Comparing the Åland Islands Precedent and the Nagorno-Karabakh Conflict

Research Note

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Abstract

This research note explores available studies concerning the possibility of the resolution of the Nagorno-Karabakh Conflict through implementation of good practices and experiences of the Åland Islands precedent to pave way for the final solution of the territorial conflict through the application of the international law. In the original exploratory research effort that was carried out in 2017–2018 at the Faculty of Law of Lund University, very close similarities were found between the conflict situation in the case of Åland Islands, that was resolved in the beginning of the 20th century, and the Nagorno-Karabakh Conflict that is a protracted armed conflict for which a resolution has not been ready to find for more than a quarter of a century now. Subsequent research raised many interesting questions connected to the right of peoples to self-determination, its evolution through the 20th century, the importance of demilitarisation and neutralisation for Nagorno-Karabakh, minority rights issues and other matters important for the discussion on applicability of certain elements of Åland Islands precedent to the situation of Nagorno-Karabakh. The differences in geographical location, territorial dissimilarities, historical context and political processes that influence the two situations during separate periods of time are also considered in the discussion as important for a resolution of the conflict based on international law.

Keywords

Åland Islands, Nagorno-Karabakh, conflict, autonomy, minority, international law, self-determination, territorial integrity, resolution

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1. Introduction

The idea of a comparative study of the Åland Islands precedent and the Nagorno-Karabakh Conflict has been formed and took shape in the course of studies of the latter issue. Thoughts about the possibility to use the Åland Islands precedent as a model for the resolution of the Nagorno-Karabakh question have been expressed earlier and have then been based on visible similarities that these two territorial conflicts bear. Interestingly, those thoughts and ideas have surfaced mostly in diplomacy and works of scholars studying international relations. In international law such ideas have been almost absent. Nonetheless, after pondering on a very limited comparison done by Tim Potier in his work on conflicts in Nagorno-Karabakh, South Ossetia and Abkhazia, the idea of a proper comparative study started to shape.[1]

While discussing theory and practice of the autonomy in general, Potier singles out the Åland Islands as an autonomous, demilitarized and unilingual Swedish province of Finland.[2] When further discussing the process of a political solution in the Nagorno-Karabakh Conflict, he raises the Åland Islands precedent once again, stressing that: "The Bosnian version is unacceptable to Azerbaijan. They will not accept the principle of 'two states created in the framework of one state'. Instead, they prefer a level of autonomy similar to that enjoyed by the Åland Islands or Tatarstan. These, at least, are acceptable to Yerevan, which views the 'state of affairs' in these autonomies as being considerably different to the situation in the South Caucasus, let alone Karabakh."[3] The basis of these arguments was not properly explained and it became clear that only a proper comparative study of the two cases will answer a long list of questions that appear even at a glance.

During the preliminary research done on this initial question, some main issues (or, rather, set of questions) started to crystallize. Moreover, the consideration of the historical context proved to be crucial for a further discussion and subsequent comparative analysis. Consequently, this research note aims to be a discussion opener that will be valuable for further research and study on its topic.

2. Historical Context Considered

Karabakh is a small mountainous land that lies in the wider region of South Caucasus that historically has been located in the nexus of three empires: Russian (today Russian Federation), Persian (today Islamic Republic of Iran) and Ottoman (today Republic of Turkey). Today South Caucasus consists of three independent states of Armenia, Azerbaijan and Georgia, that regained their independence after the dissolution of the

1 Potier 2001.
2 Id., p. 56.
3 Id., p. 86.

Soviet Union in 1991. Armenians and Azerbaijanis lived in Karabakh for centuries and both trace their ancestry to the ancient region of Caucasian Albania (not to be confused with modern-day Albania in the Balkans). These regions have always been in the middle of the clashes of empires warring in South Caucasus through centuries. Probably, the biggest demographic shift that formed the majority of modern-day Armenian population in the highland part of the region called Nagorno-Karabakh took place in the begging of the 19th century after the wars between the Russian and Persian empires. The Armenian population on the Nagorno-Karabakh territory dramatically increased, while Azeris, Kurds and Lezgins were driven out.[4]

