

THE INTERNATIONAL PROTECTION
OF THE NATIONAL IDENTITY OF THE
ÅLAND ISLANDS

BY

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1. THE PRINCIPLE OF SELF-DETERMINATION OF PEOPLES AND THE INTERNATIONAL PROTECTION OF NATIONAL MINORITIES

Since the second world war the principle of self-determination has been a central theme in the programme of the United Nations and has resulted in a number of practical and concrete measures, such as the achievement of independence by former colonies. After the first world war, however, it was the protection of national minorities which caught the interest of the world. When the map of Europe was redrawn by the Treaty of Versailles in 1919, attempts were made to ensure that peoples of the same nationality were grouped together in one state. Poland, Czechoslovakia and Yugoslavia may be mentioned as examples of this. In those cases, however, where for various reasons it was impossible to form a state consisting of people belonging to the same nationality, the national minorities so created were given compensation in the form of international protection guaranteed by the League of Nations.

This policy vis-à-vis national minorities was not, however, consistently pursued. In South Tyrol, for example, Italy, as one of the Entente powers, was for strategic reasons given purely German-speaking areas without providing for any kind of guarantees for the German minority. On the other hand, some states which had taken no part in the war were given the opportunity to annex areas with a national minority from defeated powers. Thus, for example, Denmark was given the northern part of the German province of Schleswig after a plebiscite had been held in the area.

2. THE ÅLAND ISLANDS—SOME GEOGRAPHICAL AND HISTORICAL ASPECTS

Up to the year 1809 the Åland Islands belonged to Sweden in the same way as did those parts of Finland which had remained under the Swedish crown after the signing of the peace

treaties of Nystad in 1721 and of Åbo in 1743. From the administrative point of view the islands had been part of the diocese of Åbo (which diocese originally comprised the whole Finland)¹ since the beginning of the 14th century and had belonged to Åbo province since 1634. When, as a result of the Treaty of Fredrikshamn (signed on September 17, 1809), the whole of Finland was ceded by Sweden to Russia, it was expressly stated that the Åland Islands belonged to the areas subject to Russian sovereignty.

Because of the strategic value of the Åland Islands—they were known as “the key to the Baltic”—Sweden had done her utmost in the course of the negotiations with Russia to retain the islands, but without success. Nor was Karl Johan Bernadotte² able to bring about any change in the position when he negotiated with the Tsar, Alexander I, in 1812.

Soon after peace was concluded in 1809, Russia fortified the Åland Islands. The fortifications were, however, destroyed in 1854 by British and French troops as part of the Crimean war. Despite the fact that Sweden had not been engaged in the war against Russia, she put forward a claim to the islands during the peace discussions in Paris in 1856. Sweden wanted the islands returned to her in order to strengthen her strategic position and, at the same time, to reduce Russian influence in the Baltic. The latter aim, of course, lay also in Britain's and France's interest. This goal was not achieved, but Russia was none the less forced to accede to a convention providing for the demilitarization of the Åland Islands; this instrument formed an appendix to the peace treaty.³

Towards the end of the first world war, when Russia's collapse was imminent, Sweden once more took an initiative with regard to the Åland Islands. Approaches were made to the German Government in Berlin in 1917, but nothing came out of them. On the Åland Islands there had by this time arisen a strong separatist movement. Finland's future was regarded as very uncertain and furthermore the people of Åland were afraid that the position of the Swedish language and Swedish culture on the is-

¹ The site of the diocese was in Åbo, which city in Finnish is called Turku.

² Karl Johan, former French marshal, was elected successor to the throne of Sweden in 1810.

³ Convention of March 30, 1858, between France and Great Britain, on the one hand, and Russia, on the other, by which the latter agreed to the demilitarization of the Åland Islands. Martens, *Nouveau Recueil Général*, Tome XV, p. 788. See Söderhjelm, *Démilitarisation et neutralisation des Iles d'Åland*, Helsinki 1928, pp. 100 ff., 118 ff.

lands would be threatened in an independent Finland. There were, however, other areas of Finland with a purely Swedish-speaking population or a very strong Swedish minority. Furthermore, until quite recently Swedish had been Finland's principal official language, even though the majority of the population spoke Finnish.⁴

The Ålanders feared that Finnish dominance when Finland gained its independence would be very strong. They therefore looked upon union with Sweden as the surest guarantee for the preservation of the national identity of the Åland Islands.

Sweden's interest in the Åland Islands was determined mainly perhaps by their strategic value in the Baltic. Nevertheless, the Swedes, in their arguments for the ceding of Åland to their country, made reference to the considerations of nationality mentioned above and also to the obvious desire of the Ålanders for union with Sweden.

During the Finnish war of independence the Åland Islands were occupied for a short time in 1918 by Swedish troops, but later their place was taken by German forces.

In the course of the peace negotiations at Versailles attempts were made both by the Swedes and the Ålanders to bring about the incorporation of the Åland Islands with Sweden after a plebiscite, in the same way that Denmark had been permitted to annex northern Schleswig. As to the outcome of the plebiscite there could be no doubt.

Certainly the Supreme Council of the victorious allied powers could, had it so wished, have taken the Åland Islands from Finland in this way. A well-informed observer, Ossian Donner, described the Supreme Council as "probably the most powerful institution this world had ever seen It had the authority to make whatever decrees it wished, to change frontiers and alter existing conditions just as it desired."⁵

Finnish diplomacy, however, succeeded in getting the question of the Åland Islands and which country they belonged to removed from the agenda of the peace conference ; instead the matter was passed on to the League of Nations. This meant that the risk of Finland's losing the islands was considerably diminished.

⁴ See Modeen, "The situation of the Finland-Swedish population in the light of international, constitutional and administrative law", *McGill Law Journal*, vol. 16 (1970), p. 121.

⁵ Donner, *Åtta år*, Oxford 1927, pp. 125 f.

3. FINLAND AND THE PROTECTION OF MINORITIES

On December 15, 1920, the League of Nations had passed a resolution to the effect that the Baltic countries, of which Finland was considered one, would be accepted as members of the League only on condition that they observed the protection of national minorities in accordance with the principles prescribed in the peace treaties and national minority conventions.⁶

However, Finland was recognized as an independent state by the Entente powers and accepted as a member of the League of Nations in December 16, 1920, without first being asked to provide any guarantees for the protection of national minorities. The only condition made was that the question of which country the Åland Islands belonged to should be left open for the present. At the time in question the Åland Islands problem was under discussion by the Council of the League of Nations.

Only after Finland had already been accepted as a member of the League was she notified that she should provide the Council of the League with details of the position of national and religious minorities in Finland. A report providing this information was prepared by the Finnish foreign ministry.⁷

After the Council of the League had studied the report it decided not to require of Finland any formal undertaking to respect the position of her national minorities. The Finnish Constitution and Finnish legislation concerning the use of the country's two languages were regarded as sufficient guarantees for the protection of minorities. In addition, there was the fact that the conflict over the Åland Islands had by this time been resolved. Furthermore, the Swedish-speaking Finns—the only minority of any importance in Finland—had made no demands for an international guarantee of their protection.

The attitude of the League of Nations towards Finland was from the very beginning marked by a particular respect for Finland's domestic legal system and for the guarantees provided for the observation of the country's laws.

⁶ These treaties are enumerated in *Protection of Minorities. United Nations publication*, Sales No. 67.XIV.3, New York 1967, pp. 7 f.

⁷ *La situation juridique et les droits des minorités en Finlande. Documents publiés par le ministère des affaires étrangères*, Helsinki 1921.

4. THE ÅLAND ISLANDS QUESTION AT THE LEAGUE OF NATIONS

The Åland Islands question was first discussed by the Council of the League on July 11, 1920, when Finland had not yet become a member of the League. The initiative in this matter had been taken by the United Kingdom, which invoked Article 11 of the Covenant of the League of Nations. According to the article it is "the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends".

