 1996.

definition as a “Constitutional Act”, given by the Parliament itself. The other one could be to refer to the procedure required for the enactment of a Constitutional Act.

In the Finnish case, a combination of the two methods was generally adopted. Indeed, on the one hand, a particular procedure is required in order to amend, repeal, expound and make exceptions to the Constitution.¹⁰¹ In this respect, since the 1919 Constitution Act had no provisions on the procedure for constitutional enactments, it had to be interpreted in the light of the provisions of the Parliament Act.¹⁰² Considering the provisions of the 1928 Parliament Act, it provided that, “in order to be adopted as a decision of Parliament, a proposal on the enactment, amendment, expounding or repeal of a Constitutional Act shall, after following the procedure laid down in Section 66,^[103] be approved by a majority of the votes cast in the third reading to be left in abeyance until the first regular parliamentary session following an election. In the said session the proposal shall be approved in an unamended form by a decision that has received the support of no fewer than two thirds of the votes cast. However, if a proposal relating to a Constitutional Act is declared urgent by a decision made in a plenary sitting that has received the support of no fewer than five sixths of the votes cast, then the matter shall be resolved and a decision on the adoption of the proposal made, as provided in paragraph 1, without leaving the matter in abeyance”.¹⁰⁴

On the other hand, according to Section 95 of the 1919 Constitution Act, Section 94 of the Parliament Act, Section 8 of the Ministerial Responsibility Act, and Section 3 of the Act on the High Court of Impeachment, all of these Acts, were declared “Constitutional Acts”. This formal definition obviously implied their subjection to the regime provided by Section 67 of the Parliament Act.

¹⁰¹The procedure for Constitutional enactments is currently provided by Section 73 of the new Finnish Constitution, which slightly simplified the previous procedure, but did not affect the general system. That is why the following considerations, mostly developed in the light of the repealed Finnish Constitutional Acts, remain valid under the new Constitution. In this respect, one only needs to be aware that nowadays a more simple procedure is provided by Section 73 – and, in the field of the international relations, by Section 95 – of the new Constitution.

¹⁰²First the 1906, then the 1928 Parliament Act.

¹⁰³That is the ordinary legislative procedure.

¹⁰⁴Section 67 of the 1928 Parliament Act.

Truly, Section 95 of the Constitution Act and Section 94 of the Parliament Act added that these Acts “may not be amended, expounded or repealed, nor exceptions to [them] be made, except according to the prescribed procedure for Constitutional Acts in general”.¹⁰⁵ The last two provisions, however, were rather pleonastic in view of the provision of Section 67 of the Parliament Act, according to which the procedure to amend, expound or repeal a Constitutional Act was the same as the one for new Constitutional Acts. In this respect, all that was added by Section 95 of the Parliament Act was the express mention on the possibility to bring exceptions to these two Constitutional Acts in accordance with the same procedure.

For a better understanding, it is important to recall that, apart from formal amendments to the Constitution, the Finnish constitutional system provided at least other two possibilities to modify the Constitution. The first one was to pass a new Constitutional Act, which could be added to the four already enjoying this status. The second one was to pass an exception to a Constitutional Act. In the latter case, however, although the exception had to be passed according to the same procedure required for all Constitutional Acts, the Exceptive Act did not gain constitutional status. Thus, it could be placed at a lower level in the hierarchy of legal sources, and – unless the new Act brought about new exceptions to the Constitution – it could be repealed by an ordinary Act of Parliament.

If the previous considerations are correct, it may be concluded that, since Exceptive Acts had to follow the same procedure required for the other Constitutional Acts, their only difference from a Constitutional Act or a constitutional amendment from a formal point of view was the title of “Exceptive Act” given to them by the Parliament. From this title depended the procedure required to repeal the Act itself.

Going back to the Autonomy Act, the original Government proposal for the new Autonomy Act¹⁰⁶ provided that the Act would enter into force as a Constitutional Act. In this respect, the Government detailed argumentation affirmed that “the status of the Autonomy Act within the hierarchy of enactments ha[d] been somewhat vague. As the Act has not contained an

¹⁰⁵See Section 95 of the 1919 Constitution Act. A similar provision was, however, provided by Section 94 of the 1928 Parliament Act.

¹⁰⁶Government Proposal no. 73/1990.

express statement thereon, its status has been deemed to be close to that of a Constitutional Act. According to paragraph 1 the status of the Act is made clear by providing that it enter into force as a Constitutional Act”.¹⁰⁷

However, since the Committee for Constitutional Law rejected the express definition of the Autonomy Act as a Constitutional Act, this attempt to make things clearer did not work out.¹⁰⁸

In any case, the Committee maintained the system of the reinforced procedure for the amendments to the Act. Consequently, according to the final text of Section 69 of the Autonomy Act, “Th[e] Act may be amended, explained, repealed or exceptions to it may be made only by consistent decisions of the Parliament of Finland and the Legislative Assembly. In the Parliament of Finland the decision shall be made as provided for the amendment, explanation and repeal of Constitutional Acts and in the Legislative Assembly by at least two thirds’ majority of votes cast”.¹⁰⁹

The consequence of the solution adopted by the Finnish Parliament was that, if the formal definition of Constitutional Act – as previously concluded for the Exceptive Acts – had to be considered decisive for the attribution of this substantive status, then the Autonomy Act was not a Constitutional status. Still, the procedure provided for its amendment makes one to doubt about this conclusion, which therefore requires a deeper consideration.

To start with, one might recall the reasoning of the Constitutional Law Committee, which is laid down in the cited report of the Committee on the Government proposal.¹¹⁰ In synthesis, apart from expediency considerations, the Committee held that:

¹⁰⁷Section 69, Paragraph 1, of the *Government Proposal to Parliament for a new Act on the Autonomy of Åland, Detailed Argumentation, Unofficial English translation, in Constitutions of Dependencies..., cit., p. 188.*

¹⁰⁸The view of the Committee was that “having the Autonomy Act enter into force as a Constitutional Act would with regard to certain sections (e.g. sect. 27 and 28) lead to confusion as to the meaning of the expression ‘Constitutional Act’ in a given situation” (*Report of the Committee for Constitutional Law no.15 on the Government Proposal for a new Act on the Autonomy of Åland. Unofficial English translation, in Constitutions of Dependencies..., cit., p. 130.*)

¹⁰⁹The quotations of the Autonomy Act are from *Act on the Autonomy of Åland*, Unofficial English translation published by the Åland Legislative Assembly and by the Government of Åland, Mariehamn 1993.

¹¹⁰The report reads,

1) The special autonomous status of Åland did “not require an alteration in the hierarchical position of the Autonomy Act”;

2) The Autonomy Act contained “several provisions that according to constitutional theory do not in any way require the status of a constitutional Act”;

3) It was “appropriate to have an express statement on the autonomy of Åland in a provision to be added to the Constitution.

Now, the first of these sibylline statements seems to imply that a provision on the entry into force of the Autonomy Act as a Constitutional Act would have changed its nature and its hierarchical position. Accordingly, the previous Autonomy Acts – and the other Acts with similar entrenchment – could not be considered Constitutional Acts, because their constitutional nature was not formally declared. However, since the aim of these Acts was apparently not to amend, expound or repeal the existing Constitutional Acts, they could only be conceived as Exceptive Acts.¹¹¹ Still, they could only be conceived as a *sui generis* type of Exceptive Act, which could not be repealed according to the ordinary legislative procedure of Section 66 of the 1928 Parliament Act. In fact they could only be amended following the mentioned procedure presently provided by

“According to the proposal the Act on the Autonomy of Åland will enter into force as a Constitutional Act. In the argumentation for the Proposal it is stated that the purpose of the change is to make the status of the Autonomy Act clearer.

“The Committee has evaluated this proposal from the viewpoint of principle. Finland currently has four Constitutional Acts, while in the rest of the world such fundamental provisions have usually been incorporated in one statute. This solution should be considered also in Finland (*cf. CtteeConstLaw Rprt no. 7/1990 sess.*).

“The Autonomy Act contains several provisions that according to constitutional theory do not in any way require the status of a Constitutional Act. Also, having the Autonomy Act enter into force as a Constitutional Act would with regard to certain sections (e.g. sect. 27 and 28) lead to confusion as to the meaning of the expression ‘Constitutional Act’ in a given situation.

“Due to the above and as it is to be deemed that the special autonomous status of Åland does not require an alteration in the current hierarchical position of the Autonomy Act, the Committee has removed the first sentence of paragraph 1 of the present section. At the same time the Committee notes that it is appropriate to have an express statement on the Autonomy of Åland in a provision to be added to the Constitution. The Committee has declined, however, to discuss the issue in the present context. Due to the importance of the matter the Committee suggests that Parliament approve a petition for such supplementation of the Constitution”.

¹¹¹A similar conclusion should also concern the present Autonomy Act, since the Committee did not want it to have a different nature.

Section 69 of the Autonomy Act, that is by means of a procedure even more complicated than the one ordinarily prescribed for all kinds of Constitutional Acts.¹¹²

The second statement of the Committee reinforces the idea impressed by the first statement, that – according to the Committee – the Autonomy Act could not have the nature of a proper Constitutional Law.

Finally, the third statement discloses the Committee’s real opinion. Indeed, according to the Committee, the aim to systematize the whole constitutional matter required the reunion of all the materially constitutional provisions into a single document. In this respect, the remaining regulations – like those regulating the details of the Parliamentary procedure – could find place in provisions of a lower level.

According to this view, as far as Åland’s autonomy was concerned, it was enough to provide a constitutional basis for its exceptional regime. A basis that was eventually found in the provision of Section 52A of the 1919 Constitution Act,¹¹³ according to which “Åland has self-government according to separate enactments”.

It must be agreed that this solution (substantially confirmed and implemented on the occasion of the enactment of the new Constitution) has a certain appeal, both because it aimed at a global systematization of the Finnish Constitution, and because, as far as Comparative Constitutional Law is concerned, several similar precedents existed in other countries where constitutional entrenchment has been granted to certain autonomous areas.¹¹⁴

However, in the case of Åland, certain peculiar aspects made the aimed systematization slightly more problematic. Indeed, unlike the existing cases in Comparative Constitutional Law, Åland’s autonomy had already existed – and had enjoyed constitutional protection – for over

¹¹²This consideration is enough to exclude that the Autonomy Act is an Exceptive Act, since, as mentioned above, from the procedural point of view, the only characteristic which makes Exceptive Acts different from Constitutional amendments – apart from the formal fact that an amendment usually consists of the inclusion of the new provision within a text which is already in force – is the fact that the former can be repealed by an ordinary Act of Parliament.

¹¹³Inserted by a Constitutional amendment of 18 February 1994/128.

¹¹⁴*Cf., i.a.*, Article 116 of the Italian Constitution or Articles 6 and 227-236 of the Constitution of Portugal. These Constitutions, indeed, only include the recognition of the autonomy of certain regions, which is further regulated by special documents. However, in the mentioned cases also the nature of these documents is expressly recognized as “constitutional”.

seventy years before the inclusion of Section 52A in the Constitution Act. Now, according to Section 69 of the Autonomy Act – and to similar provisions of the previous Acts – the Parliament alone may not change the nature of the Autonomy Act itself, without the consent of the Ålandic Legislative Assembly. In this respect, it must be recalled that the Ålandic *Lagting* is not involved in the procedure for constitutional amendments.

Moreover, since the Constitutional provision of Section 52A – *expressis verbis* – only covered Åland's self-government, one might doubt about the status of the other exceptional provisions which establish special guarantees and privileges for the Ålanders. Similar doubts might, for instance, rise about the rules on the right to vote and stand as a candidate in local elections, the right to own land, the right to exercise a trade or a profession and the exemption from military conscription. Rights which are currently annexed to the right of domicile and are apparently inconsistent with the general equality clause enshrined in Section 5 of the 1919 Constitution Act (Section 6 of the new Constitution).

