

Book Reviews

S. Spiliopoulou Åkermark (ed.)

The Åland Example and Its Components – Relevance for International Conflict Resolution, Åland Islands Peace Institute, Mariehamn, 2011. ISBN 9789525265606, 204 pages (paperback), price: EUR 30.

When one mentions the Åland Islands in casual conversation, the reaction is usually muted. Observant Nordic travellers may recall the archipelago as a brief stopover on one of the numerous ferries plying the Stockholm-Helsinki route. Non-Nordics may be hard-pressed to place the islands in Europe. And even the next-door neighbour Swedes sometimes having a hard time recalling whether Åland is Swedish, Finnish or something else entirely. The sole exception to this rule involves international lawyers. No matter where they hail from, the eyes of this rarefied group light up at the mention. Europe's sole demilitarised, neutralised autonomy with minority rights protections? Based on the famous 1921 League of Nations decision? I read all about them, do they really exist?

They do exist, albeit on a demographic scale that belies their political significance. The Åland Islands 'regime' was developed in the service of a surprisingly small and rural population of Swedish-speakers inhabiting a scattered Finnish archipelago strategically placed at the centre of the Baltic Sea. Even among Finland's relatively small Swedish-speaking minority, the Ålanders account for a fraction – some 10 per cent of 265,000 souls. And yet, given the scope of this international law regime and its duration, the Ålanders have arguably wrought in Finland one of the world's most lopsided federal states, with one unit comprising five million people ruled from Helsinki, and the other comprising only 26,000 ruled from the provincial capital of Mariehamn. By any scale, the Åland regime – comprising both its autonomy and minority rights scheme and its security arrangements – punches well above its weight.

The specific solutions adopted to the dual problems of accommodating cultural difference and meeting regional security needs have also stood the test of time, fostering nearly a century of stable self-government on Åland and an even longer period during which the archipelago has not figured significantly in any of the conflicts that have swept through the region. As such, Åland has become something of a showcase for Nordic conflict management and toleration. This has led to a great temptation to seek lessons from Åland in addressing

the numerous ethnic conflicts that continue to flare up in the wake of the Cold War – as well as a risk that such efforts will fall flat for having failed to take into account the unique contextual factors that allowed the Åland regime to prosper.

A notable contribution of the recent volume published by the Åland Islands Peace Institute¹ is that it highlights Åland's continued relevance to conflict management while getting at a number of neglected but essential elements of the Åland regime. First, it points out the centrality of the security components of the Åland regime to a successful package of measures including the better-known autonomy and language protection rules. Second, it places both the rules and the institutions that have undergirded the Åland regime in regional and historical context, emphasising the futility of any effort to replicate the entire package in any other setting, but reframing its relevance as both a flexible Nordic smorgasbord of components – and a source of inspiration. And finally, the authors emphasise the dynamic political process that has facilitated the adaptation of the substantive elements of the regime to changing circumstances in the region and beyond.

1 Evolution of an Autonomy

The Åland Islands are an archipelago stretching from south-western Finland across the Baltic Sea toward the Swedish mainland. Although there are long-standing commercial and cultural ties with nearby Stockholm, Åland was administered as a part of Finland during the four centuries that Finland was an integrated part of Sweden. As a result, when Finland fell to Russia in 1809, Åland travelled with it. Given its strategic significance at the crossroads of the Baltic and within striking distance of Stockholm, Åland was fortified by the Russians and became the northernmost theatre of the Crimean War. After the conflict, the Russians were forced to accede to an 1856 Convention prohibiting any fortification of the islands.²

As Finland's Swedish-speaking elite faced the prospect of permanent integration into Russia (albeit initially as a Grand Duchy with an unusually high

1 Sia Spiliopoulou Åkermark (ed.), *The Åland Example and Its Components – Relevance for International Conflict Resolution*, Åland Islands Peace Institute, Mariehamn, 2011.

2 Convention on the Demilitarization of the Åland Islands (1856). This treaty, along with the others that undergird the Åland regime can be accessed at a database maintained by the Åland Culture Foundation: <http://www.kulturstiftelsen.ax/traktater/eng_fr/ram_right-enfr.htm>.

degree of self-government) a debate arose about their relationship with the Finnish-speaking majority of the population. The relative influence of the Finnish language increased with an 1863 decree guaranteeing formal language equality and a 1906 parliamentary reform that removed an effective veto held by Swedish-speakers under the previous regime.³ Mounting tensions erupted into two decades of full-blown 'language strife' after independence in 1918, with Swedish-speakers guaranteed language equality in the country's first Constitution but facing an increasingly resentful and nationalistic Finnish-speaking majority.

