

The Competence of Autonomous Entities in the International Arena – With Special Reference to the Åland Islands in the European Union

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Abstract

International law and the international community is primarily based on the dominant role of the state. Other actors are increasingly involved in conducting international affairs. This article examines different solutions for bringing autonomous entities to the international level, taking one specific autonomous entity, the Åland Islands, as an example. The article concentrates on competences of autonomous entities in relation to international treaties and the European Union.

Keywords

Autonomous entities, Åland Islands, international treaties, EU, EC law

1. Introduction

International law is to a large extent based on the dominant role of states. Already in 1927 the Permanent Court of International Justice (PCIJ) characterized the right of entering into international treaties as “an attribute of state sovereignty”.¹ Subsequent developments have shown that the treaty-making power does not constitute an attribute exclusive to state sovereignty. Different actors, for example autonomous entities and international organizations, have appeared on an international stage which traditionally has been reserved for sovereign states. The international community has shown a certain readiness to accept that other entities than states can receive a capacity to negotiate and conclude treaties.²

*) The article does not reflect the official position of the government of Åland.

¹) *The S.S. Wimbledon*, 17 August 1923, Ser. A, No. 1, p. 25.

²) D. B. Hollis, ‘Why State Consent Still Matters: Non-State Actors, Treaties and the Changing Sources of International Law’, 23 *Berkeley Journal of International Law* (2005) pp. 10–19.

Increasingly autonomous entities receive far-reaching competences within the constitutional framework of a state.³ The process leading up to transfers of competences (usually legislative and executive powers) to autonomous entities can often be difficult. These hard-earned competences within the state are altered by developments on the international level. Autonomies are confronted with the expansive effects of international treaties and international organizations set up by treaties. The ability of autonomous entities to participate in international affairs depends primarily on whether the entity has been authorized by the state to do so. It is not surprising if demands for domestic authorizations will increase due to the greater impact and effect of international affairs on autonomies.

This complex picture of international and intrastate relations questions the practicality of a static concept of state sovereignty. One should not place too much emphasis on the formal status of a certain legal entity as it can be more revealing to investigate the actual exercise of functions in international affairs.⁴ This approach provides a fragmented but more accurate description of how autonomous entities can be active on the international level.

This article will pay special attention to one specific autonomous entity, the Åland Islands located in the middle of the Baltic Sea between Sweden and the Finnish mainland. Åland is an autonomous region of the Republic of Finland. The autonomy of Åland is primarily based on the Autonomy Act⁵ which has been passed by the Parliament of Finland in constitutional order and with assent of the Åland Parliament (*lagtinget*).⁶ The Autonomy Act does not grant Åland international legal personality, and Åland is not a subject of international law.⁷

The article concentrates on the competences of autonomous entities related to international treaties and one specific international organization, the European Union (EU). Although the observations are made from a European and Ålandic viewpoint, they will hopefully also highlight more generally how autonomous entities are affected by international affairs and what kind of solutions might be preferable or possible when bringing autonomous entities to the international level.

³ In this context the term 'autonomy' refers to different forms of territorial autonomy. For a more thorough discussion on the concept of autonomy, see M. Suksi (ed.), *Autonomy: Applications and Implications* (Kluwer Law International, the Hague, 1998).

⁴ C. Schreuer, 'Waning of the Sovereign State: Towards a New Paradigm for International Law?', *4 European Journal of International Law* (1993) p. 455.

⁵ Act on the Autonomy of Åland (16 August 1991/1144). Later amended 31 December 1994/1556, 12 July 1996/520, 28 January 2000/75 and 30 January 2004/68.

⁶ For a brief description of the status of Åland in Finnish constitutional law, see S. Palmgren, 'The Autonomy of the Åland Islands in the Constitutional Law of Finland', in L. Hannikainen and F. Horn (eds.), *Autonomy and Demilitarisation in International Law: The Åland Islands in a Changing Europe* (Kluwer Law International, the Hague, 1997).