The point is that, as far as the Acts on which Åland's autonomy is based are concerned, although their constitutional status had never been formally recognized, the provisions on the procedure required for their amendment might be considered preponderant in order to conclude on the fact that, from a substantive point of view, these laws had always been a part of the Finnish multi-documentary Constitutional system.¹¹⁵

The previous conclusion might seem inconsistent with the opinion of the Committee for Constitutional Law, according to which “the Autonomy Act contains several provisions that according to constitutional theory do not in any way require the status of a Constitutional Act”. Such a statement however requires a deeper consideration. Indeed, one might agree with the Committee that a constitutional recognition of Åland's autonomy was enough for the legal validity of several provisions of the Autonomy Act, like the ones concerning the organization of Åland or its relations with the State. A different conclusion, however, must be reached in relation to the provisions on the devolution of legislative authority to the Province, or on the limitation of the

¹¹⁵A similar standing is taken, *i.a.*, by Jyränki A., *Autonomy of the Åland Islands...*, *cit.*, in *Constitutionalism in Finland...*, *cit.*, p. 8, and by Sipponen K., *The Finnish Constitution in the Throes of Change*, *ibid.*, p. 54.

rights of the Finnish citizens on the Islands. Both these groups of rules are clearly inconsistent with other constitutional provisions. Therefore, they require to be passed according to the appropriate procedure in the Finnish Parliament, as provided for the Acts belonging to the sphere of constitutional enactments.

In this respect, although the Autonomy Act brings exceptions to the Constitutional Laws of Finland, it may not be considered an Exceptive Act. Two main arguments may be put forward in this respect. First, as already mentioned, from a formal point of view, an Exceptive Act differs from constitutional amendments on the grounds of its formal definition as an Exceptive Act and on the grounds of the procedure necessary to repeal the Exceptive Act itself. Now, none of these formal requirements are satisfied in the case of the Autonomy Act. Second, from a substantive point of view, an Exceptive Act is only justified when the restrictions it produces on the constitutional provisions are supposed to have a limited scope. In this respect, for example, an Exceptive Act is justified when the restoration of the ordinary situation may be effected as soon as possible. Now, as far as the Autonomy Act is concerned, there is no will or possibility to repeal its exceptional provisions.¹¹⁶

Once it is excluded the nature of an Exceptive Act, one must conclude that the Autonomy Act, the Land Acquisition Act and all the other Acts mentioned before have always been Finnish Constitutional Acts.

This solution given to the question of the legal nature of the Autonomy Act may not change as a consequence of the recent entry into force of the new Constitution. In this respect, Åland's autonomy has not been affected by the reunion of the previous basic four constitutional documents into a single Act. Once again, one must recall that the Parliament alone may not change the nature of the Autonomy Act.

¹¹⁶If the previous considerations are correct, Section 52A had to be read as if it provided that "Åland has self-government according to separate *constitutional* enactments" and should have not been regarded as introducing a substantively new regime for Åland.

In this respect, this provision would be quite similar to that of Article 116 of the Italian Constitution, according to which the special statutes of the five regions which enjoy a special autonomy – namely Sicily, Sardinia, Valle d'Aosta/Vallee d'Aoste, Trentino-Alto Adige/Südtirol and Friuli-Venezia Giulia – are enacted in the form of a Constitutional Act.

A different opinion is expressed by Suksi M., *Frames of Autonomy and the Åland Islands*, Åbo 1995, p. 41, who believes that Section 52A has further entrenched Åland's autonomy.

On the other hand, a couple of new constitutional provisions concern the autonomy of Åland and the Autonomy Act. First, the new Section 120 of the Constitution adds a specific reference to the Autonomy Act to the mentioned Section 52A of the previous Constitution Act. Second, a new provision has been laid down in Section 75, according to which “The legislative procedure for the Act on the Autonomy of the Åland Islands and the Act on the Right to Acquire Real Property in the Åland Islands is governed by the specific provisions in those Acts. The right of the Legislative Assembly of the Åland Islands to submit proposals and the enactment of the Acts passed by the Legislative Assembly of Åland are governed by the provisions in the Act on the Autonomy of the Åland Islands”.

Now, in spite of the new provisions, the ambiguity of the system has not been totally eliminated. On the one hand, the express reference to the Autonomy Act provides further elements in favour of its at least partial “constitutionalization”, concerning the parts of the Autonomy Act that are recalled by Sections 120 and 75 of the new Constitution. In fact, these Sections recall the rules on the “self-government” of the Islands, the legislative procedure to be followed to amend the Autonomy Act, the right of the *Lagting* to submit proposals and the procedure for the enactment of the Ålandic Acts. Now, this constitutionalization would imply the need to proceed to a formal constitutional amendment, at least in order to amend the “constitutionalized” parts.

On the other hand, in spite of this partial and indirect recognition of the constitutional nature of the Autonomy Act, the constitutional legislators once again manifested the will not to take any standing on the question of the nature of the Autonomy Act. So, they lost another occasion to recognize the original and persisting real nature of the Autonomy Act as a Finnish Constitutional Law.

The emphasis given also to the procedure required to approve the Autonomy Act in order to recognize its constitutional nature may not lead to conclude, however, that its hierarchical status would be even higher than that of the Constitution.¹¹⁷ Indeed, the question of the hierarchical status of an Act may not be answered only in the light of the procedure required to amend or repeal the Act itself.

In this respect, before relying only on the analysis of the procedure required for the enactment of the Autonomy Act, a preliminary analysis must also be based on legal theoretical considerations. To start with, one has to consider that, both in legal theory and in comparative experience, even federal systems may only be founded on a single Constitution. Moreover, a single Constitution must stand as the legal basis of all the elements of similar decentralized systems. Indeed, notwithstanding the degree of autonomy accorded to the different parts of a state, and in spite of the possible differentiation in the legal systems of these parts, it is for the Constitution itself to confer validity and unity to the whole legal system, and to envisage and allow derogations from the common legal regime.¹¹⁸ In other words, according to a legal positivist

¹¹⁷This seems to be the opinion of Suksi on the grounds of the complicated procedure to bring about amendments to the Autonomy Act (*Cf. Suksi M., Frames of Autonomy..., cit., p. 23 ff.*).

¹¹⁸This last point raises the need to clarify the point of view of the present author in relation to the much-recalled fact that Finland had its own Constitution during the period of its autonomy within the Russian empire. In this respect, it is submitted that, although the Swedish Constitution was recognized by the Czar as the basis for the autonomy of the Finnish Grand-Duchy, the legal basis of this recognition resided in the constitution of the Empire, that is in the will of the Czar himself.

The criticized doctrine was remarked at the time of the Åland question, in order to oppose the argument that Finland was not definitely established as a State when the Ålanders brought their claims to self-determination (*cf., i.a., The Åland Question and the Rights of Finland..., cit., p. 8*). This doctrine has, however, survived and is still recalled every now and then in the Finnish scholarship (*Cf. e.g. Holger Rotkirch, The Demilitarization and Neutralization of the Åland Islands: a Regime "in European Interest" withstanding Changing Circumstances, in Journal of Peace Research 1986, vol. 23 no. 4 p. 359 ff.*). However, the main part of the recent Finnish legal

point of view, only the constitutions of independent states do not need to find their legal basis in any other law than in a previous constitution. In this respect, the only exception is that of constitutions imposed by revolutionary actions legitimized by the people's subsequent acceptance of the new system.

Similar conclusions may not be reached in relation to any other Act of any legal system. In this respect, in spite of its special entrenchment, the Autonomy Act for the Åland Islands may not be an exception.¹¹⁹

Since the Autonomy Act must be considered a part of the Finnish Constitutional system, only this constitutional system may confer validity to Åland's autonomy. In other words, if – by virtue of unlikely political events – the Finnish Constitution would lose validity, Åland's autonomy could not stand alone, and it should find a new legal basis in the new constitutional system.

Similarly, the autonomy of the Archipelago would have no basis outside the Finnish constitutional system. Therefore, for example, if Åland would be transferred to another state, it could claim no juridical right to autonomy, unless the new sovereign State would explicitly grant it.

The previous considerations cover rather theoretical situations. Thus, they might not seem worth of much attention. Indeed, their only purpose is to show that, because Åland's autonomy must find a justification in the Finnish Constitution, the hierarchical status of the Autonomy Act may never be higher than that of the Constitution itself. Instead, as a part of the Finnish constitutional system, it has the nature of a Constitutional Act.

In the comparative experience, an interesting application of the approach followed in these pages has been provided by the Italian Constitutional Court in relation to the Sicilian Statute

scholarship has abandoned the old view. For example, *cf.* Modeen (*Constitutional Problems...*, *cit.*, *p. 1*), who concludes that, "Finland must be regarded as a federal state with home rule during 1809-1917".

¹¹⁹According to a legal positivist approach, it is only for the constitutional systems of independent states to be based on International Law. In this respect, one may not misunderstand the much-recalled statement that Åland's autonomy is based on International law. Indeed, the resolutions of the League of Nations on which the islands' autonomy would be "based" did not intend to develop them into an independent state, since they expressly provided that the sovereignty of Åland was recognized to belong to Finland.

of Autonomy. In this respect, the fact that this Statute had been enacted and actually entered into force before its validity was definitively confirmed by the 1948 Constitution, raised largely spread opinions that the Statute had a sort of super-constitutional nature.¹²⁰ This theory found consistent grounds in a decision of the High Court for Sicily¹²¹ which consisted of an extremely rare case of annulment of a Constitutional Act because of its assumed inconsistency with the Sicilian Statute.¹²² However, the evident consequences of this exceptional ruling have been reversed in the long run by the case-law of the Italian Constitutional Court, which dealt with the nature of the Sicilian Statute in a couple of cases concerning the mentioned High Court.¹²³ The result of these pronouncements is that nobody doubts any longer that the Sicilian Statute must find its own justification in the Italian Constitution and, namely, in its Article 116.

In spite of the differences in the autonomous arrangements for Sicily and Åland and of the different procedures for amending the Sicilian Statute and the Autonomy Act for Åland, both units represent federal elements in their respective countries.¹²⁴ The right of both these

¹²⁰Indeed, Sicily was granted autonomy already in May 1946 - *i.e.* two years before the enactment of the Italian Constitution of 1948. The constitutional basis for the recognition of the Sicilian Statute, therefore, lay in the provisional constitutional system, which was established after the collapse of the fascist regime and granted provisional powers to the King and the Government. However, the decisions taken during the transitory period had to be ratified by the Constituent Assembly, once it was elected. Notwithstanding this, the fact that the Sicilian Statute had entered into force before the Italian Constitution opened a very interesting legal dispute, which was settled according to general legal principles belonging to the field of legal theory, which may be applied also in Åland's case.

¹²¹The High Court was a body of constitutional review, which was established by the Sicilian Statute in order to ensure the supremacy of the Statute itself, and compliance with it of all Sicilian and State legislation. The Court was formed by Justices jointly appointed in equal number by the Sicilian and Italian governments. It worked until 1956.

¹²²In the event, the Constitutional Act had been passed by the Constituent Assembly on its last day of activity, and provided that it was a task of the first Parliament of the Republic to coordinate the Statute with the new Constitution.

¹²³As soon as the Constitutional Court was established – in 1956 – it decided to take over the jurisdiction of the Sicilian High Court. Later, in a ruling of 1970, the Constitutional Court even held that the jurisdiction of the High Court was inconsistent with the Italian Constitution. Thus, it declared null and void the provisions of the Sicilian Statute on the jurisdiction of the High Court. Provisions which had a constitutional status.

¹²⁴As far as Åland is concerned, this conclusion is reached by Jyränki mostly in consideration of: “1) the division of legislative powers between the State and the Province and 2) the *kompetenzhoheit* exercised by the State and the Province jointly” (Jyränki A., *Autonomy of the*

autonomous entities to enact their own laws, to have self-governing institutions, and to enjoy a special constitutional regime – according to specific constitutional provisions which bring about certain exceptions to the general constitutional system of the respective country – is based on this federal feature. The same legal theoretical considerations may, therefore, apply to the two cases, as well as in any case of proper federal states or unitary states which have developed some areas as federal parts of the country.

