Den åländska hembygdsrätten

Rapport från seminariet *Hembygdsrätt, näringsrätt, medborgarrätt – hörnstenar i den åländska självstyrelsen* i Helsingfors den 14 juni 2007

Ålands lagting & Ålands fredsinstitut

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Excluding to Protect: Land Rights and Minority Protection in International Law

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Introduction

One of the most important effects of the rise of international human rights law in the post-World War II period has been the creation of international rules according to which states may be held accountable for the treatment of individuals on their territory. Prior to World War II, states' decisions to extend rights to their own citizens (or not to do so) were seen primarily as internal, constitutional matters not governed by international law. However, an important precursor to the recognition of individual human rights came in the form of attempts to secure the collective rights of minorities through international guarantees brokered by the League of Nations during the interwar period.

In the context of Åland's autonomy within Finland, the institution of the right of domicile (*hembygdsrätt*) is based on minority rights commitments undertaken in the inter-war period by the Finnish authorities. This study examines one of the central features of the right of domicile – an ongoing restriction on the rights of non-Ålanders to acquire landed property on Åland – in order to highlight the legal dilemmas posed by the persistence of Finland's minority rights obligations regarding Åland in the changed political and legal circumstances of the post-Cold War era. While this measure is broadly accepted as necessary to preserve the cultural and linguistic identity of Åland's Swedish-speaking population within Finland, it unquestionably accomplishes

its purpose by imposing restrictions on both the rights of Ålanders to freely dispose of their property and the rights of non-Ålandic Finnish citizens to acquire property or freely choose their place of residence on Åland. Moreover, the constitutional mechanism that underlies the autonomy – Finland's recognition of the exclusive competence of the Åland authorities to legislate in a number of key areas – has the effect of interposing a third actor – the Åland authorities – between the individuals holding human rights in Finland and the state authorities who bear the ultimate responsibility under international law for implementing them.

This study proceeds from the view that Finland's minority rights obligations related to Åland and its human rights responsibilities are not inherently incompatible with each other. Both the conception and the application of most human rights rules have taken into account the duty of states to balance respect for individual rights with broader considerations of the common good. Typically, where a state *interferes* with the enjoyment of human rights, this does not automatically give rise to a *violation* of the international obligations of the state concerned. Instead, the extent to which such a measure is grounded in law and represents a *proportional* means of safeguarding a legitimate state aim or interest will be analyzed. This study begins with a historical overview of measures restricting land acquisition by non-Ålanders in order to highlight the factors that would be crucial in judging their current proportionality. These include both the changing nature of the individual rights affected by such measures and evolving conceptions of why their continued implementation is nevertheless necessary for the common good.

Background – The Åland Question

Although Åland had been demilitarized by international treaty for nearly sixty years by the time of the outbreak of World War I, it had otherwise functioned as a normal administrative unit within Finland, both during its early history as a province of Sweden and its post-1809 reincarnation as an autonomous Grand Duchy within the Russian Empire.[1] As Russia collapsed into revolution and Finland moved toward independence in 1917, Åland broke dramati-

cally with this tradition by seeking reunification with Sweden. There were two main reasons for Åland's attempted international realignment. On one hand, the process of Finland's formation as an independent state was chaotic, with a civil war between conservative and socialist camps spilling onto Åland's territory in 1918 along with overlapping foreign occupations.[2] Faced with a choice between the unsure outcome of Finland's independence struggle and the security and stability of Swedish political life, the majority of Ålanders opted for the latter.

However, further motivation for Åland's desire to join Sweden came from the fear of Swedish-speakers – on Åland and in Finland more generally – of losing their cultural and linguistic identity. Throughout Finland's history, the Swedish-speaking population had been concentrated in coastal areas and archipelagos – such as Åland – and had exercised political and economic power disproportionate to its size vis-à-vis the Finnish speaking majority. This was reflected in the fact that the Swedish remained the language of law and administration throughout Finland's early history and into the Grand Duchy period. By the time of independence, the Finnish-speaking population had grown in both size and influence relative to the traditional Swedish-speaking elite, and the Finnish language was placed in constitutional parity with Swedish.[3] Politically, Swedish and Finnish-speakers in Finland were portrayed as a single nation.[4] However, tensions remained, particularly as the declining demographic trend among Swedish-speakers and progressive agrarian reform led to the transfer of long-held land to the burgeoning Finnish-speaking population.[5]

In contrast to the mainland, where Swedish-speakers declined from 14 to 11 percent of the population between 1880 and 1920, Åland remained overwhelmingly Swedish speaking at the time of Finland's independence.[6] Nevertheless, the number of Finnish-speakers resident on Åland increased nearly seven-fold during the same period, from a very small base of some 200 in 1880 to over 1,300 by 1914.[7] As a result of this and Ålanders' awareness of concerns regarding "finnishization" (*förfinsking*) among the mainland Swedish-speakers, reunification with Sweden came to be seen as a way to preserve Åland's language and culture by decoupling it from Finland's demographic trends. Sweden supported Åland's cause and the matter was effectively inter-

nationalized by 1919 through its inclusion in the discussions at the Paris Peace Conference. By the next year, the resulting tensions between Finland and Sweden had grown to the point that the matter was referred to the newly minted League of Nations for resolution.

Åland's Autonomy and the Evolution of the Land Acquisition Restriction

Fearing the loss of significant territory at the very dawn of its independence, the Finnish government passed a law granting the Åland Islands significant autonomy as an inducement to remain.[8] Although this "first Autonomy Act" of 1920 was rejected by the Ålanders, it does appear to have been viewed by the League of Nations Council as a sign that Finland was prepared to take meaningful steps to provide guarantees of Åland's Swedish language and culture.[9] The Autonomy Act set out to "guarantee Ålanders the possibility to take care of their affairs in as free a manner as is possible for a region that is not an independent state."[10] The law also represented a somewhat rushed first step toward a broader scheme of local autonomy foreseen in the 1919 Finnish Constitution as a means of protecting the Swedish-speaking minority by drawing administrative borders that maximized linguistic homogeneity.[11] While the first Autonomy Act provided for a regional assembly with legislative powers, it set out a broad list of competences reserved exclusively to the National Assembly in Helsinki. The Ålanders were left with no means to prevent migration to the Islands or limit the ability of Finnish-speakers to purchase land as matters such as freedom of movement, choice of residence, inheritance law, and private law were reserved exclusively to state-level legislation.[12] Moreover, those Finnish-speakers who did move to Åland were entitled both to vote and to receive Finnish-language education.[13]

In 1921, the Council of the League of Nations found that Finland retained sovereignty over Åland. However, in doing so, it required Finland to undertake further guarantees – beyond those in the first Autonomy Act – protecting the Ålanders' language and culture. The Council also assuaged Sweden's regional

security concerns by requiring confirmation of Åland's demilitarization as well as new provisions on its neutralization. While demilitarization and neutralization was accomplished through a treaty ratified by multiple parties (the "Åland Convention"), Åland's autonomy proceeded on the basis of a seven-point informal agreement concluded between Finland and Sweden and unanimously approved by the League of Nations Council (the "Åland Agreement").

The League's original finding in favor of Finland set out specific guidance on the protections to be elaborated in the Åland Agreement and incorporated in Finland's existing Autonomy Act for Åland, in order to ensure the "prosperity and happiness" of the Islands.[14] These included protection of the Swedish language in schools, limitations on the electoral rights of newcomers to the Åland Islands, and, crucially for the purposes of this study, measures for "the maintenance of landed property in the hands of the Islanders…."[15] The Åland Agreement, concluded three days later, went into considerably more detail on the latter point:

> When landed estate situated in the Aaland Islands is sold to a person who is not 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 that 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.[16]

The next year, the Finnish Parliament passed a "Guarantee Law" incorporating the new protections recommended by the League Council into Åland's autonomy regime.[17] The new Law faithfully reproduced the property restriction set out in the Åland Agreement, deviating from its wording only to define its requirement of "legal domicile" more narrowly as a requirement of at least five years of uninterrupted lawful residence.[18] In 1938, a law was passed more closely regulating the right of "redemption" (*inlösning*) of land purchased by non-Ålanders.[19] This law specified that where property on Åland was purchased by non-domiciliaries who were unwilling to agree to transfer it to per-

sons domiciled on Åland, the latter individuals, as well as the municipality in which the property was located or the Åland government, enjoyed the right to redeem the property.[20] However, those entitled to redemption were required to submit a written claim within a specific deadline in order to exercise this right.[21]

In 1951, a new Autonomy Act (the "1951 Autonomy Act") was passed which represented a significant departure in substance – if not spirit – from the measures undertaken in 1921 to preserve Ålanders' landholdings.[22] The 1951 Autonomy Act explicitly introduced, for the first time, the concept of the right of domicile (*hembygdsrätt*).[23] This right, conferred and revoked by the local Government based on Finnish citizenship and residency on Åland, became the central requirement for free exercise of the rights restricted for non-Ålanders under the 1921 Agreement. Accordingly, the right to "purchase *or possess* land" located on Åland became contingent on the right of domicile.[24] Where non-Ålanders had previously been able to purchase land on Åland subject the risk of its redemption by local actors, they could now no longer even lease landed property on Åland without specific permission from the local Government.[25] The only exceptions foreseen at the time involved acquisition of property through inheritance or expropriation. The restriction was also explicitly extended to cover legal persons as well as individuals.[26]

