

Explaining the Robustness and Longevity of the Åland Example in Comparison with Other Autonomy Solutions

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Abstract

The Åland Islands Settlement of 1921 before the League of Nations confirmed the domestic autonomy arrangement of 1920 in a conflict resolution context and at the same time added some special rights that the inhabitants of the Åland Islands would be allowed to enjoy. The international guarantees for the Swedish character of the islands have been changed in several respects over the years, either by the legislative assembly of the Åland Islands or by the Parliament of Finland with the consent of the legislative assembly of Åland. Although the international guarantee through the League of Nations disappeared through the dissolution of the organisation, the protection afforded by the international guarantee has actually continued. The autonomy of Åland can be placed in a group of autonomies together with a relatively large number of other similar entities, distinguishable from federal forms of organisation. The autonomy of Åland is strong because there is a clear distribution of competence between the national law-maker and the law-maker of Åland and because national law does not preempt or supersede legislation of the Åland Islands. The fact that this autonomy arrangement has existed in a national democratic environment that takes seriously not only its international commitments but also its own domestic commitments is probably a factor that strongly contributes to the robustness and longevity of the autonomy arrangement.

Keywords

autonomy; legislation; competence; federalism; minority

1. Introduction

The autonomy arrangement of the Åland Islands has been in existence for almost a century now. During that time, it has evolved through certain stages, while at the same time preserving its most salient features. The self-government of the Åland Islands is sometimes referred to as the oldest existing autonomy arrangement in the world and therefore often regarded as an example when other autonomy

arrangements are either in the process of being created or managed after their creation.¹

This has, however, not meant an absence of changes in some features of the arrangement. Hence the Åland Islands has managed to remain a territorial autonomy, but the arrangement has, at the same time, managed to respond to changing circumstances. The uniqueness of the autonomy arrangement may, in itself, be a factor that contributes to its permanency: the self-government of the Åland Islands can be singled out as a specific constitutionally and internationally entrenched sub-state solution. The domestic constitutional solution was crafted in 1920, while in 1921 the solution was confirmed at the international level by the League of Nations.²

What may also contribute to the permanency of the arrangement is the understanding that a sub-state arrangement in a state which otherwise is a unitary state brings in an organisational solution that at least in some respects is comparable to federal forms of organisation (without, however, being a federal solution) and creates the dynamics of governance from the binary perspective of two separate orders of government. In such a set-up, the central government might not be at the same liberty to commandeer organisational changes as in the case of 'regular' state administration at regional and local levels of government. The discourse between the two orders of government may contain an element of dispute, but it is more or less certain to contain an element of constant negotiation and co-operation that aims at defining and re-defining the parameters of and the interface between the two spheres of government. That element is often absent in a symmetrically organised unitary state.

2. The Evolution of the Autonomy Arrangement

Initially, the original Self-Government Act for the Åland Islands (Statutes of Finland 124/1920), enacted by the Parliament of Finland in 1920, remained inoperative during a couple of years, because the inhabitants of the Åland Islands refused to populate the institutions: the inhabitants of the area preferred secession from Finland and a subsequent union with Sweden. It is a significant feature of already the first Self-Government Act that it was enacted under the same procedure as a constitutional amendment, that is, under the requirement of a

¹ On the autonomy of the Åland Islands, see e.g. M. Suksi, *Sub-State Governance through Territorial Autonomy* (Springer Verlag, Heidelberg, 2011). For a detailed analysis of the domestic and Ålandic provisions dealing with the autonomy arrangement, see M. Suksi, *Ålands constitution* (Åbo Akademis förlag, Åbo, 2005). For further references and bibliographical information, please consult these volumes.

² The Åland Islands Agreement before the Council of the League of Nations, V. Minutes of the Seventeenth Meeting of the Council, June 27th, 1921, *League of Nations Official Journal*, September 1921, at p. 701.

qualified majority of two-thirds of the members present in the Finnish Parliament at the same time as the Self-Government Act itself required that the Legislative Assembly of the Åland Islands gives its consent under the same qualified majority rule to any amendment of the Self-Government Act. This first Self-Government Act also contained a special right for the inhabitants of the Åland Islands, namely the exemption from conscription to the armed forces.

In many contexts, the Åland Islands is referred to as an example of successful conflict-management, which it undoubtedly is: under the auspices of the League of Nations in 1921, a dispute over the area with the risk of escalating into a violent conflict between Finland and Sweden was resolved in the so-called Åland Islands Settlement so that the original conflict, the wish of the inhabitants of the Åland Islands to secede from Finland and join Sweden, was institutionalised in the form of autonomy. The international dispute was compartmentalised into a domestic constitutional issue, which still today may contain a low level of dispute between the institutions of the self-governing Åland Islands, on the one hand, and the central government and Parliament of Finland, on the other.