4.2. The content of the constitutional right to autonomy

In the last section of the previous chapter it was referred to the scope of Åland's autonomy under International Law, and it was concluded that it encompasses a big part of the constitutional provisions enshrined in the Autonomy Act and in the Land Acquisition Act.¹²⁵

However, it must be added that these constitutional provisions – which have been correctly defined “the most important guarantee of the autonomy of the Åland Islands”¹²⁶ – also provide further guarantees that, by no means, were envisaged by the “Åland Agreement”. The aim of the present section is to survey these further guarantees.

Åland Islands..., *cit.*, p. 13). In another context this author also points out that “the foundation of federal relations is confirmed in the federal constitution” and that “in a federal state [...] the unity of the legal order provided by the concept of sovereignty, as well as the historical mutual relations of different norms, can in the last instance be derived from the federal constitution” (*ibid.*, p. 2).

According to the present author this is the decisive element in order to uphold the view that an autonomous region constitutes a federal elements within its own constitutional system. This would confirm the conclusions reached in respect of Åland, since in its case the jurisdiction of central and regional authorities is based on the constitutional provisions enshrined in the Autonomy act. On the other hand, as far as Italian case is concerned, similar conclusions are not only valid in relation to the Sicilian Statute, but at least also for the other four regions that enjoy a special autonomy. In other words, the correct grounds for concluding that both the Province of Åland and the five Italian special regions represent federal elements of their constitutional systems lie on the fact that they all *enjoy a certain degree of autonomy, according to the constitutions of the two countries.*

¹²⁵There is only one exception in this respect, consisting in the right of Ålanders to enhance claims to the international forum of the League of Nations. This provision was eliminated by the 1951 Autonomy Act.

¹²⁶Modeen T., *Constitutional Problems...*, *cit.*, p. 9.

The constitutional guarantees have been mostly enhanced by the 1951 Autonomy Act, whose basic aim was to strengthen the protection afforded to the Islanders in relation to the Swedish character of the Province. The instrument envisaged for this purpose was the introduction of the “right of domicile” in the Province, to which the Act attached the exercise of certain basic rights – some of which already mentioned in the Åland Agreement. Thus, in order to evaluate the impact of the constitutional guarantees which enhance the protection afforded by international law, one has to take into account both the right of domicile and the other rights, which are attached to the former. In fact, the right of domicile is an empty box which does not mean anything as such, but may become an extremely far-reaching institution, depending on the rights which are attached thereto.

As already mentioned, the novelty concerning the right of domicile was brought about by the 1951 Autonomy Act. Earlier no such concept existed, since the “Åland Agreement” only spoke about the “legal domicile” in the Islands. According to the “Åland Agreement”, the legal domicile – that is the official residence in the Archipelago – was the precondition for the full right to purchase real property in Åland. In this respect, those who had acquired real property and did not have the legal domicile on the Islands were subject to the risk of having the estate redeemed by anybody with the legal domicile or by the Provincial Government or the municipality on whose territory the estate was situated. In addition, a second effect of the “legal domicile” was that its continuous possession for five years granted any Finnish citizen the right not to be considered as an immigrant and to have franchise in local elections.

It must be noticed that, as far as the right to purchase real property in Åland is concerned, the implementation of the clause provided by the 27th June 1921 resolution raised a certain disagreement between the Ålandic *Landsting* and the Parliament in Helsinki. In fact the Ålanders also claimed the right to purchase land to be enjoyed by Finnish immigrants only after they had been legally domiciled on the Islands for five years. Thus, they wanted the requirement provided for the right of franchise to be extended to the right to purchase land in Åland. The consequence of this conflict was the impossibility to implement the international guarantee on the limitation to the right to purchase land in the domestic sphere until 1938.

The establishment of the right of domicile had a profound impact on the guarantees' mechanism. Up to that moment, indeed, no legal restriction could apply to Finnish immigrants, after they had resided in the Islands for five uninterrupted years. Moreover, apart from the mentioned conflict about the extent of the limitations to the right to purchase real property, the only discrimination allowed against Finnish citizens legally domiciled on the Islands for less than five years concerned the fact that they did not enjoy the right to vote in local elections. Nevertheless, they automatically acquired this right once they had been legally domiciled on the Islands for five years.

It goes without saying that the settlement provided by the League of Nations in relation to the stringent rules on the right of franchise aimed at avoiding a situation whereby the natives could be outvoted in local elections. In view of the small size of the local population and of the fact that the maintenance of autonomy is mainly entrusted to the Provincial Legislative Assembly, a similar situation would have obviously endangered the maintenance of the autonomy. On the other hand, no such risks were envisaged in relation to the remaining limitations imposed on non-Ålanders.¹²⁷ Thus, these rules were not so stringent as those on the right to vote and stand as a candidate in local elections.

Since 1951, Finnish constitutional laws on the autonomy of Åland have gone much further. In respect of the right of domicile, the present constitutional provisions – which, with a single exception, do not modify the provisions of the 1951 Autonomy Act – lay down that, apart from the native people¹²⁸ - who acquire the right automatically - the right of domicile is granted on application of the interested Finnish citizens who have taken up legal domicile on the Islands. Moreover, the Ålandic Government is vested with certain discretionary powers both in relation to the possibility to deny the right for “persuasive reasons” (in cases whereby the requirements provided by the Autonomy Act are fulfilled), and to the possibility to grant it “for special reasons”

¹²⁷As a matter of fact, the limitations to the right of non-Ålanders to purchase real property on Åland could be easily circumvented due to the fact there was no requirement of a minimum residence period. In this respect, one may understand the Ålanders' claim to extend the requirement concerning the five years of legal domicile also to this right.

¹²⁸That is the children of the holders of the right of domicile who have been born on Åland.

(if the legal requirements are not wholly satisfied).¹²⁹ Finally, it is worth mentioning that the 1991 Autonomy Act – further enhancing the constitutional protection of the Swedish character of Åland – expressly added the requirement of a satisfactory proficiency in the Swedish language to the other requirements needed in order to qualify for the right of domicile.¹³⁰

As already mentioned, the basic impact of the right of domicile depends on the rights that are attached to the enjoyment of this form of “provincial citizenship”. Presently, the Finnish citizens who enjoy the right of domicile on the Åland Islands also enjoy:

- a) The right to vote and stand as a candidate in local elections;
- b) The right to acquire real property in Åland;
- c) The right to exercise a trade or a profession on the Islands;
- d) Exemption from conscription for military service.

As far as the right to vote and stand as a candidate in local elections is concerned, the only novelty provided by Finnish Constitutional Law – in respect of International Law – concerns the fact that, according to the provisions on the right of domicile, the right to vote and stand as a candidate in local elections does not any longer automatically belong to anyone who has been legally residing in the Islands for five years.¹³¹

The right to acquire real property in Åland has been completely reshaped under Constitutional Law. First, while the League settlement did not restrict this right with respect to anybody who was legally domiciled in the Islands – regardless of the period of residence – the present Autonomy Act (Section 10) and the Land Acquisition Act discriminate on the basis of the right of domicile, which – as mentioned above – has quite stringent requirements. Second, while the “Åland Agreement” only provided the right of the Ålanders and of the local authorities to

¹²⁹It must be noticed, however, that the discretion of the Ålandic Government is not free, as its decisions may be appealed to the Supreme Administrative Court. These appeals have already occurred.

¹³⁰This requirement had already been asked by the Ålandic Government under the 1951 Act, but the Supreme Administrative Court found it inconsistent with the principle of equal enjoyment of constitutional rights.

¹³¹This point might raise problems in the light of the Ålandic accession to the European Union and of the general sensitivity which, in the European context – namely within the Council of Europe – is given to the issue of immigrants’ participation in local elections. A further analysis is, however, provided in the following chapter.

redeem the estate, the mentioned constitutional provisions affect the right itself of non-Ålanders to acquire real property. More detailed provisions in this respect are provided by the Land Acquisition Act, which also lays down that exemptions may be granted by the Ålandic Government.

The limitations for non-Ålanders of the right to exercise a trade or a profession in Åland were completely unknown under International Law. Thus, the enhancement of legal protection afforded to the Ålanders by Constitutional Law has been the sharpest one in this field.

A different standing should be taken for the exemption from conscription for military service, according to Section 12 of the Autonomy Act. Indeed, the “Åland Agreement” is mute in this respect, and even the demilitarization of the Islands cannot be considered sufficient grounds for this exemption. In fact, nothing in the Treaties prevents the establishment of a system whereby Ålandic soldiers would train on the Finnish mainland. Thus, one might believe that this right was not under the supervision of the League. However, the fact that this exemption had already been granted by the 1920 Autonomy Act, leads to a conclusion that it was presupposed by the 24th and 27th June 1921 Resolutions of the League of Nations, and, therefore, falls within the scope of the protection of International Law.

4.3. Overall evaluation of Åland’s autonomy in a comparative perspective

4.3.1. Autonomy in comparative Constitutional Law: Formal comparisons

Once the constitutional status and the scope of Åland’s autonomy have been surveyed, it is possible to compare its autonomy with that of other European regions.

The purpose of this comparative analysis is not to apply legal labels used for the definition of the relationship between other autonomous regions and the respective central government. Legal definitions like “federalism” or “regionalism” are very vague and do not help understanding complex legal phenomena, mostly when there is no agreement among legal scholars even on the basic elements of these definitions. Moreover, even identical institutions might have very different developments depending on practical circumstances and political attitudes in the different constitutional systems.

Nevertheless, comparisons remain interesting in order to have a deeper knowledge of similar institutions, and to understand the reasons of their different development. In addition, comparisons may help forecasting the impact of possible constitutional reforms on the development of a particular autonomous system. Finally, comparisons with other autonomous regions of the European Union are particularly interesting in the present stage of European integration. For this reason the following analysis concentrates on the autonomous regions of the member states of the European Union.

Comparisons may be made on different grounds. To start with, a first comparison could take into account the constitutional basis of autonomy. In this respect, the kind and level of entrenchment would make the difference, together with the procedure according to which the devolution is carried out. As far as this criterion is concerned, among the most consolidated European experiments, the institutions which apparently are the closest ones to Åland's case are the Spanish and Italian regions, together with the Portuguese autonomous regions of Azores and Madeira.¹³² Concentrating on the Italian regions – which have a longer and more consolidated tradition – one has to consider that they consist of two different types. The so-called “ordinary regions”, whose autonomy is directly regulated – at least in its fundamental elements – by the Constitution,¹³³ and the so-called “special regions”, whose autonomy is recognized by the Constitution,¹³⁴ but is regulated by specific Statutes, adopted in the form of Constitutional Laws. Now, as far as the above-mentioned formal elements are concerned, both types of the Italian regions can be considered close enough to the Ålandic model. Still, the closest one remains that of the five regions with a special autonomy. Indeed – as well as Åland's autonomy – also their autonomy is based on a general constitutional clause, while the regulations for the organization and the powers of each of the special regions is provided by specific constitutional Statutes. In order to grant the “special regions” a broader autonomy than that enjoyed by the “ordinary

¹³²Cf. Suksi M., *Frames of Autonomy...*, *cit.*, p. 39. The present author has elsewhere surveyed more thoroughly these and other forms of European regionalism and federalism (cf. Scarpulla C., *A Europe of the Regions. Reality, Challenges and Perspectives*, in *Essays on International Law, Publications of the Finnish Branch of International Law Association, no.7*, Helsinki 1998, pp. 200 ff).

¹³³ See Articles 117-133 of the Italian Constitution.

¹³⁴ Art.116 of the Italian Constitution.

regions”, these Statutes bring about several exceptions to other constitutional provisions. Thus, as far as the Italian regions are concerned, these constitutional Statutes play the same role played in Finland by the Autonomy Act for Åland. Since, however, also the basic organization and the powers of the “ordinary regions” are set down by the Constitution, even the autonomy of these regions may be said to have a similar level of entrenchment to that of Åland.¹³⁵

From this point of view no similarity may be envisaged between the case of Åland and the following:

a) The federal system of countries like Germany or Austria, in which each federate state (*Land*) claims to be autonomous on the basis of its own “constitution”, which would have the same authority of the Constitution of the Federation (*Bund*).