The 1951 Autonomy Act was accompanied by a new law regulating transfer of property to outsiders.[27] Despite the broad new approach to such transfers set out in the Autonomy Act, the new special law continued to refer to the right of redemption and largely reproduced the rules and procedures set out in the prior 1938 law.[28] In fact, the better part of thirty years passed before the adoption of a Law on Land Acquisition in 1975 (Land Acquisition Law) which unambiguously replaced the practice of redemption with a new procedure for evaluating applications from outsiders for specific exemptions from Åland's land regime.[29] This law set out the process by which physical and legal persons without the right of domicile could seek permission from the Åland government to purchase land, requiring applicants to seek such approval within three months of the conclusion of a purchase or lease contract unless there were particular reasons for failing to do so.[30] Failure to seek such permission or rejection of an application would result in the forced auction of any purchased

property or termination of any contract for leased property, along with the eviction of the occupants.[31] The same fate awaited those who failed to comply with the terms of conditional grants of permission or who set up dummy purchases in order to bypass the law.[32]

The law that now governs Åland's autonomy was passed in 1991 (1991 Autonomy Act).[33] This law built on the "right of domicile" concept, adding a requirement of "adequate knowledge of the Swedish language" to the Finnish citizenship and five year residency conditions for acquiring the right.[34] The 1991 Law no longer sets out detailed provisions on land, but simply refers to the Land Acquisition Law, noting that the restrictions contained therein "do not apply to those with the right of domicile."[35] The Land Acquisition Law itself was also strengthened through amendments in 1991.[36] The most significant change limited the inheritance-based exception in the law to cover direct descendants and surviving spouses only, meaning that all other heirs to real estate property could be required to seek permission from the Åland authorities in the same manner as anyone else without the right of domicile.[37] In 2003, a further law was passed regulating in more detail both the *right* to acquire land (for those with the right of domicile, as well as direct descendants, surviving spouses and other groups) and the circumstances under which *permission* to acquire land would be granted.[38] In analyzing individual applications for permission, the Åland government was given further guidance, both in the 2003 law and a subsequent instruction:

> In making its determination, the government should take into account the applicant's connection to Åland and intention to reside permanently here, as well as the size of the real estate, its condition and the purpose it is to be used for.[39]

Over the course of the seventy years from its conception to the assumption of its present form, the restriction on land acquisition on Åland has expanded significantly. To begin with, where the restriction once merely imposed the risk of discretionary redemption on primarily private law property sales, it now constitutes a new administrative procedure with respect to which almost any land transaction involving outsiders is automatically subject.[40] The basic assumptions underlying the process seem to have changed as well, with land

sales to outsiders previously permitted, in principle, unless the redemption right was exercised, but now presumptively illegal unless specific permission is given. Finally, the substantive scope of the restriction has been broadened to encompass possession as well as purchase of landed property on Åland, through the inclusion of rights under rental contracts and inheritance proceedings as well as those under sales agreements.

Finland's International Obligations

In the wake of World War II, the newly-created UN effectively replaced the League of Nations but was not given a mandate to assume the League's responsibilities with regard to interwar minority arrangements such as that on Åland. Most observers agree that the Åland Agreement nevertheless remained effectively in force, as the original obligations undertaken by Finland with regard to Åland have been repeatedly affirmed and even expanded through successive renegotiations of the Autonomy Act, giving rise to a regional customary law regime.[41] However, Finland has also adopted other international legal obligations over the course of the same post-war period that do not sit easily with the Åland autonomy. The first example involves the EU, which views the free movement and choice of residence of its citizens throughout the Union, as well as their ability to "to acquire and use land and buildings" in other EU countries, as central principles of EU citizenship.[42] In the course of negotiating its 1994 accession to the EU, Finland attained a derogation from these and other principles in respect of Åland's autonomy, which now stands as part of the EU's basic law.[43]

A greater challenge is posed by human rights law, which is binding on Finland both through the adoption of many of the major multilateral human rights conventions and through its membership in the regional European Convention on Human Rights (ECHR). In the latter case, Finland is subject to jurisdiction of the European Court of Human Rights in Strasbourg, which can – and regularly does – hear complaints against states-parties by individuals alleging that their rights under the ECHR have been violated. While there has been some degree of debate about the exact nature of Finland's liability

for human rights issues arising from the exercise of Åland's legislative competences, there is little doubt that if a direct clash were to be found, reference to Åland's autonomy would not suffice to relieve Finland of its obligations to uphold its international human rights commitments.[44]

Finland's assumption of international human rights obligations has rebalanced the relationship between the interested actors in land transactions, namely individuals, the Åland authorities and the state. The general pattern over time has been for the Åland authorities to achieve greater discretion over such matters even as individuals affected by them have gained greater rights – with respect to which Finland has taken on greater obligations. The next sections of this study describe evolving understandings over the lifetime of the Åland autonomy of the nature and strength of the rights affected by restrictions on land acquisition and conclude by noting the need to periodically assess the proportionality of these restrictions to their stated aims.

The Starting Point: Citizens' Rights during the Interwar Period

One of the fundamental attributes ofstates is that they control a physical territory. Possession of "a defined territory" along with a permanent population and effective control by a government comprise the three most basic characteristics of statehood under international law.[45] In the legal traditions of many countries, the sovereign notionally held title to all land, granting it explicitly or implicitly to his subjects on conditions such as the obligation of the landed nobility to provide military service in feudal Europe. In the event of the failure to meet such conditions – or where the landholder died without heirs – such land would typically revert to the ownership of the sovereign or, in less centralized societies, become available to others for use. As states shifted from monarchy to republican rule in the modern era, the notion that title to all land ultimately vested in the state persisted in numerous respects. For instance, the old concept of a royal right of reversion is reflected in legal escheat rules such as those in Finland, where the property of persons who die without heirs reverts to the

ownership of the state.[46] More fundamentally, the modern Finnish Constitution of 1999 contains the same provisions as the first Constitution 80 years previously, proclaiming the parliament as the manifestation of popular sovereignty and confirming its control over the territory of Finland.[47]

However, the basic republican principle that sovereignty is vested in the people – rather than a monarch – implies that the individuals should have rights vis-à-vis the state they notionally constitute. In keeping with this principle, many republics voluntarily extended basic protections to their own citizens. The 1919 Constitution of Finland, for instance, set out a list of "citizens' rights" (*medborgarrättigheter*) that correspond closely to many currently recognized human rights.[48] Such rights commonly extended to protection of citizens' enjoyment and use of the resources of the state, including land and property. Rights in property were set out in some of the earliest manifestos of popular sovereignty such as the Fifth Amendment of the US Bill of Rights or Article 17 of the Declaration of the Rights of Man.[49] However, as exemplified by the 1919 Finnish Constitution, such provisions typically took the form of rights *of* property, conditioning the state's expropriation of private assets on legal procedures establishing public interest and providing adequate compensation.[50]

In other words, while rights of property protected established property interests against arbitrary incursions by the state, they did not obligate the state to ensure that individuals had access to property or other productive assets on an equitable basis.[51] While the constitutional recognition of rights of property undoubtedly limits the sphere of action of states, it is nevertheless a fundamentally conservative right that serves to protect the status quo and can complicate efforts at redistribution. Rights *to* property, by contrast, tend to undermine the status quo and are therefore most commonly seen in legislature seeking to achieve particular redistributive goals rather than set out as broad constitutional principles. An example of rights to acquire property came in the form of Finland's 1918 land reform in favor of small tenant farmers (*torpare*) who worked land on large estates owned by others.[52] In this case, the state undermined rights *of* property through forced purchases of such land and subsidized resale to the farmers who worked it.[53]

Even in the context of citizens' rights, in other words, states retained the ultimate say over landed property. Constitutional recognition of rights of prop-

erty made state incursions into private rights more complicated and expensive, but was never intended to tie the state's hands completely. Many states, such as Finland, also afforded their citizens the right of freedom of movement and choice of residence throughout their territory.[54] While choice of residence implies the ability to acquire residential property anywhere in the country, such rights could be and often were limited. In terms of how broadly the citizens' rights under Finland's 1919 Constitution were understood and construed at the time, it may be revealing that the only infringement anticipated by the League of Nations Commission of Rapporteurs in proposing restrictions on acquisition of Åland land was with relation to the freedom of contract.[55]

The key difference between citizens' rights in the interwar period and human rights in the post-war period is that while the former aspired to universality, they were negotiated strictly between states and their citizens and were not regulated by international law. In fact, international law at the time was seen as limited to structuring the relations between sovereign states, each of which remained almost entirely free to regulate their own internal matters.[56] A seeming exception to this state of affairs existed in the form of international law "minimum standards" setting out states' obligations toward foreign citizens on their territory. One of the key rules protecting aliens was a right of property conditioning expropriation of their assets on compensation and a finding of public purpose.[57] However, the application of this rule in practice was based on the prevailing understanding that "only states were *subjects* within the international legal order, and that wrongs done to foreign individuals were in actuality inflicted upon their state of nationality."[58] Accordingly, only states could seek to enforce the rights of their aggrieved citizens and any reparations were paid to the state that brought such a complaint rather than the individuals whose property had been seized.[59]

In retrospect, the fact that the inter-war period represented such a high water mark for state sovereignty makes it all the harder to understand why Finland would agree to the extraordinary concession of allowing Åland to exercise a degree of control over who could possess its territory.[60] However, this measure must be seen as part of a broader compromise in which Finland sacrificed a degree of territorial control over Åland in order to maintain its ultimate territorial sovereignty over the archipelago. From Åland's perspective, the re-

nunciation of external self-determination – through secession to Sweden or independent statehood – was balanced by strong guarantees of internal self-determination through an autonomy package that allowed it to exercise some of the attributes of a state.[61]

To the extent that Åland was viewed as a quasi-state, the power it enjoyed to exclude outsiders by restricting land acquisition also fit well with ideologies of nation-state formation and ethnic relations that prevailed in much of Europe, Finland included, at the time. These ideologies emphasized ethnic purity and the correspondence of political to national borderlines. In Finland, as discussed above, the 1919 Constitution initially set out to contain tensions between Swedish-speakers and Finnish-speakers by drawing internal administrative lines between them. Such measures as this and Åland's land restrictions may seem outdated today. As many observers have pointed out, the post-World War II approach to minority protection typically involves seeking to protect the rights of individuals to express their group affinities in the context of multicultural states.[62] However, in the interwar period, exclusive measures to pre-empt ethnic mixing such as those included in the Åland autonomy, seemed relatively prudent when one looked at the alternatives.