⁷ The International Court of Justice (ICJ) has defined international legal personality as the capacity to be the bearer of rights and duties under international law. *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion of 11 April 1949, *ICJ Reports 1949*, p. 179.

2. International Treaties and Autonomous Entities

2.1. Treaty-making

The constitutional framework making it possible for autonomous entities to take part in treaty-making varies greatly from one state to the other. However, it is possible to single out two groups of autonomous entities having competences related to treaty-making. An important dividing line can be drawn between autonomous entities given formal competence for treaty-making and entities which are not empowered to conclude international treaties.

The first group includes arrangements where it is the autonomous entity that negotiates, signs and ratifies treaties that fall within its sphere of competence. The autonomous entity is party to the agreement, not the state. For example, in Belgium the communities and regions can negotiate and conclude treaties regarding matters within their substantial competence. The Belgian federal government cannot conclude treaties related to matters falling within the exclusive competences of the component parts.⁸ It has been argued that this arrangement makes the Belgian communities and regions subjects of international law.⁹ Whether autonomous entities have international legal personality depends also on the recognition of the autonomous entity by other existing subjects of international law. The second group includes arrangements where the state concludes treaties on behalf of the autonomous entities. The autonomies are usually included in the process leading to the conclusion of treaties by the state authority. The autonomies are consulted by state authorities or/and participate in negotiations formally carried out by the state.¹⁰

In practice the division between these two main groups is more complex. For example, it is possible that autonomous entities are empowered to negotiate, sign and ratify treaties but that the treaties concluded are subject to the approval of central government. On the other hand, in certain states autonomous entities are granted such extensive competences when negotiating on behalf of the state that

⁸ The Belgian arrangement is exceptional in a comparative perspective although other federal states have granted similar, but more limited, treaty-making powers to component units. See D. Crikemans, *How Subnational Entities Try to Develop Their Own "Paradiplomacy": The Case of Flanders (1993–2005)*, <www.diplomacy.edu/Conferences/MFA/papers/crikemans.pdf>, visited on 31 July 2007.

⁹ J. Wouters and L. De Smet, *The Legal Position of Federal States and Their Federated Entities in International Relations: The Case of Belgium*, Institute for International Law, Working Paper No. 7, June 2001, pp. 5–6, <www.law.kuleuven.be/iit/nl/wp/WP/WP07e.pdf>, visited on 31 July 2007.

¹⁰ For example, the German Federal Government seeks the *Länders'* agreement before concluding a treaty affecting the *Länders'* legislative competence (in accordance with the so-called Lindau arrangement). See the report *Federated and Regional Entities and International Treaties* (Avis No. 091/1999), European Commission for Democracy through Law, <[www.venice.coe.int/docs/1999/CDL-DI\(1999\)006rev2-e.asp](http://www.venice.coe.int/docs/1999/CDL-DI(1999)006rev2-e.asp)>, visited on 31 July 2007.

the powers in practice resemble independent treaty-making competence. Greenland and the Faroe Islands have in 2005 been authorized, on behalf of Denmark, to negotiate and conclude international treaties with foreign states and international organizations which relate entirely to fields of affairs taken over by Greenland and the Faroe Islands.¹¹ The main difference between this arrangement and the Belgian system seems to be of a formal quality. Both arrangements rely on the assumption that the autonomous entity should be responsible for negotiating treaties within its substantive competence, but only the Danish arrangement uses the state as an intermediary.

The competences of Åland related to the negotiating of treaties or international obligations are not extensive and in practice usually limited to consultation only. According to the Autonomy Act, foreign relations are a matter, subject to the provisions of chapters 9 and 9a of the Autonomy Act, within the legislative competence of the state. Chapter 9 contains provisions on international treaties. The Autonomy Act makes a distinction between the competences of Åland in relation to treaty-negotiations and entry into force of international treaties.

