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Territorial autonomy: The Åland Islands in comparison with other sub-state entities[1]

The legal position of the Åland Islands continues to attract international interest, probably for the reason that it is an example of an arrangement through which a territorial conflict between two states, Finland and Sweden, was solved in a peaceful way.[2] The Ålandic self-government involves law-making powers and is probably for that reason internationally well known under the term autonomy. In fact, the Ålandic variant of autonomy is often referred to as the oldest existing autonomy arrangement in the world. What is less known is the more precise constitutional structure of the arrangement in the domestic law of Finland and how the bilingual state of Finland with 5.3 million inhabitants accommodates, through the autonomy arrangement, a monolingual Swedish-speaking region with only 28000 inhabitants within a Swedish-speaking minority of altogether 294 000 inhabitants that does not, as a whole enjoy territorial autonomy.

During the past twenty years, a great number of delegations from foreign countries have visited Finland and the Åland Islands in order to familiarize themselves with the autonomy model of Åland. In spite of this international interest, it would be difficult to establish that a particular autonomy arrangement among the more than 60 examples[3] would be copies of the Åland case. For instance, in the relatively recent past, there is the peace process of Aceh, which under the auspices of the former Finnish president Martti Ahtisaari resulted in an agreement on peace between the Government of Indonesia and the Free Aceh Movement, or the rebel group GAM. An important part of the peace deal dealt with the wish to create a self-government arrangement in the then Indonesian province of Aceh instead of the full independence originally claimed by the rebel group. The implementation of the self-government that Aceh was granted within the unitary state of Indonesia became effective actually only in the Fall of 2009, when the represent-

[1] In this contribution, section 2 is excerpted, with kind permission of Springer Science+Business Media, from 503-513 in Suksi, Markku: Legal Foundations, Structures and Institutions of Autonomy in Comparative Law. In Oliveira, J.C. and Cardinal, P. (eds): *One Country,Two Systems, Three Legal Orders – Perspectives of Evolution.* Berlin, Heidelberg, Springer, 2009., while sections 3, 4 and 5 are excerpted, with kind permission of Koninklijke Brill NV, from 56-65 in Suksi, Markku: Explaining the Robustness and Longevity of the Åland Example in Comparison with Other Autonomy Solutions, *International Journal on Minority and Group Rights* 20(2013) Brill, Leiden, 2013.

[2] For a comparison of six existing and one historical autonomy with each other, see Suksi, Markku: *Sub-State Governance through Territorial Autonomy – A Comparative Study in Constitutional Law of Powers, Procedures and Institutions.* Springer-Verlag, Berlin, Heidelberg, 2011.

[3] See Ackrén, Maria: *000ons for different autonomy regimes in the world: a fuzzy-set application.* Åbo Akademi University Press, Åbo, 2009., who included altogether 65 territorial autonomies in her review of different empirical dimensions of autonomy.

ative assembly of Aceh started to function, and at that point, the exact scope of the powers of the assembly were still subject to negotiations between Aceh and the Government of Indonesia. In spite of the fact that the self-government of Aceh is often referred to as an autonomy arrangement, doubts can be raised as to whether Aceh really is an autonomy, because the powers of the assembly of Aceh are less than legislative in nature.

The concept of autonomy is elusive also in other respects. The general idea of autonomy is that it is a minority protection mechanism. Although more than 60 territorial autonomies exist in the world, many of them were not created for the protection of a territorially concentrated minority population, but are justified for other reasons. Certainly, some recent autonomies such as Muslim Mindanao in the Philippines and the Bolivian autonomous areas are justified by reference to minority or indigenous concerns, but there are also areas such as Rodrigues in Mauritius that are autonomous for other than minority reasons. This same variation is present in Europe. For instance, it is doubtful whether the population of the Åland Islands is a minority of its own. It is perhaps instead a part of the Swedish-speaking minority of Finland.

When autonomy arrangements are combined with federal arrangements, it is possible to say that in Europe, the pure unitary state is not anymore the regular mode of constructing the state. Surprisingly few states are created so as not to contain any particular sub-divisions of a sub-state nature (municipal self-government excluded). Instead, a majority of the European states display a variety of sub-state arrangements, ranging from federal structures to organizational models that could be entitled autonomies. The issues in this comparison try to highlight different normative aspects of various autonomy situations and to establish that territorial autonomies are very varied in, for instance, their strength and the ways in which they are entrenched in the legal order.

Variance in autonomy positions in Europe

On the basis of powers granted or devolved to autonomous areas it is possible to claim that jurisdiction of legislative and administrative character has, in many instances, been delegated to sub-national entities which at least intuitively can be labelled as autonomies. At the same time, the autonomy arrangement may have been created in the domestic legal order at varying normative levels, where the constitution of the state and ordinary legislation passed by the national parliament are the basic points of departure.

