# Joint Bodies – a Key Factor for Successful Autonomous Systems? The Cases of the Italian Special Regions and the Åland Islands

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## Abstract

Territorial autonomy is significantly affected by the operation of IGR (intergovernmental relations) institutions and practices. Indeed, it could be said that autonomous arrangements need an effective system of IGR – be it formal or informal – based on mutual trust in order to work successfully and realize their potential.

With a view to shedding some light on the described relation between autonomy and IGR, the article deals with particular IGR institutions existing in the Italian and Finnish legal systems, namely the joint committees (JC) for the implementation of the Autonomy Statutes (ASt) (of the special Regions) and the Åland Delegation (ÅD).

Both are bodies equally composed of members of the central state and the autonomous entity, and they are considered of particular interest for they seem to be among the main keys to the success of the analyzed autonomies. The comparison – which takes into account institutional and, insofar as possible, non-institutional aspects – aims primarily to verify this statement in both cases. Moreover, comparing them may be of further interest to increase the knowledge surrounding these institutions and their role, as well as to draw inspiration for possible solutions for both these and other systems.

## Keywords

Territorial autonomy; IGR; Joint bodies; Italy; Finland; Joint committees; Åland Delegation.

## About the author

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## 1. Introduction and delimitation of the analysis: autonomy and IGRs as two sides of the same coin

Territorial autonomy is a concept with manifold conceptions,[1] implementations,[2] and justifications.[3] Generally speaking, it is possible to use this term in relation to every manifestation of autonomous powers within the framework of a more or less composite state. Indeed, in a strictly constitutional sense, the powers enjoyed by the sub-state unities of federal, regional, and (otherwise) unitary states are all but forms of autonomy.[4]

However, autonomy has also acquired a specific theoretical meaning with its own distinctive characteristics. From this perspective, it refers to those autonomous arrangements having a particular position within a state system, created to respond to the special needs of a territory and the community residing in it.[5] Hence, autonomy implies asymmetrical ad hoc arrangements for definite areas of a state that show a condition of diversity, be it cultural, linguistic, and/or geographical.[6]

Even though every single autonomy is a system of its own, each of them is based on a (varying) degree of self-rule or "independence" from the central government,[7] which may be a source of significant conflicts between the two layers of government. This is why it could be said that autonomous arrangements generally require an effective system of intergovernmental relations (IGR) – be it formal or informal[8] – based on mutual trust

1 See Lapidoth, Ruth, *Autonomy. Flexible Solutions to Ethnic Conflicts* (United States Institute of Peace Press, Washington D.C., 1997), 29.

2 On this, see Benedikter, Thomas, *The World's Modern Autonomy Systems. Concepts and Experiences of Regional Territorial Autonomy* (Eurac research, Bolzano/Bozen, 2009).

3 See Keating, Michael, "Rethinking Territorial Autonomy", in Gagnon, Alain-G. and Keating, Michael (eds.), *Political Autonomy and Divided Societies. Imagining Democratic Alternatives in Complex Settings* (Palgrave Macmillan, London, 2014), 13–31.

4 Palermo, Francesco and Kössler, Karl, *Comparative Federalism. Constitutional Arrangements and Case Law* (Hart Publishing, Oxford, 2017), 59.

5 Ackrén, Maria, *Conditions for Different Autonomy Regimes in the World. A Fuzzy-Set Application* (Åbo Akademi University Press, Åbo, 2009), 20.

6 Suksi, Markku, "Explaining the Robustness and Longevity of the Åland Example in Comparison with Other Autonomy Solutions", 20 *International Journal on Minority and Group Rights*, (2013), 51– 66, at 56–58.

7 Palermo and Kössler, *Comparative Federalism* …, 59 and footnote 111.

8 With formal IGR we mean the forms of coordination between different layers of government which are structured and institutionalized, in general, by a formal regulation which establishes or recognizes the bodies of IGR giving them some sort of public powers and functions; the two examples analyzed in the present article fall into this category. Informal IGR take place where a specific regulation establishing an IGR institution is not present, therefore, the dialogue and cooperation among levels are conducted mainly on the basis of political agreements as it is neither granted by legal provisions nor by the existence of specific IGR bodies. As we will see, generally IGR develop both formally and informally. However, there are contexts where IGR are mostly informal, like in the UK. Its system is based on the so-called Sewel Convention – the rule of constitutional practice which applies when the UK Parliament wants to legislate on a matter within the devolved competence of the Scottish Parliament, National Assembly for Wales, or Northern Ireland Assembly, according to which the UK Parliament will "not normally" do so without the relevant devolved institution having passed a legislative consent motion – and on a system of non-institutionalized bodies normally involving the executives of the UK and the devolved administrations.

in order to adequately work.[9] Among the different existing models, institutions, and procedures of IGR, joint bodies composed of members of the central state and the autonomy are particularly interesting (also) from a constitutional point of view, for they provide a platform for an equal standing dialogue and are endowed with considerable (formal and informal) tasks. The fact that their existence – at least as conflict-settlement tools – has been considered as a minimum standard of regulation of regional territorial autonomy[10] gives valuable evidence of their concrete importance as well.

Several studies have compared autonomous entities from all over the world; however, no comparative investigation seems to have thoroughly focused on this specific institutional tool so far. The essay, therefore, attempts to explore the role played by the abovementioned joint bodies from two case studies, namely the Joint Committees (JC) for the implementation of the Autonomy Statutes (ASt) of the so-called Italian special regions, and the Åland Delegation (ÅD), established in the framework of Åland's autonomy. Although both operate in a wider framework of IGR, made up of more and less institutionalized instruments, they appear to be among the main keys to the success of the analyzed autonomous systems. The comparison would primarily help verify this statement in both cases. Moreover, comparing them may be of further interest to increase the knowledge on these institutions and their role, as well as to draw inspiration for possible solutions for both these and other systems.