Finland was summoned to the Council and given an assurance of equality of treatment with Sweden, in spite of the facts that Finland did not belong to the League of Nations and that its international position was still to some extent uncertain.

When discussion of the question began, Finland opposed discussion of Åland's sovereignty by the Council of the League, on the ground that the islands formed part of Finnish territory and therefore relations between Finland and the Ålanders should be considered a matter of Finnish internal interest. Sweden, on the other hand, regarded Åland's sovereignty as an international question.

The question whether the conflict over the Åland Islands (including the problem of their demilitarization) was an international matter was referred by the Council of the League to a specially appointed Committee of Jurists which was required to report to the Council on the matter. Under Article 15(8) of the Covenant, only disputes of an international character could be decided by the Council, which was not competent to discuss a matter which by international law lay solely within the domestic jurisdiction of a party.

The Committee of Jurists decided that the question was one of international interest and put forward as the reason for their decision that "Finland had not yet acquired the character of a definitively constituted state".

On the other hand, in the justification for its decision the Committee felt impelled to state that "positive International Law does not recognise the right of national groups, as such, to sepa-

rate themselves from the State of which they form part by the simple expression of a wish, any more than it recognises the right of other States to claim such a separation”.

The Committee of Jurists, then, was of opinion that the Council of the League of Nations had the necessary authority to make a decision in the matter of Åland's sovereignty.⁸

The Council of the League supported the conclusion reached by the Committee of Jurists. A new body known as the Commission of Rapporteurs was set up to look more closely into the matter.

The Commission of Rapporteurs presented its report on April 16, 1921. The conclusion that the Commission arrived at was that there could be no doubt as to Finland's right to the Åland Islands. However, it was added that Finland should give the Ålanders stronger guarantees for the preservation of the national identity of the islands. Furthermore, the observance of these guarantees should be subject to international supervision.⁹

Finland had already given the Ålanders a wide measure of autonomy in the Åland Autonomy Act of May 6, 1920. They would hardly have been granted this autonomy if the risk that Finland might lose the Åland Islands to Sweden had not been regarded as a very real one.

The Commission of Rapporteurs should be seen as a political body, not as a body of legal experts. This explains the contradiction contained in the Commission's report: on the one hand Finland's sovereignty over the Åland Islands is indisputable, while on the other it is suggested that Finland should renounce part of its sovereignty over the islands by permitting international supervision of the islands' autonomy. The justification put forward for the latter proposal was that in this way it would be possible to bring about a relaxation of the tension between Finland and Sweden and between Ålanders and “mainlanders”.¹

After the Commission of Rapporteurs had submitted its report, which after all was favourable to Finland, the Finns no longer persisted in their opposition to the Åland Islands ques-

⁸ League of Nations, *Official Journal. Special Supplement* No. 3, p. 5 (October 1920).

⁹ League of Nations, *The Åland Islands Question*. Report submitted to the Council of the League of Nations by the Commission of Rapporteurs. *Document du Conseil* B.7. 21/68/106 (1921), pp. 32 ff.

¹ See Conwell-Evans, *The League Council in Action*, Oxford-London 1929, pp. 143, 195 ff.

tion's being decided by the Council of the League of Nations. Instead they declared themselves willing to "accept the decision of the Council". Sweden took the same attitude, albeit with a reservation in respect of "future events . . . creating a new situation in the Islands . . .".

At the League Council's meeting on June 24, 1921, there was approved a resolution which stated: "The sovereignty of the Åland Islands is recognised to belong to Finland." It was considered, however, that "the interests of the world, the future of cordial relations between Finland and Sweden, the prosperity and happiness of the Islands themselves" could not be "ensured unless certain further guarantees are given for the protection of the Islanders ; and unless arrangements are concluded for the non-fortification and neutralisation of the Archipelago". The Council recognized "that these guarantees" would "be more likely to achieve their purpose, if they are discussed and agreed to by the Representatives of Finland with those of Sweden, if necessary with the assistance of the Council of the League of Nations, and, in accordance with the Council's desire, the two parties have decided to seek out an agreement. Should their efforts fail, the Council would itself fix the guarantees which, in its opinion, should be inserted, by means of an amendment, into the autonomy law of May, 6th, 1920. In any case, the Council of the League of Nations will see to the enforcement of these guarantees." The Council also decreed the signing of "an international agreement in respect of the non-fortification and the neutralisation of the Archipelago" and instructed "the Secretary-General to ask the Governments concerned to appoint duly accredited representatives to discuss and conclude the proposed Treaty" (Appendix I).

Sweden protested against this resolution but nevertheless was "ready loyally to recognise that the decision of the Council has the force given to it by the Covenant". The representatives of both Finland and Sweden agreed to negotiate between themselves as to the provision of further guarantees for the protection of the national identity of the Åland Islands in collaboration with a member of the League Council.

When the Council met again on June 27, 1921, the negotiations had resulted in the drawing up of a definitive text which the Belgian representative, who had presided as chairman over the negotiations between Finland and Sweden, now laid before the Council for adoption. The text contained the agreement reached by the two parties. The text (see Appendix II) concludes

with an article (7) which reads as follows: "The Council of the League of Nations shall watch over the application of these guarantees. Finland shall forward to the Council of the League of Nations, with its observations, any petitions or claims of the Landsting of Åland in connection with the application of the guarantees in question, and the Council shall, in any case where the question is of a juridical character, consult the Permanent Court of International Justice."² The Council unanimously approved the terms of this agreement and decided it should be annexed to its resolution of June 24.

In coming to its decision in the question of the Åland Islands, the Council of the League should be regarded as basing its ideas on the view submitted by the Committee of Jurists that the matter of which country the Åland Islands belonged to was open to question. The Council considered that, while approving a decision which terminated the dispute in Finland's favour, it could none the less impose certain conditions in connection with its decision. Finland was required to fulfil these conditions and in return her sovereignty over the islands was confirmed. The step taken by the Council of the League of Nations in deciding the Åland question meant a certain limitation of Finland's sovereignty, but the aim of the Council was to ensure that Finland gave the Ålanders the guarantees they desired for the preservation of their national identity. This move, together with the resolution binding Finland to the non-fortification and neutralization of the archipelago by means of an international convention, was intended to bring about more relaxed relations between Finland and Sweden.³

5. THE ÅLAND AGREEMENT—FORM AND CONTENT

The agreement as to the more precise guarantees for the preservation of the national character of the Åland Islands which was concluded on June 27, 1921—henceforth called the Åland Agreement—represents the most radical form of international guarantee for a national minority ever to have been drawn up. In no other treaty have such far-reaching guarantees been given

² League of Nations, *Official Journal*, 2nd Year, no. 7, 1921, pp. 691–705.

³ See Barros, *The Åland Islands Question: Its Settlement by the League of Nations*, New Haven 1968.

for the preservation of a national minority's language and culture and the protection of the national character of the area inhabited by the minority.⁴

The Åland Islands question should not, however, be looked upon as a problem concerning a national minority in the usually accepted sense, since the people of Åland form but a small part of the Swedish-speaking minority in Finland.

The Åland Agreement is exceptional because of the way it came about and because of its form.

The Åland Agreement came about at the instigation of the Council of the League of Nations, Article 15(3) of whose Covenant states that the Council "shall endeavour to effect the settlement of a dispute" and that "if such efforts are successful a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate".

The form of the Åland Agreement—it is contained only in the printed minutes of the Council's meetings and, according to these minutes, is not formally signed by the parties to the Agreement—cannot, in view of the freedom of form which characterizes documents of this nature, be regarded as constituting any impediment to its validity as an international treaty. It is generally conceded that "the agreed minutes of a conference may become a treaty if the conditions for this are present, including the intent of the parties to be bound".⁵ Nor is its validity affected by the fact that it was not registered with the League's Secretariat (cf. Art. 18 of the Covenant) since its publication in the Official Journal must be considered to have ensured the treaty of the necessary degree of publicity.