The government of Åland (*landskapsregeringen*) may propose negotiations on a treaty or another international obligation to the appropriate state officials. In practice this possibility is rarely used. The Autonomy Act does not explicitly mention the possibility to authorize the government of Åland to negotiate a treaty on behalf of Finland. However, this right can be inferred from legislative material, although it seems this competence extends only to negotiations with Nordic states and requires approval by the president of the Republic.¹²

The Autonomy Act provides that the government of Åland shall be informed of negotiations on a treaty or another international obligation if the matter is subject to the legislative competence of Åland. If the negotiations otherwise relate to matters of special importance to Åland, the government of Åland shall be informed of the negotiations, if appropriate. If there is a special reason, the government of Åland shall be reserved the opportunity to participate in the negotiations. Åland seldom plays an active part in treaty negotiations conducted by Finland. There are probably several reasons for this passivity, but it is telling that a report to the Finnish Parliament on Finnish policy regarding international treaties does not mention Åland at all.¹³

2.2. *Treaty-implementation*

Once treaties have been concluded, they often must be incorporated into domestic legislation. This is especially important in states with a dualist system where

¹¹ See Act concerning the concluding of agreements under international law by the Government of the Faroes (24 June 2005/579) and Act concerning the conclusion of agreements under international law by the Government of Greenland (24 June 2005/577).

¹² Government Bill on the Act on the Autonomy of Åland (73/1990), p. 93.

¹³ Report by the Foreign Ministry to the Finnish Parliament on 3 February 2006 (UTP 3/2006).

national authorities usually do not apply treaties before they are introduced in the domestic legal order.¹⁴ Domestic and international law are seen as separate legal systems. On the other hand, in a monist system there is but one system of law, with international law as an element alongside all the various branches of domestic law. However, in practice the solutions for bringing the national legal order in line with international obligations show considerable variation. It is therefore not surprising that treaties can be incorporated into the substantive competence of autonomous entities in many different ways.

Generally, autonomous entities are competent to introduce and implement treaties where it is the autonomous entity that negotiates, signs and ratifies treaties falling within its sphere of competence.¹⁵ Implementation of treaties is more complex when the state is party to the agreement. In some cases the central authority has exclusive responsibility also for the implementation of treaties with regard to autonomous entities. In several states (for example Italy, Belgium and Austria) constitutional law authorizes the central authority to take over responsibility from the autonomous entities when the latter do not respect their obligations to implement a treaty.¹⁶

As a contrast to treaty-negotiations, the competences of Åland concerning the implementation of international treaties are remarkable in a comparative context. When comparing with other arrangements it should be remembered that the Constitution of Finland relies on a dualist system requiring that a treaty is expressly incorporated into the national legal system by way of a national legislative act before it can be applied by national authorities.¹⁷ Therefore, the system set up with regard to treaty-implementation in Åland cannot as such be copied into a constitutional system relying on a monist perception. Treaty-implementation in some federal states using the dualistic model is similar to the Ålandic arrangement.¹⁸

The Autonomy Act provides that the Åland Parliament must consent to the national statute implementing a treaty or another international obligation containing a term that concerns a matter within the competence of Åland. If the Åland Parliament does not give its consent, then the treaty obligation within the field of Åland's competence does not, as a matter of national law, enter into force in the Islands. The threshold for implementing treaties in Åland is even higher if the treaty is contrary to the Autonomy Act. Such treaty obligations can enter into

¹⁴ On the relationship between international and national law in different states, see T. M. Franck and A. K. Thiruvengadam, 'International Law and Constitution-Making', 2 *Chinese Journal of International Law* (2003) pp. 467–518.

¹⁵ *Federated and Regional Entities and International Treaties*, *supra* note 10.

¹⁶ *Ibid.*

¹⁷ See sections 94 and 95 of the Constitution of Finland (11 June 1999/731).

¹⁸ For a discussion on the Canadian system as well as a more general analysis, see J. H. H. Weiler, 'The External Legal Relations of Non-Unity Actors: Mixity and the Federal Principle', in J. H. H. Weiler, *The Constitution of Europe* (Cambridge University Press, Cambridge, 1999) pp. 130–187.

force in Åland only if the Parliament of Finland enacts an Act of Parliament by a qualified majority and with the consent of the Åland Parliament given by a qualified majority.