The core of the analysis is mostly focused on institutional features, such as composition and appointment, working procedure, as well as competences and functions; at the same time, when possible, non-institutional aspects and factors[11] affecting their concrete functioning are addressed.

On this, see McHarg, Haileen, "The Model of Territorial Decentralisation in the United Kingdom", in (Special Issue) *Rivista del Gruppo di Pisa* (2020), 21–44. In Italy, informal IGR seems to have increased during the pandemic crisis, and has taken the form of political agreements between the national government and the single region, as observed by Alber Elisabeth, Arban Erika, Colasante Paolo, Dirri Adriano, Palermo Francesco, "Pandemic Management in Italy: Functional "Health Federalism" and Dysfunctional Cooperation", in Steytler, Nico (ed.), *Comparative Federalism and Covid-19: Combating the Pandemic*, (Routledge, Abingdon, forthcoming 2021).

9 Indeed, in general, all composite states are experiencing a growing relevance of IGR.

10 Benedikter, Thomas, *Solving Ethnic Conflict through Self-Government. A Short Guide to Autonomy in Europe and South Asia* (Eurac research, Bolzano/Bozen, 2009), 13.

11 Mainly related to the political contexts and the cultural background in which the IGR perform their role, and by which are sometimes affected.

## 2. Case studies

### 2.1. The Italian special regions case: a differently implemented tool

Italy is a regional asymmetric state composed of fifteen ordinary regions[12] and five special regions.[13] While the former (so far[14]) enjoy the same institutional status, based on the division of powers under the Title V of the Constitution, the latter are entitled to a particular and differentiated position derived from their ASt, which are constitutional laws.[15] In other words, the special regions enjoy both an (at least formally) larger scope of autonomous powers and a stronger entrenchment of their autonomous systems[16] than the ordinary ones.[17]

12 The ordinary regions are Piedmont, Liguria, Lombardy, Veneto, Emilia-Romagna, Marche, Tuscany, Lazio, Umbria, Abruzzo, Molise, Campania, Puglia, Basilicata, and Calabria.

13 The special regions are Aosta Valley, Friuli Venezia-Giulia, Trentino-Alto Adige/Südtirol, Sicily and Sardinia; however, it is worth remembering that the Trentino-Alto Adige/Südtirol Region embeds two special Provinces endowed with the same status as other special autonomies, so that it is possible to argue that seven autonomous entities exist in Italy, each one with a different degree of self-government.

14 In fact, art. 116, para. 3, It. Const. allows for a differentiation among the ordinary regions.

15 This means that their amendment has to respect the procedure provided for by art. 138 It. Const.; in 2001, a major constitutional reform of the regional system (and in general of the territorial organization of the state) was passed. This triggered a parallel reform of the ASts of the special regions, which, on the one hand, provided for an update of the autonomous arrangements to keep up with the other reforms which were taking place at the national level, and, on the other, introduced some modifications to the amendment procedure to better protect the special regions' autonomy against the risk of unilateral interventions by the state. As a consequence, the application of the paragraph that normally allows that a national referendum be held on a draft constitutional bill approved by the parliament was excluded when a modification of an ASt is at stake. Furthermore, the special regions were entitled to initiate a constitutional amendment bill to modify their statutes, which is anyhow finally approved by the central parliament; another provision requires that, in case a constitutional amendment bill is proposed by the central government or parliament, the regional councils be necessarily asked for an opinion (to be expressed within two months) which is not legally binding but critical from a political point of view; on this, see Palermo, Francesco, Valdesalici Alice, "Irreversibly Different. A Country Study of Constitutional Asymmetry in Italy", in Popelier, Patricia, Sahadžić Maja, (eds.) *Constitutional Asymmetry in Multinational Federalism. Federalism and Internal Conflicts* (Springer International Publishing, Cham, 2019), at 287–313; Palermo, Francesco, Valdesalici Alice, "Italy: Autonomism, Decentralization, Federalism, or What Else?", in Lluch Jaime (ed.), *Constitutionalism and the Politics of Accommodation in Multinational Democracies* (Palgrave Macmillan, Basingstoke, 2014), at 180–199. The amendment of the ASts has been rather limited, even after the introduction of the abovementioned guarantees in 2001. Some of the few examples are: the case of Trentino-Alto Adige/Südtirol, which in 1972 experienced a major reform of its statute to overcome the unsatisfactory solution designed in 1948 and, notably, to comply with the international obligations stemming from the De Gasperi-Gruber agreement; and Aosta Valley in 1993, when two provisions were added, one protecting a "minority within a minority" (the Walser population) and one formally establishing and regulating the joint committees. On Trentino-Alto Adige/Südtirol and South Tyrol's autonomy, see Woelk Jens, Palermo, Francesco, and Marko, Joseph (eds.), *Tolerance Through Law. Self Governance and Group Rights in South Tyrol* (Brill, Leiden, 2008); on Aosta Valley, see Costanzo, Pasquale, Louvin, Roberto, and Trucco, Lara (eds.), *Lineamenti di diritto costituzionale della Regione Valle d'Aosta*/Vallée d'Aoste (Giappichelli, Torino, 2020).