The early 1920s saw the first negotiated population transfers in Europe, a practice that led to the permanent exile of millions of innocent civilians by the end of World War II.[63] Such transfers were particularly common in the Balkans, as the sprawling, multi-ethnic Ottoman Empire collapsed, leaving behind a patchwork of emerging nation-states that sought to consolidate their ethnic identity through purges and expulsions of minority groups. In the face of seemingly intractable violence, compulsory displacement was viewed as a relatively humane way of resolving tensions by physically removing the minorities that might otherwise remain in harm's way. This trend found its culmination in the 1923 Treaty of Lausanne, which ended a conflict between Greece and Turkey.[64] Under the terms of this convention, as many as two million Greek Muslims and Turkish Christians were forcibly removed from their ancestral homelands and resettled in Turkey and Greece, respectively. This arrangement was undertaken with the approval of the League of Nations and viewed with a degree of optimism as an experiment in conflict resolution, as reflected in one contemporary observer's description:

> This 'compulsory exchange' of populations based on religion, is a startling precedent in international procedure. A great many people, not personally affected, are enthusiastic over the outlook for both Greece and Turkey with 'homogeneous' populations, which make for the peace of the world. Time will prove the value of the plan, and if it works well, perhaps it can be applied to other countries with unassimilable populations and incompatible religions.[65]

As is now well-known, regional peace remained elusive, with ongoing tensions over Turkey's 1974 military occupation of northern Cyprus continuing to complicate the latter's bid for EU accession to this day. Meanwhile population transfers have been disavowed as a tool of diplomacy and are now roundly condemned when they arise in the context of modern ethnic cleansing. However, Åland's autonomy remains and even thrives, constituting a far more benign relic of a bygone age in international law.

The Current Balance: Human Rights in the Context of Minority Protection

In the wake of the unprecedented atrocities against civilians carried out in World War II, the newly formed United Nations began to define universally applicable rules, in the form of human rights, on how states could treat their citizens. The general commitment by parties to the 1945 UN Charter to promote human rights was subsequently elaborated on by the UN General Assembly in the form of the 1948 Universal Declaration on Human Rights (UDHR).[66] This Declaration was not legally binding on states but set the framework for subsequent international treaties that would be. In 1966, the guarantees of the UDHR were restated in the form of two multilateral "International Covenants" guaranteeing, respectively, civil and political rights (the ICCPR) and economic, social and cultural rights (the ICESCR).[67] Similar guarantees were adopted at the regional level, most notably by the Council of Europe in the form of the ECHR and its Annexes.[68] Many of the central guarantees of the UDHR have been so broadly accepted that they are now rec-

ognized as customary international law, binding even on states that have not ratified the corresponding international or regional human rights treaties.

As with pre-World War II treaties, regional and multilateral human rights conventions create obligations as amongst the states that have ratified them to honor their provisions. In the case of customary human rights rules, such obligations are, in effect, owed by all states to all other states. In this context, a striking innovation introduced by international human rights law after World War II was the opportunity it created for *individuals* to seek vindication of their rights by states. One of the most broadly accepted and significant human right is the right to an effective domestic remedy where states fail to respect their obligations.[69] This "right to a remedy" has elevated the role – if not the formal status – of individuals in international law. The creation of treaty bodies such as the UN Human Rights Committee, which oversees states parties' implementation of the ICCPR, as well as regional human rights adjudicators such as the European Court of Human Rights in Strasbourg have further strengthened the hand of individuals by allowing them to seek satisfaction before international bodies where they allege that states have failed to secure remedies for violations of their rights.

As a result, where states once enjoyed nearly unlimited discretion to define their relationship with persons resident on their territory, these relationships are now mediated by universally and regionally binding rules. One indicator of this development is the manner in which the basis for domestic protection of individual rights has shifted in many countries from constitutional rules limited in application to the nationals of the country concerned – as in the 1919 Finnish Constitution – to constitutional affirmation of universal human rights applicable to all persons present on any given country's territory – as in the 1999 Finnish Constitution.[70] However, while human rights rules are now seen as universal, they are rarely absolute. Aside from a few unconditional rules such as the prohibition on torture, most human rights tend to be formulated and applied in a manner that takes into account the broader interests of society. Accordingly, such rules are accompanied by "exceptions clauses" setting out the conditions under which *interference* with protected rights will not be found to rise to the level of a *violation* of affected individuals' rights.[71]

The decisions of the European Court of Human Rights are broadly reflec-

tive of how international adjudicatory bodies tend to approach this balancing of interests. With regard to a number of rights, the Court applies variations of a test which, roughly speaking, seeks to confirm whether a state measure has interfered with the individual exercise of a right protected under the ECHR and then proceeds to determine whether such an interference was undertaken in accordance with law and in a manner proportional to the achievement of a legitimate government objective. In light of the possibility that a complaint regarding application of Åland's land acquisition regime may eventually be considered by the Strasbourg Court or other international adjudicatory bodies, this Study proposes that it is in the interest of both the Åland and Finland authorities clearly understand the factors likely to be significant in an assessment of the proportionality of these measures and how they have changed over time, as well as to articulate how the measures continue to be relevant and justified.

The Existence of a Right

The first inquiry in any test of proportionality would be the question of *whether a protected right was at stake*. The most obvious concern is with regard to the right of property. Questions continue to be raised about the extent to which the land acquisition regime derogates from property protections in the Finnish Constitution itself, which reads as follows:

> The property of everyone is protected.
> Provisions on the expropriation of property, for public needs and against full compensation, are laid down by an Act.[72]

However, property rights are also subject to protection under Article One of the First Protocol to the ECHR. This provision reads as follows:

> Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.[73]

Any analysis of these provisions should begin with the recognition that both are expressed conservatively, setting out rights *of* property rather than *to* property. In other words, the government is fundamentally obligated to refrain from interfering with existing rights, rather than to facilitate the acquisition of new rights. This approach is consistent with broader human rights law, in which the property rights have found only weak and inconsistent protection. States have resisted strong or progressive formulations of such rights in order to retain a degree of residual control over property seen as necessary to promote economic development.[74] As a result, redistributive rights *to* property have never been explicitly set out in international human rights law, and even the relatively conservative right *of* property has been absent from many human rights conventions and is weakly expressed in others.[75] Moreover, most existing international statements of the right of property do not even go as far as the Finnish Constitution in requiring compensation for deprivations of property.[76] For instance, the ECHR explicitly requires only legal process and a finding of public interest, althought the Strasbourg Court has ruled that compensation is required in order for deprivations and even controls of the use of property to be deemed proportional.[77]

On the other hand, by protecting "possessions" as well as "property", the ECHR arguably goes farther than the Finnish Constitution in recognizing what types of assets may be sufficient significance to individuals to be worth protecting. In fact, the Court has interpreted the meaning of "possessions" broadly to include economic assets such as shares in a company, legal claims arising from statutes and even established business clienteles.[78] Crucially for the purposes of Åland's land acquisition rules, rights under property sale contracts clearly fall under the scope of this provision even in cases where the exercise of such rights remains subject to the grant of discretionary permits.[79] Moreover, the Court has ruled as early as 1979 that the right to dispose of one's property, including through inter-vivos or testamentary dispositions, falls within the ambit of the right of property under the ECHR.[80] Finally, in cases where alleged infringements of possessory rights are found to take place in a discriminatory manner, it may not even be necessary for the Court may make a strict ruling on whether or not a possessory interest exists, as long as the case raises issues related to the enjoyment of property.[81]

The ECHR protects only possessory interests that can be shown to have existed at the time of the alleged interference. Potential rights dependent on future contingencies are not possessions for the purposes of the ECHR.[82] One result that is particularly relevant to Åland is the fact that beneficiaries of testamentary provisions will not be found to have a possessory interest in their share of an estate until after the testator has died.[83] The Strasbourg Court tends to analyze the specific provisions of domestic law in order to determine whether or not they have given rise to a legitimate possessory interest. In doing so, it is not strictly bound by whether domestic law labels a particular interest as a property interest, but rather whether such an interest exists in fact.[84] As a result, the Court has tended to find possessory interests on the part of beneficiaries to testamentary agreements once the testator has died, even in cases where the precise share of the estate due to the applicant could not yet be determined.[85]

The fact that Åland's Autonomy Act excepts the local land acquisition regime from the state's general competence to regulate inheritance matters argues against the likelihood that the Court would find that a possessory right had arisen on the part of beneficiaries of a will who found themselves subject to Åland's rules.[86] On the other hand, the provision of the Autonomy Act setting out Åland's land acquisition regime explicitly states that such restrictions do not apply to those with the right of domicile.[87] As a result, the right of testators on Åland – who would presumably have the right of domicile in most foreseeable cases – to dispose over their property through the provisions of wills may still be seen to affect existing possessory interests protected by the ECHR. Likewise, as set out above, the rights of those with sales or lease contracts for landed property on Åland may be said to have come into existence for the purposes of identifying existing possessory right under the ECHR, even if they remain subject to discretionary permit procedures. Moreover, these rights – and even the rights of beneficiaries of testamentary provisions – are more likely to be of concern to the Strasbourg Court in cases where discriminatory application of the Åland land acquisition rules is alleged.

