DOCUMENTI
IAI

CONSTITUTIONAL OPTIONS FOR SELF-DETERMINATION: WHAT WORKS?

by Markku Suksi

Paper prepared for UNA-USA/IAI Conference on "Kosovo's Final Status"
Rome, 12-14 December 1999

IAI9940

ISTITUTO AFFARI INTERNAZIONALI

CONSTITUTIONAL OPTIONS FOR SELF-DETERMINATION: WHAT WORKS?[1]

by Markku Suksi

1. Background

U.N. Security Council Resolution 1244(1999) deals with the situation in Kosovo and refers to the need to develop self-government and/or substantial autonomy in that region. However, most inhabitants of Kosovo would probably prefer an independent State because they for understandable reasons oppose living under Serb rule. In fact, many Kosovars see the withdrawal of Serb forces, negotiated as part of the settlement that ended the war, as opening the way to statehood. Nevertheless, secession is not what the S.C. Resolution and the settlement with Yugoslavia provides. While it is possible that the international community might eventually change its mind, at the moment it seems to prefer finding a way to implement the settlement embodied in S.C. Res. 1244 (1999) rather than nullify it by embracing, at this stage, statehood for Kosovo.

The resolution does not at all refer to any self-determination that could be exercised by any population in the territory of Kosovo, but departs from the understanding that the Federation of Yugoslavia is in the possession of its sovereignty and self-determination, as initially restricted by the action of the international community. The issue is, therefore, the extent to which the self-government or autonomy in Kosovo can be viewed as constituting a share of the self-determination of Yugoslavia. Or, even more specifically, what kind of a share in the internal self-determination of Yugoslavia should be accorded to Kosovo by means of an institutional arrangement that involves self-government and autonomy and how should this take place? This paper is rather long precisely because the combination of self-determination with constitutional options in the topic, given to the author by the organisers of the Conference, introduces elements that complicate the review of the constitutional issues.

A set of questions have been presented for further inquiry against the background of self-determination: 1) what kind of efforts exist to fashion constitutional arrangements in other divided polities; 2) what formulas have shown some success at reconciling a group's self-determination *vis-à-vis* a larger entity, that is, what are the ingredients of success and the reasons for failure, 3) and under what circumstances? 4) How have international institutions and arrangements supported or subverted the success of those models? 5) What are the points

[1] This paper relies heavily on previously published works by the author, such as Markku Suksi (ed.), *Autonomy – Applications and Implications*. Dordrecht: Kluwer Law 1998, Markku Suksi: *Frames of Autonomy and the Åland Islands*. Meddelanden från Ekonomisk-Statsvetenskapliga fakulteten vid Åbo Akademi, Ser. A:433. Åbo: Åbo Akademi, 1995, Markku Suksi, 'The Åland Islands in Finland', pp. 193-220, in *Local Self-Government, Territorial Integrity and Protection of Minorities*. International Colloquium, Lausanne, 25-27 April 1996. Zürich: Schulthess Polygraphischer Verlag, 1996, and Markku Suksi, 'On Mechanisms of Decision-Making in the Creation (and Re-Creation) of States – with Special Reference to the Relationship between the Right of Self-Determination, the Sovereignty of the People and the *pouvoir constituant*', pp. 426-459 in *Tidsskrift for Rettsvitenskap* 3/97.

of contact between self-determination on the one hand and self-government in the form of autonomy or federalism, on the other? What kind of parallels can be drawn to the situation in Kosovo? We will, however, not try to answer the question whether the Kosovars possess a right of self-determination, but only concentrate on the institutional issue. The purpose of this paper is hence to explore the interface between the concept of self-determination at the level of international law and the institutional solutions for its realisation that are available at the level of national constitutional law.

The paper starts with the issue of self-determination at the level of international law and proceeds thereafter to conceptualise the constitutional options for different institutional arrangements. In the latter context, the position of three European structures in respect of sub-State entities is indicated. Two case studies are used to explore the contents of sub-State arrangements in situations, which in one way or another involve the issue of self-determination. The case of the Åland Islands is often referred to as a success story in the field of international conflict resolution and seems to have produced a stable institutional solution. The case of Russia and especially the Republic of Tatarstan as a part of the Russian Federation is an example of a recent attempt to institutionalise self-determination at the constitutional level. Finally, a few remarks will be given concerning the issue of "what works".

2. Institutional options for internal self-determination under international law

Self-determination is a multi-faceted term. As an element of the international legal discourse it can be located in a narrow form already in the Versailles Peace Treaty after World War I, at which point it mainly concerned border adjustments between States by means of the referendum or other forms of popular consultation. Here the point was that a minority in one State could, in some instances, choose the sovereignty under which to live. In most cases, the other State was one where the majority population was of the same "ethnicity" as the minority population in the area in which the referendum was organised.

A broader notion of self-determination emerged after World War II, and it seems as if it would have developed itself into a concept that is able to establish a bridge between constitution-making at the level of national constitutional law and the protection of certain rights accorded at the level of international law. On the latter level, self-determination has been formulated as a legal right that contains such concepts as the free determination of the will of the people and the people's right to political participation. The principle of self-determination focuses not only on the immediate national setting, but complicates the picture by adding to the scene a number of options provided under public international law and especially under human rights law. However, self-determination is rarely a term under national constitutional law. It seems that in the OSCE area, only the legal order of Moldova contains an institutional arrangement that connects autonomy with self-determination. Namely, Section 1 of the Law on the Special Status of Gagauzia, an organic law adopted on the basis of Article 111 of the 1994 Constitution of Moldova, stipulates that Gagauzia is "an autonomous territorial entity with a special status as a form of the self-determination of the Gagauz, forming an integral part of the Republic of Moldova". The Gagauz, of Turkish origin

but with the Orthodox Christian faith, are hence recognised, at least under the national legal order of Moldova, as a distinct people entitled to certain institutional arrangements.

In the context of international law, the position of the people is encapsulated in the concept of self-determination and its two sub-categories, external and internal self-determination. The former refers to the existence of a State as a sovereign subject of public international law and is widely recognised as a peremptory norm of international law. The latter is used to refer to sovereign states in a number of ways, for instance, in the sense that the population determines by means of elections the composition of its government. It may also refer to different autonomy or sub-state arrangements within the borders of sovereign states and even to the freedom for a minority from oppression by the central government.

The doctrine of self-determination was at least originally used to undermine the right of acquisition of territories by means of conquest, which seldom paid any attention to the interests of the people living in the territory in question. The idea was first built in to Article 1, Sub-section 2, of the Charter of the United Nations and developed, for instance, by Resolution 1514(XV) of the United Nations General Assembly in 1960 that includes a Declaration on the Granting of Independence to Colonial Countries and Peoples. Sub-section 2 of the Declaration affirmed that *all* peoples have the right to self-determination, on the basis of which they freely determine their political status and freely pursue their economic, social and cultural development.

The forcefulness of the principle of self-determination was boosted by the inclusion of self-determination in Common Article 1 of the 1966 UN Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. According to that Article, *all* peoples, not only those under colonial domination, have the right of self-determination, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development. The two Covenants clearly state the existence of the concept of self-determination as a right under public international law. It seems as if it were considered a collective right that can be viewed as a precondition for the realisation of most other human rights.

The realisation of the right of self-determination has consequences both at the level of international law and national law. *First*, a people in an established State shall not be subjugated by another State (non-interference and territorial integrity). This is actually an understanding of self-determination that relates to the principle of the sovereignty of States and protects State sovereignty. *Second*, if there is a subjugated people, it shall have the right to free itself and become independent. This was especially the case with colonies after World War II and relates to de-colonisation. *Third*, a people's right to self-determination can be understood as a right of (a certain part of) the population to choose the State under which authority they live. This was a common concept with respect to territorial changes after World War I and, it should be stressed, concerned almost exclusively areas inhabited by a minority population. In most cases, its purpose was to facilitate the integration of a minority population in one country into the population of the kin-State. As sub-categories of territorial self-determination may be mentioned the possibilities of the population to attain autonomy, and perhaps even the option of secession. *Fourth*, there seems to exist a right of a people to create, and perhaps re-create, their own political system, a right which is more or less overlapping with the concept of the *pouvoir constituant*. *Fifth*, self-determination is in conjunction with Article 25 of the UN Covenant on Civil and Political Rights often referred

to as the right of the people to participate in government and determine the content of policies. The first and the second category relate to external self-determination, while the fourth and the fifth category mainly denote internal self-determination in its various manifestations. The fourth and the fifth categories also conform with the main interpretation of the exercise of self-determination in a post-colonial situation, which is that the reference to the right of self-determination of all peoples is a reference to the total populations of the existing States regardless of their internal sub-divisions. The third category may be viewed as a special or perhaps as an intermediate case. The third, fourth and fifth categories are particularly relevant for national constitutional law and necessitate substantial legislative action at that level.

The UN Declaration on Friendly Relations of 1970 recalled the existence of the concept of self-determination and, more importantly, accounted for the modes of implementing the right of self-determination by a people. These modes are:

a) the establishment of a sovereign and independent State;
b) the free association or integration with an independent State; and
c) the emergence into any other political status freely determined by a people.

Hence self-determination is still, in line with the post-World War I situation, a determination of sovereignty over people under certain forms, but the broader legal concept is not only designed for a minority so that it can choose the sovereignty under which it will live, but it is designed so as to make possible the creation of a new State or sovereign for the population on the one hand and the integration of the population into an existing State or sovereign on the other. In so far as the exercise of self-determination is a determination of under which law, that is, under which sovereignty, a people will live, then the constitutional devolution of legislative powers to sub-State entities is simultaneously a limited devolution of both sovereignty and self-determination to such an entity. It is submitted here that the concept of self-determination exists parallel to sovereignty and that the culmination of both self-determination, especially in its internal form, and sovereignty in its internal form, is the exercise of the highest decision-making authority over a certain territory. Hence, just as law-making powers of autonomies are a devolved part of the internal sovereignty of the country in question, the law-making powers of autonomies may constitute a devolved part of the internal self-determination of a country. Hence exclusive law-making powers granted to a sub-State entity can be viewed as constituting a share in the internal self-determination of that State. This conclusion would, however, be valid under international law only in so far as devolution has concerned peoples or at least certain distinct groups or populations. It is thus possible that an autonomy arrangement becomes, if it is accepted by the population or group in question either through their representatives or directly through the referendum or through long-time practical acceptance, an exponent of their self-determination and wins legitimacy under international law so as to be protected under international law. Such protection under international law would involve a prohibition of the weakening of the autonomy arrangement against the will of the population concerned.

