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# **MARITIME SECURITY AND THE ROLE OF COAST GUARDS: THE CASE OF FINLAND AND THE ÅLAND ISLANDS' DEMILITARISATION**

**Åsa Gustafsson**

**Ph.D. Student**

**Åbo Akademi University, Faculty of Social Sciences, Business and Economics  
(Finland)**

**Contact information**

Address: Tuomiokirkontori 3, FI-20500 Turku, Finland

Phone: +358 40 1899117

E-mail address: asagusta@abo.fi

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**ABSTRACT**

The measures and policies states adopt and apply related to law enforcement at sea in peacetime, such as setting up and legislating about Coast Guards and their role, increasingly take maritime security into account. A grey area between military and civilian rules, actors, and activities, can be discerned in relation to maritime security. The article explores the issue of security concerns as a basis for the on-going widening of powers of the Finnish Border Guard, which includes the Coast Guard – in particular how such a widening of the powers relates to the Åland Islands' demilitarised status. The main question here is whether there is a conflict between possible military aspects of the Coast Guard vis-à-vis the demilitarised status of the Åland Islands. The article identifies aspects of a military nature regarding how the Finnish Coast Guard functions; these are not assessed as being decisive: the Border Guard is not part of the armed forces in peacetime. The article highlights the

need for a comprehensive exploration and analysis – including both Finnish authorities and Ålandic authorities – of the Åland Islands’ status in relation to possible future assistance by the Defence Forces on the Åland Islands.

**KEYWORDS**

Coast Guard, Maritime Security, Finland, Åland Islands, demilitarisation, neutralisation

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## INTRODUCTION

Border environments are complex. They include a variety of issues and contain a wide range of actors.<sup>1</sup> Both mobility and security interests are present. On the one hand, movement of persons and goods are seen as necessary to promote economic growth and social development. On the other hand, states also want to safeguard national security and combat transnational crimes such as smuggling and terrorism,<sup>2</sup> denoted as 'border security' by some,<sup>3</sup> which is handled through states' establishment of structures and processes for the purpose of confronting such challenges. As regards maritime borders, national security interests connected to the sea have traditionally related to military interests of states. This dimension remains significant, but there is increasing acceptance of a common interest that exists among states when seeking to respond to a variety of maritime security threats.<sup>4</sup> 'Maritime security' has been an emerging concept for a number of years. However, there is no international consensus over the definition of 'maritime security', neither legally nor politically, and the prospect of arriving at consensus any time soon seems bleak.<sup>5</sup> The term maritime security has different meanings depending on who is using it or in what context it is being used.<sup>6</sup> Many international actors define maritime security by identifying a number of threats.

An aspect that should not be by-passed today in any discussion or analysis of security and military related issues is the increased fusion between civilian and military rules, actors, and activities.<sup>7</sup> For example, new modes of warfare, such as cyber-warfare, may erode, or erase, the distinction that currently exists between combatants (soldiers) and noncombatants (civilians).<sup>8</sup> A policy ingredient that seems to be gaining ground and pushing the boundaries in the on-going fusion

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<sup>1</sup> E.g. International Organization of Migration (IOM), "Global Compact Thematic Paper: Border Management," 2017 // <https://www.iom.int/iom-thematic-papers>; Mariya Polner, "Coordinated border management: from theory to practice," *World Customs Journal* Vol. 5, No. 2 (2011): 49; Åsa Gustafsson, "The Baltic Sea Region Border Control Cooperation (BSRBCC) and border management in the Baltic Sea region: A case study," *Marine Policy* 98 (2018).

<sup>2</sup> *Ibid.*

<sup>3</sup> In the United States the term border security is commonly used by the Department of Homeland Security, see Marc R. Rosenblum, Jerome P. Bjelopera, and Kristin M. Finklea, *Border Security: Understanding Threats at U.S. Borders* (Congressional Research Service, 2013), 4.

<sup>4</sup> Natalie Klein, *Maritime Security and the Law of the Sea* (Oxford: OUP, 2011), 1 ff.

<sup>5</sup> Christian Bueger, "What is maritime security?" *Marine Policy* Vol. 53 (2015): 162; Douglas Guilfoyle, "Maritime Law Enforcement Operations and Intelligence in an Age of Maritime Security," *International Law Studies* Vol. 93 (2017): 298.

<sup>6</sup> Natalie Klein, *supra* note 4, 8 ff; James Kraska and Raul Pedrozo, *International Maritime Security Law* (Leiden & Boston: Martinus Nijhoff, 2013).

<sup>7</sup> Discussed in, and argued throughout, the study by Sia Spiliopoulou Åkermark, Saila Heinikoski, Pirjo Kleemola-Juntunen, *Demilitarisation and International Law in Context: The Åland Islands* (Routledge 2018), 99.

<sup>8</sup> Susan W. Brenner and Leo L. Clarke, "Civilians in Cyberwarfare: Conscripts," *Vanderbilt Journal of Transnational Law* 43 (2010): 1015.

between military and civilian elements or aspects is the concept of hybrid threat.<sup>9</sup> Within the EU there is no single definition of hybrid threats. A working definition within the EU is the one used by the EU Hybrid Centre of Excellence, which explains that a hybrid threat is characterised by “coordinated and synchronised action, that deliberately targets democratic states’ and institutions systemic vulnerabilities, through a wide range of means (political, economic, military, civilian, and information)”.<sup>10</sup>

This article explores whether there are military aspects involved in Finland’s coast guard function and, if so, how these go together with the demilitarised status of the Åland Islands. There are two Finnish Coast Guard stations located on the Åland Islands. The measures and policies that Finland adopt and apply related to law enforcement at sea in peacetime, such as the setting-up of and legislating about the main national actor as regards border management and maritime security,<sup>11</sup> could possibly affect the demilitarised regime in different ways, or are at least highly relevant to follow for those interested in safeguarding the status in question. It is obviously not the definitions of the concepts as such that force or push Finland to adopt measures, but threats perceived or identified, and the reasons underlying the development of (new) concepts. The author of this article has chosen to take a closer look at above all the concept of maritime security, since the underlying reasons for the development of that concept are assessed to be of relevance for increasing powers of actors countering maritime security threats. One example is that the latest proposals for widening the Finnish Border Guard’s powers involve counter-terrorism measures. The Finnish Coast Guard is included in the larger entity of the Finnish Border Guard. Therefore, as a main rule references will be made to the ‘Border Guard’ in this article.

Against the above background the main research question is the following: Is there a conflict emanating from possible military aspects of the Finnish Coast Guard vis-à-vis the demilitarised status of the Åland Islands? In order to answer the question, first the demilitarisation in question will be explored regarding one particular aspect: what is the scope of the prohibition against military, naval or air forces in the Åland Islands? Second, possible military aspects of how the Finnish Coast Guard functions will be examined, including both the nature of the Guard and the latest widening of the powers of it, which includes enlarged possibilities to use ‘military force’. Regarding the widened powers, the focus is on the new parts that

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<sup>9</sup> Ron Huisken, “The QDR: A future of Hybrid Warfare,” *ASPI Policy Analysis* 55 (2010), cited by Natalie Klein, *supra* note 4, 298.

<sup>10</sup> See European Centre of Excellence for Countering Hybrid Threats webpage // <https://www.hybridcoe.fi/hybrid-threats/>.

<sup>11</sup> See Natalie Klein, Joanna Mossop, and Donald R. Rothwell, “Australia, New Zealand and Maritime Security”: 9-10; in: Natalie Klein, Joanna Mossop, and Donald R. Rothwell, eds., *Maritime Security: International Law and Policy Perspectives from Australia and New Zealand* (Oxford: Routledge, 2010).

are assessed as most relevant for the Åland Islands' status, namely the use of (compulsory enrolled) conscripts by the Border Guard and the assistance to the Border Guard by the Defence Forces.

In this context it should be noted that Svalbard is another demilitarised territory within the boundaries of a Nordic state, Norway. However, it seems that juxtaposing the Svalbard and Åland Islands' demilitarisation regimes would not prove very useful in relation to the main question in this article, since the Norwegian Coast Guard from an organisational and legislative perspective can be seen as a 'naval Coast Guard',<sup>12</sup> and is not permanently present on Svalbard, as the Finnish Coast Guard is on the Åland Islands. The Norwegian Coast Guard only visits (around 40-50 visits per year in the last few years),<sup>13</sup> and all its vessels are homeported in Sortland in Northern Norway. The Norwegian Navy also visits Svalbard, but according to current practice just once a year.<sup>14</sup> Consequently, already at the first instance it seems clear that a possible exploration of 'Coast Guard issues' should be made from a slightly different perspective regarding Svalbard.

The perspective of this contribution is that of international law, but elaborations on conceptual aspects as regards security will take also other perspectives into account.

First, main traits of the role of Coast Guards and the concepts border security, border management and maritime security will be described. Second, the powers of the Coast Guard in Finland will be explored, with a focus on the Åland Islands' status. In the end, conclusions will be drawn.

## 1. COAST GUARDS AND BORDERS

The purpose of this section is to attempt to shed light on the terms border management and maritime security, since the perspective of this contribution is that they are fundamental for Coast Guards' tasks. First, a brief overview of the role of Coast Guards is given.

When the notion law enforcement is used in this article, it is intended as a general description of 'all' law enforcement powers.<sup>15</sup> In this article there will be no

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<sup>12</sup> Bård Holmen Solvik, *The Norwegian Coast Guard Model Strengthening Norwegian Seapower or unfortunate militarization of Norwegian jurisdiction?* Master thesis (University of Oslo, Department of Political Science, 2014), 5-6.

<sup>13</sup> See Website of the Port of Longyearbyen // [http://portlongyear.no/wp-content/uploads/2017/02/Statistics\\_2007\\_2012-2018.pdf](http://portlongyear.no/wp-content/uploads/2017/02/Statistics_2007_2012-2018.pdf).

<sup>14</sup> Information received in personal communication via e-mail 24 January 2018 from the Port of Longyearbyen.

