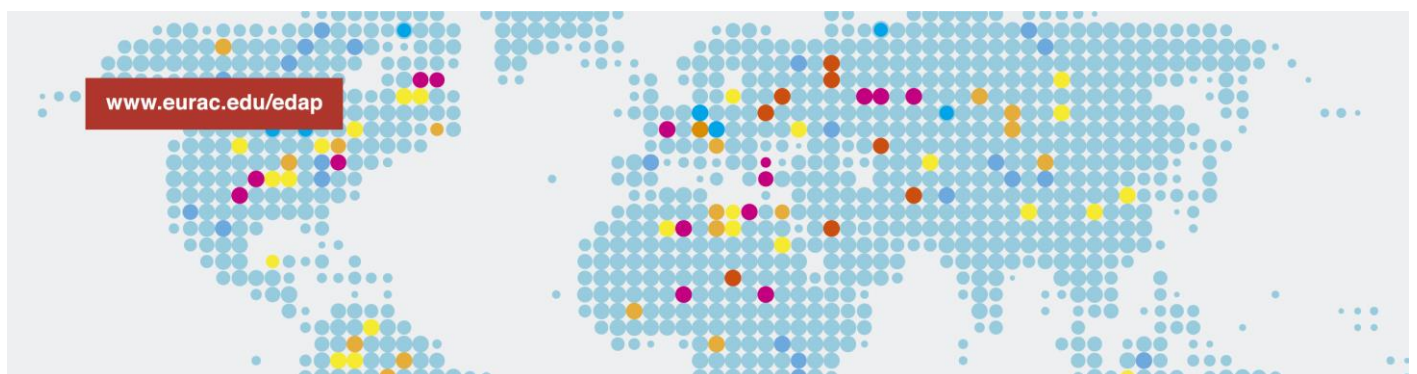


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Making Autonomies Matter: Sub-State Actor Accommodation in the Nordic Council and the Nordic Council of Ministers

**An Analysis of the Institutional Framework for
Accommodating the Faroe Islands, Greenland and
Åland within ‘Norden’**

Sarah Stephan



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Abstract

Sovereign powers are not absolute but exercised in varying areas and to varying degrees by sub-state, state and supra-state entities. The upward dispersion of power to international organisations carries implications for the sub-state level, while sub-state governance poses demands as to the conduct of governance at the international level. It is well recognised that sub-state entities, such as federal states and autonomies, may have the (restricted) capacity to enter into international relations. But what capacities do international organisations have to accommodate autonomies in their institutional frameworks? This paper shall present a case study of one such framework, namely Nordic co-operation and the accommodation of the Nordic autonomies, the Faroe Islands, Greenland and Åland, within its institutional framework. Within 'Norden', the position of autonomies has been scrutinised and adapted on several occasions, in the late 1960s, early 1980s and in the mid-2000s. The accommodation of the autonomies has been discussed in light of evident implications of statehood and international legal personality and the institutional arrangements eventually carved serve well to illustrate the challenges and opportunities international organisations face in the attempt to accommodate multi-level systems.

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Key words

Åland - Autonomy - International organisations - Multi-level governance - Nordic co-operation.

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Making Autonomies Matter: Sub-State Actor Accommodation in the Nordic Council and the Nordic Council of Ministers

Sarah Stephan

1. Introduction

Most, if not all, items on the agendas of today's law and policy-makers have international, national and regional dimensions. This necessitates governance across multiple levels, both within and beyond state borders. Sovereign powers are not absolute but exercised in varying areas and to varying degrees by sub-state, state and supra-state entities.¹ Of course, in today's globalised and interdependent world, almost all areas of life are indeed objects of international agreements and are regulated to varying extents by international bodies. Certainly, the upward dispersion of powers to international organisations carries implications for the sub-state level. As law-makers and regulatory bodies, international organisations impact the life of states but also of sub-state entities, such as federal units or autonomies. What is often overlooked, however, is that sub-state governance also poses demands as to the conduct of governance at the international level.

International law pays only little attention to sub-state arrangements. Sub-state entities are regularly presented as objects rather than subjects. It is mainly where a particular sub-state arrangement is entrenched also internationally, for instance as a solution to territorial or ethno-political conflict, that internal self-government experiences some form of international legal endorsement and is studied from the perspective of international law. This holds true for autonomies in particular.²

At the same time, it is well recognised that sub-state entities may have the (restricted) capacity to enter into international relations. As expressed aptly by the Government of the Faroe Islands “[i]t makes no sense to have internal policy competence in an area for which there is not also the equivalent foreign policy competence, especially as globalisation means that national law becomes increasingly subordinate to international law.”³ Here, the

¹ See Ruth Lapidoth, *Autonomy: flexible solutions to ethnic conflicts* (United States Institute of Peace Press, Washington D.C., 1997), 46 *et seq*; Markku Suksi, *Sub-State Governance through Territorial Autonomy. A Comparative Study in Constitutional Law of Powers, Procedures and Institutions* (Springer, Heidelberg, Berlin, 2011), 3.

² Such research has largely concentrated on autonomy, cf. e.g. Hurst Hannum, *Autonomy, Sovereignty and Self-Determination - The Accommodation of Conflicting Rights* (University of Pennsylvania Press, Philadelphia, 1996); Lapidoth, *Autonomy...*; Zelim A. Skurbaty, *Beyond the One-Dimensional State: An Emerging Right to Autonomy?* (Martinus Nijhoff Publishers, Leiden, 2005).

³ General comment to the Faroese Act No. 80 of 14 May 2005 on the Conclusion of Agreements under International Law by the Government of the Faroes, see webpage of the Prime Minister's Office.

internal distribution of powers within a state is decisive and defines the extent of a sub-state entity's external competences. It is from the perspective of constitutional and comparative law that such competences are studied in order to better understand and systematize the particularities of such domestic arrangements.⁴ However, international relations, whether exercised by sovereign states or sub-state entities, are always relational in essence. When sub-state entities, sovereign states and international organisations meet on the international plane, the international law dimensions of, for example, territorial autonomy, become evident. International law might still be preoccupied with, but is no longer limited to, an international community of states. International organisations, international corporations and, of course, individuals, have received increasing attention as the bearers of rights and duties under international law.⁵ Likewise, autonomies can be considered as subjects of specific international frameworks. In fact, instead of subjects we speak increasingly of actors and actor capacity.⁶ Contrary to common perception, autonomy is not an exception and we find numerous autonomy arrangements around the world.⁷ It is desirable that forms of shared sovereignty and territorial self-government are discussed, also from the perspective of international

Cabinet Office and Foreign Service of the Faroe Islands, <http://www.mfa.fo/Default.aspx?ID=11725>, last visited 6 October 2013.

- ⁴ As Malcolm Shaw has noted in his widely read textbook on international law with regard to federal states, “[t]he federal state will itself, of course, have personality, but the question of the personality and capability of the component units of the federation on the international plane can only really be determined in the light of the constitution of the state concerned and state practice. Shaw thus suggests that the above questions can be disentangled with reference to constitutional law, see Malcolm N Shaw, *International Law* (Cambridge University Press, Cambridge, 5th ed. 2003), 196. A more in-depth contribution on this issue has been made in the early 1970s by Ivan Bernier with a work on the international legal aspects of federalism, see Ivan Bernier, *International Legal Aspects of Federalism* (Longman Group Limited, London, 1973). Bernier’s more diverse account reveals the conceptual complexities behind the international legal problems traditionally associated with federal states, namely those of personality, responsibility and immunity. Certainly, these apply also to other forms of internal self-government such as territorial autonomy, possibility even more so considering that territorial autonomy arrangements often lack supremacy clauses that function to legitimize internally their representation by the state on the international level. Similar complexities might moreover be revealed within supranational systems such as the EU, which exposes increasing similarities to a federal state; Chris N. Okeke has in the mid-70s studied a number of entities with limited sovereignty and their international capacity, see Chris N. Okeke, *Controversial Subjects of Contemporary International Law* (Rotterdam University Press, Rotterdam, 1974).
- ⁵ See the International Court of Justice’s landmark advisory opinion in *Reparations for Injuries Suffered in the Service of the United Nations*, 1949 ICJ Reports 174.
- ⁶ Roland Portland, *Legal Personality in International Law* (Cambridge University Press, Cambridge, 2010), 208 *et seqq.*
- ⁷ The term autonomy is used differently by different scholars, for a broad overview of possible conceptualizations see Michael Tkacik, “The Characteristics of Forms of Autonomy”, 4 *International Journal on Minority and Group Rights* (2008), 369-401.

institutional law and under the auspices of international organisations in order to do justice to existing multi-level arrangements.⁸

How do international legal frameworks regulate the co-operation between dissimilar state entities with ‘actor capacity’? Considering the dispositive character and fragmented nature of international law, the answers will be highly contextual and depend on the international legal-institutional framework in question. The question is rather what capacities individual international organisations have to accommodate autonomies institutionally.

This article shall present a case study of one such framework, namely Nordic co-operation and the accommodation of the three Nordic autonomies within the Nordic Council (Council) and Nordic Council of Ministers (Council of Ministers). I depart from the presumption that legislative, executive and judicative functions are indeed dispersed across the ‘sub’, the state, and the ‘supra’ in today’s globalised and interdependent world and set out to explore the development of sub-state actor accommodation within the Nordic Council and Council of Ministers and its current modalities. How are the Nordic autonomies, the Åland Islands, Greenland and the Faroe Islands accommodated within the institutional framework for Nordic co-operation? Which rights and duties are accorded to the autonomies? This case study shall serve to illustrate the capacities of international organisations to pay regard to multiple levels of governance and to create institutional frameworks for the accommodation of autonomies. I map the stages in which the autonomies have successively gained representation in the Nordic Council and access to the Council of Ministers at the end of the 1960s, early 1980s and mid-2000s and discuss the scope and limits of the current system.⁹

The three Nordic autonomies are well comparable for the purposes of the present article. They do not only share some of the geographical particularities that shape island regions; they are also home to three

⁸ The fact that autonomies may attain membership of international organisations is often acknowledged; however, research thus far has not further dealt with the modalities of such accommodation, see e.g. Hannum, *Autonomy, Sovereignty and Self-Determination...*, 23; Suksi, *Sub-State Governance through Territorial Autonomy...*, 575 *et seqq.* Deeper examinations focus on the legal personality of minorities and indigenous people under international law, mainly in relation to human rights law, their capacity to bring claims before international tribunals, but less on their position within non-judicial fora, see e.g. Anna Meijknecht, *Towards International Personality: The Position of Minorities and Indigenous Peoples in International Law* (Intersentia, Oxford, 2001). Of course, in this contexts the individual versus collective dimension is a concern that does not apply to autonomies or sub-state actors in general. Only one study by Sia Spiliopoulou Åkermark has focused on the position of autonomies before international tribunals, see Sia Spiliopoulou Åkermark, “The Procedural Position of Autonomous Regions Before International Judicial and Quasi-Judicial Organs”, in Markku Suksi (ed.), *Autonomy: Applications and Implications* (Kluwer Law International, The Hague, 1998); 139-150.

⁹ Among the Nordic autonomies, I focus on the Åland Islands, not because they make an exceptional case, in fact, all three autonomies are accorded equal status within the institutions of Nordic co-operation. The spotlight is on an international body rather than on individual autonomy regimes: however, where reference to internal frameworks is necessary I chose to focus on the Åland Islands simply because they are the case study I am most familiar with.

linguistic minorities, which are distinct from the majority populations inhabiting the mainland states to which they belong, in terms of language, culture and history. Autonomy has been chosen as the appropriate form of minority governance in the case of all three Nordic autonomies and has acquired, through these living and rather well-functioning examples, a certain permanence and acceptance in the Nordic context as a valid instrument for accommodating autochthonous minorities. This is not to say there are no problems and that the Nordic countries do not struggle with accommodating other minorities in satisfying ways. Nonetheless, autonomy is very much a Nordic tradition.