International law is, however, careful in pointing out that the exercise of the right of self-determination shall not be disruptive of the territorial integrity of the existing States, and at a European level, this is sustained by the principles contained in the various OSCE principles adopted by the participating States. According to public international law and under certain conditions provided therein, the Security Council of the UN is the only body that can

authorise actions by the international community or by third States that are in breach of the sovereignty of a State and of its territorial integrity.

The constitutional consequences of the realisation of these categories of self-determination are manifold. The establishment of a sovereign and independent State means that a moment of exercise of self-determination takes place. This moment is apparently simultaneously of a pre-constitutional character and can be described in terms of the *pouvoir constituant*, which may contain in itself the adoption of a constitution for the new State or result as a consequence in another constitutional action at which the constitution is adopted either by means of a referendum or through an elected assembly. This parallellism between the exercise of self-determination to create a new State and the exercise of the *pouvoir constituant* is necessarily not a feature that has drawn much attention from the international community. Whereas international law grants the right of self-determination and is interested in its realisation, it has had very little to say about the next step, that is, about what should take place after the exercise of self-determination. How should the new State be organised? Should its method of governance be democratic? Of course, if the exercise of self-determination is democratic according to the UN criteria, it could perhaps be assumed that the emerging State, too, will be democratic. However, a more legal link to the participation of the people in a democratic manner is established if Common Article 1 is read together with Article 25 in the CCPR, which further on involves at least the adjacent political rights of expression, association and assembly as well as equality and non-discrimination. Hence human rights law can today be interpreted so as to require the enactment of the first constitution of a new State with at least these rights. During the past decade, the international community has, in fact, been involved in the State-creation processes in a number of places. The UN was very active in Namibia and gave, by means of incorporating the document into a UN decision, a certain legitimacy to an internal agreement between the parties in Namibia on constitutional principles and on the adoption of the constitution. The elections in 1989 under UN supervision to the constitutional convention, the enactment of the Constitution of Namibia on 9 February 1990, and the formal Declaration of Independence on 21 March 1990 illustrate an interesting path of decision-making that combines the right of self-determination at the level of international law and the *pouvoir constituant* at the national level. The international community is also actively involved in Bosnia and Herzegovina through the Dayton Agreement, which creates the country as a federal State with a number of institutions that have been designed against the background of democratic concepts. The existence of sub-state entities or units of governance that have their own and exclusive legislative powers is one part of the Bosnian solution.

What would paragraph b) mean in constitutional terms, that is, what is implied by the possibility of a people to free association or integration with an independent State? Firstly, it would seem to mean that there exist two different entities, a people that wants to associate or integrate with an existing State and a State that is willing to receive such a people. Secondly, in harmony with Principles VII-IX of UN General Assembly Resolution 1541(XV) of 1960 on the Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 e of the Charter, that is, principles concerning Non-Self-Governing Territories, it seems that association with an independent State implies a confederal or at least a loose federal constitutional setting in which the associated territory retains the right to determine its internal constitution without

outside interference, in accordance with due constitutional processes and the freely expressed wishes of the people. Such a people shall continue to have the freedom to modify the status of that territory through the expression of their will by democratic means and through constitutional processes, a freedom that may actually amount to a right of secession or lead in the other direction, towards various forms of closer relationship with the "receiving" State. The constitution of the confederation should probably contain a provision establishing the right of secession. Integration is clearly more far-reaching and may even be interpreted as the creation of a unitary State, because the peoples of both territories should, according to these Principles, have equal status and rights of citizenship and equal guarantees of fundamental rights without any distinction or discrimination. Both peoples should, according to the Principles, have equal rights and opportunities for representation and effective participation at all levels in the executive, legislative and judicial organs of government.[2] Representative government and effective participation are hence the objectives of international human rights law.[3]

Between these extremes that could be chosen by a people in the exercise of their self-determination, that is, an independent State or a State in a confederation on the one hand and a unitary State on the other, there seems to remain a sphere of constitutional options that are covered by point c) in the Declaration on Friendly Relations, namely the emergence into any other political status freely determined by a people. This is a position that could cover all constitutional solutions ranging from a federation through various kinds of autonomy arrangements and arrangements of devolution to cultural autonomy. However, there does not seem to exist much guidance at the level of international law as to what kind of institutional arrangements point c) exactly covers. This is not surprising, because public international law normally leaves the organisation of the national administration at the discretion of the State and establishes in the best of situations only principles that should be implemented by the national administrations, which is quite different than the requirements in human rights law concerning, for instance, courts of law.

The conclusion is, however, that public international law can, under the right of self-determination, tolerate almost any institutional arrangement at the sub-state level, provided that the people concerned has determined its status in a free process. Concerning the term "autonomy", which term was used for the sub-state status of Kosovo under the 1974

---

[2] The requirement of effective participation was in 1992 introduced in the U.N. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (G.A.Res. 47/135(1992)). Article 2.2. of the Declaration emphasises the right of the persons belonging to minorities to participate effectively in cultural, religious, social, economic and public life, while Article 2.3. stipulates that persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.

[3] It is in this respect interesting to point out that General Recommendation No. 21 of the CERD Committee (U.N.Doc. CERD/48/Misc. 6/Rev. 2/1996) distinguishes between internal and external self-determination of peoples and holds that there exists a link between internal self-determination and the right of every citizen to take part in the conduct of public affairs at any level, as referred to in Article 5(c) of the CERD. In its General Comment on Article 25, Par. 2, of the CCPR, the U.N. Human Rights Committee makes a somewhat similar connection between Common Article 1 and Article 25 of the CCPR (U.N.Doc. CCPR/C/21/Rev. 1/Add. 7(1996)).

Constitution of Yugoslavia until 1989, we can probably still agree with the view of Hannum & Lillich, according to which autonomy could be viewed as "a relative term which describes the extent or degree of independence of a particular entity, rather than defining a particular level of independence which can be designated as reaching the status of 'autonomy'".[4] However, it should be kept in mind that no express right to autonomy or to federalism is created at the level of general international law. To the extent the right of self-determination has any effect at all for the internal legal orders of States, it may imply that a sub-state arrangement, for instance, an autonomy, is protected under that right, provided that the beneficiary of the arrangement is a distinct people. This may be the case, for instance, concerning the Gagauz in Moldova, *supra*. In other respects, the institutional solution is entirely in the hands of the constitution-maker of the State. This does not preclude the possibility that a State agrees in a special treaty to create a sub-State entity. Such a deal was stricken between Italy and Austria in Paris Peace Treaty of 1946, in which Italy agreed to "grant autonomy coupled with measures for the cultural identity of the German-speaking minority"[5] for South Tyrol.

However, the Kosovars have been denied both representative government and effective participation through the actions that started in 1989. At the moment, the international community is in the process of designing legal mechanisms through which Kosovo could re-emerge as a part of the Federal Republic of Yugoslavia. According to U.N. Security Council Resolution 1244(1999) of 10 June 1999, the aim of the international community is to promote "the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo," taking full account of annex 2 in the Resolution and of the Rambouillet accords (S/1999/648). Annex 2, in turn, starts "[a] political process towards the establishment of an interim political framework agreement providing for substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of UCK. Negotiations between the parties for a settlement should not delay or disrupt the establishment of democratic self-governing institutions". A position as an international protectorate reminiscent of the position of the Free City of Danzig on the basis of Articles 100-108 of the Versailles Peace Treaty between the Allied and Associated Powers and Germany should thus be excluded, so also a situation which the Saar had after World War I and World War II. Hence the discussion concerns institutional solutions within the Yugoslav constitutional setting to restore representative government and effective participation for the Kosovars.

What could be a somewhat comparable situation is the position of the Memel Territories in Lithuania after World War I. Under Article 99 of the Versailles Peace Treaty of 1919, Germany ceded Memel to the Allied Powers and promised to accept any settlement concerning the status of Memel. The territory, inhabited by Germans, Jews and Lithuanians, was put under the administration of France and was some kind of a protectorate of the League of Nations, but Lithuanian troops occupied the area in 1923. A council of ambassadors of the

[4] Hannum, Hurst & Lillich, Richard B., 'The Concept of Autonomy in International Law', in Yoram Dinstein (ed.), *Models of Autonomy*. New Brunswick, London: Transaction Books, 1981, p. 249.
[5] Schreuer, C., "Autonomy in South Tyrol", in Yoram Dinstein (ed.), *Models of Autonomy*. New Brunswick and London: Transaction Books, 1981, pp. 53-65.

Allied designed a new status for the territory which made Memel an autonomous region within Lithuania with its own representative body that possessed some legislative powers. In 1938, the National Socialists won the elections in Memel, and in 1939 Germany demanded the return of Memel to Germany, with which demand Lithuania complied. Here, the international community had an active role under the established rules of international co-operation, but the promising development of the autonomy arrangement was interrupted by World War II.

3. Conceptualisation of the constitutional options (unitary State – autonomy – federation) and the relationship between the European institutions (OSCE, CoE, EU) and sub-State entities

The unitary State has long been regarded as the principal form of State. A unitary State is a State in which all legislative powers are vested in one legislature at the national level and in which no delegation of exclusive legislative powers or even significant devolution of specifically delineated regulative powers exist. In Europe, for instance, Sweden could be an example of a pure unitary State.
However, at the moment, more than half of the countries in Europe are not totally unitary States, because they display features of devolution of regulative powers or of delegation of legislative powers either to self-governing regions or autonomous territories (e.g., Great Britain and Italy) and because a number of them are federal States (e.g., Germany and Austria). Hence the polities are much more varied than one might think at a quick glance and provide evidence of human inventiveness through the different forms of sub-state entities.
A core definition of a federation can contain two different elements. Firstly, the federal legislative body is organised so as to provide for equal representation of the constituent states of the federation in one chamber of the legislature, while the other chamber is normally directly elected by the inhabitants of the constituent states in a way which guarantees the proportional representation of the population in the federal legislature. Hence the “upper house” displays a symmetry by granting an equal number of seats to all constituent states, while seats in the “lower house” are distributed according to the number of inhabitants in the several states. Secondly, in a federation, the federal legislature and the central authorities have enumerated powers, which means that they are in the possession of special competencies or certain specified functions that, at least in theory, have been transferred to the federation by the constituent states. The latter, in turn, remain in the possession of the residual competencies, which allows the characterisation of the basis of their powers as a general competence. Hence the constituent states are empowered to deal with all the matters which are not explicitly reserved to the federal level. The idea underpinning the distribution of powers between the federal level and the state level and actually the whole definition of the federation is that the constituent states have retained at least some traces of their original sovereignty, albeit in a way profoundly circumscribed by the federation. For instance, the amendment of the federal constitution would, as a general rule, require the participation and consent of the constituent states. (In a confederation, the constituent States would retain a much more substantial part of their sovereignty.) In Europe, the following countries can be described as federations: Germany, Switzerland, and Austria as well as Belgium and Russia,