In the area of civil and political rights, the right to freedom of movement and choice of residence may also be affected by Åland's land regime. These rights are relatively widely recognized in international human rights law.[88]

They also constituted some of the original "citizens' rights" set out in the 1919 Finnish Constitution and remain constitutionally protected today. However, the right to freedom of movement and choice of residence is similar to the right of property in that it remains subject to broad exceptions, both at the international and the national level. For instance, the 1919 Constitution set out the right of Finnish citizens to "stay in their own land, freely choose their place of residence and travel from one place to another, *subject to exceptions set out in law*."[89] Likewise, this right is one of the few rights in the current Constitution to be limited in application to "Finnish citizens and foreigners legally resident in Finland" rather than anyone in Finland's jurisdiction.[90] Meanwhile, the relevant ECHR provision not only requires legal residence but also subjects the exercise of the right to a battery of exceptions:

> 1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
> 2. Everyone shall be free to leave any country, including his own.
> 3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety for the maintenance of 'ordre public', for the prevention of crime, for the protection of rights and freedoms of others.
> 4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposes in accordance with law and justified by the public interest in a democratic society.[91]

Although the application of Åland's land restriction regime will almost certainly be found to affect the exercise of individuals' rights to freedom of movement and choice of residence, such interferences are likely to be seen as less fundamental and more easily justified with reference to the public interest than infringements on existing property rights. In addition, the fact that it is possible to reside on much of Åland without triggering the restrictions related to landed property – for instance through renting or buying an apartment – make it less likely that an unjustifiable interference in such rights would be found. As a result, the remainder of this section will focus primarily on property rights.

A final question related to the rights affected by the Åland land regime touches on key economic and social rights related to adequate housing, which is set out as a component of the right to an adequate standard of living in international and regional treaties.[92] However, with rare exceptions, this right tends to be framed as a policy goal rather than a constitutional right in domestic settings. Finland is somewhat exceptional by virtue of its constitutional obligation to "promote the right of everyone to housing and the opportunity to arrange their own housing."[93]

According to some interpretations, the obligation on states signatory to the ICESCR to progressively implement the right to adequate housing has come to be interpreted as giving rise to distinctly redistributive rights to access land and housing.[94] Looking at the issue regionally, the ECHR does not protect housing rights as such and the European Social Charter has only included a distinct right to housing since its 1996 revision.[95] Although this provision may take on greater importance with relation to Åland's land regime in the future, rights *to* property appear less likely to be of significance than those *of* property in the immediate term. As discussed above, while the "right of establishment" under EU law also presents a right of access to property (albeit on the grounds of economic efficiency rather than redistribution), Åland was explicitly exempted from this regime in the course of Finland's accession to the EU.

Existence of an Interference

Having identified relevant rights under international law, the next important question in a proportionality analysis would be *whether Åland's land regime interferes with the exercise of such rights*. The answer to this question presents the entry point into a proportionality analysis, as a humans right violation, in essence, consists of an interference in individual rights which is not undertaken in accordance with law and in a manner proportional to a legitimate aim. As set out above, the land regime unquestionably (1) restricts the rights of those with the right of domicile on Åland to dispose over their property freely through testamentary disposition; (2) restricts the rights of persons without the right of domicile to purchase, possess, lease, or inherit landed property on Åland (though inheritance may not give rise to a possessory right under domestic law); and (3) restricts the right of legal residents of Finland without the

right of domicile to freely choose their place of residence on Åland. As such, the Åland land regime would be very likely to be found to pose an interference with the exercise of various human rights.

Legal Certainty

Entering into the substance of a proportionality analysis, a threshold question is *whether the interference posed by Åland's land regime is lawful*. The requirement of legal certainty is inherent in all the provisions of the ECHR and where interferences are not found to be in accordance with law, they are deemed to be violations on that basis alone, without the need to inquire further as to their proportionality in regard to a legitimate aim.[96] In analyzing lawfulness, the Court proceeds first by confirming that the impugned measure is mandated by and in formal accordance with domestic law, and then goes on to evaluate whether the relevant provisions of domestic law are adequately accessible and sufficiently precise to be non-arbitrary and to allow individuals to foresee the consequences of their actions.[97]

In the context of the current legal regime related to land acquisition, a number of important points arise related to legality. As set out above, the Åland land regime has been founded on both general provisions of successive autonomy acts and a series of special laws regulating the issue in more detail. However, specific criteria for assessing applications for exceptional permission to acquire land on Åland were set out in a 2003 law that specified basic considerations such as "the applicant's connection to Åland and intention to reside permanently," upon which an instruction elaborated in more detail. However, in light of the Finnish Constitution's protection of property rights, the use of an instruction to set out criteria for curtailing such rights may in itself constitute a formal breach of legality.[98] A further problem is that, in the past, decisions rejecting such applications have not always been based on specific reference to particular criteria and the circumstances that justified their application.[99] Finally, there is room for some concern with regard to the application of criteria for acquisition and loss of the right of domicile, which is a precondition to be exempted from Åland's land restrictions.[100]

Proportionality with Regard to a Legitimate Aim

Presuming that Åland's land regime fulfills the criteria of legality, the next question in a proportionality inquiry is *whether it sets out to fulfill a legitimate government aim*. In the context of the right of property under the ECHR, restrictions are required to be in the "public" or "general" interest.[101] The key point related to this criterion is that the Strasbourg Court has taken a deferential approach, permitting states a particularly broad "margin of appreciation" in defining how measures affecting property rights serve a public interest end. In a case relevant to Åland, for instance, the Court accepted that residency restrictions on Guernsey, an island autonomy in the UK, served the public interest by "ensuring that accommodation was available in Guernsey for persons with strong connections or associations with the island and … responding to the problem of potential overpopulation, taking account of the overall population density of the island and its economic, agricultural and tourist interests."[102]

However, it is also important to note that such a finding is not the end of the inquiry. Once satisfied that a property restriction is targeted at a legitimate aim, the Court goes on to examine its proportionality, in terms of the fairness of the burden such measures impose on individuals affected by them. The classic ECHR formulation of this test in property cases involves the question of whether the individuals whose rights are affected by such measures are thereby made to bear an "individual and excessive burden" relative to the benefits accruing to society as a whole.[103] Assessments of proportionality tend to focus to a great degree on the particularities of each individual case. However, an overview of some of the decisions of the European Court of Human Rights referred to above may be of assistance in portraying the basic dynamic of such assessments:

In *Håkansson and Sturesson v. Sweden* (1990), the applicants had bought a plot of agricultural and forest land at auction for 240,000 Swedish kronor, nearly double the assessed market value. However, they were denied a permit for the sale under Sweden's Land Acquisition Law on the basis that the land in question was best-suited for rationalization through merger with neighboring plots. As a result, the land was re-sold at auction at a new assessed market value of 172,000 kronor. The Court found the applicants' rights under the sales contract to constitute possessions in the sense of the ECHR and deemed the

denial of the permit and forced sale an interference with the applicants' rights. However, it found these measures to have been undertaken in accordance with the provisions of the Land Acquisition Law and recognized the rationalization of agriculture as a legitimate government aim. Moreover, although the applicants ended up receiving "considerably less" money than they had initially paid for the land, the Court noted that they had been warned of the permit requirement and that the law had been properly applied in their case: "Having regard to the margin of appreciation enjoyed by the national authorities under Article 1 of Protocol 1 [to the ECHR], the Court therefore [finds] that the price received by the applicant can be considered to have been reasonably related to the value of the estate."[104]

In *Gillow v. the United Kingdom* (1986), the applicants were UK citizens who had moved to the offshore dependency of Guernsey in 1956, bought land and built a house. After four years residence, the family moved abroad, allowing the house to be leased to persons entitled to reside on Guernsey under the terms of its restrictive housing laws. After eighteen years, the applicants sought to move back but found that the passage of a 1969 law had cancelled their right to occupy their home. Later, they were denied a discretionary license to occupy their home and were prosecuted and fined for being present there for the purpose of repairing and selling it. Although the Court was unable for technical reasons to rule on whether these measure violated the applicants' right to property, they did take a decision under Article 8 of the Convention, which safeguards the right to privacy in the home and is often construed in a similar manner.[105]