At the outset of its independence, Finland also suffered a short but traumatic Civil War in 1918 between a socialist 'Red' movement supported by Soviet Russia and conservative 'Whites' that ultimately won with German support. As one of a number of largely rural and conservative areas along the Finnish coast where Swedish-speakers made up local majorities, Åland had made common cause with Finland's mainland Swedish speakers and was sympathetic to the victorious White cause. However, the limited fighting that took place on Åland, along with the perception that nationalist Finnish-speakers were plotting the Finnicisation (*förfinskning*) of the Swedish-speaking territories of Finland fuelled a movement founded in 1917 for the return of Åland to Swedish sovereignty.

As tensions flared between Sweden and the newly independent Finnish Republic over possession of Åland, the newly minted League of Nations intervened, ruling that Finland should retain sovereignty over Åland, but only on the proviso that an earlier offer of political autonomy be enhanced with specific guarantees calculated to protect the Swedish language and culture in the archipelago.⁴ This so-called 'Åland Agreement' was supplemented with a treaty of the same year, the 'Åland Convention', that not only confirmed the demilitarisation rule established in 1856, but also imposed a wartime neutralisation regime on the islands.⁵

Despite the subsequent passing of the League of Nations, this regime of autonomy, minority protection and security measures has been affirmed and expanded to the present day. The autonomy regime in particular, has been revised and expanded several times in laws ratified jointly by the Helsinki and Mariehamn (Åland) legislatures, and the minority protection measures were

3 K. D. McRae, *Conflict and Compromise in Multilingual Societies: Finland* (The Finnish Academy of Sciences and Letters and the Wilfrid Laurier University Press, Rauma, 1999), pp. 34–43.

4 The Åland Agreement in the Council of the League of Nations (1921).

5 Convention on the Demilitarization and Neutralization of the Åland Islands (1921).

exempted from the ordinary application of the EC Treaty upon Finland's 1995 accession to the EU.⁶ The result is a package of measures remarkable even among Europe's plethora of autonomy and devolution arrangements for both its breadth and its longevity.

2 Everything Short of Statehood

To put the Åland regime in perspective, it is worth revisiting Canadian political philosopher Will Kymlicka's influential liberal framework for the treatment of ethnic minorities, *Multicultural Citizenship*.⁷ Kymlicka proposes three categories of minority rights, beginning with 'self-government', or the right of settled minorities to autonomy within their traditional territories, and continuing to 'polyethnic rights', exempting minorities from rules applicable to the majority where necessary to protect their cultural identity, as well as 'special representation rights', meaning guaranteed representation of minorities in political fora and institutions dominated by the majority.⁸

Linking Kymlicka's formulation to international law discourses, 'polyethnic rights' correspond largely to the orthodox view of minority protection as espoused in Article 27 of the International Covenant on Civil and Political Rights (ICCPR), whereby states-parties may not deny members of minorities the right "to enjoy their own culture, to profess and practise their own religion, or to use their own language". Such rights, which may be enjoyed by members of minorities regardless of their location within the host country, may also be collectively referred to as constituting a 'cultural autonomy' for the affected minority.

By contrast, 'self-government' corresponds to 'internal self-determination', an interpretation of the right of self-determination in common Article 1 of the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR) that allows for established national minorities and indigenous peoples to be granted self-rule short of the possibility of secession. Exercised within the historical homelands of affected peoples, such rights are frequently said to constitute a 'territorial autonomy'. Finally, Kymlicka's third category of 'special representation rights' are less clearly set out in international law, but might be posited as a special measure necessary to secure the right to political participation (Article 25, ICCPR) to minorities that do not qualify for internal self-determination.

6 Treaty of Accession of Finland to the European Union, Protocol No. 2 (1994).

7 W. Kymlicka, *Multicultural Citizenship* (Clarendon Press, Oxford, 1995).

8 *Ibid.*, pp. 26–33.

The latter interpretation elides once again with Kymlicka's views: while 'polyethnic rights' can be combined with either of the other two categories, Kymlicka holds that self-government and special representation are, in principle, alternatives. While self-government regimes should have representation on intergovernmental bodies competent to regulate the division of powers, representation in governmental bodies with general powers would effectively allow minorities double representation; first via their own territorial institutions from which the majority is excluded and second via a guaranteed say in majority decision-making.⁹

This type of analysis helps to put the Åland regime, as set out in *The Åland Example*, in some perspective. First, the Åland Islands autonomy regime must be one of the world's most complete examples of self-government, including broad legislative, executive and administrative competences and numerous symbolic aspects such as a flag, license plates and a national hymn. The autonomy even includes a number of international elements including a negative treaty-making competence, and a limited right of representation along with other Nordic autonomies at the Nordic Council. At the same time and contra Kymlicka, the Ålanders enjoy special representation rights not only in relation to specialised bodies set up to administer the autonomy but also in the more general form of a guaranteed seat in the Parliament of Finland.