Even though the arrangement can in legal terms be defined only as a treaty-implementing power, in practice it can work as a veto. It could be asked why Åland has received such far-reaching powers in relation to the foreign affairs of Finland. The Privy Council in Canada seems to have given a reasonable answer when commenting on the Canadian arrangement. The Privy Council concluded that it would “undermine the constitutional safeguards of provincial constitutional autonomy” if the central government needed only to agree with a foreign country in order to receive powers otherwise vested with the provinces.¹⁹ The rationale is that the autonomy should enjoy the same constitutional safeguards on the international level as on the domestic level.

The Åland Parliament has refused to give its consent only a few times. It could be argued that these powers should function primarily as a constitutional safeguard and last resort when the preceding treaty negotiations between Finland and a third party have failed completely in taking into account the needs of the Åland Islands.²⁰ It might be assumed that the powers of the Åland Parliament, if used wisely, can and should have an effect on negotiations conducted by the state. Some questions are still unanswered. For example, the Constitutional Law Committee of the Finnish Parliament has stated that Finland could, as a matter of law, ratify a treaty although the Åland Parliament has refused to implement that treaty.²¹ This interpretation creates a dilemma considering that ratification on such terms could lead to a breach of international law and treaty obligations.

It would be possible to prevent such a breach of treaty obligations by negotiating a federal or territorial clause into the treaty or by putting forward a reservation.²² However, it should be underlined that neither federal clauses nor reservations are allowed in relation to certain treaties as such arrangements are thought to prevent the uniform application of a treaty. In some states with a dualistic system the central authority has the power to implement treaty obligations, also concerning domestic matters within the competence of autonomous entities. This solution avoids breaches of treaty obligations but results in a violation of the competences of the autonomous entities.²³

¹⁹ *A.-G. Can. v. A.-G. Ont.* (Labour Conventions), [1937] A.C. 326.

²⁰ It is interesting to note that the ‘veto-power’ has been used quite recently, *see* decision no. 5/2006 by the Åland Parliament on 8 March 2006 concerning certain amendments to annex 4 of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, <www.lagtinget.ax>, visited on 31 July 2007.

²¹ Statement of the Constitutional Law Committee 10/1998.

²² A federal clause provides that international responsibility is accepted by federal parties only for matters within the constitutional authority of the federal government.

²³ Wouters and De Smet, *supra* note 9, p. 22.

3. Autonomous Entities in the European Union: The Case of the Åland Islands

3.1. *Basic Principles on the Status of Autonomous Entities in the European Union*

The European Union is founded on several international treaties, first and foremost the Treaty Establishing the European Community (EC Treaty).²⁴ The European Court of Justice (ECJ) has for a long time emphasized the difference between international law and the legal system set up by the founding treaties of the European Union. The ECJ has even called the EC Treaty “the basic constitutional charter”.²⁵ The European Union is, at least in theory, founded on the principle of equality or non-discrimination between the member states and a duty of solidarity in relation to the Union.²⁶ These principles are also guarded when candidate states are negotiating for accession to the European Union. The starting point is that the acceding state should apply the body of EC law (or the *acquis communautaire*) in its entirety. Normally states are granted only transitional, not permanent, derogations.²⁷ The principle of non-discrimination does not exclude any differentiation between member states but restricts temporal exceptions from the application of EC law by imposing the requirement that there has to be a reasonable justification for it.²⁸

Some small territories and autonomous entities have been granted permanent derogations from the founding treaties of the European Union. These are listed in Article 299 of the EC Treaty, which defines the territorial scope of the EC Treaty. For example, the Faroe Islands have stayed outside the European Community and preferred a bilateral relationship with the Community.²⁹ Another example is Greenland, which at first acceded to the European Community but later decided to leave the Community after Greenland was granted an autonomous status.³⁰ The Channel Islands and the Isle of Man as well as Gibraltar can be included among these territories. Also Åland belongs to the territories that have a special status according to the EC Treaty. These British autonomies and Åland are subject

²⁴ Consolidated version, published 24 December 2002, OJ C 325, <eur-lex.europa.eu/en/treaties/dat/12002E/htm/12002E.html>, visited on 2 August 2007.

