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Demilitarisation and neutralisation of Svalbard: how has the Svalbard regime been able to meet the changing security realities during almost 100 years of existence?

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ABSTRACT. Norway will soon celebrate that 100 years ago, the former 'no-man's land' of the Svalbard archipelago was placed under its sovereignty. However, this paper focuses on another important and often omitted element also brought about by the 1920 Svalbard Treaty regarding its demilitarisation and neutralisation. We ask how has the Svalbard security regime been able to meet the various challenges it has faced over almost 100 years of existence? Also, given that the treaty was drafted at the beginning of the 20th century, are the security provisions of this regime already obsolete or are they seen still as valid, and more importantly functional against the backdrop of rapidly changing security realities? This paper then goes further and while it uses Svalbard as a case study, it tries to assess the role of demilitarisation and neutralisation in the modern context by trying to infer possible lessons from two similar regimes, which apply to Antarctica and the Åland Islands.

Introduction

'Demilitarisation' and 'neutralisation' represent two closely associated arrangements in international law which have been employed from as early as the 12th century, for example to help to reduce political tension, to shield the disputed area from potential military activities, and/or as confidence-building measures. When attempting to define these arrangements, one encounters 'a certain degree of conceptual confusion' surrounding these concepts as they have been used without a clear distinction and 'in an undefined way', sometimes even denoting each other (Ahlström 2004: 15). Also, due to the fact that they are often shaped specifically to meet the needs of a particular situation within a certain geographical area, their form is often unique in every instance. Despite the 'lack of stringency' in the evolution process of these concepts and their *ad hoc* character, demilitarisation can in general be described as a prohibition of placing military installations or stationing troops within a certain geographical area. This prohibition applies both in peacetime and wartime. Neutralisation on the other hand, refers to an intention of the parties to a treaty to keep a certain area segregated from military activities during a state of war. Neutralisation thus applies to wartime situations and has no direct relevance to the presence of fortifications (Ahlström 2004: 16, 21; for more comprehensive coverage also see for example, Ahlström 1997; Ahlström 2004: 15–24, 67–88).

This article focuses on the Svalbard legal regime, which employs both of these concepts as set by the treaty of 9 February 1920 relating to Spitsbergen (Svalbard Treaty), and in particular on its security provisions. The main question we are looking to answer is whether the Svalbard regime (and mainly its security provisions) have been able to meet the challenges it has faced during the time of its existence. It is obvious that practically every aspect of security has changed since the Svalbard Treaty was originally concluded. Military forces today operate in very different ways compared to the times following WWI. For instance, private companies are now placed in charge of some important military tasks, and military strategies have changed together with developments in the arms industry. The geopolitical context of Svalbard has also changed many times over the years since the Svalbard Treaty was concluded.

Before moving to the main research question, it is important to understand why the Svalbard regime and its security provisions came into being, and why this arrangement assumed its particular shape and form. This will be done not only by looking into the particular creation process of the Svalbard regime, but also by comparing the regime to two similar security arrangements in the Åland Islands and Antarctica. Despite the different historical, geographical and legal-political backgrounds surrounding these territories, it will be useful to highlight some important elements of the Svalbard regime by comparing it to these other regimes, and by doing so also illuminate other interesting commonalities. This is particularly pertinent as these three regimes are the only multilateral security arrangements (employing both demilitarisation and neutralisation) applying to entire territories adopted to shield a territory permanently from military operations and conflicts (known as territorial security regimes [TSR]).

First, we will examine the events and circumstances which led to the adoption of the Svalbard Treaty. Then we will examine the Svalbard Treaty, in particular its security provisions (Svalbard TSR) and the reason for its creation, and make comparisons with the TSRs that are in place in the Åland Islands and Antarctic. Thereafter, we will address the main research question and chronologically examine the various challenges that the Svalbard TSR has met during the time of its existence. Can we perceive that the Svalbard TSR is functioning in a legitimate manner

when it comes to demilitarisation and neutralisation, and if not, are there possibilities to improve the function of the regime in this respect?

The road to the Svalbard Treaty

The Svalbard archipelago (Svalbard) is situated midway between the northernmost part of Norway and the North Pole. With a total land area of 61,020 km^2 it is approximately the size of Lithuania or Latvia. As of January 2016, Svalbard had 2654 inhabitants; of which, 2152 live in the Norwegian settlement and administrative centre of Longyearbyen, and 492 live in the Russian settlement of Barentsburg (Statistics Norway 2016). The Svalbard Treaty defines Svalbard as a territory 'comprising with the Bear Island […] all the islands situated between 10° and 35° longitude East of Greenwich and between 74° and 81° latitude North […] together with all islands great or small and rocks appertaining thereto' (Article 1 of the Svalbard Treaty). This 'trapezoid' came to be known as the 'Svalbard box' (Pedersen 2006: 342). Svalbard also has a very important geo-strategic location due to its proximity to Russia's military strategic facilities in north-western Russia, which transit the Svalbard area to reach the Atlantic Ocean, as well as the potential for intercontinental bombers to reach North America. This is further amplified by the fact that during the Cold War, Norway and Turkey were the only NATO states neighbouring Russia/Soviet Union (Pedersen 2008a; Laruelle 2014).