The fact that the Åland Islands, Greenland and the Faroe Islands occupy institutionalised positions within Nordic co-operation is all the more interesting in view of the fact that Nordic integration is currently experiencing a revived interest, as manifested in Gunnar Wetterberg's proposal for the creation of a Nordic federation and Johan Strang's report proposing a less synchronised pace of integration within what he calls "Nordic communities".¹⁰ Autonomy and minority protection are thereby situated within a lively and highly topical Nordic integration debate.¹¹

2. The Status Quo: The Position of the Autonomies in the Institutional Framework for Nordic Co-operation

The Nordic Council and the Nordic Council of Ministers are the political bodies governing the co-operation between the Nordic countries (Denmark, Norway, Sweden, Finland, Iceland), and the three autonomous, or self-governing territories (the Åland Islands in Finland as well as Greenland and the Faroe Islands in Denmark).¹² Nordic co-operation is governed today by the Helsinki Treaty of 1962, but existed prior to that since 1952 by virtue of individual national acts and simple rules of procedure.¹³ The Helsinki Treaty is an international agreement between the five Nordic countries, which are the High Contracting Parties and thus the Member States of 'Norden', as the overall institution is called.

At first, the focus of Nordic co-operation lay on inter-parliamentary co-operation within the Nordic Council. Nonetheless, Nordic co-operation has never been entirely inter-parliamentary as government representatives

¹⁰ Gunnar Wetterberg, "The United Nordic Federation", *TemaNord* 2010:583, Nordic Council of Ministers, Copenhagen, 2010, also available on the webpage of Norden, at <http://www.norden.org/en/publications/publikationer/2010-583>, last accessed 21 October 2013; Johan Strang, "Nordiska Gemenskaper. En vision för samarbetet", *Nord* 2012:009, Nordic Council, Copenhagen, 2012, available (in Swedish only) on the webpage of Norden, at http://www.pohjola-norden.fi/filebank/3160-strang_se.pdf, last accessed 21 October 2013.

¹¹ Sia Spiliopoulou Åkermark (ed.), *The Åland Example and its Components - Relevance for International Conflict Resolution* (The Åland Islands Peace Institute, Mariehamn, 2011), 11.

¹² The terms autonomous and self-governing are used interchangeably throughout this article.

¹³ Frantz Wendt, *Cooperation in the Nordic Countries* (Almqvist & Wiksell International, Stockholm, 1981) 35; Finland considered itself in the position to join first in 1956, *ibid*, 36.

participated and continue to participate in the Council's meetings, without voting rights or decision-making capacity but with a right of initiative. The Nordic Council of Ministers, the inter-governmental decision-making body, was established first in 1971. Today, Norden encompasses both an inter-parliamentary and an inter-governmental tier. The fundamental difference between the Nordic Council and the Nordic Council of Ministers is the fact that the Nordic Council makes no binding decisions. It acts largely as an advisory body to the Council of Ministers and both tiers of governance are closely integrated and have extensive mutual reporting obligations.¹⁴ The Nordic Council may, for instance, propose changes to the priorities made in the financial framework set out by the Council of Ministers, which the latter is to comply with unless there are extreme circumstances not to do so.¹⁵ Thus, it could be argued that the Nordic Council is, in fact, exercising a certain degree of parliamentary control over the Council of Ministers. Decision-making in the Council of Ministers is unanimous but it has been noted that voting in the Nordic Council of Ministers takes place very rarely and that the Ministers and their staff in the committees work towards consensus.¹⁶

Nordic co-operation is broad and encompasses legal, cultural, social and economic co-operation, co-operation on transport and communications and co-operation in the area of environmental protection.¹⁷ Interestingly, the Helsinki Treaty explicitly mentions that participation by the High Contracting Parties in European and other international forms of co-operation provides excellent opportunities for collaboration for the benefit of Nordic citizens and companies, and that the Governments bear a particular responsibility in this regard to safeguard common interests and values.¹⁸ Nordic co-operation thus has a clearly spelled out external dimension or ambition. Co-operation with the Baltic Sea neighbours, within the Arctic area and with the European Union (EU) are prioritised.¹⁹ It has been noted that Sweden, Denmark and Finland who are not only members of Norden but also of the EU have supported the 'Nordic dimension' within the EU and are indeed perceived as a "special block of Europe".²⁰ In fact, the creation of the EU and its subsequent

¹⁴ *Ibid.* 81.

¹⁵ Cf. Art. 64 Treaty of Co-operation between Denmark, Finland, Iceland, Norway and Sweden of 1962 (Helsinki Treaty).

¹⁶ Fridtjov Clement, "Helsingforsavtalen og de selvstyrte områdene", *Bilaga 3*, Nordiska ministerrådet, De självstyrda områdena och det nordiska samarbetet. Generalsekreterarens kartläggning, ANP 2006:743, Copenhagen, 2006, 37.

¹⁷ Cf. Arts. 8-32 Helsinki Treaty.

¹⁸ Cf. Art. 33 Helsinki Treaty.

¹⁹ Webpage of Norden, The Nordic Council of Ministers, About International Co-operation, at <http://www.norden.org/en/nordic-council-of-ministers/international-co-operation>, last visited 25 September 2013.

²⁰ Søren Dosenrode, "Introduction: The Nordic Regions and the European Union", in Søren Dosenrode and Henrik Halkier (eds.), *The Nordic Regions and the European Unions* (Ashgate, Burlington, 2004), 1.

development have decisively shaped Nordic co-operation.²¹ Certainly, the Council and the Council of Minister fulfil an important liaising function in this respect also with regard to Norway and Iceland, who are not EU members, as well as for the autonomies, of which only Åland decided to become part of the EU (in 1995).²²

Some of the core issues in which Nordic co-operation is well acknowledged are the creation of a common Nordic labor market, the Nordic social welfare model and close co-operation in cultural affairs.²³ Since 1971, co-operation in cultural affairs between the five Nordic countries has been governed by a special agreement.²⁴ Core questions that have fuelled Åland's wish to be represented in the Nordic Council, and remain of great concern, have been, *inter alia*, to ensure broadcasting in the Swedish language for the Åland Islands and environmental issues around the Baltic Sea.²⁵ Broadcasting and the protection of the environment are only two of the areas falling under the legislative competences of the Åland Islands and coinciding with the areas of Nordic co-operation. In fact, all three Nordic autonomous areas hold broad and notably exclusive legislative competences.

Nordic co-operation can be expected to further expand in the coming years. One area of common Nordic concern that has been discussed repeatedly over the years is security and defence policy. Plans for a Nordic defence union had failed after World War II but in recent years, security and defence issues have regained impetus within Norden.²⁶

In sum, the Nordic co-operation endeavor can be described as a comprehensive regional integration enterprise, based on common cultural and linguistic traditions, but also including a considerable number of minority regimes and three comprehensive territorial arrangements. Its overall institutional framework will be introduced briefly in the following sections,

²¹ Wendt, *Cooperation in the Nordic Countries...*, 39 *et seqq.*

²² Ålands landskapsregering, Regeringsprogram för samarbete, resultat och framtidstro, Meddelande nr. 1/2011-2012, Mariehamn, 22 November 2011, 4.

²³ For an early analysis of the work of the Nordic Council see Erik Solem, *The Nordic Council and Scandinavian Integration* (Praeger Publishers, New York, 1977) and Wendt, *Cooperation in the Nordic Countries...*

²⁴ Agreement between Denmark, Finland, Iceland, Norway and Sweden concerning cultural co-operation. The agreement was signed on 15 March 1971 and entered into force 1 January 1972. Agreements amending the above-mentioned agreement signed on 13 June 1983, on 6 May 1985 and on 15 September 1989. The latest amendment came into force 1 June 1990, full text available online at <http://www.norden.org/en/about-nordic-co-operation/agreements/treaties-and-agreements/culture/agreement-concerning-cultural-co-operation>, last visited 14 September 2013.

²⁵ Håkan Branders, "Hur Åland blev medlem av Nordiska rådet", 94, in *Ålands landsting, Åland i utveckling, festskrift utgiven av Ålands Landsting med anledning av självstyrelsens 60-årsjubileum den 9 juni 1982*, (Ålands lagting, Mariehamn, 1982), 90-116; see Act on the Autonomy of Åland of 1991 (FFS 16.8.1991/1144) (Act on the Autonomy of Åland), Sections 18 no. 10 and no. 20.

²⁶ See webpage of Norden, The History of the Nordic Council, at <http://www.norden.org/en/nordic-council/the-nordic-council/the-history-of-the-nordic-council>, last visited 9 October 2013; Wendt, *Cooperation in the Nordic Countries...*, 25.

with special emphasis on the status quo of the autonomies within these frameworks.

2.1 The Nordic Council

The popularly elected assemblies of the Nordic countries and the Nordic autonomies co-operate in the Nordic Council.²⁷ The Council currently has 87 seats to which each parliament elects delegates from among its own members for a one-year term.²⁸ The Council members are thus simultaneously members of their national parliaments or the parliaments of the autonomous territories. The Council has the power to initiate proposals and may give advice on matters pertaining to co-operation between all or some of the High Contracting Parties as well as the Faroe Islands, Greenland and Åland.²⁹ It may also adopt recommendations and make other representations, as well as issue statements and submit questions to one or more of the governments or to the Council of Ministers.³⁰ The right of initiative in the Council is extended beyond the elected delegates to government representatives, who participate in the work of the Council without, however, holding a right to vote.³¹ The parliamentarians and government representatives for each country constitute the respective national delegations.³²

The organs of the Nordic Council are the Plenary Assembly, the Presidium and the standing committees.³³ The presidency rotates annually among the Nordic countries and all countries must be represented in the Presidium, which is responsible for dealing with overarching political and administrative matters, including the budgets of the Council and Council of Ministers as well as foreign affairs and defence and security policy.³⁴ It is further provided that the Presidium's composition shall reflect different political opinions.³⁵ The Secretariat of the Presidium is to assist the work of the Nordic Council.³⁶ Currently, the Council has five Standing Committees whose members are elected by the Plenary Assembly. These are the Culture, Education and Training Committee, the Welfare Committee, the Citizens' and Consumers'

²⁷ Cf. Art. 44 Helsinki Treaty.

²⁸ Cf. Art. 47(1) & (4) Helsinki Treaty.

²⁹ Cf. Art 44 Helsinki Treaty.

³⁰ Cf. Arts. 45 & 57 Helsinki Treaty, § 59 Rules of Procedure of the Nordic Council of 1972 (Rules of Procedure of the Nordic Council). Following a decision of the Nordic Council of 2007, Art. 57 is today interpreted to apply also to the governments of the autonomous territories who may be addressed and respond to questions submitted by the Council, see Nordiska rådet, Yttrande om Nordiska ministerrådets initiative som kan förstärka de självstyrda områdenas deltagande i officiellt nordiskt samarbete, document 23, Nordiska rådets plenarförsamling 1 november 2007.

³¹ Cf. Art, 47(5) & Art. 55 Helsinki Treaty.

³² Cf. *ibid.* Art. 48(1).

³³ Cf. *ibid.* Art 50.

³⁴ Cf. *ibid.* Art. 52 (1) & (5) and §26 Rules of Procedure of the Nordic Council.

³⁵ Cf. *ibid.* Art. 52 (2).

³⁶ Cf. *ibid.* Art. 54.