<sup>15</sup> For a discussion of the notion of jurisdiction see Ian Brownlie, *Principles of Public International Law*, 6<sup>th</sup> edition (Oxford: OUP, 2003), 297, cited by Natalie Klein, *supra* note 4, 62 ff. See also William T. Burke, *The new International Law of Fisheries: UNCLOS 1982 and beyond* (Oxford: Clarendon Press, 1994), 303, cited by Natalie Klein, *supra* note 4, 63.

exploration of the jurisdictional powers in the different maritime zones, such as internal waters, the territorial sea, Exclusive Economic Zone and so on, as this expands the scope too far.

### 1.1. THE ROLE OF COAST GUARDS

Until the twentieth century, coastal States were primarily concerned with the protection of their territory, although the rights of regulation and enforcement included such subjects as customs, fisheries, health and immigration.<sup>16</sup> The modern international law of the sea, reflected in the United Nations Convention on the Law of the Sea, 1982, allows States to assert and exercise a multitude of sovereign rights and jurisdictions in zones beyond the territorial sea.<sup>17</sup> States exercised the powers of enforcement regarding these rights and jurisdictions in a variety of ways. Some States deploy their navies and air forces in this role, supplementing them where necessary with equipment and officials of such agencies as customs, fisheries, and immigration departments. Other States have a designated coast guard service, which carries out all law enforcement activities at sea in peacetime.<sup>18</sup> Guilfoyle cites Till and states that as the concept of maritime security widens, "the extent of potential overlap" between naval and coast guard activities "is increasing in ways which raise issues over who should be responsible for what."<sup>19</sup>

States in Finland's neighbourhood have chosen different solutions for the management of their maritime borders. In Sweden the Coast Guard is civilian, under the Justice Ministry. In the other Nordic countries the Icelandic coast guard authority is civilian; Denmark's and Norway's are part of the military. In Norway the Coast Guard, "Kystvakten", and the Marine, "Kysteskadren", together constitute the 'Sea Defense'.<sup>20</sup> In Estonia the Police and Border Guard Board is an authority operating under the Ministry of Interior, responsible for law enforcement and homeland security. In Latvia, the State Border Guard is an institution under the responsibility of the Ministry of the Interior, and also in Lithuania the State Border Guard Service operates under the authority of the Ministry of the Interior.

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<sup>16</sup> Ivan Shearer, "The Development of International Law with Respect to the Law Enforcement Roles of Navies and Coast Guards in Peacetime," *U.S. Naval War College International Legal Studies* 71 (1998): 429.

<sup>17</sup> *United Nations Convention on the Law of the Sea (UNCLOS)*, 1982.

<sup>18</sup> Ivan Shearer, *supra* note 16: 430.

<sup>19</sup> Geoffrey Till, *Seapower: A Guide for the Twenty-First Century* (Routledge, 2004), cited by Douglas Guilfoyle, *supra* note 5: 299.

<sup>20</sup> Swedish Government, "Report: 'Maritim samverkan'" (Maritime Cooperation), SOU 2012:48, 9.

## 1.2. BORDER MANAGEMENT

At a global level various institutions have started developing broad and encompassing border management concepts, even though not adopted legally. For instance, the World Customs Organization (WCO) has used the term 'Coordinated Border Management' (CBM), and the World Bank 'Collaborative Border Management'.<sup>21</sup> Although states are entitled to exercise sovereign jurisdiction at their international borders, all border management interventions must be carried out in accordance with states' obligations under international law.<sup>22</sup> In the context of enhancing border management to combat transnational organised crime and terrorism, the United Nations (UN) have passed several resolutions (both the UN Security Council<sup>23</sup> and the UN General Assembly<sup>24</sup>), and conventions and protocols have been negotiated within the UN framework. For instance, for the purpose of combating transnational organised crime, the UN Convention against Transnational Organized Crime and the Protocols thereto provide the starting point. It includes provisions on document security and controls as well as on the collection, analysis and exchange of information at borders.<sup>25</sup> However, the rules on border management at global level are fragmented and not very detailed, at least not compared to the supranational EU rules. States' policies and rules on the movement of persons and goods come into play in a number of fields, such as migration, trade and security issues, so the creation of an all-encompassing system does not seem like an easy attainable goal, perhaps not even desirable.

Within the EU, the notion of 'integrated border management' was more a political concept than a legally binding one until the entry into force of the Lisbon Treaty in 2009. Later, 'integrated border management' was given a quite precise content in the latest supranational Regulation on the European Border and Coast Guard Agency, Frontex, adopted in 2016.<sup>26</sup>

## 1.3. MARITIME SECURITY

Legally there is no agreed upon definition of 'international security', although 'international peace and security' is a fundamental locution in international law,

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<sup>21</sup> *Supra* note 1.

<sup>22</sup> *Ibid.*

<sup>23</sup> See *UN Security Council resolutions 1373(2001), 1566(2004), 1624(2005)* (in which para. 2 states; "Calls upon all States to cooperate, inter alia, to strengthen the security of their international borders") and *2178(2014)*.

<sup>24</sup> For instance, the UN General Assembly adopted the Global Counter-Terrorism Strategy on 8 September 2006, *A/RES/60/288*.

<sup>25</sup> *UN Convention against Transnational Organized Crime, UN General Assembly A/RES/55/25, 2000*.

<sup>26</sup> *Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard (...) OJ L251/1 (Frontex Regulation): Art. 4 a) - f)* lists the components of European integrated border management.

since the rationale for the United Nations is to maintain 'international peace and security'.<sup>27</sup> Scholars have devoted ample time to studies of 'security' from different angles. International relations scholars often reach the conclusion that security concerns are no longer focused on military interests, in terms of a state being able to avoid war or otherwise prevail in any war.<sup>28</sup>

As concerns 'maritime security', major actors have started to include it in their mandate and to organise their work in such terms. The United States pioneered the development when launching a national Maritime Security Policy in 2004.<sup>29</sup> The UN Secretary General's 2008 list of threats<sup>30</sup> are often included in a concept definition;<sup>31</sup> (1) Piracy and armed robbery, (2) terrorist acts, (3) the illicit trafficking in arms and weapons of mass destruction, (4) the illicit trafficking in narcotics, (5) smuggling and trafficking of persons by sea, (6) illegal, unreported and unregulated fishing and (7) intentional and unlawful damage to the marine environment.

The North Atlantic Treaty Organization (NATO) included maritime security as one of its objectives in its 2011 Alliance Maritime Strategy.<sup>32</sup> In 2014 the European Union (EU) launched an ambitious maritime security strategy.<sup>33</sup> Between 2013-2015, maritime powers France, India, Spain, the UK, and the US published cross-sectoral national maritime security strategies, linked to their national security and maritime strategies.<sup>34</sup> Bueger assesses that the 'breakthrough' for maritime security came with the rise of piracy off the coast of Somalia between 2008 and 2011.<sup>35</sup> Jacobsson states that 'maritime security' became visible as a concept already in the 1990s and was clearly related to security policies.<sup>36</sup> The concept was present in naval disarmament discussions<sup>37</sup> and surfaced in the context of

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<sup>27</sup> Marie Jacobsson, "Maritime Security: An Individual or Collective Responsibility?": 392; in: Jarna Petman and Jan Klabbers, eds., *Nordic Cosmopolitanism: Essays in International Law for Martti Koskenniemi*, (Leiden: Martinus Nijhoff, 2003).

<sup>28</sup> Natalie Klein, *supra* note 4, 5; Richard H. Ullman, "Redefining Security", *International Security* 8 (1983); Jessica Tuchman Mathews, "Redefining Security", *Foreign Affairs* 68 (1989); Barry Buzan, *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era* (New York: Harvester Wheatsheaf, 1991). See also Sia Spiliopoulou Åkermark, Salla Heinikoski, Pirjo Kleemola-Juntunen, *supra* note 7, 9-13, on 'comprehensive security'.

<sup>29</sup> For an overview of current research status of maritime security and its issue-areas, see *inter alia* the dissertation (political science) by Stefan Lundqvist, *Continuity and Change in post-Cold War Maritime Security: A Study of the Strategies Pursued by the US, Sweden and Finland 1991-2016* (Åbo: Åbo Akademi Press, 2017), 15 ff.

<sup>30</sup> United Nations (UN), "Oceans and the law of the sea: Report of the Secretary-General," UN General Assembly 2008, A/63/63 // <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N08/266/26/PDF/N0826626.pdf?OpenElement>.

<sup>31</sup> Christian Bueger, *supra* note 5: 162; Natalie Klein, *supra* note 4, 9 ff.

<sup>32</sup> North Atlantic Treaty Organization (NATO), "Alliance Maritime Strategy," 2011 // [https://www.nato.int/cps/ua/natohq/official\\_texts\\_75615.htm](https://www.nato.int/cps/ua/natohq/official_texts_75615.htm).

<sup>33</sup> European Union, "European Union Maritime Security Strategy (EUMSS)," 11205/14, adopted by the General Affairs Council on 24 June 2014.

<sup>34</sup> Stefan Lundqvist, *supra* note 29, 3.

<sup>35</sup> Christian Bueger, *supra* note 5: 159.

<sup>36</sup> Marie Jacobsson, *supra* note 27: 391-392.

<sup>37</sup> *Ibid.*; see e.g. United Nations (UN), Report 'The Naval Arms Race', *Disarmament Study Series* No. 16 (New York: United Nations, 1986).



proposals on naval confidence-building measures and so-called multilateral incidents agreement.<sup>38</sup> Some have advocated for an understanding of maritime security as a "stable order at sea".<sup>39</sup> In contrast to the 'negative' definition of maritime security as absence of a range of threats, this understanding provides a 'positive' conceptualisation, constituting the point of departure for a discussion about questions of how law enforcement at sea can be improved.<sup>40</sup>

From a legal perspective, it is of interest to regard UNCLOS as a point of reference for understanding terms such as 'security', which are related to the law of the sea.<sup>41</sup> However, there are scant references to security in UNCLOS.<sup>42</sup> Nevertheless, there are indications in UNCLOS as to what might compromise security, in its identification series of activities that would be inconsistent with the right of innocent passage and prejudicial to the peace, good order and security of the coastal state.<sup>43</sup> It is not only a range of military activities that may pose a threat to the security of the coastal state (such as threats or use of force), but also fishing activities, willful and serious pollution, and research or survey activities.<sup>44</sup> Security interests influence the development of the law of the sea and contribute to changing the interpretation of the law of the sea.<sup>45</sup>

The maritime interests can be said to be mirrored by the jurisdictional arrangements, or structure, agreed among states. Jacobsson clarifies that legally maritime security involves areas under the sovereignty of a state, areas under the jurisdiction of a coastal state, and areas over which no state has jurisdiction, but where other jurisdictional principles apply, primarily the flag state principle.<sup>46</sup> The jurisdictional arrangements are not permanent or unalterable, and are subject to changes. An example of changes made, labeled by some as "creeping jurisdiction",<sup>47</sup> is the recognition of the Exclusive Economic Zone and rights over the continental shelf, motivated by states' greater claim to exclusive use.