In 1922, the Settlement that consisted of seven paragraphs, including several special rights for the inhabitants of the Åland Islands, was enacted into domestic law by the Parliament of Finland. Because the Settlement was not a treaty and there was no treaty to be incorporated into the domestic legal order of Finland, this so-called Guaranty Act (SoF 189/1922) was based on a direct transformation of the contents of the Settlement, and thus this translation was 'appended' to the Self-Government Act of 1920. Suffering from unclear interpretation as concerns the provisions on the purchase of real property, the proper implementation of the Settlement in this regard was effectuated only in the late 1930s, when the understanding started to emerge that the first Self-Government Act needed revision. Revision became all the more pertinent in the wake of the Second World War, when the international guarantor of the Settlement, the League of Nations, vanished and its successor in the arena of the maintenance of international peace, the United Nations, showed little interest in assuming the role of the international guarantor, although such a solution was originally sought by Finland.

The Self-Government Act of 1951 (SoF 670/1951) established the right of domicile as a platform for the exercise of the special rights identified in 1921–1922. At the same time it changed the method of attribution of legislative powers: since 1920, the distribution of powers had been more federally styled, establishing an area of enumerated powers for the Parliament of Finland in the territory of the Åland Islands and leaving the Legislative Assembly of the Åland Islands in the possession of residual powers on the same territory, but in 1951 an enumeration was established both for the Parliament of Finland and the Legislative Assembly of the Åland Islands as concerns legislative enactments applicable in the territory of the Åland Islands. At the same time, this measure blocked a few holes through

which the legislative competences of the Åland Islands could have been drained and thus seriously diminished.

A new Self-Government Act was prepared at the end of the 1980s, with increased powers placed in the enumeration for the Åland Islands. This current Self-Government Act (SoF 1144/1991) organises the legislative powers so that by and large and along the continental European distinction between private law and public law the Parliament of Finland is responsible for the so-called private law and general criminal law in the territory of the Åland Islands, while the Legislative Assembly of the Åland Islands is in charge of the so-called public law in the territory of the Åland Islands, including such particular criminalisations that appear necessary within the framework of the legislative powers of Åland. Of course, exceptions to this general description of the distribution apply, but in the main this is a relevant account of the contents of the legislative powers of the two legislatures competent on the territory of the Åland Islands. At this juncture, it was thought to be an invention to create another, separate list of powers for the Parliament of Finland from which powers could be transferred to the Legislative Assembly of the Åland Islands in the order established for the enactment of ordinary legislation in the Parliament of Finland, that is, by simple majority, without the need to use the complicated constitutional order for amending the Self-Government Act. However, this simplified procedure for transferring legislative powers has never been used, but instead a few times some powers of the Parliament have been transferred by means of formal amendments to the Self-Government Act.

Between 1920 and 1993, there was no mention in the Constitution of Finland of the position of the Åland Islands in the Finnish constitutional system. The Self-Government Acts had actually been understood as particular laws of constitutional nature which, without becoming part of the Constitution in the formal meaning, introduced exceptions to the Constitution. Only in 1994 were explicit provisions added to the then Constitution, now featured in sections 75 and 120 of the Constitution of Finland (SoF 731/1999). Section 120 records the fact that the Åland Islands has self-government as established in a particular Act. Sub-section 2 of section 75 is of fundamental importance from the point of view that it actually recognises the distribution of powers between the Parliament of Finland and the Legislative Assembly of the Åland Islands as concerns legislation applicable in the territory of the Åland Islands. Both sections of the Constitution are of a general nature, while the specifics of the self-government of Åland are determined in the Self-Government Act.

In 2011–2012, discussions have been initiated by the governmental institutions of the Åland Islands with a view of enacting a new Self-Government Act during the next decade, and a parliamentary committee has been set up in Finland to inquire into the feasibility of an amendment process. The wish of the governmental institutions and the political scene of the Åland Islands is, *inter alia*, to develop

the position of the Åland Islands in relation to the international affairs and to amend the system of the distribution of powers.³ As regards the distribution of powers, the proposal from Åland is to return to the original residuality on the part of the Åland Islands while keeping the enumeration as the basis of the legislative powers of the Parliament of Finland in the territory of the Åland Islands. If this were to succeed, the method of distribution of powers would evolve in a more federal-type direction, without, however, turning the Åland Islands to a federal entity in Finland.

The position of the Åland Islands in the constitutional framework of Finland is not only affected by formal changes in the Self-Government Act or the Constitution of Finland. Finland has participated in the so-called Nordic co-operation since the 1950s, and through amendments to the Helsinki Agreement between the five states, the three self-governing territories in the Nordic space, that is, the Åland Islands in Finland and the Danish autonomies of the Faroe Islands and Greenland, were granted formal positions more or less at par with the five states in the functioning of the Nordic Council.⁴ While the Nordic Council as an international organisation does not have the power to pass binding decisions on the five states, the other Nordic organisation, the Nordic Council of Ministers, has such powers, and even in that international organisation the Åland Islands and the two other Nordic autonomies have a certain position, although not at par with the Nordic states. Finally, since the beginning of 1995, the Åland Islands is, together with Finland, a part of the European Union (EU).

