

# The Continued Validity of the Demilitarised and Neutralised Status of the Åland Islands

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## *1. Introduction*

The Åland Islands have been demilitarised since 1856 and neutralised since 1921. This archipelago of some 25.000 inhabitants is located in the northern Baltic Sea between Finland and Sweden at the entrance of the Gulf of Bothnia. Until 1809 the Åland Islands were part of Sweden, from 1809 until 1917 they belonged to Russia, and since then have been an autonomous Swedish-speaking region under the sovereignty of Finland.<sup>2</sup>

The principal treaties regulating the demilitarisation and neutralisation of Åland have been 1) the 1856 Convention on the Demilitarisation of the Åland Islands, imposed by Britain and France on Russia following the Crimean war and annexed to the 1856 Paris Peace Treaty; 2) the 1921 Convention on the Demilitarisation and Neutralisation of the Åland Islands, concluded by ten States; 3) a bilateral treaty of 1940 between Fin-

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Abbreviations: CSCE = Conference on Security and Co-operation in Europe; EC = European Community; EU = European Union; FTS = Finnish Treaty Series/ Suomen Asetuskokoelman/Säädöskokoelman Sopimusarja; FYBIL = The Finnish Yearbook of International Law; ICJ = International Court of Justice; ICJ Reports = International Court of Justice: Reports of Judgements, Advisory Opinions and Orders; ILC = International Law Commission; LNOJ = Official Journal of the League of Nations; NACC = North Atlantic Co-operation Council; NATO = North Atlantic Treaty Organization; UN = United Nations; WEU = Western European Union.

<sup>2</sup> In Swedish the Åland Islands are called either “Åland” or “Ålandsöarna” and in Finnish “Ahvenanmaa”.

land and the Soviet Union on the demilitarisation of the Åland Islands, concluded on the initiative of the Soviet Union; and 4) the 1947 Paris Peace Treaty, imposed by the victorious Allied States on Finland, a co-belligerent of Nazi Germany. Furthermore, Article 60 of the 1977 Additional Protocol I to the 1949 Geneva Conventions on the protection of war victims obligates States Parties to respect demilitarised zones during international armed conflicts.<sup>3</sup>

The location of the Åland Islands implies that they may be of military-strategic significance – defensive for Sweden and Finland, but otherwise for greater military powers. A military power in control of Åland and with aggressive intentions can use Åland as a base for military operations, especially in the northern region of the Baltic Sea area.<sup>4</sup> Sweden has been the most active proponent of the demilitarised and neutralised status of Åland, because the invader of Åland would be able to threaten Sweden's east coast and Stockholm. Finland has been in favour of the demilitarisation and neutralisation of Åland, but not as whole-heartedly as Sweden. In addition the Soviet Union/Russia has been in favour of the demilitarisation of Åland but has assumed no obligations with regard to neutralisation.<sup>5</sup> Russia has traditionally considered that the Åland Islands in hostile hands can form a threat to the security of St. Petersburg and of Russia's Baltic fleet.<sup>6</sup> Even at present Russia considers that the demilitarisation of Åland contributes to its security. The other interested States have consented to the demilitarisation and neutralisation of Åland.<sup>7</sup>

A public discussion has arisen recently in Finland about whether it is advisable for Finland to continue to hold to the demilitarisation and neutralisation of the Åland Islands. A number of leading Finnish military

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<sup>3</sup> By June 1994 Additional Protocol I had been ratified by 133 States. These include Finland, Sweden, Germany, Russia and Poland but not the United Kingdom, France or the United States.

<sup>4</sup> See A. Gardberg, Ålands strategiska ställning, Krigshögskolan, Generalstabsofficerkurserna, Forskningsrapporter (3/1992), 5 ff.

<sup>5</sup> The Russian Federation has been recognised as the continuing or successor State to the Soviet Union, having assumed the international rights and obligations of the former Soviet Union. See R. Mullerson, The Continuity and Succession of States by Reference to the Former USSR and Yugoslavia, 42 International and Comparative Law Quarterly (1993), 473–493; M. Koskenniemi/M. Lehto, La Succession d'Etats dans l'ex-URSS, en ce qui Concerne Particulièrement les Relations avec la Finlande, XXXVIII Annuaire Français de Droit International (1992), 179–190.

<sup>6</sup> See Gardberg (note 4), 46–47.

<sup>7</sup> It should be noted, however, that one Baltic Sea coastal State, namely Lithuania, has no conventional obligations in this matter.

officers expressed opinions to the effect that the demilitarisation of Åland prevents Finland from safeguarding the security of Åland against a surprise attack and invasion. Åland in the hands of an aggressive invader would form a threat to Finland, most clearly to Finland's foreign trade transportation. The most radical voices in the Finnish military called for Finland's unilateral denunciation of the present demilitarisation and neutralisation of Åland. The Finnish Government has not concurred in the views of these military critics, at least not officially. President Mauno Koivisto displayed some understanding of the military critics but the new President, Martti Ahtisaari, has held unequivocally to the present status of Åland. However, discussion of the matter may well continue, especially as the views of Finnish military critics have been received with understanding, even sympathy, in Swedish military circles.<sup>8</sup>

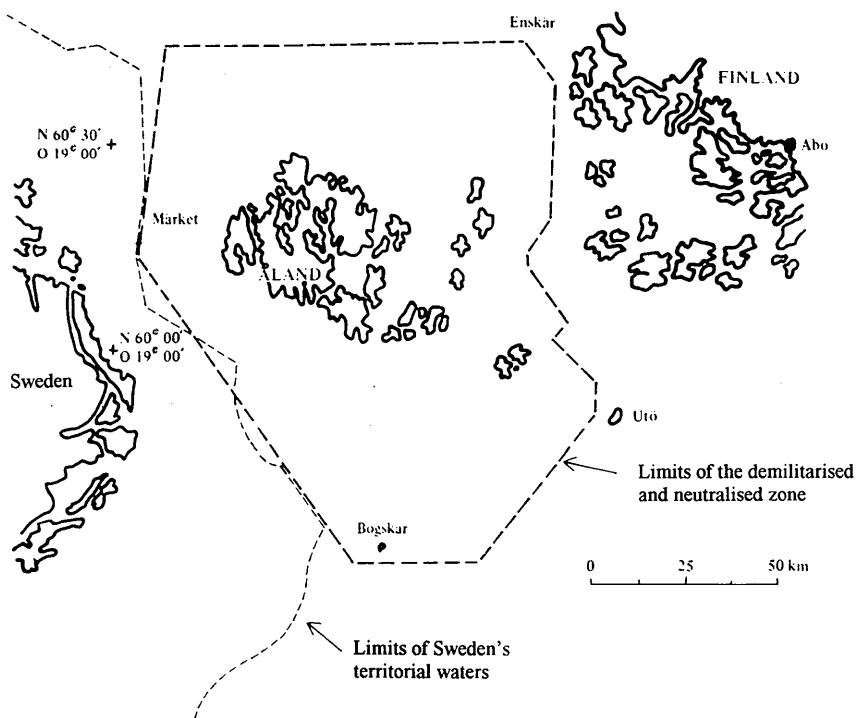
Demilitarisation means that no fortifications or permanent military structures may exist within the demilitarised territory. It is the purpose of demilitarisation to contribute to the keeping of the demilitarised territory outside the theatre of war of an armed conflict. However, if an armed conflict breaks out, the State exercising sovereignty over the demilitarised territory is not prohibited from deploying armed troops in the demilitarised territory to ensure its inviolability or defence. Neutralisation means that no war operations may take place within the neutralised territory, even during an armed conflict. The purpose is to keep the neutralised territory completely outside of the theatre of war. However, if an attack is made against, or an invasion into, the neutralised territory, or if there is a danger of such an attack or invasion, the State exercising sovereignty over the neutralised territory is permitted to take military measures to defend the territory. If a territory is both demilitarised and neutralised, the manifest purpose is to keep it completely outside the armed actions of armed conflicts. However, if an outside State infringes, or displays serious indications of infringing the inviolability of the territory in question, then the State exercising sovereignty over the territory cannot be denied the right to defend the territory by armed means, even within the territory.<sup>9</sup>

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<sup>8</sup> See H. Svensson, Åland - en region under stress, Nordrevy 4–5/1992, 47.

<sup>9</sup> On demilitarisation and neutralisation in international law, see J.O. Söderhjelm, Démilitarisation et Neutralisation des Iles d'Åland en 1856 et 1921 (1928), 1–19 and 215–239; O. Bring, Nedrustningens folkrätt (1987), 26–32; M. Björkholm/A. Rosas, Ålandsöarnas demilitarisering och neutralisering (1990), 16–17.

Figure 1



The Åland Islands neutralised and demilitarised zone according to the 1921 Treaty

taken from T. Wulff, Handbok i folkrätt (1980)

During World War I the demilitarisation of the Åland Islands was not respected. Russia fortified Åland and used it as a base for military operations against Germany. Russia's explanation was that it wanted to prevent Germany from occupying Åland and acted altogether defensively against the principal aggressor State of World War I. In the late phases of World War I, Åland was first occupied by Sweden (1918) and then by Germany (1918). The fortifications were demolished in 1919 by Finland, the new

sovereign of Åland following Finland's secession from Russia in late 1917, and by Sweden.<sup>10</sup>

During World War II the demilitarised and neutralised status of the Åland Islands was better respected in the end, even though both Nazi Germany and the Soviet Union had plans to occupy the Islands. No other State made any attempt to occupy the Islands. Finland resorted to military preparations, including fortifications, to ensure the neutrality of Åland. It informed the parties to the 1921 Convention of its military preparations, and these did not express criticism. However, Finland did not use Åland as a base for military operations. After World War II the demilitarisation of Åland was restored.

In the decades following World War II the demilitarised and neutralised status of Åland has been in existence without any particular difficulties (the borders of the demilitarised and neutralised zone are shown in Figure 1). At times some legal experts have questioned the remaining in force of the 1921 Convention, because the supervisor and guarantor of the Convention – the League of Nations – has been dissolved and the UN has not become the successor of the League of Nations as the supervisor and guarantor of the Convention. However, no State has questioned the demilitarised and neutralised status of Åland.

The purpose of this article is to examine the obligations under international law of Finland and other States to respect the demilitarisation and neutralisation of the Åland Islands, and to inquire whether there are legal grounds for denouncing or modifying those obligations. Can Finland – or some other State – unilaterally denounce its international legal obligations? Furthermore, it is interesting to examine whether Finland's membership in the EU or its participation in a joint Western defence policy would call for a modification of the demilitarised and neutralised status of Åland. At the time of completion of this article Finland's accession to the EU seems more than evident. In October 1994 the Finnish people voted in an advisory referendum for Finland's membership in the EU and in November the Finnish Parliament confirmed Finland's intention to join the EU. In November also the Ålandic people in their advisory referendum voted for Åland's accession to Finland's membership. It seems certain that the Ålandic Parliament will confirm Åland's accession.