Finland's representative at the negotiations conducted in the Council of the League of Nations had clearly received full powers from the Finnish Government to conclude an agreement on guarantees for the preservation of the national identity of the Åland Islands. The same was also true of Sweden's representative. It is therefore not possible to raise any objections to the validity of the Åland Agreement on the grounds that the negotiating parties lacked the necessary powers.

The Åland Agreement was not made on condition that it should

⁴ See UN Document E/CN.4/Sub.2/133, *Treaties and Instruments Concerning the Protection of Minorities 1919–1951*, pp. 6 f.

⁵ O'Connell, *International Law*, 2nd ed. London 1970, p. 203.

be ratified. It must therefore be regarded as having immediately come into force as far as Finland was concerned. It was expressly stated in the Agreement that Finland undertook to introduce shortly into the Act of Autonomy of the Åland Islands the guarantees contained in the Agreement.

According to art. 33 of the Constitution of Finland "the President shall determine the relations of Finland to foreign powers, yet the treaties concluded with foreign powers must be approved by the Riksdag (Diet) in so far as they contain stipulations falling within the domain of legislation or otherwise requiring, according to the Constitution, the consent of the Riksdag". Since the Åland Agreement contained stipulations falling within the domain of legislation, it had to be approved by the Riksdag in order to come into force.

The usual procedure in such cases is for the Riksdag's agreement to treaties, the contents of which should be approved by the Riksdag, to be obtained by presenting the treaty to the Riksdag, which then approves it by means of an informal resolution. Should the treaty require formal legislation in order to come into force, it is up to the Riksdag to decide as to the passing of such legislation. It is usual to publish the treaty as such in the treaty series of the Finnish Code of Statutes as an appendix to a law or a decree bringing it into force (known as a blank law or decree).

As far as the Åland Agreement was concerned, however, the formal approval of the Riksdag for the Agreement was never sought, nor was the Agreement presented to the Riksdag in conjunction with a bill for a blank law. The Government of Finland regarded it as sufficient to lay a bill (1921: 42) before the Riksdag with proposals for certain statutes concerning the province of Åland along the lines laid down in the Åland Agreement. In the explanatory memorandum attached to the bill it is expressly mentioned that the Council of the League of Nations approved on June 27, 1921, "a proposal for regulations concerning Åland which are intended to be put into operation by means of Finnish legislation: the proposal has also been accepted by the representatives of Finland and Sweden". Included as appendices to the Government bill were the decision of the Council of the League of Nations of June 24, 1921, and the Åland Agreement of June 27, 1921.

Although several voices were raised against the bill in the course of parliamentary debate, it was passed with a comfortable

majority. In the introduction to the Riksdag's reply to the President, however, criticism was directed against the fact that disputes between the country and the province of Åland were to be determined by "an alien body which cannot be assumed to be bound only by legal considerations in its dealings with disputes".⁶

In this way Finland's parliament gave *de facto* but not formal approval to the Åland Agreement. Finland's obligation to observe the Agreement has never been called in question either internationally or constitutionally. The fact that parliamentary handling of the treaty did not follow the correct prescribed procedure is defended by an expert on Finnish treaty law on the grounds that the Åland Agreement was not "in a technical sense" to be considered a treaty even though Finland was bound by its provisions in international law.⁷

Since the Åland Agreement contains no direct obligations as far as Sweden is concerned (other than that Sweden shall respect Finnish sovereignty over the islands provided Finland meets her obligations as to the guarantees laid down in the Agreement for the protection of the Ålanders' language and culture), the Åland Agreement does not appear in the treaty series appended to the Swedish Code of Statutes. The Swedish Riksdag for similar reasons did not discuss the Åland Agreement. The only published form in which the Agreement appears in Sweden is in a collection of documents published by the Swedish foreign ministry.⁸

We shall return later to the question of the status of the parties to the Åland Agreement and the guarantees for its observation.⁹

6. FINLAND AND ÅLAND.

ADOPTION OF THE NEW AUTONOMY ACT OF 1951

The League of Nations was formally dissolved on April 18, 1946, after its activities had been at a standstill for a number of years. With the dissolution of the League a new situation arose as far as the Åland Agreement was concerned.

Not once during the period that the League of Nations had

⁶ Riksdagen 1921. *Handlingar* (Official Reports) II. Prop. no. 42. Riksdagens svar (Parliament's reply).

⁷ Kaira, *Valtiosopimusten tekemisestä ja voimaansaattamisesta Suomen oikeuden mukaan*, Helsinki 1932, pp. 172, 391.

⁸ *La Question des Iles d'Åland III. Documents relatifs à la réunion du Conseil de la Société des Nations en juin 1921*, Stockholm 1921, pp. 88 ff.

⁹ See *infra*, sections 11, 12.

guaranteed the observation of the Agreement did the Landsting of Åland avail itself of its right to address complaints to the Council of the League on the ground of a failure by Finland to observe the provisions of the Agreement. Nor did the Council take any initiative in this respect; no great significance need be attributed to this, however, as it was the general policy of the League of Nations in regard to treaties concerning the protection of national minorities that the Council only took measures to solve disputes if complaints were forthcoming.¹

Relations between Finland, Åland and Sweden developed satisfactorily and for the most part the provisions for the protection of the national character of Åland functioned well during the twenties and thirties. While in Europe generally the protection afforded to national minorities by international law had lost all practical significance by the end of the thirties, the Åland Agreement stands out as an example of an international treaty providing a compromise solution in a dispute between two countries which established a firm base for the development of friendly relations between the parties concerned. The radical protection afforded the Ålanders can probably be regarded as an explanation why the population of Åland has since shown a positive attitude towards Finland. On the other hand, mention should also be made of the Finnish authorities' correct adherence to the provisions of the Agreement.

The 1922 statute consolidating the various provisions pertaining to the population of the province of Åland, commonly known as the Åland Guarantee Act, was amended only once during the time it was in force, on September 1, 1939. The change comprised a more precise definition of the conditions to be satisfied by anyone wishing to purchase real estate in the province: such a person was required to have been permanently resident in the Islands for five years prior to the time of purchase. This rule as to the right to purchase had been given a more concrete form on April 1, 1938, through the passing of a special statute concerning the exercising of the right to repurchase real property sold in the province of Åland.

The Åland Autonomy Act, like the Åland Guarantee Act, had, however, a number of technical shortcomings; furthermore, it did not satisfy the Ålanders materially in certain respects. From 1938 onwards, therefore, different committees worked on the

¹ See *infra*, section 12.

complete revision of this legislation. One demand repeated on numerous occasions by the people of Åland was that the provisions contained in the Autonomy Act and the Guarantee Act should be combined in a single statute ; such an arrangement would have conformed to the tenor of the Åland Agreement (art. 1).

The work of revising this particular piece of legislation was partly interrupted by the war. But in 1945 a move was made by the Ålanders to hasten the revision of the law. At the same time a wish was also expressed for a future reunion with Sweden. This, however, was immediately rejected by the Swedes. The Finnish Government's reply was that, inasmuch as the Ålanders' proposal concerned Åland's relations with a foreign power and invoked a change in the internationally decided status of the province, it lay outside the jurisdiction of the Landsting.²

In the following year the Finnish Government presented to the Riksdag a bill for a new Act of Autonomy for Åland. The bill was based on a committee report submitted on April 12, 1946. There were five members of the committee responsible for drawing up the proposed bill, two of them representing the Landsting of Åland. The bill contained provisions from both the 1920 Åland Autonomy Act and the 1922 Åland Guarantee Act. In addition it was proposed that the legislation concerning the autonomy of Åland should be extended on a number of important points.