While the Ålandic involvement in the Nordic structures can be understood as a strengthening of the position of Åland in the international sphere, the EU membership of Finland has brought with it a decrease in the material competences enumerated in the Self-Government Act. The distribution of competences between the Parliament of Finland and the Legislative Assembly of the Åland Islands remains unchanged, but because legislation adopted by the EU within the competences of the EU sets aside any national legislation that may be in conflict with the EU law, including the Constitution of Finland and the Self-Government Act of the Åland Islands, the law-maker of Åland has experienced a loss of powers within such areas as agriculture, fisheries, the environment, *etc.* The political institutions of the Åland Islands have proposed that this loss of powers to the EU be compensated in suitable ways, such as the creation of a reserved seat for the Åland Islands in the European Parliament. So far, that plan has not succeeded, but the

³) *Betänkande från parlamentariska kommittén om förslag till reformering av självstyrelsesystemet och självstyrelselagen för Åland, Åländsk utredningsserie 2010:2*, Mariehamn, Landskapsregeringen, 2010.

⁴) See the 1962 Co-operation Agreement between Denmark, Finland, Iceland, Norway and Sweden, as amended in 1970 and 1984. It might be possible to entertain the view that, in the absence of an explicit international guarantee for the Åland Islands after the Second World War, the position of the Åland Islands in Nordic co-operation serves as an implicit international guarantee for the autonomy of the territory.

compensation for the loss of powers is on the agenda of the discussions to reform the current Self-Government Act. It should be recognised, however, that the voters of the Åland Islands agreed to EU membership in an advisory referendum, followed by a positive decision involving a qualified majority of two-thirds by the Legislative Assembly of the Åland Islands, the situation being such that Åland had the option of remaining outside of the EU although Finland made the decision to join.

3. Conceptual Distinctions between Autonomy and Federalism: The Absence of a Pre-emption or Supremacy Doctrine

The Åland Islands constitutes a territorial autonomy and is in this respect comparable to other similar sub-state solutions, including sub-state entities that are connected in a federal way with each other. Åland is not, however, a federally organised part of Finland, but conforms relatively well to a general definition of territorial autonomy that can be developed, *inter alia*, on the basis of the norms that regulated the status of the Memel Territory as a part of Lithuania between 1924 and 1938.

On this basis, a territorial autonomy involves a singular entity in what otherwise would be a unitary state or a federal state, so that the entity introduces an asymmetrical feature in the state through a transfer of exclusive law-making powers on the basis of provisions, which often are of a special nature and defined in such a manner that the central state level remains with the residual powers, while the sub-state level relies on enumerated powers, at the same time as the state level contains no institutional representation of the sub-state entity.

A federation of a classical kind is differently organised and displays often an aim to introduce symmetry in the treatment of the federal entities so that these sub-state entities of a federation are left with the residual powers, while the federal level is vested with enumerated powers. At the same time, the sub-state level in a federation is institutionally represented in a senate or a federal chamber, which participates in at least some legislative functions so as to create a mechanism of joint management of issues at the federal level.

As concerns the Åland Islands, it can be said that Åland conforms well to the expectation that an autonomy would not be institutionally represented in the national parliament: the Finnish Parliament is unicameral, and thus the inhabitants of the Åland Islands participate in the exercise of the national legislative powers through the mechanism of general elections to the Parliament. In order to secure the representation of the inhabitants of Åland, there is a system in place since 1947 that reserves one mandate out of the altogether 200 seats in the Parliament for a representative from the Åland Islands. From the point of view of the ratio of representation, this special mandate does not produce any

great imbalance, because the citizens of Finland in the constituency of the Åland Islands are more or less as many as those who support a seat amongst each of the other 199 mandates in the Parliament of Finland. It should also be noticed that the special seat for the citizens of the Åland Islands is not created on the basis of the Åland Islands Settlement of 1921, nor is the right to vote in these elections limited to those who have the right of domicile in the Åland Islands (which is the case for elections to the Legislative Assembly of the Åland Islands). This is instead a mechanism of general participatory nature of a domestic origin.

What causes a slight deviation in the case of the Åland Islands from the definition of a territorial autonomy is the manner in which the powers are distributed between the national Parliament and the law-maker of Åland. As explained above, the law-making powers of the Legislative Assembly are enumerated, but so, too, are the law-making powers of the Parliament of Finland. This latter feature is not quite in harmony with the definition of a territorial autonomy and causes a slight deviation in the case of Åland from the typical position of an autonomy in the direction of a federal idea of organisation, but the deviation is a slight one and would not cause us to change our characterisation of Åland as a territorial autonomy.