For operators in the shipping industry, maritime security is particularly focused on the maritime transport system, relating to the safe arrival of cargo at its

<sup>38</sup> Marie Jacobsson, *supra* note 27: 391-392; see e.g. Jozef Goldblat, ed., *Maritime Security: The Building of Confidence UNIDIR* (New York: United Nations, 1992).

<sup>39</sup> James Kraska and Raul Pedrozo, *supra* note 6, 1

<sup>40</sup> *Ibid.*

<sup>41</sup> UNCLOS, *supra* note 17.

<sup>42</sup> Natalie Klein, *supra* note 4, 9.

<sup>43</sup> *Ibid.*; Stuart Kaye, "Freedom of Navigation in a Post 9/11 World: Security and Creeping Jurisdiction": 347, 348-9; in: David Freestone, Richard Barnes, and David M. Ong, eds., *The Law of the Sea: Progress and Prospects* (Oxford: Oxford University Press, 2006).

<sup>44</sup> Natalie Klein, *supra* note 4, 9; Myron H. Nordquist, et al., eds., *Legal Challenges in Maritime Security* (Leiden: Martinus Nijhoff, 2008).

<sup>45</sup> Natalie Klein, *supra* note 4, 1; the legally non-binding Proliferation Security Initiative (PSI) (which involves interdicting vessels carrying weapons of mass destruction, WMD), 2003, is an example.

<sup>46</sup> Marie Jacobsson, *supra* note 27: 392.

<sup>47</sup> Natalie Klein, *supra* note 4, 7; Barbara Kwiatkowska, "Creeping Jurisdiction Beyond 200 Miles in Light of the 1982 Law of the Sea Convention and State Practice," *Ocean Development and International Law* 22 (1991); Erik Franckx, "The 200-mile Limit: Between Creeping Jurisdiction and Creeping Common Heritage?" *George Washington International Law Review* 39 (2007).

destination without interference or being subjected to criminal activity.<sup>48</sup> The International Maritime Organization (IMO) has addressed maritime security issues since the 1980s, drawing a distinction between maritime safety and maritime security.<sup>49</sup> Maritime safety refers to minimizing the occurrence of accidents at sea that may be caused by for instance substandard ships, whereas maritime security is related to protection against unlawful and deliberate acts.<sup>50</sup>

The issue of increased fusion of civilian and military aspects is very much on the agenda also regarding maritime security. The range of maritime issues in play today raise complex legal issues, and a fundamental question is what law to apply when a particular threat is to be countered.<sup>51</sup> Law enforcement powers are the point of departure, but for instance when states have exercised greater powers than is normally granted in particular maritime zones (mostly powers of interdiction), recourse has been made to the right of self-defence and naval warfare.<sup>52</sup> The so-called 'war on terror' following the attacks in New York City, on September 11, 2001, has brought to light and contributed to the increasing fusion between law enforcement, Security Council action, the right to self-defence, and the law of naval warfare.<sup>53</sup> Kraska and Pedrozo state that: "Maritime security operations lie at the uncomfortable nexus between maritime law enforcement and naval warfare."<sup>54</sup> It is not possible to explore this issue further within the limits of this contribution, but in sec. 4 some concluding comments will be made regarding this topic.

As indicated above, the term maritime security is seldom defined in a categorical way.<sup>55</sup> Bueger assesses that the practical meaning will always vary across actors, time and space, and that striving for a universally acceptable definition of maritime security is an unproductive quest.<sup>56</sup> A practical approach is to identify what are perceived as existing or potential threats to maritime security, and the measures that have been, or need to be, taken to address these threats.<sup>57</sup> The approach in the 2008 UN Secretary-General Report concerning which threats that can be identified as maritime security threats<sup>58</sup> is the point of departure for this article.

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<sup>48</sup> Natalie Klein, *supra* note 4, 8.

<sup>49</sup> *Ibid.*; Marie Jacobsson *supra* note 27: 393.

<sup>50</sup> Marie Jacobsson, *supra* note 27: 393-394.

<sup>51</sup> Discussed by Natalie Klein, *supra* note 4, 297 ff, 321 ff.

<sup>52</sup> *Ibid.*, 298.

<sup>53</sup> *Ibid.*

<sup>54</sup> James Kraska and Raul Pedrozo, *supra* note 6, 2.

<sup>55</sup> Natalie Klein, *supra* note 4, 11.

<sup>56</sup> Ian Bueger, *supra* note 5: 163.

<sup>57</sup> Natalie Klein, *supra* note 4, 11

<sup>58</sup> United Nations (UN), *supra* note 30.

## 2. FINLAND AND THE ÅLAND ISLANDS

### 2.1. FINLAND AND MARITIME SECURITY

Finland is a maritime nation. About 90% of its exports and 80% of its imports are carried by sea.<sup>59</sup> The high proportion of foreign trade transported by sea makes it essential that sea routes are well-functioning and safe. Clearly, security regarding its maritime interests is crucial for Finland. However, the concept maritime security as such does not seem to be referred to in legal contexts. For instance, in the latest Government Bills focusing on the Coast Guard and its role in crime combating the concept is not visible.<sup>60</sup> But in policy contexts there are official positions, such as the Finnish participation in the coordination process under the EU Maritime Security Strategy<sup>61</sup> Action Plan<sup>62</sup>. The 2015 Finnish responses are a concrete Finnish contribution regarding the Action Plan<sup>63</sup> (in a filled-out reporting template) sent to the EU Commission. The Finnish responses focus on policy choices made for the purpose of implementing the Strategy and the Action Plan, focusing on cooperation, national as well as international, undertaken to counter threats, and on resources and achievements of the Finnish Coast Guard. The examples examined above, such as the recent Government Bills on the Finnish Border Guard, are not numerous, but carry that much weight that they suffice as a basis for at least a tentative conclusion that the concept maritime security has not been discussed, at least not to any large extent, in official legal contexts in Finland.

However, in policy contexts there are also other examples of official positions than the Finnish participation under the EU Maritime Security Strategy Action Plan. The above-mentioned Finnish Maritime Transport Strategy for Finland 2014–2022 focuses on measures related to maritime transport. (As indicated, the emerging trend is that 'maritime security' encompasses more than that.) There are numerous statements by the Government and Ministries containing references to maritime security.<sup>64</sup> Seemingly, the EU concept of maritime security has weighed in when it

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<sup>59</sup> Finnish Ministry of Transport and Communications, "Maritime Transport Strategy for Finland 2014–2022" // <https://www.lvm.fi/documents/20181/797516/Julkaisuja+24-2014/fc6c8d9f-c4eb-4a2f-bb7f-f9b4667b8b7e?version=1.0>.

<sup>60</sup> *Finnish Government Bills 40/2017, 41/2017, and 201/2017.*

<sup>61</sup> European Union, *supra* note 33. *The European Union Maritime Security Strategy (EUMSS) Action Plan (17002/14)* was first adopted on 16 December 2014. On 26 June 2018 the Council of the European Union adopted its conclusions, including the revised EUMSS Action Plan, on the revision of the EU Maritime Security Strategy (EUMSS) Action Plan (10494/18).

<sup>62</sup> *Ibid.*

<sup>63</sup> Received in personal communication 18 May 2018 from Sami Heino, Finnish Ministry for Foreign Affairs ("UM Tietopalvelu").

<sup>64</sup> Two examples are, first, the Finnish Ministry for Foreign Affairs, "Press Release 69/2015," 3 March 2015; and, second, the Finnish Government Communications Department, "Press Release 258/2016," 15 June 2016 // [https://valtioneuvosto.fi/sv/artikeln/-/asset\\_publisher/10616/suomi-ja-ranska-eu-nyhteista-turvallisuus-ja-puolustuspolitiikkaa-kehittava?\\_101\\_INSTANCE\\_LZ3RQQ4vvWXR\\_languageId=en\\_US](https://valtioneuvosto.fi/sv/artikeln/-/asset_publisher/10616/suomi-ja-ranska-eu-nyhteista-turvallisuus-ja-puolustuspolitiikkaa-kehittava?_101_INSTANCE_LZ3RQQ4vvWXR_languageId=en_US).

comes to policy. This view gains support from the assessment by Lundqvist who asserts that Finland's and Sweden's gradual implementation of the concept has followed the EU path rather than a national one, and that the two countries have incorporated the EU maritime security concept.<sup>65</sup>

## 2.2. THE ÅLAND ISLANDS

### 2.2.1. REGULATORY BACKGROUND

The Åland Islands is an autonomous region within Finland. According to a decision of the League of Nations in 1921, Finland gained sovereignty over the Islands while the Ålanders were guaranteed the preservation of their Swedish language, culture and local customs. The present Act on the Autonomy of Åland (hereinafter the Autonomy Act), passed by the Parliament of Finland in constitutional order and with assent of the Åland Parliament, entered into force on 1 January 1993.<sup>66</sup> The Parliament of Åland ("Lagtinget") exercises legislative power regarding certain fields in the Islands, as listed in the Autonomy Act, where chap. 4 (secs. 17-26) contains the Ålandic Parliament's legislative fields and chap. 5 (secs. 27-35) the Finnish Parliament's fields.<sup>67</sup> The point of departure is that the administrative competences follow the legislative powers.<sup>68</sup> However, there are possibilities provided for in the Autonomy Act to transfer administrative duties from the Åland Islands' authorities to an authority on the mainland, or vice versa. Such 'transferrals' are regulated in sec. 32 in the Autonomy Act, where it is stated that the instrument 'consentaneous decrees' can be used.<sup>69</sup> There are several such consentaneous decrees, in a variety of fields.