On top of that, the Ålanders benefit from a broad range of protections of their language and culture applicable only on Åland, and can also freely benefit from the less stringent cultural autonomy regime available to other Swedish-speakers on the mainland of Finland. Finally, although the demilitarisation and neutralisation regime do not give rise to individual rights or contribute directly to minority protection, the authors of *The Åland Example* argue convincingly that these have consolidated the identity of the Ålanders and helped them to mobilise politically with respect to the government in Helsinki.

3 Defining the Åland Example

How to parse this broad and historically contingent collection of components and make them relevant to peace negotiators in contemporary conflict areas? The editor of *The Åland Example* is Sia Spiliopoulou Åkermark, a Swedish law professor and director of the Åland Islands Peace Institute, an independent charitable foundation with a long tradition of analysing autonomy and demilitarisation as

9 *Ibid.*, pp. 142–143.

conflict resolution measures.¹⁰ She introduces the book by stating two straightforward yet ambitious aims, namely to “describe and analyse the Åland Example as a dynamic and adaptable, yet continuous regime” and to “map the use of the Åland Example and of autonomy in general in conflict resolution”.¹¹

The first aim, description and analysis of the components of the regime, is addressed in Part I of the book, which includes a chapter on the autonomy itself,¹² a chapter on the security arrangements by Spiliopoulou Åkermark,¹³ and a chapter on cultural and language protection measures.¹⁴ Parts II and III address the second aim of mapping the use of the Åland example in conflict resolution processes, beginning with fully-fledged chapters on a number of South and East Asian examples,¹⁵ East Timor,¹⁶ Japan¹⁷ and the Balkans,¹⁸ and concluding with annotated interviews with mediators previously active in Nagorno-Karabakh,¹⁹ the Georgian breakaway regions,²⁰ Kashmir,²¹ South Sudan²² and the Middle East conflict.²³

On first glance, the goals of the book might appear to be in tension. The descriptions of attempts to apply the Åland example directly in peace

10 For more information on the Åland Islands Peace Institute, see <<http://peace.ax/en/>>.

11 S. Spiliopoulou Åkermark, ‘Introduction’, in Spiliopoulou Åkermark (ed.), *The Åland Example and Its Components*, *supra* note 1, p. 11.

12 S. Stephan, ‘The Autonomy of the Åland Islands’, in Spiliopoulou Åkermark (ed.), *ibid.*

13 S. Spiliopoulou Åkermark, ‘Åland’s Demilitarisation and Neutralisation: Continuity and Change’, in Spiliopoulou Åkermark (ed.), *ibid.*

14 H. Öst, ‘The Cultural and Linguistic Safeguards of the Åland Minority Protection Regime’, in Spiliopoulou Åkermark (ed.), *ibid.*

15 Y. Ghai, ‘Åland’s Autonomy in Comparative Perspective’, in Spiliopoulou Åkermark (ed.), *ibid.*

16 K.-Å Nordquist, ‘The Åland Islands as a Case in the East Timor De-Colonisation Process’, in Spiliopoulou Åkermark (ed.), *ibid.*

17 F. Ohnishi, ‘The Åland Example from Four Perspectives in Japan: Area Studies, the Nitobe Saiti Discourse, the Northern Territories and Okinawa’, in Spiliopoulou Åkermark (ed.), *ibid.*

18 E. Nauclé, ‘The Åland Solution Applied’, in Spiliopoulou Åkermark (ed.), *ibid.*

19 H. Öst, ‘Åland and the Nagorno-Karabakh Negotiations in the South Caucasus’, in Spiliopoulou Åkermark (ed.), *ibid.*

20 S. Stephan, ‘Abkhazia and South Ossetia: Dialogue Discontinued’, in Spiliopoulou Åkermark (ed.), *ibid.*

21 S. Spiliopoulou Åkermark, ‘Kashmir: The Lengthy Conflict between India and Pakistan’, in Spiliopoulou Åkermark (ed.), *ibid.*

22 H. Öst, ‘An Åland Example for South Sudan?’, in Spiliopoulou Åkermark (ed.), *ibid.*

23 S. Spiliopoulou Åkermark, ‘Autonomy on the pendulum between a one-state solution and a two-state solution for the Palestine-Israel conflict’, in Spiliopoulou Åkermark (ed.), *ibid.*

negotiations and peace-building settings are of undoubted anecdotal interest and historical value. However, aside from a few unexpected and often two-edged ‘successes’ (who knew that the intergovernmental Åland delegation provided inspiration for the committee set up by China to “tame and control” Hong Kong, for instance?),²⁴ they largely read as a dry litany of near-misses. Many are the negotiation processes that took up and considered elements of the Åland regime, but few are cases that applied them. Despite impressive research by a broad array of authors, the project is unable to summon a single instance of the unambiguously successful replication of a substantive component of the Åland regime that was indispensable to achieving a sustainable peace.