In fact, there is one particular feature found in federations that strongly supports our conclusion that the Åland Islands is a relatively typical territorial autonomy. In a federation, it is rather the rule than the exception that the relationship between the federal level and the several states involves a supremacy clause or a pre-emption doctrine on the basis of which it is held that the legislation agreed to at the federal level sets aside legislation produced at the state level. This is the case, for instance, on the basis of the Constitution of the USA, which contains the rule that federal law supersedes state law. The same is true according to the Constitution of the Federal Republic of Germany, according to which “*Bundesrecht bricht Landesrecht*” (see below, Section 5).

The legislative powers of the typical territorial autonomies, however, imply that the law-making powers of the autonomy are exclusive in relation to the national law-making powers and that there is an absence of a supremacy doctrine on the part of the national law-maker so as not to allow any pre-emption on the part of the national government within the competences of the sub-state entity. This is certainly the case with the Åland Islands: the Parliament of Finland cannot enact a piece of ordinary law within the competence of Åland even in the case that there would exist a normative void within the legal order of the Åland Islands.⁵

⁵ The matter may be a little bit different at the level of constitutional legislation: the Constitution of Finland is applicable in the Åland Islands to the extent the self-government act, adopted in the constitutional order, makes an exception to the provisions of the Constitution, but the fundamental rights and freedoms guaranteed by the Constitution are generally speaking not exempted from application in the Ålandic jurisdiction. Therefore, the Parliament of

This absence of national supremacy and pre-emption has been confirmed several times over in case law of the courts and in *travaux préparatoires* of national legislation.⁶ The national law-maker cannot enter the sphere of authority of the law-maker of Åland. This feature is certainly explaining at least a part of the robustness of the autonomy arrangement of Åland: in relation to the national government and the national Parliament, the Åland Islands are very autonomous, enjoying legislative ‘independence’ within their sphere of competence.

The matter is different in relation to the EU. The supremacy of EU law in relation to not only the legal order of Finland but also in relation to that of the Åland Islands is, as explained above, cutting into the material law-making powers of the Legislative Assembly of the Åland Islands. The effect of the supremacy of EU law is that the autonomy of the Åland Islands is watered down: the law-making powers of the Åland Islands are being drained to the national government and to the EU, because in principle the EU only talks to the governments of the Member States. It could thus be said that Åland is autonomous in relation to Finland, but not in relation to the EU.

4. Entrenchment of the Autonomy Arrangement

Another feature that may explain at least a part of the robustness and longevity of the autonomy arrangement in Åland is the various ways in which the autonomy of the Åland Islands is entrenched in the legal order of Finland.⁷ There exist at least eight distinctive situations of entrenchment that are relevant for the consideration of the legal position of each territorial autonomy. In some cases, none of the entrenchment mechanisms exist, which means that the autonomy arrangement is left without any safeguards for the permanency of the arrangement. In some other cases, as for instance concerning the Åland Islands, several forms of entrenchment can be identified that apply simultaneously. In such cases, it is possible to conclude that the permanency of the autonomy arrangement is geared towards guaranteeing longevity of the arrangement.

Firstly, there is the general entrenchment of the sub-state arrangement in the provisions of the national constitution. As explained above, this is the case for the Åland Islands since 1994, but autonomies enjoying this sort of entrenchment are

Finland could, in theory, amend the provisions concerning constitutional rights so as to make them extremely detailed and expect that the Legislative Assembly of the Åland Islands passes implementing legislation as required by the amended constitutional provision. This has never happened.

⁶ On the exclusivity of the legislative competence of the Åland Islands, see Suksi 2011, *supra* note 1, p. 297.

⁷ On the entrenchment issue, see M. Suksi, ‘On the Entrenchment of Autonomy’, in M. Suksi (ed.), *Autonomy: Applications and Implications* (Kluwer Law International, Dordrecht, 1998).

found also elsewhere, as in Spain, Italy, and Ukraine (the Crimea). Here, the starting point is a framework of autonomy established in the provisions of the national constitution. Secondly, there is a variation of the first position in that the national constitution does not contain explicit provisions on the autonomy arrangement, but instead, a semi-general entrenchment that creates the sub-state arrangement is originally created in an organic law under the constitution of the country. This was the case in relation to the former Croatian autonomy arrangement intended for the Serbian population of the Krajina district, now revoked since a long time. A current example could be the two Basic Laws of a temporal character enacted by the National People's Congress of China, one for Hong Kong and another for Macau, on the basis of a framework provision for special administrative regions in the Constitution of China. It can be argued that the legislation concerning the Åland Islands between 1920 and 1993 does not constitute a case in this category, because there was no enabling provision in the Constitution of Finland that created a legal basis for an organic act of this sort.