Under section 120 of the Constitution of Finland "[t]he Åland Islands have self-government in accordance with what is specifically stipulated in the Act on the Autonomy of the Åland Islands." The current Self-Government (Autonomy) Act was enacted by the Parliament of Finland in 1991 (No. 1144/1991). In addition, according to section 75 of the Constitution, "[t]he legislative procedure for the Act on the Autonomy of the Åland Islands and the Act on the Right to Acquire Real Estate 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 Acts passed by the Legislative Assem-

bly of Åland are governed by the provisions in the Act on the Autonomy of the Åland Islands." Whereas section 75 can be understood as a recognition of the existence on the entire territory of Finland a second legislative power in addition to the Parliament of Finland, namely the Legislative Assembly of the *Åland Islands*, it should be underlined that the legislative competence of the law-maker of the Åland Islands has since 1920 been devolved on the basis of a Self-Government (Autonomy) Act. Currently, the enumeration of the legislative competencies of the Åland Islands is established in section 18 of the Self-Government (Autonomy) Act, and the powers granted to the Åland Islands are generally speaking of a public law nature under the continental European understanding of the legal order as being composed of public law and private law. Only those who possess a special regional citizenship are qualified to vote in the election of and stand for election to the Legislative Assembly of the Åland Islands. However, at the same time, the Åland Islands are identified under art. 25 of the Constitution as a special constituency for the purposes of the election of one MP to the Parliament of Finland,[4] an election in which those persons may participate who are citizens of Finland. The Åland Islands do not have foreign policy powers, although Åland may, under the Self-Government (Autonomy) Act, participate in the conclusion of treaties in certain ways and although Åland participates in the functioning of the Nordic Council, an inter-governmental organization, with its own delegation (as do the Faroe Islands and Greenland, too).

The Self-Government (Autonomy) Act requires for its enactment and amendment that the Parliament enacts it following the procedure prescribed for the enactment and amendment of the Constitution, that is, by a prolonged enactment procedure involving qualified majority of two-thirds in the final vote, with the special requirement under section 69.1 of the Self-Government Act that the Legislative Assembly of the Åland Islands shall make the same decision with a qualified majority. The Åland Islands have had such a special position since 1920/1922, and for the autonomy arrangement created in 1920, an international guarantee in the form of the so-called Åland Islands Settlement was created by agreement between Finland and Sweden before the Council of the League of Nations in 1921.[5] The Settlement did not become a formal treaty under

[4] Interestingly, the election of the one MP from this single-member constituency is not designed as a regular First-Past-the-Post election of the British kind, but the election instead purports to preserve the general features of the elections by using open lists in multi-member constituencies in mainland Finland by designing it as a First-List-Past-The-Post. From the winning list, the candidate receiving the highest number of votes is elected as MP.

[5] The final solution recommended by the Committee of Rapporteurs to the Council of the League of Nations involved the Autonomy Act of 1920, which the Finnish Parliament had enacted in order to defuse the tension surrounding the Åland Islands question. Apparently, the Commission of Rapporteurs was relatively satisfied with the Autonomy Act itself, which enjoyed an entrenched position in the legal order of Finland comparable to that of the Constitution. Nonetheless, the Commission recommended certain additions to the Autonomy Act, which aimed especially at the preservation of the Swedish language as the language of schools on the Åland Islands. In addition, the maintenance of real property in the hands of the natives was recommended, and in the area of politics, measures against the premature exercise of the franchise granted to new inhabitants were put forward. The Commission also suggested conditions for the nomination of a governor of the Åland Islands who has the confidence of the population. The Åland Islands Settlement contained these elements, and after the process before the League of Nations was completed, Finland incorporated the guarantees in the so-called Guaranty Act of 1922, enacted by the Parliament in the order prescribed for constitutional enactments.

international law, but it is still and despite the collapse of the League of Nation through the Second World War considered valid in the relation between Finland and Sweden at the level of customary international law.

The Åland Islands is not the only autonomy in the Nordic countries, but it is the oldest and smallest. After World War II, the "Home Rule Model" was developed in Denmark, first applied to the Faroe Islands in 1948[6] and later to Greenland in 1978.[7]

The *Faroe Islands* and *Greenland* are listed as special areas in the Danish Constitution of 1953, in the context of providing specific regulations for them in certain fields, such as for their representation in the Danish Parliament, where each autonomous territory has two seats out of a total of 179 seats. The Constitution however, does, not mention the self-government or autonomy of these areas. The delegation of exclusive law-making powers to these areas has taken place on the basis of ordinary acts of the Danish Parliament. However, it has been maintained that the Acts concerning Home Rule on the Faroe Islands and Greenland "are no longer to be classified as pieces of ordinary Danish legislation, but must be regarded as '*Constitutional Laws*' on a level superior to ordinary Parliamentary Acts", whilst at the same time they are at a normative level inferior to the Constitution itself.[8] It has, therefore, been suggested that the two Acts could not be unilaterally amended by the Danish legislator, but that such amendments would require negotiations and agreement between the parties involved, followed by a regional referendum confirming the amendment.[9] As a matter of fact, the two Home Rule Acts contain provisions which create a right to be heard for the autonomous territories on the legislative and administrative matters of the central government that affect them. However, this procedure does not form an unconditional requirement of consent, and does not accord the Home Rule Acts a heightened position in the hierarchy of norms. At any rate, there is a certain element of regional entrenchment within the two Home Rule Acts. Three pieces of Danish legislation from 2005 confirm the idea of consent and sustain the position of the Faroe Islands and Greenland as two separate units in the Danish Realm by making a reference in the Preamble of each of the Acts to the fact that the Act is based upon an agreement between the government of the relevant autonomous entities on the one hand and the Danish government on the other hand as equal parties.[10] It seems that a federative relationship of some sort between the three parts of the Danish realm (Denmark proper, the Faroe Islands, and Greenland) is emerging.