The provision contained in sec. 6 of the Guarantee Act (corresponding to art. 7 of the Åland Agreement) was, however, omitted from the bill. Instead a provision, sec. 46, was introduced according to which the Government pledged itself, "as soon as a suitable opportunity presented itself, [to] seek to obtain an international guarantee for the application" of the Act as far as the provisions for the protection of the Ålanders' nationality originally contained in the Guarantee Act were concerned. The Government bill (1946: 100), which was laid before the Riksdag on November 6, 1946, had to be held over from the 1946 session because of shortage of time. The committee stage of the bill took so long that, when the Riksdag was dissolved in 1948, the bill lapsed.

The reason for the long delay was that the Soviet Union was opposed to sec. 46. This provision was considered to be a limitation of Russia's controlling power over Finland.

² See Dreijer, *Ålands självstyrelse 25 år*, Mariehamn 1947, pp. 149 ff.

The Standing Constitutional Committee of the Riksdag, which managed to discuss the bill, also proposed that sec. 46 should be omitted.³

A new committee was set up to prepare a revised Act for the Autonomy of Åland. The result was a new Government bill (1948: 38), which lacked anything corresponding to sec. 46 in the earlier bill of 1946. On the other hand, it was decreed in the new bill that only those provisions contained in the 1922 Guarantee Act that were replaced by corresponding provisions in the new statute would be repealed when the latter came into force. Accordingly, sec. 6 of the Guarantee Act would continue to be in force even though the rest of the Act was repealed.

However, on account of the opposition on the part of the Soviet Union to this clause, the Riksdag altered the text of the law so that the whole of the Guarantee Act was repealed. The law was finally passed in October 12, 1951, after being put to the vote many times. The extreme left continued its opposition to the new law right to the end, in spite of the change referred to above. The Act was approved by the Landsting of Åland on December 1, 1951, and was signed by the President of Finland on December 28, 1951 (extracts of the Act are given as Appendix III below).

Sweden, as well as the Soviet Union, made representations to the Finnish Government as to the contents of the Government bill concerning the new Åland Autonomy Act. Sweden referred to the 1921 Åland Agreement and pointed out that there were certain clear Swedish interests to be protected in any revision of the Agreement. In notes to the Finnish foreign minister the Swedish envoy in Helsinki claimed that "regardless of the position in which the League of Nations . . . now finds itself, the express obligations to safeguard and guarantee the Swedish language culture and local traditions of the people of Åland, which Finland accepted in Geneva on June 27, 1921, also with regard to Sweden, are still binding" (Swedish notes of October 24, 1945; December 30, 1946; October 19, 1950).

The Finnish foreign minister's reply to these notes was to the effect that, although sec. 6 had been formally repealed, the Finnish Government considered it quite clear that the country's international obligations were not in any way affected by a piece of legislation such as that in question (October 26, 1950).

³ Riksdagen 1947. *Handlingar* (Official Reports) III.

7. ANALYSIS OF THE PROBLEMS CONCERNING
THE INTERNATIONAL GUARANTEES FOR THE
PROTECTION OF THE ÅLAND ISLANDS' NATIONAL
IDENTITY AND THE AUTONOMY LEGISLATION OF 1951

The new Åland Autonomy Act came at an unfavourable time, for the League of Nations had just been dissolved and the question whether the United Nations would take over the guarantees contained in treaties concerning national minorities still remained open to some extent.

During the time that the League of Nations had been active sec. 6 of the Åland Guarantee Act (art. 7 of the Åland Agreement) had not been invoked on a single occasion. This meant that the very existence of this provision was hardly known to the people of Finland, not even to the members of the Riksdag. It was quite usual for this guarantee to be confused with the international guarantee for the non-fortification and neutralization of Åland which was contained in the Convention of October 20, 1921 (L.N.T.S., Vol. IX, No. 255), and which was supplemented in a subsequent treaty made with the Soviet Union on October 11, 1940. These latter conventions had been the subject of much livelier discussion than had the guarantee for the preservation of the national identity of the Åland Islands. Furthermore, they had been invoked both in negotiations with Sweden and in the armistice and peace treaties with the Soviet Union.

For the people of Åland, however, the provision of an international guarantee contained in the 1922 Åland Guarantee Act held considerable significance. Above all, this obligation was perhaps looked upon as an acceptance in principle of protection of the Ålanders' national identity in international law rather than any real, concrete guarantee of it. There was a distinct reluctance to accept the idea that Åland's autonomy, together with the protection of the national identity of the islands, was a matter between Åland and Finland alone. On the other hand, there was some uncertainty as to Sweden's position according to the Åland Agreement. Certainly the people of Åland hoped for Swedish support in this matter, but they did not dare place all their trust in Sweden's role under the Åland Agreement as international guarantor of the continuance of protection for the national identity of the islands.

There are several remarkable points connected with the Finnish Government's and Parliament's handling of the revision of

the Åland Autonomy Act. The inclusion in the 1946 Government bill of a clause obliging the Government to arrange an international guarantee for Åland's autonomy seems strange. It is the duty of parliaments to lay down rules, not to engage in commitments. Commitments on the part of a government should not be contained in a statute but should be given some other form.

It is true that when the 1948 Government bill was presented the commitment contained in the earlier bill had been omitted. Instead, in the final section of the law, concerning its coming into force, there was smuggled in a provision that only those parts of the 1922 Åland Guarantee Act were repealed which were contained in the new Åland Autonomy Act. This was done in order to meet the wishes of the people of Åland. It was believed that in this way everybody concerned would be satisfied. The Soviet Union could no longer point to an obligation which bound Finland to seek an international guarantee for the protection of the national identity of the Åland Islands, while the Ålanders could be satisfied with the *status quo*. The international guarantee as formulated in the Åland Guarantee Act still remained in force in Finnish law, for whatever effect it might have. In Finland it was generally assumed that this guarantee was, in practice, valueless. Consequently the Government's move was also a way of pacifying domestic opinion, which viewed such a guarantee with suspicion.

One can agree with one commentator on the bill (1948: 38) who, referring to such a solution, says: "Of course, it may be said with some justification that, from the purely legal viewpoint, it is an anomaly to retain a single provision of a statute that gives the right to enter complaints as to the application of other provisions, which are no longer in force, and furthermore, to address them to an institution which no longer exists."

The Soviet Union, however, was not satisfied with the *status quo*, however worthless the League of Nations' guarantee might be in practice at this stage. It demanded that every hint at the existence of an international guarantee of the national character of the Åland Islands should be removed from the Act. The Government showed itself willing to meet Soviet wishes and took steps to ensure that the Riksdag deleted the offending clause from the Act. At the same time, however, it was pointed out, in order to calm the Ålanders and the Swedes, that this did not mean that the Government was trying to bring about any change in Finland's international obligations through the deletion of this clause.

.. It is well to remember that at this time there was still an Allied (in practice, a Soviet) control commission in Finland and that the country could not be considered neutral but rather belonged to the Soviet sphere of interest.

The only realistic way in which Finland might have repealed her international obligations with regard to Åland would have been for her to try to arrange this by means of international negotiations between the parties to the treaty, for international obligations cannot be set out of force unilaterally. Since no such step was taken in conjunction with the revision of the Åland Autonomy Act—on the contrary, the Finnish Government maintained that this legislation was not aimed at changing Finland's international obligations—it may be said that the whole dispute over the provision of international guarantees for the Autonomy Act was pointless and lacked any real significance.