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<sup>10</sup> On the Åland Islands during World War I, see Söderhjelm, *ibid.*, 121ff.; J. Barros, *The Åland Islands Question: Its Settlement by the League of Nations* (1968), 20ff., and H. Rotkirch, *The Demilitarisation and Neutralisation of the Åland Islands: A Regime "in European Interests" Withstanding Changing Circumstances*, 23 *Journal of Peace Research* (1986), 362–366.

## 2. *Demilitarisation and Neutralisation of the Åland Islands under International Law*

The 1856 Convention<sup>11</sup> apparently is still in force, but all three parties to it have later conventional obligations. Thus, we confine ourselves here to the treaties of this century.

The League of Nations sought a comprehensive settlement of the status of the Åland Islands at the beginning of the 1920s. There was a dispute between Finland and Sweden regarding the status of the Åland Islands. The Swedish-speaking Ålanders wanted to make Åland a part of Sweden and Sweden called upon Finland to respect Åland's right to self-determination. Finland disagreed and claimed that Åland fell under the sovereignty of Finland. The two States agreed to submit their dispute to the League Council for a binding decision. The outcome was that the League Council recognised Finland's *de jure* sovereignty over Åland, but Finland had to consent to guarantees for the development of the autonomy and for the preservation of the Swedish character of Åland.<sup>12</sup>

The development of the demilitarised status of Åland was especially in the interest of Sweden. The Council recognised this and expressed the hope that a new agreement on the demilitarisation and neutralisation would be accomplished, so "that the Åland Islands will never become a source of danger from the military point of view".<sup>13</sup> Sweden, in co-operation with the League of Nations, sought the creation of a new convention; an effort which proved successful in late 1921.

During its treatment of the question of the Åland Islands the League of Nations appointed a Commission of Jurists to give an expert opinion on certain international legal questions concerning Åland. The Commission commented on the demilitarised status of Åland. In its much-quoted Report the highly-esteemed Commission stated that the provisions of the 1856 Convention and Peace Treaty were still in force and that the legal significance of the demilitarised status of Åland went beyond the parties to the 1856 settlement; the demilitarised status was created in European interest and was meant to be part of "European law". The Commission is worth quoting:

<sup>11</sup> The original French text of the Convention can be found in Martens, *Nouveau Recueil Général des Traités*, T. XV, 788, or in FTS 1922, 9–10. On the Convention, see Söderhjelm (note 9), 100ff., and Barros (note 10), 3ff.

<sup>12</sup> See LNOJ, September 1921, 699–700; Barros, *ibid.*, 216ff.; L. Hannikainen, *Ahvenanmaan itsehallinnon ja ruotsinkielisyyden kansainoikeudelliset takeet* (1993), 13ff.

<sup>13</sup> LNOJ, September 1921, 699.

"Thus, admitting that the provisions of 1856 relating to the Åland Islands bear the character of a settlement regulating European interests, it becomes obvious that such a settlement cannot be abolished or modified either by the acts of one particular Power or by conventions between some few of the Powers which signed the provisions of 1856, and are still parties to the Treaty.

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These provisions were laid down in European interests. They constituted a special international status relating to military considerations, for the Åland Islands. It follows that until these provisions are duly replaced by others, every State interested has the right to insist upon compliance with them. It also follows that any State in possession of the Islands must conform to the obligations, binding upon it, arising out of the system of demilitarisation established by these provisions."<sup>14</sup>

The 1921 Convention on Demilitarisation and Neutralisation<sup>15</sup> was part of the new international status of the Åland Islands, co-ordinated by the League of Nations. The Conference which created the Convention was convened by the League. The League was also assigned a very prominent role in the supervision of the Convention.

Ten States participated in the Conference in 1921; they all ratified the Convention and none has denounced it. These States are: Finland, Sweden, Britain, Germany, France, Denmark, Poland, Italy, Estonia and Latvia. Russia (the Soviet Union) is not a party to the Convention.

Certain provisions of the 1921 Convention use unusually strong language. According to the Preamble, the parties accept the wish expressed by the League Council that the new Convention would guarantee that the Åland Islands never become a source of danger from the military point of view. Articles 2 to 7 specify the demilitarisation and neutralisation of Åland. These provisions permit certain exceptions to Finland, *inter alia*: Finland is entitled to keep a regular police force within the demilitarised zone to maintain public order and security in the zone and, if exceptional circumstances demand, to send into the zone and keep there temporarily such other armed forces as shall be strictly necessary for the maintenance of order (Article 4). If war breaks out in the Baltic Sea area, Finland will be entitled temporarily to lay mines in the territorial waters of the demilitarised and neutralised zone and for this purpose to take such

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<sup>14</sup> The Report of the Commission of Jurists in LNOJ, Supplement Special, No. 3 (1920), 18–19.

<sup>15</sup> The original French text of the 1921 Convention can be found in Söderhjelm (note 9), 372–378, and in FTS 1922, 1–8. See also 17 American Journal of International Law (1923), Supplement I.

measures of a maritime nature as are strictly necessary (Article 6). If a sudden attack endangers the neutrality of Åland, Finland is entitled to take measures necessary to ward off the aggressor, until the other parties are able to intervene in order to ensure respect for Åland's neutrality (Article 7).

Article 8 is of great interest here. It stipulates that the Convention is to remain in force irrespective of whatever changes may occur in the existing *status quo* of the Baltic Sea.

The supervision of the observance of the Convention was entrusted to the Council of the League of Nations. Under Article 7, it was the League Council which was to decide upon measures to safeguard the observance of the Convention and to prevent violations. Thus, the League was the guarantor of the Convention.

Article 9 indicates that the Convention was intended to have bearing among the whole membership of the League. In Article 9 the parties requested that the Council bring the Convention to the attention of the members of the League, so that for the sake of general peace all would respect the legal status of the Åland Islands under the Convention as a recognised rule guiding the action of governments. In the light of this stipulation it is surprising to note that according to Article 9 accession by States other than the signatory States is possible only if the signatory States unanimously consent to the extension of a request to a given State to become a party to the Convention. The parties have not extended such a request to any State.

The Convention creates the impression that it is intended to have lasting validity and legal bearing in the international community of States. There is no denunciation clause in the Convention.

When the League of Nations fell into a political impasse towards the end of the 1930s and the danger of a European war became real, Finland and Sweden became concerned for the evident ineffectiveness of the guarantee system of the 1921 Convention. Together they worked out the so-called Stockholm Plan in 1939 to revise the demilitarisation and neutralisation of Åland.<sup>16</sup> The Plan contained three main points: 1) The demilitarised and neutralised zone would be reduced permanently by excluding the most southern islands from it. 2) For a period of ten years, Finland would have the right to take certain defensive measures in the

<sup>16</sup> On the Plan and reactions to it see LNOJ, May–June 1939, 257–260 and 284–289; E. Lönnroth, Den svenska utrikespolitikens historia, Del V, 1919–1939 (1959), 194ff.; Rotkirch (note 10), 370–371.

demilitarised and neutralised zone. 3) During that ten-year period Sweden would be entitled to strengthen Åland's defence, for example by sending troops to Åland, if so requested by Finland. The Plan was intended to revise the Convention, not to abrogate it. The Ålanders were opposed to the Plan.

The Finnish and Swedish Governments submitted the Plan for approval to their Parliaments, to the other parties to the 1921 Convention and to the League Council. They referred to grounds which could be interpreted as *rebus sic stantibus*: In the existing situation the Convention could not secure the attainment of its original purpose – to keep Åland outside of military activities. Sweden stated that the existing situation had changed profoundly from what it had been in 1921. Indeed, the other parties to the Convention gave their assent to the Plan.<sup>17</sup> But the Soviet Union was suspicious and blocked the Plan. At that time the Soviet Union was an important actor in the international arena, *inter alia*, a member of the League Council. In the Council it prevented the adoption of the Plan by its veto. Because of the opposition of the Soviet Union the Swedish Government decided to withdraw the Bill from Parliament. Finland was unwilling to pursue the matter alone.

When in late 1939 the Soviet Union attacked Finland and the so-called Winter War began, Finland took certain precautionary military measures in Åland, including fortifications which, in the opinion of Rotkirch, Bring and Wahlbäck, exceeded its rights under the aforesaid 1921 Convention.<sup>18</sup> Finland reported these measures to the parties to the 1921 Convention and to the League of Nations, receiving no replies from them and interpreting this as silent assent. Ultimately the battles of the Winter War did not reach Åland. After the Soviet Union, the aggressor, had imposed a peace treaty on Finland in March 1940, it proposed the adoption of a bilateral treaty on the demilitarisation of the Åland Islands. This treaty, concluded in September 1940, obligated Finland to restore the demilitarised status of Åland in terms which, to a high degree, corresponded to those of the 1921 Convention. According to the new treaty, the Soviet Union was entitled to establish a consulate in Mariehamn, the

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<sup>17</sup> The assent of Great Britain and France was somewhat conditional, but in principle they were ready to give their assent. See LNOJ May–June 1939, 286–287.

<sup>18</sup> Regarding the events of World War II and its aftermath, see Rotkirch (note 10), 371–372; Bring (note 9), 326–327; K. Wahlbäck, Ålandsfrågan idag och förr, Briefing från utrikesdepartementet (6/1993), 24.

capital of Åland. This consulate was assigned the right to monitor the observance of the treaty.<sup>19</sup>

When war broke out again between Finland and the Soviet Union in 1941, Finland, this time as a co-belligerent of Nazi Germany, built fortifications in Åland anew. As the League of Nations had completely lost its significance, Finland informed only the parties to the 1921 Convention of these measures. None of them reacted. The fortifications were not used for military action during the war of 1941–1944. The armistice agreement of 1944 reactivated in all respects the 1940 treaty on the demilitarisation of Åland.<sup>20</sup> Finland and Russia have recently declared that the 1940 treaty remains in force.<sup>21</sup>

The 1947 Paris Peace Treaty<sup>22</sup> between Finland and a number of victorious Allied States, *inter alia* the Soviet Union and Great Britain, imposed many obligations on Finland, a co-belligerent of Nazi Germany. Article 5 provided that the Åland Islands will remain demilitarised according to the existing situation. Rotkirch describes the post-war situation as follows:

“Considering that both the Soviet Union (as a party to the 1940 Treaty) and Great Britain (as party to the 1921 Convention) confirmed the continuation of the demilitarisation of the Åland Islands according to status quo, the provisions of the 1947 Peace Treaty restored the pre-war situation. In addition to this provision the Soviet Union separately informed Finland that the 1940 Treaty regarding the Åland Islands remained in force.”<sup>23</sup>

As was mentioned above, in the post-World War II period some legal experts have expressed doubts as to whether the 1921 Convention continues in force<sup>24</sup> but the prevailing view is that it does.<sup>25</sup> When Finland submitted its membership application to the EC in 1992, it was the Com-

<sup>19</sup> FTS 1940, No. 24.