However, to its credit, *The Åland Example* rejects this criteria for achieving success from the outset. Not because such an example would not be welcome, but because this is simply not where the value of the Åland example lies. Spilipoulou Åkermark is quick to clarify, setting out three essential points in the introductory chapter. First, and in keeping with contemporary views on constitutionalism, Åland is set up as a unique and historically contingent model that can provide various individual components of a conflict resolution plan in other settings but never a one-size-fits-all blueprint that could be replicated in whole. In this sense, the reference to the “Åland example” in the title of the book is meant to banish the idea that the authors seek to impose a model:

The term ‘the Åland example’ was coined in the 1990s as a concept in contraposition to the idea of ‘an Åland model’. The first concept ... aspires to give insights in the components and preconditions that made the peaceful solution of the dispute between Finland and Sweden possible in 1921 ... The idea of a ‘model’, by contrast, implies the faint hope and possibility that the regime may be transposed and used, more or less in its entirety, in other ethno-political and territorial disputes.²⁵

As such, *The Åland Example* is at least halfway successful in escaping the trap of providing ‘supply-driven’ advice on conflict management. Recent trends in international development and governance assistance have rejected earlier tendencies to promote the one-to-one adoption of outside national models. Instead, more emphasis is placed on understanding the ‘demand’ side (*e.g.* the nature of the problems national authorities are seeking to address and the specific opportunities and constraints they perceive in doing so) before identifying corresponding examples of successful practice from among a broad

24 Ghai, *supra* note 15, p. 90.

25 Spilipoulou Åkermark, ‘Introduction’, *supra* note 11, p. 8.

range of comparative settings.²⁶ While a book focusing on a specific setting such as Åland will inherently be driven by ‘supply-side’ considerations, the conscious effort by the authors of *The Åland Example* to break the regime down into its components and present each of them in detail makes the regime, as a whole, more accessible and useful for practitioners seeking a response to specific ‘demand’ issues.

A second and related point is that the Åland regime has acquired, through its scope, durability and longevity, a symbolic value for peacemakers in other settings. This function is referenced by Spiliopoulou Åkermark, who presents the Åland example not only as a set of “components and preconditions” that gave rise to a sustainable regime but also as “a source of inspiration and a platform for constructive discussions”.²⁷ This theme is given its most sustained treatment in a subsequent chapter by Kjell-Åke Nordquist on the contributions of the Åland example to self-determination in East Timor. In describing Åland’s “substantial contribution”, Nordquist focuses on process rather than rules, noting that at this level “a model case serves as a trustworthy example of ‘how it can be done’” and thereby “provides confidence to those that develop an autonomy proposal for their own situation”.²⁸

4 The Åland Regime as a Process

A third point emphasised by Spiliopoulou Åkermark is the fact that the strength of the Åland example lies at least as much in the dynamic political process that has formed it as the substantive rules that have resulted. This is a critical insight and one that provides an indirect response to a number of criticisms of the Åland example. Such criticism often focuses on the fact that the Åland regime was agreed before tensions had resulted in large-scale violence and an irretrievable loss of trust. Others question Åland on the broader grounds that any example from a region as “civilized, democratic and rich” as the Nordic countries cannot be relevant to poorer, less-well governed parts of the world.²⁹

26 For a forceful assertion of the need for ‘demand-based’ approaches in planning international assistance to national constitution-building processes, for instance, see M. Brandt, et. al., *Constitution-making and Reform: Options for the Process* (Interpeace, 2011), available at <http://www.interpeace.org/constitutionmaking/>.

