THE ÅLAND AUTONOMY AND INTERNATIONAL LAW

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I. The League of Nations settlement after World War I

As Mr. Janson pointed out, it was in 1917 that the representatives of the Aland Islands demanded a union with Sweden. Sweden — after some hesitation — supported this, while Finland objected. An Aland delegation was heard at the peace conference in Paris after World War I, but no decision was made. Thereupon the United Kingdom brought the matter before the Council of the League of Nations.

Finland claimed that the Aland Islands were under Finnish sovereignty and that the question thus concerned an internal Finnish matter, which the League under Article 15(8) of the Covenant was not competent to deal with. The Council appointed a commission of three Continental Western European lawyers to report on this preliminary legal question. In the Report of 5 September 1920 they concluded that this was not a matter under Finnish domestic jurisdiction. At the same time they added that the principle of self-determination — which had been applied in many provisions in the peace treaties following World War I and which had been invoked by the Alanders — was no right under international law.

The Council of the League accepted the finding of the commission of lawyers and then established a commission of “rapporteurs” — also composed of Western European representatives. In its Report of 16 April 1921 the Commission submitted two conclusions:

1. Finland’s sovereignty is undeniable ("incontestable").
2. Finland must give the population formal guarantees for the protection of Aland’s national character. The Finnish Act on self-government for the Islands of 6 May 1920 would have to be expanded and given international protection.

After the submission of this Report, both Finland and Sweden accepted that the Council should decide the fate of the Islands, and the Council in its Resolution of 24 June 1921 decided to recognize that the sovereignty belonged to Finland. Sweden protested against this decision, but, in accordance with its previous undertaking, it agreed to conform to it. In accordance with the second finding of the Commission of Rapporteurs, negotiations were then held on the autonomy between Finnish and Swedish representatives under a Belgian chairman. This led to an agreed text, which was not signed, but was approved by the Council on 27 June 1921, and which the Council decided to annex to the Resolution it had adopted three days earlier.

II. Was the settlement right?

In a lecture I gave at Oslo University in 1933 at a seminar under Professor Castberg, I took the position that there was a contradiction between the reports of the two
Commissions – the first (degal) saying that it was not an internal Finnish matter and the second (political) saying that the Finnish sovereignty was undeniable. In fact it seemed that the second commission and the Council had given a political and not a legal decision – and this they were probably entitled to do under the mandate conferred upon them by Sweden and Finland. However, I felt that if the Council was free to make a political decision, it should have adopted the principle of self-determination of peoples, which had been applied to a great extent in the then recent peace treaties after World War I, and that consequently it should have given the Islands to Sweden, as the islanders themselves wanted. At that time I had not yet started my legal studies (I was only seventeen), but I still maintain these views.

After my lecture, another “freshman” student – Sigurd Juell Lorenzen, later justice of the Supreme Court – criticized the other part of the League’s decision: A renewal of the 1856 demilitarization of the Islands.

I have now seen professor Tore Modeen’s interesting book of 1973 on De folkrittsliga garantierna för bevarandet af Alândöarnas nationella karaktär, which I believe is the only complete and up to date discussion of the international law position of the Aland Islands. He very rightly points out that there is an additional contradiction, viz. within the report of the second Commission itself, inasmuch as its states that Finland has an undeniable sovereignty – and yet recommended that the autonomy regime be expanded and guaranteed internationally. This, too, demonstrates that the decision was political and not legal, as it apparently purported to be.

At the seminar professor Castberg agreed that there was a contradiction between the reports of the two commissions, but explained that the decision of the Council had been caused by two special considerations: First, that feelings in Finland were running high – there might even be danger of a war if the Islands were allocated to Sweden. (By that time Sweden also took a rather strong position, but – as I have mentioned before – it took some time before they took that position.) And second: The Council wished to strengthen the position of the Swedish-speaking minority in Finland proper. Most of these, incidentally, supported Finland’s claim, probably for the same reason, except that professor Modeen has told me that the Swedes in Österbotten (further north) were much more understanding of the Alander’s attitude.

After World War II, the Aland Landsting again asked for a union with Sweden, but this time the Swedes refused to cooperate, in loyal compliance with their acceptance of the League’s decision.

III. Was the settlement an agreement between Finland and Sweden or a binding decision of the League?

So much for the question of sovereignty – which now is a historical one. The questions of practical interest today are related to the autonomy of the Aland Islands. This was laid down in the Finnish Law of Autonomy of 6 May 1920 and the Guarantee Law of 1922, both of which were subsequently replaced by the Autonomy Law of 28 December 1951. However, the two latter were based on the text which had been agreed between the two countries and approved by the Council, as I have explained earlier.

We have to consider, first, whether this text was a treaty or merely a binding decision by the League and, second, who can invoke it internationally.