<sup>20</sup> See Rotkirch (note 10), 371–372.

<sup>21</sup> See Pöytäkirja Suomen Tasavallan Hallituksen ja Venäjän Federaation Hallituksen välillä Suomen ja Venäjän kahdenvälisten suhteiden sopimusoikeudellisen perustan kartoituksesta. This Protocol was done in Finnish and in Russian on 11 July 1992.

<sup>22</sup> FTS 1947, No. 19–20.

<sup>23</sup> Rotkirch (note 10), 372.

<sup>24</sup> See E. Castrén, Die Entmilitarisierung und Neutralisierung der Ålandinseln, in: Völkerrecht und rechtliches Weltbild, Festschrift für Alfred Verdross (1960), 115–116, and T. Modéen, Völkerrechtliche Probleme der Åland-Inseln, 37 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (1977), 606–607, 619. Both of these authors were of the opinion that the 1940 treaty between Finland and the Soviet Union was in force.

<sup>25</sup> See Björkholm/Rosas (note 9), 27ff.; Bring (note 9), 326–327; Hannikainen (note 12), 110. As regards Germany, Auswärtiges Amt, recognised on 23 March 1953 that the 1921 Convention is in force, see Bundesgesetzblatt 1953 II, 117.

mission of the EC/EU which took the opportunity to comment on the demilitarised and neutralised status of Åland. It was the opinion of the Commission that the demilitarised and neutralised status is in force. The Commission pointed out that certain Member States of the EC/EU are parties to the relevant treaties and conventions.<sup>26</sup> The Commission in no way sought to express doubt or criticism concerning the demilitarised and neutralised status. No State expressed differing opinions on the Commission's statement. The 1994 Treaty on Finland's accession to the EU recognises in its Protocol No. 2, dealing with Åland, that the Åland Islands enjoy a special status under international law.<sup>27</sup>

Whereas some writers have doubted the continuance in force of the demilitarised and neutralised status of Åland, certain other writers have presented this status as a prime example of a "permanent settlement" or "objective regime" in international law. They can base their opinions on the analysis of the above-quoted Commission of Jurists (1920) and on the Preamble and Articles 8 and 9 of the 1921 Convention. There appears to exist in international law the institution of "permanent settlement" or "objective regime".<sup>28</sup> It is characteristic of this institution that it seeks to determine in a permanent (or long-lasting) way the boundaries and/or status of a territory or a waterway, and the purpose is to serve the common interest. After this settlement has won general recognition, it is obligatory on all States *erga omnes*.<sup>29</sup> Either all States, or all States of a given region, regardless of whether or not they participated in the crea-

<sup>26</sup> The statement of the Commission on Finland's membership application of 4 November 1992. See also the Commission's reply to the question of Iversen, member of the European Parliament, in late 1993; Ålands landskapsstyrelsens meddelande 1/1993–94 – Redogörelse för konsekvenserna av Ålands medlemskap i den Europeiska unionen, 20 May 1994, bilaga, 38ff. According to Wahlbäck (note 18), 26, the EC/EU has respected existing international legal arrangements.

<sup>27</sup> Thus, the terms of Åland's accession to Finland's membership in the EU permit certain exceptions in respect of the autonomy and Swedish character of Åland and for the safeguarding of its economic viability. The text of Protocol No. 2 can be found in EU Doc. CONF-SF 20/94, 21 February 1994.

<sup>28</sup> See E. Klein, Statusverträge im Völkerrecht (Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, Vol. 76) (1980). However, no provision on treaties creating permanent settlements was included in the 1969 Vienna Convention on the Law of Treaties.

<sup>29</sup> On obligations *erga omnes*, see J.A. Frowein, Die Verpflichtungen *erga omnes* im Völkerrecht und ihre Durchsetzung, in: Völkerrecht als Rechtsordnung, Internationale Gerichtsbarkeit, Menschenrechte, Festschrift für Hermann Mosler (Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, Vol. 81) (1983), 241–263; M. Kamminga, Inter-State Accountability for Violations of Human Rights (1992), 156–163.

tion of the permanent settlement, may have a legal interest in demanding that the terms of the permanent settlement are respected. Among the most commonly-cited examples have been the demilitarisation of Åland and Antarctica and the international status of the canals of Panama, Suez and Kiel.

The character of the demilitarisation and neutralisation of Åland as a permanent settlement draws support from the analyses of Klein, Fagerlund, Lehto and McNair.<sup>30</sup> Fagerlund considers that the whole status of Åland established in 1921 constitutes a permanent settlement. Lehto argues that "the demilitarisation of Åland is most likely to have achieved the status of an objective regime that is binding even on third states". Bring, Rotkirch and Björkholm/Rosas speak in somewhat more cautious terms but emphasise that the demilitarisation of Åland has bearing in general international law.<sup>31</sup> Bring does not use the term "permanent settlement" but states that State practice has confirmed the existence of a common interest in such a way that the demilitarisation and neutralisation of Åland can be considered to be sanctioned by general international law. According to Rotkirch, the special status of Åland is of such long standing "that it has without doubt become part of customary international law and is thus binding on the international community as a whole".

In light of the foregoing, there is no cause to doubt the continuance in force of the demilitarisation and neutralisation of Åland. The treaties of 1921, 1940 and 1947 are in force. Whether this status is a "permanent settlement" may be open to doubts. It is true that after World War II the demilitarisation and neutralisation of Åland has been in existence without any great problems and has not been challenged by any State. Nevertheless, it is somewhat puzzling that in both of its major wars during the World War II period Finland slipped from its obligations concerning the demilitarisation of Åland. The other parties to the 1921 Convention did not react against Finland; in fact, their attitude towards the modifications of the 1939 Stockholm Plan was positive. If an international crisis arose and there was a threat of war in the Baltic area, would Finland and other States hold steadfastly to the letter of the 1921 Convention? This one may doubt.

<sup>30</sup> See Klein (note 28); N. Fagerlund, Ålands folkrättsliga status och EG (1993), 99ff.; M. Lehto, Restrictions on Military Activities in the Baltic Sea – a Basis for a Regional Regime?, 2 FYBIL (1991), 57–60; Lord A.D. McNair, The Law of Treaties (1961), 255–263.

<sup>31</sup> See Bring (note 9), 327–328; Rotkirch (note 10), 373; Björkholm/Rosas (note 9), 112–117.

There are certainly grounds to argue in favour of the permanent settlement status of the demilitarisation and neutralisation of Åland. No unilateral denunciation of the 1921 Convention or of the fundamental provisions of the 1947 Paris Peace Treaty appears permissible. The demilitarisation and neutralisation of Åland has been one of the stabilising factors in the politics of the Baltic area and has not been challenged by any State. These are powerful legal and political factors. It can be argued that all of the States of the Baltic area, and of Europe, have a legal interest in demanding that the demilitarised and neutralised status of Åland must be respected. Thus, it can also be argued that even though Russia has assumed only treaty obligations to respect the demilitarisation of Åland, but not its neutralisation, on the basis of the permanent settlement Russia would also be obliged to respect the neutrality of Åland. Lehto argues that the Soviet Union by its own conduct can be considered to have approved the neutralisation of Åland as binding.<sup>32</sup>

We conclude that on the basis of the practice of the last fifty years and of the 1921 Convention and the 1947 Paris Peace Treaty, the demilitarisation and neutralisation of Åland can be argued to constitute a permanent settlement. Such a conclusion, however, is not without doubts. Instead, it can be safely concluded that the demilitarisation and neutralisation of Åland has the status of regional customary law in the Baltic Sea area. Perhaps it is even a European regional customary norm. Since this customary status appears to have a bearing in general international law, obligating all States to respect it<sup>33</sup>, this tends to indicate something akin to a permanent settlement. This problem regarding a permanent settlement will be borne in mind as we proceed. Will the problem be solved later in this article and what significance does the matter ultimately have to this article?

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<sup>32</sup> Lehto (note 30), 57–60.

<sup>33</sup> See Reports of the International Law Commission of 1966, UN doc. A/6309/Rev.1, 56–61; Fagerlund (note 30), 99; Hannikainen (note 12), 105–106.

### *3. Is Unilateral Denunciation of the Demilitarisation and Neutralisation of Åland Legitimate?*

#### *3.1. The View of the Finnish Military Establishment*

After the end of the Cold War and the dissolution of the socialistic Great Power, the Soviet Union, it became evident that Finland could, more than at any time during its independence, manifest its own aspirations and interests and make its own international choices. It has been the Finnish military establishment in particular which has felt that Finland's new freedom should be manifested in the matter of the military status of Åland.

The Åland Islands are capable of considerable military-strategic significance in the Baltic Sea area. It is a commonly-held position among Finnish military experts that the military-strategic significance of Åland has increased in recent years following the dissolution of the Soviet Union. Russia has been pushed to the end of the Gulf of Finland and its immediate security/military interests in the Baltic Sea are directed towards its northern waters. The military-strategic centre of gravity in the Baltic Sea has moved from its southern part to the waters off the Åland Islands.<sup>34</sup> A number of Finnish military experts fear that due to developments in military technology the ability of military powers to launch a surprise attack at Åland is now much greater than at the time of the conclusion of the 1921 Convention. However, there are other military experts who do not share this opinion.<sup>35</sup>

The critical view of the Finnish military establishment towards the demilitarisation and neutralisation of Åland has been formulated in greatest detail by Major Mikko Taavitsainen in his 1993 article in

<sup>34</sup> See the article of Admiral Jan Klenberg, Commander-in-Chief of the Finnish Defence Forces until the summer of 1994, *Pohjoinen Itämeri on nyt sotilaiden mielenkiannon kohde*, *Navigator* 4/1993, 20–21; and the interview of Lieutenant General Gustav Häglund, successor to Admiral Klenberg as Commander-in-Chief, in the newspaper *Nya Åland*, 22 March 1994; *Gardberg* (note 4), 9ff.; *Wahlbäck* (note 18), 21. Regarding the contemporary military-strategic thinking of the Finnish military in more general terms, see the special English language edition of *Sotilasaikakauslehti* on the occasion of the 75th anniversary of the Finnish Defence Forces, *The Finnish Defence Review*, published in 1993 by *Upseeriliitto* (the Finnish Officers' Union).

<sup>35</sup> Among them are the leading officers of the Turku and Pori Military Province Headquarters which is responsible for the defence of Åland. See *Svensson* (note 8), 48; the newspaper *Turun Sanomat*, 11 July 1993. The new Commander-in-Chief of the Military Province, Lieutenant-General Hannu Särkiö, warned that the unilateral denunciation of the 1921 Convention would not serve Finland's interests.