which, however, display certain features that modify their federalism. Nevertheless, federalism is normally a fairly symmetrical mode of organisation.
There does not exist any solid theory about autonomy or devolution, perhaps because autonomy arrangements are often very pragmatic *ac hoc* solutions that escape generalisations. However, if a provisional definition of autonomy were to be developed, the relationships between the central level and the sub-State level would be turned upside down. Firstly, the legislative body of the State would normally not consist of any organ, which would incorporate the official representation of the sub-State entity, although the inhabitants of an autonomous region might be granted a certain number of seats in the legislative body filled by means of elections in that particular constituency. Hence at the same time as the inhabitants of the autonomous territory have the right to elect their own self-governing bodies they participate in national elections on an equal basis with the other citizens of the State. This seems to be the idea incorporated in the Rambouillet Accords. Secondly, as concerns the powers held by the autonomous sub-State entity, the legislative powers would be enumerated and specified so that a special competence is created for the sub-State entity in certain fields, while the central government and the legislature of the State would at least in principle retain the general legislative competence or the residual powers. The idea underpinning this characterisation is that the sub-State entities do not possess any original sovereignty: they are constitutionally created and defined entities entrusted with powers transferred to them by the central state. Such autonomies would normally not have any great influence in, for instance, amendments to the national constitution, at least not in cases that do not affect the autonomy arrangement. The issue of legislative powers is crucial for the understanding of autonomies and their functioning. These powers constitute, at the level of the State, the core of the internal sovereignty of the State. Making laws is equal to the effective exercise of power over the territory of a State. In states where autonomies exist, a share of that internal sovereignty may have been devolved under the constitution of the country in such a way that both the legislature of the State and the legislature of the autonomous entity have exclusive legislative powers even in relation to each other, although they may also have concurring jurisdictions.
In Europe, at least the following countries create varying degrees of autonomy in their legal order: Finland, Denmark, Great Britain, France, Spain, Portugal, Italy, Ukraine and Moldova. Not all of these entities are created as exclusive legislative jurisdictions, but remain as jurisdictions with a certain measure of regulative powers. At least in Spain, where by the way Article 2 of the Constitution formulates a right to autonomy, the "autonomisation" of the country is so far-reaching that it approaches a federative arrangement. Autonomy arrangements introduce an asymmetrical element in the governance of the country. This is the case, for instance, in respect of the United Kingdom, where three distinct territories, Scotland, Wales and Northern Ireland, display a varying degree of devolution organised in form of self-government. The Northern Ireland arrangement, agreed upon in April 1998 between the parties to the conflict, there among the United Kingdom and the Republic of Ireland, was brought into force through an Act of the Parliament of England on 2 December 1999. The arrangement is actually to a certain extent a re-introduction of self-government of the kind that existed between 1921 and 1972. The significant feature of the British devolution is, however, that the law-making powers vested in the popularly elected assemblies of Scotland and Northern Ireland should conform to the Acts of the English Parliament

according to the principle of the sovereignty of Parliament. Hence, in the absence of a formal written constitution, there exist no such exclusive legislative powers in the UK, which would be independent of the legislative powers of the Parliament of England. It should nevertheless be remembered that at least some of the States that contain autonomy arrangements, such as Italy, define themselves formally speaking as unitary States.

On the basis of Article I.5(a) of the Rambouillet Accords, the Legislative Assembly of Kosovo seems to have such enumerated legislative powers. However, under Articles I.3 and I.4, the powers of the Federal Republic of Yugoslavia and the Republic of Serbia are enumerated, too, which does not conform to our provisional theory of autonomy (see above). Hence it seems that there will exist three different legislative powers in Yugoslavia which all have exclusive law-making powers in relation to each other in areas that are enumerated in the Rambouillet Accords.

Jurisdiction of a legislative or a regulative kind has, as indicated above, been created in sub-State entities in many countries, and the results of such activities have produced a number of federal states and states with autonomies. The powers accorded to the sub-State entities are of a varying character and vary from case to case according to the specificities of the aims to be achieved displayed by the arrangement. The various sub-State arrangements do not seem to follow any general pattern. For instance, the minority protection component is not present in all the sub-State arrangements, not even in all of the autonomy arrangements. The variation in the creation of the arrangements is particularly interesting in respect to the norm-hierarchical level at which any sub-State arrangement is established. The combined variation in the powers of the sub-State entities and the level of legislation is illustrated in Table 1, *infra*.

Table 1.: The constitutional variations sub-State entities in Europe[6]

Constitution

Legislative powers			**Regulatory powers**
States in federation Spain, Italy Åland Portugal Gagauzia (Åland bef. 1994)	**I**	**III**	Crimea Croatia
Greenland Faroe Islands	**II**	**IV**	Corsica

Ordinary Legislation

It is possible to conclude on the basis of the dimensions in the Table that all constituent states in the European federations can be placed in Section I of the Table. Furthermore, it is possible to conclude that at least those autonomies that have been placed in Section I are autonomies

[6] Markku Suksi, ‘On the Entrenchment of Autonomy’, in Markku Suksi (ed.), Autonomy – Applications and Implications. Dordrecht: Kluwer Law International, 1998, p. 169.

proper. These entities are organised on the basis of the national constitutions of their respective "host-countries", and special jurisdictions involving exclusive law-making powers have been created for them against the background of the national constitutions. The material fields of activity they possess vary a lot, but because they are entitled to make laws of their own, they exist within the ambit of Article 3 of the First Protocol to the European Convention on Human Rights (free elections at reasonable intervals by secret ballot). They may also, on the basis of their legislative powers, be able to enact such restrictions to the rights and freedoms guaranteed by the ECHR which are allowed by the various Articles of the European Convention.

Entities in Section II of the Table lack the formal constitutional delegation of law-making powers, but they nevertheless make their own laws, in this case on the basis of ordinary legislation adopted by the parliament of the State. From a formal point of view it could perhaps be possible to exclude them from autonomies proper, but the powers they exercise in spite of this make them, for all practical purposes, autonomies.

Although the entities in Section III have a certain constitutional basis, it would, however, seem as if their powers were of a non-legislative kind, limited to regulative or administrative jurisdiction and subordinated to ordinary legislative powers of the country concerned. Here the use of the term "autonomy" could already be qualified. Section IV represents cases which perhaps should not be discussed in terms of autonomy, but rather as special administrative regions.

It is difficult, on the basis of the 1974 Constitution of the Socialist Federal Republic of Yugoslavia, to fit in the "revoked" Autonomous Province of Kosovo in the Table. On the basis of Article 1 of that Constitution, the State was a community of voluntarily united nations and of their Socialist Republics and of the Socialist Autonomous Provinces of Vojvodina and Kosovo. Kosovo was, under that Article, regarded a constituent part of the Socialist Republic of Serbia. Article 4 of that Constitution tried to explain what an Autonomous Province is: it is an autonomous socialist self-managing democratic socio-political community based on the power of and self-management by the working class and all working people, in which the working people, nations and nationalities realise their sovereign rights, and when so specified by the Constitution of the Socialist Republic of Serbia in the common interests of the working people, nations and nationalities of that Republic as a whole, they do so also within the Republic. Hence the details of the autonomy of Kosovo were dependent on the Constitution of Serbia. However, the level of regulation of the position of Kosovo was clearly constitutional. At the same time, the powers accorded to Kosovo were probably (and please note this is pure speculation) such that they should not be exercised against the constitutions of Yugoslavia and Serbia or even the laws of Yugoslavia and Serbia. Therefore, the powers of Kosovo were, until their revocation in 1989, probably mainly of a regulative kind. This kind of a position for the powers of Kosovo would place Kosovo (1974-1989) in Section III of the Table. The reference to "substantial self-government" and to "substantial autonomy and self-government" for Kosovo in the S.C. Resolution 1244(1999) should probably be interpreted so as to mean the creation of an institutional solution in harmony with the principles of Section I of the Table. The Rambouillet Accords would meet this wish. However, Article 6 of the 1992 Constitution of the Federal Republic of Yugoslavia leaves it to the competence of a member republic, that is, Serbia and Montenegro, to organise its government and local self-government under its own constitution. Therefore, the

institutional solution created by the Rambouillet Accords should actually, at least under the Yugoslav Constitution, be inserted in the Constitution of Serbia, which in turn would make Kosovo a sub-sub-State entity.

The position of the different European structures in respect of sub-State entities varies considerably due to the normative aims the different structures have. Actually, only the OSCE is directly concerned with institutional arrangements for divided polities, mainly because of its conflict-prevention function. It is, however, not to be excluded that the other two structures, the Council of Europe and the European Union, could have an impact on divided polities through their mechanisms.

It was already concluded above, that the entities in Section I of the Table are relevant at least under Article 3 of the First Protocol to the ECHR. Hence the European human rights system probably does not protect such entities, but at least covers them. Moreover, the Council of Europe seems to treat all these entities as possible expressions of self-government of a higher order, as is evident, for instance, on the basis of the Draft European Charter of Regional Self-Government,[7] which has been drawn up under the auspices of the Congress of the Local and Regional Authorities in Europe. What self-government means, albeit at a local government level, within the framework of the Council of Europe is perhaps best expounded by the European Charter of Local Self-Government of 1985. According to Article 3.1. of the Charter, local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population. In this context, self-government implies, *inter alia*, elected assemblies, meaningful powers, safeguarded territorial boundaries of local government, and adequate financial resources of which at least a part derive from locally determined taxes and charges. The self-government intended for Kosovo under the Rambouillet Accords seems to meet the requirements of the European understanding of self-government.

The OSCE principles adopted at the Human Dimension Meeting in Copenhagen in 1990 connect autonomy and minority protection in Paragraph 35(2), according to which the "participating States note the efforts undertaken to protect and create conditions for the promotion of the ethnic, linguistic and religious identity of certain national minorities by establishing, as one of the possible means to achieve these aims, appropriate local or

---

[7] "*Article 2 - Foundation of regional self-government*

1. The principle of regional self-government shall be recognised as far as possible in the constitution.

2. The scope of regional self-government shall be determined only by the constitution, the statutes of the region, national law or international law.

3. The statutory provisions determining the scope of regional self-government shall, as far as possible, afford the regions specific protection by virtue of the procedures or conditions for their adoption.

Article 3 - Principle

1. Regional self-government denotes the right and the ability of the largest territorial authorities within each State, having elected bodies, being administratively placed between central government and local authorities and enjoying prerogatives either of self-organisation or of a type normally associated with the central authority, to manage, on their own responsibility and in the interests of their populations, a substantial share of public affairs, in accordance with the principle of subsidiarity.