The legislative powers regarding the Border Guard belong to the Finnish state (sec. 27.34 in the Autonomy Act). The legislative powers regarding law and order (sec. 18.6 in the Autonomy Act) belong to the Åland Islands, with some exceptions, such as issues regarding the security of the State.<sup>70</sup> According to the Government Bill on the Autonomy Act<sup>71</sup> the security of the State encompasses the combating of

<sup>65</sup> Stefan Lundqvist, *supra* note 29, 248 f.

<sup>66</sup> *Finnish Act on the Autonomy of Åland (FFS 1991/1144) (ÅFS 71/1991)*.

<sup>67</sup> *Ibid.*: In the 1991 Autonomy Act a number of issues are listed concerning which it would be possible to transfer the legislative power from the Finnish Parliament to the Åland Islands' Parliament; for details see e.g. Finnish Ministry of Justice, "Development of the autonomy of Åland: Final report of the Åland Committee," 2013, 33/2017, 63, and *Finnish Government Bill 73/1990*, 46 ff.

<sup>68</sup> Finnish Ministry of Justice, *supra* note 67, 64.

<sup>69</sup> For details see e.g. the Finnish Ministry of Justice, *supra* note 67, 64.

<sup>70</sup> Sec. 18.6 in the Autonomy Act, *supra* note 66, clarifies that "public order and security, with the exceptions as provided by section 27, subparagraphs 27, 34 and 35" fall under the Åland legislative authority. The subparagraphs mentioned that fall under the state's legislative authority are; sec. 27.27 "firearms and ammunition", sec. 27.34 "security of the State, state of defence, readiness for a state of emergency", and sec. 27.35 "explosive substances, as to the part relating to State security".

<sup>71</sup> *Finnish Government Bill 73/1990*, *supra* note 67, 77.

terrorism. Consequently, certain new provisions proposed in Government Bill 201/2017 (hereinafter Bill 201/2017), regarding executive assistance between authorities when it comes to combating terrorism, will be valid also for the Åland Islands.

The first consentaneous decree on the Finnish Border Guard was adopted as late as 2004.<sup>72</sup> The latest revised decree on the tasks of the Finnish Border Guard on the Åland Islands came into force on 31 May 2017.<sup>73</sup> In the consentaneous decree it has been agreed *inter alia* that the Border Guard has certain administrative powers regarding such issues as oil damage and fishing.<sup>74</sup> Furthermore, it is clarified that the Ålandic Police can ask the Border Guard for assistance regarding law and order issues under certain circumstances; if urgent and if the Ålandic Police cannot deal with it without delay.<sup>75</sup>

The 2017 Consentaneous Decree, the Border Guard Act<sup>76</sup> and the Autonomy Act, are the basis for the Border Guard's tasks in the Åland Islands.

## 2.2.2. THE PROHIBITION AGAINST MILITARY, NAVAL OR AIR FORCES IN THE ÅLAND ISLANDS

The conventions<sup>77</sup> containing the provisions on the demilitarisation and neutralisation of the Åland Islands are the 1856 Convention on the demilitarisation of the Åland Islands (the 1856 Convention),<sup>78</sup> annexed to the Treaty of Paris, the 1921 Convention on the Demilitarisation and Neutralisation of the Åland Islands, concluded between ten states (the 1921 Convention)<sup>79</sup>, the bilateral treaty between Finland and the Soviet Union of 1940 (the 1940 Bilateral Treaty), and the 1947 Paris Peace Treaty.<sup>80</sup> The 1856 Convention established the original basis for the

<sup>72</sup> Finnish Decree FFS 420/2004, ÅFS 2004/21.

<sup>73</sup> Finnish Decree FFS 309/2017, ÅFS 58/2017. "Åland Delegation Opinion," Helsingfors/Mariehamn Nr. 24/17 (12 May 2017).

<sup>74</sup> *Ibid.*, sec. 3

<sup>75</sup> *Ibid.*, sec. 4.

<sup>76</sup> Finnish Border Guard Act 578/2005 // <http://www.finlex.fi/sv/laki/kaannokset/2005/en20050578.pdf>.

<sup>77</sup> The conventions can be found at the website of Åland Culture Foundation (Ålands Kulturstiftelse) // <http://www.kulturstiftelsen.ax/internationella-avtal>.

<sup>78</sup> Parties were France, Great Britain and Russia.

<sup>79</sup> Ten states ratified the 1921 Convention Finland, Sweden, Britain, Germany, France, Denmark, Poland, Italy, Estonia and Latvia, but Russia (the Soviet Union) is not a party to it.

<sup>80</sup> The regime has been analysed by many scholars, for instance: Johan Otto Söderhjelm, *Démilitarisation et neutralisation des Iles d'Åland en 1856 et 1921* (Helsingfors 1928); Mikaela Björkholm and Allan Rosas, *Ålandsöarnas demilitarisering och neutralisering* (The demilitarisation and neutralisation of the Åland Islands) (Åbo: Åbo Akademis förlag, 1990); Lauri Hannikainen, "The Continued Validity of the Demilitarised and Neutralised Status of the Åland Islands," *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 54 (1994); Allan Rosas, "The Åland Islands as a Demilitarised and Neutralised Zone", 23; in: Lauri Hannikainen and Frank Horn, eds., *Autonomy and Demilitarisation in International Law* (The Hague: Kluwer Law International, 1997); Lauri Hannikainen, "The International Legal Basis of the Autonomy and the Swedish Character of the Åland Islands": 57; in: Lauri Hannikainen and Frank Horn, eds., *Autonomy and Demilitarisation in International Law* (The Hague: Kluwer Law International, 1997); Sia Spiliopoulou Åkermark, "Åland's Demilitarisation and Neutralisation: Continuity and Change": 50; in: Sia Spiliopoulou Åkermark, ed., *The Åland Example and Its Components - Relevance for International Conflict Resolution* (Mariehamn: Åland Islands Peace

demilitarisation, in one operative article. The much more detailed 1921 Convention is the most comprehensive treaty text on the regime: It contains nine operative articles on the demilitarisation and neutralisation as well as certain exceptions. Stipulations include that Åland is not to be fortified and, in war time, "a neutral zone".<sup>81</sup> However, there is a need to keep in mind that the demilitarisation and neutralisation regime is 'more' than an analysis of the conventions in question; the regime can be said to involve "a series of regulations, institutions and processes at various levels, national as well as international".<sup>82</sup> This article will not explore in depth the scope of the demilitarisation and neutralisation regime, except to attempt to describe the provision containing the prohibition against military, naval or air forces to enter or remain in the Åland Islands, with its exceptions, as regulated in art. 4 in the 1921 Convention.<sup>83</sup>

The general prohibition in art. 4 concerns "military, naval or air force" (in the original French version: "force militaire, navale ou aérienne"). The expression is not defined in the Convention. Analyses have been made regarding the interpretation and scope of art. 4.<sup>84</sup> The prohibition encompasses also Finland, but with certain exceptions: "one or two"... "light surface warships" can visit the islands "from time to time" and may "anchor temporarily". Furthermore, "Finland may, if important special circumstances demand, send into the waters of the zone and keep there temporarily other surface ships". In practice the rule seems to have been interpreted to mean that the presence of Finnish naval vessels in Ålandic waters should not last more than 24 hours (each time).<sup>85</sup> The visits by Finnish naval vessels to the Åland Islands are carefully monitored by the Ålandic authorities and media. The number of visits every year are made public in the annual report to the legislative authority, the Lagting. The report covering 2017 stated that there had been 29 visits by naval vessels in 2017, and six of these involved landings.<sup>86</sup>

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Institute, 2011); Sia Spiliopoulou Åkermark, "The Puzzle of Collective Self-defence: Dangerous Fragmentation or a Window of Opportunity? An Analysis with Finland and the Åland Islands as a Case Study," *Journal of Conflict and Security Law* Vol. 22, Issue 2 (2017); Sia Spiliopoulou Åkermark, Salla Heinikoski, and Pirjo Kleemola-Juntunen, *supra* note 7.

<sup>81</sup> Art. 3 in the 1921 Convention: "No military or naval establishment or base of operations, no military aircraft or base of operations, and no other installation used for war purposes shall be maintained or set up in the zone described in Article 2."

<sup>82</sup> Sia Spiliopoulou Åkermark, Salla Heinikoski, and Pirjo Kleemola-Juntunen, *supra* note 7, 21.

<sup>83</sup> *Supra* note 77.

<sup>84</sup> Johan Otto Söderhjelm, *supra* note 80, 243; Erik Castrén, *Ahvenanmaan linnoittamattomuus ja neutralisointi* (1939), 269; Mikaela Björkholm and Allan Rosas, *supra* note 80, 61 ff; Niklas Fagerlund, *Innebörden av uttrycket 'temporärt förankra i de till öarna hörande vatten' i artikel 4 st. 2b) Ålandskonventionen* (Mariehamn: Åländsk utredningsserie 1994), 10; Allan Rosas, *supra* note 80; Sia Spiliopoulou Åkermark (2011), *supra* note 80.

<sup>85</sup> Susanne Eriksson, "Åland – demilitariserat och neutraliserat område": 17; in: Susanne Eriksson, Lars Ingmar Johansson, and Barbro Sundback, eds., *Fredens öar. Ålands självstyrelse, demilitarisering och neutralisering* (Mariehamn: Ålands fredsinstitut, 2006).

<sup>86</sup> "Ålandic Government's Report on Issues related to the Autonomy to the Ålandic Parliament," 8 March 2018, sec. 5.4 // <https://www.lagtinget.ax/arenden/RS%201%7C2017-2018/redogorelse-fran-alandskapsregering-rs-1-2017-2018-48020>.