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[6] The Faroese Home Rule Act (Act 137 of the Danish Parliament of 23 March 1948). The Faroe Islands have around 45,000 inhabitants and are located in the Atlantic Ocean, west of Norway and north of Scotland. The Faroe Islands is not a part of the European Community.

[7] The Greenlandic Home Rule Act (Act 577 of the Danish Parliament of 29 November 1978). Greenland has around 60,000 inhabitants, most of whom are indigenous Inuit. Greenland joined the European Community in 1973 together with Denmark, but on the basis of the wishes of the Greenlanders, as indicated by an advisory referendum, Denmark negotiated an amendment to the EC treaty which allowed Greenland to leave the EC in 1983.

[8] Harhoff, Frederik: *Rigsfaelleskabet.* Århus: Klim„1993. 504.

[9] Harhoff, 1993. 490, 493, 512 ff.

[10] Act concerning the entering into agreements under international law by the government of the Faroe Islands (Act nr 579 of the Danish Parliament of 24 June 2005), Act concerning the entering into agreements under international law by the government of Greenland (Act nr 577 of the Danish Parliament of 24 June 2005), and Act concerning

From a purely formal perspective, the self-government of the Faroe Islands and Greenland may perhaps be viewed as a more or less simple delegation of powers. The autonomy of these areas is thus not entrenched in any particular and explicit way in the constitutional fabric of Denmark, although a regional entrenchment might be discerned in the two arrangements. This feature may perhaps be strengthened by formulations as the one included in the Preamble of the Greenlandic Home Rule Act: "Recognising the exceptional position which Greenland occupies within the Realm nationally, culturally and geographically, the Danish Parliament has in conformity with the decisions of the Greenlandic Provincial Council passed and We [Margarethe the Second] by Our Royal Assent confirmed the following Act about the constitutional position within the Realm." A somewhat similar formulation is included in the Faroese Home Rule Act. Are the two Danish autonomy arrangements thus formally speaking unprotected? From the point of view of the Constitution, the existence and substance of the legislation regulating the position of the two areas are in principle dependent on a simple majority in the Danish Parliament and could simply be understood as a delegation of certain state authority and legislative powers to the autonomous areas. In theory, the same simple majority in the Danish Parliament could be used to amend or even to completely abolish the Home Rule Acts.

However, the Danish Home Rule legislation has certain important purposes. It has been suggested that the two Home Rule Acts pertain to two peoples who live on a limited territory and who share common internal characteristics which distinguish them from others. Their different ethnic, linguistic, cultural, and geographic conditions distinguish these areas from the rest of Denmark, and these distinguishing marks have been highlighted in the Preambles to the Home Rule Acts[11] as well as in the Preambles of the three Acts passed in 2005. Hence the Danish autonomy arrangements contain clear elements that separate them from the regular framework of a unitary state, recognise them as distinct units in the Danish realm and connect them to the concepts of a minority or a people. The latter, at least, could be read as a connection to the concept of self-determination, an issue that has been topical both in relation to the Faroe Islands and Greenland. As concerns the Inuit population in Greenland, which is an indigenous population for the purposes of ILO Indigenous and Tribal Peoples Convention No. 169 of 1989 and which constitutes a clear majority in the territory of Greenland, the institutions of representation in Greenland are probably such that they meet the intentions of Article 6 of the Convention.[12] However, participation in political life, such as in elections to the legislative assemblies of the two autonomies, is not reserved to the original population of the Faroe Islands or the indigenous Inuit population of Greenland only, but applies to all Danish citizens who reside in the two territories. Hence the Danish Home Rule model "grants specific rights and powers to the population living in a specific territory, i.e. it is

taking over of issues and competencies by the authorities of the Faroe Islands (Act nr 578 of the Danish Parliament of 24 June 2005).

[11] Zahle, Henrik: *Dansk forfatningsret 2: Regering, forvaltning og dom.* Christian Ejlers' København: Forlag, 1989. 266 ff.

[12] Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries of 27 June 1989. Denmark ratified the Convention on 22 February 1996.

not based on ethnicity, but is the type of model in which the rights are transferred to the population in a territory".[13] In this respect, the autonomies of Faroe Islands and Greenland can be characterised as inclusive (which especially in Greenland is not entirely without complications), while the Åland Islands would stand out as exclusive in comparison.

Both the Faroe Islands and Greenland are vested with legislative powers exercised by their respective elected legislative assemblies and applied by a politically answerable government, while the judiciary is part of the Danish national court organisation.[14] The law-making powers the two autonomies possess on the basic enumerated list (the so-called A-list) of the respective Home Rule Acts are fairly broad, ranging from organisation of governmental institutions to health and social affairs and fisheries, and including also direct and indirect taxes. As concerns the Faroe Islands, the division of legislative competencies is since the end of July 2005 actually established on the basis of another Act of the parliament of Denmark,[15] which enumerates a core of competencies that can not be transferred to the Faroe Islands,[16] leaving the remaining competencies to be transferred at a time decided by the authorities of the Faroe Islands or at a time agreed to after negotiations between the authorities of the Faroe Islands and Denmark.[17] As concerns Greenland, there are powers often referred to as "the B-list" (these include the state church, police, underground resources, radio, aviation, import and export control), which in principle are exercised by the Danish authorities, but which particularly affect the interests of the autonomous entity. In such cases, after negotiation with the Greenlandic authorities, the central authorities of Denmark may determine by statute that the Greenlandic authorities shall assume regulating jurisdiction for and admin-