2. In conformity with the provisions of the present Charter, the scope of regional self-government shall be determined by the domestic law of each State on the conditions set forth in Article 2, paragraph 2."

autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the State concerned". This connection has been further elaborated by the OSCE, for instance, in Ukraine, where the OSCE has been intensively involved in the negotiations leading up to the establishment of the Crimean Autonomous Republic, and in the 1999 Lund Recommendations on the Effective Participation of National Minorities in Public Life, a work commissioned by the OSCE High Commissioner on National Minorities. Hence it could be said that the OSCE facilitates the use of all kinds of pragmatic solutions to issues involving minority populations within the borders of the existing States. The OSCE's support for pragmatic and *ad hoc* institutional solutions can probably produce sub-State entities across all Sections in the above Table.

The position of sub-State entities in the European Union may be problematic in many ways, but especially in respect of their powers. Because the division of competencies in the Union is predominantly a matter between the Union and the Member States, the territorial sub-divisions of a Member State do not play any role. In fact, many of the sub-State entities, for instance, the Åland Islands, have experienced a decrease in their competencies due to the exclusive powers of the Union. Therefore the ever closer union between the Member States of the Union may, in fact, lead to problems concerning the sub-State entities and can even threaten their meaningful existence, at least in so far as the competencies of the Union overlap with the competencies of the sub-State entities. Anyway, autonomies created in the legal orders of the Member States of the European Union would normally qualify as regions and be entitled to seats in the Committee of Regions under Article 263 ECT. Hence at the same time as the European Union may cut down the competencies of the sub-State entities, it incorporates them in a formal body of the EC structures and gives them an advisory role. However, autonomies may also be treated as special regions of some kind under EC law, as is the case, for instance, with the Åland Islands that were granted certain exceptions from the regular application of EC rules at the point when Finland joined the European Union.

4. A case from the 1920s: the Åland Islands

When discussing territorial autonomy and minority protection, the model of the Åland Islands is often brought to the fore, and not without good reason. The Åland Islands may be presented as a case in which autonomy helped to solve a conflict situation. It is said that the Åland Islands today constitute the oldest autonomy in the world. The autonomy of this area has its background in the dispute about the national affiliation of the inhabitants of the Åland Islands. However, before analysing the Åland arrangement, some initial parameters should be set within which the situation before 1920 is recapitulated. The purpose of this is to indicate that solutions of this kind may not be universally relevant and applicable, but are tied to the particular circumstances surrounding the case in question. Therefore, instead of speaking about a model of autonomy one should probably mention the Åland Islands as a laboratory of autonomy.

Firstly, Finland and Sweden formed a single kingdom until 1809, when Finland was conquered by Russia and taken into the Russian Empire as an autonomous Grand Duchy, leaving a substantial Swedish-speaking population in Finland in the coastal areas of Southern, South-Western (including the Åland Islands), and Western Finland. Some Swedish-speakers may have retained

a longing for a reunification with Sweden until the 20th century. Secondly, the Åland Islands are geographically near to Stockholm, the Swedish capital. The Islands' strategic importance derived from this close proximity. Moreover, from the Åland Islands, it was possible to control large areas of the Baltic Sea.

Thirdly, a treaty under international law was concluded in 1856 between Russia, Great Britain and France on the demilitarisation of the Åland Islands leading to a distinct status of this territory in respect of military installations. Fourthly, it deserves to be repeated that Finland was an autonomous Grand Duchy of the Russian Empire. This arrangement was created in 1809 and codified in Article 2 of the 1906 Constitution of Russia, which concluded that "(t)he Grand Duchy of Finland, while it constitutes an indivisible part of the Russian State, is governed in its domestic affairs by special institutions on the basis of a special legislation". Apart from the plausible attempt to anticipate the 1921 decision of the League of Nations (see below) and the possible "model-effect" of the creation in 1919 of the Free City of Danzig under the Treaty of Versailles, the then recent Finnish experience as an entity with (relative) autonomy may be cited as an important factor conducive to the recognition of the Ålandic autonomy in 1920 and in 1922.

Fifthly, Finnish independence at the end of 1917 resulted in the separation of Finland from the multiethnic Russian Empire and in the creation of Finland as an independent state with one dominant linguistic group, parts of which aimed at the creation of a nation state (in the Form of Government (Constitution) Act of 1919, however, a nation with two equal languages, Finnish and Swedish). This development was probably perceived quite negatively on the Åland Islands. Sixthly, during the First World War, Russia deployed troops on the Islands and built military installations. Moreover, the Finnish Civil War at the beginning of 1918 resulted in the presence of military forces of the Whites, as well as units of the German and Swedish Army. The demilitarisation of the Åland Islands was in danger.

Seventhly, before the creation of Ålandic autonomy, the population of the Åland Islands was hardly viewed as a separate linguistic minority, but constituted a part of the Swedish-language population of Finland. Nevertheless, because of its geographically separated position (the area was quite difficult to reach before 20th century methods of communication were in place) the population of the Åland Islands developed the characteristics of a community and displayed distinct political aspirations (see below). However, whether the Islanders constitute a minority is debatable.[8] Currently the inhabitants of the Åland Islands display a strong "Ålandic" national identity in comparison with the Swedish-speaking population in Finland, which in general strongly identifies itself with Finland. Of a total population of 5.1 million inhabitants in Finland,

---

[8] See, e.g., Hannikainen 1993a, p. ff. and Hannikainen 1993b, p. 20, in which it is concluded that the Swedish-speaking population of the Åland Islands forms a distinct national community which should be considered as qualifying in international law as a national minority or equivalent to national minority, although not all of the most common criteria for minority status are fulfilled by the population of the Åland Islands. The criteria used by Hannikainen is using are 1) numerical inferiority to the rest of the population; 2) non-dominant position; 3) possession by the members of the minority of ethnic, religious or linguistic characteristics differing from those of the rest of the population; and 4) the display by the members of the group, even if only implicitly, of solidarity directed towards preserving their culture, traditions, religion or language. While the last criterion is of a subjective character, the other ones are of a more objective character. While the population of the Åland Islands would not seem to fulfil the third criterion, it could be argued that the decision of the League of Nations in 1921 recognised the Ålandic population as one possessing the necessary qualities.

some 300,000 (5.8 per cent) speak Swedish. The population of the Åland Islands amounts to more than 26,000 inhabitants, of which 25,100 are Swedish-speaking and 1,200 Finnish-speaking. Eightly, when the Form of Government (Constitution) Act was enacted in 1919, provisions providing language rights and facilitating even general systems of self-government of a higher order were incorporated into the Constitution. The former were realized in the form of linguistic guarantees on an equal footing for both language groups, but the latter never led to anything concrete (with the exception of a committee and its subsequent "emergency drafting" of the Ålandic autonomy legislation, see below). It should be noted that the Swedish-language population in Finland is not considered as a minority in Finnish law, but a population which has the same linguistic rights as the Finnish-speaking population. The Language Act (Statutes of Finland, SOF 148/22) that implements Sections 14 and 50(3) of the Form of Government (Constitution) Act combines the personal principle (the right to use ones own language in his or her case) with the territorial principle, which determines the linguistic character municipalities and administrative subdivisions as unilingually Finnish-speaking, unilingually Swedish-speaking or bilingual (with either Finnish or Swedish as the dominant language).

On the basis of these background elements, it is possible to conclude that the Ålandic autonomy arrangement is very much tied both to international and national politics and to international and national law.

But why is the Ålandic solution so attractive? In the contemporary world, its appeal seems to depend on its close relationship with the international law concept of self-determination. This concept, again, has various interrelated dimensions, some of which are relevant for areas which form parts of a state. In this respect, people's right to self-determination can be understood, *inter alia*, as a right of (a certain part of) the population to choose the state under whose authority they want to live (see above). This quite narrow version of the concept of self-determination had a tremendous appeal on the Åland Islands at the end of the 1910s and the beginning of the 1920s and resulted, *inter alia*, in the organization of two petition campaigns on the Islands advocating secession from Finland and accession to Sweden. However, the narrow principle of self-determination was not really applicable on the Åland Islands situation: there was no minority population which, on the basis of a peace treaty, was given the opportunity to exercise its self-determination with a view to choosing national affiliation. What the League of Nations actually did was that it applied certain conflict resolution techniques on the dispute between Finland and Sweden and confirmed the existence of an autonomy that had been created by Finnish law already a year earlier: the Council of the League of Nations replaced the population as the decision-making organ and the Covenant of the League of Nations with its dispute settlement mechanisms replaced the peace treaties. However, the end result was probably not given, but the result could perhaps have been the same as with the exercises of self-determination after World War I: the separation of the Åland Islands from Finland and the integration of the Islands with Sweden. After the consolidation of the position of the Åland Islands as an autonomous part of Finland, however, this issue has, with certain smaller exceptions of a mainly internal character, ceased to be contentious.

Already in August 1917, an unofficial assembly of the inhabitants of the Åland Islands had proposed that the area would secede from Finland and join Sweden. Moreover, the Åland Islands question involves two instances which are often termed unofficial referendums or opinion polls. Soon after the Finnish Declaration of Independence, at the end of December 1917, a petition campaign was undertaken on the Åland Islands to establish and support the wishes of

the inhabitants to secede from Finland and to join Sweden. Of the approximately 21,000 inhabitants of the Islands, approximately 12,500 persons had the right to vote, and about 8,000 of these were presented with a petition on the issue. 7,135 persons signed the petition addressed to "the king and people of Sweden" asking for measures to be undertaken leading to annexation by Sweden. A majority of persons with the right to vote can thus be said to have been in favour of union with Sweden.

Soon thereafter, a dispute about the Islands arose between Finland and Sweden. Although Sweden was not a party to the 1856 treaty establishing the Åland Islands as a demilitarized area, the matter was laid before the Paris Peace Conference in 1919 in order to make it possible to follow a similar path as Denmark had followed with regard to Schleswig. This plan did not succeed, although it was supported by another petition campaign, which was completed on 29 June 1919. This second petition was signed by 9,735 persons who supported union with Sweden, while 461 persons refused to sign the petition. In 1920, the League of Nations took the matter up on proposal by Great Britain, which was a party to the 1856 treaty. At this point, an Act on the Self-Government of the Åland Islands (SOF 124/20) was enacted by the Parliament of Finland, probably at least partly as a preemptive measure, the preparations for which had begun already in 1919. With this Act, the province of the Åland Islands gained its own Legislative Assembly with a general competence in fields that were not included in the enumeration of exclusive legislative powers of the Finnish Parliament. Hence the original grant of autonomy was more in conformity with the theory about federal organisation than with the provisional definition of the creation of autonomies in unitary States. However, because the inhabitants of the Åland Islands felt that the self-government legislation had been imposed upon them, the Assembly did not convene until 1922.