Figures in the last few years are 18 visits in 2013, 19 visits in 2014, 12 visits in 2015, and 27 visits in 2016.<sup>87</sup>

According to art. 4 a in the 1921 Convention, in addition to the regular police force necessary to maintain public order and security, Finland may, if exceptional circumstances demand, temporarily send military forces to the Åland Islands “as shall be strictly necessary for the maintenance of order.”

The question posed in this article focuses on prohibition as such, and whether the Coast Guard could be seen as such a “military, naval or air force” referred to in the 1921 Convention. The exceptions in art. 4 are of interest above all when it comes to possible assistance by the Defence Forces to the Coast Guard.

### 2.3. THE FINNISH BORDER GUARD

The main national actor(s) responsible for the management of Finland’s maritime borders are the Coast Guard Districts, within the Border Guard. The Finnish Border Guard is a militarily organised authority that operates under the Ministry of the Interior.<sup>88</sup> There are two Coast Guard Coast Guard districts in Finland (before 2004 there were three districts) with in total 18 Coast Guard stations: The West Finland Coast Guard District comprises 13 Coast Guard stations.<sup>89</sup> As mentioned, two of these Coast Guard stations are located in the Åland Islands. The Border Guard also operates aviation resources. The length of the boundary of the territorial waters under the Border Guard’s responsibility is approximately 1 250 km.

### 2.4. THE TASKS OF THE FINNISH BORDER GUARD AND GROWING POWERS

The Border Guard’s responsibilities have continued to grow over the years. The border authorities in Finland are involved and have powers in several areas, regulated in a large number of national provisions, in such areas as shipping, assisting in the control of goods, law enforcement, fishing and the environment.<sup>90</sup>

Currently, the main law regulating the border management activities of the Border Guard is the Border Guard Act from 2005.<sup>91</sup> The former 1999 Frontier Guard

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<sup>87</sup> *Ibid.*

<sup>88</sup> See sec. 6 in the *Finnish Act on the Administration of the Border Guard 577/2005*, and sec. 25 in the *Finnish Border Guard Act 578/2005*, *supra* note 76, and for a description for instance p. 81 ff. in the *Finnish Government Bill 6/2005*.

<sup>89</sup> See the Finnish Border Guard website // [http://www.raja.fi/lsmv/en/organization/coast\\_guard\\_stations](http://www.raja.fi/lsmv/en/organization/coast_guard_stations).

<sup>90</sup> For a description of the competences in various fields, see e.g. *Finnish Government Bill 6/2005*, *supra* note 88, 11 ff, and *Finnish Government Bill 219/2008*, 1 ff.

<sup>91</sup> *Finnish Border Guard Act 578/2005*, *supra* note 76.



Act<sup>92</sup> was replaced 2005 by the Border Guard Act, in a complete revision of the legislation in question.<sup>93</sup> Sec. 3 in the 2005 Border Guard Act describes the border guard's responsibilities and tasks. The main task is 'border management'.<sup>94</sup> In the 2005 revision, the crime combating powers of the Border Guard were enhanced,<sup>95</sup> and subsequently there have been further strengthening of these powers.<sup>96</sup> In order to make it clearer which competencies the Border Guard holds in that field, a Government Bill was presented to Parliament in 2017 proposing a separate act on the Border Guard's crime combating powers.<sup>97</sup> The Bill resulted in the Act on Crime Combating by the Border Guard that came into force in April 2018,<sup>98</sup> which changed the Border Guard's powers in this regard slightly,<sup>99</sup> but not in any significant way, according to the Finnish Ministry of the Interior.<sup>100</sup>

In Government Bill 201/2017, which proposed the latest widening of the Finnish Border Guard's powers, the hybrid threat was emphasised as a ground for the measures proposed in the Bill.<sup>101</sup> The Finnish Parliament adopted the proposals in question on 27 November 2018, with only minor changes made in relation to the initial ones.<sup>102</sup> There have also been other legislative proposals and enactments in the last few years in which 'the new threats' are referred to as the reason for new legislation; for instance, those that reinforced the powers of the territorial surveillance authorities<sup>103</sup> to cover situations in which Finland's territorial integrity is violated by a military group without insignia.<sup>104</sup>

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<sup>92</sup> *Finnish Frontier Guard Act 320/1999.*

<sup>93</sup> *Finnish Government Bill 219/2008, supra note 90.*

<sup>94</sup> *Ibid. Finnish Border Guard Act 578/2005, supra note 76.*

<sup>95</sup> *Finnish Government Bill 6/2005, supra note 88, e.g. 1, 56 ff, and Finnish Government Bill 219/2008, supra note 90, 5 ff.*

<sup>96</sup> E.g. *Finnish Government Bill 219/2008, supra note 90, 21 ff; Finnish Government Bill 220/2013, Finnish Government Bill 107/2016* (regarding the giving and receiving of international assistance in relation to terrorism and transnational crime); Finnish Ministry of the Interior, "Press Release 11.12.2008 'Gränsbevakningsväsendet får ökade befogenheter i brottsbekämpning' (The Border Guard is trusted with increased crime combating powers)" // [https://www.raja.fi/sv/information/meddelandena/meddelandena\\_gbvs/1/0/gransbevakningsvasendet\\_f\\_ar\\_okade\\_befogenheter\\_i\\_brottsbekampning\\_21550](https://www.raja.fi/sv/information/meddelandena/meddelandena_gbvs/1/0/gransbevakningsvasendet_f_ar_okade_befogenheter_i_brottsbekampning_21550).

<sup>97</sup> *Ibid.* The statement of the Åland Islands' Government on the proposed legislation, dated 16 November 2017, ÅLR 2017/8729, made references to a few legislative changes that needed to be made, but had all in all no fundamental objections.

<sup>98</sup> *Finnish Act on Crime Combating by the Border Guard 108/2018* // <https://www.finlex.fi/sv/laki/alkup/2018/20180108>.

<sup>99</sup> *Finnish Government Bill 41/2017, supra note 60, 1.*

<sup>100</sup> Finnish Ministry of the Interior. "Press Release 40/2017 'Lagstiftningen om brottsbekämpning inom Gränsbevakningsväsendet förtydligas' (The legislation concerning the Border Guard is clarified)" // [https://intermin.fi/sv/artikkeli/-/asset\\_publisher/rajavartiolaitoksen-rikostorjuntaa-koskevaa-lainsaadantoa-selkeytetaan](https://intermin.fi/sv/artikkeli/-/asset_publisher/rajavartiolaitoksen-rikostorjuntaa-koskevaa-lainsaadantoa-selkeytetaan).

<sup>101</sup> *Finnish Government Bill 201/2017, supra note 60, 5-6; Finnish Ministry of the Interior, "Press Release 8/2018 'Powers of the Finnish Border Guard to intervene in hybrid threats to be strengthened'"* // [https://intermin.fi/en/article/-/asset\\_publisher/rajavartiolaitoksen-valtuuksia-puuttua-hybridiuhkien-tarkoitukset-lisata](https://intermin.fi/en/article/-/asset_publisher/rajavartiolaitoksen-valtuuksia-puuttua-hybridiuhkien-tarkoitukset-lisata).

<sup>102</sup> See the *Finnish Parliament's reply, RSv 148/2018* // [https://www.eduskunta.fi/SV/vaski/EduskunnanVastaus/Sidor/RSv\\_148+2018.aspx](https://www.eduskunta.fi/SV/vaski/EduskunnanVastaus/Sidor/RSv_148+2018.aspx).

<sup>103</sup> According to sec. 23, the Defence Forces, the Border Guard, the Police and Customs authority are such authorities.

<sup>104</sup> See *Finnish Government Bill 56/2017* with proposals regarding the *Finnish Territorial Surveillance Act (755/2000)*, which are in force since July 2017.



The enactment of proposals in Bill 201/2017<sup>105</sup> has entailed a further strengthening of the Guard's crime combating powers. It is stated in the Bill that there is a need to strengthen the Guard's powers in the maintenance of public order and security at border crossing points, in the premises of the Finnish Border Guard and in areas under the control of the Finnish Border Guard at times when the police service is unavailable; the powers of the Finnish Border Guard would be the same as those of the police in corresponding situations.<sup>106</sup> The adopted proposals have widened the Border Guard's powers when it comes to aiding and receiving aid from other authorities; so-called executive assistance. The amendments include that the Finnish Border Guard would be authorised to provide the police with executive assistance involving the use of military force in counter-terrorism activities.<sup>107</sup> Furthermore, the possibility for the Finnish Defence Forces to give executive assistance to the Finnish Border Guard has been widened, in a general way, and such assistance could now include measures using force under the direction of a competent border guard.<sup>108</sup> The proposals in the Bill regarding the powers of conscripts when used in support of the Finnish Border Guard have been enacted.<sup>109</sup>

The Finnish parliamentary Constitutional Law Committee in its supervisory role has examined the proposals on the strengthening of the powers of the Board Guard over the years, and on several occasions has underlined that the maintenance of law and order is a police task, and police tasks can only exceptionally and if there are well-grounded reasons, be performed by other authorities.<sup>110</sup> However, also the latest proposals in Bill 201/2017 have been approved by the Constitutional Law Committee, as fulfilling the necessary criteria.<sup>111</sup>

Executive assistance can be needed, and is given, both in fields under Ålandic powers and state powers. The Ålandic Government has stated that the fact that today's authorities need to be more specialised results in increased executive assistance being provided among authorities, and that this can lead to an increased fusion of military and civilian activities, for instance when dealing with threats of a civilian nature, which is a growing problem in relation to the demilitarisation.<sup>112</sup>

The Constitutional Law Committee,<sup>113</sup> the Defence Committee,<sup>114</sup> and the Administration Committee,<sup>115</sup> were largely positive in their statements regarding

<sup>105</sup> *Finnish Government Bill 201/2017*, *supra* note 60.

<sup>106</sup> *Ibid.*, 1. Finnish Ministry of the Interior, "Press Release 8/2018," *supra* note 101.

<sup>107</sup> *Ibid.*; *Finnish Border Guard Act 578/2005*, *supra* note 76, sec. 77a.