The fact that Finland omitted such a provision from a revised version of the Åland Autonomy Act after the dissolution of the League of Nations and before the United Nations had declared itself willing to assume responsibility for guaranteeing the rights of national minorities could not be considered a move contrary to international law. Finland's obligation under the Åland Agreement, namely that Finland's domestic legislation concerning Åland should conform to the provisions of the Agreement, could no longer be binding as far as art. 7 was concerned. All that could be claimed was that, if a new situation arose whereby the United Nations, as successor to the League, demanded that Finland accept a similar new guarantee and a supervision of the guarantee by the United Nations like that enforced by the League in accordance with art. 7 of the Åland Agreement, then Finland should acquiesce in such a demand. In addition, it might then supplement the new Autonomy Act with a provision specifying this guarantee and the supervision of it.

During the time—more than 20 years—that the 1951 Autonomy Act has been in force, relations between the province of Åland and the mainland have become considerably more stable. It was important that this piece of legislation was renewed, for it permitted the solution of certain problems which the law had earlier left unresolved and which consequently led to conflicts. Both from the technical legal point of view and as far as the content of the law itself was concerned, the 1951 Act meant a step forward in the development of relations between Åland and the Finnish state. In Sweden, too, there was probably satisfaction over

the propitious outcome of the matter.

What is of the greatest importance here, however, is that the 1951 Act conforms to the provisions of the 1921 Åland Agreement and that Finland respects its international obligations in the matter of the preservation of the Swedish language and culture of the Åland Islands.

The Autonomy Act is now once more regarded by the Ålanders as being in need of revision. Certain clarifications are needed in the Act as regards the powers of the Landsting as a legislating body. Furthermore, a more just distribution of taxes between the province and the rest of Finland is required.

8. FINNISH PRONOUNCEMENTS AS TO THE CONTINUED VALIDITY OF THE INTERNATIONAL GUARANTEES FOR THE PROTECTION OF THE NATIONAL IDENTITY OF THE ÅLAND ISLANDS

What did the Finnish Government mean when it said that the adoption of the new Åland Autonomy Act did not imply any change in Finland's international obligations as far as the Åland Islands were concerned? The answer to this question is not clear. The Government provided no clarification of what was intended. It is evident that a state cannot, by means of domestic legislation, modify its duty to observe its obligations in international law. However, it was not stated expressly that Finland still considered herself bound by the Åland Agreement.

Finnish experts in international law who have commented on this matter have either refrained from taking any definite stand or have put forward the view that the Åland Agreement is no longer in force. Those who consider that the guarantees for the protection of the national identity of the Åland Islands are ensured only by domestic legislation point to the fact that the 1951 Autonomy Act no longer contains any reference to an international guarantee.⁴

⁴ Suontausta, "Ålands rättsliga ställning", *Statsvetenskaplig Tidskrift* 1951, pp. 241 ff.; Saario, *Yearbook on Human Rights for 1951*, New York 1953, pp. 89 ff.; Castrén, *Suomen kansainvälinen oikeus*, Porvoo 1959, pp. 156 f.

9. THE UNITED NATIONS' STUDY OF
THE LEGAL VALIDITY OF THE UNDERTAKINGS
CONCERNING MINORITIES

It was clear from the very beginning of the United Nations' existence that the organization had no great eagerness to continue the League of Nations' work in guaranteeing the protection of minorities. However, it was considered important to make a study of whether the old treaties concerning the protection of minorities were still in force. At the instigation of the Economic and Social Council, therefore, the question was examined by the Secretary General and the conclusions published in the form of a mimeographed Study on April 7, 1950.⁵ An extract of the study is reprinted as Appendix IV below.

Among the treaties examined was the Åland Agreement of June 27, 1921. It is regarded as a "Resolution of the Council of the League of Nations dated June 27th 1921 *approving* an Agreement between the Representatives of Finland and Sweden".

It is true that Finland took part in the war, but since the treaty concerned her relation to a neutral state, it was not considered that the war had affected the validity of the treaty. Nor was the Agreement deemed to be affected by the Finnish peace treaty, concluded in 1947.

On the basis of the bilateral nature of the Åland Agreement, the Study concludes that the dissolution of the League of Nations does not affect the validity of the Agreement. The League of Nations is looked upon as a guarantor of the Agreement but the treaty as such continues to have the force of law despite the disappearance of the guarantor.

Nor can any outward change of circumstances be invoked as a basis for the Agreement's ceasing to be valid. The territorial changes and population movements in Finland during and after the war did not affect the Åland Islands. These remained Finnish territory and had retained their purely Swedish identity. The UN Study, which came to the conclusion that almost all the other treaties concerning the protection of minorities had ceased to be valid because of the *rebus sic stantibus* clause, maintains the view that Finland's obligation towards Sweden still exists, although the obligation undertaken by Finland towards the Council of

⁵ United Nations Publication E/CN.4/367 (1950), *Study of the Legal Validity of the Undertakings Concerning Minorities*. Memorandum by the Secretary General.

the League of Nations as representative of the international community is suspended until such time as an express decision has been taken by the UN to put it back into force.⁶

Not one of the numerous authors who have commented on this UN Study has questioned the conclusions as to the continued validity of the Åland Agreement.

Several writers have criticized the Study's use of the *rebus sic stantibus* clause in connection with the treaties concerning minorities. In their opinion it is wrong to invoke this clause. Instead they hold that the treaties have ceased to have any validity *per desuetudinem*, as they have not been applied in practice for so long.

This last contention cannot be maintained in the case of the Åland Agreement for the protection of Åland's minority, as this Agreement has been observed in practice and is still respected by the Finnish authorities by virtue of the Åland Autonomy Act, which in turn conforms with the provisions of the Åland Agreement.⁷

10. THE OPINION OF THE INTERNATIONAL COURT OF JUSTICE CONCERNING THE STATUS OF SOUTH-WEST AFRICA

Is it possible to draw any conclusions as to the Åland Agreement on the basis of the International Court of Justice's various pronouncements concerning the validity of South Africa's mandate over South-West Africa?

Despite the dissolution of the League of Nations, the International Court of Justice held that the mandate was still in force. South Africa's obligation to administer South-West Africa for the well-being and the development of the people in accordance with

⁶ *Op. cit.*, p. 69. See also United Nations Publication E/CN.4/367/Add. 1 (1951), *Study on the Legal Validity of the Undertakings Concerning Minorities*, p. 3.

⁷ See, among others, Doehring, "Das Gutachten des Generalsekretärs der Vereinten Nationen über die Fortgeltung der nach dem ersten Weltkrieg eingegangenen Minderheitenschutzverpflichtungen", *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, Bd 15 (1953-54), pp. 521-40; Feinberg, "The legal validity of the undertakings concerning minorities and the *clausula rebus sic stantibus*", *Studies in Law. Scripta Hierosolymitana*, vol. V, pp. 95-131 (1958); Ganji, *International Protection of Human Rights*, Paris 1962, pp. 80 f.; Veiter, *Völkerrecht und Volksgruppenrecht. System eines internationalen Volksgruppenrechts*, I, Vienna 1970, pp. 72-94.

the mandate was still binding even though the League of Nations and consequently also its supervisory control had ceased to exist. The Court's view was that the General Assembly of the United Nations could perform the duty of supervising the mandate which had earlier fallen on the Council of the League of Nations. South Africa's right to change the provisions contained in the mandate was considered to require the approval of the General Assembly.⁸

The conclusion arrived at in the UN Study of 1950 that the Åland Agreement was still in force in spite of the fact that the League of Nations' supervisory control had ceased to exist does not therefore conflict with the International Court of Justice's pronouncement regarding the mandate over South-West Africa.

While the United Nations has exhibited an active interest in supervising the observance of the Mandate for South-West Africa and, after South Africa's opposition to this, adopted a resolution on the termination of the Mandate for South-West Africa, there has been no corresponding activity on the part of the UN in respect of the minority treaties signed after the first world war. Consequently, the United Nations has shown no interest in the Åland Agreement, either.