The position of the Provincial Governor as the representative of the President of Finland caused dissatisfaction and distrust with the arrangement. According to this Act on Self-Government, the President had, upon receiving an opinion from the Supreme Court, an absolute veto over the legislative enactments of the Legislative Assembly if the Ålandic Act violated the exclusive legislative powers of the State, or if the Act was in conflict with the good of the Republic. Courts of law of the State were in charge of interpreting the Ålandic Acts, too. At this point, the Åland Islands also received the right to use the proceeds of certain taxes and to levy some additional taxes and charges connected to these general State taxes. Many of these taxation powers were subsequently diminished and faded away altogether by the 1950s because the State abolished the relevant categories of taxes when restructuring its general taxation. However, at the same time the Åland Islands became entitled to a certain economic equalisation by the State determined by a delegation, if the taxes for the self-government functions rose above the average for corresponding functions elsewhere in Finland.

The Act on Self-Government included no specific right of domicile. Nevertheless, the inhabitants of the Åland Islands, that is, persons who were registered as residents of the Ålandic municipalities under a regulation that covered all Finland, were exempted from military service, a provision which has an obvious connection to the demilitarised status of the Islands. The Act contained provisions concerning the language of State officials in the Åland Islands, which was to be Swedish. The Supreme Court of Finland was given the competence to rule on disputes that may arise concerning the powers of the Governor, the Legislative Assembly, and the Government of the Åland Islands under the Act on Self-Government.

The Act on Self-Government was enacted on the basis of Section 60 of the 1906 Diet (Constitution) Act as an Act of Exception, following the amendment formula for the Constitution. This method of enactment constituted the Ålandic autonomy arrangement as an exception to the constitutional structure of administration, but, however, without as such making the Act on Self-Government a part of the formal Constitution of Finland or without declaring the Act a constitutional law. The special features of this legislative measure were included in Section 36 of the Act, according to which the Act on Self-Government could be amended only in the way established for the amendment of the Constitution and with the consent of the Legislative Assembly of the Åland Islands.

When the matter was dealt with by the League of Nations, Sweden requested in her submission to the Council of the League that the matter be decided by the inhabitants of the Åland Islands in a plebiscite. Although plebiscites were fashionable in such questions after the First World War, no popular vote was ever organized, but the investigation of the matter was carried out by two commissions. The first one, the so-called Commission of Jurists, concluded that the Åland Islands issue fell within the jurisdiction of the League of Nations, and the second one, the so-called Commission of Rapporteurs, maintained that the Åland Islands should remain under the sovereignty of Finland. On 24 June 1921, the League of Nations decided the territorial dispute in favour of Finland on condition that guarantees aiming, *inter alia*, at the Islanders' prosperity and happiness, would be established and that measures would be taken to demilitarise and neutralise the Islands. The guarantees relating to the inhabitants were to be included in the Act on Self-Government and would deal with the maintenance of the Swedish language as the language of school instruction, the maintenance of real estate in the possession of the inhabitants, the establishment under reasonable terms of the acquisition of the right to vote of persons who move to the Islands, and the appointment of a person as Governor who enjoys the confidence of the inhabitants. The final solution agreed upon by Finland and Sweden and adopted by the League of Nations confirmed the existing autonomy of the Åland Islands and supplemented it with some additional features (for the text of the Agreement in the French language, see Appendix I) mentioned above.

Although this so-called Åland Agreement was not a treaty under public international law, in Finland it led to the enactment of the Act containing Certain Provisions concerning the Inhabitants of the Åland Islands (SOF 189/22) or the so-called Guaranty Act in 1922. This Act was an amendment of and an addition to the Self-Government Act of 1920, enacted in the order prescribed for constitutional amendments. It regulated the adoption of the Governor by the President with the agreement of the Chairman of the Legislative Assembly (Section 1) and stipulated that the Legislative Assembly and the Ålandic municipalities are not obliged to maintain or support other schools than those in which Swedish is the language of instruction (Section 2). Moreover, in State schools located in the Åland Islands, the Swedish language would be the language of instruction. Finally, the Finnish language was not to be taught in primary schools maintained or supported by the State or a municipality unless the municipality in question consented to this. According to Section 3 of the Guaranty Act, a citizen of Finland who moves to the Åland Islands acquires there the municipal and Ålandic right to vote only after he or she has been legally resident in the Åland Islands for five years. Finally, under Section 5, a restrictive regulation concerning property was introduced: if a piece of real property had been sold to somebody whose legal residence was not in the Åland Islands, the authorities of the Åland Islands, the municipality within which the property was situated, or a private person

legally resident in the Åland Islands had the right to redeem the piece of property at a certain fair price. None of these laws created any right of domicile, limited to the inhabitants of the Åland Islands, but the regulations concerning the right to vote contained the basis for such a concept.

The League of Nations settlement gave the rights granted under this autonomy arrangement a collective character. Section 6 of the Guaranty Act of 1922, supplementing the first Autonomy Act of 1920, contained provisions for a situation where the Legislative Assembly of the Åland Islands might present complaints or notes about the implementation of the Self-Government Act and Guaranty Act. In such a situation, the Government of Finland would add its own observations to the complaint or note and pass on the issue to the Council of the League of Nations so that the Council could supervise the implementation of the provisions and, in case the matter is judicial, obtain an opinion from the Permanent Court of International Justice. This procedure became a desuetudo when the League of Nations system collapsed, but it was eliminated from Finnish legislation only in 1951, when the new Autonomy Act repealed the Acts of 1922 and 1920. However, despite the disappearance of the mechanism of supervision, the autonomy arrangement itself has been regarded as one of customary law,[9] while at least the demilitarisation and neutralisation may perhaps be regarded as a so-called objective regime under international law.[10]

The 1951 Autonomy Act (SOF 670/51) confirmed the basic elements of the arrangement of the 1920s, but created at the same time a *specific right of domicile*, which defined the group of persons who were to be considered beneficiaries of the special features of autonomy, that is, the right to vote and stand as candidate in municipal and Ålandic elections, acquisition and possession of real estate,[11] the right to carry out so-called regulated branches of trade,[12] and exemption from military service. The definition of the right of domicile created at this point a distinction between the inhabitants of the Åland Islands and those of mainland Finland that was more protective of the former than under the previous legislation, while the definition may have had a discouraging effect on persons from the mainland as concerns their intention to move to the Åland Islands. This Autonomy Act made the countours of autonomy more specific and provided more detailed regulations concerning the powers and functioning of autonomy. At this point, an enumerated list replaced the more general clause in defining the competences of the Legislative Assembly. From this point on, the division of powers between the Parliament of Finland and the Legislative Assembly of the Åland Islands conformed better with our provisional theory about autonomy. As concerns the administrative tasks and possible conflicts

[9] Lauri Hannikainen, *Ahvenanmaan itsehallinnon ja ruotsinkielisyyden kansainoikeudelliset perusteet.* Turku: Åbo Akademin ihmisoikeusinstituutti, 1993, pp. 79-102.

[10] Ibid., pp. 103-130.

[11] A special Act on the Purchase of Real Estate (SOF 3/75) was enacted for the first time in 1938 (SOF 140/38) and amended in 1951 (SOF 671/51). The important change that took place in 1975 was that under the previous law, anybody could buy real estate on the Åland Islands, but faced, in the absence of the right of domicile, the risk of the property being redeemed by the categories mentioned. However, under the 1975 Act, an advance permit by the Government of the Åland Islands is required of persons who are not in the possession of the right of domicile before they can purchase the property.

[12] However, the right of trade was not exclusively reserved for those who had the right of domicile, but regulated trades could also be carried out by persons who had had uninterrupted legal residence in the Åland Islands for five years.

between the administrative authorities of the State and the Åland Islands in respect of these, the Supreme Court was given the competence to rule on them upon an opinion of the Åland Delegation. Within the framework of the legislative powers, the boundaries of the law-making capacity of the Legislative Assembly could be efficiently supervised by the President of the Republic, who could veto an Ålandic Act upon receiving an opinion from the Supreme Court. However, the authorities of the Åland Islands received no corresponding remedy for situations in which the legislature of the Republic of Finland interfered with the legislative powers of the Legislative Assembly. This asymmetry is one element distinguishing the Ålandic arrangement in Finland from a federative arrangement.

The current Autonomy Act was enacted in 1991. The 1991 Autonomy Act strengthened the self-government of the Åland Islands and restricted the State's supervision. This was carried out especially by expanding the legislative competences of the Åland Islands (e.g., regulations concerning use of the flag of the Åland Islands, leasing, historical sites, social care, sub-soil resources (in respect of which there is a divided competence with the State), the sale of alcoholic beverages, archives, postal affairs, radio and telecommunications) as well as giving the Åland Islands more administrative powers (for the legislative powers of the Åland Islands and the State of Finland, see Appendix II).

A more detailed regulation concerning the language of instruction was included in the Act to provide more protection of the cultural identity of the inhabitants of the Åland Islands. Moreover, the acquisition of a certain proficiency in the Swedish language as a condition for the right of domicile was added to the Act. The special rights tied to the possession of the right of domicile were kept more or less in the same form as in the 1951 Autonomy Act, with the exception that the right of a person without the right of domicile to exercise a trade or profession in Åland for personal gain may be limited by an Ålandic Act.

The monopoly of the Swedish language on the Åland Islands may, however, create a so-called 'minority in minority' problem in respect of Finnish-speaking persons (about 1100 or 4.5 per cent of the population) residing in the Åland Islands. Although Finnish-speakers could, if they wanted, create a private school on the Åland Islands, the language provisions may contain conflicts with the provisions of the 1960 UNESCO Convention Against Discrimination in Education. The *Belgian Linguistics Case* of the European Court of Human Rights would, in turn, seem to indicate that there is no such discrimination against Finnish-speaking pupils in the Åland Islands that would be prohibited under the European Convention on Human Rights: there would seem to exist "legitimate and objective grounds to keep the schools of the Åland Islands monolingually Swedish" at the same time as the present system would not seem to "involve disproportionality between the means employed and the aim sought".[13] There has been a certain discussion concerning the relationship between the Ålandic arrangement and the various human rights conventions binding on Finland. It has been suggested that the 1921 decision of the League of Nations could be considered a *lex specialis*, but it would seem as if most legal experts gave precedence to Finland's obligations under human rights conventions according to the principle of *lex posterior*.[14]

[13] Lauri Hannikainen, Cultural, Linguistic and Educational Rights in the Åland Islands. An Analysis in International Law. Helsinki: the Ministry of Foreign Affairs, 1993, p. 38 f.

[14] Ibid., p. 53 f.