In this case, the Court found an interference with the applicants' rights to their home, but noted that it was undertaken in accordance with both the letter of the law and the principle of legal certainty. Specifically, although the license issuance process was discretionary, the responsible authorities were required to take into account legally prescribed criteria and their decisions were subject to judicial review.[106] The Court went on, as described above, to recognize the stated aim of the Guernsey Housing Laws, namely to "maintain the population within limits" on a densely populated island.[107] In assessing the proportionality of the housing restrictions in light of this aim, the Court upheld the general license process over objections that a recent decline in Guern-

sey's population had rendered it unnecessary, opining that "the Guernsey legislature is better placed than the international judge to assess the effects of any relaxation of the housing controls."[108] However, the manner in which these rules were applied in the applicants' case was found to be disproportionate to the aims they pursued. The Court questioned whether sufficient weight was given to the applicants' circumstances in denying them a permanent license and found no purpose served by the decisions to deny them a temporary license in order to fix and sell their home.[109]

Proportionality of Land Restrictions in Minority Rights Settings

As a general matter, minority protection measures tend to be justified with reference to fundamental considerations related to the viability of separate communities or cultures within states. As one observer points out, even flawless domestic observance of individual human rights guarantees may not be enough, in practice, to protect such communities:

> 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; equal access to public service may be insufficient to guarantee an effective minority voice.[110]

These arguments are perhaps most compelling with regard to indigenous and tribal peoples, a category of minority group which is, among other things, often distinguished by the fact that their territories have been colonized or invaded by other groups and, as a result, they have subsequently played a subordinate or non-dominant role in the societies in which they live.[111] Interestingly for the Åland case, there is a current trend toward recognition of the rights such

groups have held over their traditional lands, as well as the customary rules and institutions they have adopted in order to manage their lands and natural resources. For instance, protection of traditional lands receives detailed treatment in Convention No. 169 of the International Labor Organization (ILO), the premier international legal standard on the rights of indigenous and tribal peoples.[112] The justifications given for such measures typically fall into two categories, both of which have a degree of relevance for Åland. The first justification is based on the spiritual connection between indigenous groups and their ancestral lands, in which particular landmarks or sacred areas are central to such group's culture, religious rites and self-conception:

> Land is central to many indigenous and tribal peoples' cultures and lives. It is the basis for their economic survival, their spiritual well-being and their cultural identity. Thus loss of ancestral lands threatens their very survival as a community and a people.[113]

A related justification is more pragmatic. A further key distinction between indigenous groups and other minorities is that the former tend, in many cases, to continue to practice pre-industrial traditional livelihoods. As a result, indigenous life is particularly dependent on land, making its practitioners inherently vulnerable to extreme material privation in the event of its loss.[114] Based on these concerns, many of the current proposals for the protection of indigenous land focus on mechanisms to prevent individual members of such groups from alienating land to outsiders without the permission of the broader community.[115] The similarity between the basic assumptions underlying such protections and those of the Åland land regime are striking. In essence, the need to protect the cultural integrity of the group is deemed to outweigh the individual interests not only of outsiders but also of its own members in treating traditionally held lands purely as a commodity.

On the other hand, Ålanders are clearly not indigenous peoples.[116] As important as the land restrictions may arguably be to Åland's culture, it does not share the severe threats and elemental correlation between land and survival frequently seen in indigenous settings. Moreover, even the protection of indigenous land rights is not absolute. Although such regimes undoubtedly pursue legitimate aims, their implementation with regard to affected individuals

must be proportional. There have been cases before human rights adjudicatory bodies in which domestic legal measures undertaken in order to protect the land and other rights of indigenous groups have imposed a disproportionate burden on individuals, including the members of such groups.[117] Accordingly, the ILO Convention No. 169 stipulates that indigenous groups "shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights."[118] In practice, state schemes to enforce the integrity of indigenous land are often conditioned on the groups concerned demonstrating that their internal procedures for administering land are accountable and non-discriminatory.[119]

Justifications for the Åland Land Regime

With this as background, it may be useful to revisit the rationales presented over time for the creation and expansion of the Åland land regime. At the time of the League of Nations decision, regulation of land rights on Åland arguably shared some of the elemental urgency of that in contemporary indigenous settings. At the time, the Åland Legislature dismissed the Autonomy Act offered by Finland in 1920 as a sop for international opinion, alleging that its "weaknesses lie naturally in the fact that it did not arise from [considerations of] what would be best for Åland but in order simply to remove a temporary difficulty and reach an important political goal."[120] Pointing out that the law would allow anyone registered on Åland to vote and buy land, the Legislature painted a picture of "denationalization" carried out at any cost by a Finnish-speaking majority allegedly known for its "brutal energy and … the weight [it] places on retention of the Islands under Finnish sovereignty."[121] In a description that sounds highly improbable in today's context but must be seen in light of the then-recent Finnish Civil War between conservative "whites" and radical "reds", the Legislature described the perceived threat as follows:

> Many methods exist for such a de-nationalization. The fastest and most effective, albeit quite expensive, would be the purchase of a number of small properties on Åland (of which a large number already belong to

> Finnish-speaking settlers) and the setting up on each property … of large-scale industrial enterprises. This advance force of Finnish workers, employed in these enterprises, would provide an excellent means of excluding from the Legislature the native-born Ålandic population who live spread on islands and archipelagos and would never be in a position to exercise their voting rights to the same extent as the newly-arrived workers, who would constitute a compact group together with their spouses and children.
>
> The immediate result of this situation would obviously be the creation of a Finnish majority in the Legislature with the natural consequences thereof. Beyond the difficulties of an election campaign under these circumstances, the first detrimental consequence would be the creation of a feeling of disunity and discomfort among the Islands' inhabitants, which would naturally lead to a significant increase in emigration to Sweden and America.[122]

The Rapporteur's Commission of the League of Nations appears to have taken issue with the Åland Legislature's implication that the Finnish Government could not or would not prevent such an outcome, justifying its recommendation against reunification with Sweden on the grounds that "[t]he Finnish State is ready to provide satisfactory guarantees to the inhabitants [of the Åland Islands] and to honestly take into account the obligations which they will undertake as a result…"[123]

However, it gave credence to the fundamental threat depicted by the Åland Legislature in explaining the need for such guarantees: "We concede also that the fears held by the Ålanders of being gradually submerged by a Finnish invasion are completely justified, and that effective measures should be taken with the purpose of avoiding that danger."[124] In introducing the land purchase restriction measures ultimately recommended by the League Council, the Rapporteurs proceeded from the assumption that the favorable conditions for shipbuilding on Åland could lead to heavier investment from the mainland, thus lending credence to the Åland Legislature's concern about an "influx of Finnish workers" but attributing this possibility to the working of markets rather than Finnish machinations.[125]

By the end of World War II, the general linguistic climate between Swedish-speakers and Finnish-speakers in Finland is seen to have become "relative-

ly free from major conflicts."[126] This did not initially apply to Åland, where the relationship was strained by well-founded rumors that the Finnish government had offered Russia the use of territory on Åland as a military base as part of its war reparations.[127] Nevertheless, by the time of the negotiation of the 1991 Autonomy Act, the primary motivations for retaining and expanding the land regime had clearly shifted to a primarily economic, rather than demographic footing. Studies undertaken in the 1980s had shown both an explosive growth in summer homes on waterside land plots and an increasing trend toward non-resident ownership of such plots.[128] Another study in one of Åland's more isolated municipalities not only confirmed high non-resident ownership of summer cottage and residential plots, but also found that over one-third of agricultural land, pasture and forest was owned by the beneficiaries of undistributed estates.[129]

The drafters of the 1991 Autonomy Act drew a connection between these issues, noting that the exemption of inheritance bequests from the local land regime had led to the transfer of land to non-residents without domicile rights, and that non-resident owners – particularly of non-distributed estates – were less likely to use their property, a factor that "often serve[d] to remove fields and forests from productive use."[130] In essence, the concern was that the original restrictions were being bypassed – particularly through inheritance proceedings – by persons living outside Åland, facilitating both speculation in attractive waterside sites and the idling of agricultural land.[131] To some extent, the earlier existential arguments regarding "de-nationalization" have become conflated with the current economic arguments in favor of the land regime. In describing the motivations behind the sharpening of the restriction in the 1991 Autonomy Act, one observer notes that they were meant to "protect the resident population's livelihood possibilities (*utkomstmöjligheter*), which are dependent on the possibility to retain land in Ålandic ownership."[132] However, in contrast to the threats of forced integration and mass emigration asserted in the 1920s, contemporary concerns revolve around the need to assure that Ålanders are not left behind in the economic growth of the broader region:

> Land is needed to build hotels, vacation cottages, yacht harbors, etc. If the provisions related to acquisition of landed property would be completely revoked, land prices would be likely to shoot up. Åland is a very popular area for summer tourism, both from abroad and from the Finnish mainland. It is therefore reasonable to assume that land plots appropriate for leisure activities in the Åland archipelago would be attractive purchase objects for tourists from urban areas with high purchasing power. Relaxation of the land acquisition legislation would presumably invite land speculation. This would, in turn, quickly lead to such high prices that the resident population would no longer be able to buy land.[133]

The land acquisition regime also continues to be defended on the ground of cultural protection. However, as the perceived threat of hostile mass immigration or industrial colonization from Finland has receded, such arguments have also come to revolve around economic issues. For instance, one observer seeks to encapsulate nearly a century's worth of developments in the Åland-Finland relationship by concluding that "it is to be assumed that it is more important for the Ålanders to retain their culture than for the country's Finnish-speaking majority to be able to buy summer homes in the Åland archipelago."[134]