²⁵ C-294/83 *Les Verts v. European Parliament*, [1986] ECR 1339, para. 23.

²⁶ See C-39/72 *Commission v. Italy*, [1973] ECR 101, para. 24.

²⁷ On the law governing enlargement of the Union, see D. Kochenov, ‘EU Enlargement Law: History and Recent Developments: Treaty – Custom Concubinage?’, 9:6 *European Integration Online Papers* (2005), <eiop.or.at/eiop/texte/2005-006a.htm>, visited on 2 July 2007.

²⁸ See U. Becker, ‘EU-Enlargements and Limits to Amendments of the E.C. Treaty’, *Jean Monnet Working Papers* 15/2001, <www.jeanmonnetprogram.org/papers/01/013801.html>, visited on 7 June 2007.

²⁹ For a description of the relation between the Faroe Islands and the EC, see N. Fagerlund, ‘Autonomous European Island Regions Enjoying a Special Relationship with the European Union’, in L. Lyck (ed.), *Constitutional and Economic Space of the Small Nordic Jurisdictions* (NordREFO, Copenhagen, 1996) pp. 90–112.

³⁰ See F. Harhoff, ‘Greenland’s Withdrawal from the European Communities’, 20 *Common Market Law Review* (1983) pp. 13–33.

to EC legislation within the substantive fields of competence of the European Union not covered by derogations. It seems that not any territory within a state could qualify for a special status. Component units in states with a federal structure (for example Belgium, Germany and Italy) have not been granted permanent derogations.

The founding treaties set up an institutional framework consisting of the European Parliament, the Council, the Commission, the Court of Justice and the Court of Auditors. These institutions perform their respective tasks according to the competences prescribed in the founding treaties. For their part, the founding treaties of the EC, in their original versions, took no notice of the existence of sub-national entities in relation to the institutional framework. In particular these entities had no voice, as such, in the European decision-making procedures, nor did they dispose of effective means to challenge European measures once adopted.³¹ It is principally a question for the member states which rights different sub-national authorities have in relation to these institutions.

A striking difference between traditional international obligations and EC legislation is the domestic effect of legal rights and obligations emanating from these different sources. The primacy and direct effect of EC law make these legal norms far more effective than traditional international obligations.³² Every public authority, even municipalities, has a clear obligation to apply and enforce directly effective EC law.³³ Autonomous entities are also required to implement EC law within their domestic field of competence. This state of affairs, whereby sub-national entities were the passive addressees of EC law, touching upon an increasing number of subject matters, finally gave rise to several political demands.

The Maastricht Intergovernmental Conference at the beginning of the 1990s acceded to some of these requests. Firstly, the principle of subsidiarity was introduced in the EC Treaty.³⁴ One reason for this reform was that especially the German *Länder* felt that the competences of the Communities would have to be delimited more strictly. Secondly, a Committee of the Regions (CoR), composed of the representatives of regional and local bodies, was established with advisory status. Thirdly, the EC Treaty was amended to make it possible for regional ministers to

³¹ F. Maiani, 'Addressees, Councillors, Legislators: What Role for Regional and Local Authorities in the Union's Decision-Making Procedures?', in I. Pernice and J. M. Beneyto Pérez (eds.), *The Government of Europe: Institutional Design for the European Union* (Nomos, Baden-Baden, 2003) p. 89.

³² The cases mostly referred to concerning the primacy and direct effect of EC law are C-6/64 *Flaminio Costa v. E.N.E.L.*, [1964] ECR 1141 and C-26/62 *N. V. Algemene Transport – en Expeditie Onderneming Van Gend & Loos v. Nederlandse Administratie der Belastingen*, [1963] ECR I.