[13] Lyck, Lise: The Danish Home Rule Model. Principles, History, and Characteristics. In Lyck, Lise (ed.): *Constitutional and Economic Space of the Small Nordic Jurisdictions.* NordREFO 1996:6 (Stockholm: Nordiska institutet för regionalpolitisk forskning, 1996.). 124. See also Mørkøre, Jogvan: The Faroese Hme Rule Model – Theory and Reality. In Lyck, Lise (ed.): *Constitutional and Economic Space of the Small Nordic Jurisdictions.* NordREFO 1996:6 (Stockholm: Nordiska institutet för regionalpolitisk forskning, 1996.). 164: "To be eligible to vote for the Løgting, the main preconditions are Danish citizenship and Faroese residence. This means, for instance, that every Dane who takes up residence in the Faroes automatically becomes Faroese, and, conversely, that a Faroese resident in Denmark enjoys all the rights of a Dane resident in Denmark. On the other hand, the Faroese, i.e. Danish citizens resident in the Faroe Islands, are entitled to elect representatives to both the Løgting and the Danish Folketing." Citizens resident in Denmark would normally not have the right to participate in the elections of the Legislative Assembly of the Faroe Islands, except Faroese students who reside in mainland Denmark because of their studies.

[14] However, on the basis of the Act concerning taking over of issues and competencies by the authorities of the Faroe Islands (Act nr 578 of the Danish Parliament of 24 June 2005), the Faroe Islands could create its own court organization, except for the Supreme Court, which shall remain a Danish competence.

[15] Act concerning taking over of issues and competencies by the authorities of the Faroe Islands (Act nr 578 of the Danish Parliament of 24 June 2005).

[16] The Constitution, citizenship, the Supreme Court, foreign policy, security policy, defense policy, and currency and financial policy. For instance, as concerns the courts, the Faroe Islands has not, as of 2006, created its own courts, but the local courts are part of the court organization of Denmark.

[17] The competencies that can be overtaken at a time agreed upon by the authorities of the Faroe Islands and Denmark are the following: the legal profession, the state church, property and possessions, industrial property, treatment of offenders, aviation, passport, the law governing the individual, the family and inheritance, police and prosecutor and the adjacent criminal law, administration of justice and the institution of courts, criminal law, immigration and border control.

ister such fields, and fix subsidies accordingly. The autonomous entities also receive financial contributions from the budget of the state in the form of block grants.[18]

Generally speaking, the two autonomous entities in Denmark, the Faroe Islands and Greenland, exercise enumerated powers, while the central government and the Danish Parliament exercise residual powers (however, from 2005 on, the core of Danish powers in relation to the Faroe Islands are based on an enumeration. From that perspective, Faroe Islands and Greenland may be considered as fairly traditionally organised autonomies. A special feature of the Faroese autonomy is that regarding matters which belong to the central government and which have not been transferred to the Faroe Islands, 'Danish legislation is not promulgated in the Faroes until the Faroese authorities have had the opportunity to express their view on it'.[19] 'If new Danish legislation is not approved by the Faroese authorities, it is habitually not promulgated, and the old Danish law remains in force.'[20] In other words, the Legislative Assembly of the Faroe Islands can effectively exercise absolute veto power in relation to Danish legislation.

In the United Kingdom, the constitutional development has resulted in an increasing devolution and regionalisation of the country. The so-called Channel Islands, that is, Guernsey, Jersey and the Isle of Man have historically speaking a unique relationship to the English Crown. The main interest from an autonomy point of view is currently directed towards the three special areas in the U.K., namely, Northern Ireland, Scotland and Wales. A constitutional characterisation of these areas is not very simple because the country does not have any written constitution, but departs from constitutional conventions for the structure of the government. The point of departure seems to be, however, that the legislation that emerges at least in two of the areas (Scotland and Northern Ireland) is understood as delegated or devolved legislation and that the legislation of the Parliament of England takes precedence in case the regional autonomy legislation stands in conflict with an Act enacted by the national Parliament.[21]

Northern Ireland had regional self-government through its own legislative assembly, the Stormont, between 1921 and 1974, but this arrangement was suspended because of the unrest that plagued Northern Ireland. The area was thus placed under direct rule of the central government. A new attempt to establish self-government took place against the background of the so-called Good Friday Agreement between the U.K. and Ireland in 1998. The Legislative Assembly started its activities at the end of 1999, but the co-op-

[18] On the economy of the Danish autonomies, see Lyck 1996, *passim*, and Mørkøre 1996, *passim*.

[19] Olafsson, Arni: A note on the Faroe Islands. In *Local self-government, territorial integrity and protection of minorities*. Proceedings of the European Commission for Democracy through Law, Lausanne, 25-27 April 1996. Collection Science and technique of democracy, No. 16 (Strasbourg: Council of Europe, 1996.). 106.

[20] Olafsson 1996. 108.

[21] See, in particular, point 13 in *Devolution. Memorandum of Understanding and Supplementary Agreements between the United Kingdom Government Scottish Ministers, the Cabinet of the National Assembly for Wales and the Northern Ireland Executive Committee*. Presented to Parliament by the Deputy Prime Minister by Command of Her Majesty, December 2001/CM 5240. See also Patricia Leopold: Autonomy and the British Constitution. In Markku Suksi (ed.): *Autonomy: Applications and Implications.* The Hague: Kluwer Law International, 1998. 223-250. and Himsworth, C.M.G: Devolution and its Jurisdictional Asymmetries. *Modern Law Review* (2007) 70(1) 31-58.

eration between the different groupings was difficult and after an infiltration scandal involving terrorist organisations, the basis of co-operation vanished completely. Northern Ireland was again placed under the direct rule of London, and the local legislative work and self-government were suspended until further notice.