In practice, however, in the light of the legal positivist considerations developed above, concerning the fact that there can only be a constitution for each country, this form of federalism seems to differ from the mentioned forms of European regionalism only on quantitative grounds. In fact, the scope of these “regional constitutions” is much broader than that of the laws of autonomy considered above. For example, they provide own bills of rights and – when compared to that of the regions of the so-called regional states – give a broader competence to the German and Austrian *Länder*. In this respect, one might recall their competence in fiscal matters and in the organization of the judiciary.

From this point of view, even if the scope of Åland’s legislative autonomy is generally broader than that of regional States, it remains less far-reaching than that of these Federal States. But this substantive comparison will be considered below;

¹³⁵On the other hand, a basic difference between the Italian “ordinary regions” and Åland is – from a substantive point of view – that, while the Italian ordinary regions may only pass “concurrent” legislation, Åland’s legislative power is “exclusive” in every matter of its jurisdiction. This means that the laws passed by the Italian ordinary regions must respect basic common principles to be found in State laws. This limit does not exist for certain fields of competence of the Italian “special regions”. Thus, also in this respect, their form of autonomy looks slightly more similar to that of Åland.

b) The autonomy of regions like the Faeroe Islands or Greenland, whose legal bases cannot be found in a Constitutional Act, but only in ordinary Acts of Parliament.¹³⁶ From a formal point of view, therefore, these regions lack the strong guarantees which have been provided, *inter alia*, to Åland and to the regions of regional States;

c) The autonomous regions of countries without a written constitution. These regions deserve a specific consideration. Indeed, from a merely formal point of view, their autonomy seems to enjoy a system of guarantees similar to that of Greenland and of the Faeroes Islands, that is at the level of ordinary legislation. In the case of the United Kingdom, for instance, the absence of a written constitution reflects the theory of Parliamentary sovereignty, according to which a Parliament may not bind the subsequent ones. Thus, the Parliament may amend the Constitution at any given time – including the provisions concerning autonomous regions – without any special formality. As far as the Channel Islands and the Isle of Man are concerned, however, the issue is further complicated by the fact that these self-governing islands are not considered to be part of the United Kingdom, but only personal dominions of the British Sovereign, in a sort of real union with the United Kingdom.¹³⁷ As a consequence, the principle of sovereignty of Parliament applies

¹³⁶It must be mentioned, however that the Danish constitutional scholars are not unanimous about the real nature of the Home Rule Acts for the two mentioned territories. Cf. Olafsson A., *Relationship between political and Economic Self-determination. The Faeroese Case*, in *Nordic journal of International Law* 1995, vol. 64 p. 468 f.

¹³⁷The mentioned considerations remain fully valid, however, in the case of the autonomy of Northern Ireland and, presently, of the autonomy of Scotland and Wales. As far as Northern Ireland is concerned, this region was first granted autonomy in 1920 under a Government of Ireland Act – which established forms of self-government for both the parties of the Island, under a separate organization. In 1972 the autonomy of Northern Ireland was suspended by an Act of Parliament, which imposed direct rule. Later, in the 1970s a legislative body and a local executive were again provided by two Acts – the Northern Ireland Assembly Act and the Northern Ireland Constitution Act, both of 1973. But, since the system did not work out, direct rule was re-imposed and the Assembly dissolved.

In spite of this absolutely non-entrenched situation, it was considered – in the 1960s – that “the relationship between the United Kingdom and Northern Ireland [was] not unlike a federal one with the important difference that the Parliament of the United Kingdom can legislate in amplification or in derogation of the powers of the Parliament in Northern Ireland” (Wade E.C.S. and Phillips G. Godfrey, *Constitutional Law*, VI ed., London & Colchester 1960, p. 384). Similar considerations nowadays apply to the new process of the devolution of Scotland and Wales, started in 1997 and wholly effected and entrenched at the level of ordinary legislation – unless the referendums respectively held in the two regions are considered as a part of the specific legislative procedure in

to these regions only to a limited extent - *i.e.* in matters like nationality or defense. Therefore, these territories are really close to a situation of semi-independence, which cannot be defined according to the rigid criteria usually referred to in the “continental” systems with a written constitution. Atypical situations – similar to those of the Channel Islands and of the Isle of Man – are usually possible only in systems which lack a written constitution. Thus, it is not by chance that the constitutional systems of the United Kingdom and of the British Commonwealth are a great source of these atypical figures.¹³⁸

In conclusion, as far as systems without a written constitution are concerned, autonomy and independence represent two elements of a scale with infinite intermediate possibilities.¹³⁹ On the contrary, autonomy and independence represent two antithetic elements in continental systems with a written constitution.

4.3.2. Alternative comparisons

Apart from the formal basis of autonomy and its level of entrenchment, other similarities can be found between the autonomy of Åland and that of other European regions.

Although Finland’s approach to International Law is a dualistic one, it is often said in respect of Åland that – because of the so-called Åland Agreement – its autonomy is founded on International Law.¹⁴⁰ With regard to this feature, some Finnish scholars have developed a comparison with the Italian autonomous Province of Bolzano, which has its own legislative powers according to the Statute of the autonomous Region Trentino-Alto Adige/Südtirol.¹⁴¹

these matters. On the autonomy of these British regions, see also Scarpulla C., *A Europe of the Regions... cit.*, in *Essays on International Law... cit.*, p. 209.

¹³⁸For example it can be recalled that the Constitution of Canada – which otherwise is a fully independent country – provides that certain constitutional amendments may only be passed by the Westminster Parliament at request of the Canadian Government.

¹³⁹As a matter of fact, for many of the former Dominions of the United Kingdom it is not even easy to state when they gained full independence.

¹⁴⁰This wording has already been criticized above. See note 26 of this chapter.

¹⁴¹The autonomous Province of Bolzano is one of the two autonomous provinces included in the autonomous Region of Trentino-Alto Adige/Südtirol. Both the Provinces and the Region have legislative and administrative powers shared among them or exclusive of either of the two institutions, according to complicated rules provided by the Statute of the Region. In the Province of Bolzano a large part of the population is German speaking.

As a matter of fact, the measures aiming at the cultural protection of the German speaking population of South Tyrol have been agreed between Italy and Austria in the framework of the 1947 Peace Treaty and in later “political agreements”, which settled a controversy between Italy and Austria somewhat similar to the Åland question between Sweden and Finland.¹⁴² Nonetheless, the Italian constitutional scholarship has never considered these agreements to be the legal basis of the autonomy of the Bolzano Province.

Another case of autonomy originated by international agreements is that of Northern Ireland. However, as mentioned above, in spite of the existing international agreements between the Republic of Ireland and the United Kingdom, this autonomy has never worked out. Thus, its international basis has not granted a sufficient strength, so to ensure its implementation in the internal sphere.

Taken into account the last two examples, one should probably conclude that, as far as dualistic countries are concerned, rather than being *founded* on International Law, the autonomy of certain regions may be better depicted as *occasioned* by international controversies and by the relative settlements.

Truly, the fact that an international organization like the League of Nations undertook to oversee the enforcement of the guarantees provided by the “Åland Agreement” makes the Åland’s case slightly different from the other ones. Still, as far as the domestic legal system is concerned, stating that the autonomy of Åland is founded on International Law seems slightly excessive. In this respect, it is also essential to recall the enhancement of legal protection provided by the Finnish Constitutional system.

A further comparison could be drawn in relation to the contents of autonomy, particularly in relation to the powers granted to the autonomous units. In this respect, on the grounds that all these communities enjoy legislative powers, Suksi groups Åland together with the Italian and Spanish regions, the autonomous Portuguese territories of Azores and Madeira, and the Danish territories of the Faeroe Islands and Greenland.¹⁴³ Still, some considerations are needed on

¹⁴²Cf. Hannikainen L., *The International Legal Basis... cit.*, in *Autonomy... cit.*, p. 67.

¹⁴³Cf. Suksi M., *Frames of Autonomy..., cit.*, p. 39.

the “style” of the devolution, or on the constraints that derive from the broader constitutional structure.

These features lead to distinguish two different groups of autonomous regions: a) those governed according to the principle of “home rule” or self-government, and b) those, which have been granted certain autonomy, under specific constitutional provisions. In this respect, the first group should include the autonomous territories belonging to flexible constitutional systems without a written constitution, or where the home rule principle is provided by legal sources below the constitutional level, on condition that the political approach remains favourable to the devolution.

In the second group, instead, one could put the autonomous regions whose autonomy is strictly defined by constitutional provisions, mostly if some compulsory mechanism ensures compliance of practice with the written norms. Such a characteristic recalls the continental system of countries like Italy and Spain, but also of Germany.

Now, if one wonders about the position of Åland in this respect, it may be submitted that the Ålandic type of autonomy rests somewhere in the middle. On the one hand, the scope of Åland’s autonomy is so broad that it could really be said that the underlying principle is that the Province has as much power as it is allowed for a “non-independent state”. This aspect puts the Ålandic model of autonomy right in the Nordic context, mostly when one considers that Åland’s autonomy, as well as the autonomy of several other Nordic autonomous areas, is characterized by certain aspects which generally characterize nations. Common features of this model seem to be all those symbolic elements – like the use of own flags or coats of arms, special car plates and passports, postage stamps, *etc.* – which strengthen the idea of the local community as a self-governing one.

These features, which put Åland’s case much closer to that of the present and former Danish and British dependencies (the Faeroe Islands, Greenland, Iceland, the Channel Islands and the Isle of Man), resemble also the relations established between Finland and the Russian Empire during certain periods of Finnish autonomy. In this respect, an example of the closeness of the present Ålandic experience with the past Finnish one is provided by the exemption from conscription for military service – presently enjoyed by the Ålanders, as it was formerly enjoyed

by the Finns. An example which may also help explaining why the Finnish Government – without being obliged in this respect by the existing agreements on Åland’s demilitarization and neutralization – decided to grant this privilege to the Ålanders in 1920.

On the other hand, in relation to other features of Åland’s autonomy, its form of autonomy seems much closer to the continental types, which are usually referred to as “federalism” or “regionalism”. Indeed, broad as it may be, Åland’s autonomy is enshrined in a constitutional text. In this respect – set aside the need to have the amendment approved by the Provincial Legislative Assembly – it remains fixed for as long as the complicated mechanisms for the amendments of the Constitutional texts have not been accomplished. Moreover, although Finland has no system of judicial review, compliance with the constitutional system of distribution of authority is ensured by juridical or quasi-judicial mechanisms, like the veto right of the President of the Republic on Åland’s legislation. In fact, the President may apply his veto only on juridical grounds, when Åland’s legislation acts *ultra vires*, after having heard the opinion of the Supreme Court. Moreover, a fully juridical model applies to the supervision of state legislation in relations to Åland’s autonomy, since it is for the courts to decide whether or not a State Act should apply to Ålandic matters.¹⁴⁴

The last considerations lead to the much broader issue of the substantive and concrete comparisons. In this respect, when surveying an institution like Åland’s autonomy, one should also give adequate consideration to the general constitutional framework and to the constitutional doctrine of a given country. For example, also constitutional provisions like those on the

¹⁴⁴As Palmgren remarks, according to the Autonomy Act, the Finnish Parliament is not entitled to explain provisions of the Autonomy Act itself. Therefore, no ordinary Act of Parliament states its own application in Åland (*cf.* Palmgren S., *The Autonomy of the Åland Islands in the Constitutional Law of Finland*, in *Autonomy and Demilitarization...*, *cit.* p. 88). The result of this approach is that, when the competence of Åland or of the State is not clear, the Finnish Courts are called to reconsider Acts of Parliament in the light of Constitutional Acts. In actual facts, this activity is nothing but a form of diffuse judicial review, which consists in the duty of the judges to disregard unconstitutional legislation. It is noteworthy that this form of judicial review is rather exceptional for Finland, since Finnish judges have generally used a great deal of self-restraint in respect to the direct application of constitutional provisions, and even to the direct application of the Constitution in order to develop constitutionally oriented constructions of legislative provisions. In this respect, a deeper analysis of the functioning of this mechanism would probably be needed.

constitutional dispute settlement – although not specifically aimed at regulating the functioning of autonomy – may directly affect the actual development of regional autonomies.