³³ C-103/88 *Fratelli Costanzo*, [1989] ECR 1839.

³⁴ The 'subsidiarity principle' means that EU decisions must be taken as closely as possible to the citizen. In other words, the Union does not take action (except on matters for which it alone is responsible) unless EU action is more effective than action taken at national, regional or local level.

join or lead member state delegations in the Council of the European Union (subject to arrangements within member states).

For the first time the problems European integration causes for regional and local entities were recognized at the EU level. However, especially regions with legislative powers and autonomous entities have been disappointed with the Committee of the Regions. The main reasons for this are its limited advisory role and the very diverse membership of the Committee. Autonomous entities are grouped together with sub-national entities having no legislative or executive powers. Many autonomous entities feel that there are other and better routes to get their ideas into European decision-making: through representative offices in Brussels, transnational networks and, above all, through domestic EU policy-making processes.³⁵ In spite of some recognition at the EU level, the state remains the most important channel for autonomous entities to influence European decision-making.³⁶

The state-centred approach of the European Union is not unusual among international organizations. Only in rather exceptional cases are autonomous entities welcome to participate directly.³⁷ In practice most of the constitutive acts of international organizations reserve membership and the participation in the decision-making process to states.³⁸ Any recognition of autonomous entities within decision-making procedures is usually limited to the status of observer or the right to be consulted. The diverging domestic competences of autonomous entities is usually an effective barrier to full participation or membership in international organizations.

3.2. *The Status of Åland in European Union Affairs*

According to Article 299(5) of the EC Treaty, the Treaty shall apply to Åland in accordance with the provisions set out in a protocol to the Act on Accession.³⁹

³⁵ For example, the government of Åland takes part in the co-operation between regions with legislative powers (RegLeg) whereas the Åland Parliament is a member of CALRE which is a conference of speakers of the assemblies with legislative power of the regions of the European Union.

³⁶ For a comparative account of national procedures for involving autonomous entities in European decision-making, see *Procedures for Local and Regional Authority Participation in European Policy Making in the Member States* (Office for Official Publications of the European Communities, Luxembourg, 2005).

³⁷ It is interesting to note that the earliest international organizations, the Universal Postal Union and the International Telecommunications Union, gave colonial administrations separate full memberships in the respective organizations. See H. G. Schermers and N. M. Blokker, *International Institutional Law* (Martinus Nijhoff Publishers, the Hague, 1995) pp. 64–65.

³⁸ Wouters and De Smet, *supra* note 9, p. 23.

³⁹ Protocol no. 2 annexed to the Act concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded, published 29 August 1994, OJ C 241.

The preamble to the protocol on Åland states that the treaties shall apply to Åland with certain derogations, which are justified with reference to the special status Åland enjoys under international law.⁴⁰ The aim of the first derogation is to uphold the restrictions associated with the regional citizenship (right of domicile) of Åland. These restrictions concern the right to acquire and hold real estate as well as the right of establishment and the right to provide services. The first derogation refers to domestic provisions in force on 1 January 1994, and further expansion of the derogation through amendment of these provisions is prohibited. The second derogation is expressly aimed at maintaining a viable local economy in the Islands. The territory of Åland is excluded from the application of the EC provisions concerning harmonization of the laws of the member states on turnover taxes, excise duties and other forms of indirect taxation. This derogation ensures the continuation of tax-free sales on ferry traffic to and from Åland.⁴¹ The Ålandic derogations are quite limited compared with those accorded to the Channel Islands and Isle of Man.⁴² These islands are primarily subject only to the EC law on free movement of goods. Moreover, Åland is fully subject to the Treaty on European Union (EU Treaty).⁴³

The relationship of Åland to the institutions of the European Union is primarily based on national law. The Autonomy Act contains a specific chapter 9a on European Union affairs. It defines on a national level the rights and obligations of Åland, *inter alia*, with regard to the institutions of the European Union. The government of Åland shall have the right to participate in the preparation, within the Council of State, of the national positions of Finland preceding decision-making in the European Union (primarily in the Council of the European Union). This right concerns matters that would in other respects fall within the powers of Åland or matters that otherwise may have special significance to Åland. The Autonomy Act contains a conflict-clause, and the position of Åland shall, on the request of the government of Åland, be declared by the state in the institutions of the European Union if the positions of Åland and the state cannot be harmonized.