From 2000 on, the *Scottish* Parliament has legislative powers within internal matters such as education, health care, housing, transportation and criminal law, and a Scottish budget is administered by the Government of Scotland. The British central government has responsibility over the national economy, currency, defence and foreign policy. The tax powers of Scotland imply that an additional tax up to 3 % can be imposed on top of the regular income taxation. The creation of a Scottish parliament implied at the same time that the number of the Scottish MPs in the House of Commons of the Parliament of England was diminished. The delegation of power to *Wales* in 2000 was less comprehensive and does not involve legislative powers proper, only powers of an administrative nature. The Welsh council of self-government is responsible over such areas as education, health care and culture and is in charge of a budget for these purposes.

As concerns France, the constitutional amendments of 2003 created a platform for a further decentralisation of France by identifying in art. 72, *inter alia*, so-called special-status areas among other units of territorial jurisdiction. Under the constitutional provision, these units shall be self-governing through elected councils and have the power to make regulations. This seems to be an important delineation, because *Corsica*, an island in the Mediterranean Sea which since 1982 has enjoyed a special status under a special Act which was replaced in 1991 by a new Act of Self-Government of Corsica and supplemented in 1999 by amendments, thereby can exercise administrative powers, not legislative powers. An attempt to enlarge the powers of the Corsican Assembly was made in 2002, but in a confused political situation, the Corsican voters turned down the proposal with a slim margin in a regional referendum.[22] Currently, the Corsican Assembly has powers in such areas as education, media, training, culture, the environment, regional planning, agriculture, tourism, fiscal matters, housing, transportation and energy.[23]

The Portuguese Constitution identifies two areas, *Azores* and *Madeira*, which are islands in the Atlantic Ocean, as autonomous entities with their own legislative competencies for each of them. However, this legislative power is to some extent circumscribed by the legislative power of the national parliament.

Among all European constitutions, only the Spanish Constitution seems to create an explicit right to autonomy. At the same time as art. 2 of the Constitution of Spain underlines the indivisible unity of the Spanish nation, it also recognizes and guarantees a right to autonomy for the different nationalities and regions which constitute the Spanish nation. The Spanish understanding of autonomy is very flexible and has result-

[22] According to Art. 72-1 of the French Constitution, "[w]here there is a proposal to establish a special-status territorial unit or to modify its organisation, a decision may be taken by statute to consult the voters registered in the relevant units. Voters may also be consulted on changes to the boundaries of territorial units in the conditions determined by statute." A regional entrenchment of autonomy arrangements therefore seems to be an option in France.

[23] Daftary, Farimah: Experimenting with Territorial Administrative Autonomy in Corsica: exception or pilot region. *International Journal on Minority Rights and Group Rights* 15(2008). 273-312

ed in that there exists, on mainland Spain and the *Canary Islands*, two different types of autonomy, that of the so-called traditional communities, such as *Catalonia* and the *Basque Country*, which have a very far-reaching legislative competence and also powers of taxation, and other autonomies, which have a somewhat lower level of competence in relation to the national parliament. In addition, the Spanish Constitution recognizes a certain administrative autonomy without legislative powers proper for the Spanish enclaves of *Ceuta* and *Melilla* on the Northern coast of Africa, bordering to Morocco. Thus the entire territory of Spain consists of autonomous entities which on the basis of their autonomy have the right to exercise both exclusive legislative powers and such legislative powers which are concurrent with those of the Spanish parliament.

Formally speaking, Italy is also, according to her Constitution, a unitary state, but it displays strong characteristics of regionalism because the entire country is divided into regions of two different types according to the extent of their legislative competencies. In this respect, Italy comes close to Spain. In addition, there is a dimension of international law affecting the autonomy arrangement in Italy, because the autonomy in *Trentino-Alto Adige* includes the German speaking area of *South Tyrol* at the border with Austria. This arrangement has as its basis a treaty under international law, more specifically art. 27 of the Peace Treaty of Saint-Germain-en-Laye of 1919 and appendix IV of the Peace Treaty of 1947 with Italy.[24] A somewhat similar situation exists in the region of *Friuli-Venetia Julia* concerning its Slovenian population on the basis of the Treaty of Osimo of 1975.[25]

There is an interesting arrangement in existence in Moldova, the Constitution of which refers in art. 111 to special autonomy legislation that makes possible the delegation of legislative powers to autonomous entities. The Act concerning special legal status for *Gagauzia* (*Gagauz Yeri*) creates for that entity a legislative competence which seems to be exclusive in relation to the legislative competence of the Moldovan parliament at the same time as the executive power in Gagauzia seems to be very intertwined with the executive power of Moldova.