Sotilasaikakauslehti (*The Military Journal*).<sup>36</sup> His article has the blessing of the leadership of Finland's Armed Forces. Taavitsainen emphasises that on the basis of the experience of two World Wars one cannot have great respect for the demilitarised and neutralised status of Åland. Political considerations have overshadowed legal ones. That Finland made military preparations in Åland during World War II was only elementary realism. Taavitsainen concludes his study of history:

"History shows that the treaties on Åland have not protected the region from war or speculation. Åland has been a veritable magnet for military operations."<sup>37</sup>

In the opinion of Taavitsainen the demilitarisation and neutralisation of Åland was not Finland's idea and has not been in its interests. Actually, Finland has had no chance to have a meaningful say in determining the military status of Åland. Now when Finland is no more under the watchful eye of its "big brother" (i.e. Finland's large eastern neighbour) and feels more independent than ever, it should speak for its own interests.

According to Taavitsainen the surprise invasion of Åland, a military vacuum, by an external power would endanger the security of Finland as a whole. The invader of Åland would have good chances of disembarking on the west coast of Finland. Such a danger would tie down a considerable portion of Finland's armed forces to the defence of the country's west coast which is not protected by any strong defence. This, in turn, would significantly diminish Finland's chances of defending other parts of the country. Furthermore, as most of Finland's foreign trade transport goes along sea lanes passing Åland, the invader of Åland could virtually extinguish Finland's foreign trade.

Taavitsainen claims that in the present situation Finland is unable to secure the inviolability of Åland. This would be possible only if Finland could make adequate military preparations on the islands.<sup>38</sup> This military vacuum may even draw Finland into an international crisis outside of which Finland could otherwise remain. Also the security of the east coast of Sweden, including Stockholm, would improve if Åland were not a military vacuum.

<sup>36</sup> M. Taavitsainen, *Ahvenanmaa – suurempien ja pienempien intressien ristiriita*, 68 Sotilasaikakauslehti (8/1993), 472–481.

<sup>37</sup> Translation into English by the present author.

<sup>38</sup> According to Taavitsainen, it is not necessary that strong fortifications are built in Åland. There should be adequate preparations to enable Finnish troops to move quickly and effectively in the archipelago. See also M. Viitasalo/B. Österlund, *Itämeren meristrateginen tilanne muuttuu*, 29 *Ulkopolitiikka* (4/1992), 45.

As far as Russia is concerned, Taavitsainen does not claim that the country has any secret plans of invading Åland during a crisis in the Baltic Sea. However, a demilitarised Åland is to Russia like a playing card known in advance. There is no reason to discard that card until Russia has looked at the other cards. The Åland card may prove to be valuable if

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How, then, would it be possible to dissolve the present demilitarisation of Åland? Taavitsainen thinks that Finland should not try to pursue the dissolution through an international conference. There are three other alternatives:

1. Finland would become a party to a security alliance which, as a part of its overall security policy would, without much ado, dissolve the demilitarisation of Åland. If both Finland and Sweden were parties to such an alliance, the arguments for the dissolution of the demilitarisation of Åland cannot be lightly rejected. According to Taavitsainen a disadvantage of this alternative would be its uncertainty and slowness.

2. Finland and Sweden would remain outside of military alliances and would try to agree on certain common defence efforts, at least in the Åland archipelago and adjacent sea areas. However, this alternative is also uncertain; one recollects the failure of the 1939 Stockholm Plan.

3. The fastest and perhaps best alternative would be for the Finnish Government to simply denounce the treaties on the demilitarisation and neutralisation of Åland as obsolete in the post-Cold-War situation. There is a recent successful precedent for this procedure: in 1990 Finland unilaterally denounced a number of military articles of the 1947 Paris Peace Treaty. Taavitsainen thinks that other States might not challenge Finland's denunciation of the demilitarisation and neutralisation of Åland if Finland did its best to avoid jeopardising the security interests of other States.

Major Taavitsainen is not an expert in international law and does not argue in terms of international law. His comparison between Finland's denunciation of a number of military articles of the Paris Peace Treaty and Finland's possible denunciation of the demilitarisation and neutralisation of Åland would require, however, expertise in international law. It is advisable to examine whether Taavitsainen's approach on denunciation is consistent with international law and this is done in 3.4. below.

In his study on the strategic position of Åland Anders Gardberg, another Finnish military expert, takes an analytical approach.<sup>39</sup> He appears to agree with Taavitsainen that Åland in hostile hands could constitute a real threat to the security of Finland and Sweden. Not only could a foreign invader of Åland interrupt Finland's sea transportation but it could also interrupt Finland's international telephone contacts. Over 90 per cent of Finland's telephone contacts to the West go over Åland. If Russia invaded Åland and took control of the Gulf of Bothnia, it could use the Gulf of Bothnia and the east coast of Sweden for an attack on northern Norway.

According to Gardberg's analysis, in the light of developments in military technology the possibility of a successful surprise attack and invasion of Åland is considerably greater than it was at the time of the conclusion of the 1921 Convention. Contemporary mobile rocket systems are effective and stable fortifications are not necessary for the invader to use Åland for external military operations. The requirements for Finland to meet threats of attack and to maintain a reliable defence of Åland are high. On the other hand, developments in weaponry offer Finland new possibilities for enhancing the defence of Åland.

Of Gardberg's conclusions the following are of particular interest:

– If there were any doubts about whether or not Finland is able to defend the neutrality of Åland, then the security of the Baltic Sea area would be disturbed. It is in the common interest of all parties involved to be satisfied that the neutrality of Åland is not under threat.

– The existing treaties have functioned in a satisfactory manner during peacetime and have not excessively hampered Finland's ability to keep watch over Åland. It is in the interest of all the parties involved to interpret the existing treaties so that in a crisis Finland is able to secure the neutrality of Åland. The alteration of the existing *status quo* would be accompanied by many uncertainties. Therefore its alteration appears unlikely, at least in peacetime.

Gardberg expresses many interesting opinions on the existing conventions and their interpretation. These are examined below in subsection 3.4.

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<sup>39</sup> Gardberg (note 4).

### 3.2. Finland's Successful Invocation of the Principle of *Rebus Sic Stantibus*

The Finnish Government denounced in 1990 a number of military articles of the Paris Peace Treaty – nearly all of the articles of Part III of the Treaty.<sup>40</sup> Part III dealt with restrictions on Finland's armaments. On the one hand, restrictions had been imposed on Finland's armed forces and armaments while, on the other hand, Finland was prohibited from acquiring war material from Germany. The restrictions were intended to be temporary – certainly not permanent – but in 1947 it was unclear how long they would continue in force. Even though it was generally recognised no later than in the 1960s that Finland was a peace-loving country, the restrictions of Part III of the Paris Peace Treaty became an element of the Cold War equilibrium. When the Cold War came to an end and negotiations between the victorious powers of World War II and the German States resulted in agreements freeing the united Germany from all limitations on its sovereignty, the Finnish Government understandably considered that the legal grounds for limiting Finland's sovereignty had been completely removed. In the opinion of the Finnish Government “(T)he fundamental change of the security situation in Europe makes it possible to recognise that the stipulations limiting sovereignty are outdated also with regard to Finland”. This phrasing amounts to a reference to the principle of *rebus sic stantibus*, i.e. the fundamental change of circumstances, which, if applied *bona fide*, is a lawful ground to denounce a treaty or part thereof.

The provision on the demilitarisation of Åland – Article 5 – is in Part II of the Paris Peace Treaty. This Part contains the political rules of the Treaty. While denouncing most of the articles of Part III the Finnish Government emphasised that the denunciation had no bearing on the Treaty as a whole.

### 3.3. The Principle of *Rebus Sic Stantibus* in International Law

What are the criteria for the lawful application of the principle of *rebus sic stantibus* in international law? The commonly accepted criteria can be found in the 1969 Vienna Convention on the Law of Treaties. Article 62 of the Convention lays down the principal criteria as follows:

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<sup>40</sup> The text of the declaration of the Finnish Government can be found in 1 FYBIL (1990), 565–567.

"1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:

- (a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and
- (b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty."

Article 62 continues by stating that a fundamental change of circumstances may not be invoked as grounds for withdrawing from a treaty if, *inter alia*, the treaty establishes a boundary.

It should be noted that according to Article 56 of the Vienna Convention a treaty which contains no provision regarding its denunciation is not subject to denunciation unless (a) it is established that the parties intended to admit the possibility of denunciation, or (b) a right of denunciation may be implied by the nature of the treaty. Article 61 permits withdrawal from a treaty on the ground of the impossibility of the performance thereof – the permanent disappearance or destruction of an object indispensable for the execution of the treaty.

The ICJ stated in the *Fisheries Jurisdiction* cases in 1973 that international law admits that "a fundamental change in the circumstances which determined the parties to accept a treaty, if it has resulted in a radical transformation of the extent of the obligations imposed by it, may, under certain conditions, afford the party affected a ground for invoking the termination of the treaty". The Court continued that Article 62 of the Vienna Convention "may in many respects be considered as a codification of existing customary law on the subject of the termination of a treaty relationship on account of change of circumstances."<sup>41</sup>

The ILC, which did the ground work for the Vienna Convention on the Law of Treaties, was of the opinion that the principle of *rebus sic stantibus* was a part of international customary law and should be a part of modern international law. The ILC considered that in order not to upset the sanctity of treaties the *rebus* principle should be defined within narrow, strict limits. The ILC endeavoured to draft the text of Article 62

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<sup>41</sup> ICJ Reports (1973), 18, 63. To the same effect, see A. Vamvoukos, *The Termination of Treaties in International Law – The doctrines of *Rebus Sic Stantibus* and Desuetude* (1985), 118–127, 138–151. [Regarding this book see the note by its publisher, Oxford University Press, reproduced in ZaöRV 51 (1991), 824.]

accordingly.<sup>42</sup> At the Vienna Conference of the Law of Treaties in 1968–1969, the states were in general agreement with the approach of the ILC regarding *rebus sic stantibus*.<sup>43</sup>

Let us have a closer look at the criteria for the principle of *rebus sic stantibus*. It is a commonly shared opinion in international jurisprudence and expert literature that the *rebus* principle shall be applied within narrow, strict limits.<sup>44</sup> For example, according to Akehurst, in modern times it is agreed that the *rebus* principle applies only in the most exceptional circumstances.<sup>45</sup> Under Article 62 of the Vienna Convention, a fundamental change of circumstances which was not foreseen by the parties at the time of the conclusion of a treaty may not be invoked unless a) the existing circumstances constituted an essential basis of the consent of the parties, and b) the effect of the change is radically to transform the extent of the obligations still to be performed. In the *Fisheries Jurisdiction* case the ICJ required “radical transformation of the extent of the obligations” imposed by a treaty. “The change must have increased the burden of the obligations to be executed to the extent of rendering the performance something essentially different from that originally undertaken.”<sup>46</sup>

According to Vamvoukos, the common intention of all the parties plays a major role in determining when the principle of *rebus sic stantibus* applies. However, the intention of the parties is not the only weighty factor. Once a treaty has entered into force it begins a life of its own according to its objects and purposes. Another relevant factor is the sum of the political, legal, economic and other circumstances, in brief the historical background of circumstances in which the treaty was concluded and in the light of which it may be fully understood. A subsequent change in those circumstances may destroy the intention of the parties. The change must at all events be fundamental, i.e. such as to vitiate the

<sup>42</sup> See Reports of the International Law Commission of 1966, UN-Doc. A/6309/Rev.I, 84–88.