27 Spiliopoulou Åkermark, ‘Introduction’, *supra* note 11, p. 8.

28 Nordquist, *supra* note 16, p. 124.

29 Nauc ler, *supra* note 18, p. 143.

There is little doubt that factors such as traditions of democracy and pluralism count in the development of sustainable autonomy and security regimes. Contributor Yash Ghai identifies this tradition in Finland as one of seven critical factors that has allowed the Åland regime to survive and prosper.³⁰ In a separate chapter, however, Elizabeth Naclér notes that Finland in 1921 was poor, devastated by civil conflict and afflicted with the defensiveness of any newly independent state facing a threat to its territorial integrity.³¹ In this context, Naclér describes a tradition of “peaceful fighting” between Åland and Helsinki built less on a shared tradition of rule of law than legalism: “sometimes it is necessary to create rigid regimes when the level of distrust is high and there is a need for protection of the system not to risk [sic] the settlement”.³²

There is little doubt that the level of trust was very low, particularly during the lead-up to the autonomy decision in 1921 and its early implementation. The founder of the Åland Museum, Matts Dreijer, recalls tense debates about whether to attack Finnish troops stationed on Åland during this period in his memoirs.³³ Such recollections serve both to emphasise that Åland is not disqualified by some inherent Nordic rationality from serving as an example for other conflict areas, and to underscore the importance of protracted engagement in agreed political processes in building trust, regardless of the nature of the rules initially agreed and the institutions initially set up to enforce them.

While misunderstandings and resentment linger between Åland and mainland Finland, there is little doubt that “high levels of suspicion and illwill at the start have gradually developed into well-coordinated, consultative working relationships”.³⁴ And as noted by the authors of *The Åland Example* process has been everything in achieving this outcome across the board. In the introduction, Spiliopoulou Åkermark quotes one of the mediators interviewed for the book describing autonomy arrangements as inherently and necessarily dynamic:

The basic and original autonomy solution is important but it needs to be developed, going beyond the status quo. It is like business, it goes forward or it goes backward, but it cannot halt.³⁵

30 Ghai, *supra* note 15, pp. 102–8.

31 Naclér, *supra* note 18, pp. 145–7.

32 *Ibid.*

33 M. Dreijer, *Genom Livets Snårskog* (Söderström & Co. Förlags AB, Ekenäs, 1984), p. 85.

34 McRae, *supra* note 3, p. 327.

35 Spiliopoulou Åkermark, ‘Introduction’, *supra* note 11, p. 24.

In keeping with this insight, Spiliopoulou Åkermark attributes key significance to the dynamic of “finding a workable balance” between the separation sought by autonomous regions on one hand, and the level of contact with the central authorities – often via “bridging institutions” – that is required to ensure effective coordination and governance on the other.³⁶ In his engaging review of the utility of autonomy solutions in conflict resolution, Yash Ghai makes the complementary argument that autonomy presents a “mid-point of competing claims” as between minorities seeking complete separation via secession and majorities seeking a degree of contact amounting to overt political control in the framework of a unitary state.³⁷

The fundamental insight behind the question of separation and contact is that once a territorial autonomy regime is established, the best way for the affected minority to consolidate and assert its separate status may, ironically, be to pursue contact, in the form of a process of pragmatic engagement with the host state authorities. Kjell-Åke Nordquist picks up this point in his chapter, with a “theoretical reflection”:

[A] totally insulated autonomy ... would have no basis for calling itself ‘autonomy’ since being autonomous requires someone to relate to, that is, ‘someone to be different from’. Thus, ‘autonomy’ includes always a relational component. To be an autonomy means balancing the right to be different and the right to be open, to put it briefly.³⁸

It is worth noting that this notion of autonomy as an ongoing, relational process is fully consistent with broader trends in constitutional design in conflicted and plural societies. Since the end of the Cold War, there has been a marked shift from viewing constitutions as contracts, valued for their stability and resistance to change to viewing them as conversations, valued for “seeking a workable formula that will be sustainable rather than assuredly stable”.³⁹ In an influential 2003 report, Vivien Hart expanded on this approach as applied in conflict settings:

The nature of many modern conflicts makes a final resolution hard to reach. In such circumstances, finding a way of living together within

36 *Ibid.*, pp. 12–13.

37 Ghai, *supra* note 15, p. 95.

38 Nordquist, *supra* note 16, p. 123.

39 V. Hart, “Democratic Constitution Making”, *United States Institute of Peace Special Report 107* (July 2003), p. 3.

major disagreement is the more modest goal. Traditional constitution making as a conclusion of conflict and codification of a settlement that intends permanence and stability can seem to threaten rather than reassure. Citizens who actively reject a final act of closure seek instead assurances that constitution making will not freeze the present distribution of power into place for the long term, nor exclude the possibility of new participants and different outcomes.⁴⁰

This approach is reflected in the three chapters of Part I describing components of the Åland regime. Beginning with a description of the autonomy itself, Sarah Stephan provides a useful typology of institutions ranging from those that are completely separate and parallel from Helsinki (the legislative and executive branches) to joint institutions that play a bridging role and unitary institutions fully shared between Åland and the rest of Finland (notably, the judiciary).⁴¹ In describing the interplay between these institutions, Stephan notes the extent to which pragmatic solutions have been found to complex jurisdictional questions, and trust has developed, over time, between Ålanders and the central institutions that have consistently played a constructive bridging role.