Although the former Socialist states of Eastern Europe seem to be relatively careful with the creation of autonomy arrangements within their borders, it is possible to find one in Ukraine, too. Article 136 of the Constitution of Ukraine contains rules concerning the Autonomous Republic of *Crimea*. According to the provision, Crimea is an indivisible and integral part of Ukraine and exercises decision-making powers within the framework of the Constitution to the extent the Constitution grants decision-making powers to Crimea. The Supreme Council of Crimea has the power within its material competence to adopt norms which are binding inside the territory of Crimea. These norms nonetheless, under art. 135.2 of the Ukrainian Constitution, seem to exist at a norm-hierarchical level which is lower than that of the Acts of the Ukrainian par-

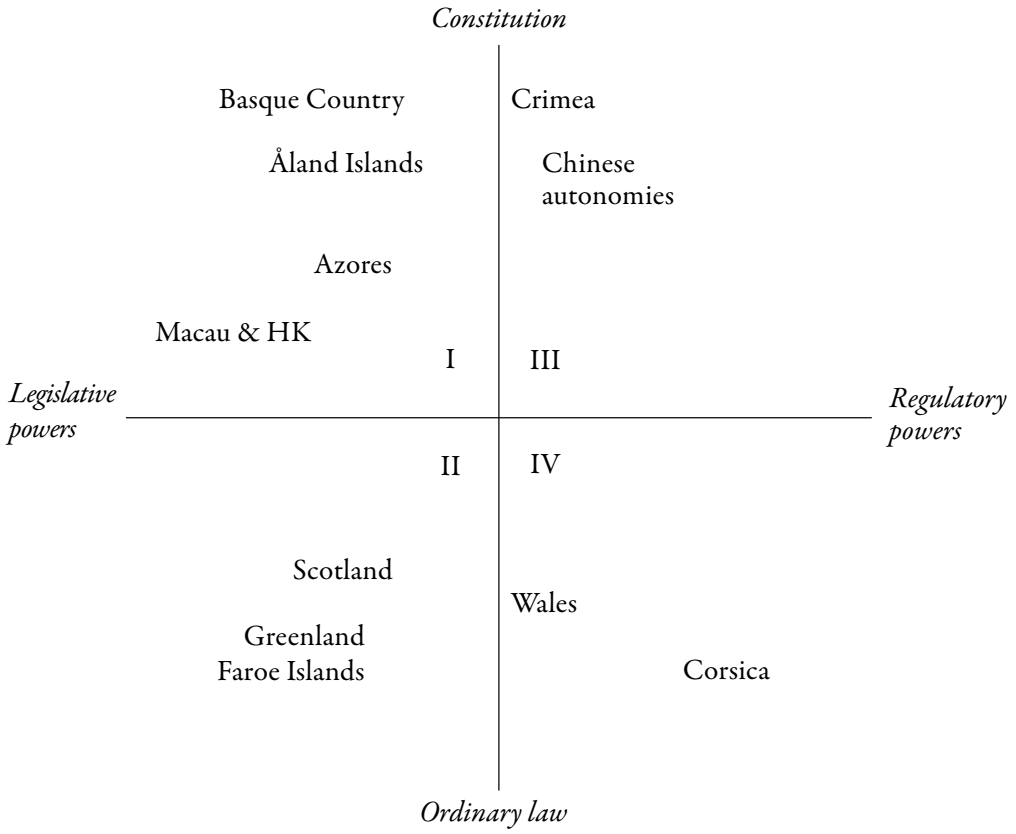
[24] 49 U.N.T.S. 1950.

[25] Treaty on the delimitation of the boundary line for the part not indicated as such in the Peace Treaty of 10 February 1947. UNTS Registration Number 24848. See also Bartole, Sergio: Regionalism and Federalism in the Italian Constitutional Experience. In Suksi, Markku: *Autonomy – Applications and Implications.* The Hague: Kluwer, 1998. 193.

liament, it may be possible to draw the conclusion that the self-government rights of Crimea are more of a regulatory or administrative nature than of a legislative nature.

When comparing the different situations, it becomes apparent that the powers granted to autonomies are not of a similar character in terms of extension or substance. The powers do not deal with the same material fields, but vary instead from case to case according to the specificities of the aims to be achieved. The creation of the various autonomy arrangements does not, moreover, follow any general pattern and does not display, in all instances, clear features of minority protection. Furthermore, of the national constitutions, it seems that only the Spanish Constitution in its art. 2 and the 2009 Bolivian Constitution in its art. 2 formulates autonomy as a constitutional right. The variation in the creation of the autonomies is particularly interesting in respect of the norm-hierarchical level at which any given autonomy is established. The combined variation in the powers of the European autonomies and the norm-hierarchical level of the generic legislation can be illustrated in the following way (see table 1 below):

Table 1: Various autonomy positions.[26]



[26] See Suksi, Markku: On the Entrenchment of Autonomy. In Suksi, Markku: *Autonomy – Applications and Implications.* The Hague: Kluwer, 1998. 169.

It is possible to conclude on the basis of the chart summarising some key features of European autonomies that legislative powers and regulatory or administrative competence have, in many states, been granted or devolved to so-called sub-national entities. At least a greater part, if not all, of these entities can be identified as autonomies. The competencies devolved are, however, not of the same nature and do normally not concern the same substantive areas. Instead, it seems that the competencies vary from case to case with a view to the needs that a specific case displays. The creation of individual autonomy arrangements does not follow any general pattern, and each and every autonomy arrangement is not created in order to create a minority protection arrangement. It is also important to note that only the Spanish constitution creates a constitutional right to autonomy for territorial entities. In addition, one should also be aware of the difficulties to characterise the British sub-national entities in this chart (see table 1 above). The absence of a written constitution results in the absence of more definitive fixation points of these entities in the chart.