The dispute over the territory of Nagorno-Karabakh first arose between Armenia and Azerbaijan when these countries had their first chance to become sovereign independent states in 1918 after the revolution in the Russian Empire. At the time, even Armenians living in Karabakh agreed that it should be a part of Azerbaijan with territorial and cultural autonomy for its Armenian population.[5] Later in 1920, the Paris Peace Conference recognized Karabakh as belonging to Azerbaijan.[6] Ironically, by 1921 all of the states of South Caucasus had lost their newly gained independence and came under Soviet rule. That year Nagorno-Karabakh was confirmed as a part of Azerbaijan (named "Azerbaijan Soviet Socialist Republic" at the time) with the creation of regional autonomy in order to maintain the economic ties between Nagorno-Karabakh (the mountainous part) and lower Karabakh.[7]

When it comes to the history of Åland Islands, they have been considered of strategic importance for a very long time due to their geographic location in the Baltic Sea region and their role in European great power politics. The islands themselves constitute an archipelago of approximately 6500 small and very small islands. Three different periods leading to the more modern history of the Åland Islands, mark their natural importance. First, is a Swedish rule over the islands stretching from 1157 and to 1809, then Russian rule between 1809 and 1917 and finally Finland's sovereignty over the Åland Islands from 1917 and up to present time.[8] The Swedish dominion over the islands, the beginning of which coincided with the rise of Valdemar the Great to the absolute monarchy in the Danish kingdom,[9] was marked by aggressive and successful foreign policy of Sweden (especially in the 17th century) that allowed the country to effectively rule the Baltic Sea. Sweden was later, in the 18th century, challenged by the rising Russian empire that occupied the Åland Islands for the first time in 1714. The Russians quickly turned the islands into a naval base

4 Cornell 1999, p. 4; Rossi 2017, pp. 54–55.
5 Altstadt 1992, p. 102.
6 Potier 2001, p. 2.
7 Zurcher 2007, p. 154.
8 Barros 1968, p. 1.
9 Dreijer, 1986, p. 266.

to attack the coast of Sweden. Nonetheless, after years of war, the Åland Islands were eventually returned back to the jurisdiction of Sweden in 1721 under the Peace Treaty of Nystad, along with the whole of Finland.[10]

Later on, but still in the 18th century, Sweden lost most of the wars with Russia, and the latter had gained most of the territory of Finland by the middle of that century. The Åland Islands, together with the rest of Finland, were effectively incorporated into the Russian Empire in 1809 after the military campaign Russia waged with the consent of Napoleon, a consent given at the Congress of Erfurt in 1808. In 1856, after the end of Crimean War, and at the peace negotiations in Paris, the Swedish position was based on the restitution of the islands, neutralization of their territory as of an independent state under the protection of France, Britain and Sweden.[11] That bid of Sweden failed. Still, a Convention on the demilitarisation of the Åland Islands was adopted between Britain, France and Russia. The specific nature of that treaty was that it was permanent in character – meaning that even in the event of change of sovereign rule over the islands the demilitarised status could not be altered.[12] This situation very accurately reflected the interests of European powers in the Baltic Sea. Finland gaining its independence in 1917 raised the issue of the Åland Islands again and against the background of turmoil in Russia and with European powers engaged in World War I. To the Paris Peace Conference of 1919 Sweden and Finland arrived already engaged in a full-grown territorial conflict. However, during the course of the Paris Peace Conference different positions of European centres of power and of Finland and Sweden, led to a situation where the conflict was not resolved during the Conference itself. Instead the matter was referred to the newly created League of Nations on the proposal from Britain and as "the only course for the Ålanders".[13]

As it can be seen from the history of both regions in question, their strategic importance for the imperial powers was the main cause of volatility of their respective status and sovereignty. After the Paris Peace Conference of 1919, the status of both territories was under question once again. However, while the Åland Islands question found a longstanding resolution, the Nagorno-Karabakh situation was put into some sort of "stasis" incorporated into the Soviet Union.

10 Barros 1968, p. 1.
11 Barros 1968,, pp. 6–8.
12 Jansson 2007, p. 2.
13 Barros 1968, p. 210.

3. Main Issues

Following the historical logic, the stasis of Nagorno-Karabakh was broken with the dissolution of the Soviet Union (USSR). In late 1991, the Nagorno-Karabakh Conflict evolved into a full-scale war between Armenia and Azerbaijan that were newly independent and recognized *uti possidetis juris* in their territorial borders, just as they had existed in the former USSR. The result of the war was one of the bloodiest outcomes of all the conflicts in the post-Soviet era with at least 25,000 lives were lost. Moreover, the conflict has left approximately one million Azerbaijani people as internally displaced and refugees and around 20% of Azerbaijani territories lost. From the other side of the conflict, the International Crisis Group estimates the number of displaced Armenians as high as 400,000.[14] A shaky ceasefire agreement is maintained between the parties since 1994.[15] The conflict is ongoing with low-intensity violent skirmishes occurring daily despite the ceasefire arrangements.