16 On the different degrees of entrenchment of the autonomy arrangements, see Suksi, Explaining the Robustness …, at 51–66.

17 Whose ASt are ordinary regional laws, which are passed by the regional council following a rigid procedure laid down by art. 123 It. Const. and subjected to the preventive control of the national government as provided for by Art. 123, 2nd and 3rd paras., It. Const.: "Regional statutes are adopted and amended by the Regional Council with a law approved by an absolute majority of its members, with two

The reasons underlying such a different treatment are manifold and unique to every single special autonomy. Synthetically, it is possible to affirm that the factors that led to the establishment of the special regions boil down to: a. diversity and minority protection; b. rebalance of structural economic disadvantages caused by geographic or other conditions; c. contingent reasons, connected to the risk of secession, or the presence of strategic interests. The establishment of every single special autonomy is characterized by a different mix of the abovementioned grounds. In particular, as for Aosta Valley, Friuli Venezia-Giulia, and Trentino-Alto Adige/*Südtirol*, the main determinants are related to the presence of sizeable linguistic minorities, their location in mountainous areas in the North of Italy, and the threats of secession coming from those territories after the oppression of the fascist regime. In addition, the international obligations arising from the Paris Peace Treaty (1947) guaranteed Trentino-Alto Adige/*Südtirol*'s autonomy, while the presence of an international regime[18] together with geopolitical reasons[19] further justified Friuli Venezia-Giulia's autonomy. As regards the islands of Sicily and Sardinia, their remoteness and isolation are among the most important motives underlying their special position, as well as the presence of secessionist movements as early as the constituent period (in Sicily).

What should be highlighted is that the creation of the special regions is to be traced back to the constituent moment; as a consequence, the existence of these autonomy arrangements can reasonably be considered as part of the "original constituent pact" and thus unamendable.[20] The latter condition ontologically differentiates special and ordinary sub-state entities.

Importantly, the different position of special and ordinary regions within the framework of the regional state is mirrored in the principles and institutions of IGR. Indeed, on the one hand, an "ordinary" system of IGR is in place, whose most significant institution is the state-regions conference.[21]

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subsequent deliberations at an interval of not less than two months. This law does not require the approval of the Government commissioner. The Government of the Republic may submit the constitutional legitimacy of the regional statutes to the Constitutional Court within thirty days of their publication. The statute is submitted to popular referendum if one-fiftieth of the electors of the Region or one-fifth of the members of the Regional Council so request within three months from its publication. The statute that is submitted to referendum is not promulgated if it is not approved by the majority of valid votes".

18 In Trieste, until 1954.

19 Friuli Venezia-Giulia is located in the North-East of Italy, and at that time it was on the border of the communist block.

20 Labriola, Silvano, "Il principio di specialità nel regionalismo italiano", in Ortino, Sergio and Pernthaler, Peter (eds.), *Il punto di vista delle autonomie speciali – La riforma costituzionale in senso federale* (Eurac research-Regione autonoma Trentino-Alto Adige, Bolzano/Bozen-Trento, 1997), 61–84.

21 This is a multilateral institution composed of the President of each regional government and chaired by the Prime Minister. There is no legal indication on voting procedures, so the decision depends on consensus of the two sides involved (national and regional). This means that the state and the regions as a whole have one vote each; accordingly, all the regions have to internally agree a common position, which is generally unanimous, unless for some limited issues in which a majority consent is possible. As to its functions, the conference has been gradually vested with an increasing number of tasks. In general, the

On the other hand, special autonomies are entitled to negotiate on an equal footing with the state (principle of parity) in the JC, owing to their peculiar constitutional status. Employing these IGR, special regions can protect their specific interests without being outvoted – as is possible in the state-regions conference – and have a final say on the implementation of their competences.

In accordance with the principle of parity, the JC are composed of members appointed half by the state and half by the single special region.[22] The former are selected by the council of ministers and the latter by the regional council. The members are mostly senior civil servants or academics.

Interestingly, no specific procedural rule is foreseen for the operation of these bodies. This situation implies that consensus between the parties is the general method for decision-making.[23]

Concretely, the JC draft by-laws aimed at implementing the ASt, which are eventually approved by the council of ministers in the form of governmental decrees. It must be noted that the Constitutional Court has explicitly affirmed that the government cannot unilaterally modify a draft enactment decree without breaching the principle of parity underlying the operation of the JC.[24] This means that the joint committees are formally consultative bodies which, however, have substantially acquired a quasi-legislative function, at least in those autonomies where they have been thoroughly exploited.[25]

Moreover, if generally the governmental decree is a source of law with the same rank as

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state-regions conference performs an important role concerning the coordination of secondary legislation and administrative functions, while it has a very limited role in influencing legislation.

22 Numbers differ among the different special regions. Trentino-Alto Adige/Südtirol is of particular interest: there is a "Commission of twelve" which drafts enactment decrees with regard to the Region, and has thus a limited role; in addition, a "Commission of six" has been established – formally included in the "Commission of twelve" – whose main task is the implementation of the ASt for South Tyrol. It has a composition whereby territories (state and autonomy) and linguistic groups are equally represented. As far as its competences are concerned, there are not particular differences between this JC and the others today, even if, as we will see in the following paragraphs, South Tyrol's JC was originally designed to be a provisional body with circumscribed tasks related to the strict implementation of the ASt. On this, see: Palermo, Francesco, "Implementation and Amendment of the Autonomy Statute", in Woelk, Palermo, and Marko, (eds.), Tolerance Through Law …, 143–159.