Those self-governmental arrangements that can be placed in section I of the table can probably be considered autonomies proper. They are organized on the basis of the national constitutions of their respective "mother-countries", and special jurisdictions involving exclusive law-making powers have been created for them against the background of the constitutions. The material fields of activity they possess vary between the different autonomies, but they are entitled to make laws of their own. This brings the European areas clearly within the ambit of Article 3 of the First Protocol to the European Convention on Human Rights, which means that the legislatures must be elected in the manner prescribed in the provision.[27]

Entities in section II of the table lack the formal constitutional delegation of law-making powers, but they nevertheless make their own laws in the spheres determined for them in ordinary legislation. From a purely formal point of view they are not in the category of autonomies in section I, but the powers they exercise and the elevation of their status by way of non-statutory constitutional conventions or by way of customary constitutional law make them, for all practical purposes, autonomies.

Although the entities that can be placed in section III have a certain constitutional basis, their powers are of a non-legislative kind, limited to regulatory or administrative jurisdiction and subordinated to the ordinary legislative powers of the national law-maker of the country in which they exist. Here the use of the term "autonomy" could be misleading, provided that a narrow understanding of the term is used in order to refer to territorially delineated entities with exclusive law-making powers. The powers of the regional ethnic autonomies in China to enact by-laws on the one hand and to exercise a gap-filling power on the other seem to warrant the placing of those autonomous entities in section III of the chart. Section IV represents cases which probably should not be considered autonomies, but rather as regions with self-government of an administrative nature.

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[27] See, *e.g.*, the following cases from the European human rights system: *Moureaux and others v. Belgium*, Eur. Comm. HR, Application 9267/81, D.R. 33, para. 64, and *Mathieu-Mohin and Clerfayt v. Belgium*, judgment of 2 March 1987, Publications of the European Court of Human Rights, Series A, vol. 113.

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

The Åland Islands constitute 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 organized 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 organized 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 organization, but the deviation is a slight one and would not cause us to change our characterization 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, in 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 of this article).

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 competencies 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.[28]

This absence of national supremacy and pre-emption has been confirmed several times over in case law of the courts and in *travaux preparatoires* of national legislation.[29] 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

[28] 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 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.

[29] On the exclusivity of the legislative competence of the Åland Islands, see Suksi, 2011. 297.

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.

Entrenchment of the Autonomy Arrangement

The autonomy arrangement of the Åland Islands is entrenched in various ways in the legal order of Finland, but how is this regulated in relation to the other autonomies?[30] 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 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 which 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, which has since been e. 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,

[30] On the entrenchment issue, see Suksi, 1998.

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 of 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 recognize its responsibility under international law to uphold the Åland Islands Settlement as a unilateral obligation under international law.[31]

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

[31] It might be possible to view the Nordic co-operation arrangements, which recognize 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.

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 this 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 public international law, but a unilateral commitment by Finland that does not give rise to treaty obligations.[32]

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 characterized 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 on the legislative competence of the Scottish Par-

[32] 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 neutralization 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. 149.

liament, 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 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 are considerable and would serve to fix the autonomy arrangement in the legal order in a multitude of ways.

Comparing Autonomy Arrangements and Federations

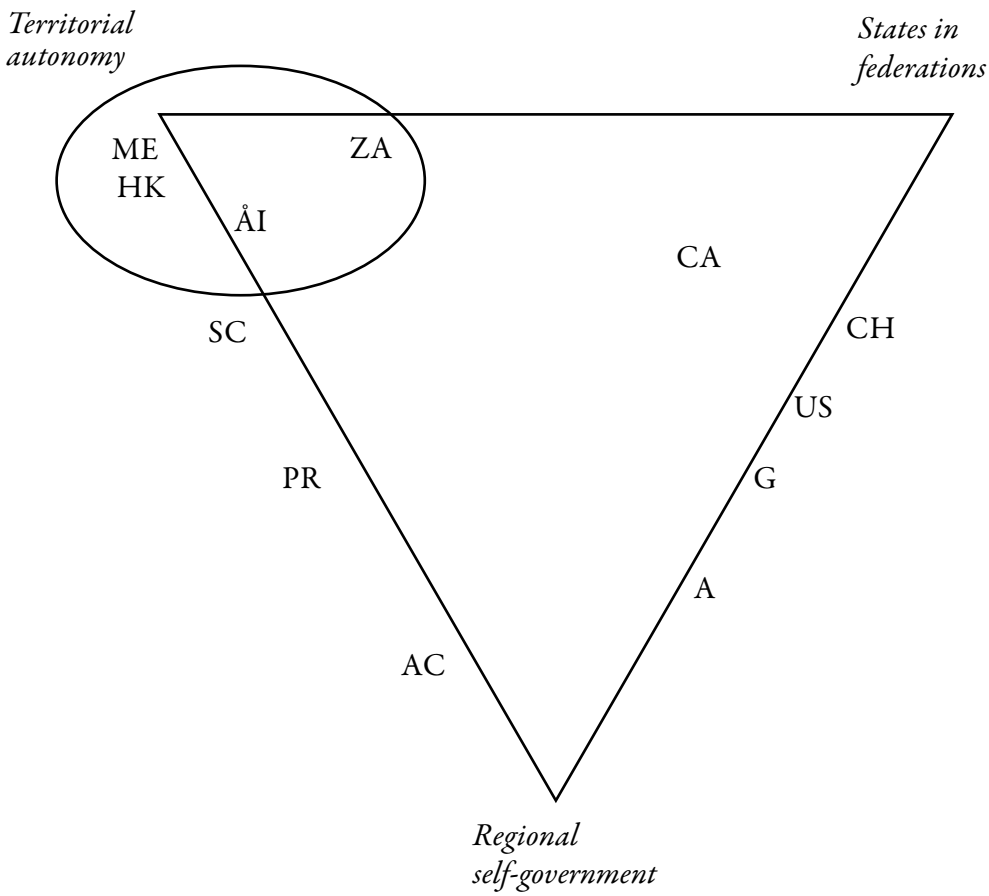
In comparison with most other autonomous territories in the world, the Åland Islands stands out as an autonomous territory with a very strong legal position. This applies both in relation to its powers (save for the inroads EU law is making into the powers of Åland) and the permanency of the autonomy arrangement. In comparison with other sub-state arrangements, including federal forms of organization, 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 of this article), amongst territorial autonomies, not amongst federally organized 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 Table 2, below.