Rights Committee, the Environment and Natural Resources Committee and the Business and Industry Committee.³⁷ In addition, the Control Committee exercises parliamentary oversight over activities funded from the Nordic budgets and over the Election Committee for organising any elections held in the Plenary Assembly.³⁸ Elected members of the Nordic Council are entitled to form party groups with a minimum of four members from a minimum of two countries.³⁹ Currently, five party groups are represented while twelve delegates are not affiliated with either of these party groups.⁴⁰

The Autonomies in the Nordic Council

At present, the Faroe Islands, Greenland and Åland each have two seats in the Nordic Council.⁴¹ These seats are filled by delegates elected from the members of the regional parliaments.⁴² The autonomies, just as the Member States, may delegate a desired number of representatives of their governments to participate in the work of the Council.⁴³ The delegates and government representatives for the self-governing territories constitute their own Faroese, Greenlandic and Ålandic delegations.⁴⁴ However, these delegations are in turn part of the national delegations.⁴⁵ This could be described as a system of double delegations, which, it could be argued, pays regard to the actual status of autonomies, which form their own systems of government while being part of a larger sovereign entity. Delegates elected by the parliaments of the autonomous territories may hold certain offices only as members of national delegations.⁴⁶ This concerns primarily the Presidium. Delegates from the autonomies are not excluded from being elected as president or vice-president or as members of the Presidium;

³⁷ Cf. *ibid.* Art. 53 and §§5, 32 Rules of Procedure of the Nordic Council.

³⁸ Cf. §§ 6 & 7 Rules of Procedure of the Nordic Council.

³⁹ Cf. *ibid.* §9; Party groups are entitled to a basic allowance which is the same per group plus an allowance per member, the latter of which also non-affiliated members obtain, cf. §§ 77 and 78 Rule of Procedure of the Nordic Council.

⁴⁰ See webpage of Norden, Nordiska rådets partigrupper, at <http://www.norden.org/sv/om-samarbetet/organisationer-og-institutioner/nordiska-raadets-partigrupper>, last visited 24 September 2013.

⁴¹ Cf. Art. 47(2) Helsinki Treaty.

⁴² *Ibid.* Arts. 44 & 47(3).

⁴³ *Ibid.* Art. 47(5).

⁴⁴ *Ibid.* Art. 48(2).

⁴⁵ *Ibid.* Art 48(1).

⁴⁶ This is clarified in Art. 58(2) of the Helsinki Treaty, which specifies who is to bear the costs of participation in the Council, that the term delegation refers to national delegations. The Rules of Procedure of the Nordic Council seem not to distinguish clearly between national delegation and delegation and it has to be determined within the overall legal framework whether an individual provision refers to a national delegation or includes the delegations of the autonomous territories. According to § 75(2) of the Rules of Procedure of the Nordic Council each delegation is responsible for ensuring that the decisions of the Council of Ministers are implemented. It is only logical to interpret this rule as applying to the autonomies where their governments have explicitly acceded to a decision of the Council of Ministers.

however, in these cases they are technically representing the national delegations.⁴⁷ In Presidium meetings where matters affecting the Faroe Islands, Greenland or Åland are discussed, one of their respective delegates has the right to be present, speak and submit proposals.⁴⁸

The members of the Council's committees are appointed by the Plenary.⁴⁹ Because there are only two elected representatives from each autonomous territory, many committees will lack representatives from the autonomies. In such committees, representatives from the Faroe Islands, Greenland or Åland may nonetheless take part in the meetings and, if so agreed with the Danish or Finnish committee members, replace a Danish or Finnish representative in the decision-making.⁵⁰ The Control Committee plays an important role as it can submit its opinion to the Presidium on the interpretation of the Helsinki Treaty, other agreements on Nordic co-operation, the Rules of Procedure of the Nordic Council and other internal regulations.⁵¹ In meetings where matters affecting the Faroe Islands, Greenland and Åland are discussed, elected delegates representing the autonomies have the right to present, speak and submit proposals.⁵² It is established practice that the autonomies themselves determine whether a matter affects them.⁵³

2.2 The Nordic Council of Ministers

The Nordic Council of Ministers is the institutionalised forum for the co-operation of the governments of the Nordic countries, in which also the governments of the Nordic autonomies participate.⁵⁴ Responsible for the overall coordination of matters of Nordic co-operation are the prime ministers of the Nordic countries. Each prime minister is assisted by his or her respective minister for co-operation and an under-secretary of state or a government official, who is a member of the national standing committees on Nordic co-operation.⁵⁵ The Council of Prime Ministers is the prime face of the Council of Ministers, but, in fact, it would be more accurate to speak about 'Councils of Ministers' in the plural as it encompasses altogether eleven Councils in which the ministers responsible for each area of co-operation are represented.⁵⁶ Each sector-specific Council of Ministers is assisted by a

⁴⁷ Nordiska ministerrådet, *De självstyrda områdena och det nordiska samarbetet. Generalsekreterarens kartläggning*, ANP 2006:743, Copenhagen, 2006, 18.

⁴⁸ Cf. §23 Rules of Procedure of the Nordic Council.

⁴⁹ Cf. *ibid.* §32.

⁵⁰ Cf. *ibid.* §33(1) and (2).

⁵¹ Cf. *ibid.* §43.

⁵² Cf. *ibid.* §41(2).

⁵³ Nordiska ministerrådet, *De självstyrda områdena och det nordiska samarbetet. Generalsekreterarens kartläggning*, ANP 2006:743, Copenhagen, 2006, 18.

⁵⁴ Cf. Art. 60(1) and (2), Helsinki Treaty.

⁵⁵ *Ibid.* 61(2) & (3).

⁵⁶ See webpage of Norden, Nordic Council of Ministers, at <http://www.norden.org/en/nordic-council-of-ministers>, last visited 6 October 2013.

committee of senior officials and by the Secretariat of the Council of Ministers, which is led by the General Secretary.⁵⁷

The Presidency of the Council of Ministers rotates annually among the five Nordic countries according to a fixed scheme.⁵⁸ It is the Presidency that holds the responsibility for initiating actions and can thus shape the Council of Ministers' programme for each term.⁵⁹

Each country has one vote in the Nordic Council.⁶⁰ Decisions are made unanimously in the Council of Ministers and are binding for each country.⁶¹ If parliamentary approval is required, decisions are binding for all members when such approval has been obtained.⁶²

The Autonomies in the Nordic Council of Ministers

While the Nordic autonomies are 'represented' in the Nordic Council, where their delegates 'co-operate' with their peers representing the national parliaments, the legal framework of the Nordic Council of Ministers employs a clear linguistic distinction and uses the term 'participation' with respect to the autonomies. In the context of the Nordic Council of Ministers 'co-operation' is reserved for the High Contracting Parties, *i.e.* the Member States.

Decisions of the Council of Ministers made under the Helsinki Treaty are binding on the Faroe Islands, Greenland and the Åland Islands only insofar as they accede to the decision in accordance with their statutes of self-government.⁶³ The autonomies, however, participate in the decision-making process, with the explicit right to participate in meetings of the Standing Committee of Nordic Co-operation and of the Committees of Senior Officials.⁶⁴

2.3 Nordic institutions, co-operative bodies and programmes

The Council of Ministers's decisions are not only implemented directly by the Member States, and where applicable by the governments of the autonomies, but also by a range of Nordic institutions and other bodies that are directly subordinate to the Nordic Council. There are currently around 45 such institutions and co-operative bodies, and more than 1500 distinct

⁵⁷ Cf. *ibid.* 61(4) and §13 Rules of Procedure of the Nordic Council of Ministers.

⁵⁸ Cf. Art. 61(3) Helsinki Treaty and §4 Rules of Procedure of the Nordic Council of Ministers; The presidencies in the Council and Council of Minister's do not coincide to fall upon the same country simultaneously.

⁵⁹ Cf. Art. 61(3) Helsinki Treaty.

⁶⁰ Cf. Art. 62(2) Helsinki Treaty.

⁶¹ *Ibid.* Arts. 62(3) and 63(1).

⁶² *Ibid.* Art. 63(1).

⁶³ Cf. *ibid.* Art. 61(2).

⁶⁴ Cf. §11(1) Rules of Procedure of the Nordic Council of Ministers.

programmes.⁶⁵ Among them are the Nordic House on the Faroe Islands and the two Nordic Institutes on Greenland and Åland, institutions involved mainly in cultural activities. The Nordic institutions, co-operative bodies and programmes deal with a wide range of issues, from research to culture to gender, the protection of the environment and international co-operation, to name but a few. In 1999, the Council of Ministers adopted a general statute for the Nordic Institutions, which also regulates the representation of the autonomies in the boards of these institutions. As a rule, representatives for the autonomies have the right to speak and submit proposals, but participate in the decision-making only when an institution is physically located on the territory of a respective autonomy.⁶⁶ Exceptions, including full membership, can be granted by the Council of Ministers for Co-operation following a decision by the respective Council of Ministers responsible for the specific issue area that the institution in questions deals with.⁶⁷ With a few exceptions, co-operation on equal terms in the Nordic programmes is thus open to the autonomies upon application.⁶⁸ The autonomies are represented, inter alia, on the board of the Nordic Culture Fund and hold observer status in a number of institutions.⁶⁹

This brief description of the status quo only summarises the results of the political processes that have led to the adaptation of the Helsinki Treaty and enabled the successive institutional accommodation of the autonomies in Norden. Two such processes took place under the auspices of the Nordic Council, from 1969 to 1970 in the Kling Committee and from 1980 to 1983 in the Petri-Committee. In 2005, the issue of autonomy accommodation was taken up within the Council of Ministers. These processes will be outlined in the following sections as they serve well to highlight the challenges that international organisations face in finding solutions for autonomy accommodation as well as the possibilities that such international fora present for co-operation, not only between states but also between entities with limited statehood.

⁶⁵ Nordiska Ministerrådet, Betänkande från arbetsgruppen med uppgift att föreslå initiativ som kan förstärka de självstyrda områdenas deltagande i nordiskt samarbete, Åland, 5 September 2007, para 3.1. See also webpage of Norden, Nordic Council of Ministers, Institutions and Other Co-operation Organisations, at <http://www.norden.org/en/nordic-council-of-ministers/institutions-and-other-co-operation-organisations>, last visited 4 October 2013.

⁶⁶ Nordiska Ministerrådet, Betänkande från arbetsgruppen med uppgift att föreslå initiativ som kan förstärka de självstyrda områdenas deltagande i nordiskt samarbete, Åland, 5 September 2007, para 3.4.1.

⁶⁷ *Ibid.* para. 3.4.2.

⁶⁸ *Ibid.* para. 3.5 and appendices.

⁶⁹ *Ibid.* para. 4.4 and appendices.

3. The Nordic Autonomies Enter the Stage: Considerations of the “Kling Committee”

Since 1962, the Helsinki Treaty has been amended multiple times, in 1971, 1983, 1985, 1991, 1993 and 1995. Of these amendments, those undertaken in 1971 and 1983 respectively are most decisive for the current analysis. In 1971, Nordic co-operation opened up to the Faroes and Åland. Greenland became a self-governing territory in 1979 and was effectively admitted to Nordic co-operation in 1983, when the status of the other two autonomies was also elevated.

The Faroe Islands sought representation in the Nordic Council early on and at first achieved a national solution. From the late 1950s onwards, one of the two delegates to the Danish Parliament elected from the Faroe Islands was nominated as one of Denmark’s delegates or alternates to the Nordic Council.⁷⁰ Håkan Branders, a former Finnish diplomat and former Secretary of the Nordic Council’s Cultural Committee, has tracked the first traces of the discussion of Åland’s potential representation on the Nordic Council to a motion brought to the Government of Åland by the Åland Parliament in 1957, asking for an investigation into the possibilities to gain such representation. The Åland Parliament reasoned at that point of time that a natural solution would be for Åland to be included in the delegation elected by the Parliament of Finland.⁷¹ This position evolved considerably over the years, and by the time it was formally discussed within the Nordic Council, Åland sought more or less fully-fledged membership, including the right to speak and voting rights in matters falling within Åland’s legislative competences.⁷²

The Nordic Council did not attend to the Nordic autonomies as such until 1967, when an original motion by the Government of the Faroe Islands reached the Council in the form of a proposal by the Government of Denmark. The Danish proposal speaks about the “direct participation” of the Parliament and the Government of the Faroes in the work of the Nordic Council. It proposed concretely that two delegates nominated directly by the Parliament of the Faroe Islands should be represented in the Council as well as one representative for the Faroese Government. Denmark had motivated its proposal with reference to the fact that the Faroes actually exercise

⁷⁰ Branders, *Hur Åland...*, 92.