If Finland's obligation to protect the national identity of the Åland Islands is considered to have been entered into only towards the League of Nations, then it may be put on the same footing as those obligations vis-à-vis national minorities that were contained in declarations made to the League of Nations by Albania and Iraq. It might be held that those two countries' obligations, according to the UN Study of 1950, did not cease automatically on the dissolution of the League of Nations, since there was no change of circumstances that might be looked upon as terminating the validity of the obligations. However, for the obligations to continue to be binding it would have been necessary for the United Nations expressly to assume the role played by the League of Nations as recipient of the obligations and as supervisor of their observance. In that case it might be claimed, by virtue of the International Court of Justice's decision in the case of the Mandate for South-West Africa, that these obligations for the protection of national minorities were not without a competent body to which they might be addressed, a condition that was necessary for their continued validity.

⁸ *I.C.J. Reports*, 1950, pp. 128 ff.

However, the United Nations did not assume the League of Nations' position as recipient of minority declarations. Furthermore, it is clear that it has no intention of doing so, more than twenty years having passed since the publication of the Study without any change of attitude. These unilateral obligations to protect national minorities must therefore be regarded as having lapsed. If Finland's undertaking to preserve the national identity of the Åland Islands is considered to have been entered into unilaterally towards the League of Nations, then there is today no international guarantee for this undertaking.

11. THE PARTIES TO THE ÅLAND AGREEMENT

It has already been pointed out that the question whether the Åland Agreement can still be regarded as valid depends on how one views the problem who the parties to the Agreement are.

There has been uncertainty from the very beginning on the question: Towards whom did Finland undertake these obligations? There is no doubt that Finland bound herself in this matter towards the League of Nations. But did she also bind herself towards Sweden? Could Åland as a self-governing province possibly be a subject on whose behalf Finland had entered into international obligations?

Sweden is not mentioned in the Åland Agreement. According to the Agreement the Landsting of Åland has the right to make complaints to the Council of the League of Nations through the agency of the Finnish Government. In addition, it is provided that the Council shall supervise the application of the guarantees referred to in the Agreement.

How the Åland Agreement came about is quite clear from the minutes of the Council of the League of Nations as well as from statements made by Finland's representative in Geneva, Carl Enckell, and by other persons who have examined the procedure at these negotiations. The first stage was the Council's resolution of June 24, 1921. In accordance with this Finland was recognized to have sovereignty over the Åland Islands in the dispute between Finland and Sweden which lay before the Council. The resolution went on to stipulate that the parties to the dispute should enter into direct negotiations to determine more precisely the additional guarantees that Finland should offer the

people of Åland in the matter of their national identity in accordance with the Council's resolution of June 24, 1921. The Åland Agreement of June 27, 1921, was the result of Finnish-Swedish negotiations pursued under the chairmanship of a person appointed by the Council of the League. The Agreement, which was entered into by the representatives of both Finland and Sweden, was confirmed by the Council.

Sweden was not given any express right to supervise the application of the minority provisions contained in the Agreement, although the Swedish representative pleaded for such a right.¹ However, it is not correct to characterize the Åland Agreement as a third-party agreement in Sweden's favour, since Sweden herself took part in the negotiations as to the contents of the Agreement and, furthermore, did not directly profit from it.

Instead it might be considered a third-party agreement in favour of Åland although representatives of the province were present both at the meetings of the Council of the League of Nations and at the negotiations between Finland and Sweden. However, Åland was not thereby given the status of a party to the Agreement. This was quite natural since Åland, being only a Finnish province, had no authority to conclude a treaty. As a result of the province's autonomy and the right given it to bring complaints before the Council of the League, Åland acquired the status of a subject of international law, but with a limited capacity. This status, however, was not held by Åland before the Agreement.

It is my opinion that a distinction should be made between two kinds of parties in the minority treaties concluded after the first world war. On the one hand, there are the parties who created the treaty and formulated the contents and, on the other, the party or parties who, under the treaty, acquired the right to call the attention of the Council of the League of Nations to inadequate observance of the treaty's provisions.

Sweden was, without doubt, party to the Agreement in so far as she took part in its creation, but her status under the Agreement was not defined exactly. Sweden may be regarded as occupying a "passive role"—a situation which was by no means unique in minority treaties. It was a general rule of these minority treaties that only members of the Council of the League of Nations had the formal right to bring offences against the treaties

¹ Enckell, *Politiska minnen* II, Helsingfors 1956, pp. 94 f.

to the attention of the Council. The other parties to the treaties, which might be parent countries of a national minority (motherland), did not enjoy this right.

The parties to the Åland Agreement clearly believed that the Ålanders themselves would take advantage of the opportunities afforded by the Agreement to bring complaints before the Council of the League of Nations. It would therefore be unnecessary to give Sweden a similar right, especially since Sweden's intervention over this question in the future might hinder the resumption of good relations between the Finns and the Swedes.

Although Sweden was thus not given the express right by the Council of the League to lodge a complaint in the event of Finland's breaking the Åland Agreement, this did not mean that she did not continue to have the right to watch over her interests as far as the Åland Agreement was concerned. In part Sweden could do this as a member of the League of Nations, if such an infraction of the Agreement could be considered to threaten to disturb international peace (Art. 11(2) of the Covenant). Partly, too, Sweden could use her right of petition, which right had been given to states that had an interest in the observation of minority treaties by virtue of League of Nations practice in this matter. Finally, Sweden could make its views known by means of direct contact with the Finnish Government. Finland could not oppose such moves by Sweden on the ground that the matter lay within Finnish domestic jurisdiction, for she was bound by the Åland Agreement to an international obligation to guarantee the Swedish identity of the Åland Islands.

For political reasons Finland's representative opposed the conclusion of a formal treaty between Finland and Sweden. For the same reasons Finland was opposed to Sweden's being given the right by the Agreement to bring complaints before the League of Nations. Sweden refrained from persisting in her attitude in this matter and the Agreement was concluded in accordance with Finnish wishes. Thus the text which was laid before the Council of the League and is referred to here as the Åland Agreement constituted an informal agreement between the representatives of Finland and Sweden. Nevertheless, by virtue of the principle of the freedom of form of international treaties the Agreement, comprising seven points in all, is to be regarded as a binding treaty between Finland and Sweden. Sweden pledged herself to withdraw its claims to sovereignty over the Åland Islands (this occurred in fact when Sweden declared herself ready to ac-

cept the decision of the Council of the League of Nations). An express condition for this was that Finland should provide a guarantee for the national identity of the people of Åland in accordance with the clauses of the Agreement.

12. THE STATUS OF THE LEAGUE OF NATIONS ACCORDING TO THE ÅLAND AGREEMENT

The two most important criteria determining the status of parties to a treaty should, in my opinion, be that they take part in deciding the content of the treaty and that they are bound by the provisions of the treaty. The Council of the League of Nations took an active part in bringing about the Åland Agreement. Does this imply that the League of Nations should be regarded as a party to the Agreement?

The activities of the Council of the League of Nations depended, however, on its status as an arbitrating body in the dispute between Finland and Sweden. The League of Nations cannot, therefore, be regarded as a party to the treaty in the true sense of the word. The role of the Council of the League in accordance with the Agreement as supervisor of the observation of the Agreement gives the League of Nations the status of guarantor of the treaty, not that of party to it. Finland was therefore bound towards the League of Nations in its capacity as supervisor of the Åland Agreement to observe the Agreement's provisions. There was, however, no obligation on the part of the League of Nations towards Finland under the Agreement. Finland's obligations towards the League of Nations were therefore unilateral.