Unfortunately, these aspects cannot be considered in full depth in the context of the present study. However, it is possible to submit that these constitutional mechanisms have usually worked in favour of the development of Åland's self-government, making it similar to the mentioned Nordic model. In this respect, one of the reasons might be the fact that the Finnish system lacks a Constitutional Court. Indeed, although a system of quasi-judicial review of constitutionality is generally established in Finland, the fact that this system is centered on intrinsically political institutions – such as the President of the Republic and the Committee for Constitutional Law – allows a space for political mediation and certain flexibility in the application of the legal norms. These features are normally unknown in systems that leave the settlement of constitutional disputes to the Constitutional Courts.

Furthermore, the constitutional doctrine of countries with a system of judicial review has often developed so as to confer to some constitutional provisions a higher status within the constitutional system itself. Consequently, exceptions to these constitutional provisions have not been tolerated even if they have been brought about by means of constitutional laws, like the laws of autonomy of certain autonomous regions.

An example of this attitude is provided by the Italian Constitutional Court, which has considered that the principle of Article 5 of the Constitution – according to which “the Republic is one and indivisible” – is a supreme constitutional principle, which cannot suffer any limitation. Accordingly, as mentioned above, the Court has not deemed it inconsistent to declare void certain provisions of the Sicilian Statute, because they could endanger the unity of the national legal system. In other cases, the same provision of Article 5 has been used by the Court to reinterpret certain statutory provisions in a way that, eventually, caused a restraint of the regional autonomy. This has, for example happened with respect to the regional legislative powers.

This restraint of the provincial autonomy has definitely not arisen in Finland, which has a very different constitutional doctrine.

A practical example of the different pattern that has taken place in Italy and Finland is provided by the different system provided to implement the international commitments

overlapping with the sphere of regional autonomy. In the Italian case, indeed, the exclusion of regional powers in the formulation of such commitments has never raised any ado. Moreover, for a long time the Italian regions have been also considered to suffer an implicit limitation in their legislative and administrative powers also at the stage of the implementation of these commitments. This limitation has been extremely significant, mostly with regard to the implementation of EC Law, which in several matters overlaps with the competence of the regions.

As far as the implementation of the European Community's Directives is concerned, this view was upheld by the Italian Constitutional Court in view of the international responsibility of the State. In this respect, the Court held that, unless mechanisms are provided to make sure that the State may intervene and amend regional decisions in case of inconsistency with the directives to be implemented, it was only for the State authorities to implement the international commitments. This standing raised a conflict between the State and the regional governments, which was settled only when an Act of Parliament¹⁴⁵ provided the right of the State authorities to take over the regions in case of regional delay or inaccurate implementation.¹⁴⁶

On the contrary, the Finnish model – as well as the Danish one in relation to Greenland and the Faeroe Islands – provides that no international treaty involving provisions falling into the sphere of competence of the Province may enter into force in Åland without the consent of the Ålandic Legislative Assembly. In this respect, it is interesting to notice that this provision – which is included in Section 59 of the 1991 Autonomy Act – has been passed in spite of the fact that devolution of power in the fields of international relations and foreign policy was not on the agenda when the Autonomy Act was being prepared. Instead, the provisions included into the Sections 58 and 59 of the Autonomy Act were deemed to be related to the matters of provincial jurisdiction, rather than to the foreign policy.¹⁴⁷ Still, nowadays, in the light of the mentioned provisions, it is not completely correct to say that Åland has no authority in the field of the

¹⁴⁵Act 9th March 1989 no. 86, which will be discussed also in the following chapter.

¹⁴⁶See also below, in the following chapter.

¹⁴⁷Similar considerations are also valid in relation to Sections 59A, 59B and 59C of the Autonomy Act – inserted in 1995, following accession to the European Union – which deal with the participation of the Ålandic Authorities in the definition of the Finnish position in relation to the European Policies.

international relations. On the contrary, the fact that it may refuse to implement an international treaty concluded without the consent of its Legislative Assembly means that the provincial bodies might lead an autonomous foreign policy.

Even if it were established by means of a constitutional enactment, such as an amendment of the Statutes of the “special regions”, in the light of Article 5 of the Italian Constitution, it may be submitted that a similar system would be hardly upheld by the Italian Constitutional Court.

In spite of the fact that the Finnish Constitution may only be amended according to a time consuming procedure and with a large majority of votes, Finnish constitutional doctrine seems to be much more accustomed to a flexible application of the constitutional provisions, provided that the supreme will of the Parliament is respected.

Possible causes of this attitude might be the already mentioned fact that Finland lacks a Constitutional Court or a fully judicial system of constitutional review of legislation. An additional element might also be the practice of the so-called Exceptive Acts. According to this practice, it is for the Parliament itself to decide whether any constitutional provision should be passed as an Exceptive Act. In this respect, although it is accustomed to follow the legal reasoning of the Committee for Constitutional Law, the fact that the supreme interpreter of the Constitution is a political body like the Parliament legitimizes its choices even when they bring about innovative interpretations of the constitutional system.¹⁴⁸

Constitutional norms and constitutional interpretation represent, on the contrary, an insurmountable obstacle for political innovative solutions in countries with a judicial system of constitutional review. The result is that constitutions of countries without judicial review usually develop as more flexible ones. To this extent, it may be submitted that the Finnish system of autonomy has developed according to a model, which is slightly closer to that of countries whereby self-government is enjoyed without it being enshrined in a constitutional text, either

¹⁴⁸ In this respect, Finnish scholars have also pointed out that this approach risks to become too formalist when it only implies the choice of the procedure to be followed in order to enact a piece of legislation - *i.e.* the choice between the procedures presently provided by Section 72 or 73 of the new Constitution - depending on the fact that the Act is deemed to be consistent or not with the Constitution.

because such a written text simply does not exist, or because it has been chosen not to give it the form of a constitutional enactment.

Finally, it is also submitted that another reason of the success of the Ålandic model of autonomy in respect of the continental systems of autonomies lies in the independence of local politics from the central ones. Indeed, the development – and even the survival – of a strong autonomy are extremely unlikely if local politics and political parties are not independent from the ones which lead the state policy. As a matter of fact, this element represents a big difference between Åland's autonomy and that of the Italian regions. It also shows that, although certain autonomous systems might *prima facie* be similar when considered on paper, they may profoundly differ in actual practice even as a consequence of phenomena not directly concerning the constitutional system of guarantees for the local autonomy.

4.4. Final remarks

Throughout the years, the scope of the Ålandic self-government and the features of its exceptional regime have undergone several changes. The 1921 settlement of the Åland question by the League of Nations represented – according to the view of the parties which took part in its definition – a balanced solution, as it did not endanger the Finnish sovereignty over the Archipelago, but it granted the Ålanders a broad area of self-government and adequate guarantees for the protection of the Swedish character of the Islands.

The “Entente Powers” which had just won in the First World War – the USA, Britain, France, Italy and Japan – had a strong position in the League of Nations, to the effect that no decision could be taken by that institution against their will. However, in concrete terms the decision was drafted by a Commission of Inquiry, whose members were a Belgian, a Swiss and an American.¹⁴⁹ In this respect, it is noteworthy that, although British diplomacy played an extremely important role in the Åland question, the British point of view – which might have led to quite

¹⁴⁹Respectively Baron Paul Hymans, the President of the Commission, Felix Calonder, former President of the Swiss Confederation, and Abram Elkus, former ambassador to the Ottoman Empire and a member of the Court of Appeal of the New York State (*cf. Barros J., cit., p. 300 ff.*).

revolutionary outcomes – did not actually affect the final decision.¹⁵⁰ On the contrary, it could be said that the 24th June 1921 Resolution was not so far-reaching as it has often been considered.¹⁵¹ The same may be said also for the 27th June Resolution, which incorporated the “Åland Agreement”. Thus, one may conclude that even after the contribution of Finland and Sweden to the League’s viewpoint, the settlement did not include much more far-reaching elements.

However, subsequent developments have gone in a direction that had not been totally envisaged in 1921. Accordingly, the Ålandic self-government has slowly shifted towards the Nordic model. Among the other elements of this change, one may recall that the protection of the Swedish character of the Islands has become ever more stringent,¹⁵² the establishment of “national” symbols has strengthened the national feelings of the inhabitants, and a general attitude of the Finnish authorities has favoured the development of Åland’s autonomy, effecting an ever greater devolution of powers to the local government.¹⁵³

In the background of this development – but with a fundamental impact on it – lies the general Finnish constitutional doctrine and the relations established between central and local politics.

¹⁵⁰ The British diplomats had repeatedly suggested solutions like that of a Swedish and Finnish condominium on the Islands, or of the creation of a free territory of the kind that had been provided for the city of Danzig (*cf. Barros J., cit., passim*).

¹⁵¹ As an example, one can recall that, even the right of franchise by the new comers should have been restricted “within reasonable limits”.

¹⁵² Namely, the more stringent requirements for the exercise of the right of franchise, and the restrictions for those who do not possess the right of domicile to undertake a trade or a profession in Åland, or to acquire real property therein, have definitely built a great barrier against immigration.

¹⁵³ An extremely important example of the latter case is the provincial powers with respect to an own “foreign policy” of the Province.

5. ÅLAND'S AUTONOMY AND EUROPEAN INTEGRATION

5.1. Preliminary remarks

The present chapter discusses the topical matter of the impact of Åland's accession to the European Union on its autonomy.

The present author has elsewhere dealt with the issue of the possibilities of the European autonomous regions to influence the European level of decision-making.¹⁵⁴ It is a very important topic for all the autonomous units of the member States, because the main challenges to the development of their autonomy are currently afforded by the European integration process. It belongs to the field of European Community Law and does not make Åland's case different from that of the other European regions. For this reason, it is not the case to discuss this problem in this paper, but it is possible to refer to the conclusions already reached within the mentioned general survey.

Within this paper it is, instead, necessary to concentrate on two main issues:

- 1) The impact of accession on the constitutional status of Åland, with a particular attention to the legislative and administrative authority of the Ålandic authorities in the implementation of Community Law;
- 2) The impact of Community Law on the privileges enjoyed by the Ålanders under the international regime of the Islands and Finnish Constitutional Law.

5.2. Åland's accession to the European Union and the meaning of Section 59 of the Autonomy Act

The whole issue of the relation between Åland's autonomy and European Community Law must be considered in the light of the procedure that was followed in order to allow the accession of the Province to the Union. In this respect, lacking a specific provision on the accession to supranational organizations, the applicable rule was found in the first paragraph of

¹⁵⁴See Scarpulla C., *A Europe of The Regions...cit.*, in *Essays on International Law... cit.*, p.182 ff.

Section 59 of the Autonomy Act. Thus, the starting point of the present survey may be the construction of this provision.

To begin with, it is necessary to distinguish its scope from that of the provision enshrined in the second paragraph of Section 59 itself.

In fact, taken as a whole, Section 59 of the Autonomy Act aims at providing for the need to achieve the consent of the Provincial Assembly whenever international agreements affect Åland's autonomy. In this respect, however, it envisages two different instances. According to the second paragraph of Section 59, "if the treaty contains a provision that according to this Act is subject to the authority of Åland, the Legislative Assembly must consent to the statute implementing the treaty in order to have the provision enter into force in Åland". The first paragraph, instead, provides a more stringent rule, according to which, "if a treaty that Finland has concluded with a foreign State contains a provision contrary to this Act, the provision shall enter into force in Åland only if so provided by an Act enacted in accordance with Sections 67 and 69 of the Parliament of Finland Act and Section 69 of this Act".

Distinguishing the scope of the two provisions of Section 69 is extremely important in order to understand the implications of Åland's accession to the European Union. In this respect, when the accession was debated in Åland, it was certainly clear that, once the Province entered the European Community, the EC Treaty would have definitively conferred on the Community Institutions certain competences which used to belong to the exclusive authority of Åland. In addition, it was as clear that not only the Treaty provisions, but also the legislation passed by the European Institutions would have bound the provincial bodies and the Ålanders themselves. In fact, the so-called direct applicability and direct effect of Community Law imply that no domestic implementing measure is needed in order to grant domestic legal force to the Community legislation. According to the case-law of the European Court of Justice, indeed, these features are a sort of genetic character of EC Law. Therefore, the accession to the EU would have automatically bound Åland to the respect of Community Law without any further pronouncement of the Legislative Assembly on the desirability of each Regulation.