23 It can be of particular interest to analyze the rules of practice governing the functioning of these committees, and, for example, how they affect the effectiveness of the bodies. This topic is touched upon to a limited extent, since it seems to be more connected to a political science standpoint, which is not the approach adopted in this article. These considerations also apply to the paragraph devoted to the study of the Åland Delegation. On these issues with regard to the Italian case, see Alessi, Nicolò P., Palermo, Francesco, "Intergovernmental Relations and Identity Politics in Italy", in Fessha, Yonatan T., Kössler, Karl (eds.), *Intergovernmental relations in divided societies: A comparative perspective* (Palgrave MacMillan, Basingstoke, forthcoming 2021) (The following footnotes referring to this publication are unfortunately without page references due to the fact that at the time when this article was written the book was in the process of being published.)

24 See Constitutional Court, ruling no. 37/1989.

25 This is especially the case in South Tyrol: on this, see Palermo, Implementation …, at 152–153.

parliamentary statutes[26], in this case it enjoys a stronger legal condition. This is to say that it can only be amended or repealed by another enactment decree of the same type, thus holding a sub-constitutional status. Again, this particular quality comes as a juridical and logical consequence of the constitutional condition of the special regions; it thus finds a justification in the protection of the joint decision from possible parliamentary overrulings – as also recognized by the constitutional court.[27]

As stated above, the principal purpose of these special decrees is the implementation of the ASt. However, what implementation means is not clearly stated and has been variously interpreted in the different regional contexts. Hypothetically, almost all provisions of the ASt may be an object of implementation. This has certainly been the case with those foreseeing the transfer of administrative competences from the state to the special regions, as well as those providing for general rules which need to be detailed further.[28] Financial relations between state and autonomies may also be addressed by enactment decree, although this matter is regulated by negotiated procedures that do not involve the JC in some regions.

Furthermore, and this is perhaps the most interesting feature, the scope of the decrees has been even broader, involving provisions that go further than the straightforward application of the ASt. For example, through enactment decrees (at least some) autonomous entities and the state have agreed on the transfer of legislative powers to the autonomies beyond the division of powers as literally foreseen by the ASt.[29] This expansion could be deemed especially surprising with respect to those autonomies (like South Tyrol) whose statutes had originally established the JC as provisional bodies with limited tasks.

The reason for this trend lies in the fact that the activity of the JC has provided a means to bend the otherwise rigid statutory regulations. Indeed, as constitutional laws, the ASt can only be modified through a constitutional amendment procedure (which has some particular features[30]), which has proved to be very difficult to trigger and finally adopt in recent decades. Furthermore, given that the final say is left to the central level, the latter procedure seems to continue to be considered a risk from the regional side even though in 2001 significant provisions were introduced to enhance the protection of the special regions' interests throughout the process. Consequently, the joint committees, which are deemed the bodies that best concretize and grant the principle of parity characterizing

26 So that a successive parliamentary law can amend or repeal it, owing to the principle *lex posterior derogat priori*.

27 See Constitutional Court, judgments no. 20/1956, 22/1961, 151/1972, 180/1980, 237/1983, 212/1984 and 160/1985.

28 A glaring example is South Tyrol: the ASt only states some general rules on the coexistence of linguistic groups, which have been thoroughly detailed by means of enactment decrees.

29 For example, new legislative and administrative competences on universities have been transferred to Aosta Valley by virtue of the enactment decree no. 282 of 21 September 2000.

30 See footnote no. 16.

the relations between state and special regions, have become the privileged bodies to implement and update the autonomous arrangements.

Definitively, the JC make use of the same tool to perform several functions, all related to the dynamic and agreed definition of the areas of state and regional respective jurisdiction.[31]

As for their actual performances in the different autonomous contexts, a great variety exists: the alpine autonomies – where sizeable minorities are located – have significantly exploited this IGR[32], whereas the others – the insular autonomies – have not. Given the broad potential scope of the enactment decrees and the constitutional rigidity of the ASt, the limited activity of the joint bodies not only has proved a missed opportunity but also has had a concrete penalizing effect for these regions.[33]

The different performances of the joint bodies, which can be assessed both quantitatively and qualitatively,[34] are determined by several factors. Firstly, the unwritten rules determining their composition: while most of the joint bodies are composed of civil servants or academics, the most effective JC are those made up of top-level politicians who can show previous experience in the regional system.[35] Secondly, the general political climate of relations between state and autonomy – and, precisely, the homogeneity or inhomogeneity of the respective political majorities – evidently affects the likelihood of approving a by-law.[36]

Thirdly, and most importantly, the identity factor: it is a matter of fact that in the autonomies inhabited by minorities where identity politics is at stake – and, consequently, a system of regional parties conveying these identity issues exists – the JC have been exploited more, especially when it comes to their innovative functions. Indeed, a regional party system appears thus to be fundamental to build, or rebuild, the conditions for self-recognition and membership which are necessary to implement an autonomous arrangement.[37]

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31 On this, see Cosulich, Matteo, *Il decreto legislativo di attuazione statutaria nelle Regioni ad autonomia speciale* (University of Trento, Trento, 2017), especially 116 ff.

32 Although even among them considerable differences occur: South Tyrol is undoubtedly the autonomy that has benefitted more from this tool.

33 Palermo, Francesco, "Specialità, minoranze e revisione statutaria: l'incertezza programmata", in Toniatti, Roberto (ed.), *Il fattore «minoranza linguistica» nella revisione statutaria delle autonomie speciali alpine* (University of Trento, Trento, 2017), 121–135, at 127 and especially footnote no. 19.