The position of the Åland Islands was and is special at the level of the formal Constitution. In the multi-documentary Constitution of Finland consisting of the Form of Government (Constitution) Act, the Parliament (Constitution) Act, and two constitutional acts pertaining to the form and procedure of the Court of the Realm, which all have been enacted in accordance with the qualified procedure prescribed for legislation at the constitutional level and which all define themselves as constitutional laws, the Åland Islands used to be referred to only in Section 33 of the Parliament (Constitution) Act. Before 1 March 1994, this article stated that "(s)eparate provisions shall apply on the right of the Åland Legislative Assembly to submit initiatives" to the Parliament of Finland. According to an amendment to the Form of Government (Constitution) Act, creating Section 52a which entered into force on 1 March 1994, the Åland Islands have self-government in accordance with separate enactments. At the same time, Section 33 of the Parliament (Constitution) Act was amended so as to include a provision according to which the procedure of enactment concerning the Autonomy Act of Åland Islands and the Act on Acquisition of Land on the Åland Islands is the one established in the these laws. Moreover, Section 33 contains a provision according to which the Legislative Assembly of Åland has the right to present legislative initiatives to the Finnish Parliament according to separately enacted provisions.

Does the above characterization mean that the Åland Islands enjoyed a very weak constitutional status before 1994? On the contrary, despite the fact that the Åland Autonomy Act and the Act on Acquisition of Land on the Åland Islands do not declare themselves to be constitutional laws, it could even possible to conclude that their hierarchical status may, in fact, be *higher* than that of the other four constitutional laws: both the Autonomy Act and the Land Acquisition Act stipulate (Section 69 and Section 17, respectively) that amendments to these laws are made only in the order established for the amendment of the Constitution in Section 67 of the Parliament (Constitution) Act[15] and with the consent of the Legislative Assembly of Åland. However, the Finnish Constitution does not regard these two Acts relating to the Ålandic autonomy arrangements as Acts of a formally higher order than the other Constitutional Acts, but rather as Acts of Exception to the Constitution. As concerns Ålandic consent to amendments to the Autonomy Act, Section 69 of this Act requires materially identical decisions of the Finnish Parliament and the Legislative Assembly of Åland, so that the Ålandic decision is made by a two-thirds qualified majority. The Land Acquisition Act does not, in the first place, according to Section 17, require any super-majority in the Legislative Assembly of Åland, but leaves this particular entrenchment and the raising of the decision-making threshold to the two-thirds level to be determined in an Ålandic Act (which itself must be enacted in that manner).

Already before 1994, the position of the Åland Islands was therefore clearly entrenched: the Finnish legislature could not rid itself of the Åland Islands or alter Åland's formal or material status by using only those legislative means which are at its own disposal. With the amendments of 1994 to the Finnish Constitution, the position and self-government of Åland have been properly anchored in the Constitution of Finland and thereby further entrenched. Hence the Åland Islands seem to enjoy a strong position: we may describe the constitutional setting of the Islands before 1994 in terms of a special and regional entrenchment, special meaning here the

[15] A simple majority in favour of the amendment in one Parliament and a two-thirds majority in a new Parliament convening after elections or, a decision on urgency of the amendment with a five-sixths majority and adoption by two-thirds by the same Parliament.

requirement of the constitutional amendment formula with a two-thirds majority in Parliament for alterations of the Autonomy Act and regional meaning here the requirement of Ålandic consent for any modifications to the Autonomy Act. Moreover, after amendments to the Finnish Constitution on 1 March 1994, it now also includes a clear general entrenchment of the Åland Islands arrangement. In this way, the constitutional setting of the Åland Islands has become even more fixed than it was before.
Referring to the material Constitution, Section 1 of the Act on the Election of Members of Parliament (SOF 391/69) creates the Åland Islands as one constituency from which one MP shall be elected to the Finnish Parliament. This is a special arrangement that undoubtedly contains a strain of federalism, but it must at the same time be noted that the Ålandic constituency has more or less the same number of voters as the average number of votes in relation to the seats in the Parliament elsewhere in Finland.

5. A case from the 1990s: Tatarstan and "Accommodative Federalism" in Russia

The Russian Federation is a federal State. According to Article 5 of the 1993 Constitution of the Russian Federation, the Russian Federation shall consist of republics, territories, regions, federal cities, and autonomous regions and autonomous areas, which shall be equal subjects of the Russian Federation. As a subject of federation, each republic shall have its own constitution and legislation, while a territory, region, federal city, autonomous region and autonomous area shall have its own charter and legislation. The federated structure of the Russian Federation shall, according to the same Article, be based, *inter alia*, on the equality and self-determination of the peoples in the Russian Federation. Hence the concept of self-determination is here used in an internal meaning and its scope made dependent on the contents of the federal constitution. Under Article 65, in all 91 different kinds of subjects of federation can be identified, and the listing of the subjects indicates that a number of peoples, not only populations, are involved in the constitutional structures of Russia. Hence there is a constitutional concept of self-determination for the various peoples that results in the creation of certain law-making powers in their institutions (see below). Although the point of departure is equality between the different subjects, the republics have a specific right to institute their own state languages, which shall be used alongside the state language of the Russian Federation in bodies of state power, bodies of local self-government and state institutions of the republics.
Article 71 of the Federal Constitution creates an exclusive jurisdiction for the federation, while Article 72 provides for a joint jurisdiction of the Russian Federation and the subjects of the Russian Federation. An exclusive jurisdiction is created for the subjects of federation by Article 73 outside of the jurisdiction of the Russian Federation and the powers of the Russian Federation and outside the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation. Concerning these matters, framed as residual powers, the subjects of the Russian Federation shall exercise the entire spectrum of state power. Because the subjects of federation have these residual powers and because these subjects seem to give expression to the existence of certain peoples or populations, it seems as if a certain self-determination in the meaning of self-government were indeed created for the various subjects. To the extent that federal laws are enacted within the framework of the exclusive

jurisdiction of the federation or the joint jurisdiction of the federation and the subjects, laws and other regulatory acts of the subjects shall conform to the federal laws, as well. This clear-cut hierarchy of norms is, however, inverted inside the exclusive jurisdiction of the subjects of the federation, where, according to Article 76, Paragraph 6, the norm of the subject shall apply.[16] On the basis of this, it should be possible to conclude that the subjects of federation have a position, which according to Table 1, above, would justify a place in Section I.

What the reference to self-determination in the Russian Constitution could mean is perhaps illustrated by the so-called Tatarstan case from the first Constitutional Court of Russia,[17] handed down before the enactment of the 1993 Constitution, which was dealt with above. Here, the national level is perhaps a little bit more illuminating than the international level as concerns judicial interpretations that relate to self-determination and the *pouvoir constituant.* It must be remembered when reading this decision that the Constitution of 1993 had not yet been adopted when the decision was handed down by the court.

A referendum was planned for 21 March 1992 in the Autonomous Republic of Tatarstan within the Russian Federation on the following question: "Do you agree that the Tatarstan Republic is a sovereign state and a party to international law, basing its relations with the Russian Federation and other republics and states on treaties between equal partners? Yes or no?" The Constitutional Court of the Russian Federation ruled, *inter alia,* that the the Referendum Law of Tatarstan conformed to the Constitution of the Russian Federation. However, the referendum itself was held to be unconstitutional under Articles 70, 71, and 78 of the Constitution of the Russian Federation with respect to that part of the question which considered Tatarstan a subject of international law and which stated that the relations between Tatarstan and the Russian Federation, other republics, and States were based on treaties between equal partners. The reason for its unconstitutionality was the unilateral alteration of the national and governmental structure of the Russian Federation, which would have meant that Tatarstan did not belong to the Federation. By submitting the definition of the position of the republic to a referendum, the Supreme Council of Tatarstan had tried to make it into a norm of the highest order, approved by the people. Therefore the measure was not only of an implementing character in relation to the Declaration of Sovereignty issued by Tatarstan on 30 August 1990, but also a normative issuance which would determine the direction and content of the legislative process. In this respect, the Court seemed to understand the referendum as an exercise of the *pouvoir constituant* of some kind (although it was not entirely an instance of constitution-making) and of the right

[16] According to Article 5, Paragraph 2, a republic, that is, a constituent state or a subject of federation, shall have its own constitution and legislation. A territory, region, federal city, autonomous region and autonomous area shall have its own charter and legislation. See also the Federation Treaty (Treaty on the Delineation of Spheres of Jurisdiction and Authority Between Federal Government Bodies of the Russian Federation and the Government Bodies of the Sovereign Republics Belonging to the Russian Federation) of 31 March 1992 and an attached Protocol to the Federation Treaty, Treaty on the Delineation of Spheres of Jurisdiction and Authority Between Federal Government Bodies of the Russian Federation and the Government Bodies of Krays, Oblasts, and the Cities of Moscow and St.Petersburg of the Russian Federation and an attached Protocol to the Federation Treaty of 31 March 1992, Treaty on the Delineation of Spheres of Jurisdiction and Authority between Federal Government Bodies and the Government Bodies of the Autonomous Oblast and Autonomous Okrugs Belonging to the Russian Federation of 31 March 1992, and the Decree of the Congress of People's Deputies of the Russian Federation on the Federation Treaty of 10 April 1992, all published as an appendix to the 1993 Constitution of Russia in Blaustein - Flanz (eds), *Constitutions of the Countries of the World*, as issued in May 1994.

[17] Decision no. 671 of 13 March 1992 by the Constitutional Court of the Russian Federation

of self-determination,[18] but considered such a possibility as pre-empted under the 1978 Russian Constitution at least to the extent it might involve a unilateral secession.[19] The Court also raised objections concerning the unclear formulation of the question.

However, the argumentation of the Court was not only based on the (extensively amended) 1978 Constitution of the Russian Federation, but also involved considerations of international law. The Court stated that Tatarstan had the right to submit a question on its constitutional status to the people, because this right followed from the people's right of self-determination. This right was guaranteed domestically as well as internationally. As to the latter, the Court referred to common Article 1 of the Covenants of 1966, ratified by the Supreme Soviet of the USSR on 18 September 1973, to the UN Declaration on Friendly Relations,[20] to Article 29 of the Universal Declaration of Human Rights, to the UN General Assembly Resolution 41/117(1987) on the Indivisibility and Interdependence of Economic, Social, Cultural, Civil and Political Rights,[21] and to the CSCE commitments Russia had taken upon itself.[22] The Court viewed the international documents as emphasizing that the right of self-determination should not be invoked for the purpose of disrupting the unity of a state and a nation. Hence without denying the people's right of self-determination, which could be realized by means of a legal act of will, such as the referendum, the Court concluded that two elements of international law, namely the requirement of territorial unity and the observance of human rights,[23] did limit the right of

[18] Such an understanding is not too far-fetched against the background of, for instance, the fact that the territory concerned was conquered by the Russians in 1552, the fact that half of its population consists of ethnic Tatars, and the fact that there does seem to exist a certain "national sentiment" in Tatarstan.