In other words, if the above considerations are correct, it may be concluded that it must have been clear that the accession to the European Union would have implied a permanent limitation of Åland's autonomy.

The second paragraph of Section 59 was clearly inadequate in order to allow a similar result. Indeed, this provision apparently concerns the quite different case of treaties, whose provisions fall within the scope of the legislative authority of Åland. In this case, the Legislative Assembly's consent is considered enough in order to maintain the legislative prerogatives of the Province unbiased.

It is evident the difference with the Treaty of Accession to the European Community. A Treaty which implies permanent limitations to the new members. In this respect, the Accession Treaty concerned the entry into force of Treaty provisions "contrary to th[e Autonomy] Act", and the Ålandic Legislative Assembly's consent did not merely concern the entry into force of Treaty provisions that – according to the wording of the second paragraph of section 59 of the Autonomy Act – were "subject to the authority of Åland".

It was, therefore, absolutely correct to hold that the Treaties on which the European Union is founded would have been binding on Åland only if the procedure envisaged by the first paragraph of Section 59 of the Autonomy Act was followed.¹⁵⁵ In fact, the first paragraph of Section 59 belongs to the system of constitutional amendments in respect to Åland's autonomy.

This point is made clear by the fact that it recalls Section 69 of the Autonomy Act itself,¹⁵⁶ and Sections 67 and 69 of the 1928 Parliament Act, that is all the constitutional provisions laid down by the old constitutional system for constitutional amendments, exceptions or interpretation. In this respect, it means that the general rules provided for constitutional amendments apply also to the case of international treaties that "contain provisions contrary to the Autonomy Act".¹⁵⁷

¹⁵⁵ Cf. Fagerlund N., *The Special Status...*, cit., in *Autonomy and Demilitarization ...*, cit., p. 190.

¹⁵⁶ Section 69 of the Autonomy Act provides the rules for the enactment of new laws on the autonomy of the Islands.

¹⁵⁷ It is useful to recall the general rules provided under the previous constitutional system, and compare them with the present rules:

a) The procedure provided by Section 67 of the 1928 Parliament Act applied to the ordinary

To conclude, the application of the first paragraph of Section 59 of the Autonomy Act was fully consistent with the aim of bringing about a permanent derogation to the Autonomy Act.

amendments, exceptions and interpretations to be brought to a Constitutional Act. Nowadays, the new provision is enshrined in Section 73 of the new Constitution;

- b) The procedure provided by Section 69 of the 1928 Parliament Act applied to the ordinary amendments, exceptions and interpretations to be brought to a Constitutional Act by approving an international treaty. Today, the corresponding provision is that of the second paragraph of Section 94 of the new Constitution;
- c) The procedure provided by Section 69 of the Autonomy Act – which includes the procedure of the mentioned Section 67 of the 1928 Parliament Act and the approval of the Åland Lagting by a qualified majority – applied to the ordinary amendments, exceptions and interpretations to be brought to the Autonomy Act. In this respect, as considered below, the reference to Section 67 of the Parliament Act must be read today as if it referred to Section 73 of the new Constitution;
- d) The procedure provided by the first paragraph of Section 59 of the Autonomy Act – which includes the procedure of the mentioned Section 69 of the 1928 Parliament Act and the approval of the Åland Lagting by a qualified majority – applied to the ordinary amendments, exceptions and interpretations to be brought to the Autonomy Act by approving an international treaty. In this respect, instead, the reference to Section 69 of the 1928 Parliament Act must be read today as if it referred to the second paragraph of Section 94 of the new Constitution

In the light of the fact that the first paragraph of Section 59 of the Autonomy Act also referred to Section 67 of the 1928 Parliament Act, it might, indeed, be doubted that – as a sort of major protection of the Province's autonomy – the international treaties which affected the Autonomy Act had to be approved by the Finnish Parliament according to the more cumbersome procedure provided therein. A similar construction – which would have been inconsistent with the general system – was however unnecessary. In this respect, it is enough to consider that:

- 1) A similar construction would have rendered meaningless the reference made by Section 59 of the Autonomy Act also to Section 69 of the 1928 Parliament Act;
- 2) Even in the case considered by the first paragraph of Section 59 of the Autonomy Act, the autonomy of Åland was already well entrenched because no such treaties might enter into force in Åland without the consent of the Legislative Assembly, to be expressed by a qualified majority of two thirds of the votes cast. Since, according to the Autonomy Act, the protection of the autonomous status of Åland is generally left to the Legislative Assembly and to the Ålanders themselves, there would have been no reason to require, because of the Autonomy Act, the procedure of Section 67 of the 1928 Parliament Act which was unnecessary for the Finnish Constitution itself.

For the same reasons, every reference still made today by the Autonomy Act to the relevant rules of the 1928 Parliament Act need to be read as if it referred to the corresponding rules provided by the new Constitution of the Country. Still, it would be appropriate to proceed to a formal amendment of the Autonomy Act in this respect, so that any doubt would be set aside.

5.3. The impact of Åland's accession to the European Union on its constitutional status: The authority of Åland and of the State in the implementation of EC Law

According to the previous considerations, the Finnish Act which approved the Treaty of Finnish Accession to the European Union may be considered to have implicitly supplemented and amended the Autonomy Act. This conclusion does not concern only the entry into force in Åland of the European legislation, but also the relations between Åland – and Finland – with the European Union.

The problem of the relation with the EU involves the question of who is responsible for the implementation of the EC Directives and of all EC Law.

Generally speaking, as far as decentralized member States are concerned, the question of the allocation of the legislative and administrative duties in implementing EC Law allows two possible answers. The first one is to consider the domestic distribution of competence not affected by the accession to the European Union. The second one, instead, is to admit that certain consequences might automatically arise.

The first Finnish scholar who surveyed this issue submitted that the first solution applies to the Åland's case.¹⁵⁸ The argument used by this author in order to reach this conclusion was that, "Article 5 of the E.C. Treaty [...] obliges all organs of a Member State to ensure the effective implementation of Community Law. Under Article 5 regional and local authorities must also ensure that everyone complies, within their jurisdiction, both with Community Law and with national measures implementing Community legislation".

As it appears from the above reasoning, the issue of the competence to implement EC Law (and, particularly, the Directives) involves the question of the responsibility in case of inaccurate implementation. In this respect, however, it must be considered that the former article 5 (article 10 after the Amsterdam Treaty) of the EC Treaty involves the responsibility only of the member States. In fact, under articles 226 or 227 of the EC Treaty, even if the internal competence to implement the violated directive belonged to regional or local authorities, the matter could only be brought against the respective Member State. In fact, no Treaty provision allows the European

¹⁵⁸Fagerlund N., *The Special Status...*, cit., in *Autonomy and demilitarization ...*, cit., p. 231.

Commission or another member State to bring a case against an internal body of any member State. And, in fact, the only express obligation provided by the mentioned article 10 is the member States' duty to "take all appropriate measures, whether general or particular, to ensure fulfillment of the obligations arising out of th[e] Treaty or resulting from action taken by the institutions of the Community", and to "facilitate the achievement of the Community's tasks".

Thus, even if all organs of the member States are somehow obliged to ensure the effective implementation of Community Law, article 10 of the Treaty may not be used by the regional and local authorities as an evidence of the fact that EC Law wants to safeguard the regional and local spheres of competence. On the other hand, it appears that, although article 10 of the EC Treaty does not rule on – nor does it want to affect – the domestic distribution of competence between central and regional levels, it obliges the State authorities to ensure any lower and autonomous institution's compliance with Community Law.

The Italian Constitutional Court has preferred the second solution since 1972 in relation to the competence of the Italian regions.¹⁵⁹

According to this Court, in order to claim that the regional competence is infringed by a State Act which implemented an EC Directive in a field which would otherwise fall within the regional authority, "it is not enough to recall Article 189(3) of the Rome Treaty, which refers to the domestic systems of the member States in relation to the actual accomplishment of the necessary implementing measures. Indeed, in relation to the implementation of EC Law, any allotment of power to bodies other than the member State [...], presupposes that the State itself has the power to ensure the implementation even in case of regional delay. These instruments are not presently provided in our legal system. [...] Thus, until the situation changes, the only available means in order to allow regional participation in the implementation of EC law is the delegation of power [...] which actually allows the substitution of the delegating State in case of the delegated region's default".¹⁶⁰

This earliest approach of the Italian Constitutional Court may be summarized in the following terms: as far as no legal instrument is available in order to ensure regional compliance

¹⁵⁹See the Decision no. 142 of 24.7.72.

¹⁶⁰Author's translation.

with EC Law, even if – according to the constitutional distribution of powers – the measure concerned would generally fall within the regional authority, the State implementation is justified in view of the international responsibility of the member States.

In other words, the Constitutional Court found that the mentioned principle of responsibility implicitly restricted the possibility to apply the general constitutional provision on the allotment of power.

The situation arising from the mentioned decision of the Italian Constitutional Court was clearly unsatisfactory for the Italian regions, which – unless a delegation occurred – were consequently deprived of a large part of their own constitutional competences. Thus, new solutions had to be envisaged. For this reason, the Italian Parliament eventually developed and improved the solution envisaged by the Constitutional Court, by passing specific legislative provisions.

Nowadays, according to these provisions, whenever Community Directives fall within the scope of regional authority, the regions maintain the right to issue the required legislative or administrative implementing measures. However, in case of regional default in the issuance of the necessary measures, State laws might provisionally take over the regional measures, until the regional authorities do not take adequate steps.¹⁶¹

This solution has been criticized by some Italian constitutional scholars, as it would, to a certain extent, change the constitutional distribution of competence between the State and the regions.¹⁶² However, the main part of the Italian constitutional scholarship appreciated this legislative solution, and justified the interference of the State in matters of regional competence, in the light of three practical considerations:

a) This solution aimed at reducing the encumbrance in the implementation of EC Law and the consequent high level of non-compliance with Community obligations;

b) The State interference may be easily avoided by the regional authorities simply by complying with their duties under EC Law;

¹⁶¹ Art. 9(4) of the Act no. 86 of 9.3.1989.

¹⁶² Cf. D'Atena A., *Costituzione e Regioni, Studi*, Milano, 1991, p. 472 ff.

c) The State interference has a purely provisional character, as any State measure is automatically repealed by the regions when they, eventually, issue their own measures.

In the Federal Republic of Germany this question has not raised many doubts in the light of the constitutional provisions that allow the so-called *Bundesexecution*¹⁶³. Thus, the EC treaty had no impact on the constitutional distribution of authority within the federal system of this country. Since a provision similar to the *Bundesexecution* was lacking in Italy, some arrangements had to be made. Still, on the one hand, one might legitimately doubt the constitutionality of these arrangements.¹⁶⁴ On the other hand, however, from a practical point of view, the solution adopted ultimately satisfied all the parties involved.

As far as Åland is concerned, it might be submitted that an acceptable solution should be equally founded – rather than on the system of Community Law – on the relations established by the domestic constitutional system between the State and the autonomous Province. According to this view, Article 10 of the EC Treaty should not be considered conducive for the definition of the instruments available to the State authorities in order to ensure Finnish compliance with its obligation under Article 10 itself. Instead, the solution should be found in the Finnish constitutional system. Still, one should consider the fact that Åland has accepted the limitations of its autonomy which derive from Article 10, which allows the State authorities to intervene in order to avoid a faulty implementation of EC Law, giving them the right – and the duty – to take all appropriate measures to ensure fulfillment of its obligations under Community Law.