34 That is to say in terms of number of decrees approved and more or less innovative content.

35 For example, the members of the committee for South Tyrol not only usually have a prominent political role (at state or provincial level) but are also almost all – regardless of the state's or the province's appointment – South Tyroleans.

36 A quantitative example that confirms this statement was provided by Alessi and Palermo, Intergovernmental Relations…: "For Trentino-South Tyrol, the implementing rules adopted during the legislative period 2008–2013 were less numerous, and none was adopted between 2007–2010 due to the lack of political homogeneity between the two autonomous provinces and Rome. Between 2013 and 2018, when the political climate was again favourable, as many as 23 enactment decrees have been adopted".

37 On the role of a decentralized party system, see Lijphart, Arendt, *Patterns of democracy: Government forms and performance in thirty-six countries* (Yale University Press, New Haven, 1999).

Importantly, in those autonomous territories – especially South Tyrol, and to a limited extent, Aosta Valley and Friuli-Venezia Giulia – identity politics has not been a source of internal conflict – unless for some limited examples[38] – but rather a *stimulus* for a cooperative behaviour based on reciprocal trust.[39] In other words, in those places identity politics is coupled with the presence of a rooted culture of autonomy[40] and a certain degree of pragmatism, both of which are evidently conducive to fostering the (bilateral) dialogue with the central government. Different reasons explain why in certain special regions a culture of autonomy has developed, while in others it has not. Several authors have underlined that the presence of a rooted network of territorial associations which encourages social cooperative behaviours and the creation of common cultural values within a collectivity (referred to as civicness or social capital) is to be considered fundamental in this regard.[41]

### 2.2. The Åland case

The Åland case is more than an example of an autonomous territory. Indeed, three main components have been considered as being the core of the Åland case: the autonomy arrangement, the linguistic and cultural safeguards in favour of their Swedish-speaking population, as well as its condition of demilitarized and neutralized territory.[42]

38 On an example concerning place names in South Tyrol, see Fraenkel Haeberle, Cristina, "Linguistic Rights and the use of language", in Woelk Jens, Palermo, Francesco, and Marko, Joseph (eds.), Tolerance Through Law…, 259–278, esp. 271 ff.; however, the conflict has hardly ever reached the internal operation of the committees; more frequently, the committees are limited in their work by external circumstances, such as the fact that every time the central or the regional government changes, members can be changed. In case of a centre-region political tension, the central government can obstacle the functioning of the committees by postponing its formal appointments.

39 As Alessi and Palermo, Intergovernmental Relations…, affirmed: "In other words, the more identity politics is relevant – i.e. identity is at stake in the political debate – the more the special regions implement their autonomies, develop cooperative attitudes and use effectively their IGRs. A comparison of the quantitative performance of the different regions confirms this statement. In fact, in some regions, the enactments decrees play an accidental role, while in others they represent the forum where the most relevant legal measures are adopted. Trentino-South Tyrol is emblematic: as of summer 2020, the adopted enactment decrees were 189, almost five times those of Sicily and Sardinia (41 and 42). The gap with Aosta Valley is also wide, as the latter has agreed on 62 acts so far".

40 On this concept, which refers to the necessary cultural conditions for an autonomous arrangement to effectively work, with specific regard to the Italian legal system, see Toniatti, Roberto (ed.), *La cultura dell'autonomia. Le condizioni pre-giuridiche per un'efficace autonomia regionale* (Università di Trento, Trento, 2018).

41 Some authors have suggested that the presence of social capital in some territories can be at least partially explained referring to the conditions they had experienced starting from the medieval time; on these issues, see Banfield, Edward C., *The moral basis of a backward society* (The Free Press, Chicago, 1958), Almond, Gabriel A., Verba, Sidney, *The civic culture: Political attitudes and democracies in five nations* (Princeton University Press, Princeton, 1963), Almagisti, Marco, "Subculture politiche territoriali e capitale sociale", in *L'Italia e le sue Regioni, 4*, Enc. Treccani. Retrieved from https://bit.ly/3i8uWOv.

42 As described by Stephan, Sarah, "The Autonomy of the Åland Islands", in Spiliopoulou Åkermark, Sia (ed.), *The Åland Example and Its Components – Relevance for International Conflict Resolution* (Åland Islands Peace Institute, Marieham, 2011), 28–49, at 28; on the demilitarization and neutralization, see

Focusing on the first component[43], the Ålandic autonomy is the only autonomous arrangement characterized by exclusive legislative powers in Finland and dates back to the inter-war period. Indeed, in 1921 the international supervision of the League of Nations guaranteed the peaceful settlement of the dispute between Finland and Sweden over the sovereignty on these islands while acknowledging the peculiar needs of their inhabitants.[44] In fact, even though in 1920 Finland had already adopted an Autonomy Act, the Åland question was still significantly conflictual and was thus referred to the League of Nations. The Council of the League of Nations, with the resolutions of 24 and 27 June 1921, affirmed and confirmed the Finnish sovereignty over the islands. Yet at the same time, it required further guarantees for Åland and the Ålanders[45]; by concluding the so-called "Åland Agreement"[46], Finland undertook to respect the resolutions, and, in 1922, eventually adopted the Guarantee Act[47] containing the required provisions. The Autonomy Act (entered into force in 1921 and amended by the Guarantee Act) was later repealed and substituted by a new Act in 1951, which was in turn replaced in 1991 by the current Autonomy Act. This regulation has been defined as a *sui generis* law, holding an exceptional position in the Finnish constitutional system.[48]