Thirdly, a form of entrenchment underlining the position of the autonomous entity is regional entrenchment. This means that a separate regional reaction through the representative assembly of the sub-state entity or through a regional referendum is envisaged whenever the legislation concerning the sub-state arrangement is being amended. This is the case in relation to the Åland Islands, because the Self-Government Act creates the requirement that any amendment to the Self-Government Act has to be consented to by the Legislative Assembly of the Åland Islands. This is also the case, for instance, in the case of the Spanish autonomous communities, because amendments to their respective statutes have to be consented to by the relevant autonomous territory, too, after the national Parliament has completed the amendment procedure. To some extent, the preambles of the home rule acts of the Danish autonomies of the Faroe Islands and Greenland contain the same idea in their reference to an agreement behind the material contents of the self-rule acts. It is very likely that the effect of the referendum in Scotland in 1998 on the devolution of legislative powers to Scotland has a similar result: it would be very difficult to revoke the Scottish autonomy only by means of an Act of Parliament without confirmation in a referendum.

The fourth form of entrenchment could be termed special entrenchment. It implies that the statute outlining the more practical modalities attached to the sub-state entity can be revised only according to a special amendment rule that complicates the amendment of the statute. The Self-Government Act of the Åland Islands is a case in point: according to the Act, any amendment thereof has to be passed in the Parliament of Finland in the same procedure as an amendment to the Constitution (without, however, making the Self-Government Act a formal constitutional act for that matter), and in addition the amendment has to be passed with the same qualified majority to two-thirds by the Legislative Assembly of the Åland Islands. These procedural requirements certainly increase the degrees

of difficulty to amend the Self-Government Act contrary to the wishes of the autonomous entity.

Leaving the ambit of entrenchment at the national constitutional level, it is possible to point at methods of entrenchment that exist within the boundaries of international law or of at least international relations. It is possible to mention at least two different categories of entrenchment in this context. A fifth category of entrenchment is the more general international entrenchment, by which the international community guarantees a sub-state arrangement in the creation of which it perhaps has participated. This certainly was the case with the Åland Islands back in 1921, when the Council of the League of Nations decided to approve the agreement between Finland and Sweden on the terms under which the Åland Islands would remain under Finnish sovereignty. This obligation of Finland under international law was, however, left without the international guarantor institution when, in the wake of the Second World War, the League of Nations was dismantled and replaced by the United Nations that did not want to assume the role of the guarantor of the autonomy arrangement. In spite of that, Finland has continued to recognise its responsibility under international law to uphold the Åland Islands Settlement as a unilateral obligation under international law.⁸

The sixth mode of entrenchment is the treaty-based entrenchment, more frequently found around the world than the general international entrenchment. In the treaty-based entrenchment, two or more states agree in a formal treaty that one of them creates or maintains a sub-state arrangement in its territory, for instance, for the protection of a minority population in that territory. This was very much the case in relation to the Memel Territory, consisting of an area that until the end of the First World War was a part of the German Empire: after the Great War, Memel was separated from Germany under the Versailles Peace Treaty and, after some time under international supervision, made a part of Lithuania on the basis of the so-called Memel Convention of 1924, in which document Lithuania pledged, in relation to the guaranty powers of France, Great Britain, Italy and Japan, to maintain in its domestic legal order this sub-state entity, which it did until 1938, when it decided to transfer the territory back to Germany. This entrenchment is currently valid, for instance, for South Tyrol on the basis of the Gruber – de Gaspari Agreement between Austria and Italy and both for Hong Kong and Macau on the basis of their respective Joint Declarations, which in spite of their names are formal treaties under international law signed by China, on the one hand, and the United Kingdom and Portugal, respectively, on the other hand. It should be underlined in this context that the Åland Islands Settlement is not a treaty under

⁸⁾ It might be possible to view the Nordic co-operation arrangements, which recognise the role of the Nordic self-governing territories, as an implicit international guarantee for the Åland Islands, although the explicit international guarantee disappeared at the point when the League of Nations ceased to exist.

public international law, but a unilateral commitment by Finland that does not give rise to treaty obligations.⁹

There is an additional option of entrenchment under international law, entrenchment under the right of self-determination. This seventh mode of entrenchment could protect existing sub-state arrangements against weakening of the arrangement against the will of the population, provided that the beneficiaries of the arrangement could be characterised as a people. A case in point would be Greenland, where there is no doubt about the fact that the Inuit population constitutes an indigenous people entitled to self-determination. In the internal agreement between the Free Aceh Movement (the GAM) and the Government of Indonesia and also in the Indonesian Law on the Governance of Aceh, reference is made to the people of Aceh. Therefore, the Acehnese might be able to refer to this mode of entrenchment in case the Indonesian government tried to weaken the governance arrangement created for Aceh, although the agreement itself is not governed by public international law. As concerns the Åland Islands, it can, however, be concluded that the inhabitants of the Åland Islands do not constitute a people. Therefore, this category of entrenchment is not applicable on Åland.