The main international legal issues that this conflict produced can be identified as a set of the following questions:

1) What role does Armenia hold in the Conflict? Is this role an act of intervention of a concerned kin-state or an act of occupation of a neighbouring state's territory?
2) The failure of the implementation of the UN Security Council Resolution of 1993 on Nagorno-Karabakh Conflict. Does Azerbaijan maintain the right to self-defence?
3) A right of peoples to self-determination in the context of the Nagorno-Karabakh Conflict: applicable or not?
4) What is the legal status and legitimacy of the entity in Nagorno-Karabakh ("Nagorno-Karabakh Republic") from 1991 onwards? Can we talk about a "right to secession"?

These issues appeared anew at the international level recently in front of the European Court of Human Rights. The European Court of Human Rights (hereinafter ECHR) by its judgment in the *Chiragov and Others v. Armenia* case in 2015 has addressed some of these questions. In its Grand Chamber judgment the court touches upon the relevant international law and citing the Article 42 of Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907 (hereafter "the 1907 Hague Regulations") concludes that: "...occupation within the meaning of the 1907 Hague Regulations exists when a state exercises actual authority over the territory, or part of the territory, of an enemy state. The requirement of actual authority is widely considered to be synonymous to that of effective control. Military occupation is considered to exist in a territory, or part of a

14 International Crisis Group 2007, p.1.
15 Kasim 2012, p. 94.

territory, if the following elements can be demonstrated: the presence of foreign troops, which are in a position to exercise effective control without the consent of the sovereign. According to widespread expert opinion physical presence of foreign troops is a sine qua non requirement of occupation, i.e. occupation is not conceivable without 'boots on the ground' therefore forces exercising naval or air control through a naval or air blockade do not suffice."[16] Indeed, occupation is a state when foreign troops on the ground exercise effective control over territory or its parts without consent of the sovereign state. Further, the Court determines that for the purposes of the case it was deciding it is: "...necessary to assess whether [Armenia] exercises effective control over Nagorno-Karabakh and the surrounding territories as a whole".[17] This necessity was explained by the court as meaning the need to determine Armenia's jurisdiction in the case. Furthermore, the ECHR: "...finds it established that the Republic of Armenia, through its military presence and the provision of military equipment and expertise, has been significantly involved in the Nagorno-Karabakh conflict from an early date. This military support has been – and continues to be – decisive for the conquest of and continued control over the territories in issue..."[18] Thus the Court has also established the "boots on the ground" requirement it referred to in the relevant international law previously in its judgment. The Court comes to the definite conclusion that "...the 'NKR' and its administration survives by virtue of the military, political, financial and other support given to it by Armenia which, consequently, exercises effective control over Nagorno-Karabakh and the surrounding territories...".[19]

Despite its conclusions, the ECHR does not proceed to the sum of its statements to declare a state of occupation in Nagorno-Karabakh. For the Court it was enough to establish the fact of the "effective control" over Nagorno-Karabakh by Armenia, to determine its jurisdiction in the case. Whether the Court has unintentionally proven the state of occupation and, thus, answered a lot of the above questions, requires further investigation.

Even more interesting are the parallels that can be drawn between the aforementioned questions and the issues that have been a part of the Åland Islands question. During the negotiations in the League of Nations, Sweden defended the right of Ålanders to opt for reunification with Sweden, Finland strongly argued that the case was a domestic affair and that the Åland Islands, being a part of Finland, did not constitute an entity (with its population) that could enjoy the right to self-determination.[20] Ultimately, the League of Nations established two Commissions to deal with the issue. The first one, the Commission of Jurists, analyzing the issue of self-determination came to a conclusion that: "... the

16 Chiragov and Others v. Armenia [GC], no. 13216/05, ECHR 2015, http://hudoc.echr.coe.int/eng?i=001-155353, para. 96.
17 Id., para. 170.
18 Id., para. 180.
19 Id., para. 186.
20 Vesa 2009, p. 45.

principle recognizing the rights of peoples to determine their political fate may be applied in various ways; the most important of these are, on the one hand the formation of an independent State, an on the other hand the right of choice between two existing States."[21] The questions of the status of the entity, self-determination questions, the role of Sweden, including whether this was a domestic matter of Finland only) and other questions relevant to the Nagorno-Karabakh Conflict today, have been addressed during the resolution of the Åland Islands dispute in the League of Nations.