⁷¹ This in turn seems also to have motivated a member of the Swedish parliament to raise the question to the Minister for Foreign Affairs, who replied by referring to the nature of the Nordic Council to be an organ for the co-operation between parliaments and governments, and concluding that for that reason Åland cannot constitute its own delegation and nor have seats or voting rights, see Branders, *Hur Åland...*, 93.

⁷² Branders also maps the rather diffuse position then taken by the Finnish authorities, including a positive stance taken by the President and the generally passive although not obstructive position maintained over the course of time by the Finnish Government, *ibid*, 101 *et seqq.*

legislative authority over many of the issue areas dealt with in the Nordic Council.⁷³

In subsequent years, the issue was elaborated in the Nordic Council. Under the auspices of the Committee for Legal Affairs, a committee composed of the ministers of justice of all five Nordic countries and the members of the Presidium, under the chairmanship of Sweden's Minister of Justice Herman Kling, was seized with investigating the possibilities for representation of both the Faroe Islands and Åland. It was upon a written request of the Parliament of Åland to the Finnish Government, which underlined the inherent similarities between the autonomy regimes of the Faroes and Åland, that Åland was eventually included in the Council's considerations.⁷⁴ In its request, the Parliament of Åland speaks about the desired 'accession' as well as 'membership' of the Nordic Council.⁷⁵ A point of departure for the Kling Committee was the generally agreed position that the self-governing territories shall gain 'satisfactory representation' in the Nordic Council.⁷⁶

The issue revealed three underlying dimensions, which occupied not only the Kling Committee in the late 1960s but also later expert groups. These dimensions or questions pertain (1) to the status of the 'applicants' and the quality of the autonomy regimes, (2) to implications of international law, and (3) to the modalities of possible accommodation. These dimensions are easily discernible in a number of documents and memoranda that informed the Committee.⁷⁷

⁷³ Regeringsförslag om representation för Färöarna i Nordiska rådet (Väckt av Danmarks regering), B 4/j, Nordiska rådet, 16:e sessionen, 1968, 1374.

⁷⁴ On the preceding internal debate on Åland, see Branders, Hur Åland ..., 96 *et seqq*; Skrivelse till Nordiska rådet från Nordiska kommittén för utredning av formerna för de självstyrda områdenas representation i Nordiska rådet, B 4/j, Bilaga 3, Nordiska rådet, 16:e sessionen, 1968, 1413.

⁷⁵ Skrivelse från Åland landsting till Finland regering rörande ansökan om medlemskap i Nordiska rådet för landskapet Åland, Bilaga 2, Bihang 1, Nordiska rådet, 16:e sessionen, 1968, 1376.

⁷⁶ Skrivelse till Nordiska rådet från Nordiska kommittén för utredning av formerna för de självstyrda områdenas representation i Nordiska rådet, B 4/j, Bilaga 3, Nordiska rådet, 16:e sessionen, 1968, 1413.

⁷⁷ Cf. the following appendices to Nordiska rådet, 16:e sessionen, B4/j, 1968: Skrivelse från Åland landsting till Finland regering rörande ansökan om medlemskap i Nordiska rådet för landskapet Åland, Bilaga 2, B 4/j, Bihang 1, 1968, 1375 f; PM angående landskapet Ålands självstyrelse (Utarbetat av lagstiftningsråd Henry Ådahl), B 4/j, Bilaga 2, Bihang 3; Notat om Færøernes hjemmestyre (Udarbejdet af fuldmægtig Ole Perch Nielsen), B 4/j, Bilaga 2, Bihang 4; PM om tänkbara former för de självstyrda områdenas representation i Nordiska rådet (sammanställd av huvudsekreteraren i Nordiska kommittén för utredning av formerna för de självstyrda områdenas representation i Nordiska rådet), B 4/j, Bilaga 2, Bihang 2, 1394 *et seqq*; Oversigt over de sagområder, der pr. 1 januar 1967 overtaget af Færøernes hjemmestyre som særansligger (Udarbejdet av Statsministeriet), B 4/j, Bilaga 2, Bihang 5; PM om tänkbara former för de självstyrda områdenas representation i Nordiska rådet (sammanställd av huvudsekreteraren i Nordiska kommittén för utredning v formerna för de självstyrda områdenas representation i Nordiska rådet), B 4/j, Bilaga 2, Bihang 2, 1404 *et seqq*; PM rörande material av betydelse för regeringsförslaget (Uppsatt av Nordiska rådets sekretariat), B 4/j, Bilaga 2, 1968, 1375; The Council's Secretariat later also composed a memorandum comparing both autonomy regimes, this is mentioned in Skrivelse till Nordiska rådet från Nordiska kommittén för utredning av formerna för de

The first dimension, the nature and legal status of the autonomies as such, does not feature very much in the ensuing discussion and it seems that it was never questioned that the Nordic autonomies qualified for some sort of accommodation in the Nordic Council. The Committee familiarised itself with the legal frameworks and functioning of the autonomy regimes and decided at the outset that representation for the Faroes and Åland should follow the same principles due to the great similarities between both regimes.⁷⁸ It was apparent from the original Danish proposal, as well as the documents submitted by the Government of Finland, that there were no internal conflicts as to the respective delimitations of competences and that neither of the Member States was opposed to the idea of accommodation as such. A further evaluation of the autonomy regimes hardly fell within the Committee's competences.

The status of the 'applicants' nonetheless was a crucial factor in respect of the second area of concern, the international law dimension, which arose intrinsically from the fact that an international organisation based on a treaty between states was now to accommodate two autonomies in one way or another. So, while the specific autonomy regimes were not discussed in great detail, the 'collision' of an international framework with two autonomy regimes proved to be the core concern. The international law implications were a decisive factor in determining which institutional modalities for accommodation were feasible.

A four-page memorandum composed by the Kling Committee on the implications of international law arising in connection with Faroes' and Åland's representation on the Nordic Council is of particular interest for the present analysis.⁷⁹ The Kling Committee remained rather superficial in its analysis. It simply acknowledged (a) that it was most intensely discussed after World War II whether national minorities were subjects of international law and that this was ultimately denied; (b) It further noted that Chapter XI of the Charter of the United Nations sets out a declaration regarding non-self-governing territories, which has been applied exclusively to colonised territories; the authors of the memorandum did not fail to note, however, that it had been discussed whether it might be applicable to territories inhabited by national minorities; and (c) the Committee noted that the participation of 'non-sovereign territories' in international intergovernmental organisations is unusual and that in such rare cases association is the dominant form of co-operation.⁸⁰ The Committee did not find evidence for the participation of non-sovereign territories in inter-parliamentary organs and arrived at the conclusion that neither in the statutes of the Council of Europe, the founding treaties of the European Economic Community or the

självstyrda områdenas representation i Nordiska rådet rörande kommittén sammansättning, möten m.m., B 4/j, Bilaga 7, Nordiska rådet, 18:e sessionen, 1970, 1626.

⁷⁸ Kommitténs förslag, B 4/j, Bilaga 8, Nordiska rådet, 18:e sessionen, 1970, 1629.

⁷⁹ Några folkrättsliga frågor i samband med Färöarnas och Ålands representation i Nordiska rådet, B 4/j, Bilaga 6, Nordiska rådet, 18:e sessionen, 1970, 1622 *et seqq.*

⁸⁰ *Ibid.* 1622.

statutes of the Inter-Parliamentary Union can such arrangements be found.⁸¹ It included in the memorandum a non-exclusive list of past and present arrangements for the accommodation of sub-state entities. Here, the Committee acknowledged arrangements within the Commission for Technical Co-operation in Africa South of the Sahara (CCTA), the Food and Agricultural Organisation of the United Nations (FAO), the International Telegraph Union (ITU), the Universal Postal Union (UPU), the World Health Organisation (WHO) and the World Meteorological Organisation (WMO).⁸² The memorandum does not offer further analysis or conclusions. However, it includes examples for different modalities of accommodation. With the exception of the CCTA, all organisations listed granted only associated membership with either no voting rights (FAO, ITU), limited voting rights (WMO) or conditional voting rights (UPU) to “territori[es] not fully responsible for the conduct of [their] international relations”.⁸³ The Committee underlined that the international organisations listed all fulfil specialised functions.

The third dimension, the concrete options and modalities for accommodation, then occupied the Kling Committee in great detail. Four possible modes of representation were discussed, including: (1) “equal status” with Denmark, Finland, Iceland, Norway and Sweden; (2) a guarantee for members of the Faroese and Ålandic parliaments to be part of the Danish and Finnish delegations respectively, with the possibility to correspondingly link Faroese and Ålandic government representatives to the respective delegations; (3) a guarantee for the respective Faroese and Ålandic delegates to Denmark’s and Finland’s parliaments to be part of the Danish and Finnish delegations by virtue of national legislation; and (4) representation with the right to speak but no voting rights, *i.e.* some form of qualified observer status.⁸⁴

The major crux in the subsequent discussion was whether the autonomies could accede to the Helsinki Treaty and become independent members of the Nordic Council. The Kling Committee framed this as a question of equality between the sovereign Member States and the autonomous territories. This alternative was considered as highly problematic due to the very nature of autonomy, *i.e.* the limited capacity to enter into international relations. Although both the Faroes and Åland hold very broad and notably exclusive law-making powers, certain questions remain within the exclusive domain of the state, including foreign affairs, in whole or in part. Unlike some of the organisations listed by the Committee in the memorandum mentioned above,

⁸¹ *Ibid.* 1622 *et seq.*

⁸² *Ibid.* 1623 *et seq.*

⁸³ This is a formulation cited to recur in the statutes of the Food and Agricultural Organisations, the International Telegraph Union, and the World Health Organisation, see Några folkrättsliga frågor i samband med Färöarnas och Ålands representation i Nordiska rådet, B 4/j, Bilaga 6, Nordiska rådet, 18:e sessionen, 1970, 1622-1624.