Finally, there is an eighth mode of entrenchment, which is of a domestic nature and which would operate at the level of national constitutional law, namely entrenchment through constitutional conventions. The specific legal effect of such an entrenchment would, however, be somewhat difficult to pinpoint, and the difficulty can be explicated by reference to the constitutional structures of the United Kingdom as concerns Scotland. There is no written constitution in the United Kingdom, and the grant of legislative powers to the Scottish Parliament and thus the creation of territorial autonomy in Scotland took place under the principle of parliamentary sovereignty. This means that the Scotland Act is an ordinary act of the UK Parliament, enacted by a simple majority, and it could, in theory, be revoked by a similar Act of Parliament. In addition, if the UK Parliament wanted to enact a piece of law that encroaches into the legislative competence of the Scottish Parliament, it could do so with reference to this principle of parliamentary sovereignty. However, according to a political convention or understanding entitled the Sewel Convention, the UK Parliament will not enact legislation that purports to be applicable in the Scottish jurisdiction and sets aside Scottish law unless the Scottish Parliament gives its consent to such UK legislation. An understanding seems to exist in Denmark, too, concerning the position of the

⁹ This Åland Islands Settlement of June 1921 should not be confused with the so-called Åland Islands Convention of October 1921, which deals with the neutralisation and non-fortification of the Åland Islands and which is concluded between several states in the Baltic Sea region, including Finland and Sweden. The Åland Islands Convention is a treaty under public international law and concludes, in line with the Council of the League of Nations in June 1921, that the Åland Islands is a territory under Finnish sovereignty. See Suksi 2011, *supra* note 1, p. 149.

Faroe Islands and Greenland as component parts of the Realm. The position of the two self-governing entities seems to be afforded some protection under this understanding, recorded in the preambles of the two home rule acts. This mode of entrenchment is not, however, relevant in the case of the Åland Islands, because there exist other modes of entrenchment that are explicit and that rely on positive norms of domestic law.

Focusing on the Åland Islands only, we can take note of the fact that for Åland several entrenchment modes are in place at the same time and simultaneously in a way that at least in part can explain not only the longevity of the autonomy arrangement but even its robustness. For the Åland Islands, general entrenchment, special entrenchment and regional entrenchment apply within the domestic constitutional framework, while at the international level a general international entrenchment applies. The total entrenchment effect of these separate entrenchment modes can be considered considerable and would serve to fix the autonomy arrangement in the legal order in a multitude of ways.

5. Comparing Autonomy Arrangements and Federations

In comparison with most other autonomous territories in the world, the Åland Islands stands out as an autonomous territory with a very strong legal position. This applies both in relation to its powers (save for the inroads EU law is making into the powers of Åland) and the permanency of the autonomy arrangement. In comparison with other sub-state arrangements, including federal forms of organisation, it can be said that Åland belongs to a core group of territorial autonomies together with the historical example of the Memel Territory (MT), Hong Kong (HK), and Zanzibar (ZA), while a number of sub-state entities, such as Puerto Rico (PR) and Aceh (AC), may have a weaker position and approach regional self-government of some sort. At the same time, the Åland Islands (ÅI) can be placed, on the basis of material and institutional criteria (see above, Section 3), amongst territorial autonomies, not amongst federally organised entities such as the sub-state entities in Canada (CA), Switzerland (CH), the United States (US), Germany (D), or Austria (A). A comparative table could illustrate this comparison in a very approximate way as shown in Fig. 1.

It seems, on the basis of the horizontal dimension in this comparative table, that a certain variation can be detected between typical autonomous entities and typical states in federations, at least when such sub-state entities are considered that are most powerful in relation to the national level. The Memel Territory (and Hong Kong, too) stands out as the most typical case of territorial autonomy, because the entity possessed enumerated law-making powers, while the residual powers were held by the central government of Lithuania. The Åland Islands moves a step or two from this ideal position towards a federal form of organisation