<sup>43</sup> See Vamvoukos (note 41), 145–146. According to this source (p. ix), the doctrine of *rebus sic stantibus* has often been described as the *enfant terrible* of international law.

<sup>44</sup> In addition to the sources mentioned in the three previous notes see T.O. Elias, *The Modern Law of Treaties* (1974), 120; Vamvoukos, *ibid.*, 152–185; K. Ipsen, *Völkerrecht*, 3rd. ed. (1990), 180–184; H. Thirlway, *The Law and Practice of the International Court of Justice 1960–1989*, 63 *The British Year Book of International Law* (1992), 75–82.

<sup>45</sup> M. Akehurst, *Treaties, Termination*, in: R. Bernhardt (ed.), *Encyclopedia of Public International Law*, Instalment 7 (1984), 508–509.

<sup>46</sup> ICJ Reports (1973), 18, 168. See also P. Reuter, *Introduction to the Law of Treaties* (1989), 147.

object and purposes of the treaty or to destroy or radically transform its foundations.<sup>47</sup>

Vamvoukos writes that the likelihood of circumstances affecting the motives of one party alone does not, as a rule, fall within the range of the *rebus* doctrine. However, in exceptional cases the expectations or assumptions of one party may be relevant if they were of paramount importance in moving the party to enter into a treaty and were not only made known to the other parties but were also recognised by these as being of prime importance. A subsequent change of circumstances which destroys those expectations and assumptions may give rise to the application of the *rebus* doctrine. The applicability of *rebus sic stantibus* is acceptable if an unforeseen event upsets the original balance of mutual performances: the performance of the obligation would then impose upon one party an "intolerable burden" or an "unreasonable sacrifice" which is not contemplated in the treaty and, therefore, not to be expected of that party.<sup>48</sup>

This may be illustrated by referring to the following examples. The ICJ stated in the Fisheries Jurisdiction case that the apprehended dangers for the vital interests of Iceland, resulting from changes in fishing techniques, did not constitute a fundamental change in the sense of Article 62 of the Vienna Convention.<sup>49</sup> Vamvoukos writes that States have sometimes proposed as a test that a treaty has, in the new circumstances, become dangerous to the security of a State Party, but there is no convincing evidence that customary international law recognises such an argument to be sufficient *per se* to invoke the *rebus* principle.<sup>50</sup>

A report of the Secretary-General of the UN in 1950 evaluated the effect on the obligations of states of the collapse of the minorities protection system of the League of Nations. His general conclusion was that the collapse of the League's guarantee formerly accompanying obligations in respect of minorities had not extinguished those obligations themselves. However, after a more detailed study the Secretary-General came to the conclusion that a great majority of those obligations had terminated on the ground of *rebus sic stantibus*. The relevant factors were the degeneration and dissolution of the League of Nations and the operating problems in its minorities protection system, the considerable changes in the posi-

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<sup>47</sup> Vamvoukos (note 41), 191–195.

<sup>48</sup> Vamvoukos, *ibid.*, 190, 194.

<sup>49</sup> ICJ Reports (1973), 20–21.

<sup>50</sup> Vamvoukos (note 41), 193–194.

tion of the States bound by the obligations concerned and the different human rights approach of the UN, emphasising equality. Whereas the Secretary-General stated in general terms that changes in political circumstances do not affect the existence of treaties, in this case the changed political circumstances enabled him to draw hardly any other conclusion than to admit that after the collapse of the League's minorities protection system it was impossible to uphold most of the obligations.<sup>51</sup>

It seems clear that the principle of *rebus sic stantibus* has to be invoked within a reasonable time after the fundamental change of circumstances has occurred.<sup>52</sup> A single party has the right to invoke the principle but at first it should propose to the other parties a less dramatic alternative such as modification of the treaty concerned or suspension of its operation. Vamvoukos explains the current practice as follows: "Should the party or parties refuse to negotiate in good faith or should the negotiations lead to no result, the party relying on the *rebus* doctrine may be entitled to terminate the treaty."<sup>53</sup> The emerging approach is, as evidenced by the Vienna Convention on the Law of Treaties, that if a dispute arises between the parties on the applicability of the *rebus* principle, then the dispute should be settled by an international judicial organ.<sup>54</sup>

<sup>51</sup> The Secretary-General's "Study on the Legal Validity on Undertakings Concerning Minorities", UN doc. E/CN.4/367 (1950). It is interesting to note that in the opinion of the Secretary-General one arrangement for the protection of minorities remained clearly in force, namely Finland's obligation to respect the autonomy and Swedish character of the Åland Islands. Finland owed those obligations to Sweden continuously. See p. 69 of the Secretary-General's Study; see also Hannikainen (note 12), 95–98.

The Secretary-General dealt with the fate of obligations of a reciprocal character in an interesting way in the following example: State A has agreed to protect a national minority originating from State B, and State B has assumed a corresponding obligation to respect a national minority originating from State A. If minorities protection ceases in State A, State B would appear to have grounds for considering that an important change of circumstances has taken place.

<sup>52</sup> See Vamvoukos (note 41), 195.

<sup>53</sup> Vamvoukos, *ibid.*, 199–200.

<sup>54</sup> See Articles 65–68 and the Annex of the Vienna Convention; Vamvoukos, *ibid.*, 206–214; G. Haraszti, Some Fundamental Problems of the Law of Treaties (1973), 400–420.

### 3.4. Is the Principle of *Rebus Sic Stantibus* Applicable to the Demilitarisation and Neutralisation of Åland?

It should be pointed out that the 1969 Vienna Convention on the Law of Treaties does not formally apply to the existing treaties on the demilitarisation and neutralisation of Åland. According to Article 4, the Convention applies only to treaties which are concluded by States after the entry into force of the Convention with regard to such States. But since many provisions laid down in the Convention codify existing customary international law, they can apply to treaties concerning Åland on the basis of customary law. It appears that the above-mentioned provisions of the Vienna Convention codify existing customary law.

It was explained above that according to Article 8 of the 1921 Convention on the Demilitarisation and Neutralisation of the Åland Islands, the Convention was meant to remain in force “irrespective of whatever changes may occur in the existing status quo of the Baltic Sea”. It was also noted that the Convention does not contain any provision on denunciation. It is evident that the Convention was meant to exclude the applicability of *rebus sic stantibus*.<sup>55</sup>

It is nevertheless not excluded that the 1921 Convention could be denounced, or at least its operation suspended, in extreme circumstances such as the invasion of the Åland Islands by an aggressive external power. In such circumstances it would be possible to refer to the ground of impossibility of performance of the Convention.

Even if Article 8 was meant to prevent the applicability of the *rebus* principle to the 1921 Convention, after its existence for many decades the question of the Convention’s legal relevance may understandably come under discussion at some point in time.<sup>56</sup> An expert expressing doubts

<sup>55</sup> Among legal experts, *inter alia*, Söderhjelm (note 9), 317–322; S. R. Björksten, *Kansainvälinen oikeus* (1938), 125 and 210; Rotkirch (note 10), 370; Bring (note 9), 323; Björkholm/Rosas (note 9), 33–34; Fagerlund (note 30), 104, are of the opinion that Article 8 prevents the application of the principle *rebus sic stantibus* to the 1921 Convention. Björkholm/Rosas report that Finland proposed the deletion of Article 8 at the Geneva Conference where the 1921 Convention was completed. The proposal was rejected and the discussions showed that the *rebus* principle was intended to be inapplicable.

<sup>56</sup> I. Sinclair, *The Vienna Convention on the Law of Treaties*, 2nd. ed. (1984), 193, writes as follows: “The *rebus* doctrine fell into serious disrepute during the interwar period, largely as a result of its indiscriminate invocation by states in the period immediately preceding 1914 to escape from inconvenient treaty obligations.” The 1969 Vienna Convention on the Law of Treaties displays a more positive attitude among States towards the *rebus* principle.

about the never-ending relevance of Article 8 might want to point out that according to Klein, in the light of State practice it is not excluded that *rebus sic stantibus* can be applicable to treaties creating permanent settlements.<sup>57</sup> Nor is it excluded that a given provision of a treaty should fall into desuetude.<sup>58</sup> Let us examine whether the criteria of the *rebus* principle would be applicable at present to the 1921 Convention. However, because of Article 8 of the 1921 Convention the criteria of *rebus sic stantibus* must be interpreted in an even more restricted manner than Article 62 of the Vienna Convention on the Law of Treaties demands.

According to Article 62 of the Vienna Convention on the Law of Treaties, the *rebus* principle is not applicable to treaties establishing boundaries. Even though the 1921 Convention creates the boundaries of the demilitarised and neutralised zone, we do not consider the 1921 Convention a boundary treaty in the sense of Article 62. Article 62 means primarily boundaries between States.<sup>59</sup>

Perhaps the best argument for the right to denounce the 1921 Convention on the basis of *rebus sic stantibus* goes like this: The collapse of the guarantee of the League of Nations has clearly weakened the reliability of the demilitarisation and neutralisation of Åland. Åland has become a potential military vacuum constituting a potential threat to Finland. The absence of an international guarantee makes it tempting for a State with aggressive designs to engage in speculation on the notion of invading the military vacuum by a sudden military attack. Developments in military technology have increased the danger that Åland could be invaded in such a manner. This danger should be read together with the evident fact that in recent years the military-strategic centre of gravity in the Baltic Sea has moved from the southern part to the waters off Åland. Thus, Finland would have legitimate grounds for denouncing the demilitarisation of Åland.

Using this reasoning and referring to Finland's acceptable denunciation in 1990 of a number of military articles of the Paris Peace Treaty Finland

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However, the States Parties have the right to exclude the applicability of the *rebus* principle to a treaty. *Rebus sic stantibus* is not a principle of the character of *jus cogens*; see L. Hannikainen, *Peremptory Norms (Jus Cogens) in International Law – Historical Development, Criteria, Present Status* (1988), 319–320.