⁸⁴ PM om tänkbara former för de självstyrda områdenas representation i Nordiska rådet (sammanställd av huvudsekreteraren i Nordiska kommittén för utredning av formerna för de självstyrda områdenas representation i Nordiska rådet), B 4/j, Bilaga 2, Bihang 2, Nordiska rådet, 16:e sessionen, 1968, 1377 *et seqq.*

the Nordic Council is not an expert organ but an organisation that covers a broad range of issues, some of those falling under the exclusive competences of the Member States and not the autonomies, notwithstanding their broad legislative powers. Proposing changes in the national legal frameworks or the legal frameworks for the autonomies was far beyond the Committee's mandate. The Kling Committee turned towards the question whether it would be possible to admit the autonomies to the Nordic Council but granting voting rights selectively and corresponding to the national delimitations of competences between Denmark and the Faroes and Finland and Åland. Such a selective approach, however, was considered to necessitate a case-by-case assessments of whether an issue fell within the domain of the autonomies or of the respective state. An additionally aggravating element of this problem was that the delimitation of powers between the Faroes and Denmark on the one hand, and Åland and Finland on the other hand, does not fully coincide. The Nordic Council, in any case, has no mandate to interpret national legislation and is not prepared to resolve questions pertaining to the internal delimitation of competences.⁸⁵ Thus, the autonomies were not considered to fit in neatly with the states that had concluded the Helsinki Treaty. The international law implications weighed too heavily and ultimately posed too many technical challenges to be resolved within the framework of the Helsinki Treaty at the end of the 1960s.⁸⁶ Interestingly, in its discussion of alternative (1), the Committee nonetheless drafted new rules concerning the numerical representation in the Council, which served as the basis for the solution ultimately found.⁸⁷

Different modalities for observer status according to alternative (4) were drawn up, including the right to initiative and the possibility of indicating votes without these becoming part of the official count. Finally, observer status was rejected, as

*“not to give the self-governing territories the measure of insight and influence in the work of the Council that would correspond to the territories' interest in being able to take part in shaping the inter-Nordic regulation of such legal, economic and other questions which are encompassed by the territories' autonomy legislation”.*⁸⁸

This left the Kling Committee with two options, which were both based on representation of the autonomies within the existing structures and as part of the respective national delegations. The final question concerned the nomination of delegates from the Faroes and Åland. Alternative (3) was to

⁸⁵ *Ibid.* 1377 *et seqq.*

⁸⁶ Kommitténs förslag, B 4/j, Bilaga 8, Nordiska rådet, 18:e sessionen, 1970, 1629 *et seqq.*

⁸⁷ PM om tänkbara former för de självstyrda områdenas representation i Nordiska rådet (sammanställd av huvudsekreteraren i Nordiska kommittén för utredning av formerna för de självstyrda områdenas representation i Nordiska rådet), B 4/j, Bilaga 2, Bihang 2, Nordiska rådet, 16:e sessionen, 1968, 1378 *et seqq.*

⁸⁸ Kommitténs förslag, B 4/j, Bilaga 8, Nordiska rådet, 18:e sessionen, 1970, 1629, author's translation.

rely on the Faroese and Ålandic members of the national parliaments, which both form electoral constituencies for the purposes of national elections, so that both territories are also represented in the national parliaments. While originally it seems to have been envisaged that such a solution would demand guarantees by virtue of national legislation, the Kling Committee also considered the possibility to amend the Council's rules of procedure with the requirement, not only to ensure that the national delegations would represent the complete political spectrum presented in the national parliaments but to include also members of parliament from the Faroes and Åland.⁸⁹ Ultimately, this alternative was considered as too limited. The autonomies as such would not have gained access to the Nordic Council, as still no members of their regional parliaments were to be represented. Representation would, at best, have been indirect.⁹⁰

Thus, alternative (2) was eventually preferred. It was argued that only through electing their representatives directly from among their midst could the parliaments of the self-governing territories gain genuine access and become engaged in questions of Nordic co-operation. Genuine engagement was, after all, desired not only by the autonomies but also by all High Contracting Parties. It was decided that the Faroe Islands, then with 38,000 inhabitants, were to elect two delegates while the Åland Islands, then with 22,000 inhabitants, were to elect one delegate.⁹¹ Notably, these delegates would then be part of the respective national delegations. Nonetheless, this raised questions of proportionality and thus required the adaptation of the overall number of seats. In order to accommodate three additional representatives without having to reduce the seats reserved for delegates representing the Danish and the Finnish parliaments, the overall number of seats was increased keeping a proportional ratio of delegates per country determined by the size of their populations. The number of seats in the Nordic Council was raised from 73 to 78, which meant additional seats not only for the Danish and Finnish delegations but also for Iceland, Norway and Sweden. In addition, the governments of the autonomous territories were to be endowed with the possibility to nominate representatives to the Council.⁹² As governments did not hold voting rights, no proportionality implications were raised by the fact that governments of the autonomies were now admitted to participate in the work of the Council.⁹³ The Kling Committee submitted a complete draft of the revisions necessary in the Helsinki Treaty. Corresponding changes were also implemented in the Council's rules of procedure to ensure that the autonomies would be included in the practical

⁸⁹ PM om tänkbare former för de självstyrda områdenas representation i Nordiska rådet (sammanställd av huvudsekreteraren i Nordiska kommittén för utredning av formerna för de självstyrda områdenas representation i Nordiska rådet), B 4/j, Bilaga 2, Bihang 2, Nordiska rådet, 16:e sessionen, 1968, 1378.

⁹⁰ *Ibid.* 1379.

⁹¹ Kommitténs förslag, B 4/j, Bilaga 8, Nordiska rådet, 18:e sessionen, 1970, 1630.

⁹² *Ibid.* 1630.

⁹³ *Ibid.* 1631.

aspects of co-operation and provided with all communication in the same timely manner as the Nordic countries.⁹⁴

Although the autonomies were not admitted to full membership, it can be argued that the 1969 solution made way for direct participation in Nordic co-operation and thus responded to Denmark's proposal.⁹⁵ The representatives for the Faroes and Åland participated in the Council's sessions for the first time in 1970.⁹⁶ Originally, it was envisaged that the Kling Committee was to complete its work already in 1968 but extraordinary elections in Denmark delayed the process.⁹⁷ However, in retrospect it seems fair to say that the autonomies were accommodated rather swiftly, thanks to the general consensus among the Nordic countries and the deliberate solution carved by the Kling Committee. The level of accommodation that was effectively instituted in 1970 opened up Nordic co-operation, until then reserved to fully sovereign states, to two autonomous regions with broad and exclusive legislative competences without formally extending membership. Indeed, membership was not considered a prerequisite for representation and full voting rights in the Council. Writing in 1982, Branders describes the Åland Islands early experiences of Nordic co-operation as outright positive and indeed the Åland Islands have been actively engaged in Nordic co-operation ever since.⁹⁸

Looking merely at the Nordic Council, the question of accession (full membership) *versus* representation seems to have very limited practical relevance. It is symbolic nonetheless. Indeed, originally the delegates from the Faroe Islands and Åland were formally Danish and Finnish representatives respectively and their regional identities were not acknowledged in the form of own delegations. However, the Kling Committee deliberately opted to link the regional parliaments to the Nordic Council and the delegates from the Faroes and Åland were endowed with unqualified voting rights, irrespective of their 'home' parliaments' legislative competences and thus as individuals held equal standing. When the Kling Committee was mandated with finding a

⁹⁴ Betänkande av Nordiska rådets juridiska utskott över regeringsförslaget, B 4/j, Bilaga 10, Nordiska rådet, 18:e sessionen, 1970, 1635 *et seqq.*

⁹⁵ PM om tänkbara former för de självstyrda områdenas representation i Nordiska rådet (sammanställd av huvudsekreteraren i Nordiska kommittén för utredning av formerna för de självstyrda områdenas representation i Nordiska rådet), B 4/j, Bilaga 2, Bihang 2, Nordiska rådet, 16:e sessionen, 1968, 1379.

⁹⁶ Betänkande av Nordiska rådets juridiska utskott över regeringsförslaget, B 4/j, Bilaga 10, Nordiska rådet, 18:e sessionen, 1970, 1632 *et seqq.*; See also Wendt, *Cooperation in the Nordic Countries*, 44.

⁹⁷ Skrivelse till Nordiska rådet från Nordiska kommittén för utredning av formerna för de självstyrda områdenas representation i Nordiska rådet, B 4/j, Bilaga 3, Nordiska rådet, 16:e sessionen, 1968, 1414.

⁹⁸ Branders, *Hur Åland blev medlem av Nordiska rådet*, 113; Nordiska ministerrådet, *De självstyrda områdena och det nordiska samarbetet. Generalsekreterarens kartläggning*, ANP 2006:743, Copenhagen, 2006, 23 *et seq.* Today, the delegation of the Åland Islands reports annually to the Åland Parliament about its activities in the Nordic Council and the items of business it has deemed particularly relevant for the Åland Islands. For the latest report, see *Ålands lagting, Ålands delegations i Nordiska rådet berättelse för tiden 1.1.2011-31.12.2011, Berättelse NRB 1/2011-2012.*

way to accommodate the autonomies, the Nordic Council essentially exercised only advisory functions. Neither then nor today does the Nordic Council take binding decisions, but it adopts recommendations, makes representations, issues statements or asks questions. Of course, the question of accession and that of representation with voting rights, carries very different implications with regard to an inter-governmental body with binding decision-making powers, where Member States intend to exercise sovereignty. It is somewhat odd that the questions of accommodation in the Nordic Council of Ministers was not addressed by the Kling Committee when the creation of the intergovernmental body was taking place in parallel at the end of the 1960s. Neither the Council nor Denmark nor any of the other Member States seems to have seen a need to anticipate the questions, which must have been an obvious issue to arise in the near future.

4. From Direct Representation to ‘Own’ Delegations: Considerations of the “Petri Committee”

The Nordic Council of Ministers was established in 1971 and once again the Nordic autonomies were left outside a central organ of Nordic co-operation. Based on a decision by the Council of Ministers in 1976, the representatives for the Faroes and Åland were admitted to participate in the meetings of the Council of Ministers and the committees of senior officials. Participation, however, was not formalised.⁹⁹

In 1980, Denmark once again submitted a proposal to the Nordic Council. The Danish proposal did not only address the question of the Faroe Islands’ ‘independent’ representation, as opposed to ‘direct’ in 1967, but extended even to Greenland, which by 1979 had become autonomous.¹⁰⁰ ‘Independent’ representation referred to accession and full membership, a demand that had been denied but was now discussed again under the auspices of the Nordic Council. A high-level committee under the leadership of Swedish Minister of Justice Carl Axel Petri was seized with examining, (a) the possibilities and practical consequences of Greenland’s participation in Nordic co-operation against the background that Greenland was thus far lacking representation; (b) the possibilities and practical consequences of independent Faroese and Greenlandic representation; and (c) the possibilities to strengthen the Faroes’, Greenland’s and Åland’s participation and influence in Nordic co-operation “under all circumstances”.¹⁰¹ The subsequent process within the

⁹⁹ Färöarnas, Grönlands och Ålands representation in Nordiska rådet. Betänkande avgivet av kommittén för utredning av frågan om Färöarnas, Grönlands och Åland representation i Nordiska rådet, NU 1982:6, 23.

¹⁰⁰ Regeringsförslag om färöisk och grönländsk representation I Nordiska rådet, B 29/j, Nordiska rådet, 28: sessionen, 1980, 904.

¹⁰¹ Färöarnas, Grönlands och Ålands representation in Nordiska rådet. Betänkande avgivet av kommittén för utredning av frågan om Färöarnas, Grönlands och Åland representation i Nordiska rådet, NU 1982:6, 24.

Nordic Council resembles the events of 1967 to 1970.¹⁰² Again, the question revealed three underlying dimensions, pertaining to (1) the status of the autonomies, (2) the international law implications, and (3) the practical modalities for accommodation.

While the Nordic autonomies' basic demands were well known to the Kling Committee, in 1967 these were communicated through the respective states and thus considered only indirectly. By 1980, the Faroes and Åland had been formally admitted to Nordic co-operation and had thus been formally endowed with the capacity to participate in Nordic co-operation through the Nordic Council, which is clearly visible in the way that the Petri Committee engaged directly with the autonomies. In the course of its work, the Petri Committee gave the Nordic autonomies the chance to comment on its draft position, which notably did not respond entirely to the autonomies' demands. The issues raised thereupon by the autonomies and the Åland Islands in particular have subsequently influenced the Committee's work and visibly shaped its conclusions in major aspects.¹⁰³ While full membership was the overall desire, the Nordic autonomies' core demands pertained to their representation in the Nordic Council with 'independent' delegations, representation in the Presidium of the Nordic Council, the possibility of representation in all Council committees, representation in the Nordic Council of Ministers, including in decision-making whenever autonomous competences are concerned, as well as participation in the preparation and implementation of decisions within the Committees of Senior Officials.¹⁰⁴ The autonomies were more detailed in their demand than merely asking for a right to accede to the Helsinki Treaty, so that once again there was a margin for discussing solutions that would satisfy the autonomies, at least in part, without opening up for full membership.