[19] In its judgment in the so-called Chechnya Case of 31 July 1995 (translated into English by the Federal News Service Group and published by the Council of Europe/European Commission for Democracy through Law, CDL-INF(96)1 on 10 January 1996), the Constitutional Court of the Russian Federation concluded that state integrity is one of the foundations of the constitutional system of the Russian Federation and that the status of a subject of the Russian Federation may only be changed by mutual agreement between the Russian Federation and the subject of the Russian Federation in accordance with the federal constitutional law.

[20] In its judgment in the so-called Chechnya Case of 31 July 1995 (translated into English by the Federal News Service Group and published by the Council of Europe/European Commission for Democracy through Law, CDL-INF(96)1 on 10 January 1996), the Constitutional Court of the Russian Federation concluded, by referring to the Friendly Relations Declaration of 1970, that the constitutional goal of preserving the unity of the Russian State accords with the universally recognised international legal principles concerning the right of nations to self-determination, which could not accept the dismemberment or complete disruption of territorial integrity or political unity. In the judgment, the Court also discussed Article 15, part 4, of the Russian Constitution, according to which the universally recognised principles and norms of international law and international treaties are a component part of the Russian legal system and must be observed in good faith, including by being taken into account in internal legislation. It would seem that this decision employs the same open attitude to prescriptions of international law as the Tatarstan Case, but perhaps only to the extent that grounds can be found that support the integrity of Russia.

[21] This Resolution confirms the GA Res. 32/160(1977) concerning Alternative Approaches and Ways and Means within the United Nations System for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms.

[22] Helsinki 1975, Vienna 1986, Copenhagen 1990, "and other documents of international law". The treatment of the rather political OSCE documents as sources of law is very interesting, but they may be understood here as expressing and sustaining principles of hard international law, found, *inter alia*, in treaty law.

[23] Territorial integrity is a notion which has been used, for instance, in the Declaration on Friendly Relations, *supra,* but the notion of human rights as limiting self-determination may be somewhat confusing: normally, a better realization of human rights is sought by means of self-determination. However, in this case the reference to human rights might be understood as the human rights of the Russian population in the territory declaring independence. This reading of the decision could make sense against the background of the often negative experiences that the

self-determination. Therefore, and because the Constitution of the Russian Federation did not contain any right of secession for a republic, Tatarstan's attempt to acquire more self-determination than the Republic already had was considered impermissible.
This decision seems to indicate that, at least according to the former Constitutional Court of Russia, the *pouvoir constituant,* especially when understood as an equivalent to the right to self-determination, is to some extent limited by international law.
The chaotic situation in Russia at the time of the decision is illustrated by the fact that the decision of the Constitutional Court had no effect in Tatarstan: the referendum was held on 21 March 1992 according to the plans that had been declared unconstitutional by the Court, and in the referendum, a clear majority of the voters answered the above question in the affirmative. After the vote the legislature of the Republic of Tatarstan adopted and declared a new Constitution in accordance with the result of the referendum and thus tried to give effect to the notion of the *pouvoir constituant*. However, despite the popular decision and the new Constitution, Tatarstan found no ways to assert its "independence": it has since claimed to be a sovereign State that has voluntarily joined the Russian Federation and that it consequently is free to leave the Federation at any time, but the Republic was nevertheless included as one of the Subjects of the Federation in Article 65 of the 1993 Constitution of the Russian Federation, and finally in February 1994, the Republic of Tatarstan signed a formal Agreement of Federation with Russia, which guarantees to Tatarstan a better position in the Federation, for instance, concerning economic decision-making than the other subjects of the Federation generally speaking have. Tatarstan has kept its own Constitution (which it has the right to under the 1993 Constitution of the Russian Federation) and claims to have associated itself with Russia, but not to have acceded to or integrated itself with the same. Perhaps the reference to association with the Russian Federation should, according to the interpretation of Tatarstan, be understood as association in terms of the Friendly Relations Declaration (see above).

6. Concluding Remarks

This paper suggests that self-determination can imply self-government both at the State and at the sub-State level. In so far as self-determination is created against the background of international law, it should also at a sub-State level produce an institutional arrangement which acquires a share in the totality of internal self-determination of the State in question. To this end, elaborate constitutional mechanisms are required for the creation of a devolved share of exclusive legislative powers in the sub-State entity, which may be a constituent state of a federation or an autonomous territory.
Very little research has so far been conducted in the area of the reasons for the success and failure of sub-State arrangements. The durability of autonomy arrangements may be regarded as one indicator of success, and results indicate that significant international involvement in the establishment process of an autonomy as well as in the post-implementation of the agreement correlates in a positive way with a high durability level. This certainly was the case in relation to the Åland Islands, and it should be an encouraging element in relation to

---

Russians forming ethnic minorities in territories of the former Soviet Union have got when these territories have declared themselves independent and tried to cut the ties to Moscow.

the situation in Kosovo. However, “the higher the degree of militarisation of a conflict preceding the establishment of an autonomy, the less likelihood there is of high autonomy durability”.[24] The cases of the Åland Islands and Tatarstan never escalated into military actions, which may be one reason for their durability. There is no doubt, however, that the degree of militarisation was and is considerable in relation to Kosovo, and against this background, the prognosis is not too good, unless a controlled decrease of militarisation is achieved.

According to the existing research, the internal conditions for autonomy nevertheless seem more important than the external. Hence the emphasis on constitutional and political solutions at the national level is important. The processes aiming at internal solutions started by S.C.Res. 1244(1999) and followed up, for instance, by IAI and UNA/USA are certainly necessary against that background. The cases of the Åland Islands and Tatarstan offer many pieces of valuable information about institutional design. Recent research suggests, however, that “autonomies within democratic states are more likely to be durable than other autonomies”.[25] The Åland Islands has existed in a democratic State from the beginning, while Tatarstan is a part of a newly democratised State which still lives through a certain period of transition, although the constitutional components have already been established. No such democratisation has yet taken place in Yugoslavia (or Serbia, for that matter) which would work in this direction and support the durability of any autonomy solution for Kosovo. The internal dimension may also be more important than the international in terms of the possible breaking up of autonomies. For instance, “a major threat to autonomies is major structural changes in the state system that affect the central government”.[26] No such changes have occurred in Finland since the creation of the autonomy of the Åland Islands, while the Tatarstan case suggests that situations of change may open a door of opportunity for a development of the constitutional position of a sub-State entity. Such dramatic changes may take place also in Yugoslavia in the future, and the function of the international community could then be to speak for the necessary sub-State solutions.

“It seems that “weak states” make “weak autonomies”. However, the picture is not that simple. As was argued concerning the connection between democracy and autonomy, the economic factor may be important, but some cases show that this is not necessarily true. Economically weak states, then, may not necessarily make weak autonomies. Politically weak, or unstable, states may be a greater threat to an autonomy. Having a different political structure within one’s borders may provide a tempting excuse for governments that seek explanations for political failures. This is, however, only one side of the coin. The political stability and culture of an autonomy within a politically weak state, is probably not so different from that of the central government. Thus, challenging political manoeuvres against the central government may well have their source in internal autonomy politics.”[27]

The durability issue may, especially in its internal form, translate itself to the method of entrenchment which the sub-State arrangement is subject to. With entrenchment is meant

---

[24] Kjell-Åke Nordquist, ‘Autonomy as a Conflict-Solving Mechanism – an Overview’, in Markku Suksi (ed.), *Autonomy – Applications and Implications*. Dordrecht: Kluwer Law, 1998, p. 72 f.

[25] Ibid.

[26] Ibid.

[27] Ibid.

various legal guarantees for the permanency of the arrangement. It is possible to distinguish between at least six forms of entrenchment. Firstly, there may exist a *general entrenchment*, which means that sub-State arrangements are established in the national constitution. A *semi-general entrenchment* can be distinguished in situations where the sub-State arrangement is originally created in an organic law under the constitution of the country. Secondly, it is possible to distinguish *a regional entrenchment*, which 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. Thirdly, a *special entrenchment* exists in situations in which the statute outlining the more practical modalities attached to the sub-State can be amended only according to a special amendment rule that complicates the amendment of the statute. Fourthly, an *international entrenchment* may come about in situations in which the international community guarantees a sub-State arrangement in the creation of which it perhaps has participated. Fifthly, a *treaty-based entrenchment* is present when, for instance, two States agree in a formal treaty that one of them creates a sub-State arrangement for a minority in its territory. Sixthly, it is possible to envision an *entrenchment under the right of self-determination*, which could protect existing sub-State arrangements against weakenings against the will of the population, provided that the beneficiaries of the arrangement could be characterised as a people.

The Åland Islands case involves at least the general, regional, special and international forms of entrenchment and is a pointer to the direction that elaborate and overlapping methods of entrenchment may create stability for the arrangement. The Tatarstan case, in turn, is a pointer in the direction that such entrenchment may be important also for the State so that no unilateral changes in the status of the sub-State entity can take place and lead to the disruption of the territorial unity of the State. Both the Åland Islands case and the Tatarstan case point in the direction that there exist no generally applicable solutions, but the solutions must be, at least to some extent, tailor-made in respect of the particularities of the case. However, at the same time as a sub-State arrangement is designed for a certain population and their representative government and effective participation is guaranteed, it is important to make sure that the arrangement contains safeguards for a possible “minority in minority” situation so that the majority population in the State or other smaller populations would not feel themselves threatened by the sub-State arrangement. This is important, because the sub-State entity would normally have exclusive legislative powers within certain areas, and on the basis of these powers, the authorities of the sub-State entity may be in a position to exercise public powers in relation to the minorities within that entity.

The idea behind the creation of all kinds of special jurisdictions in the form of sub-State entities is to make all parties more or less happy. None of the parties can have its way completely, but already a substantial influence over issues that are important for the situation at hand may help to create a positive atmosphere. The Åland Islands may be seen as a practical illustration of this: a medical survey was conducted in Finland with a view to finding out why the general level of health of the Åland Islanders was higher than that of the rest of Finland, and the relevant factor that could be established as an explanation was the positive effects of the self-government of the area on the possibilities of the inhabitants to meaningful self-realisation of their needs and aspirations. At least in this respect, the basic aim of the 1921 Settlement before the Council of the League of Nations have been realised.

The international community does not have any established procedures to deal with situations of the kind that have emerged in Kosovo. However, case by case, certain patterns may develop. It may be premature to speak about the necessity of the parties to submit to such patterns as established in advance for this kind of situations, but it would probably be important to develop, within the framework of the United Nations, some models of action that can be lifted in where needed and on the basis of which more permanent solutions can be sought for.

APPENDIX I:
PROCÈS-VERBAL DE LA DIX-SEPTIÈME SÉANCE DU CONSEIL, 27 JUIN

Présents: Tous les représentants des Membres du Conseil et le Secrétaire général.