However, there can be little doubt that the frontlines of the debate over language and culture on Åland have shifted significantly. In contemporary debates, the land restriction, along with other elements of the broader autonomy, continue to be at least implicitly credited with holding the number of Finnish-speakers on Åland to approximately the same level as in 1921. However, a new set of concerns have emerged that have little to do with land ownership and revolve much more around Åland's troubled integration into Finnish political life as well as the implications of its more successful penetration of mainland economic markets. The Government's 2007 "Language Policy Program" reflected this shift in setting priority areas of inquiry for the Åland Statistical Bureau to investigate:

> Questions that are important to answer include the situations in which Ålanders feel that they are required to know Finnish or cannot receive adequate service in Swedish. The investigation [mandated by the program] will also focus on Ålandic students outside Åland and immigration with the purpose of answering the question of the extent to which

> the linguistic situation on Åland and employment prospects here affect the decision to immigrate or move back to Åland.[135]

With these historical developments in mind, it is important to revisit the fundamental question posed in a human rights-based analysis of Åland's land regime, namely *whether the means chosen to keep land in the hands of the Åland Islanders are proportional to the burden they impose on individual Ålanders who wish to dispose over their property and outsiders who wish to acquire property*. It is important to note that the Strasbourg Court allows states a relatively broad margin of appreciation not only in the identification of legitimate government aims but also in "ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question."[136] Nevertheless, the Finnish and Åland authorities would do well to continue to clearly articulate the purpose of the land regime and ensure that its application is both non-arbitrary and does not give rise to any de facto discrimination.

Conclusion

There is no inherent conflict between the local restrictions on land acquisition that Finland has obligated itself to upholding in the context of Åland's autonomy, on one hand, and the human rights of individuals interested in selling, purchasing, inheriting or bequeathing such land, on the other. Although the restrictions unquestionably interfere with individual rights related to property, they are founded in law and undertaken in furtherance of a clear public purpose, namely the preservation of the Swedish language and culture on Åland as well as Finland's longstanding obligations to uphold Åland's territorial autonomy. These points will weigh in favor of a finding that the existing restrictions on land acquisition are proportional to legitimate government aims and avoid placing an excessive burden on the individuals they negatively impact.

On the other hand, it is important to note that the factors in the proportionality equation have shifted significantly over time. On the individual side, rights to acquire or dispose over property were new and relatively weak at the time that the Åland Agreement was approved, and any violations that occured

were a matter of purely domestic concern. Although contemporary human rights related to land and property remain relatively conditional in substance, they are now nevertheless universal, invoking the international responsibility of the Finnish state under its human rights obligations. Moreover, respect for these obligations is now subject to the scrutiny of independent regional and international bodies such as the European Court of Human Rights.

Meanwhile, both the substantive scope of the interferences presented by the land acquisition rules and their procedural intrusiveness have increased over time. Specifically where this rule once covered only sales of landed property, it now relates as well to rights acquired by lease and, in some cases, inheritance. Also, where the Åland Agreement initially imposed the risk of forced redemption on transfers of landed property – in cases where entitled individuals or public bodies opted to seek it within stipulated deadlines – the current regime amounts to an automatically applicable administrative procedure in which such transfers are presumptively invalid barring the discretionary grant of special permission.

On the state's side of the equation, meanwhile, the legitimate aim asserted in defense of the land acquisition regime has changed over time as well. At the time of the Åland Agreement, the League of Nations rapporteurs recommended these measures both in order to avert an impending "denationalization" of the Åland Islands through outside demographic pressure and to affirmatively secure the local population's economic well-being. Although concerns remain about threats to the status of the Swedish language on Åland in the context of Finland's broader constitutional framework, there is no longer any serious support for the idea that Åland's fundamental national identity is at risk as a result of demographic pressures. As a result, the land acquisition regime and the broader autonomy are now justified primarily on the basis of less existential – albeit still highly significant – concerns about the economic basis underlying Åland's unique minority culture.

For these reasons, it is in the interests of the authorities on both Åland and Finland to take all steps within their power to ensure that the land acquisition restrictions on Åland will be deemed proportional in the case of any eventual human rights scrutiny. Steps toward this end include (1) analyzing the regime carefully in order to eliminate the possibility of any unintentionally discrimi-

natory differentiation between affected persons; (2) ensuring that the criteria for granting land acquisition permits are clear and that the outcomes of such procedures are consistent and predictable; and perhaps most importantly (3) continuing to clearly articulate the reasons that this regime, in its current form, remains well-suited and necessary to the preservation of the linguistic and cultural rights of Åland's Swedish-speaking minority, taking into account the changed circumstances since it was conceived.

Notes

1. Tore Modeen, *De folkrättsliga garantierna för bevarandet av Ålandsöarnas nationella karaktär*, Skrifter utgivna av Ålands kulturstiftelse VII (1973), 13-14. The author notes that Åland had been part of the Bishopric of Åbo since the 14th century and had remained an integrated part of the Grand Duchy of Finland.
2. Ibid., 14-15. In 1918, a Swedish expeditionary force negotiated the departure of Russian troops posted on Åland, but gave way in turn to a German occupation.
3. Regeringsform för Finland ("1919 Constitution"), 17 July 1919 (FFS 94/1919), Article 14 ("Finnish and Swedish are the Republic's national languages.") (translation by author).
4. Finland's December 1917 Declaration of Independence, states, for instance, that "Finland's people should join the world's other peoples as an independent nation." (translation by the author). *Finlands självständighetsförklaring*, available at http://sv.wikisource.org/wiki/Finlands_självständighetsförklaring
5. Pekka Kalevi Hämälainen, *Nationalitetskampen och språkstriden i Finland, 1917-1939* (Helsingfors: Holger Schildts Förlag, 1968), 34.
6. Kenneth D. McRae, *Conflict and Compromise in Multilingual Societies: Finland* (Waterloo: Wilfrid Laurier Press, 1997), 85-6.
7. Ålandsfrågan inför Nationernas Förbund II: *Den av Nationernas Förbund tillsätta Rapportörkommissionens utlåtande* (Stockholm: Kungl. Boktryckeriet, P.A. Norsted Söner, 1921), 11.
8. Lag om självstyrelse för Åland, 6.5.1920 (FFS 124/1920).

9. *Ålandsfrågan inför Nationernas Förbund II*, 121-123. See also Lauri Hannikainen, "The International Legal Basis of the Autonomy and Swedish Character of the Åland Islands," in Hannikainen and Horn (eds.), *Autonomy and Demilitarisation in International Law: The Åland Islands in a Changing Europe* (The Hague: Kluwer Law International, 1997), 58 and 76.
10. Proposition for the first Autonomy Act, *Ålands lagsamling* (Mariehamn: Ålands landskapsstyrelse, 2001), 741 (translation by author).
11. Ibid. ("In accordance with the Constitution's requirement of the creation of autonomous areas above the municipal level, a special committee was appointed on 19 July 1919 in order to develop proposals for autonomy for the Counties (of Finland). Special grounds demand that this question is addressed separately with regard to Åland.") (translation by author). See also 1919 Constitution, Articles 50 and 51. Ironically, the Åland Autonomy Act of 1920 was both the first and last attempt to implement these articles; concerns about further "separatism" left the Finnish speaking majority unwilling to discuss further autonomy arrangements for other Swedish-speaking areas. McRae, 63.
12. Lag om självstyrelse för Åland, Article 9, paragraphs (1) and (8). Both the state authorities and the Åland authorities were accorded the right to expropriate property subject to constitutional safeguards. Ibid., Article 9, paragraph (1).
13. Ibid., Articles 5 and 9(b).
14. LoN Council Decision, Point 2.
15. LoN Council Decision, Point 3. The fourth protection called for by the Council involved a mechanism to ensure "the appointment of a Governor [the representative of the Finnish state on Åland] who will possess the confidence of the population." Id.
16. Åland Agreement, Point 3.
17. Lagen innehållande särskilda stadganden rörande landskapet Ålands befolkning 11.8.1922 ("Guarantee Law") (FFS 189/1922).
18. Ibid., Article 5.
19. Lagen om utövande av lösningsrätt vid försäljning av fastighet i landskapet Åland (FFS 140/1938).
20. Ibid., Article 1.
21. Ibid., Article 2.
22. Självstyrelselag för Åland (1951 Autonomy Act) 8.12.1951 (5/1952).
23. Ibid., Article 3.
24. Ibid., Article 4 (1) (emphasis added by author).

25. Ibid., Article 5. This article reads in full (as translated by the author): "A person who does not enjoy the Åland right of domicile [including legal persons] may not acquire ownership rights to real estate property in Åland or possess such property through a lease or other agreement without the permission in each individual case of the Åland Government.

    Without regard to the provisions of the first paragraph of this Article, the persons or associations named therein may acquire real estate property through inheritance or expropriation.

    The authorities of Finland, Åland or the communes of Åland may acquire real estate property without regard to the provisions of the first paragraph of this Article.