<sup>108</sup> *Ibid.*; *Finnish Border Guard Act 578/2005*, *supra* note 76, sec. 79.

<sup>109</sup> *Ibid.*

<sup>110</sup> E.g. *Finnish Parliamentary Constitutional Law Committee*, GrUU 6/2018.

<sup>111</sup> *Ibid.*

<sup>112</sup> Åland Islands' Government, "Policy for the Åland Islands' demilitarisation and neutralization," (2015): 21.

<sup>113</sup> Statement by the *Finnish Parliamentary Constitutional Law Committee*, *supra* note 110.

the proposals in Bill 201/2017. As mentioned, the proposals in the Bill were adopted on 27 November 2018 with only minor changes,<sup>116</sup> based on the views of the Committees. The main content of relevance for the Åland Island of the Bill's proposals is described in broad terms below in sec. 2.7. The new law provisions entered into force on 1 April 2019.<sup>117</sup>

## 2.5. THE NATURE OF THE FINNISH BORDER GUARD

The nature of the Finnish Border Guard, and any possible military aspects, in relation to the Åland Islands' demilitarised status has been discussed over the years.<sup>118</sup> In 1989 Rosas and Björkholm explored the topic and reached the conclusion that it was possible to interpret the 1921 Convention in the way that art. 4 on the prohibition against armed forces entering or staying in the Åland Islands demilitarised area does not encompass the Finnish Border Guard.<sup>119</sup>

Rosas and Björkholm examined art. 43. in the 1977 additional protocol I relating to the Protection of the Victims of International Armed Conflicts, which complements the 1949 Geneva Conventions.<sup>120</sup> According to the International Committee of the Red Cross (ICRC) state practice establishes the rule in art. 4,3 as a norm of customary international law applicable in international armed conflicts.<sup>121</sup> Rosas and Björkholm stated that an interpretation of art. 43 leads *inter alia* to the conclusion that a hierarchy and the availability of certain weapons can be seen as indications of the existence of armed forces.<sup>122</sup> Looking closer at the national rules governing the Finnish Border Guard, Rosas and Björkholm referred *inter alia* to the two following factors indicating a military nature of the Border Guard: in the Finnish legislation it was stated that the inner organisation of the Border Guard was military,<sup>123</sup> and, one of the Border Guard's tasks was to participate in the defence of the country.<sup>124</sup> Factors indicating that the Border Guard was of a civilian nature were, according to Rosas and Björkholm among others, the following: the chief and the leadership were acting under the Ministry of the Interior, not the Ministry of

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<sup>114</sup> Statement by the *Finnish Parliamentary Defence Committee*, *FsUU 3/2018 rd.*

<sup>115</sup> Statement by the *Finnish Parliamentary Administration Committee*, *FvUB 16/2018 rd.*

<sup>116</sup> See the *Finnish Parliament's reply*, *supra* note 102.

<sup>117</sup> The new legislation is available in the *Finnish Act on amendments in the Border Guard Act 9/2019* // <https://www.finlex.fi/sv/laki/alkup/2019/20190009>

<sup>118</sup> E.g. "Policy for the Åland Islands' demilitarisation and neutralization", *supra* note 112, 24.

<sup>119</sup> Mikaela Björkholm and Allan Rosas, *supra* note 80, 63 ff.

<sup>120</sup> *Ibid.* *Geneva Conventions of 12 August 1949* // <https://www.icrc.org/en/publication/0173-geneva-conventions-august-12-1949>.

<sup>121</sup> See the ICRC website // [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule4](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule4).

<sup>122</sup> Mikaela Björkholm and Allan Rosas, *supra* note 80, 63 ff.

<sup>123</sup> *Ibid.*, *Finnish Border Guard Act 5/1975*, sec. 2.

<sup>124</sup> *Ibid.*, *Finnish Border Guard Act 5/1975*, sec. 1.

Defence, and, the Border Guard did not form part of the Defence Forces in peace time.<sup>125</sup>

In the current legislation in force it is still stated that the inner organisation of the Border Guard is military.<sup>126</sup> It is also stated that the Border Guard takes part in the defence of the country.<sup>127</sup> According to the current legislation in force it is stated that the chief and the leadership are acting under the Ministry of the Interior, not the Ministry of Defence,<sup>128</sup> and the Border Guard still does not form part of the Defence Forces in peace time.<sup>129</sup> It seems that at least regarding the mentioned factors, the Border Guard's status is similar to when Rosas and Björkholm explored the issue, and based on this, the conclusion would still be that art. 4 (in the 1921 Convention) on the prohibition against armed forces entering or staying in the Åland Islands' demilitarised area does not encompass the Finnish Border Guard.

Nevertheless, it can be noted that there have been further developments. There have perhaps not been any fundamental changes regarding the Guard's status in the last few years, but the Guard has been evolving in the context of tasks. According to sec. 33 in the Territorial Surveillance Act,<sup>130</sup> the Defence Forces and the Border Guard can use military means of force to secure the territorial integrity of Finland.<sup>131</sup> In 2014 a new section 77.a was inserted in the 2005 Border Guard Act, according to which the Border Guard could give the Police executive assistance with military force when combatting terrorism in the Finnish sea area and Exclusive Economic Zone.<sup>132</sup> When the Ålandic Government made its view known in 2014 regarding the proposal to insert the provision in question, it made reference to military aspects, and pointed out that it had made references earlier on of a similar nature regarding the fact that the Border Guard performs tasks involving military aspects.<sup>133</sup> The scope of sec 77.a on the use of military force in the context of terrorism was enlarged in 2017 to encompass other EU member states' sea area or Exclusive Economic Zone.<sup>134</sup> Use of military force refers to the use of armed force with weaponry acquired for military purposes that is more powerful than the use of personal sidearms of officers and is suitable for the

<sup>125</sup> Mikaela Björkholm and Allan Rosas, *supra* note 80, 63 ff.

<sup>126</sup> *Finnish Act on the Administration of the Border Guard 577/2005*, *supra* note 88, sec. 6.

<sup>127</sup> *Finnish Border Guard Act 578/2005*, *supra* note 76, sec. 3 and sec. 25.

<sup>128</sup> *Finnish Act on the Administration of the Border Guard 577/2005*, *supra* note 88, sec. 3.

<sup>129</sup> As transpires from the *Finnish Border Guard Act 578/2005*, *supra* note 76, the *Finnish Act on the Administration of the Border Guard 577/2005*, *supra* note 88, and the *Finnish Territorial Surveillance Act (755/2000)*, *supra* note 104.

<sup>130</sup> *Ibid.*

<sup>131</sup> *Finnish Government Bill 38/2000*, 51 ff.

<sup>132</sup> *Finnish Government Bill 220/2013*, *supra* note 96, for details, e.g. 52 ff.

<sup>133</sup> Ålandic Government statement ÅLR 2013/2048, 17 January 2014.

<sup>134</sup> See *inter alia* *Finnish Government Bill 107/2016*, *supra* note 96.

performance of police duties, according to sec. 77a. Furthermore, the possibilities to use military force will be widened according to the proposals in Bill 201/2017.<sup>135</sup>

However, all in all it seems that the Ålandic Government sticks to the view that non-military aspects are outweighing military ones. In the 2015 "Policy for the Åland Islands' demilitarisation and neutralisation", the Ålandic Government assesses that even though some of the legislation concerning the Border Guard seem to underline military aspects, the regular work and daily tasks of the Border Guard can be seen as constituting tasks that are not of a military nature.<sup>136</sup>

## 2.6. CONSCRIPTS IN THE FINNISH BORDER GUARD

A highly interesting issue related to the Border Guard's activities in the Åland Islands is the use of conscripts for Border Guard tasks. It seems to be the firm view of the Ålandic Government that conscripts cannot be used in 'regular' Border Guard's duties within the Åland Islands demilitarised and neutralised area.<sup>137</sup> The international legal definitions of armed forces do not explicitly address the concept 'conscript'.<sup>138</sup> Conscriptio – the compulsory enlistment of civilians into the military – is a relatively recent development, since for much of history sovereigns relied on either voluntary enlistment or impressments to staff their armed forces.<sup>139</sup> Most experts agree that the 1949 Geneva Conventions created only two categories: lawful combatants, and civilians.<sup>140</sup> Combatants are members of armed forces.<sup>141</sup> It is of interest for the purpose of this article to explore the specific issue concerning the conscripts' position in Finland according to national rules, and in particular their position when supporting the Border Guard.

The Act on the Administration of the Border Guard stipulates that conscripts can be appointed to the Border Guard for support, if needed.<sup>142</sup> Also women performing voluntary military service are covered by sec. 30, but in this article the focus is on compulsory enrolled conscripts. The provision in question was included in the revision of the legislation on the Border Guard in 2005.<sup>143</sup> It was clarified in the preparatory works that the conscripts were not to replace border guard officials. Rather, they should perform supportive tasks or assist border guard officials.<sup>144</sup> It

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<sup>135</sup> *Supra* note 60, 25-26, 76.

<sup>136</sup> "Policy for the Åland Islands' demilitarisation and neutralization," *supra* note 112, 24.

<sup>137</sup> Chapter 5.3 in the "Ålandic Government's Report on Issues related to the Autonomy to the Ålandic Parliament", *supra* note 86.

<sup>138</sup> ICRC website, *supra* note 121.

<sup>139</sup> Discussed e.g. in Susan W. Brenner and Leo L. Clarke, *supra* note 8: 1049.

<sup>140</sup> *Ibid.*, 1022; ICRC webpage, *supra* note 121.

<sup>141</sup> *Ibid.*

<sup>142</sup> Sec. 30, *Finnish Act on the Administration of the Border Guard 577/2005*, *supra* note 88.

<sup>143</sup> *Finnish Government Bill 201/2017*, *supra* note 60, 39.

<sup>144</sup> *Finnish Government Bill 6/2005*, *supra* note 88, 98; *Finnish Government Bill 201/2017*, *supra* note 60, 39.

was also clarified that the conscripts were subordinate to the immediate leadership and worked under continuous supervision.<sup>145</sup> The Ålandic Government was asked for its views on the draft Bill before it was finalised, and had some comments,<sup>146</sup> but at that time none specifically on the use of conscripts as support for the Border Guard.