Finland's status vis-à-vis the League of Nations according to the Åland Agreement may be compared to the relations with the League of Nations of other states bound by minority treaties or declarations. The contents of the obligations varied considerably, however. The Åland Agreement was formulated along lines which differed greatly from those of the majority of minority treaties and declarations, which were drawn up according to the same pattern. The reason for this is obvious. The minority treaties and declarations did not come about as the result of any acute conflicts. Their contents were drawn up in accordance with the general "philosophy of the protection of national minorities"

that had been worked out in conjunction with the peace negotiations at Versailles. The Åland Agreement, however, was born as an arbitration agreement to solve a dispute as to the sovereignty of the islands. The Council of the League of Nations functioned as the arbiter and consequently the provisions concerning the protection of Åland's national identity were drawn up to satisfy the demands of the situation and quite independently of the "rights of European national minorities" in general.

As far as both the Åland Agreement and the minority treaties and declarations were concerned, the Council of the League of Nations considered its obligation to supervise such agreements only a duty to intervene in the event of complaints being laid before it. The Council did not consider that it had any obligation actively to supervise the observation of the provisions.²

13. CONCLUSION

The question of the Åland Agreement's continued validity is directly linked with the problem of how the status of the parties to the treaty is interpreted. The survey given here has shown that the correct interpretation is, like that of the 1950 United Nations Study and many of the pronouncements of writers on international law who have considered this treaty, to regard the Agreement as a bilateral treaty between Finland and Sweden which also laid down obligations to be observed by both parties towards the

² See Oppenheim-Lauterpacht, *International Law I*, Edinburgh 1960, p. 715; Castrén, "Die Selbstverwaltung Ålands", *Internationales Recht und Diplomatie* 1957, p. 106; Modeen, *International Protection of National Minorities in Europe*, Åbo 1969, pp. 59 ff.

On the question of the status of the parties to the Åland Agreement, see also Erich, "Kompetensfördelning, kompetensprövning och kompetenskontroll enligt Finlands författningsrätt", *F.J.F.T.* 1924, pp. 72-157; *ibid.*, *Suomen valtio-oikeus II*, Helsinki 1925, pp. 410 ff.; Björkstén, "Finland och det folkrättsliga minoritetsskyddet", *F.J.F.T.* 1931, pp. 217 f.; *ibid.*, *Kansainvälinen oikeus*, Porvoo 1937, pp. 164 f.; Berlin "Folkenes selvbestemmelseret og de nationale mindretals beskyttelse", *T.f.R.* 1922, pp. 259 ff.; Myrberg, "Giltigheten av 1921 års Ålandskonvention", *Statsvetenskaplig Tidskrift* 1942, pp. 262 f.; Eek, "Minoriteterna, folkrätten, NF och FN", *Identitet och minoritet*, Stockholm 1971, p. 19; Kraus, *Das Recht der Minderheiten*, Berlin 1927, pp. 16, 20, 116, 228; Balogh, *La protection internationale des minorités*, Paris 1930, p. 59; Flachbarth, *System des internationalen Minderheitenrechts*, Budapest 1937, p. 103, Ganji, *op. cit.*, pp. 80 f.; Nørgaard, *The position of the Individual in International Law*, Copenhagen 1962, p. 119; Pizzorusso, *Le minoranze nel diritto pubblico interno*, Milano 1967, p. 373.

League of Nations. The League of Nations, which acted as guarantor for the observation of the provisions of the treaty, has long since ceased to exist. By virtue of the rule of international law that the non-existence of a guarantor for a treaty does not invalidate the treaty, the Åland Agreement is still valid between the parties to the treaty. Consequently, the Åland Agreement can today only be regarded as being in force between the two parties to the treaty, Finland and Sweden. Finland is obliged to observe the guarantees for the protection of the national identity of the Åland Islands as they are laid down in the Agreement, while Sweden must respect Finland's sovereignty over the Islands as long as Finland keeps its obligations.

The continued validity of the Åland Agreement means that Sweden has the right to make representations direct to the Finnish Government or to take the matter up in an international forum if she considers that Finland has infringed the provisions of the Åland Agreement. Since the dissolution of the League of Nations, however, the Landsting of Åland no longer has any direct right to demand international supervision of the observation of the Agreement. The province of Åland has therefore lost its status as a subject of international law.

By addressing herself directly to the Finnish Government, Sweden can therefore protest against possible infractions of the Åland Agreement or, as happened at the time that the 1951 Åland Autonomy Act was being drawn up, remind Finland of her obligation to observe the provisions of the Åland Agreement in Finnish domestic legislation concerning Åland.

Sweden could, if Finland agreed, lay any legal dispute before the International Court of Justice or other international arbitrary body for its consideration by virtue of the Åland Agreement.³ Finland and Sweden have also both declared themselves bound by the Optional Clause according to art. 36(2) of the Statute of the International Court of Justice, which automatically gives the Court jurisdiction to handle legal disputes between the two countries.

Sweden could also lay a (political) dispute before the General

³ In such a case the body would not consider the dispute by virtue of the provision contained in the Åland Agreement that the Permanent International Court of Justice should function as a consultative body in disputes involving Åland. This provision, which presupposed that any such consultative pronouncement should be obtained from the Council of the League of Nations, has ceased to have the force of law.

Assembly of the United Nations or, if there were a threat to peace (a theoretical possibility), before the UN Security Council.

In such cases Finland could not oppose Sweden's initiative, since Finland's observation of the Åland Agreement is not a matter for Finnish domestic jurisdiction, Finland being under an obligation in international law to apply the provisions of the Åland Agreement (see Art. 2(7), Charter of the United Nations).

It may therefore be said that the question whether Finland's guarantee to preserve the national identity of the Åland Islands is protected in international law by virtue of the Åland Agreement is not completely without significance.

Those general international conventions which provide some limited protection for national minorities are no substitute for the Åland Agreement, in view of the much more radical protective provisions contained in the Agreement.⁴ Whether any new system of international supervision might in the future be set up as far as the Åland Agreement is concerned is a somewhat theoretical question.

Because of the lack of interest shown by the United Nations in the protection of national minorities, it is hardly to be expected that the organization would give its active support to the establishment of a new control system for supervising questions concerning national minorities, at least not in the foreseeable future. As long as Finland is not a member of the Council of Europe, that international organization cannot take over the League of Nations' role as guarantor of the Åland Agreement.

None the less it is to be hoped that Finland will continue to respect, as she has done hitherto, the provisions of the Åland Agreement and that the need for a guarantee exercised by some international body of the Agreement will not arise. It is also to be hoped that Sweden will find no reason to protest against any infraction of the provisions of the Agreement on Finland's part.

This means that the people of Åland will continue to live in surroundings which are Swedish in both language and culture: this lies not only in their own interest but in that of both Finland and Sweden. For Finland it means a strengthening of the country's official bilingual status, since a part of her territory will

⁴ See International Covenant on Civil and Political Rights, Art. 27, and Convention against Discrimination in Education, Art. 5. Concerning this, see Modeen, *International Protection of Minorities in Europe*, Åbo 1969, pp. 105 ff., pp. 112 ff.

be retained as a monolingual Swedish-speaking area. For Sweden it means that beyond her own frontiers there exists a thriving Swedish-speaking province, the existence of which enriches the common Swedish cultural heritage. And the people of Åland have the advantage of enjoying a marked degree of autonomy, which gives them as independent a status as a small community of some 20,000 inhabitants can hope to achieve.

APPENDIX I

Resolution of the Council of the League of Nations of June 24, 1921

(Minutes of the Fourteenth Meeting of the Council of the League of Nations, June 24, 1921)

The Council at its meeting of June 24th, 1921, having regard to the fact that the two parties interested in the fate of the Åland Islands have consented that the Council of the League of Nations should be called upon to effect a settlement of the difficulties which have arisen, and that they have agreed to abide by its decision;

After consideration of the Report of the Jurists which settled the question of the competence and of the decision of the Council, of September 20th, 1920, which recognised the aforesaid competence:

And having reviewed all the geographical, ethnical, political, economic and military considerations set forth in the memorandum of the Rapporteurs, who undertook a thorough enquiry upon the request of the League of Nations;

But having recognised, on the other hand, the desirability of a solution involving a maximum of security both for the population of the Islands and the parties concerned;

Decides

1. The sovereignty of the Åland Islands is recognised to belong to Finland;

2. Nevertheless, the interests of the world, the future of cordial relations between Finland and Sweden, the prosperity and happiness of the Islands themselves cannot be ensured unless (a) certain further guarantees are given for the protection of the Islanders; and unless (b) arrangements are concluded for the non-fortification and neutralisation of the Archipelago.