    More detailed provisions regarding the restrictions foreseen in this Article shall be set out in a special law."
26. Ibid. The law refers both to persons and to "companies, cooperatives, associations, or other groups or foundations, which have neither had legal domicile on Åland for at least five years, nor have a board composed exclusively of members with the right of domicile on Åland" (author's translation). Prior legislation was less specific. For instance, the 1938 Redemption Law referred only to "someone" (någon) without legal domicile on Åland.
27. Lagen om utövande av lösningsrätt vid överlåtelse av fastighet i landskapet Åland, 28.12.1951 (671/51).
28. The 1951 law amended the 1938 law to reflect the extension of Åland's land restriction to include any form of acquisition other than inheritance and expropriation (Article 1, paragraph 1) and its applicability to legal persons (Article 1, paragraph 1). It also explicitly exempted those with the new right of domicile or those who had received specific permission from the Åland government from the risk of redemption (Article 1, paragraphs 1 and 2, respectively). However, no procedures for seeking or granting such permission were set out. Finally, the Law amended the 1938 Law by replacing the Governor appointed to Åland by the Finnish State (Landshövding) with the Åland Government as the body responsible for accepting and deciding claims for redemption (Article 2).
29. Lag om inskränkning i rätten att förvärva och besitta fast egendom i landskapet Åland (Land Acquisition Law), 3.1.1975 (3/1975). This law, like the prior 1951 and 1938 laws, was passed according to special procedures, fulfilling the requirement under the 1921 Åland Agreement that such laws be given equal legal force to the Autonomy Act itself.
30. Ibid., Article 4.

31. Ibid., Articles 5-6 (regarding purchase contracts) and 7 (regarding leases).
32. Ibid., Articles 8 (allowing the authorities to condition permissions on terms compatible with the purpose of the Law, 10 (on the consequences of failure to comply with such conditions), 15 (requiring those granted conditional permission to demonstrate compliance upon inquiry) as well as Article 9 (on dummy sales).
33. Självstyrelselag (1991:71) för Åland.
34. Ibid., Article 7, paragraph 2 (3).
35. Ibid., Article 10 ("Om inskränkningar i rätten att med ägande- eller nyttjanderätt förvärva fast egendom och därmed jämförbar egendom i landskapet stadgas i jordförvärvslagen för Åland (3/1975). Inskränkningarna gäller inte den som har hembygdsrätt.")
36. Law passed 16.8.1991 (1145/1991).
37. Land Acquisition Law, Article 3 (as amended).
38. Landskapslag om jordförvärvsrätt och jordförvärvstillstånd, 68/2003.
39. Ibid., Article 12. See also Landskapsförordning om jordförvärvstillstånd, 70/2003.
40. Markku Suksi, *Ålands konstitution* (Åbo: Åbo Akademis förlag, 2005), 130.
41. Hannikainen, 68. The autonomy is not, however, seen as having acquired as clear an international status as Åland's demilitarization, which is widely recognized as binding erga omnes. Ibid, 71.
42. European Union – Consolidated Versions of the Treaty on European Union and of the Treaty Establishing the European Community (consolidated text), *Official Journal C 321E of 29 December 2006*, Articles 18 (freedom of movement and residence); 39 (free movement of workers); 43 (right of establishment); and 44, paragraph 2(c) (defining measures to attain freedom of establishment, including "enabling a national of one Member State to acquire and use land and buildings situated in the territory of another Member State….").
43. Protocol No 2 on the Åland islands, Article 1: ("The provisions of the EC Treaty shall not preclude the application of the existing provisions in force on 1 January 1994 on the Åland islands on ... restrictions, on a non-discriminatory basis, on the right of natural persons who do not enjoy hembygdsrätt/kotiseutuoikeus (regional citizenship) in Åland, and for legal persons, to acquire and hold real property on the Åland islands without permission by the competent authorities of the Åland islands; ....").
44. Hannikainen, 68.
45. Malanczuk, 75: "The control of territory is the essence of a state."

46. Code of Inheritance (40/1965; amendments up to 1228/2001 included) (unofficial translation), Chapter 5, Section 1: "If there are no heirs, the estate shall pass to the state."
47. The Constitution of Finland (1999 Constitution), 11 June 1999 (731/1999), Articles 2 ("The powers of the State in Finland are vested in the people, who are represented by the Parliament.") and 4 ("The territory of Finland is indivisible. The national borders can not be altered without the consent of the Parliament.").
48. 1919 Constitution, Section II ("Finska medborgares allmänna rättigheter och rättsskydd").
49. Declaration of the Rights of Man (1789), Article 17: "Since property is an inviolable and sacred right, no one shall be deprived thereof except where public necessity, legally determined, shall clearly demand it, and then only on condition that the owner shall have been previously and equitably indemnified."
50. 1919 Constitution, Article 6, paragraph 3: "Expropriation of property for general needs against full compensation shall be regulated by law." (translation by author).
51. See Catarina Krause, "The Right to Property," in *Economic, Social and Cultural Rights: A Textbook* (Dordrecht: Martinus Nijhoff Publishers, 1995), 143.
52. McRae, 65.
53. On the mainland of Finland, this reform had significant political overtones as many of the landed estates affected were owned by Swedish-speakers and predominantly worked by Finnish-speakers. McRae, 66.
54. 1919 Constitution, Article 7.
55. *Ålandsfrågan inför Nationernas Förbund II*, 119: "Man kan fråga, varför en sådan inskränkning i avtalsfrihet skall vidtagas."
56. Peter Malanczuk, *Akehurst's Modern Introduction to International Law*, 7th revised ed. (New York: Routledge, 1997), 209 ("the relationship between states and their own nationals was considered to be an internal matter for each state....").
57. Ibid, 235.
58. Richard Falk, "Reparations, International Law, and Global Justice: A New Frontier," in *The Handbook of Reparations* (Oxford: Oxford University Press, 2006), 482.
59. Malanczuk, 257.

60. Relatively few comparable autonomy regimes allow for such an unambiguous restrictions on the land acquisition rights of persons who have not, in effect, met local "naturalization" requirements. Examples include the Channel Islands, which have similarly direct, residency-based restrictions on the purchase of land and real estate. By contrast, another UK island autonomy, the Isle of Man, is able to effectively limit migration through the allocation of work permits. Bertil Roslin, *Europeiskt självstyrelse i omvandling*, Statsrådets kanslis publikationsserie 11/2006, 75 and 82.
61 As described above, the stated aim of the first Autonomy Act was to allow Ålanders "the possibility to take care of their affairs in as free a manner as is possible for a region that is not an independent state."
62. Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights* (Philadelphia: University of Pennsylvania Press, 1996), 57. See also, International Covenant on Civil and Political Rights, Article 27.
63. The last internationally sanctioned population transfers in Europe took place at the end of World War II, when up to 15 million ethnic Germans were forced from their ancestral homes in Poland, Czechoslovakia and other East European countries in accordance with the terms of the 1945 Potsdam Agreement signed by the victorious allies. Alfred-Maurice de Zayas, *A Terrible Revenge: The Ethnic Cleansing of the East European Germans, 1944-1950* (New York: St. Martin's Press, 1994), 1.The displacement of some 450,000 Finnish citizens from parts of Eastern Karelia ceded to the Soviet Union was part of the same pattern. Ironically, nearly simultaneous judgments by the Nuremberg Tribunal and provisions of the 1949 Geneva Conventions confirmed the illegality of such transfers, which have been internationally condemned and even partially reversed where they have subsequently taken place on European soil. See European Stability Initiative, "The Lausanne Principle: Multiethnicity, Territory and the Future of Kosovo's Serbs" (2004).
64. A *Convention Concerning the Exchange of Greek and Turkish Populations* was signed as between Greece and Turkey on 23 January 1923 and was incorporated by reference into the broader *Treaty of Lausanne*, signed on 24 July 1923 by Greece and Turkey as well as other countries from the region and Great Powers involved in the negotiations.
65. Esther Pohl Lovejoy, M.D., *Certain Samaritans* (New York: The MacMillan Co., 1933), chapter 31. The author served as the General Director of the American Women's Hospitals' service during the early 1920's conflict

between Greece and Turkey, and the cited work includes her memoirs from this period, available at http://www.ku.edu/carrie/specoll/AFS/library/2-ww1/Lovejoy/awhTC.html#TC

66. Universal Declaration of Human Rights (UDHR), U.N. Doc A/810 at 71 (1948).
67. International Covenant on Civil and Political Rights (ICCPR), U.N. Doc. A/6316 (1966); International Covenant on Economic, Social and Cultural Rights (ICESCR), U.N. Doc. A/6316 (1966).
68. Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Nov. 4, 1950, 213 U.N.T.S. 222.
69. The right to a remedy was first expressed in Article 8 of the UDHR, which guaranteed every person "the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." It is also found in Article 13 of the ECHR and Article 2(3) of the ICCPR. Although the ICESR does not include an explicit right to domestic remedies, the UN Committee on Economic, Social and Cultural Rights (CESCR) has repeatedly found that the obligation under Article 2(1) to realize economic and social rights "by all appropriate means" entails the domestic provision of "judicial or other effective remedies." Committee on Economic, Social and Cultural Rights (CESCR), General Comment 3, Para. 5 (Fifth Session, 1990). *See also*, CESCR, General Comment 9 (Nineteenth Session, 1998).
70. The 1999 Finnish Constitution has replaced reference to "Citizens' Rights" with reference to "Basic Rights and Liberties" (Chapter Two) and the majority of these rights are guaranteed to "everyone" within Finland's jurisdiction (see Articles 6, 7, 10-13, etc.) Explicit exception is made with regard to particular rights that are more closely tied to citizenship or legal residence in Finland (see, e.g. Articles 9 and 14).
71. In addition, some rights may be temporarily derogated from under certain conditions in situations of national emergency. See ICCPR, Article 4; ECHR, Article 15.
72. 1999 Constitution, Section 15. See Suksi, 57.
73. Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 009 (1952), Article 1. This provision is construed by the Strasbourg Court as setting out three rules, the first paragraph being a general rule protecting peaceful enjoyment of property and possessions and the second two paragraphs setting out specific scenarios under which this right is at stake, namely the complete deprivation of property

rights (e.g. through expropriation) and their partial curtailment through regulation or government controls. Monica Carss-Frisk, *The Right to Property, A guide to the implementation of Article 1 of Protocol No. 1 to the European Convention of Human Rights* 7-8 (Council of Europe, Human rights handbooks, No. 4, 2001), available at http://www.coe.int/T/E/Human_rights/hrhb4.pdf