The Åland Delegation has been established since the Autonomy Act of 1920. According to section 55, it is chaired by the governor of Åland[49] and consists of two members appointed by the council of state and two by the legislative assembly of Åland (*lagting*). It is an expert

Spiliopoulou Åkermark, Sia, "Demilitarisation and neutralisation", in Spiliopoulou, (ed.), *The Åland Example* …, 50–71, at 52–53, who recalled that "Åland's demilitarisation and neutralisation is built on four foundational documents that are still in force", namely the Convention on the Demilitarisation of the Åland Islands (1856), the Convention on the Non-fortification and Neutralisation of the Åland islands (1921), the Treaty between Finland and the Soviet Union concerning the Åland Islands (1940), and the Peacy Treaty of Paris (1947).

43 The fundamental legal sources of which also provide for the linguistic and cultural safeguards. As is known, autonomy and minority protection, albeit intertwined, are theoretically separated concepts; it may be possible to define minority protection as a widely multifaceted set of rights and tools aimed at guaranteeing survival and possible promotion of groups and diversity. Naturally, the protection of cultural diversity can be one of the justifications underlying the establishment of an autonomous system, but almost never is it the only one.

44 Yet their very first claim, i.e. the secession from Finland and the reunification with Sweden, was rejected by the Decision of the Council of the League of Nations of 24 June 1921, which affirmed Finland's sovereignty.

45 As noted by Stephan, The Autonomy …, at 31: "Autonomy itself is not mentioned as a guarantee as such, neither in the Decision of the Council of the League of Nations nor in the Åland Agreement. After all, the League of Nations imposed only additional guarantees, which were to be inserted into the Act on the Autonomy of the Åland Islands as proposed by Finland on May 6th 1920"; still, she also pointed out that "Although not a guarantee proper, autonomy is the indispensable basis for the special guarantees, protected under public international law by virtue of the League's decision".

46 Not technically a treaty but considered as unilaterally binding under international law by Finland, as observed by Suksi, Explaining the Robustness …, at 53.

47 On this, see Stephan, The Autonomy …, at 30–31.

48 See Suksi, Explaining the Robustness …, at 53 ff.

49 Or another person appointed by the President of the Republic with the agreement of the Speaker of the *lagting*.

body with legal competence on Ålandic autonomy issues, which bases its opinions on judicial and not political considerations.[50]

Similar to the Italian JC, no procedural provision is explicitly set out, other than the rules establishing that "The Delegation shall only have a quorum when all the Members are present",[51] and that Swedish is its official language.

As far as its competences are concerned, three main categories of tasks may be distinguished: financial, advisory/consultative, and arbitrary. The first one corresponds to its original duty[52]: the Autonomy Act of 1920 already assigned the power to determine the tax equalization rate to be allocated to finance the autonomy to the ÅD. Although the rate is today determined by the Autonomy Act,[53] the joint body must carry out the procedure for tax equalization, as laid down by sections 46 and 47 of the Autonomy Act. Moreover, as provided for by section 56 of the Autonomy Act, the Delegation determines the tax retribution in accordance with section 49[54], gives the extraordinary grant, and awards the subsidy respectively foreseen by sections 48 and 51.[55]

The second set of functions encompasses a wide range of advice and opinions the Delegation may (or, sometimes, must) be asked to give as an expert body. Interestingly, this advisory function touches upon the activity of every institution involved in the complex mechanism of checks and balances that underlies Åland's autonomy.[56] Specifically, the Delegation takes part in the process of supervision of the Ålandic legislation[57], as the decision on the adoption of an Act of Åland – to be presented to the President, who has the final say[58] – is delivered to the Ministry of Justice and to the Delegation itself, which issues

50 Stephan, The Autonomy …, at 41.

51 Section 55, par. 2, Autonomy Act.

52 Spiliopoulou Åkermark, Sia et al., "Åland Islands", in the Online Compendium *Autonomy Arrangements in the World* (2019), at www.world-autonomies.info, at 16.

53 The tax equalization rate was modified in November 2020 and adjusted from 0.45% to 0.47%, owing to the increase of the population of the islands, which has now surpassed 30,000 inhabitants; on this, see the Finnish Parliament's confirmation of the change: https://www.eduskunta.fi/SV/tiedotteet/Sidor/Avr%C3%A4kningsgrunden--Aland-0,47-procent.aspx.

54 "If the income and property tax levied in Åland during a fiscal year exceeds 0.5 per cent of the corresponding tax in the entire country, the excess shall be retributed to Åland (tax retribution)".

55 Section 48: "An extraordinary grant may be given on the proposition of the Åland Parliament for particularly great non-recurring expenditures that may not justifiably be expected to be incorporated in the budget of Åland. An extraordinary grant may only be given for purposes within the competence of Åland"; section 51: "Åland shall be subsidised from State funds in order to 1) prevent or remove substantial economic disorders that affect especially Åland; 2) cover the costs of a natural disaster, nuclear accident, oil spill or another comparable incident, unless the costs are justifiably to be borne by Åland. The Government of Åland shall initiate the proceedings for a subsidy at the latest on the year following the emergence of the costs. A decision on the matter shall, if possible, be made within six months of the initiation of the proceedings".