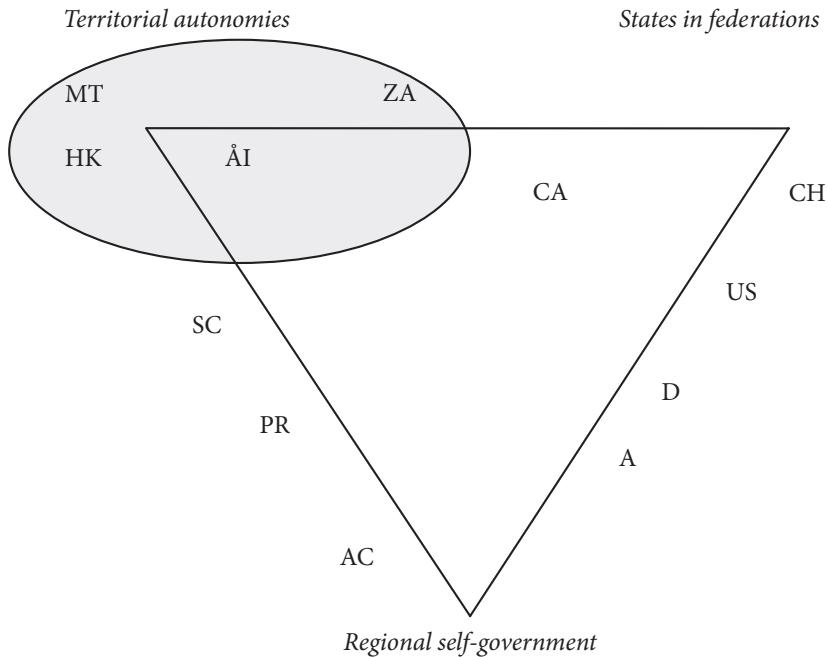


Fig. 1.

for the reason that the powers of both the Åland Islands legislature and the legislature of Finland have been enumerated. Zanzibar is probably even further away in the federal direction, but can still be considered an autonomous territory.

A similar variation from the classical federation towards autonomy can be detected, for instance, in the Canadian case. In Canada, the powers of the provinces are not of a residual nature, but enumerated, which is a feature that in itself separates the Canadian federalism from the classical federation, and this feature is enhanced by the position of the senate in the Canadian federal government, which seems weak in comparison with other senates or federal chambers. It deserves to be pointed out that at the same time, the arrangement with two enumerations of competences in the Canadian case, one list of competences for the provinces and another list of competences for the federation, is an arrangement similar to that of the Åland Islands.

The vertical dimension in the comparative table tries to illustrate the extent of the powers of the sub-state entities both amongst entities that could be viewed as territorial autonomies and states in federations. Starting with the federal arrangements,¹⁰ it seems that there is a relatively weak supremacy clause or federal

¹⁰ As concerns the federal arrangements, the indications concerning the vertical dimension in the chart are very rough approximations that need to be elaborated further.

pre-emption doctrine in place in the Swiss confederation, which means that the federal law-maker cannot normally trump the legislative decisions at the cantonal level. The situation is similar in the Canadian federation, although according to the Canadian Constitution it is in some situations possible for the federal legislature to make laws for the peace, order and good government of Canada, a federal power that introduces a limited measure of federal supremacy. That supremacy is not, however, of the same nature as established in the supremacy clause of art. VI, clause 2, of the US Constitution, according to which in situations where the federal and state laws are in conflict with one another, the federal enactments will prevail and override the state enactments.¹¹ In the Federal Republic of Germany, the principle of *Bundesrecht bricht Landesrecht*, that is, federal law breaks state law, is established in section 31 of the Basic Law of Germany. It means that if there is a conflict between a norm established in state law and a norm established in federal law, the federal norm takes precedence. In the Austrian case, the *Länder* seem even less powerful than the *Länder* of Germany.

This ‘federal’ consideration involving a supremacy clause or a federal pre-emption doctrine can also be used to distinguish between different entities that might be referred to as territorial autonomies. No such pre-emption or supremacy existed in relation to the Memel Territory under the law that governed the position of Memel (however, the Lithuanian government refused to accept the exclusivity of the Memel jurisdiction and was involved in constant attempts to break into the legislative powers of Memel). Such a pre-emption or supremacy is also absent in the cases of Hong Kong and Zanzibar. The situation is similar in relation to the Åland Islands, for which both case law and *travaux préparatoires* from the Parliament of Finland exist that conclude that the legislation of the national Parliament is not applicable within the jurisdiction of the Åland Islands to the extent the Legislative Assembly is competent to enact legislation.¹²

Scotland (SC, in the above table) is already in a slightly different position in this respect, because the Parliament of England might, under the principle of parliamentary sovereignty, decide to enact legislation within the competence of Scotland. However, and as mentioned above, it has promised not to do so without the consent of the Scottish Parliament in a political convention entitled the Sewel Convention, which is the closest to a provision in positive constitutional law

¹¹ See e.g. R. D. Rotunda and J. E. Nowak, *Treatise on Constitutional Law – Substance and Procedure*, vol. 2, 3rd edition (West Group, St. Paul, 1999) pp. 199–231; and R. A. Rossum and G. A. Tarr, *American Constitutional Law – Volume 1, the Structure of the Government* (Thomson Wadsworth, Belmont, 2007) pp. 418–420. See also G. Anderson, *Federalism: An Introduction* (Oxford University Press, Don Mills, 2008) p. 26, who makes the point that courts in federal systems “have tended to give broad interpretation to specified powers, whether federal or constituent unit, so the effect of residual power clauses has been less than envisaged by constitutional drafters”.