74. For instance, during the drafting of the ECHR, "[t]he United Kingdom and Sweden … were concerned as to whether including the right to property in the Convention might place too much of a fetter on the power of States to implement programmes of nationalization of industries for political and social purposes. The formulation that was ultimately adopted provides a qualified right to property." Carss-Frisk, 5-6.
75. The right of property was set out in Article 17 of the UDHR: "(1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property." However, it was not included in the subsequent 1966 Covenants.
76. Krause, 151-152.
77. Carss-Frisk, 37-40.
78. Ibid., 10-17.
79. European Court of Human Rights, Judgment, Case of Håkansson and Sturesson v. Sweden, Application no. 15/1988/159/215 (23 January 1990), paragraph 43.
80. European Court of Human Rights (Plenary), Judgment, Case of Marckx v. Belgium, Application no. 6833/74 (13 June 1979), paragraph 63: "…the right to dispose of one's property constitutes a traditional and fundamental aspect of the right of property."
81. Carss-Frisk, 44. Article 14 of the ECHR states that "enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground…."
82. Carss-Frisk, 18.
83. ECtHR, Marckx v. Belgium, paragraph 50: The Court found that Article One of the First Protocol to the ECHR "applies only to a person's existing possessions and that it does not guarantee the right to acquire possessions whether on intestacy or through voluntary dispositions."
84. The meaning of the concept of "possessions" is said to be "autonomous" in this respect for the purposes of the ECHR. Carss-Frisk, 17.
85. European Court of Human Rights, Judgment, Case of Inze v. Austria, Application no. 8695/79 (28 October 1987), paragraph 38.

86 1991 Autonomy Act, Article 27, paragraph 1(7): "The state has legislative competence in questions regarding ... marriage and family relations, children's legal situation and adoption, inheritance with the exception foreseen in Article 10 ...." (translation by author). Article 10 of the Law refers to the Land Acquisition Law as setting out restrictions on the right to acquire landed property on Åland.

87. Ibid., Article 10.

88. Freedom of movement is protected in accordance with the UDHR, Article 13 (1); the ICCPR, Article 12 (1); and Article 2 (1) of the Fourth Protocol to the ECHR.

89. 1919 Constitution, Article 7, paragraph 1 (translation and emphasis by author).

90. 1999 Constitution, Section 9, paragraph 1.

91. Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto (1963), Article 2.

92. Article 25 (1) of the UDHR sets out the right of everyone to "a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care…." See also Article 11 (1) of the ICESCR. The right to adequate housing is also protected under Article 31 (1) of the 1996 revised European Social Charter.

93. 1999 Constitution, Section, 19 ("The right to social security"), paragraph 4.

94. UN Committee on Economic, Social and Cultural Rights (CESCR), "General Comment 4" (Sixth Session, 1991), paragraph 8(e): "Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement."

95. Revised European Social Charter (1996), Article 31:
"With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:
1. to promote access to housing of an adequate standard;
2. to prevent and reduce homelessness with a view to its gradual elimination;
3. to make the price of housing accessible to those without adequate resources."

96. Carss-Frisk, 40.
97. Ibid., 41-3.
98. Suksi, 329.
99. Ibid., 331-2. The passage of legislation and an instruction setting out criteria for such determinations in 2003 appears to have improved the situation. Moreover, the fact that such decisions are generally capable of being reviewed for legality in the Finnish administrative law system militates in favor of a finding of overall compatibility with the principle of legal certainty. Ibid., 334.
100. See Anna-Lena Sjölund, "Förvärv av åländsk hembygdsrätt på ansökan," also in this volume.
101. The two phrases used in Article 1 of Protocol One to the ECHR, "public interest" and "general interest" have been treated as having the same meaning in practice. Carss-Frisk, 26.
102. European Court of Human Rights, Judgment, *Case of Gillow v. the United Kingdom*, Application no. 9063/80, (24 November 1986), paragraph 53. The Court in this case was evaluating a complaint under the right to privacy in the home under Article 8 of the Convention, rather than the right to property, but the proportionality test applied by the Court in such cases is comparable.
103. *Håkansson and Sturesson v. Sweden*, paragraph 51.
104. Ibid., paragraph 54.
105 *Gillow v. The United Kingdom*, paragraph 62. Article 8 of the ECHR reads as follows:

    "1 Everyone has the right to respect for his private and family life, his home and his correspondence.

    2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

    See also Ursula Kilkelly, *The Right to Respect for Private and Family Life: A Guide to the Implementation of Article 8 of the European Convention on Human Rights*, Council of Europe Human Rights Handbook, No. 1 (2003).
106. *Gillow v. The United Kingdom*, paragraph 51.
107. Ibid., paragraph 54.
108. Ibid., paragraph 56.

109. Ibid., paragraph 57.
110. Hannum, 6.
111. Ibid., 81. The author notes that this characteristic also leaves many indigenous groups without the ability to rely on neighboring countries dominated by their own or a supportive"ethnicity" for political support, in contrast to many minorities (as is notably the case in the Åland minority's relationship to Sweden). Although indigenous groups often fit the criteria to be considered as minorities, many resent being labeled as such. Ibid., 90.
112. International Labor Organization Convention No. 169 on Indigenous and Tribal Peoples (1989). Article 14 (1) states that: "The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised."
113. International Labor Organization (ILO), ILO Convention on Indigenous and Tribal Peoples, 1989 (No. 169): A Manual (2003), 29.
114. Hannum, 90-91.
115. See Daniel Fitzpatrick, "Best Practice Options for the Legal Recognition of Customary Tenure," Development and Change, vol. 36 no. 3 (2005). ILO Convention No. 169 addresses this risk in Article 17:
"1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.
2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.
3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them."
116. See Andreas Backfolk, *FN:s definition av begreppet "ursprungsbefolkning" ur ett åländskt perspektiv*, Åländsk utredningsserie (1998:1). It is instructive to contrast the Åland autonomy with a truly indigenous Nordic territorial autonomy in the case of Greenland, or with a truly indigenous but primarily cultural Nordic autonomy in the case of the Saami.
117. See UN Human Rights Committee, *Sandra Lovelace v. Canada*, Communication No. R.6/24, U.N. Doc. Supp. No. 40 (A/36/40) at 166 (1981). The Human Rights Committee oversees state implementation of the ICCPR. In this communication, the Committee found that provisions of the Canadian Indian Act stripping women who marry non-Indian men of the right to reside on reservations constituted an unjustified interference with the

right of the applicant to enjoy her own culture under Article 27 of the ICCPR – particularly in light of the fact that this restriction continued to apply despite the break-up of her marriage.

118. ILO Convention No. 169, Article 8(2).
119. Fitzpatrick, 456.
120. "Anmärkningar beträffande självstyrelselagen, framställda av Ålands landsting den 12 december 1920" (Observations related to the Autonomy Act, forwarded by Åland's Legislature, 12 December 1920), Annex 5 to *Ålandsfrågan inför Nationernas Förbund II*, 169 (translation by author).
121. Ibid., 167 (translation by author).
122. Ibid., 165-7 (translation by author).
123. *Ålandsfrågan inför Nationernas Förbund II*, 105 (translation by author).
124. Ibid., 103 (translation by author).
125. Ibid., 119 (translation by author).
126. McRae, 80. The author cites reasons including solidarity arising from the shared experience of the Winter War against Russia, the fact that Finnish-speakers had effectively achieved equitable political representation, overcoming previous Swedish-speaking dominance, and the context of broader Nordic cooperation. Ibid., 80-81.
127. Håkan Skogsjö and Jonas Wilén, *Skotten i Tornvillan: Historien om Ålands självstyrelse*, Ålands museum (1997), 31.
128. Regeringens proposition 73/90, 23. During the period of 1970-1985, the number of summer cottages on Åland increased by 70%, with one third of such properties owned by persons resident outside Åland.
129. Ibid., 24.
130. Ibid., 39 (author's translation).
131. Ibid., 7 (justifying expanded land restrictions on the need to prevent the circumvention of the rules on land acquisition) and 24 (concluding that a significant and growing proportion of land on Åland was owned by non-residents).
132. Marine Holm-Johansson, "Vissa begränsningar i äganderätt och politiska rättigheter på Åland och den Europeiska Konventionen för Mänskliga Rättigheter," Examensarbete i folkrätt, Juridiska fakulteten, Uppsala Universitet (1991), 16 (author's translation).
133. Ibid. (author's translation).
134. Niklas Lampi, "Kampen fortsätter i nytt hus" (ledare) *Åland* (19.03.2007) (author's translation).

135. Ålands landskapsregering, Språkpolitiskt program, Meddelande nr 3/2006-2007 (2007) (author's translation).
136. Carss-Frisk, 32.