Conscripts' legal position in general is grounded in sec. 127 in the Finnish Constitution<sup>147</sup> on the obligation to defend the country, and on the Conscription Act,<sup>148</sup> that details the obligation.<sup>149</sup> The Finnish Parliamentary Constitutional Law Committee has pointed out that the conscripts that are appointed to support the Border Guard are not employed by the Defence Forces or the Border Guard.<sup>150</sup> Rather, it is their duty to serve according to sec. 57 in the Conscription Act.

No detailed provisions on the powers of the conscripts when supporting the Border Guard were enacted in 2005, but Bill 201/2017 proposed such detailed provisions.<sup>151</sup> The proposals included that conscripts could take people's personal identifying characteristics, direct traffic and carry out security checks.<sup>152</sup> The Constitutional Law Committee has earlier assessed that it is possible to legislate about conscripts being appointed to temporary duties not part of the Defence Forces, if this is to the advantage of the Defence Forces and the conscript's education.<sup>153</sup> The Constitutional Law Committee assessed that the tasks (and powers) proposed in Bill 201/2017 were acceptable, and in accordance with sec. 127 in the Finnish Constitution.<sup>154</sup>

The Defence Committee on Bill 201/2017 states that: according to the information to the Committee such support would be given in extraordinary situations, and there has not been a need for such support for the Border Guard

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<sup>145</sup> *Ibid.*

<sup>146</sup> *Finnish Government Bill 6/2005, supra* note 88, 76: In the *Ålandic Statement of 24 January 2005 (K10/04/1/23)* it was assessed that the proposals in Bill 6/2005 widened the Border Guard's powers in a way that could affect issues under the Åland Islands' legislative powers, but that the Consentaneous Decree in force would have to be amended accordingly for these changes to be in force also for the Åland Islands. It is also stated *inter alia* that keeping in mind the enlarged role of the Border Guard in civilian crisis management and terrorist situations, the state authorities should prepare planning for the Coast Guard in the Åland Islands, so that international rules on the demilitarisation and neutralisation are not violated. In Bill 6/2005 it is also stated that 'procedures' of the Border Guard in the demilitarised Åland would be regulated more in detail.

<sup>147</sup> *The Constitution of Finland 731/1999, sec. 127.*

<sup>148</sup> *Finnish Conscription Act 1438/2007.*

<sup>149</sup> *Finnish Parliamentary Constitutional Law Committee, supra* note 110, p. 5. It can be noted that conscripts can perform military service at the Border Guard, see e.g. sec. 3 in the *Finnish Conscription Act 1438/2007*, in the Guard's "border jaeger companies". The Finnish Parliamentary Administration Committee, *supra* note 115, expressed the view that primarily the conscripts trained by the Border Guard should be used for support of the Border Guard for the specific tasks in question.

<sup>150</sup> *Ibid.*

<sup>151</sup> *Finnish Government Bill 201/2017, supra* note 60, 39 ff, 76. See also Finnish Ministry of the Interior, "Press release 8/2018," *supra* note 101.

<sup>152</sup> *Ibid.*

<sup>153</sup> *Finnish Parliamentary Constitutional Law Committee, supra* note 110.

<sup>154</sup> *Ibid.*

lately, not even when there have been grave disturbances for the Guard to handle.<sup>155</sup>

The European Court of Justice has elaborated *inter alia* in the Dory case on the issue of compulsory military service, but mainly from the perspective of whether it is compatible with the principle of equal treatment of the sexes under Community law. But the point of departure has been that conscription is a decision of a Member State concerning the organisation of its armed forces, and, thus, the conclusion can be drawn that conscripts are seen as part of the armed forces.<sup>156</sup> Interestingly, Finland submitted an observation in that case, in which the obligation to perform military service is labeled a fundamental choice of defence policy.<sup>157</sup>

Based on the reasoning above it can be concluded that conscripts are part of the Defence Forces. This conclusion is not altered by such aspects as the conscripts' subordination to the immediate leadership in the Border Guard and continuous supervision of them.<sup>158</sup> The reasoning by the Constitutional Law Committee regarding the conscripts' status, for instance that they are not employed by the Border Guard, reinforces this interpretation. The Ålandic Government has stated that the status of military units cannot change depending on the mission or command at the time (seemingly in the context of the issue of executive assistance by the Defence Forces to the Border Guard), which, against the background of the rules described above, transpires as a valid conclusion.<sup>159</sup>

## 2.7. THE LATEST PROPOSALS REGARDING THE BORDER GUARD IN RELATION TO THE ÅLAND ISLANDS

Not all the proposals in Bill 201/2017 are directly relevant for the Åland Islands. Firstly, the proposals on strengthening the Border Guard's powers in the maintenance of public order and security are not in general relevant for the Åland Islands, since the Ålandic Parliament has the legislative powers in this field – with the exception of issues regarding the security of the state, such as the combating of terrorism (see sec. 2.2 above).<sup>160</sup> Consequently, for instance, the new provisions

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<sup>155</sup> Finnish Parliamentary Defence Committee, *supra* note 114, 3. According to a personal telephone communication with Reijo Lahtinen, Finnish Ministry of the Interior, on 28 March 2019, there has not been any such use since the adoption of the rule in 2005. In that context it can be noted that the Border Guard can use its own students – who have completed conscript service – enrolled in the basic course for border guards at the Border and Coast Guard Academy, for the tasks in question (*supra* note 149).

<sup>156</sup> *Alexander Dory v. Federal Republic of Germany*, case C-186/01, [2003] E.C.R. I-2508, para. 35, (decided March 11, 2003) // <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-186/01>.

<sup>157</sup> *Ibid.*, para. 27.

<sup>158</sup> For a discussion regarding military command, see e.g. Geoffrey S. Corn, "Autonomous weapons systems: managing the inevitability of 'taking the man out of the loop'"; in: Nehal Bhuta, Susanne Beck, Robin Geiss, Hin-Yan Liu, and Claus Kress, eds., *Autonomous Weapons Systems: Law, Ethics, Policy* (Cambridge University Press, 2016).

<sup>159</sup> Chapter 5.3 in the "Åland Islands' Government's Report", *supra* note 86, 4.

<sup>160</sup> Finnish Government Bill 73/1990, *supra* note 67, 77.

on the Border Guard's combating of terrorism are relevant and will be in force also for the Åland Islands. The new provision regarding the Border Guard's possibilities to receive executive assistance from the Defence Forces is highly relevant for the Åland Islands and the demilitarised status, in relation to the prohibition for the Defence Forces to enter or remain in the Åland Islands.

Secondly, the proposal in Bill 201/2017 that the Border Guard's activities could include conscripts, as a measure of support for the Border Guard, is of relevance for the Åland Islands, for the same reasons. Conscripts could be included in the regular activities of the Border Guard and take part in both duties that fall under the legislative powers of the state (regular border management tasks), and tasks that have been conferred on the Border Guard through the consentaneous decree.

The Ålandic Government was asked about its opinion on a draft Government Bill dated 11 July 2017 (hereinafter "the draft Bill"),<sup>161</sup> later to be presented to the Finnish Parliament as Bill 201/2017, and the Ålandic Government's statement on the draft Bill is dated 2 October 2017.<sup>162</sup>

Firstly, as regards the combating of terrorism, the text of the draft Bill was quite categorical. Even though the 1921 Convention and the 1940 Bilateral Treaty were referred to as an obstacle for (in general) the entrance of military forces,<sup>163</sup> the draft Bill text continued with an explanation that according to art. 4 a<sup>164</sup> in the 1921 Convention Finland may, if exceptional circumstances demand, temporarily send military forces to the Åland Islands, and that terrorism always constitutes such exceptional circumstances. The draft Bill also stressed that such a terrorism combating operation was always led by civilian authorities.

Secondly, the formulation on conscripts participating in the Border Guard's activities in the Åland Islands was more far-reaching in the draft Bill than the one that was included in the final version of the Bill. It was stated in the draft Bill that conscripts within the Coast Guard would be allowed to perform duties on the Åland Islands regarding issues falling under the powers of the state (according to the consentaneous decree on the Coast Guard's tasks).<sup>165</sup>

The Ålandic Government had doubts regarding the interpretation of exceptional circumstances in art. 4a (in the 1921 Convention), the formulation on terrorism, and on conscripts, in the draft Bill and voiced concern in the mentioned

<sup>161</sup> Received in personal communication via e-mail from the administration of the Ålandic Government on 8 August 2018.

<sup>162</sup> *Åland Islands Government ÅLR 2017/5668, 2 October 2017, 4.*

<sup>163</sup> It should be noted for instance that the 1856 Convention is not at all mentioned in the Bill. The 1921 Convention has been seen as complementing, rather than replacing, the 1856 Convention; see Sia Spiliopoulou Åkermark, Salla Heinikoski, and Pirjo Kleemola-Juntunen, *supra* note 7, 104, as explicitly stated in the preamble of the 1921 Convention.

<sup>164</sup> The text of the 1921 Convention, *supra* note 77.

<sup>165</sup> Personal communication, *supra* note 161.



statement of 2 October 2017.<sup>166</sup> In the Bill that was subsequently presented to Parliament as Bill 201/2017, the formulations on the interpretation of exceptional circumstances in art. 4a, terrorism, and on conscripts had indeed been changed, as follows.

Firstly, the formulation on terrorism had been softened. The changes made *inter alia* entails that the combating of terrorism can be seen as such exceptional circumstances as those referred to in art. 4.a, but this will always be decided on case-by-case basis. Furthermore, it is stated that executive assistance that will encompass the use of military force will be decided on by the Finnish Government, and the international conventions on the demilitarisation and neutralisation, as well as foreign policy aspects, will be taken into account in connection with such a decision.