56 As observed by Spiliopoulou Åkermark, et al., Åland Islands …, at 23.

57 Pursuant to section 19, Autonomy Act.

58 According to Section 19, para. 2, Autonomy Act, the President can order the annulment of an act of Åland only after having obtained an opinion from the Supreme Court; this particular role of the Supreme Court has been deemed problematic by the Venice Commission due to the combination of *ex ante* advisory

an opinion. The same occurs when a Consentaneous Decree[59] is proposed to transfer "duties belonging to State administration […] to an Åland official for a fixed period or until further notice"[60]. In addition, the Delegation shall express opinions – mainly about the interpretation of the Autonomy Act – when requested by the Finnish government, the ministries thereof, the government of Åland, and even the courts.[61] This advice can potentially address any issue related to the application of the Autonomy Act. Accordingly, the Delegation can pre-emptively solve a significant number of possible conflicts, even when it comes to the definition of the legislative areas of competence of both Finland and Åland.[62]

The third category of tasks refers to the power to settle controversies between the islands and the State.[63] Pursuant to Section 62 of the Autonomy Act, the Åland Delegation is expressly vested with this function in case of disputes about the exercise of administrative powers in the matter of new merchant shipping lanes[64] and the use of land in Åland for State administration.[65] Moreover, the expert body may be asked to formulate a recommendation for the resolution of a disagreement on the administrative measures needed to implement EU decisions[66], thus exercising a quasi-arbitrary and persuasive role.

Given the above, it is fair to affirm that the ÅD constitutes a core institution of this autonomous system, both formally and substantially. In fact, its functions – explicitly set out in the Autonomy Act – back most of the powers, institutions, and processes involved in the dynamics of Åland's autonomous system. In other words, it constitutes a cross-cutting guarantee of stability for this autonomy. This holds true not only as regards its formal role. It is indeed a matter of fact that its activity is accepted and respected and is never considered as encroaching upon other institutions' spheres of competence;[67] this is

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and *ex post* judicial functions with regard to the same case. See: Venice Commission, "Opinion on the Constitution of Finland", at https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2008)010-e, at 25–26.

59 Concretely, this function has been considered as including the power to draft the decree, as noted by Stephan, The Autonomy …, at 42.

60 Section 32, Autonomy Act.

61 Section 56, Autonomy Act; as concerns the advisory function with regard to the judicial activity, for example, Section 60 provides that the Supreme Court, when deciding on conflicts of administrative authority, shall ask an opinion from the Åland Delegation.

62 Interestingly, the Åland Delegation may also be asked to issue an opinion on a draft government bill or on the application of a state law in Åland; on this, see the reports of the Åland Delegation's activity at https://www.ambetsverket.ax/alandsdelegationen/alandsdelegationens-publikationer.

63 As explained by Benedikter, The World's Modern Autonomy …, at 109, if not referred to the ÅD, other disputes are to be resolved by the Supreme Court.

64 Section 30, subpara. 12, Autonomy Act.

65 Section 61, para. 1 and 2, Autonomy Act.

66 Section 59b, para. 2, Autonomy Act.

67 Firstly, this is apparent if one looks at the concrete activity of the ÅD through its reports, available at https://www.ambetsverket.ax/alandsdelegationen/alandsdelegationens-publikationer; secondly, the significance of the ÅD has been observed by many authors, for example: Stephan, The Autonomy …, at 41–42 and Ghai, Yash, "Åland's Autonomy in Comparative Perspective", in Spiliopoulou, (ed.), The Åland Example …, 88–112, at 105–106.

especially due to its expertise – which provides (technical and) neutral interpretations, advice and (less frequently) decisions – together with its joint composition.

In addition, more generally, the Åland Delegation has been deemed important even as a forum for constant and peaceful dialogue between the state and Åland.[68]

Finally, its centrality is further confirmed by the fact that not only has it existed since the origins of the autonomous arrangement, but it has also witnessed an expansion of its functions. It is thus not by chance that even the current discussions on the revision of the 1991 Autonomy Act are addressing a possible delegation of further powers to this expert body.[69]

## 3. Comparison of the models

The comparison of the two models of joint bodies reveals, on the one hand, several differences in terms of entrenchment, functions, and role played within their respective contexts; on the other hand, it shows that the Åland Delegation and – when exploited[70] – the JC have similarly affected the evolution of the autonomous arrangements in which they work in terms of their general functioning.

Focusing on their entrenchment, it is worth noting that both bodies have been explicitly established by constitutional sources of law. Nevertheless, the Åland Delegation enjoys formally well-defined powers and tasks, while the JC are the object of limited provisions, their role having evolved over the decades as a consequence of an extensive interpretation of their duties. This condition implies that the JC are somewhat generally deemed as extraordinary tools rather than ordinary, especially from a non-expert standpoint. As seen, the absence of formal rules does not necessarily entail a limited activity, which is however affected by numerous extra-legal factors.

Concerning their functions, the joint bodies differ in several respects, almost all related to the role that is attributed to them. Synthetically, the Åland Delegation appears to act more as an arbiter, i.e. an impartial and independent body[71] – mostly endowed with persuasive authority – in a complex system based on the cooperation and dialogue of several institutions.

68 Benedikter, The World's Modern Autonomy …, at 111.

69 According to Simolin, Susann, "The Aims of Åland and Finland Regarding a New Act on the Autonomy of Åland – An analysis of three parliamentary committee reports (2010–2017)", 2 (1), *Journal of Autonomy and Security Studies* (2018), 8–48, at 31, the provincial committee – one out of the three that have made a report on the third revision of the Autonomy Act – has proposed that the President of the Republic should have the possibility to ask the ÅD for opinions regarding the compatibility of state law with the Autonomy Act in order to organise the supervision of legislation in a more symmetrical way.