The Petri Committee followed a number of basic propositions, which had already framed the work of the Kling Committee, including treating all three autonomies alike and seeking a solution for the accommodation of the autonomies without changing the national legal frameworks for self-government or allowing for the interpretation of autonomy legislation on the Nordic level.¹⁰⁵ Once again, accession was not an option. The Petri Committee argued that co-operation in the Nordic Council is based on the co-operation of states, whose decisive characteristic it considered to be the capacity to maintain independently international relations. The Committee felt the need to underline the importance of this core characteristic of statehood for the purposes of Nordic co-operation by pointing to those provisions of the Helsinki Treaty that refer to the external relations of the

¹⁰² Reference to the work of the Kling Committee is made at several points during in the Petri Committee's report, see for example *ibid.* 27.

¹⁰³ *Ibid.* 26.

¹⁰⁴ *Ibid.* 8 & 25 *et seqq.*

¹⁰⁵ *Ibid.* 27 *et seqq.*

Nordic Council as a whole.¹⁰⁶ In a two-page memorandum which partly summarised the corresponding analysis of 1968, the Petri Committee concluded that international law had at the time being not opened up to territorial autonomies. Membership of the United Nations and its organs, as well as of most other international organisations, remained reserved for the state as the subject of international law.¹⁰⁷ The terminology of ‘subjects’ recurs throughout the discussion. The Committee emphasised the difference between micro-states and non-sovereign territories and referred to the relevant discourses of the time, which were focussed on entities such as the Palestine Liberation Organisation (PLO), which, so the Committee, could not be considered a subject of international law *per se*. It was also pointed out that federal states and entities similar to the Nordic autonomies, such as Northern Ireland, the Channel Islands and former colonies such as Guadeloupe, Martinique, Puerto Rico, Hong Kong and Macau, have special statuses but cannot be considered as subjects of international law. Finally, the Committee argued that the attention paid to national minorities in recent debates was reflected increasingly in the work of international organisations and that the international community had become more sensitive to the concerns of, for example, the PLO, which could be entitled to observer status. From these observations, the Committee arrived at the conclusion that there was an increased awareness of the need for participatory structures in the international community at that time. However, it considered sovereign statehood to remain the threshold for membership in international organisations, so that no more than observer status could be awarded to national minorities in such contexts.¹⁰⁸ The Petri Committee, just like its predecessor, remains rather superficial in its discussion and does not devote time to distinguish between minorities and autonomies. In fact, the conclusions drawn relate merely to full membership and neither Kling and Petri nor their colleagues considered other forms of participation to be a question intruding upon the realm of international law. Göran Lindholm, writing about the work of the Petri Committee in the mid-1980s, remarked that its work followed a traditional school of thought in describing international law as an order of co-existence, while at that time international relations had already progressed to focus on co-operation between different, indeed dissimilar, entities.¹⁰⁹

¹⁰⁶ *Ibid.* 28 and 35.

¹⁰⁷ Färöarnas, Grönlands och Ålands representation in Nordiska rådet. Betänkande avgivet av kommittén för utredning av frågan om Färöarnas, Grönlands och Åland representation i Nordiska rådet, Bilaga 4, Promemoria med folkrättsliga synpunkter på frågan om Färöarnas, Grönlands och Ålands representation i Nordiska rådet, NU 1982:6, 76.

¹⁰⁸ *Ibid.* 75 *et seq.*

¹⁰⁹ Göran Lindholm, “The Right of Autonomous Regions to Participate in Nordic Co-Operation”, 54 *Nordisk Tidsskrift for International Ret* (1985), 79-84, 79 *et seq.*

With respect to the Nordic Council, the autonomies' essential demand in 1980 was to form independent delegations.¹¹⁰ Thus far, their delegates were elected directly by the regional parliaments but could not form delegations of their own. The option of forming 'independent' delegations was discarded early with reference to the international law implication already elaborated upon by the Kling Committee. Apparently, the idea of independent delegations was equated with full membership. In fact, the question was then re-framed and became not one of 'independent' but 'own' delegations. The autonomies' own delegations were in turn to form part of the national delegations. The Petri Committee struggled with the use of the term 'delegation', as it feared that two levels of delegation would render the term void of actual meaning and give rise to confusion.¹¹¹ Nonetheless, ultimately this is the solution agreed upon and in force today, a system of double delegations if you will.¹¹² Certain matters, such as the election of the members and secretary of the Presidium and the distribution of seats in the committees, remain reserved to the national delegations, although in these instances delegation terminology is avoided altogether. Instead, the Helsinki Treaty and Council's rules of procedure speak of Nordic countries or merely countries, thereby excluding the autonomies from the provision's scope.¹¹³

With regard to the number of seats to be granted to the now three autonomies, the Petri Committee drew up a number of alternatives for the distribution of seats, taking into account that neither Denmark nor Finland was willing to accept a reduction of seats for the representatives of their national parliaments. Ultimately, the overall number of seats was increased to 87 with the Faroes, Greenland and Åland having two seats each.¹¹⁴

Due to much the same reasons that justified its objection against independent representation, the Committee also took a negative stance towards a guaranteed representation of the autonomies in the Presidium but had no objections to possible consultations. Although the Committee did not consider it necessary to formalise such procedures, the solution was

¹¹⁰ Färöarnas, Grönlands och Ålands representation in Nordiska rådet. Betänkande avgivet av kommittén för utredning av frågan om Färöarnas, Grönlands och Åland representation i Nordiska rådet, NU 1982:6, 28 *et seqq.*

¹¹¹ Färöarnas, Grönlands och Ålands representation in Nordiska rådet. Betänkande avgivet av kommittén för utredning av frågan om Färöarnas, Grönlands och Åland representation i Nordiska rådet, NU 1982:6, 32.

¹¹² The Committee, once it had objected to the concept of entirely separate delegations, did not consider it necessary to make the financial implications of the representation of the Nordic autonomies a matter of Nordic concerns. As the autonomies would not be represented independently the financial contributions of the autonomies to the Nordic Council were considered a matter of national concern, see Färöarnas, Grönlands och Ålands representation in Nordiska rådet. Betänkande avgivet av kommittén för utredning av frågan om Färöarnas, Grönlands och Åland representation i Nordiska rådet, NU 1982:6, 33.

¹¹³ Cf. for example Art. 52 Helsinki Treaty.

¹¹⁴ Färöarnas, Grönlands och Ålands representation in Nordiska rådet. Betänkande avgivet av kommittén för utredning av frågan om Färöarnas, Grönlands och Åland representation i Nordiska rådet, NU 1982:6, 31.

eventually formalised in the Rules of Procedure of the Nordic Council as this was desired by the Åland Islands in particular.¹¹⁵ The Committee took a positive stance towards the autonomies' wish to maintain own secretariats, as this would support efficient co-operation. Åland at that point had already instituted its own secretariat.¹¹⁶ The Committee considered it most appropriate to solve the formal aspects under national law, however.¹¹⁷

Consultations presented also the preferred solution to the question of representation in the Council's committees. It was not considered feasible to admit the autonomies to more committees than corresponding to their number of elected delegates, *i.e.*, a maximum of two. The Committee found, however, that the Rules of Procedure of the Nordic Council should be amended so as to allow explicitly for inviting representatives of the governments of the autonomies to participate in the committee deliberations, although not in the decision-making. Further, it was provided that in committees without representatives from the Faroese, Greenland or Åland, an elected member may take part, and, if so agreed upon with the respective Danish and Finnish member, replace the member elected by the national parliament in the decision-making.¹¹⁸

By 1980, the right to submit proposals to the Council had been extended beyond the parliamentary representatives of the Nordic Council to apply also to governments and the Council of Ministers. The autonomies now demanded that their governments be provided with the same right of initiative, a demand that the Committee fully supported.¹¹⁹

The final demand addressed by the Committee was for representation in the Nordic Council of Ministers. It is with regard to the Council of Ministers that the international law concerns discussed by both, the Kling and the Petri Committees, remain the most immediate. What was framed as independent representation was ultimately the question of accession as high contracting parties to the Helsinki Treaty. As mentioned above, the autonomies had had access to co-operation in the Council of Ministers since 1976 by virtue of a simple decision. However, the governments of the Faroe Islands, Greenland and Åland were, and still remain, excluded from formal decision-making, *i.e.* they do not hold voting rights and, considering that voting in the Council of

¹¹⁵ *Ibid.* 32 *et seq*; § 23 Rules of Procedure of the Nordic Council.

¹¹⁶ Färöarnas, Grönlands och Ålands representation in Nordiska rådet. Betänkande avgivet av kommittén för utredning av frågan om Färöarnas, Grönlands och Åland representation i Nordiska rådet, NU 1982:6,32.

¹¹⁷ *Ibid.* 33.

¹¹⁸ *Ibid.* 33 and 34; § 33 Rules of Procedure of the Nordic Council; Thus far the autonomies have not voiced the desire for a similar solution with regard to the Election and the Control Committee; see Färöarnas, Grönlands och Ålands representation in Nordiska rådet. Betänkande avgivet av kommittén för utredning av frågan om Färöarnas, Grönlands och Åland representation i Nordiska rådet, NU 1982:6, 36.

¹¹⁹ Färöarnas, Grönlands och Ålands representation in Nordiska rådet. Betänkande avgivet av kommittén för utredning av frågan om Färöarnas, Grönlands och Åland representation i Nordiska rådet, NU 1982:6, 33.

Ministers is unanimous, no veto rights. However, they cannot be bound by the decisions falling within their exclusive domains. The Petri Committee followed what seems to have been a proposal by the Åland Islands, namely to open up for the possibility of the autonomies to accede to the decisions of the Council of Ministers in areas falling within their competences.¹²⁰ This resembles the solution found on the national level in Finland with regard to the entry into force of international treaties concerning the Åland Islands.¹²¹

The suggestions made by the Petri Committee entered into force in 1983. In sum, it could be argued that the Petri Committee worked its way successfully around full membership and tried to find solutions to the detailed demands without opening up for accession. Its work has led to the creation of own delegations for the autonomies and at least opened the doors to all committees and to the Council of Ministers. Decision-making in the Council, however, is a door that remains closed for the autonomies.

5. *Ålandsdokumentet*: Functional Membership and Visibility

It was not until 2005 that the issue of autonomy accommodation again appeared on the Nordic agenda. It was upon a Faroese proposal submitted directly to the Council and Council of Ministers in 2003 that the Ministers for Co-operation decided to map the position of the self-governing territories within Nordic co-operation “without bias”.¹²² In May 2006, the Council of Ministers’ General Secretary Per Unckel presented a report on the legal and practical aspects of the participation of the autonomies, which was informed by written and oral contributions of legal experts from Sweden, Denmark and Finland.¹²³ Unckel’s report in turn informed a working group that was established under the auspices of the Council of Ministers and was composed, notably, not only of representatives of the national governments but also of the autonomies’ governments.¹²⁴ The Kling and Petri Committees had operated under the auspices of the Nordic Council. Now, for the first time, the Council of Ministers took the lead. The Ministers for Co-operation specifically excluded the option of full membership at the outset and directed the working group, which presented its result in the so-called Åland document (*Ålandsdokumentet*) in the autumn of 2007, to explore the possibilities for strengthened forms of co-operation, in specific institutions and sub-programmes of Norden.¹²⁵ The mandate of the working group was thus rather limited and did not include the possibility of making proposals concerning the Council of Ministers as such.¹²⁶ A reform of co-operation in

¹²⁰ *Ibid.* 26 and 37.

¹²¹ Cf. Section 59 Act on the Autonomy of Åland.

¹²² Nordiska ministerrådet, *De självstyrda områdena och det nordiska samarbetet. Generalsekreterarens kartläggning*, ANP 2006:743, Copenhagen, 2006, 7.

¹²³ *Ibid.*

¹²⁴ *Ibid.* paras 1.2 & 2.1.

¹²⁵ *Ibid.* para. 1.3.