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 cases 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 organization 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 competencies in the Canadian case, one list of competencies for the provinces and another list of competencies for the federation, is an arrangement similar to that of the Åland Islands.

Table 2: Comparison of territorial autonomies with states in federations and regional self-government



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,[33] it seems that there is a relatively weak supremacy clause or federal pre-emption doctrine in place in the Canadian federation, which means that the federal law-maker cannot normally trump the legislative decisions at the provincial level. 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.[34] More or less this is the situation in Switzerland, too, in relation to the cantons under art. 49 of the Federal Constitution of the Confederation of Switzerland. 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 preparatoires* 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.[35]

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 that the British system can arrive in the absence of a written constitution. The jurisdiction of Puerto Rico is, from this

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

[34] *See e.g.* Rotunda. R. D. and Nowak, J. E.: *Treatise on Constitutional Law – Substance and Procedure*. Vol. 2, 3rd edition. St. Paul: West Group, 1999. 199–231; and Rossum, R. A. and Tarr, G. A.: *American Constitutional Law – Volume 1, the Structure of the Government* (Thomson Wadsworth, 2007) 418–420. *See also* G. Anderson, *Federalism: An Introduction.* Belmont: Oxford University Press, Don Mills, 2008. 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".

[35] *See* Suksi, 2011. 297.

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:[36] 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.

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 guarantees are not carved in stone but can be and have been changed.[37] 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

[36] *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.

[37] 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. 161–165, and, in particular, Suksi, Markku: Stegvisa förändringar i Ålandsöverenskommelsens innehåll? In Aarto, Markus & Vartiainen, Markku (eds): *Oikeus kansainvälisessä maailmassa – Ilkka Saraviidan juhlakirja.* Helsinki: Edita, 2008.

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.[38] 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 organization, 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 to 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, in fact, for almost a century now.[39]

Other autonomies evolve in their unique directions. Some might vanish, but the prediction is that the ones embedded in a relatively stable and democratic environment will survive and contribute to the maintenance of peace, to the protection of minorities or to the generally reasonable organization of a state. At the same time, the prospects for creating new autonomies are probably best in situations where the state has a relaxed and liberal attitude to minorities and groups that might want to do things in a different manner than the majority population. Societies characterized by nationalism and strong nationalist sentiments are probably not easy to convince about the benefits of autonomy for a particular group of persons, which often is a minority population.

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[38] Öst, Heidi: The Cultural and Linguistic Safeguards of the Åland Minority Protection Regime. In Sia Spiliopoulou Åkermark (ed.): *The Åland Example and Its Components – Relevance for International Conflict Resolution.* Mariehamn: The Åland Islands Peace Institute, 2011. 72–85

[39] After the work of a committee in the Åland Islands, a committee composed of all parties present in the Finnish parliament proposed in its report of 24 January 2013 that the drafting of a new self-government act of the Åland Islands would be commenced. If such a new act, the fourth self-government act after the ones of 1920/1922, 1951 and 1991, is enacted in the future, it is likely that it takes place on the occasion of the 100th anniversary of the autonomy of the Åland Islands right at the beginning of 2020s. See *Ålands självstyrelse i utveckling*. Betänkanden och utlåtanden 4/2013. Helsingfors: Justitieministeriet, 2013.

However, it seems that it might be very difficult today to create one particular dimension of the Åland Islands arrangement, namely the special rights of the inhabitants of the Åland Islands, at least outside of the context of indigenous rights. Hence if a law-maker wanted to create special rights of the kind in effect in the Åland Islands, such attempts might come into conflict with provisions in international conventions on human rights, such as the prohibition of non-discrimination. Explicit human rights provisions at the level of international law did not exist in the 1920s, when the Åland Islands arrangement was designed, and at that point in time, the national legislator had more freedom to do so. In fact, in the Åland Islands case, that creation of special rights was urged by the League of Nations. In that respect, the situation and the overall framework of regulation has changed.

Relatively recent autonomies, such as Aceh in Indonesia, will most of the times have to start up their activities from scratch, but they might benefit from the comparison with more established autonomy arrangements, such as the Åland Islands, in their pursuit to beat their own path towards – one hopes - good governance as well as prosperity and happiness.