⁴⁰ For a historical background of the international status of Åland's autonomy, see for example C. Scarpulla, *The Constitutional Framework for the Autonomy of Åland: A Survey of the Status of an Autonomous Region in the Throes of European Integration* (Meddelanden från Ålands högskola nr 14, Mariehamn, 2002), <www.ha.ax/bibliotek/Scarpulla%20fulltext.pdf>, visited on 2 August 2007.

⁴¹ For an account of the accession negotiations and the status of the Åland Islands in the European Union, see N. Fagerlund, 'The Special Status of the Åland Islands in the European Union', in L. Hannikainen and F. Horn (eds.), *Autonomy and Demilitarisation in International Law: The Åland Islands in a Changing Europe* (Kluwer Law International, the Hague, 1997) pp. 189–256. See also N. Jääskinen, 'The Case of the Åland Islands – Regional Autonomy versus the European Union of States', in S. Weatherill and U. Bernitz (eds.), *The Role of Regions and Sub-National Actors in Europe* (Hart Publishing, Oxford, 2005) pp. 89–102.

⁴² For a recent discussion on the status of the Channel Islands, see A. Sutton, 'Jersey's Changing Constitutional Relationship with Europe', *The Jersey Law Review* (February 2005), <www.jerseyl-egal.info.je/Publications/jerseylawreview/feb05/JLR0502_Sutton.aspx>, visited on 2 August 2007.

⁴³ Consolidated version, published 24 December 2002, OJ C 325.

Åland is not completely without direct representation in Brussels. According to the Autonomy Act, the government of Åland nominates a representative to the Committee of the Regions.⁴⁴ The Committee of the Regions is, as a contrast to the co-legislative powers of the European Parliament, a consultative body representing various regional interests in the EU. Recently the Åland Parliament submitted an initiative to the Finnish Parliament about granting Åland permanently one of the seats reserved for Finland in the European Parliament (at the moment 14 out of 785). The Finnish Parliament rejected the initiative in February 2007.

The relationship of Åland to the ECJ is organized in a way that reminds of the indirect relationship to the Council of the European Union. However, the government of Åland has a limited direct access to the Court of First Instance. Any public authority may institute an action for annulment in order to challenge certain acts enacted by the institutions of the Union. The government of Åland can gain access to the Court if it is “directly and individually concerned” by the act although it has never instituted such an action for annulment.⁴⁵ As a contrast to this, Åland has several times been the indirect subject of infringement proceedings initiated by the Commission. Usually these proceedings start because of late implementation of EC directives in the Åland Islands. In only a few cases has the government of Åland contested the Commission’s interpretation of EC law.⁴⁶ The addressee in these infringement proceedings is always the state although the alleged infringement may in practice only concern Åland. According to the Autonomy Act, the state authorities, in co-operation with the government of Åland, shall prepare the response of Finland in these proceedings.

Åland has extensive constitutional safeguards in relation to international treaties. This is a result of a combination of a dualist system for implementing international obligations and a requirement that the Åland Parliament gives its consent for implementing a treaty obligation within the field of Åland’s competence. As a contrast, the direct application and effectiveness of EC law often excludes the use of domestic implementation. An autonomous entity has a clear obligation to

⁴⁴ The Committee of the Regions is consulted on upcoming EU decisions with a direct impact at the local or regional level in fields such as transport, health, employment or education. Its 344 members represent very diverging interests but are often leaders of regional governments or mayors of cities.