Stephans concludes that Åland has never been isolated because the “institutional design of the Autonomy provides for continuous and long term forms of contact between Åland and the State”.⁴² Although the changing regional and international context has brought new challenges, Stephan asserts that this tradition of engagement has allowed Åland to “actively shape its position vis-à-vis the State and the international community over time”.⁴³ Perhaps the most telling example involves Finland’s membership in the EU, which frequently rules on matters falling within the competence of autonomous regions such as Åland but without any formal mechanisms guaranteeing such regions separate representation. Although Åland has succeeded in negotiating a degree of representation via Helsinki, it is not clear that this achievement will fully offset the “disempowering” effect of the EU to date.⁴⁴

Interestingly, the dynamic of separation and contact is no less prevalent in Sia Spiliopoulou Åkermark’s subsequent chapter on the demilitarisation and neutralisation regimes. This chapter begins with the observation that the

40 *Ibid.*

41 Stephan, *supra* note 12, p. 33.

42 *Ibid.*, p. 48.

43 *Ibid.*, p. 49.

44 *Ibid.*, pp. 46–48.

security aspects of the Åland regime have been neglected by past researchers even as the autonomy and language rights aspects have been promoted as conflict resolution devices.⁴⁵ Given that security is frequently a precondition for autonomy, the author proposes a more balanced view going forward. However, she also notes the specific contribution that the security aspects have made to how Ålanders perceive their political status, noting that “it is first and foremost the Ålanders themselves who monitor the demilitarization and neutralization regime, in spite of lack of full formal standing in defence matters ...”.⁴⁶

In fact, the chapter presents a set of security arrangements for Åland no less dynamic than its political arrangements but resulting from a longer process. As Ålanders have raised concerns and pointed out gaps and ambiguities in this regime, the central authorities have taken their views into account and included them in decision-making processes.⁴⁷ As Spiliopoulou Åkermark points out, the mere existence of a permanent demilitarisation regime on Åland represents an unusual concession of sovereign power in that “in peacetime ... the autonomy authorities have control over the Åland territory without a significant Finnish presence”.⁴⁸ However, the fact that Ålanders have taken an active interest in the management of security issues and that this been accepted as “natural” presents “a confirmation of Åland’s status as a subject – rather than an object – as well as confirmation of Åland’s right to internal self-determination”.⁴⁹

The third chapter on the Åland regime by Heidi Öst examines the evolution of the guarantees of cultural and language protection over and above the autonomy that were initially imposed by the League of Nations in 1921. As described by Öst, these can be broken down into prescriptions on language use in the public sector, rules regarding language and education, and rules affecting the private sector.⁵⁰ The last two categories in particular, have been controversial. In the area of education, a consistent rule has been that Åland is under no obligation to subsidise schools in which Swedish is not the language of instruction.⁵¹ This rule was set up in order to avoid the establishment of Finnish language schools on Åland and has been condemned as discriminatory with regard to the Finnish-speaking ‘minority within a minority’ on Åland.⁵² Meanwhile,

45 Spiliopoulou Åkermark, ‘Åland’s Demilitarization’, *supra* note 13, p. 51.

46 *Ibid.*

47 *Ibid.*, p. 52.

48 *Ibid.*, p. 56.

49 *Ibid.*, p. 60.

50 Öst, *supra* note 14, p. 73.

51 *Ibid.*, pp. 78–79.

52 *Ibid.*

the private sector rules restrict the rights of persons not domiciled on Åland to acquire property or do business there.⁵³

Here, the pattern of political engagement and dynamism has continued, with Helsinki repeatedly countenancing expansions of a set of measures which, as restrictions on the majority population, were controversial from the beginning. However, unlike the autonomy and security regimes, the future expansion of the culture and language guarantees has effectively been capped. In a narrow sense, this has come about because these rules represented derogations from the European Community's founding principles that were allowed to remain in force upon Finland and Åland's accession to the EU in 1995 – but implicitly only in the form they were then and without the possibility of greater expansion.⁵⁴ However, in a broader sense, such rules have become increasingly difficult to square with evolving understandings of individual human rights and their interaction with minority protection regimes.