If the previous considerations are correct, the fact that the existing constitutional system does not provide any legal instrument allowing the State authorities to ensure compliance with Community Law in Åland may not be considered completely satisfactory either from the point of

¹⁶³According to Article 37 of the German Basic Law, where a State fails to comply with its obligations of a federal character imposed by this Constitution or another federal statute, the Government may, with the consent of the Senate, take the necessary measures to enforce such compliance by the State by way of federal coercion. For the purpose of exercising federal coercion, the Government or its commissioner has the right to give binding instructions to all States and their authorities.

¹⁶⁴These doubts are also justified in the light of the fact that the Act that incorporated the Rome Treaty into the domestic sphere was not adopted as a Constitutional amendment. Thus, from the formal point of the domestic hierarchy of norms, it has a lower standing than the constitutional provisions that grant autonomy to the Italian regions.

view of Community Law, or from the point of view of the Finnish Government. Indeed, in case of the Ålandic authorities' default in passing pieces of legislation or administrative provisions required to implement EC Law, the result would be that, on the one hand, EC Law would lose effectiveness in the Åland Islands, while, on the other hand, the Finnish Government would remain responsible for violations which it could not avoid.

Since, however, by approving the Finnish Act which gave execution to the Treaties on which the Union is founded, Åland accepted Article 10 of the EC Treaty and all the subsequent necessary limitations of its autonomy, one may conclude that, albeit no system of substitution of State authorities is currently provided for the case of Åland's non compliance with obligations arising from its participation in the European Union, the introduction of similar mechanisms would not be prevented even by means of ordinary legislation.

In this respect, even the doubts, which have been raised by some Italian constitutional scholars on the legality of the Italian solution, would have no room in Finland. In fact, the basis of this construction lies on Article 10 of the EC Treaty. A Treaty that, through the Treaty of Accession, has been approved both by the Finnish Parliament – as required by Section 69 of the 1928 Parliament Act – and by the Legislative Assembly – as provided by Sections 59 and 69 of the Autonomy Act – with the support of more than two thirds of the votes cast. In this respect, although the Act that approved the Accession Treaty was not formally declared a Constitutional Act, it is a *constitutional enactment, related to Finnish international obligations, and contrary to the Autonomy Act*.¹⁶⁵ A similar Act may have the effect to integrate the Constitutional system, and even to amend any conflicting rule provided either by the Constitution or the Autonomy Act.

Of course, its derogation to the previous established constitutional system must be considered to concern only the rules that may not be compatible with it. Therefore, the eventual legislative solution necessary to avoid Finland's international liability must safeguard Åland's autonomy.

¹⁶⁵In Italy, instead, the Treaties on which the Union is founded have always been approved by means of ordinary Acts of Parliament. Thus, from the formal point of these Treaties have a lower status than the Constitutional provisions on which regional autonomy is founded.

This means that the mechanisms envisaged must allow the repeal of the State measures by the provincial authorities, whenever they decide to take their own measures to implement the European Acts. In fact, the principle of loyalty enshrined in Article 10 may not allow Finland to usurp Åland's competences under the Autonomy Act, in which case the solution adopted would be inconsistent with the Autonomy Act itself.

5.4. The Protocol of Åland and the special regime of Åland under EC Law

Åland's accession to the European Union was accompanied by certain exemptions from the application of EC Law, in relation to the most important constitutional privileges already enjoyed by the Ålanders under the constitutional regime of their autonomy. These exemptions were granted by a specific Protocol on the Åland Islands (hereinafter the Protocol on Åland),¹⁶⁶ which is a part of the Finnish Act of Accession to the European Union. In addition, the Protocol on Åland also provides a derogation, which is not grounded on Åland's international or constitutional status. Indeed, according to the Protocol, Åland was also exempted from the Community rules harmonizing the Laws of the member States in the field of indirect taxation. A derogation which aimed at maintaining the viability of the Islands' economy.

Before surveying in a greater detail the provisions of the Protocol, a few considerations may be submitted in relation to the imprecise wording used by the drafters of the Preamble of the Protocol, where it provides that the derogations in favour of Åland are granted in consideration of "the special status that the Åland islands enjoy under international law".

There are at least three reasons to criticize this wording.

First, as already mentioned, the exemption from the application of the Community rules in the field of indirect taxation, provided by Article 2 of the Protocol, has nothing to do with the previous status of Åland under International Law.

¹⁶⁶Protocol no.2, annexed to the "Act concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded" (*Official Journal of the European Communities* 29.8.94 no. C 241), hereinafter the Act of Finnish Accession.

Second, the derogations provided by Article 1 of the Protocol involve, more than the status of Åland under International Law, its status under Constitutional Law. Indeed, as mentioned above, the present rules on the “right of domicile”, although somehow originating in the settlement of the Åland question achieved in the “Åland Agreement”, have been developed and are currently provided by domestic constitutional provisions.

In this respect, the emphasis put by the Preamble on Åland’s international status, seems to be the consequence of the will of the negotiating parties to reach a mutually acceptable solution. In fact, on the one hand, Finland – and Åland – could be happy with the fact that Åland’s claims were upheld, and that this allowed the Province to join the Union without forfeiting the specific features of its autonomy. On the other hand, as far as the Community authorities are concerned, this result was achieved without leaving space for an embarrassing precedent of misapplication of the rule that every revision of the founding Treaties¹⁶⁷ must not touch upon the *acquis communautaire*. In this respect, although these derogations might hinder the application of certain basic principles of EC Law – like the principle of free competition, free establishment and the freedom to provide services – the international origin of the constitutional arrangements on which the autonomy of Åland is founded, made Åland’s case rather unique.

Third, the wording of the Preamble of the Protocol has given rise to a divergent opinions between the State and the Ålandic authorities, whether the international provisions recalled by the Protocol are only those of the “Åland Agreement” – which concern Åland’s autonomous status – or also those on the military status of the Islands.

The answer to this question is not so simple. Indeed, the general wording of the Preamble does not rule out the broader construction. This construction, however, should be based on the debatable point that the military status of the Archipelago fell within the scope of the Common Foreign and Security Policy, as defined by Article J of the Treaty on European Union (Title V of its consolidated version, after the Amsterdam Treaty). In this respect, indeed, since the Protocol does not only refer to the EC Treaty, but to all the Treaties on which the Union is founded, the wording of its Preamble would maintain significance.

¹⁶⁷Every Accession Treaty, indeed, involves a revision of the Founding Treaties.

Still, the restrictive construction has a greater appeal in the light of the conclusions reached in the second chapter in relation to the need to distinguish the autonomous Province of Åland from the region of Åland, which has been the object of several international agreements concerning the demilitarization and neutralization of the Archipelago.¹⁶⁸ Now, since the Government of Åland has no authority on military matters, there would have been no need to subordinate the reference to the international military status of the Islands to the decision of the Government of Åland to join the Union. Moreover, none of the derogations accorded by the Protocol has anything to do with the military status of the Åland region.

Apart from the Preamble, also the content of the provisions of the Åland Protocol must be considered in relation to the object of this research.

Starting with Article 1, a few points are noteworthy. To begin with, this provision refers to some of the rights, which are exclusive domain of the holders of the “right of domicile”. In this respect, apart from the exemption from the conscription for military service - which has no impact on Community Law¹⁶⁹ - and from the right to vote and stand as a candidate in local elections - which is the object of a separate Declaration of the member States appended to the Finnish Act of Accession¹⁷⁰ - the rights involved are: a) the right to acquire real property in Åland, and b) the right to exercise a trade or a profession on the Islands. In this respect, albeit the exclusive enjoyment of these rights in the hands of the Ålanders might impair Community Law,¹⁷¹ the Protocol provided for a specific derogation in favour of the Ålanders, in order to maintain this

¹⁶⁸Thus, the reference in Article 2 of the Protocol to “the territory of the Åland islands [... - to] be excluded from the territorial application of the EC provisions in the fields of harmonization of the laws of the Member States on [...] indirect taxation” – is only the territory of the autonomous Province of Åland.

¹⁶⁹Community Law does not prohibit each and every discrimination, but only within the scope of application of the Founding Treaties. In this respect, see, Article 12 of the EC Treaty.

¹⁷⁰The Declaration is appended to the Final Act of the Corfu Conference, whereby the Finnish Accession to the European Union was agreed. The full text of Declaration is published in the Official Journal of the European Communities of 29.8.94 no. C 241.

¹⁷¹These provisions are not only inconsistent with the general principle of non discrimination – and with the specific applications of this principle provided, *inter alia*, by Article 54 of the EC Treaty – but also with the whole spirit of Part Two of the EC Treaty, on the Citizenship of the Union and, particularly, to Article 18.

regime, which represents one of the most prominent parts of the special features of Åland's autonomy.¹⁷²

A few considerations are needed for the correct understanding of Article 1 of the Protocol.

First, according to Article 1, the derogations only concern the provisions in force on 1 January 1994. This standstill clause, thus, prevents the aggravation of the discrimination against non-Ålanders, even if the Autonomy Act would have left room for increasing the scope of the discriminatory provisions.

Second, one must distinguish the derogation concerning the restrictions on the right “to acquire and hold real property on the Åland islands” from the one concerning the restrictions “on the right of establishment and to provide services”.

In this respect, indeed, while the existing provisions on the right to acquire and hold real property may conflict with any Treaty provision, a problem concern the interpretation of the second indent of Article 1, where it provides the derogation on the right of establishment and to provide services. In fact, while the Autonomy Act speaks about “the right to exercise a trade or a profession on the Islands”, the Protocol refers to the “right of establishment” and the “right to provide services”.

¹⁷²The fact that the special rules on the “right of domicile” contravene Community Law might be doubted in the light of the Treaty provisions, which only prohibit “any discrimination on grounds of nationality” (see, again, Article 12 of the EC Treaty). A similar discrimination might, indeed, be considered as non-existent in the case of the Ålandic “right of domicile”, since it only discriminates in favour of the inhabitants of a single Province. And, indeed, these provisions also discriminate against the other citizens of the Member State to which Åland itself belongs. However, a more careful analysis of Community Law leads to a different conclusion. In this respect, all of the other Treaty provisions on the prohibition of discrimination on grounds of nationality specify that such a discrimination is prohibited “between nationals of the Member States” (*cf.*, *e.g.*, Article 31 (1), Article 39 (2), and Article 54 of the EC Treaty), which exactly means that *each national of the member States* must receive an equal treatment in relation to the situations governed by Community Law. In addition, one has to recall that the ECJ has always considered the principle of equality as a general and basic principle of Community Law, which is not whatsoever limited to the cases in which non-discrimination is expressly provided by specific Treaty provisions. In this respect, the specificity of the Protocol on Åland is that it allows certain discriminations against all non-Ålanders, on condition that these discriminations are not – themselves – discriminatory. This means that they must apply irrespective of the citizenship of the nationals of the member States who do not hold the “right of domicile”.

This different wording is due to the different approach of Community Law, whose system is based on the so-called “four freedoms”, that is the free movement of goods, services, capitals, and persons – which, in turn, includes the free movement of workers and the right of establishment.

In the light of the different system of Community Law and of the wording of the Protocol, therefore, it may be submitted the existing restrictions on the right to exercise a trade or a profession on the Islands may not override the Community rights to free movement of goods, services and capitals. Instead, only the free movement of persons may find a restriction, but only in relation to the right of establishment and to provide services. No restriction may consequently apply to the other workers, citizens of the Union or immigrants into the Union, who wish to take up a job in Åland.

Truly, if the previous considerations are correct, the limitations to the right of these immigrants to purchase a home in the place of residence, present some problems if they are deemed to be inconsistent with one of the basic rights of the individuals. In any case, the first indent of Article 1 of the Protocol provides a clear rule in this respect.

Article 1 of the Protocol calls for further considerations. In fact, it might raise doubts due to the fact that – as mentioned above – the derogations to which it refers are accorded “on a non-discriminatory basis”. This means that the same treatment must be afforded to all non-Ålanders citizens of the European Union. In other words, all the European citizens – either enjoying the Finnish citizenship or not – must be equally afforded the possibility to enjoy those rights which are appended to the enjoyment of the right of domicile.