4. Discussion

It is clear that there are obvious differences between the two cases in question. The geographical location in a very different regions of Eurasia, the exclave[22] (archipelago) of Åland Islands as opposed to the enclave of Nagorno-Karabakh, different periods of time with very different political contexts are among the most visible ones in comparison.

Nonetheless, the similarities between the cases are of the same significance. For example, until 1917–1918 the Åland Islands and Nagorno-Karabakh were both parts of Imperial Russia and, thus, under the same sovereign for almost a century. With the independence of Finland in 1917 and Azerbaijan in 1918 Russia's sovereignty came to an end, but the strategic importance of these territories continued to define their future in a broader sense. Moreover, both the Åland Islands and Nagorno-Karabakh feature a population that constitutes a minority affiliated to a neighbouring kin-state. Interestingly, both populations gained an autonomy in early 1920s, however, the status and development of those old autonomies have been quite different.

What is very beneficial in the Åland Islands precedent is that it is a well and thoroughly studied case, that has proven its sustainability through an extended period of time. The main elements of the case can be summarized into three categories of issues:

1) Autonomy and self-governance (decision-making questions);
2) Demilitarization and neutralization (security questions);
3) Minority rights in the autonomy (human rights and democracy questions).

During the resolution of the conflict over Åland Islands, the League of Nations has already been facing the question of internal self-determination. Markku Suksi citing the Commission of Jurists appointed by the League of Nations points out that the principle of self-determination: "... must 'be brought into line with that of the protection of minorities;

21 Suksi 2013 p. 64.
22 The term exclave is used here in strictly geographical sense. To illustrate the separation from mainland Finland by the body of water.

both have common object – to assure to some national Group the maintenance and free development of its social, ethnical or religious characteristics.' The Commission suggested that...: 'Under such circumstances, a solution in nature of a compromise, based on an extensive grant of liberty to minorities, may appear necessary according to international legal conception and may even be dictated by the interests of peace'."[23] This position of the Commission shows that it was already deliberating over the question of how minorities can benefit from the principle of self-determination. As it can be seen from the quotation, in the opinion of the Commission, the aim of self-determination in case of minorities is the preservation and maintenance of their culture (society), ethnicity or religion. Moreover, it was thought that granting extensive liberties for minorities was necessary according to the international law and simple interests of peace. Since 1921 these views have solidified into the concept of internal self-determination as we know it today.

In relation to the Nagorno-Karabakh issue, the concept of internal self-determination seems to be the most appropriate approach. The resolution of the conflict is currently the responsibility of Organization for Security and Cooperation in Europe (OSCE) and its special body – the Minsk Group. It is significant that the concept of internal self-determination is very strong in OSCE's main document – Helsinki Final Act of 1975 that declares that: "The participating States will respect the equal rights of peoples and their right to self-determination, acting at all times in conformity with the purposes and principles of the Charter of the United Nations and with the relevant norms of international law, including those relating to territorial integrity of States".[24] In this line, the link between the ability of peoples to benefit from the autonomy even in the minority status and within the limits of the territorial integrity of the existing state requires further discussion and study.

At the same time, the fate of the Swedish-speaking minority living on the specific territory defined by the islands was always in the centre of the Åland Islands question. The concern of the population of the islands with their rights and security was quite evident at the time of the resolution of the question by the League of Nations.[25] That genuine concern was one of the factors that prompted Finland to grant the islands an autonomy in the first place. Moreover, that concern was at the core of the guarantees that were provided by the international community (through the League of Nations) to the islands.[26]

The same cannot be said about the Nagorno-Karabakh Conflict. The concerns of the Armenian minority have mostly been ignored by both sides of the conflict and the negotiations have not reflected the interest of the Armenian population of Nagorno-

23 Ibid.
24 1975 Helsinki Final Act, 1, VIII, https://www.osce.org/helsinki-final-act?download=true (visited 16.09.2018).
25 Barros 1968, pp. 69, 230–231.
26 Suksi 2013, pp. 64–65.

Karabakh to a proper extent. The shift in the approach to a proper consideration of minority rights needs to be explored as one of the elements of the resolution of the conflict.