5 Balancing Act

The issue of human rights compatibility goes to a dilemma that lies at the heart of contemporary minority protection regimes. On one hand, the focus on process and participation seen in the Åland example reflects highly progressive thinking regarding the sustainable accommodation of difference. On the other hand, the guarantees of separateness that are often a precondition for minorities to engage in such dialogues are increasingly problematic in terms of contemporary understandings of equality and human rights. Resolving these tensions will be crucial going forward, not only for the Åland regime to be able to resist challenges to its legitimacy, but also more broadly in order for the Åland example to continue to be a viable one in other countries torn by ethnic tensions.

In the case of Åland, the risk of human rights challenges to the education guarantees meant to protect the Swedish language has already been referred to. Under limited circumstances, the rules preventing transfer of property to non-Ålanders might also be subject to question.⁵⁵ Observers have pointed out that the EU's acceptance of Åland's special regime as a derogation from its rules is

53 *Ibid.*, pp. 81–83.

54 *Ibid.*, p. 83.

55 R. Williams, 'Excluding to Protect: Land Rights and Minority Protection in International Law', in S. Spiliopoulou Åkermark (ed.), *The Right of Domicile on Åland* (The Åland Islands Peace Institute and the Åland Parliament, 2009).

also explicitly subject to the regime being applied in a non-discriminatory manner, a fact that could raise further grounds for challenges to the regime in its current form.⁵⁶

Beyond Åland, similar dilemmas have arisen in other situations characterised by ethnic or sectarian power-sharing schemes. Most notably, in Europe, the ethnic consociation arrangements that ended the conflict in Bosnia have come under the scrutiny of the European Court of Human Rights, which found rules reserving positions on the Presidency to particular ethnic groups in Bosnia to constitute a violation of the anti-discrimination rule of the new Protocol 12 to the European Convention of Human Rights.⁵⁷

Some observers have questioned the EU's subsequent decision to suspend Bosnia's accession process until the Bosnian Constitution was amended, noting that other European states long since accepted into the EU have similar (and indeed even more stringent) provisions reserving elected positions to particular ethnic groups.⁵⁸ Others have queried whether these types of human rights rulings may tie mediators' hands, removing the flexibility necessary to arrive at formulations that can help sustainably move violent ethnic conflict into the political realm.⁵⁹

6 The Issue of Exclusion

On Åland, the most obvious human rights concerns arise as a result of measures permitting exclusion of non-Ålanders. From the beginning, the cultural protection rules on education and acquisition of land were intended to preserve the cultural status quo on Åland by discouraging non-Ålanders – and particularly Finnish-speakers – from moving permanently to Åland unless they were willing to integrate with the local population. In the League of Nations Agreement, for instance, the rationale for the property rules was quite

56 A.-L. Sjölund, 'Ålandsprotokollet och EG-rättens icke-diskrimineringsprincip', *Åland Islands Peace Institute Report Series*, Nr. 2–2008.

57 European Court of Human Rights, *Sejdic and Finci v. Bosnia and Herzegovina*, Application nos. 27996/06 and 34836/06 (22 December 2009). Consociation is a form of power sharing employed in divided societies where no group is large enough to form a majority on its own.

58 European Stability Initiative, 'Lost in the Bosnian Labyrinth: Why the Sejdic-Finci case should not block an EU application', *ESI Discussion Paper* (7 October 2013).

59 C. McCrudden and B. O'Leary, 'Courts and Consociations, or How Human Rights Courts May De-Stabilize Power-Sharing Settlements', *Public Law and Legal Theory Research Paper Series No. 317* (University of Michigan Law School, March 2013).

explicitly the “maintenance of the landed property in the hands of the Islanders”.⁶⁰

Although the authors in *Åland Example* do not dwell on the issue of exclusion, Yash Ghai’s general discussion of autonomy in conflict management provides a sense of what an edgy issue it can be. Without absolutely ruling out measures constituting exclusion in all cases, Ghai notes the risk that “some forms of autonomy may ... entrench ethnicity, as with reservations where the cultural dimensions and the need to preserve the identity of the group may serve to sharpen boundaries against outsiders”.⁶¹ He goes on to cite Henry Steiner in warning that exclusion regimes may inhibit intercourse among groups and impoverish cultures, and concludes that careful crafting of autonomies is necessary to avoid discrimination against minorities within minority areas.⁶²

In evaluating such concerns in relation to the Åland regime, it is important to recall that the underlying guarantees were given at a time in Finland’s history when linguistic tensions dictated that both the purchase of farmland and the establishment of primary schools across linguistic lines were often seen as a form of colonialism.⁶³ Although the ongoing existential significance of these rules in maintaining Åland’s language and culture has arguably waned with the broader post-World War II relaxation of language tensions in Finland, their origins are an uncomfortable reminder of one of the brute facts that still underlie minority conflict in many settings worldwide:

Where there is a dominant ethnic group, ... the assertion of *its* identity seems unavoidable, and ethnic minorities, if they are unsuccessful in securing basic human rights of non-discrimination and equality, may be driven to reinforce their own ethnic identity—or perish. Indeed, even guarantees of equality and non-discrimination may be insufficient, as freedom of movement and residence may allow dilution of minority strength through immigration of majority group members into the minority’s traditional homeland ...⁶⁴

60 Decision of the Council of the League Of Nations on the Åland Islands including Sweden’s Protest (1921)

61 Ghai, *supra* note 15, p. 95.

62 *Ibid.*, pp. 99–100.