¹²⁶ *Ibid.* para. 2.1.

cultural affairs preceded the work of the working group and even here a central aspect of the reform was the inclusion of the autonomies in all aspects of cultural co-operation, which is implemented within the broad range of Nordic institutions and programs.¹²⁷

While the Faroe Islands and Greenland applied explicitly for accession and full membership, the Åland Islands used less determined terminology and voiced as its major concern the maintenance of its ability to express its own, distinct opinions within the institutions of Nordic co-operation.¹²⁸ The Government of Åland further emphasised that it desired a form of co-operation, which also in the future would allow each autonomy to take the initiative for increased participation, independent of the other two territories. The Åland Islands emphasised their wish to retain the possibility to take up the issue of increased participation at a later time, apparently not wanting to lock itself into one position or any once-and-for-all solution.¹²⁹ Although here the autonomies clearly do not follow one and the same approach, in 2007 the Faroes, Greenland and Åland signed a non-binding memorandum of co-operation, which, *inter alia*, sets out their aim to hold meetings on the level of government officials and among the elected delegates in connection with the Council's sessions and consult each other before meetings of the Council of Ministers. It also foresees the possibility of creating ad hoc working groups and pooling secretarial functions.¹³⁰

Its mandate did not allow the 2006 to 2007 working group to dwell upon the same questions as the Kling and Petri Committees did. However, the General Secretary's preceding report maps the status quo and highlights much the same issues as were taken up by Kling and Petri, with an important difference. What was hinted at in the Petri Committee's memorandum only as an emerging trend had become manifest to the legal experts consulted by Unckel. It was argued that the monopoly-like position of states on the international plane had diminished and that international co-operation has developed with regard to members, issues and geographical scope. Unckel emphasises the dispositive character of international law and the discretion of international organisations in determining its criteria for membership. In

¹²⁷ Nordiska Ministerrådet, Betänkande från arbetsgruppen med uppgift att föreslå initiativ som kan förstärka de självstyrda områdenas deltagande i nordiskt samarbete, Åland, 5 September 2007, para. 2.2.

¹²⁸ Nordiska Ministerrådet, Betänkande från arbetsgruppen med uppgift att föreslå initiativ som kan förstärka de självstyrda områdenas deltagande i nordiskt samarbete, Åland, 5 September 2007, Bilaga 2. Önskemål från Färöarna, Bilaga 3. Önskemål från Grönland and Bilaga 4. Önskemål från Åland.

¹²⁹ Nordiska Ministerrådet, Betänkande från arbetsgruppen med uppgift att föreslå initiativ som kan förstärka de självstyrda områdenas deltagande i nordiskt samarbete, Åland, 5 September 2007, Bilaga 4. Önskemål från Åland. The appendices to the considerations of the working group include lists drawn up by the autonomies concerning their status in specific institutions and programmes annotated with the desired status in each such institution.

¹³⁰ Nordisk Samarbejdsforum, Ett samarbejde mellem Færøerne, Grønland og Åland til Nordisk Råd/ Nordisk Minsiterråd, Helsinki, 29 oktober 2012.

2006 Unckel spoke of “functional membership”.¹³¹ His analysis relied heavily on Ulf Bernitz’ expert statement attached to his report.¹³² What is interesting to note is that Bernitz, a professor of European law at the University of Stockholm, refers to and elaborates further on the terms of membership of what the Kling Committee called expert organisations such as the WPU and the WMO, as well as the International Monetary Fund (IMF). What Kling and Petri drew from these examples was the conclusion that statehood is decisive for international legal personality and, thus, the capacity to conclude international treaties. Forms of membership that do not entail any such treaty-making capacity did not seem relevant to Kling and Petri. Bernitz, however, shifts perspectives and emphasizes the opportunities, and not the limitations, that have been created by functional membership.¹³³ Kling and Petri noted that accommodation without full membership had been granted mainly in expert organisations, and therefore they pointed to the difference between expert organisations and regional organisations like Norden. Bernitz does not disagree but argues that it should generally be easier to offer clearly delimited functional membership in regional organisations like Norden, where there is a broad sense of community among its members and a geographically limited number of potential members, as opposed to organisations with a global scope. Norden can hardly be described as an expert organisation; however, the Council of Ministers works within clearly delimited sectors and, it could thus be argued, has a functional orientation in practice.¹³⁴

Former General Secretary of the Council of Ministers Fridtjov Clement, who also contributed to the General Secretary’s report, spoke of full equality as only a marginal improvement in the autonomies’ position but at the same times found only minor problems with granting equality to the autonomies.¹³⁵ Clement offered no solution to the inherent international law implications but considered it fully feasible to grant the autonomies representation in the Presidium, for example. Clement also discussed whether majority decision-making in the Council could be an option, considering that unanimity is hard to reach with eight rather than five members. Norden would then acquire a supranational character. Clement, however, excluded this possibility as in his opinion a state cannot be associated with more than one supranational organisation, a monopoly that in the Nordic context is filled by the European

¹³¹ Nordiska ministerrådet, *De självstyrda områdena och det nordiska samarbetet. Generalsekreterarens kartläggning*, ANP 2006:743, Copenhagen, 2006, 12.

¹³² Ulf Bernitz, *Angående de självstyrda områdenas ställning och arbetsmöjligheter i det nordiska samarbetet*, Bilaga 2, Nordiska ministerrådet, *De självstyrda områdena och det nordiska samarbetet. Generalsekreterarens kartläggning*, ANP 2006:743, Copenhagen, 2006, 34 *et seqq.*

¹³³ *Ibid.* 35.

¹³⁴ Johan Strang emphasizes these functional divisions throughout his report on the future of Nordic integration and point to the specific areas of expertise of each Nordic country as assets for the Nordic regions, see Strang, *Nordiska Gemenskaper...*

¹³⁵ Fridtjov Clement, *Helsingforsavtalen og de selvstyrte områdene*, Bilaga 3, Nordiska ministerrådet, *De självstyrda områdena och det nordiska samarbetet. Generalsekreterarens kartläggning*, ANP 2006:743, Copenhagen, 2006, 37 *et seqq.*

Union. In general, he found it unlikely that the High Contracting Parties would accept to divert from the principle of unanimity at the same time as granting the autonomies full decision-making powers.¹³⁶ Clement was also skeptical as to the autonomies' practical capabilities to engage to a yet higher degree in Nordic co-operation. However, he deemed it possible to adjust the practical implications of Presidency in both, the Council and Council of Ministers, so as to be manageable also for the autonomies. Clement proposed a thorough review of the Helsinki Treaty to adjust the terminology in order to increase the autonomies' influence and visibility. Clement further proposed to transfer the solution found within the Nordic Council in respect of the work in the committees to the Council of Ministers, namely allowing for the autonomies' representatives to replace the Danish or Finnish representative in the decision-making process. In addition, Clement proposed to grant representatives for the autonomies the possibility to represent the Council of Ministers in meetings with the Nordic Council, its committees, the Association Norden (a pan-Nordic civil society organisation) or other actors.

One important aspect that has been clarified following the General Secretary's report is a contradiction between the Helsinki Treaty and the Council's rules of procedure concerning the right to submit recommendations and questions to governments.¹³⁷ The Helsinki Treaty, which of course is of a higher legal status and thus has precedence, speaks of 'governments' when it intends to address the governments of the Nordic countries and addresses the Home Rule Governments of the Faeroe Islands and Greenland and the Regional Government of Åland explicitly where these are included among a provisions' addressees. This is not the case with regard to Article 57 of the Helsinki Treaty, which speaks about the right of each elected member to submit a question to a government. Thus, following a narrow interpretation of this provision, recommendations or questions may not be submitted to autonomies' governments and they thus have no corresponding right to respond. However, the rules of procedure specifying Art. 57 include the Home Rule and Regional Governments among the circle of addressees.¹³⁸ The working group looked closer at the issue and found that the preparatory works do not set any light on the issue. It noted, however, that it is custom to pose oral questions to the governments of the autonomies during the ordinary sessions of the Nordic Council, whenever their competences are concerned, and that neither Denmark nor Finland has voiced any objections to this practice.¹³⁹ The working group concluded that the Helsinki Treaty is interpreted to include the autonomies as addressees without proposing

¹³⁶ *Ibid.* 39.

¹³⁷ Nordiska ministerrådet, De självstyrda områdena och det nordiska samarbetet. Generalsekreterarens kartläggning, ANP 2006:743, Copenhagen, 2006, 20.

¹³⁸ Cf. §58 Rules of Procedure of the Nordic Council.

¹³⁹ Nordiska Ministerrådet, Betänkande från arbetsgruppen med uppgift att föreslå initiativ som kan förstärka de självstyrda områdenas deltagande i nordiskt samarbete, Åland, 5 September 2007, para 4.3.

further action on this matter.¹⁴⁰ This interpretation has also been acknowledged formally by the Council.¹⁴¹

The working group finally proposed practical remedies to increase the autonomies' visibility, which did not necessitate amendments of the legal framework. It was suggested that the ministers and government official from the self-governing territories should be granted the right to lead the work of the committees of senior officials or of working groups during the presidency of its respective Member State, without any effects on voting rights.¹⁴² Another suggestion was that the Nordic institutions and co-operative bodies be called upon to establish contacts with the autonomies and to reserve space to issues concerning the autonomies during their annual meetings. The working group also encouraged the autonomies to apply for membership of the boards, an already existing possibility that had not been fully exploited.¹⁴³

Nordic institutions and programmes are, in fact, not unimportant platforms for the autonomies to gain more visibility and stand side by side with the Member States in a range of activities, for example, in nominating candidates for the Nordic Prize in Literature.¹⁴⁴ However, it is partly due to the fact that the recommendations put forth in the Åland document had not been implemented and followed up by the Council of Ministers to the degree desired that the Faroes, Greenland and Åland signed the memorandum of co-operation in 2007.¹⁴⁵

6. Conclusions

While the legal framework for the autonomies' co-operation within Norden has remained unchanged since 1983, more recent efforts to develop the structures for accommodation have focused on the implementation and engagement of the autonomies on the day to day level, within sub-programmes. What is clearly visible from the latest official review of their

¹⁴⁰ *Ibid.* para. 4.3.3. See also Fridtjov Clement, Helsingforsavtalen og de selvstyrte områdene, Bilaga 3, Nordiska ministerrådet, De självstyrda områdena och det nordiska samarbetet. Generalsekreterarens kartläggning, ANP 2006:743, Copenhagen, 2006, 39.

¹⁴¹ Nordiska rådet, Yttrande om Nordiska ministerrådets initiativ som kan förstärka de självstyrda områdenas deltagande i officiellt nordiskt samarbete, dokument 23, Nordiska rådets plenarförsamling 1 november 2007.

¹⁴² Nordiska Ministerrådet, Betänkande från arbetsgruppen med uppgift att föreslå initiativ som kan förstärka de självstyrda områdenas deltagande i nordiskt samarbete, Åland, 5 September 2007, para 4.2.

¹⁴³ *Ibid.* para 3.4; see also section 2.3 above.

¹⁴⁴ See webpage of Norden, Nominations for the Nordic Council Literature Prize 2013, at <http://www.norden.org/da/aktuelt/nyheder/de-nominerede-til-nordisk-raads-litteraturpris-2013>, last visited 6 October 2013.

¹⁴⁵ See webpage of the Government of Åland, Ålands landskapsregeringen, Lanrådet undertecknade för närmare samarbete, at <http://www.regeringen.ax/kansli/index.pbs?press%5Bid%5D=1371&press%5Bn%5D=8&press%5Binstan ce%5D=118>, last visited 22 October 2013.

status is that there is a high level of engagement, not only by the autonomies but also by the Nordic Council and the Nordic Council of Ministers. Certainly, the autonomies, and to a large extent also Denmark, have played the most proactive roles in initiating the processes outlined above. Nonetheless, the Nordic Council and the Nordic Council of Ministers have shown the willingness and capacity to react and adapt the institutional framework and practices, although denying accession and full membership. The modalities for accommodation have been discussed with an increasing level of detail, in deliberative processes including the autonomies themselves. Norden has shown that it in fact has the willingness and capacity to deal with the issue of autonomy accommodation and, most importantly, to adapt its institutional framework to allow for representation (with respect to the Nordic Council) and participatory structures (with respect to the Nordic Council of Ministers).