70 These final assessments are then focused on the "successful" examples of Italian joint committees, i.e. the ones that have been making it possible to implement the autonomy arrangement, for the reasons explained in section no. 2.1.

71 In administrative terms, the Åland Delegation belongs to the Ministry of Justice's administrative area, however without any subordination.

Indeed, it provides expert advice on the Autonomy Act or settles some controversies, and directly regulates only some limited – albeit very important – issues, i.e. those related to financial aspects. Conversely, the JC may be identified more as players rather than arbiters. In fact, their activity is more focused on the implementation of the ASt and always aimed at drafting enactment decrees through the mediation between state and regional members. This feature has been at the same time the strongest and the weakest point of this instrument. Indeed, the autonomies that have been able to boost it have employed it in various ways, making it a manifold and flexible tool that includes a vast amount of different agreed contents. By contrast, the others have witnessed a concrete limitation of the scope of their autonomy and a deterioration of their special relations with the state.

A general assessment of the two systems may provide a possible explanation as to the joint bodies' dissimilar roles and functions. Indeed, in Åland, the implementation of autonomy (even through the amendment of the Autonomy Act) has been achieved through the political and cooperative negotiation between the political bodies of state and the islands[72] – both endowed with exclusive administrative and legislative jurisdictions – mediated by some institutions, like the Åland Delegation, acting as guarantors. In other words, there has been no need for a specific body aimed at fostering agreements to implement the autonomy arrangement.[73] By contrast, the absence of such a complex system of checks and balances and, above all, the lack of a general political culture of dialogue and autonomism (especially from the state institutions) have hindered any constant reform of the ASt and prevented a similar situation from occurring in Italy. Therefore, the JC have become the principal and most effective political place of negotiation between state and autonomies (at least for some of them, i.e. the strongest ones for several reasons).

Beyond this, the two models also share a common and general function (or effect), which stems from their institutional characteristics. In fact, regardless of their specific tasks, they both have proved successful as instruments of peace and confidence-building: they both have created the conditions for a constant and cooperative dialogue between the two layers of government.

72 This open attitude from both sides has been described, i.a., by Benedikter, The World's Modern Autonomy …, at 111 and Suksi, Explaining the Robustness …, at 53.

73 Moreover, the Autonomy Act foresees a flexible division of legislative powers: section 27 provides for the delegation of legislative power to Åland by virtue of an act of the Finnish Parliament with the consent of the *Landsting*; this "flexibility clause" gives evidence of the different mechanisms of implementation of Åland's autonomous arrangement, also based on a fruitful cooperative culture. It is worth noticing that this clause has never been used; this fact confirms the described different operation of the two models, with the Åland Islands' autonomy not needing a specific mechanism of "long implementation" like the Italian one, since its regime is already significantly dynamic, even concerning the possibility to amend the Autonomy Act itself. The latter fact is one of the main differences between the two cases, for, as seen, the Italian special regions have generally struggled with the amendment and consequent update of their Autonomy Statutes, thus resorting to the Joint Committees to develop their autonomies.

Importantly, the equal standing composition and expertise of the joint bodies may be regarded as the main keys to the success of this model of IGR. These features ensure that even conflictive political issues are not avoided, but are brought to the fore and dealt with constructively. However, while the JCs are the only tool that can perform such a role for the special regions in Italy[74], the ÅD could be considered as one of the main institutions which have contributed to the (peace and) confidence-building process between Åland and the state in the Finnish constitutional system.[75] In other words, the ÅD is somewhat in a more complex framework that has fostered a strong cooperative culture on both regional and state sides.

If it is true that both the Åland Delegation and the JC have certainly had an active role as trust-building tools, it should nevertheless be highlighted that they are among the many conditions that have contributed to the described situations. Indeed, it seems that the presence of autonomous political systems where identity politics is central has played a significant role in this sense as well. Interestingly, in both cases identity politics – instead of having triggered a conflict or caused a definitive stalemate in centre-periphery relations – appears to have encouraged cooperation, also within the joint bodies. As regards the Finnish legal system, this may also be related to the strong entrenchment of the autonomous arrangement, which somewhat compels the central government – which cannot in any case amend it without Åland's consent – to cooperate with Åland even in case of rising tensions (generally having to do with cultural or economic interests).[76] As for the Italian case, the characteristics of regional parties, where existing and significant on the political scene,[77] may be considered as one of the most considerable factors leading to an effective collaboration. They indeed have been able to constructively channel existing identity issues to form autonomies' "fronts", characterized by being cooperative and pragmatic instead of conflictive, with this creating an environment conducive to cooperation between the periphery and the centre, as well as cooperative behaviours within the IGR bodies.[78]

74 In Italy, the Constitutional court on ex post conflicts between state and autonomies.

75 A fundamental function has been performed by the President of the Republic, who is still today considered as a "guarantor for Åland's self-government *vis-à-vis* the state", as observed by Stephan, The Autonomy …, at 40.

76 As observed by Hepburn, Eve, "Forging autonomy in a unitary state: The Åland Islands in Finland", in 12 (4–5), *Comparative European Politics* (2014), 468–487, esp. 482 ff.

77 As seen, this situation applies almost only to South Tyrol and, to a limited extent, Aosta Valley and Friuli-Venezia Giulia.

78 On this, see Alessi and Palermo, Intergovernmental Relations…, especially section no. 3.4. on the importance of the identity factor in shaping the dynamics of IGR in Italy in times of emergency.

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