3. The new guarantees to be inserted in the autonomy law should specially aim at the preservation of the Swedish language in the schools, at the maintenance of the landed property in the hands of the Islanders, at the restriction, within reasonable limits, of the

exercise of the franchise by newcomers, and at ensuring the appointment of a Governor who will possess the confidence of the population.

4. The Council has recognised that these guarantees will be more likely to achieve their purpose, if they are discussed and agreed to by the Representatives of Finland with those of Sweden, if necessary with the assistance of the Council of the League of Nations, and, in accordance with the Council's desire, the two parties have decided to seek out an agreement. Should their efforts fail, the Council would itself fix the guarantees which, in its opinion, should be inserted, by means of an amendment, in the autonomy law of May 7th, 1920. In any case, the Council of the League of Nations will see to the enforcement of these guarantees.

5. An international agreement in respect of the non-fortification and the neutralisation of the Archipelago should guarantee to the Swedish people and to all the countries concerned, that the Åland Islands will never become a source of danger from the military point of view. With this object, the Convention of 1856 should be replaced by a broader agreement, placed under the guarantee of all the Powers concerned, including Sweden. The Council is of opinion that this agreement should conform, in its main lines, with the Swedish draft Convention for the neutralisation of the Islands. The Council instructs the Secretary-General to ask the Governments concerned to appoint duly accredited representatives to discuss and conclude the proposed Treaty.

APPENDIX II

The Åland Agreement of June 27, 1921

(Minutes of the Seventeenth Meeting of the Council of the League of Nations, June 27, 1921)

1. Finland, resolved to assure and to guarantee to the population of the Åland Islands the preservation of their language, of their culture, and of their local Swedish traditions, undertakes to introduce shortly into the Law of Autonomy of the Åland Islands of May 7th, 1920, the following guarantees:

2. The Landsting and the Communes of the Åland Islands shall not in any case be obliged to support or to subsidise any other schools than those in which the language of instruction is Swedish. In the scholastic establishments of the State, instruction shall also be given in the Swedish language. The Finnish language may not be taught in the primary schools, supported or subsidised by the State or by the commune, without the consent of the interested commune.

3. When landed estate situated in the Åland Islands is sold to a person who is not legally domiciled in the Islands, any person legally

domiciled in the Islands, or the Council of the province, or the commune in which the estate is situated, has the right to buy the estate at a price which, failing agreement, shall be fixed by the court of first instance (Häradsrätt) having regard to current prices.

Detailed regulations will be drawn up in a special law concerning the act of purchase, and the priority to be observed between several offers.

This law may not be modified, interpreted, or repealed except under the same conditions as the Law of Autonomy.

4. Immigrants into the Åland archipelago who enjoy rights of citizenship in Finland shall only acquire the communal and provincial franchise in the Islands after five years of legal domicile. Persons who have been five years legally domiciled in the Islands shall not be considered as immigrants.

5. The Governor of the Åland Islands shall be nominated by the President of the Finnish Republic in agreement with the President of the Landsting of the Åland Islands. If an agreement cannot be reached, the President of the Republic shall choose the Governor from a list of five candidates nominated by the Landsting, possessing the qualifications necessary for the good administration of the Islands and the security of the State.

6. The Åland Islands shall have the right to use for their needs 50% of the revenues of the land tax, besides the revenues mentioned in Article 21 of the Law of Autonomy.

7. The Council of the League of Nations shall watch over the application of these guarantees. Finland shall forward to the Council of the League of Nations, with its observations, any petitions or claims of the Landsting of Åland in connection with the application of the guarantees in question, and the Council shall in any case where the question is of a juridical character, consult the Permanent Court of International Justice.

APPENDIX III

*Extracts from the Finnish Act No. 670 of December
28, 1951, concerning the Autonomy of
the Åland Islands*¹

Chapter 7

EDUCATIONAL INSTITUTIONS

Sec. 35. The Landsting and the communes of the Åland Islands shall not be required to maintain or contribute towards the

¹ A summary of the Act is given in *Yearbook on Human Rights for 1951*, New York 1953, pp. 90 f.

maintenance of schools other than those in which the language of instruction is Swedish.

The language of instruction in State educational institutions shall be Swedish.

In elementary schools maintained by or receiving support from the State or a commune, instruction may not be given in a language other than Swedish, without the consent of the commune having jurisdiction.

Chapter 8

PUBLIC SERVICES AND LANGUAGE REGULATIONS

Sec. 37. The official language of State authorities in the province of the Åland Islands and of the Åland Delegation shall be Swedish. The right of a Finnish-speaking party to proceedings dealt with by a public authority to use and obtain documents in his own language shall be governed, *mutatis mutandis*, by such provisions of the General Language Act as relate to the rights of the Swedish-speaking population in exclusively Finnish-speaking areas.

Sec. 38. The Swedish language shall be used in correspondence between officials of the provincial government and State officials serving in the province of the Åland Islands, and between all such officials and the Council of State, the central authorities and such higher courts and other State authorities as have judicial or administrative jurisdiction over the province of the Åland Islands.

Opinions and judgments of the Supreme Court in all matters affecting the province shall be given in the Swedish language.

Sec. 39. A person may not be employed by the State in the Åland Islands unless he proves that he has complete mastery of spoken and written Swedish.

Chapter 10

SPECIAL PROVISIONS

Sec. 45. This Act shall not modify the right of residents in the province of the Åland Islands to take part in elections for the President of the Republic or for members of the Riksdag. In any such elections the province of the Åland Islands shall constitute a separate constituency.

APPENDIX IV

Excerpt from United Nations Publication E/CN.4/367 (April 7, 1950), Study of the Legal Validity of the Undertakings Concerning Minorities, p. 69:

C. Åland Islands (Finland)

The Åland Islands, whose population is Swedish in character, are placed under the jurisdiction of Finland.

On 27 June 1921, the Council of the League of Nations approved an agreement between Finland and Sweden the purpose of which was "to ensure and guarantee to the population of the Åland Islands the preservation of their language, culture and local Swedish traditions" (Article 1 of the Agreement). This Agreement provided *in fine* that: "The Council of the League of Nations will see that the guarantees provided above are duly observed ..." (Article 7).

An obligation was entered into by Finland in this matter before the Council of the League of Nations on 27 June 1921 (League of Nations document: C.L.110.1927 I annex, page 16).

1. *Ordinary causes of extinction of obligations*

(a) The dissolution of the League of Nations has suspended the obligation contracted towards the League of Nations until such time as the United Nations, by an express decision, takes the place of the League of Nations in this respect.

(b) The agreement between Finland and Sweden on which the obligation undertaken towards the League of Nations was based is still in force.

2. *Change of circumstances*

(a) *General circumstances liable to affect all obligations*

(i) The dissolution of the League of Nations.

(ii) The recognition of human rights and of the principle of non-discrimination by the United Nations Charter.

(b) *Circumstances more or less exclusively affecting the particular undertaking concerned*

No change of circumstances has occurred. The special regime for the Åland Islands concerns particularly Sweden, Finland and the population of the Åland Islands. Sweden and Finland have not been at war.

Conclusion

Finland's obligation towards Sweden still exists.

The obligation undertaken by Finland towards the Council of the League of Nations as representative of the international community is suspended until such time as an express decision has been taken by the United Nations to put it back into force.