¹² See Suksi 2011, *supra* note 1, p. 297.

that the British system can arrive in the absence of a written constitution. The jurisdiction of Puerto Rico is, from this perspective, wide open for legislative enactments passed by the US Congress under the plenary powers of the Congress on the basis of the US Constitution in a manner which distinguishes Puerto Rico from the states in the US federation. Aceh stands out as the weakest entity in this comparison: although the Law on Governance of Aceh, enacted by the Indonesian Parliament, establishes certain powers for the representative assembly of Aceh, the actual distribution of powers between Djakarta and Banda Aceh is supposed to be determined in a Presidential Decree passed by the Indonesian President after an agreement on the details of the arrangement has been reached between Aceh, on the one hand, and the Indonesian government, on the other.

The strong position of the Åland Islands and the exclusive legislative powers the Legislative Assembly of the Åland Islands mean that under international human rights law, the sub-state entity actually assumes the position of the state in relation to the inhabitants of the jurisdiction. Hence the governmental institutions of Åland that apply the legislation of Åland in individual cases, for instance, in the area of social affairs, education and the environment, have to take into consideration that the rights of an individual must not be limited more than is necessary in a democratic society and that the rule of law must be observed. This means that problems related to the realisation of the human rights of an individual may occur also in the jurisdiction of the Åland Islands:¹³ although the arrangement is, in itself, a very positive example of how the position of the inhabitants of a territorial entity could be protected, the government of an autonomous territory is government just in the same way as the government of a state is. This observation serves to remind everyone of the fact that even in a territorial autonomy, the position of the individual under international human rights law has to be upheld.

6. Concluding Reflections

The Åland Islands is internationally known for the Åland Islands Settlement of 1921, which confirmed the autonomy arrangement in a conflict resolution context and at the same time added some special rights that the inhabitants of the Åland Islands would be allowed to enjoy. Time has shown that the international

¹³⁾ See the case of *Ekholm v. Finland*, European Court of Human Rights, Judgment of 24 July 2007, in which the governmental authorities of the Åland Islands refused to heed the several rulings passed by the administrative courts on the removal of a dog-cage for reasons of noise. Because of the refusal of the Ålandic authorities to follow the several court orders, the European Court of Human Rights concluded that Finland has violated the principle of the rule of law included in the European Convention on Human Rights.

guarantees are not carved in stone but can be and have been changed.¹⁴ In some situations, such as concerning the various forms of taxation originally guaranteed to the Åland Islands, the international guarantees have been amended by the law-maker of the Åland Islands itself. In some cases, such as changing the method of protection of real property from an *ex post facto* interference in a contractual relationship to a regime of advance permit, the amendments were effectuated by the Parliament of Finland. Finally, as concerns some rights, such as the reservation of the right to vote in local government elections in the several municipalities to the inhabitants of the Åland Islands, the change into a general right to vote in municipal elections was caused by a Nordic agreement and, in particular, by membership in the EU.¹⁵ It is notable, however, that in all these cases and categories of change to the original autonomy arrangement, the consent of the Legislative Assembly of the Åland Islands has been required in one way or the other. Although the international guarantee through the League of Nations disappeared through the dissolution of the organisation, the protection afforded by the international guarantee has actually continued.

It should be noted that all the special rights of the Åland Islanders do not stem from the Åland Islands Settlement, but some have been created by the national law-maker. This is the case, for instance, concerning the exemption of the inhabitants of the Åland Islands from conscription to military service, the special seat of Åland in the national Parliament, the right of domicile that functions as a regional citizenship from which the enjoyment of the special rights is derived as an administrative matter, and the right to carry out business operations in the Åland Islands. Taken together, the special provisions that apply to the Åland Islands on the basis of the Åland Islands Settlement and on the basis of the other special rights of Åland Islands have managed to cater for the prosperity and happiness of the inhabitants of the Åland Islands, as intended by the Åland Islands Settlement before the Council of the League of Nations back in 1921. The autonomy arrangement on the Åland Islands is a generous one, originally instituted by and also maintained over the years by the Parliament of Finland. The fact that this autonomy arrangement has existed in a democratic environment that takes seriously not only its international commitments but also its own domestic commitments is probably a factor that strongly contributes to the robustness and longevity of the autonomy arrangement.

¹⁴ For an exposé of how each of the special rights granted to the Åland Islands has changed and how this has been done from the point of view of procedure, see Suksi 2011, *supra* note 1, pp. 161–165, and, in particular, M. Suksi, 'Stegvisa förändringar i Ålandsöverenskommelsens innehåll?', in M. Aarto and M. Vartiainen (eds.), *Oikeus kansainvälisessä maailmassa – Ilkka Saraviidan juhlakirja* (Edita, Helsinki, 2008).

¹⁵ H. Öst, 'The Cultural and Linguistic Safeguards of the Åland Minority Protection Regime', in S. Spiliopoulou Åkermarck (ed.), *The Åland Example and Its Components – Relevance for International Conflict Resolution* (The Åland Islands Peace Institute, Mariehamn, 2011) pp. 72–85.