63 McRae, *supra* note 3, pp. 212 and 286–287.

64 H. Hannum, *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights* (University of Pennsylvania Press, Philadelphia, 1996) p. 6.

Here, it may be instructive to return to one of the few structural factors arguably neglected by the authors of *The Åland Example*, namely the sustained but frequently awkward relationship between the Ålanders, who have traditionally looked to their kin-state of Sweden, and their larger 'kin nationality', the 265,000 Swedish-speakers on the mainland who have by and large made their peace with Finland. The relationship between Åland and 'Swedish Finland' is illuminating from many perspectives, but the insight of most relevance to the current discussion relates to the question of territorial autonomy and exclusion.

Perhaps because the question of relations with Swedish-speakers on the mainland has not been emphasised in *The Åland Example*, the relatively few observations on this point are occasionally contradictory or even somewhat misleading. One example is Yash Ghai's statement that Swedish speakers on the mainland were offered a territorial autonomy along the lines of Åland but were satisfied that their rights could be protected by a less stringent cultural autonomy.⁶⁵ In fact, the mainland Swedish speakers struggled mightily for a territorial autonomy of their own and were arguably denied in part as a result of the negative reaction of the Helsinki authorities to having their hand forced with regard to Åland by the League of Nations in 1921.

In evaluating the effect of Åland's territorial autonomy, the starting point must be the fact that Åland's population remains just below 90 per cent Swedish speaking, with a small and stable local minority of Finnish speakers (five per cent) and a increasing but still small proportion of residents who speak a third native language.⁶⁶ Mainland Swedish speakers, by contrast, have seen both a fall both in their numbers relative to Finnish speakers and, arguably, their influence. Between 1880 and 1980, the percentage of Finns with Swedish as their mother tongue dropped from 14 to six, with steady continued stagnation since then.⁶⁷

These numbers in themselves do not prove that mechanisms involving exclusion have succeeded in protecting Åland's language and culture. However, a major study completed in the late 1990s by linguist Kenneth McRae found that the key factor in both the slippage in numbers of Swedish-speakers and the erosion of their rights was the lack of an arrangement – like that on

65 Ghai, *supra* note 15, p. 100.

66 Statistics and Research Åland, 'Population by language, 31.12.2000–2013' (updated 22 April 2014), available at <<http://www.asub.ax/text.con?iPage=281>>.

67 Statistics Finland, 'Foreign-language speakers account for 90 per cent of the population growth in 2013' (21 March 2014), available at <http://tilastokeskus.fi/til/vaerak/2013/vaerak_2013_2014-03-21_tie_001_en.html>.

Åland – based on “firm territoriality”.⁶⁸ As a result of lack of mechanisms allowing exclusion, the Swedish speaking enclaves on the mainland were exposed to the full effect of a long-term process of urbanisation and migration from the north to the south of the country that effectively led to a natural Finnicisation of these areas.

Meanwhile, even private mechanisms of exclusion such as refusal to transfer property to non-Swedish speakers were nullified by events such as a 1918 agrarian reform process and the later requisitioning of land throughout the country to resettle primarily Finnish-speaking refugees from territories lost to Russia in World War II. Moreover, because of mainland Finland’s ‘flexible territoriality’ principle for implementing the cultural autonomy enjoyed by Swedish-speakers on the mainland, levels of minority language protection automatically fell in parallel with the declining Swedish-speaking proportions of local populations.⁶⁹

Seen from the mainland of Finland, the Åland regime exemplifies the fundamental role of the right to exclude (or in Kymlicka’s sense, the right of minorities to exercise control over the rate and course of cultural change) to the objective of maintaining cultural difference.⁷⁰ The way forward will not always be easy, given that those elements of the regime currently most objectionable in human rights terms may have also been most central to creating the fundamental sense of security that has allowed the Ålanders to engage so consistently and successfully with the Finnish state and the broader international community.

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68 McRae, *supra* note 3, p. 4.

69 *Ibid.*, p. 226.

70 Kymlicka, *supra* note 7, 103–105