L'Espagne est représentée par M. DE REYNOSO, et le Brésil par M. BLANCO.

Les représentants de la Finlande et de la Suède prennent place à la table du Conseil.

M. HYMANS rappelle que le Conseil a reconnu que la meilleure manière d'arriver à une solution, en ce qui concerne les garanties, serait de la rechercher par un accord entre les représentants de la Finlande et ceux de la Suède, avec le concours d'un Membre du Conseil. Il déclare que les conversations prévues ont eu lieu sous sa présidence et qu'il en apporte le résultat sous la forme d'un texte précis qui sera, si le Conseil l'adopte, joint à sa résolution du 24 juin.

Il donne lecture du texte suivant, qui contient l'accord auquel sont arrivées les deux parties:

"1. La Finlande, résolue à assurer et à garantir à la population des Iles d'Aland la préservation de sa langue, de sa culture et de ses traditions locales suédoises, s'engage à introduire à bref délai dans la loi d'autonomie des Iles d'Aland du 7 mai 1920 les garanties ci-dessous:

"{2.} Le Landsting et les Communes d'Aland ne sont, dans aucun cas, obligés d'entretenir ou de subventionner d'autres écoles que celles où la langue d'enseignement est le suédois. Dans les établissements scolaires de l'Etat, l'enseignement se fera également dans la langue suédoise. Sans le consentement de la commune intéressée, la langue finnoise ne peut être enseignée dans les écoles primaires entretenues ou subventionnées par l'Etat ou par la commune.

"3. Lorsqu'un immeuble situé à Aland est vendu à une personne qui n'a pas son domicile légal dans la province, toute personne y domiciliée légalement, ou le Conseil de province, ou bien la commune dans laquelle l'immeuble est situé, a le droit de racheter l'immeuble à un prix qui, faute d'accord, sera fixé par le tribunal de première instance (Häradsrätt) en tenant compte du prix courant.

"Des prescriptions détaillées seront fixées par une loi spéciale concernant la procédure du rachat et la priorité entre plusieurs offres.

"Cette loi ne peut être modifiée, interprétée ou abrogée que dans les mêmes conditions que la loi d'autonomie.

"4. Les immigrants dans l'archipel d'Aland jouissant des droits de citoyen en Finlande n'acquerront le droit de suffrage communal et provincial dans les Iles qu'après cinq ans de domicile légal. Ne seront pas considérées comme immigrantes, les personnes qui ont eu précédemment cinq ans de domicile légal dans les Iles d'Aland.

"5. Le gouverneur des Iles d'Aland sera nommé par le Président de la République finlandaise, d'accord avec le Président du Landsting des Iles d'Aland. Au cas où cet accord ne pourrait se réaliser, le Président de la République choisira le gouverneur sur une liste de cinq candidats, désignés par le Landsting et présentant les garanties requises pour la bonne administration des Iles et la sécurité de l'Etat.

"6. La province d'Aland aura le droit d'employer pour ses besoins 50 % des revenues de l'impôt foncier, outre les revenus prévus par l'article 21 de la loi d'autonomie.

"7. Le Conseil de la Société des Nations veillera à l'application des garanties prévues. La Finlande transmettra au Conseil de la Société des Nations, avec ses observations, toutes plaintes ou réclamations du Landsting d'Aland au sujet de l'application des garanties susdites, et le

Conseil pourra, au cas où la question serait de nature juridique, consulter la Cour permanente de Justice internationale."

Le Conseil approuve unanimement les termes de cet accord et décide de l'annexer à sa résolution du 24 juin; il adresse ses remerciements à M. Hymans pour l'heureuse réussite des négociations.

Les représentants de la Finlande et de la Suède se retirent.

[Quoted from Tore Modeen, *De folkrättsliga garantierna för bevarandet av Ålandsöarnas nationella karaktär*. Åbo : Åbo Akademi, 1973, pp. 190-191.]

APPENDIX II:
Legislative powers of the Åland Islands and the State/Sections 18 and 27 of the Autonomy Act.

Section 18
Legislative authority of Åland Islands

Åland Islands shall have legislative powers in respect of

1) the organisation and duties of the Legislative Assembly and the election of its members, the Government of Åland and the officials and services subordinate to it;

2) the officials of Åland, the collective agreements on the salaries of the employees of Åland and the sentencing of the officials of Åland to disciplinary punishment;

3) the flag and coat of arms of Åland and the use thereof in Åland, the use of the Åland flag on vessels of Åland and on merchant vessels, fishing vessels, pleasure boats and other comparable vessels whose home port is in Åland, without limiting the right of State offices and services or of private persons to use the flag of the State;

4) the municipal boundaries, municipal elections, municipal administration and the officials of the municipalities, the collective agreements on the salaries of the officials of the municipalities and the sentencing of the officials of the municipalities to disciplinary punishment;

5) the additional tax on income for Åland and the provisional extra income tax, as well as the trade and amusement taxes, the bases of the dues levied for Åland and the municipal tax;

6) public order and security, with the exceptions as provided by section 27, subparagraphs 27, 34 and 35; the firefighting and rescue service;

7) building and planning, adjoining properties, housing;

8) the appropriation of real property and of special rights required for public use in exchange for full compensation, with the exceptions as provided by section 61;

9) tenancy and rent regulation, lease of land;

10) the protection of nature and the environment, the recreational use of nature, water law;

11) prehistoric relics and the protection of buildings and artifacts with cultural and historical value;

12) health care and medical treatment, with the exceptions as provided by section 27, subparagraphs 24, 29 and 30; burial by cremation;

13) social welfare; licences to serve alcoholic beverages;

14) education, culture, sport and youth work; the archive, library and museum service, with the exceptions as provided by section 27, subparagraph 39;

15) farming and forestry, the regulation of agricultural production; provided that the State officials concerned are consulted prior to the enactment of legislation on the regulation of agricultural production;

16) hunting and fishing, the registration of fishing vessels and the regulation of the fishing industry;

17) the prevention of cruelty to animals and veterinary care, with the exceptions as provided by section 27, subparagraphs 31-33;

18) the maintenance of the productive capacity of the farmlands, forests and fishing waters; the duty to transfer, in exchange for full compensation, unutilised or partially utilised

farmland or fishing water into the possession of another person to be used for these purposes, for a fixed period;

19) the right to prospect for, lay claim to and utilise mineral finds;

20) the postal service and the right to broadcast by radio or cable in Åland, with the limitations consequential on section 27, subparagraph 4;

21) roads and canals, road traffic, railway traffic, boat traffic, the local shipping lanes;

22) trade, subject to the provisions of section 11, section 27, subparagraphs 2, 4, 9, 12-15, 17-19, 26, 27, 29-34, 37 and 40, and section 29, paragraph 1, subparagraphs 3-5, with the exception that also the Legislative Assembly has the power to impose measures to foster the trade referred to in the said paragraphs;

23) promotion of employment;

24) statistics on conditions in Åland;

25) the creation of an offence and the extent of the penalty for such an offence in respect of a matter falling within the legislative competence of Åland;

26) the imposition of a threat of a fine and the implementation thereof, as well as the use of other means of coercion in respect of a matter falling within the legislative competence of Åland;

27) other matters deemed to be within the legislative power of Åland in accordance with the principles underlying this Act.

Section 27

Legislative authority of the State

The State shall have legislative power in matters relating to

1) the enactment, amendment, explanation and repeal of a Constitutional Act and an exception to a Constitutional Act;

2) the right to reside in a country, to choose a place of residence and to move from one place to another, the use of freedom of speech, freedom of association and freedom of assembly, the confidentiality of post and telecommunications;

3) the organisation and activities of State officials;

4) foreign relations, subject to the provisions of chapter 9;

5) the flag and coat of arms of the State and the use thereof, with the exceptions provided by section 18, subparagraph 3;

6) surname and forename, guardianship, the declaration of the legal death of a person;

7) marriage and family reasons, the juridical status of children, adoption and inheritance, with the exceptions provided by section 10;

8) associations and foundations, companies and other private corporations, the keeping of accounts;

9) the nationwide general preconditions on the right of foreigners and foreign corporations to own and possess real property and shares of stock and to practice a trade;

10) copyright, patent, copyright of design and trademark, unfair business practices, promotion of competition, consumer protection;

11) insurance contracts;

12) foreign trade;

13) merchant shipping and shipping lanes;

14) aviation;

15) the prices of agricultural and fishing industry products and the promotion of the export of agricultural products;

16) the formation and registration of pieces of real property and connected duties;

17) mineral finds and mining, with the exceptions as provided by section 18, subparagraph 19;

18) nuclear energy; however, the consent of the Government of Åland is required for the construction, possession and operation of a nuclear power plant and the handling and stock-piling of materials therefor in Åland;

19) units, guages and methods of measurement, standardisation;

20) the production and stamping of precious metals and trade in items containing precious metals;

21) labour law, with the exception of the collective agreements on the salaries of the Åland and municipal officials, and subject to the provisions of section 29, paragraph 1, subparagraph 6, and section 29, paragraph 2;

22) criminal law, with the exceptions provided by section 18, subparagraph 25;

23) judicial proceedings, subject to the provisions of sections 25 and 26; preliminary investigations, the enforcement of convictions and sentences and the extradition of offenders;

24) the administrative deprivation of personal liberty;

25) the Church Code and other legislation relating to religious communities, the right to hold a public office regardless of creed;

26) citizenship, legislation on aliens, passports;

27) firearms and ammunition;

28) civil defence; however, the decision to evacuate residents of Åland to a place outside Åland may only be made with the consent of the Government of Åland;

29) human contagious diseases, castration and sterilisation, abortion, artificial insemination, forensic medical investigations;

30) the qualifications of persons involved in health care and nursing, the pharmacy service, medicines and pharmaceutical products, drugs and the production of poisons and the determination of the uses thereof;

31) contagious diseases in pets and livestock;

32) the prohibition of the import of animals and animal products;

33) the prevention of substances destructive to plants from entering the country;

34) the armed forces and the border guards, subject to the provisions of section 12, the actions of the authorities to ensure the security of the State, state of defence, readiness for a state of emergency;

35) explosive substances, as to the part relating to State security;

36) taxes and dues, with the exceptions provided by section 18, subparagraph 5;

37) the issuance of paper money, foreign currencies;

38) statistics necessary for the State;

39) archive material derived from State officials, subject to the provisions of section 30, subparagraph 17;

40) telecommunications; however, a State official may only grant permission to engage in general telecommunications in Åland with the consent of the Government of Åland;

41) the other matters under private law not specifically mentioned in this section, unless the matters relate directly to an area of legislation within the competence of Åland according to this Act;

42) other matters that are deemed to be within the legislative power of the State according to the principles underlying