<sup>57</sup> Klein (note 28), 285–294, 358.

<sup>58</sup> On the functioning of desuetude in international law, see Vamvoukos (note 41), 219–303.

<sup>59</sup> See Elias (note 44), 125–126.

would denounce Article 5 of the Peace Treaty. At the same time Finland would denounce the 1940 Treaty with the Soviet Union as a treaty imposed by the Soviet Union on Finland. Finland could submit relevant proof of this: the treaty was concluded upon the initiative of the Soviet Union soon after the Soviet Union had imposed a peace treaty on Finland after the Winter War. One of the conditions of the Soviet Union agreeing not to invade Finland had been Finland's consent to a treaty on the demilitarisation of Åland.<sup>60</sup>

However, according to the analysis of the present author, the currently existing circumstances surrounding the demilitarisation of Åland do not fulfil the criteria of *rebus sic stantibus*. The circumstances have not changed in such a fundamental manner as to enable the invocation of the *rebus* principle. It is true that the parties to the 1921 Convention hardly foresaw the collapse of the League of Nations, and that the collapse of the League of Nations changed the circumstances of the Convention. However, the conclusions drawn from those changes in 1947 were, in the words of Article 5 of the Paris Peace Treaty: "the Åland Islands will remain demilitarised according to the present situation". It is also true that since 1947 developments in military technology have increased the danger of a successful surprise attack on the Åland Islands. However, since at present there is no alarming military or political tension in the Baltic Sea area it would be incorrect to regard developments in military technology as changing the circumstances in a fundamental manner. Moreover, developments in military technology have also created new possibilities for Finland to defend Åland and to monitor compliance by other states of the provisions of the 1921 Convention. As far as changes in the military-strategic centre of gravity in the Baltic Sea are concerned, during the existence of the 1921 Convention this centre has been at times more to the south within the Baltic Sea and at times more to the north.<sup>61</sup>

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<sup>60</sup> Svensson (note 8), 45.

<sup>61</sup> See G. Hägglund, Suomen puolustuksen uudet haasteet, 29 Ulkopolitiikka (3/1992), 20. We could also refer specifically to Article 62 (1) of the Vienna Convention. According to this, one of the mandatory criteria for the legitimacy of *rebus sic stantibus* is that the effect of the (fundamental) change "is radically to transform the extent of the obligations still to be performed under the treaty". No radical transformation of the extent of obligations has taken place in the case of the demilitarisation and neutralisation of Åland. However, we doubt that the radical transformation of the extent of obligations would always be a condition of the applicability of the *rebus* principle. Finland's denunciation of certain military articles of the Paris Peace Treaty (explained above in 3.2.) can serve as an example. The extent of the obligations had not changed in any radical way, but the circumstances had changed radically. The decisive criterion is, according to the line of

A Swedish expert, Wahlbäck, emphasises that it would be politically unwise to denounce a demilitarised system in Åland which has functioned properly and which is not threatened by existing political-military circumstances. It would be difficult to reason that a demilitarised system which functioned properly during the tensions of the Cold War should be dissolved in less tense circumstances. The demilitarisation and neutralisation of Åland has been a model of pacific arrangements and is worth preserving. Wahlbäck believes that the demilitarisation of Åland is not threatened by the designs of the common foreign and security policy envisaged by the 1992 Maastricht Treaty of the EU.<sup>62</sup> It is not difficult to agree with the reasoning of Wahlbäck on the advisability of preserving the present status of Åland. Moreover, it seems quite certain that Finland's unilateral denunciation would encounter opposition from several States Parties to the relevant treaties. Unilateral denunciation could well lead Finland into political disagreements with some other States. Bring is of the opinion that the revocation of the demilitarisation and neutralisation of Åland would be a measure opposite to the "confidence building measures" whose development forms one of the central purposes of the CSCE.<sup>63</sup>

We conclude that according to the criteria of international law unilateral denunciation of the demilitarisation and neutralisation of the Åland Islands is not legitimate at present.<sup>64</sup> The prohibition of unilateral denunciation applies both to Finland and to the other States. Unilateral denunciation would also be politically undesirable.

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reasoning of Vamvoukos (note 41), 192–195, that the change must vitiate the objects and purposes of the treaty or destroy or radically transform its foundations.

Many disarmament treaties have a provision securing the right to denounce them in the following circumstances: if a State Party decides that extraordinary events related to the subject matter of the treaty have jeopardised that Party's supreme interests. G. Lysén, *The International Regulation of Armaments: The Law of Disarmament* (1990), 17, characterises this phrase as "a new version of the *clausula rebus sic stantibus*". The phrase and the *rebus* principle cannot be considered as synonyms; evidently the *rebus* principle is more strict. In any case, it seems clear at present that if the 1921 Convention on the Demilitarisation and Neutralisation of the Åland Islands contained a denunciation clause described here, it would not be lawful for a party to denounce the Convention.

<sup>62</sup> Wahlbäck (note 18), 22, 25–26. Also Finland's Minister of Defence, Elisabeth Rehn, expressed the opinion that developments within the EU will not threaten the demilitarised status of Åland; see the newspaper *Nya Åland* of 26 October 1993.

<sup>63</sup> Bring (note 9), 327.

<sup>64</sup> Björkholm/Rosas (note 9), 34, writing in 1990, were of the same opinion.

#### *4. Alternatives to Unilateral Denunciation*

It seems evident that notwithstanding the calls from the Finnish military establishment, Finland's political leadership has no strong desire to formally amend the present regime of the demilitarisation and neutralisation of Åland. The two most interested States besides Finland, Sweden and Russia, have made it known in their reactions to the radical views within the Finnish military that they are satisfied with the existing *status quo*.<sup>65</sup>

The collapse of the League of Nations' guarantee of the 1921 Convention weakened the sanctity of the Convention. In order to repair this defect, Finland has resorted to certain fairly liberal interpretations of the 1921 Convention in order to safeguard, through the possibility of taking precautionary military measures, the neutrality of Åland during international crises in the Baltic Sea region.<sup>66</sup> It seems evident that the other interested States consider such interpretations, in principle, to serve the common good.<sup>67</sup>

Terms such as "exceptional circumstances", "sudden attack" and "necessary" permit different interpretations depending on circumstances. According to Article 4, "exceptional circumstances" permit Finland to take precautionary measures in Åland during peacetime.<sup>68</sup> Article 7 entitles Finland, in case of a "sudden attack" on Åland, to take all necessary defensive measures to ward off the aggressor. The term "sudden attack" need not necessarily be interpreted to mean that the attack must already have begun. Even the threat of a sudden attack may be argued to entitle Finland to take necessary precautionary defensive measures within the demilitarised zone. According to Finland's 1991 Emergency Powers Act, not only an armed conflict directly involving Finland, but also an armed conflict between other States which may form a threat to Finland, entitles the Government to declare state of emergency. After the declaration of

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<sup>65</sup> See Svensson (note 8), 47; Fagerlund (note 30), 126; and the newspapers Helsingin Sanomat, 9 and 11 October 1992, and Nya Åland, 3 August and 26 September 1992.

<sup>66</sup> See Gardberg (note 4), 34–35.

<sup>67</sup> See Gardberg, *ibid.*, 41ff., who analyses the views and interests of various parties involved. It should be pointed out that in international law the parties to a treaty have wide powers to modify the treaty by informal means through their consensus or commonly accepted practice; see W. Karl, *Vertrag und spätere Praxis im Völkerrecht* (Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, Vol. 84) (1983).

<sup>68</sup> See more closely Gardberg, *ibid.*, 30–31, 34–36.

such a state the Government is empowered to increase military preparedness anywhere in Finland.<sup>69</sup>

According to the interpretation of Finland, monitoring measures within the demilitarised zone by the Finnish Border Guard Service should not be regarded as military measures. Björkholm/Rosas and Gardberg consider that since none of the parties to the 1921 Convention have opposed Finland's interpretation, they have consented to it. They are ready to accept Finland's interpretation as long as the Border Guard Service carries only light weaponry, similar to that employed elsewhere its border guarding.<sup>70</sup> Björkholm/Rosas put decisive weight on the fact that in peacetime the Finnish Border Guard Service is not subordinate to the command of the Finnish Armed Forces but to the Ministry of the Interior.

It is the recommendation of the present author that Finland should avoid such excessive interpretations which go beyond the rules and principles of interpretation laid down in Articles 31 and 32 of the Vienna Convention on the Law of Treaties. If Finland considers that the 1921 Convention puts excessive limits on its abilities to safeguard the neutrality of Åland, why not propose the establishment of a new international supervisory and guarantee system?

Evidently the strongest opposition to a liberal interpretation of the 1921 Convention comes from Åland itself. The Ålanders have jealously guarded the strict observance of the letter of the 1921 Convention and have reacted angrily to any measures which, according to their strict interpretation, are not consistent with the Convention. The Ålanders fear that the weakening of demilitarisation – and corresponding increase in militarisation – would bring Finnish-speaking soldiers to Åland. Their presence in Åland would, in the long run, weaken the predominance of the Swedish language in Åland. Ultimately Åland's autonomy would also suffer.<sup>71</sup>

However, formally the Ålanders have no say in matters of demilitarisation and neutralisation; these matters fall outside the sphere of Ålandic autonomy. The autonomy of Åland is nevertheless an established part of Finland's democratic system. In the spirit of the 1990 CSCE Charter of Paris for a New Europe, which emphasizes the paramount importance of

<sup>69</sup> See Sections 2 and 33 of the Act No. 1080/1991. See also Gardberg, *ibid.*, 34–35, 40.

<sup>70</sup> Björkholm/Rosas (note 9), 63–65; Gardberg, *ibid.*, 29–30.

<sup>71</sup> See Svensson (note 8), 45.

democracy, Finland should be ready to pay serious attention to Åland's views in matters of demilitarisation and neutralisation and should avoid a policy of simply overruling the Ålanders.

According to opinion polls, the Ålanders are strongly in favour of demilitarisation and neutralisation, but rather many still have worries about the weakness of Åland's defence.<sup>72</sup> It is not excluded that if political tension in the Baltic Sea area were to increase, then Åland would consider consenting to a liberal interpretation of the 1921 Convention. This would require an understanding with the Government that the military personnel moving into the demilitarised zone would be predominantly from the Swedish-speaking minority in Finland.

If Finland were of the opinion that safeguarding the inviolability of Åland required precautionary measures which would not be consistent with the existing treaties, it might still try to avoid proposing a formal process of treaty modification and choose to resort to a line of action similar to that pursued prior to and during World War II. It could send a note to the parties to the treaties and request their consent to powers derogating from the treaties.