In essence, all elected delegates on the Nordic Council have equal status; they are entitled to hold any office, whether they have been elected by a regional or a national parliament. They hold full voting capacity in the Plenary and the committees they are part of, irrespective of the legislative competences of their ‘home’ parliaments. In order to prevent exclusion, access to the committees and participation in their work is guaranteed even when these lack elected delegates from the autonomies.¹⁴⁶ Although the autonomies as such have no guaranteed place in the Council’s Presidium and are not included in the rotation of the Presidency, they are not prevented from holding these high-profile offices. In fact, an elected member from Åland held the Presidency for Finland in 1997.¹⁴⁷ About his experience as the President of the Nordic Council Olof Salmén has said that Åland was well accepted, in his words “almost alike the Nordic great powers”.¹⁴⁸ His statement suggests that he did not feel forced to discard his Ålandic identity when filling the Finnish seat.

The General Secretary of the Nordic Council has emphasised that the autonomies are able to participate in practically all contexts of Nordic co-operation, the Council of Ministers included, and that they make good use of these opportunities. In ministerial-level meetings between 2002 and 2004, the Faroes participated in 47, Greenland in 34 and Åland in 55 out of a total of 89 meetings. These numbers are rather remarkable considering the small sizes of the autonomy administrations, with generally fewer ministers, especially in comparison to the Nordic countries. Denmark, for instance, ranks lower than Åland and the Faroes at having participated in 46 meetings only.¹⁴⁹ With regard to the Nordic Council of Ministers, the autonomies are neither

¹⁴⁶ Cf. §§ 23 and 33 Rules of Procedure of the Nordic Council.

¹⁴⁷ See webpage of Norden, Former Presidents of the Nordic Council, at <http://www.norden.org/en/nordic-council/organisation-and-structure/nordic-council-president/former-presidents-of-the-nordic-council>, last visited 24 September 2014.

¹⁴⁸ Hasse Svensson, *Åland från insidan. 25 röster om självstyrelse 1972-1997* (Ålands lagting, Mariehamn, 1997), 141, author’s translation.

¹⁴⁹ Nordiska ministerrådet, *De självstyrda områdena och det nordiska samarbetet. Generalsekretärens kartläggning*, ANP 2006:743, Copenhagen, 2006, 23.

members nor mere observers but participants. They have been given institutional access to influence and shape decisions, which are not *per se* binding on the autonomies, but to which they may later accede. They can of course also exert influence on their national governments within the fora provided for internally and by virtue of national legislation. It has been noted that today the autonomies indeed participate in shaping the national programmes during their respective countries' presidencies.¹⁵⁰ In fact, the Nordic Council's General Secretary describes the system of accommodation found for the Nordic autonomies in Norden as one of the broadest to be found.¹⁵¹ Nonetheless, it seems that there is space for yet more extended forms of co-operation even without full membership. As former General Secretary Clement proposed for instance, member states could explicitly be provided with the possibility of leaving their vote in the Council of Ministers to an autonomy, at their own discretion. The current legal framework does not prevent such arrangements. However, what can be drawn from the processes outlined above is that the member states jumped into action first when the legal framework explicitly provided for autonomy accommodation and then after the scope and limits of the alternatives had been carefully analysed. In this respect, legislation might not always be strictly necessary but of course it is both a guarantee for the autonomies and the member states that all abide by the same rules.

While the scope for participation and indeed representation of the autonomies in the institutional framework for Nordic co-operation is broad, the limits of accommodation will always remain tied to the domestic frameworks, *i.e.*, the internal delimitation of competences between the centre and the autonomy. The degree of sovereignty exercised by the Nordic autonomies and their capacity to conduct international affairs is determined internally. Denmark has concluded agreements with both the Faroe Islands and Greenland and provided their governments with the power to conclude certain international agreements on behalf of the Kingdom of Denmark.¹⁵² However, corresponding powers, have not been transferred to the Åland Islands.¹⁵³ Nordic co-operation itself is of course based on an international treaty between states, the Helsinki Treaty, and each binding decision of the Nordic Council of Ministers and the agreements concluded with third parties require corresponding treaty-making powers. However, the crux for Norden is not so much the domestic arrangements as such but rather concerns about practicality and feasibility. Considering Norden's broad areas of co-operation

¹⁵⁰ Clement, Helsingforsavtalen og de selvstyrte områdene, Bilaga 3, Nordiska ministerrådet, De självstyrda områdena och det nordiska samarbetet. Generalsekreterarens kartläggning, ANP 2006:743, Copenhagen, 2006, 40.

¹⁵¹ Nordiska ministerrådet, De självstyrda områdena och det nordiska samarbetet. Generalsekreterarens kartläggning, ANP 2006:743, Copenhagen, 2006, 25.

¹⁵² See Act no. 577 of 24 June 2005 "Concerning the conclusion of agreements under international law by the Government of Greenland" and Act no. 579 of 24 June 2005 "Concerning the conclusion of agreements under international law by the Government of the Faroes".

¹⁵³ Cf. Section 58 Act on the Autonomy of Åland.

and the complexities of each autonomy arrangement, a case-by-case assessment of whether an autonomy, and which autonomy, may conclude an international agreement would require a far-reaching and resource-intensive extension of Norden's mandate. The power to interpret the autonomy legislation in light of the Helsinki Treaty has not been transferred to any organ of Nordic co-operation. Norden does not maintain its own justice system to review such decisions in case of conflict, or any other conflict-resolution body for that matter.

International organisations, once determined to offer accommodation to sub-state entities, will have to carve their own institutional solutions for hosting entities with different degrees of sovereignty. Depending on the mandate and resources of each international organisation, these differences might be more or less decisive, so that in some contexts no more than observer status can be offered, while in others decision-making may be opened up for sub-state actors. It should be added here that the parliaments of the indigenous Saami in Finland, Norway and Sweden have observer status with speaking rights during the general debates in the Plenary of the Council or as otherwise determined by the Presidium.¹⁵⁴ The Nordic Council has thus found different ways of accommodating different types of entities. Both states and international organisations are gate-keepers in this context, or more positively formulated, doors-openers. After all, international organisations cannot simply be considered as the sum of their member states, but are catalysts for change in their own right.

Stakeholders often fail to understand that autonomy is always also a relational arrangement and very little work is done by constitutional and international lawyers to find appropriate ways for translating the powers of sub-state entities into the institutional structures of international organisations.¹⁵⁵ In cases where autonomies are vested with constitutionally protected legislative powers, as is the case for the three Nordic autonomy regimes, the challenges of multi-level governance might not be possible to resolve entirely within domestic frameworks without an erosion of autonomous competences to the national level. The three dimensions that framed the question of autonomy accommodation in Norden, (1) the quality of the autonomy regime in question, (2) the international law implications and (3) the legal and practical modalities, *i.e.*, the institutional demands, are relevant also in, for instance, the EU and future scenarios. It is thus all the more important to understand existing arrangements which might gain exemplary force if better understood. There is potential for further research, for example on the question of how far the degree of representation and participation awarded to autonomy regimes in different international frameworks reflects or matches the degree of their autonomy.

¹⁵⁴ § 13 Rules of Procedure of the Nordic Council.

¹⁵⁵ Sia Spiliopoulou Åkermark, "Internal Self-Determination and the Role of Territorial Autonomy as a Tool for the Resolution of Ethno-Political Disputes", 20 *International Journal on Minority and Group Rights* (2013), 5-25, at 25.

Nordic co-operation has gained new impetus in recent years and it remains to be seen whether this will also necessitate changes with regard to the autonomies' position. Thus far, co-operation in defence and security policy between the Nordic countries has largely taken place outside the Nordic Council of Ministers, but of course it is the same member states that have signed a declaration of solidarity and co-operation in matters of security and defence policy and loosely co-operate in the framework of the Nordic Defence Co-operation (NOREDFCO).¹⁵⁶ The Nordic Council and Council of Ministers follow these developments closely. Being not only autonomous but also demilitarised and neutralised, defence and security co-operation is of concern to the Åland Islands, albeit it is not among their constitutionally protected competences, and it remains to be seen how this issue will be dealt with.

Increased co-operation is not only discussed with regards to defence and security policy. The proposal of Swedish historian Gunnar Wetterberg to create a Nordic federation has attracted considerable attention, also within the Nordic Council and motivated others to discuss the possibilities for creating yet closer political ties between the Nordic countries.¹⁵⁷ Wetterberg himself does not dwell upon the position of the autonomies within a potential federation but he does not fail to note that this is one of the most important aspects of any negotiations about a future federation.¹⁵⁸ Thus far, the Nordic autonomies, the Nordic countries and the Nordic Council of Ministers (and possibly the Nordic Council) cannot be described as competing levels of governance, they are complementary at best. Norden is a platform for co-operation. Federal or supranational decision-making is a different matter and poses different demands on representation and democratic participation that are more complex to solve. After almost 20 years and after the adaptation of the national constitutional, as well as local legislative frameworks, Åland's EU membership is still experienced as problematic due to a lack of representation and genuine participation in decision-making processes at the European level.¹⁵⁹ All that we know now is that Nordic co-operation has

¹⁵⁶ For more information on Nordefco, visit its webpage at <http://www.nordefco.org/The-basics-about-NORDEFECO>, last visited 7 October 2013. See also Thorvald Stoltenberg, *Nordeisk samarbeid om utenriks- og sikkerhetspolitikk*, Forslag overlevert de nordiske utenriksministere på ekstraordinært nordisk utenriksministermøte, Oslo, 9 February 2009, available on the webpage of the Government of Norway at <http://www.regjeringen.no/upload/UD/Vedlegg/nordiskrapport.pdf>, last accessed 20 October 2013.

¹⁵⁷ See Wetterberg, *A United Nordic Federation...*; Strang, *Nordiska Gemenskaper...*

¹⁵⁸ Wetterberg, *A United Nordic Federation...*, 30-31.

¹⁵⁹ See Markku Suksi, "Sub-National Issues: Local Government Reform, Re-Districting of Administrative Jurisdiction, and the Åland Islands in the European Union," 13(3) *European Public Law* (2007), 379-406 at 390 *et seqq*; Niilo Jääskinen, "The Case of the Åland Islands - Regional Autonomy versus the European Union of States", in Stephan Weatherill and Ulf Bernitz (eds.), *The Role of Regions and Sub-National Actors in Europe. Essays in European Law* (Hart Publishing, Oxford, 2005), 89-101; Sören Silverström, "Implementation of EU Legislation on the Åland Islands", in Sia Spiliopoulou Åkermark (ed.), "Constitutions, Autonomies and the EU", 2 *Report from the Åland Islands Peace Institute* (2008), 42-50, available online at

proven adaptable also in light of major structural changes and that the spirit of co-operation has also meant an accommodating attitude toward the autonomies, which can be expected to be decisive also for future solutions and should not be disregarded as an example for others. The autonomy regimes of all three Nordic autonomies have developed considerably since the early days of Nordic co-operation and will continue to do so, which also suggests that Norden needs to continue an adaptable approach and engage in order to re-negotiate the best alternatives for accommodation. At this point, any development towards a federal or supranational arrangement seems distant. What we are left with to date is a diverse picture that speaks of representation, participation, and institutional accommodation beyond the traditional conventions of 'all in' or 'all out'.

<http://www.peace.ax/images/stories/pdf/autonomiwebb.pdf>, last accessed 21 October 2013; Sarah Stephan, "Regional Voices in the European Union - regions with legislative powers and multi-level governance. Perspectives for the Åland Islands", 1 *Report from the Åland Islands Peace Institute* (2010), available online at http://www.peace.ax/images/stories/pdf/Rapport_1-2010_webb.pdf, last accessed 21 October 2013.

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