Nonetheless, clear distinctions between the cases of Åland Islands and Nagorno-Karabakh can be drawn from the developments of the conflicting situations and approaches of the conflicting parties during the height of their respective escalations. In the first stages of the conflict between Sweden and Finland, the former has been supportive of the population of Åland Islands in their desire for unification with Sweden. At the same time, it was not in the interests of Sweden to count Finland as non-friendly state. At the time of the Paris Peace Conference, Sweden's position can be simplified to a proposed plebiscite in the Åland Islands that would decide its fate and it was, of course, known to Sweden how this vote was going to play out. The Finnish position, on the other hand, was against any plebiscite in the Åland Islands and that these territories were historically, geographically and economically a part of Finland, and the Swedish-speaking population of the islands was a part of a larger whole of the Swedish-speaking minority of Finland and not a separate entity. In 1920, while the resolution from the League of Nations was pending, the conflict between Sweden and Finland was escalating. In order, to prevent the secessionist movements in Åland Islands, Finland extended to the islands an autonomy, that was, however, rejected by the population of the islands, because the matter was not discussed with them and the first Autonomy Act was seen as an imposed measure, rather than a negotiated one.[27]

Quite differently, when the conflict began to simmer between Armenia and Azerbaijan, on the brink of the dissolution of the Soviet Union, Armenia was already present militarily in the Nagorno-Karabakh region. It similarly supported the plebiscite that, unlike in Åland Islands, took place in the Nagorno-Karabakh in 1991. Despite that fact that the Azerbaijani minority in the region was not able to take place in the referendum, as it was already mostly expelled from the territory of the enclave. The rest have boycotted this event. Interestingly, the Armenians of Nagorno-Karabakh who were similarly expressing their will for the unification with Armenia, choose to vote for independence in the referendum in hope of using the dissolution of Soviet Union as a pathway to independence and the consequent unification with Armenia. The reaction of Azerbaijan to the referendum was the abolition of the autonomy in the Nagorno-Karabakh. After the dissolution of the Soviet Union when Armenia and Azerbaijan became independent states, the full-blown war broke out between them over the territory of Nagorno-Karabakh, as mentioned above.[28]

It is unclear to what extent such differences in the conflict situations under comparison may have an effect on the possibility of resolution of the Nagorno-Karabakh Conflict using

27 Barros 1968, p. 216; Jansson 2007, p. 3.
28 Cornell 1999, pp. 22–29.

the good practices and experiences of the Åland Islands precedent. There is an obvious need for a more thorough comparative analysis of both situations.

5. Concluding Remarks

The preliminary research proved to be an interesting experience that produced a clear set of initial questions to be answered. Approaching the issues from the perspective of public international law proved to be a fair strategy that identified a lot of common grounds between the Åland Islands precedent and the Nagorno-Karabakh Conflict. At the same time, the consideration of the comparison in the historical retrospective showed that the two cases bear not only similarities, but clear distinctions, especially in the attitudes of the conflicting parties to the issue and to each other. The way forward seems to be in the deeper contextual analysis of the main problematic issues that are common to both territorial conflicts. There will be a need to map the interests and views of the relevant conflicting parties and analyze the elements of the Åland Islands precedent in greater detail. This approach will ultimately indicate to what extent the different attitudes of the conflicting parties in both cases under consideration, have affected the possibility of the resolution of the territorial conflict through international law and/or autonomous solution.

At the same time, the focus on public international law will ultimately narrow the comparative analysis and exclude a lot of relevant issues (such as ethnic and political complications, religious factors, demographic issues, sociological issues, etc.) from its scope. However, this has to be done consciously in order not to overstep one's competences. Even more so, as the comparative analysis already bears an interdisciplinary character (e.g. historical contexts and international relations issues that must be considered). Then, it seems fair to assume that the applicability of the elements of the Åland Island precedent to the resolution of the Nagorno-Karabakh Conflict should be considered on the political level (security issues, third parties' interests, etc.) and through application of international law and constitutional guarantees (autonomous solution, minority rights, etc.).

Whatever results this comparative study will bring, they will aspire to be a clear step forward in at least two areas of scholarly discussions. On one hand, it will be an interesting input into the debate on the possibility of use of the Åland Island precedent as an example (best practices and experiences) for similar territorial conflicts. On the other hand, this comparative study can be a major input into the efforts to find an appropriate model for the resolution of the Nagorno-Karabakh Conflict. At least in the scholarly discourse.

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