However, what if Finland's liberal interpretations or proposals for derogatory modifications were contested by some of the parties? In such a case Finland should not exclude the possibility of proposing to the parties a formal modification of the existing treaties. Finland should consider the following:

“– To approach Sweden with a proposal for joint measures or initiatives for the modification of the regime of the demilitarisation and neutralisation of Åland. Finland has much better chances of achieving changes in the *status quo* if the other State with clear defensive needs, Sweden, agrees with Finland on the need for changes. If the modification proposals were drafted carefully in a way not running counter to the security interests of any of the parties involved, then they could have chances of winning approval.

– When approaching the other parties with modification proposals Finland should propose 1) the creation of a new international supervision and guarantee system for the demilitarisation and neutralisation of Åland and 2) the invitation of certain states to become parties to the 1921 Convention, namely Russia, Lithuania and Norway.”<sup>73</sup>

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<sup>72</sup> See Gardberg (note 4), 39–40, reporting a gallup-poll according to which 46 per cent of those interviewed were of the opinion that Finland's chances of defending Åland were poor and 26 per cent were of the opposite view.

<sup>73</sup> See Fagerlund (note 30), 127.

We have some comments to the latter items in the above list. Concerning point 1, it is both in the interest of Finland and in the common interest to endeavour to establish a new international system to supervise and guarantee the inviolability of the demilitarisation and neutralisation of Åland. Such a system should become a part of the 1921 Convention and could perhaps be tied in some way to the Council of Baltic States or to the CSCE. Concerning point 2, it would be less problematic if there were in existence only one convention regulating the demilitarisation and neutralisation of Åland. It would be welcome if Russia became a party to the 1921 Convention and the 1940 treaty were terminated. Lithuania, as a coastal State of the Baltic Sea, and Norway, in the vicinity of the Danish Straits would, in our opinion, be welcome parties to the Convention.

On the other hand, if the regime for the demilitarisation and neutralisation of Åland were judged to be a permanent settlement would its modification require the consent of a wider sphere of states than that of the parties to the existing treaties? Klein has an answer to this question: State practice indicates that the States Parties who created a permanent settlement can modify or terminate it without seeking the opinions of other States.<sup>74</sup>

### *5. Consequences of Finland's Membership in the European Union*

#### *5.1. Consequences to Finland's Neutrality*

The previous section discussed Finland's alternatives to unilateral denunciation with Finland being the prime actor. As Finland joins the European Union, it will have to take into account the positions of the Union and the other Member States, being itself one relatively small Member State among some fifteen Member States. Finland has to consider its position on the development of a common foreign and security policy within the EU, including the "eventual framing of a common defence policy". Also, Finland has to decide on its relationship with the WEU, which is becoming the security arm of the EU.<sup>75</sup> Apart from these European aspects, Finland's relationship to NATO may come under re-

<sup>74</sup> Klein (note 28), 258–274, 357–358.

<sup>75</sup> See F. Fink-Hooijer, *The Common Foreign and Security Policy of the European Union*, 3 European Journal of International Law (1994), 173–198; C. Archer, *Organizing Europe*, 2nd ed. (1994), 48–50; S.P. Subedi, *Neutrality in a Changing World: European Neutral States and the European Community*, 42 International and Comparative Law Quarterly (1993), 256–258, 262. On the relationship between the WEU and the EU see

consideration. Participation in the NACC and the 1994 Partnership for Peace might not be enough. As negotiations between the Scandinavian countries and the EC Commission have shown there might be further pressure on the applicant countries in respect of the common defence policy. Thus, in its opinion on Sweden's application the EC Commission on 31 July 1992 said:

“Specific and binding assurances from Sweden should be sought with regard to her political commitment and legal capacity to fulfil the obligations ... (on) the eventual framing of a common defence policy and ... the possible establishment in time of a common defence.”<sup>76</sup>

Still, with the common foreign and security policy and also the common defence policy being a matter of intergovernmental cooperation and not an integrated (supranational) common policy, decisions affecting a Member State's basic security and defence interests cannot be adopted in the EU against its will.<sup>77</sup>

Finland has pursued a policy of neutrality in the post-World War II era. However, Finland's neutrality cannot be characterized as permanent neutrality. When Finland was ready to apply for membership in the EC/EU, it made it understood that the policy of neutrality is not the only alternative for Finland. Finland characterized the basis of its security policy to be military non-alignment and independent defence capability.<sup>78</sup> Together with the other applicant States Finland expressed a positive attitude towards the 1992 Maastricht Treaty and all the goals laid down therein.<sup>79</sup>

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T. Marauhn, Building a European Security and Defense Identity. The Evolving Relationship between the WEU and the European Union (forthcoming).

<sup>76</sup> As quoted in *The Economist* of 8 August 1992, 36.

<sup>77</sup> J. Salovaara/J. Rumpunen/O.P. Salmimies, *Suomi ja Euroopan Unioni: Vaikutukset ulko ja turvallisuuspolitiikkaan, ympäristöpolitiikkaan ja pakolaispolitiikkaan* (1994), 12.

<sup>78</sup> See in more detail Salovaara/Rumpunen/Salmimies, *ibid.*, 11, 36; T. Tiilikainen, Suomen doktriini murtuu, 29 *Ulkopolitiikka* (4/1992), 15–22; O. Rehn, Odotavasta ennakoivaan integraatiopolitiikkaan, in: T. Forsberg/T. Vaahtoranta (eds.), *Johdatus Suomen ulkopolitiikkaan* (1993), 208–211; D. Arter, Suomen Euroopan poliitikka – “unionistista steppiä vai kansallista tangoa?”, 31 *Ulkopolitiikka* (1/1994), 23. On the difficulty of adjusting neutrality with the EU system, see Subedi (note 75), 238–268; O. Bring, The Changing Law of Neutrality, in: O. Bring/S. Mahmoudi (eds.), *Current International Law Issues. Nordic Perspectives – Essays in Honour of Jerzy Sztrucki* (1994), 25–50.

<sup>79</sup> See Fink-Hooijer (note 75), 197; H. Himanen, Poliittisesta yhteistyöstä yhteiseen poliitikkaan – Suomen EY-jäsenyyden ulkopolitiisesta merkityksestä, 30 *Ulkopolitiikka* (1/1993), 30.

Title V of the Maastricht Treaty reads "Provisions on a Common Foreign and Security Policy". Article J.4 in Title V deals with common defence matters:

"1. The common foreign and security policy shall include all questions related to the security of the Union, including the eventual framing of a common defence policy, which might in time lead to a common defence.

2. The Union requests the Western European Union (WEU), which is an integral part of the development of the Union, to elaborate and implement decisions and actions of the Union, which have defence implications ...

...

4. The policy of the Union in accordance with this article shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework."

It should be also noted that Article J.4 excludes majority voting on issues having defence implications. Unanimity is required.<sup>80</sup> In any event, the common foreign and security policy, and especially the common defence policy, of the Union will come under further discussion in 1996.

The future defence policy of the EU cannot be discussed without referring to already existing defence arrangements, namely NATO and the WEU.<sup>81</sup> NATO has a working machinery for common defence operations; the WEU has only just started to develop its operational role.<sup>82</sup> However, in the case of the WEU there exists an unconditional obligation of collective defence against armed attacks.

Among the Member States of the EU there are some States which have been cautious to consent to obligations in respect of a common defence. Turning to Ireland first, it is not a member of NATO; in respect of the WEU it has accepted observer status. This status does not include obligations of common defence.<sup>83</sup> However, Ireland has not expressed reservations with regard to Article J.4 of the Maastricht Treaty but has indicated

<sup>80</sup> See Himanen, *ibid.*, 31–32; E. Regelsberger, Euroopan Unionin yhteinen ulko ja turvallisuuspolitiikka, 30 Ulkopolitiikka (1/1993), 17.

<sup>81</sup> See Article 5 of the 1949 North Atlantic Treaty and Article V of the 1948 Brussels Treaty of Economic, Social and Cultural Collaboration and Collective Self-Defence, as amended by the 1954 Protocol Modifying and Completing the Brussels Treaty.

<sup>82</sup> See P. Juntunen, Länsi-Euroopan unioni yhteisön puolustusliitoksi, 30 Ulkopolitiikka (1/1993), 43–50. For the latest developments, see H. Momose, Suomi muuttuvissa kansainvälisissä suhteissa, 31 Ulkopolitiikka (1/1994), 39.

<sup>83</sup> On the membership of the WEU and on the obligations of its members and observers see Archer (note 75), 248–50; Hägglund (note 61), 10.

a mildly positive attitude. It is interesting to note the following interpretation of the Maastricht Treaty as presented by the Prime Minister of Ireland:

“Not only does the Maastricht Treaty not threaten Ireland’s policy of avoiding military alliances: it specifically recognises it. Let me quote you the actual words of the treaty. The policy of European Union on security ‘shall not prejudice the specific character of the security and defence policy of certain Member States’.

That statement was put there by Ireland – and will help more than us. Austria, Finland, Sweden and Switzerland have all applied to join the Union under the new treaty. All of them have a tradition of neutrality.”<sup>84</sup>

Denmark, on the other hand, is a member of NATO but has only observer status in respect of the WEU.<sup>85</sup> The negative attitudes expressed in Danish referendums towards common defence led the 1992 Edinburgh Summit of the European Council to issue a declaration that Denmark is not obligated to participate in the elaboration and implementation of decisions and actions of the Union which have defence implications. As Fink-Hooijer argues, this special arrangement should not be misinterpreted as an “opting out”. It should rather be seen as the formal acknowledgement of the consequences of Denmark’s decision not to change its current status of an observer to the WEU to that of a full member.<sup>86</sup> In any case, the attitudes of Ireland and Denmark significantly reflect the limited scope of the above-quoted paragraph 4 of Article J.4 of the Maastricht Treaty.

Finland’s political leadership has made it clear that Finland is not going to rush into any military alliances.<sup>87</sup> If Finland becomes a member of the EU, it will apparently apply for WEU observer status.<sup>88</sup> However, Finland and Sweden as EU members would belong to those States which are

<sup>84</sup> Irish Times, 16 June 1992. The president of the EC Commission, Jacques Delors, admitted in an interview with the Irish Times on 13 June 1992 that the 11 Member States of the EC “specifically recognise and respect the Irish position and this is made very clear in the Maastricht Treaty”. See in more detail Subedi (note 75), 254–260; Fink-Hooijer (note 75), 196–197.

<sup>85</sup> The other ten members of the EU form the membership of the WEU. Only members of the EU have access to a full membership within the WEU.

<sup>86</sup> See Fink-Hooijer (note 75), 196–197.

<sup>87</sup> It is also possible that the NATO is not eager to have Finland in its membership because of the long border between Finland and Russia. The NATO does not want to single out Russia as its adversary.