The problem is that according to the present Autonomy Act, the right of domicile may only be granted to Finnish citizens. In this respect, the present situation may not be considered non-discriminatory. Would a case arise, or would the European Commission start a proceeding under Article 226 of the consolidated version of the EC Treaty, the European Court of Justice would probably sanction the present situation. Consequently, the survival itself of the right of domicile is highly imperilled, at least in its present form.¹⁷³

¹⁷³ Cf. Fagerlund N., *The Special Status...*, cit., in *Autonomy and Demilitarization ...*, cit., p.214.

Finally, as far as the right to vote and stand as a candidate in municipal elections is concerned, albeit requested, no permanent derogation was accorded to Åland by Article 1 of the Protocol.¹⁷⁴ However, a derogation at the level of Primary Community Law was not necessary in the light of the provision of Article 19 of the EC Treaty, according to which, “the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament [...] may provide for derogations where warranted by problems specific to a Member State”. In this respect, indeed, the mentioned Declaration of the member States on the Åland Islands does not carry any other legal commitment than what is already provided by Article 19 itself. It may be understood, however, as a political commitment to examine the possibility to apply article 19 to the Åland case.

As far as the derogation accorded by Article 2 of the Protocol is concerned – that is the exemption from the EC provisions in the field of indirect taxation – since it does not concern the constitutional status of Åland, this derogation is of a secondary importance for the purposes of this paper. In this respect, it is enough to note that, although enshrined in Community Primary Law, the entrenchment of this derogation is only at the level of Secondary Community Law.¹⁷⁵ Indeed, according to Article 2(b) of the Protocol, “if the Commission considers that the provisions in paragraph (a) are no longer justified, particularly in terms of fair competition or own resources, it shall submit appropriate proposals to the Council, which shall act in accordance with the pertinent articles of the EC Treaty”. In respect of this provision one has to consider:

¹⁷⁴According to Fagerlund, “The official reason given for this was that the Community directive dealing with municipal elections would be adopted after Finland’s accession and that the Åland’s subsequent derogations had to be adapted to this legislative framework” (Fagerlund N., *Autonomous European Island Regions Enjoying a Special Relationship with the European Union*, in *Constitutional and Economic Space of the Small Nordic Jurisdictions*, NordRefo’s Publications 1996:6, ed. by Lise Lyck, p.108).

The Provincial elections of the Legislative Assembly are outside the scope of the provision of the first paragraph of Article 19 of the EC Treaty, which provides for the right of the citizens of the Union to vote in municipal elections in the place of legal residence, regardless of their own nationality.

¹⁷⁵In this respect, this derogation profoundly differs from those enshrined in Article 1, which cannot be abolished without the approval of the Legislative Assembly, even if all member States were in favour of such amendments (cf. Fagerlund N., *Autonomous European Island Regions...*, *cit.*, in *Constitutional and Economic Space...*, *cit.*, p.117).

- a) That other grounds might as well be considered in order to terminate this derogation;
- b) That the elimination of spill over effects caused by tax-free areas within the Community is presently a very sensitive issue in the agenda of the Commission;
- c) That, however, it is not customary, within the Community decision-making process, to outvote one of the member States;
- d) That, finally, the Ålandic authorities have been granted a specific constitutional right to participate to the definition of the Finnish positions, as far as Community decisions concern Åland's interests.

In the light of these considerations, it may be concluded that the maintenance of the derogation provided by Article 2 of the Protocol depends, on the one hand, on how prudent the exploitation of this derogation by the Ålanders will be, and, on the other hand, on the attitude and perseverance which will be shown by the Finnish and Ålandic authorities protecting Åland's special fiscal status.

Finally, Article 3 of the Protocol provides that, "The Republic of Finland shall ensure that the same treatment applies to all natural and legal persons of the Member States in the Åland islands". This provision includes two different elements:

- a) A repeated emphasis on the prohibition of discriminations in the application of EC Law;
- b) A reminder of the duty of the Finnish Government to take all appropriate measures in order to ensure that also the Protocol on Åland is applied without undue discriminations.

As far as the first of these elements is concerned, it is noteworthy that it only represented a further application of the general Equality Principle, which is part of Community Law, and which is already specified in more general terms, by several Articles of the founding Treaties and by Article 1 of the Protocol itself.

Similarly, also the second element is nothing but the application of the general provision of Article 10 of the EC Treaty, which generally concerns all the obligations of the member States under Community Law. Both Article 10 of the EC Treaty and Article 3 of the

Åland Protocol, indeed, ultimately aim at ensuring full effectiveness of Community Law through the responsibility of the member States (in this case, Finland).

Thus, the only relevant aspect of this Article is that it expressly provides – where doubts would arise – that the basic principle of loyalty enshrined in Article 10 of the EC Treaty also applies to the duty of the Finnish Government to eliminate possible illegitimate discriminations which would follow as misapplications of the Åland Protocol. In this respect, since also the Protocol on Åland is one of the norms specifically approved by the Legislative Assembly of Åland, it is possible to recall the conclusions submitted in relation to the general duty of the Finnish Government to ensure fulfillment of its obligations arising from Community Law.¹⁷⁶

5.5. Final remarks

The European integration process evidently presents some dangers for Åland, in relation to the traditional features of its autonomy.

Specific features of Åland's autonomy have, so far, been both the broad legislative and administrative competence of the Ålandic authorities, and the Swedish character of the Islands, which has ultimately rested upon the exclusive enjoyment by the Ålanders of the rights appended to the "right of domicile". Both of these features are somehow weakened or imperiled by the integration process. On the one hand, in fact, membership to the European Communities implies certain devolution of authority to the European Institutions, which may be only partially compensated by a full deployment of the principle of subsidiarity.

Similarly, the European perspective aims at a globalization of perspectives, which goes through the freedom of movement of workers, goods, capitals and services. Such a perspective might not be always consistent with the aim of the Ålandic authorities to protect the prerogatives previously granted to the Ålanders.

¹⁷⁶See, above, section 3 of this chapter.

For a different opinion on the interpretation of Article 3 of the Protocol and of Article 10 of the EC treaty, cf. Fagerlund N., *The Special Status...*, cit., in *Autonomy and Demilitarization ...*, cit., p. 213.

The Åland Protocol succeeded to a very large extent in letting these prerogatives survive in a legal system that is largely governed by apposite principles. However, the integration process might continue giving new challenges to Åland's autonomy and Swedish character.

The realization of a real "Europe of the Regions" – together with the principle of subsidiarity – might counter an excessive European centralism, by granting the autonomous European regions an effective participation in the European level of decision-making.¹⁷⁷ In any case, it will be up to Ålanders to choose whether insisting on the path of European integration, or defending their autonomy and Swedish character. So far they have succeeded in combining the two possibilities. In the near future other stringent choices might again be at stake. But the real success of a form of autonomy stands with its ability to renew in harmony with the outside developments.

¹⁷⁷The present author has, however, elsewhere surveyed the concept Europe of the Regions and the unfolding process underlying this concept. See, Scarpulla C., *A Europe of the Regions...*, *cit.*, in *Essays on International Law...*, *cit.*, *passim*.

Chronology of events of Åland's constitutional history

- 1809 Treaty of Fredrikshamn (Hamina): Finland (including Åland) is ceded to Russia.
- 1853-56 Crimean war: Sweden, although tempted, refuses to occupy Åland even after it had been cleared of Russian troops, in order to maintain her neutrality.
- 1854 The Bomarsund fortress is destroyed by an Anglo-French fleet.
- 1856 A Convention between Russia, France and Britain provides the demilitarization of Åland. The Convention is annexed to the Paris Peace Treaty signed also by Austria, Prussia (then Germany), Sardinia (Italy) and the Ottoman Empire (Turkey).
- 1915 Russia, having heard Sweden, fortifies the Islands for defensive purposes. Sweden, although suspicious, does not protest.
- 1917 August 20, An assembly held in Åland approves a motion which expresses the desire to reunite with Sweden.
- Oct.-Nov. Beginning of the Bolshevik revolution in Russia and of the Russian-German negotiations for a peace at Brest-Litovsk.
- November 8 A Russian Decree of Peace declares the illegality of annexations of small or weak peoples.
- Nov.13 and Dec.17 Sweden refuses the German proposal to occupy Åland.
- November 15 The Declaration of the Rights of the Peoples of Russia provides the right to self-determination for all the peoples within the former Russian Empire.
- Dec. 6 Finland's Parliament declares Finnish independence.
- Dec. 23 Sweden addresses a note to the Central-Powers, requesting that the question of the neutralization of Åland be discussed at Brest-Litovsk.
- Dec. 31 Russia recognizes Finland's independence.
- Dec. 31 Over 7,000 Ålanders sign a petition to the King of Sweden, asking their reunion with Sweden.
- 1918 Jan. 4 Sweden recognizes Finland's independence.

- Jan. 8 In a message to the US Congress, President Wilson ensures his support for a post-war settlement based on the principle of self-determination of the peoples.
- January Civil war breaks out in Finland.
- Feb. 2 The Ålanders' petition is delivered to the King of Sweden.
- February The Nystad (Uusikaupunki) White Corps arrive in Åland and are engaged in a fight with the Russian garrison.
- Feb. 10-11 Russia breaks off peace negotiations at Brest-Litovsk.
- February 13 Swedish troops occupy Åland after a new petition for protection has come from the Ålanders.
- February 14 Finland, on German suggestion, asks German support.
- February 24 An agreement is reached for the end of the conflict in the Islands on Swedish mediation. Both conflicting parties must leave Åland under Swedish supervision.
- March 3 German forces occupy Åland. Swedish troops, upon a German intimation, must depart.
- June 8 An «illegal» Åland's Legislative Assembly holds its first meeting. Its aim is to pursue reunion with Sweden.
- 1919 Jan. An Ålandic Delegation is heard at the Paris Peace Convention.
- 1920 May 6 An Autonomy Act for Åland is enacted by the Finnish Parliament. An Implementation Act (1920/125) will follow.
- May 31 An Ålandic delegation is again received by the King of Sweden.
- June 4 The Finnish Prime Minister presents the Autonomy Act to the Ålanders. The separatist leaders are arrested after their refusal to uphold it.
- June 95 percent of the Ålanders ask reunion with Sweden.
- June Great Britain refers the question to the League of Nations
- Sept. 5 The Commission of Jurists appointed by the Council of the League of Nations concludes that the Åland question is not of exclusive Finnish domestic jurisdiction.
- 1921 Apr.16 The Commission of Inquiry appointed by the Council of the League of Nations presents its final report.

- June 24 The Council of the League of Nations definitively recognizes Finland's sovereignty over the Archipelago.
- June 27 Finland and Sweden reach an agreement on the further guarantees to be given to the Ålanders. The agreement is enshrined in a resolution of the League's Council.
- 1922 A Safeguards Act (1922/189) containing implementation of the guarantees agreed with Sweden is passed by the Finnish Parliament according to the procedure required for constitutional enactments.
- May 8 First *Landsting* elections in Åland.
- June 9 The new elected Landsting holds the first meeting.
- 1938 An Act on the Use of the Expropriation Right upon Conveyance of Real Property in Åland (1938/140) implements the last guarantee of the Åland Agreement.
- 1946 April 18 Formal dissolution of the League of Nations.
- 1951 A new Autonomy Act substitutes the two Acts of 1920 and that of 1922, while a new Act on the Use of the Expropriation Right (1951/671) substitutes the one of 1938.
- 1975 A new Act on the Acquisition of Real Property in Åland substitutes the 1951 Act on the Use of the Expropriation Right (1951/671).
- 1991 Aug. 16 A new Act on the Autonomy of Åland is approved.
- 1994 Feb. 2 An amendment to the Constitution Act provides the new Section 52A on Åland's self-government.
- 1994 June 24 At the Corfu Conference Finland and the European partners sign the Treaty of Accession to the European Union. A special Protocol on Åland is annexed thereto, with a view to granting Åland certain exemptions from Community Law in case the Province decides to join the Union.
- Nov. 20 In the Ålandic advisory referendum 73.6 per cent of the votes cast are in favour of Åland's accession.
- December 2 The *Lagting* «ratifies» Åland's accession.
- 1995 Jan. 1 The Ålanders become citizens of the EU, following Finland's accession.

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