⁴⁵ Regarding autonomous entities’ access to court, see P. van Nuffel, ‘What’s in a Member State? Central and Decentralized Authorities Before the Community Courts’, 38:4 *Common Market Law Review* (2001) pp. 871–901.

⁴⁶ Especially a judgment by the ECJ finding Finland in breach of EC law because of spring hunting of birds has been controversial in Åland. See C-344/03 *Commission v. Finland*, [2005] ECR I-11033. Another case concerned the non-implementation of a ban on the selling of *snus* (moist snuff) in Åland. The Commission brought the case to the ECJ, but Finland, contrary to the position of the government of Åland, agreed with the Commission that there was a breach of EC law. The ECJ delivered a judgment in May 2006 stating that Finland had breached EC law. See C-343/05 *Commission v. Finland*, judgment of 18 May 2006.

apply and enforce directly effective EC law as if it were part of the domestic legal order. On the other hand, in many cases autonomous entities are required to implement EC law, especially EC directives,⁴⁷ within their field of competence.⁴⁸ Any breach of EC law is attributed to the state, which may not claim that the alleged failure does not fall within central government jurisdiction, but rather is a matter for autonomous entities.⁴⁹ Finland has been subject to some judgments by the ECJ because of late implementation of directives in Åland.⁵⁰

4. Conclusion

Events and contemporary practice have shown that states are not the only actors in international affairs. Some constitutional systems have stretched the treaty-making competences of autonomous entities very far, empowering them to be parties to international treaties. These entities are authorized to act at the international level as autonomous players within the limits of their international legal personality. However, the creation of limited legal personality seems to be the exception, and states usually choose to conclude treaties on behalf of the autonomous entities. Åland belongs to the group of autonomous entities having no separate legal personality in international law.

There are various options in practice for how an autonomous entity can influence the treaty-making process of the state, for example consultation, participation in state delegations or negotiations wholly conducted by the autonomous entity. The participation of autonomous entities in treaty-making is particularly important in a constitutional system where the autonomous entity is responsible for the implementation of international obligations. In Finland the central authorities have no constitutional means for implementing international obligations falling within the competence of Åland.

It can be concluded that most international organizations reserve membership to states, and this is also the case with the European Union. However, the

⁴⁷⁾ A directive is binding, as to the result to be achieved, upon each member state to which it is addressed, but leaves to the national authorities the choice of form and methods.

⁴⁸⁾ For a description on the implementation of EC law in other non-unitary states (Spain and the United Kingdom), see A. Ross and M. S. Crespo, 'The Effect of Devolution on the Implementation of European Community Law in Spain and the United Kingdom', 28 *European Law Review* (2003) pp. 210–230 and I. Aurrecoechea, 'The Role of the Autonomous Communities in the Implementation of European Community Law in Spain', 38 *International and Comparative Law Quarterly* (1989) pp. 74–103.

⁴⁹⁾ According to the ECJ "a Member State may not plead provisions, practices or circumstances in its internal legal system to justify failure to comply with obligations under Community law". See for example C-69/81 *Commission v. Belgium*, [1982] ECR 153.

⁵⁰⁾ See C-107/05 *Commission v. Finland*, judgment of 12 January 2006 and C-327/04 *Commission v. Finland*, judgment of 24 February 2005.

European Union has granted permanent derogations and a special status to some autonomous entities, including the Åland Islands. Regional and local authorities have received some recognition at the EU level although autonomous entities are in practice often dependent upon the state in EU affairs. Membership in the European Union brings with itself centralizing effects for the internal organization of the state, and national arrangements that try to restore the constitutional balance between central authorities and autonomous entities have been introduced in many member states.

It has been stated that the process of adjustment of international law to the new realities of state organization is still in its infancy.⁵¹ It is possible that states are reluctant to accelerate a process which would make the conduct of international affairs more fragmented. The active participation of autonomous entities on the international level certainly makes the international community more complex and cumbersome. However, greater complexity should not be an excuse for a gradual erosion of the competences of autonomous entities.

⁵¹⁾ Wouters and De Smet, *supra* note 9, p. 32.