<sup>88</sup> The Prime Minister of Finland, Esko Aho, was in favour of Finland’s observer status in his speech on 11 October 1994; he relied heavily on the example of Ireland. See Helsingin Sanomat, 12 October 1994. See also Helsingin Sanomat, 2 October 1994.

not eager to quickly commit themselves to far-reaching common defence obligations.<sup>89</sup> It is especially Finland which wants to take into consideration the views of Russia. The Finns emphasize that, for the sake of political and military stability in Northern Europe, Russia should not be excluded from security cooperation. Finland considers it of utmost importance that Europe does not return to the times of confrontation between the West and East.<sup>90</sup> Europe should be a continent of cooperation rather than a continent of opposing military alliances. But things in Europe may not develop as envisaged by Finland. It cannot be excluded that Russia might return to authoritarian rule.

Notwithstanding the preferences of Finland, the EU may develop a common defence including Finland. This development will not take place at a rapid pace but seems possible only within a period of at least 10 to 15 years.<sup>91</sup> Without going into speculations regarding the status of Åland in view of a common EU defence, some aspects should be discussed here. We proceed from the expectation that the treaty relationships with regard to the demilitarisation and neutralisation of Åland would remain the same as at present. Since it is difficult to know whether or to what extent a common defence will be developed within the EU, WEU or NATO, we subsequently speak of the common defence of the "Western Alliance".

### 5.2. Consequences to Åland's Status

Most probably the status of Åland will remain about the same as at present. The EC/EU in negotiations with Finland on membership (see section 2 above) displayed an approving attitude to Åland's present legal status, including its demilitarisation and neutralisation. As argued by Wahlbäck, the demilitarisation of Åland is not threatened by the designs of the Maastricht Treaty. Wahlbäck also points out that the EC has been disposed to respect existing international legal arrangements; he sees no indications of a change of policy.<sup>92</sup>

The 1957 Rome Treaty recognizes in Article 234 (1) that the provisions of the Treaty do not affect rights and obligations arising from agreements

<sup>89</sup> See Subedi (note 75), 248ff.; G. Vaerno, Norden og det europeiske sikkerhetsdilemma, 52 *Internasjonal Politik* (1994), 262–275.

<sup>90</sup> See Archer (note 75), 23–25; Salovaara/Rumpunen/Salmimies (note 77), 13; H. Hubel, Suomen ulkopoliitikan tulevaisuus – saksalainen ja eurooppalainen näkökulma, 31 *Ulkopolitiikka* (1/1994), 34.

<sup>91</sup> See Salovaara/Rumpunen/Salmimies, *ibid.*, 18–20, 30.

<sup>92</sup> Wahlbäck (note 18), 26.

concluded before the entry into force of the Treaty between one or more Member States on the one hand and one or more third States on the other. This provision corresponds to long-standing international treaty law.<sup>93</sup> One of the basic principles of international treaty law is that a State shall not assume such treaty obligations which infringe its obligations under existing treaties towards third parties. The EU is under obligation to respect the obligations assumed by Finland towards third States before its accession to the EU. If the EC/EU was reluctant to do that it should have raised the matter during the membership negotiations.

However, Article 234, paragraph 3, makes it clear that, in interpreting the agreements addressed in paragraph 1, Member States shall take into consideration the purposes of the Rome Treaty. Joutsamo characterises this obligation as weak.<sup>94</sup> Although it is not quite clear how this provision will affect the obligations assumed under the Maastricht Treaty, it is possible that, in the future, Finland might have to interpret the treaties on the demilitarisation and neutralisation of Åland in the light of the purposes of the EU's common security and defence policy.

Two possible developments are discussed here in more detail: 1) Finland might be asked to agree to the denunciation of the neutralisation of Åland without submitting the islands to any kind of alliance command, and 2) there might even be pressure to place Åland within the ambit of the common defence of the Western Alliance.

As regards the first development, looking at the matter from the perspective of international law, Russia has assumed conventional obligations to respect the demilitarisation but not the neutralisation of Åland. Also, Finland is under an obligation towards Russia to respect the demilitarisation of Åland. This matter has already been discussed at length above in previous sections. It is in accordance with international law if the parties to the 1921 Convention on the Demilitarisation and Neutralisation of the Åland Islands decide to modify or even to denounce Åland's neutralisation without asking Russia's opinion. It is true that not all parties to the 1921 Convention may be parties to the EU/WEU or NATO even in 2010. But from today's perspective it seems apparent that they would not oppose modifications suggested by the Western Alliance.

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<sup>93</sup> See Hannikainen (note 12), 152–154; Elias (note 44), 55–58; Article 30 (4) of the Vienna Convention on the Law of Treaties; Reports of the ILC of 1966, UN doc. A/6309/Rev.1, 48.

<sup>94</sup> K. Joutsamo, *Yleinen kansainvälinen oikeus ja Eurooppaoikeus*, 75 *Lakimies* (1977), 383–384.

Apparently, Russia would oppose the denunciation of the neutralisation of Åland. Being pushed to the eastern corner of the Baltic Sea,<sup>95</sup> Russia may well feel that western States plan to use the Baltic Sea as their internal sea.<sup>96</sup> Also, Russia may get the impression that the West endeavours to return to a policy of containment. This would create difficulties for Finland and its relationship with Russia. Finland is reluctant to end up in such a situation, even if it has the backing of the Western Alliance.

Also, it should be noted that plans to denounce the neutralisation would raise great anger in Åland. The Ålanders would do their utmost to ward off such plans. They would consider that the denunciation of their neutralisation weakens the credibility of, and respect for, the demilitarization. This in turn would weaken Åland's autonomy and national (Swedish) character.

As regards the second development, it is useful to examine at first the status of Spitsbergen (Svalbard).<sup>97</sup> This archipelago is under the sovereignty of Norway but is in many ways an internationalised territory. The 1920 Treaty Regulating the Status of Spitsbergen and Confering the Sovereignty on Norway stipulates in Article 9 that "Norway undertakes not to create nor to allow the establishment of any naval base in the territories specified in Article 1 and not to construct any fortification in the said territories, which may never be used for warlike purposes".<sup>98</sup> Thus, Spitsbergen is a demilitarised and neutralised territory. During World War II a Soviet plan to occupy Spitsbergen, in order to secure her supply lines, failed due to British and Norwegian opposition. Nazi Germany violated the neutralised status of Spitsbergen but after World War II the status laid down in the 1920 Treaty was restored. In 1951 Norway agreed to place Spitsbergen under the command of NATO. The Soviet Union protested arguing that the involvement of NATO constituted a breach of the status of Spitsbergen under the 1920 Treaty and formed a risk to Soviet security interests. Norway rejected the protest by emphasizing that the stipulations of the Treaty were not encroached upon

<sup>95</sup> However, Russia has a military base in Kaliningrad which enables Russia to have military presence in the southern part of the Baltic Sea.

<sup>96</sup> See Hägglund (note 61), 9; Arter (note 78), 23.

<sup>97</sup> On the international legal status of Spitsbergen, see Bring (note 9), 312–318; R. Hofmann, Spitsbergen/Svalbard, in: R. Bernhardt (ed.), Encyclopedia of Public International Law, Instalment 12 (1990), 352–357.

<sup>98</sup> The text of the Treaty can be found in the League of Nations Treaty Series, Vol. 2 (1920), 7ff.

since no military installations were to be established. The Soviet Union grudgingly acquiesced in the situation but did not approve it. It had, though, the chance to monitor compliance with the 1920 Treaty through its colony of over 3000 persons in Spitsbergen. The placement of Spitsbergen under the command of NATO did not, as such, violate the 1920 Treaty. Rather, it meant that in the case of an armed attack on Spitsbergen collective defence would take place according to Article 5 of the North Atlantic Treaty. Self-defence and collective defence against an armed attack have the support of the Charter of the UN under Article 51.

What parallels can one draw between Spitsbergen and Åland? One parallel is that the demilitarised and neutralised status of both archipelagos has been in force for over 70 years. That is a respectable achievement and one which is worth being preserved. But what about the placement of Åland within the ambit of the common defence or under the unified command of the Western Alliance?

On the basis of Åland's present legal status, it is possible that Åland will be placed within the ambit of the common defence of the Western Alliance in the sense of collective defence against an armed attack, but not otherwise. Article 7 of the 1921 Convention stipulates that if the neutrality of Åland is imperilled by an attack, Finland shall take the necessary measures in the neutralized zone to check and repulse the aggressor until such time as the parties to the Convention shall be in a position to intervene to enforce respect for this neutrality. At its best this means collective defence of Åland. Collective defence need not be restricted to the parties of the Convention only; all States are entitled to participate with Finland's consent in the collective defence of Åland against an armed attack.

For a clarification of the rules pertaining the collective defence of Åland, a special treaty should be concluded between Finland and the Western Alliance. The treaty should recognize the demilitarised and neutralised status of Åland and the strict prohibitions created by this status. The rules of demilitarisation restrict severely even the movement of military personnel in the neutralized zone.<sup>99</sup> If Åland has been the victim of an armed attack and collective defence has begun, military activities in this zone have to be limited to the defence of Åland; Åland cannot be used as a military base for other military operations. Finland must have a prominent role in the decision-making of the collective defence. Collec-

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<sup>99</sup> See Articles 4 to 6 of the 1921 Convention and Article 1 of the bilateral 1940 treaty between Finland and Russia (the Soviet Union).

tive defence shall not be started without the request of Finland. The conduct of the armed defence can be placed under a unified command.

Nevertheless, difficulties may arise regarding the restoration of the demilitarisation and neutralisation of Åland after the aggressor has been warded off. Presumably, not all Member States of the Western Alliance in question will have been parties to the 1921 Convention. It is not for the Western Alliance to decide on the restoration of the demilitarised and neutralised status of Åland; that is rather the right of the parties to the 1921 Convention (and of Russia on the basis of the 1940 bilateral treaty). This matter should be regulated properly in a treaty between Finland and the Western Alliance. The problem would disappear if the EU or the WEU acceded to the 1921 Convention. That is not impossible; the EC has acceded to a number of inter-State conventions.<sup>100</sup>

From the perspective of the present military-political situation, however, the realisation of the above-formulated scheme may not be welcome. Russia does not form a threat to Scandinavia. It is in the interest of Finland to give preference to such security solutions which do not bring it into direct confrontation with Russia, even if it has the backing of the Western Alliance. One element of this policy is to maintain Åland's present status (or to make only minor modifications) and to encourage Russia to become a party to the 1921 Convention and to a possible new guarantee system. But perhaps one condition should be set on Russia's accession to the 1921 Convention: Russia would be welcome to accede to the Convention only if it is evident that it will develop as a democratic and non-chauvinistic State.<sup>101</sup>

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<sup>100</sup> See K. Joutsamo, *Euroopan yhteisö – eurooppaoikeus*, 2nd ed. (1991), 129ff.

<sup>101</sup> The manuscript for the present article was finalized on 21 November 1994.