Secondly, regarding conscripts the formulation had also been softened in the final version of the Bill, although seemingly not fully in line with the Ålandic comments. As described in sec. 3.5.1 it is the view of the Ålandic Government that conscripts cannot be used in regular Border Guard tasks, and in its statement of 2 October 2017 on the draft Bill the Ålandic Government stresses that it is not possible to use conscripts for the duties of the Border Guard within the Åland Islands' demilitarised and neutralised area.<sup>167</sup> In the Bill that was subsequently presented to Parliament as Bill 201/2017, it is stated that the application of the provision on the powers of conscripts, when supporting the Border Guard's activities, should be decided on in a case-by-case basis on the Åland Islands and that the international Conventions on the demilitarisation and neutralisation should be respected.<sup>168</sup> This does seemingly not constitute a full acceptance of the views on this matter by the Ålandic Government, which categorically states that conscripts shall not participate in regular Border Guard's tasks. However, its statement of 5 March 2018 the Ålandic Government accepts the new formulation as fully satisfactory.<sup>169</sup>

Finally, the issue of the need for an analysis of the Åland Islands' status in relation to possible future crisis scenarios is brought up in the Bill<sup>170</sup> (the formulation was included already in the draft Bill from July 2017). It is emphasized that the parliamentary Constitutional Law Committee has assessed that it is necessary to examine the effects of the Åland Island's status on the authorities' executive assistance to each other, in particular such assistance by the Defence

<sup>166</sup> Åland Islands Government, *supra* note 162.

<sup>167</sup> *Ibid.*, 4.

<sup>168</sup> Finnish Government Bill 201/2017, *supra* note 60, 29.

<sup>169</sup> Åland Islands' Government statement ÅLR 2018/1560, 5 March 2018. The Ålandic Government stated *inter alia* that the views that it had made known in the earlier statement of 2 October 2017 had been taken into account.

<sup>170</sup> Finnish Government Bill 201/2017, *supra* note 60, 29.



Forces to the Border Guard in threatening situations. The Constitutional Law Committee stated its view on this matter both in 2005 and 2014. This analysis has not yet been carried out.<sup>171</sup>

The Åland Islands' government elaborated Ålandic guidelines on executive assistance in 2017.<sup>172</sup> A complex web is described in these guidelines. It is possible for a number of Ålandic authorities to ask for executive assistance regarding several issues, also without explicit legal ground. The guidelines make reference to a report on the issue by the Finnish Defence Ministry, in collaboration with the Ministry of Justice, in 2014.<sup>173</sup> In the report it is stated that there are divergent views as regards what kind of circumstances and to what extent the Defence Forces could assist authorities' activities on the Åland Islands.<sup>174</sup> In the Ålandic guidelines the Ålandic Government stresses the need for a comprehensive – including both Finnish authorities and Ålandic authorities – joint exploration and assessment of the issue of executive assistance by the Defence Forces on the Åland Islands.<sup>175</sup>

## CONCLUSIONS

In general the increasing grey area between military and civilian rules, actors, and activities is problematic for the Ålands Islands' demilitarised status. It renders the distinction between what is permitted and prohibited under the Åland Islands' demilitarisation regime complicated,<sup>176</sup> since the Åland Islands regime relies on the idea that a state of war is distinguishable from a state of non-war. Such confusion might have occurred also earlier, but new threats have surfaced, resulting *inter alia* in the "war on terror" and extensive new technologies have been developed and changed the ways of defense and warfare.<sup>177</sup> This has had an impact on policies, but national and legal frameworks have not been adapted accordingly. A continued advocating for upholding the distinction between military and civilian rules, actors and activities, rests on fundamental ideas of international law, and arguments for the conclusion that it is and will continue to be meaningful to distinguish between military and civilian military and civilian rules, actors and activities. There are other

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<sup>171</sup> *Ibid.*

<sup>172</sup> Åland Islands' Government, "Guidelines for requesting assistance of state authorities" (Riktlinjer för begäran om handräckning av riksmyndigheter), ÅLR 2017/7701, 15 November 2017 // <https://www.regeringen.ax/sites/www.regeringen.ax/files/attachments/protocol/nr82-2017-enskild-rk1a.pdf>.

<sup>173</sup> Finnish Defence Ministry, in collaboration with the Ministry of Justice, "Report," HARE PLM001:00/2014, 17 April 2015.

<sup>174</sup> *Ibid.*

<sup>175</sup> Åland Islands' Government, "Guidelines for requesting assistance of state authorities," *supra* note 172, 3.

<sup>176</sup> As discussed and argued by Sia Spiliopoulou Åkermark, Saila Heinikoski, and Pirjo Kleemola-Juntunen, *supra* note 7, 99.

<sup>177</sup> *Ibid.*, 109: "Technology presents not only difficulties and threats. It also offers opportunities for the upholding of the Åland Islands demilitarisation regime, such as territorial surveillance technologies being used to the advantage of upholding the regime".

views indicating that “[s]trict adherence to the dichotomy between war and peace would be ineffective and counterproductive for establishing peace and security.”<sup>178</sup>

The concept of maritime security is of interest when assessing the policy and legislative choices made regarding the setting-up and powers of the Finnish Border Guard. There is no agreement as to the detailed content of that concept, neither politically nor legally, but the measures and policies that Finland adopt and apply related to threats that often fall under the definition of ‘maritime security’ affect the Åland Islands and its demilitarised and neutralised regime in different ways. However, it should be noted as regards the Åland Islands that reasoning based on the concept ‘maritime security’ does not suffice or give the full picture, since the Coast Guard issues in relation to the Åland Islands go beyond maritime security concerns, because of the special powers arrangements in place (as described in sec. 2.2).

One reason to keep in mind is: if one accepts that there is a fundamental policy in international law that the need to resort to the use of force is to be minimised to promote public order, then it would seem that responses to maritime security threats would be tailored accordingly. This approach would mean that it is not appropriate for states to extend the law of naval warfare into times of peace.<sup>179</sup>

In particular, this contribution has explored the issue of security concerns in relation to the on-going widening of the Finnish Border Guard’s powers, and how such a widening of the powers relates to the Åland Islands’ demilitarised status. It seems useful to return to the research question at this point: is there a conflict emanating from possible military aspects of the Finnish Coast Guard’s functions vis-à-vis the demilitarised status of the Åland Islands?

First, it was clarified that there is a prohibition, also concerning Finland, in the 1921 Åland Convention for military, naval, or air forces to enter and remain in the Åland Islands. However, there are certain exceptions for Finland, which have not been examined in depth in this article, but can be summarised as follows. One or two light surface warships can visit the islands from time to time and may anchor temporarily. Finland may also, if important special circumstances demand, send into the waters of the zone and keep other surface ships there temporarily. In practice the rule seems to have been interpreted to mean that the presence of Finnish naval vessels in Ålandic waters should not last more than 24 hours (each time). The visits by Finnish naval vessels to the Åland Islands are carefully monitored by the Ålandic authorities, and media. Furthermore, in the field of public

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<sup>178</sup> Natalie Klein cites (*supra* note 4, 298) Dieter Flack, “Individual and State responsibility for Intelligence Gathering,” *Michigan Journal of International Law* 28 (2007): 687, 690; Flack is making the comment in the context of distinguishing between rules for wartime and peacetime espionage.

<sup>179</sup> Natalie Klein, *supra* note 4, 299.

order and security, Finland may, in addition to the regular police force necessary to maintain it, and if exceptional circumstances demand, temporarily send military forces to the Åland Islands “as shall be strictly necessary for the maintenance of order.”

Second, as concerns the nature of the Finnish Coast Guard, the Coast Guard is not considered to be part of the Finnish Defence Forces in peacetime, by Finland or the Ålandic authorities. In practice this is shown *inter alia* through the presence of two Coast Guard stations in the Åland Islands. The exploration in this contribution has not change that conclusion: aspects of a military nature regarding how the Finnish Border Guard functions were identified, but not assessed as being decisive. As regards the latest widening of the powers of it, above all two issues were seen as of interest: the use of (compulsory enrolled) conscripts by the Border Guard and the assistance to the Border Guard by the Defence Forces.

The use of conscripts for the support of the Border Guard, as noted by the Parliamentary Defence Committee, does not occur often – apparently not at all, so far.<sup>180</sup> From an international law perspective there are seemingly not any arguments according to which conscripts are assessed as not being a part of armed forces. The possible use of conscripts in the Coast Guard in the Åland Islands raises questions. One can assume that any use of conscripts will be closely monitored by the Ålandic authorities, and media.

The assistance of the Defence Forces brings into play art. 4.a in the 1921 Convention, and the formulation “exceptional circumstances” in it. Based on the final wording in Bill 201/2017, assistance requiring use of military force in counter-terrorism activities will always be decided on case-by-case basis. Furthermore, it is clarified in the Bill that executive assistance that will encompass the use of military force will be decided on by the Finnish Government, and the international conventions on the demilitarisation and neutralisation as well as foreign policy aspects will be taken into account in connection with such a decision. This is a seemingly satisfactory solution for the Åland Islands’ authorities. It remains to be seen how it will play out.

The issue of executive assistance is also of interest *per se*. The “mix” of an authority’s own powers and its powers to provide executive assistance to another authority, if asked by the latter authority, often renders the overview of the actual powers of an authority quite complex. Regarding the Ålands Islands there is also the additional factor of the division of powers between the Åland Islands and the state. Executive assistance can be needed, and is given, both in fields under Ålandic powers and state powers. The Ålandic guidelines on executive assistance are

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<sup>180</sup> *Supra* note 155.

perhaps not the final say on this issue. An additional aspect to take into consideration in this context is the assessment that there is a tendency in Finland, both in law and policy, of using military means when responding to non-military threats, for instance in the case of natural disasters or major accidents at sea in Finland.<sup>181</sup> The need for a comprehensive exploration and analysis – including both Finnish authorities and Ålandic authorities – of the Åland Islands' status in relation to possible future 'threatening situations' and assistance by the Defence Forces, independently or through executive assistance to other authorities, on the Åland Islands, has been highlighted on several occasions and in different contexts, as noted above. The complexity of the task and its political consideration are perhaps difficult obstacles to overcome.

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<sup>181</sup> Finnish Ministry of Justice, *supra* note 67.

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