Furthermore, the Norwegian government has identified the high north as 'Norway's most important strategic priority in the years ahead' (MFA 2006: 7).

The history of Svalbard is closely connected with the exploitation of resources. Svalbard was rediscovered by Dutch explorer Willem Barents in 1596 in an attempt to find a northern passage to China and India, at a time when Spain and Portugal virtually monopolised the southern trade passages. It did not take long for other (mainly English and Dutch) vessels to show interest in this area. During the 17th and 18th centuries, Svalbard and its surrounding waters witnessed an extensive degree of hunting, especially whaling activities. Even though there were several minor conflicts between great naval powers operating in the area, it can be argued that the political development of Svalbard only started in the second half of 19th century (Arlov 1989).

Even though there were a number of sovereignty claims advanced over Svalbard, the region's 'no-man's land' status (*terra nullius*) became widely accepted amongst the interested states, mainly due to the depletion of the whale stock (Ulfstein 1995). However, in negotiations between interested states in 1871–1872, the Swedish-Norwegian government proposed the establishment of a permanent settlement together with placing Svalbard under joint sovereignty. While the former idea was supported, it was only the Russian government who opposed the latter issue and wanted Svalbard to continue as a territory with an undecided status and open to all states (Timchenko 1992; Ulfstein 1995).

Yet, the legal uncertainty of Svalbard no longer remained tenable with a rapidly emerging coal mining industry calling for its regulation (Wråkberg 2006; Numminen 2011). With the dawn of a new century, a newly independent Norway, which was influenced by neutrality, decided not to claim sovereignty over Svalbard but instead suggested to all of the relevant great powers that an international arrangement which preserved the 'terra nullius' status be established. Negotiations took place in conferences in Oslo in 1910, 1912 and 1914, however, due to the objections of various states, no agreement was reached and negotiations were soon interrupted by the outbreak of war (Østreng 1977; Singh and Saguirian 1993; Ulfstein 1995).

After the war, despite Norway's initial willingness to resume the spirit of pre-war negotiations, an agreement based on *terra nullius* was no longer possible due to increasing political pressure and a ragingly influential press campaign. Hence, in 1919 the Norwegian representative in Paris, Fritz Wedel Jarlsberg, requested the Supreme Council of the Paris Peace Conference to examine Svalbard's legal status with the proposal of handing the sovereignty of Svalbard over to Norway. The Spitsbergen Commission was especially established for this purpose and consisted of representatives of the USA, Great Britain, France, Italy and Japan, and after speedy negotiations accepted a draft presented by Norway which would later be known as the Svalbard Treaty (Østreng 1977; Ulfstein 1995).

Svalbard Treaty and its security provisions

The Svalbard Treaty[1] came into force in 1925 and is characterised by three main elements. While it grants 'full and absolute' sovereignty to Norway ('nationalisation'), it simultaneously preserves the previous *terra nullius* status by according commercial rights to other contracting states and by allowing accession to the treaty to any interested state ('non-discrimination principle'). Last but not least, it ensures the 'peaceful utilisation' (demilitarisation) of the area (Ulfstein 1995). Looking at the Svalbard Treaty more closely, it introduces six fundamental principles of 'internationalisation', 'equal treatment', 'local use of revenue from taxes', 'rights of old claimants', 'sovereignty' and 'demilitarisation' (for the issue of Norwegian sovereignty see Pedersen 2009b). While the first principle represents the rights of access and economic exploitation, the second grants 'all nationals of the […] Contracting Parties treatment based on complete equality' (Article 7 of the Svalbard Treaty). The next two principles ensure that taxes, dues and duties levied in Svalbard are to be spent in Svalbard, and that previously established rights (for example, those acquired via occupation) are to be recognised. Finally, and probably most importantly, Norway was granted 'full and absolute sovereignty' over Svalbard, which was recognised as a demilitarised territory (Østreng 1977).

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The 'peaceful utilisation' of Svalbard is one of the main elements and governing principles of the Svalbard Treaty, and is enshrined in Article 9, which together with its preamble represents the legal basis for Svalbard's demilitarisation and neutralisation. Whereas the preamble of the Svalbard Treaty briefly refers to 'peaceful utilisation', Article 9 reads:

> Subject to the right and duties resulting from admission of Norway to the League of Nations, Norway undertakes not to create nor to allow the establishment of any naval base in the territories specified in Article 1 and not to construct any fortification in the said territories, which may never be used for warlike purposes.

It is of interest how brief this security provision is, and how ambiguously the demilitarisation and neutralisation of Svalbard is defined. According to the consistent view of the Norwegian government:

> This provision imposes a general prohibition against using Svalbard for warlike purposes and a specific prohibition against establishing naval bases or constructing fortifications […] Article 9 does not entail an absolute prohibition against Norwegian military activity on Svalbard. Norwegian naval vessels and coast guard vessels calling at ports, military aircraft landing and the presence of Norwegian military personnel in uniform are not violations of the treaty […] Norwegian policy has been designed to ensure […] restrictive practice as regards Norwegian military activities on Svalbard (MJP 1999, 2009; for the similar view see Fleischer 1978).

Geir Ulfstein holds a slightly different view and while he recognises that 'Svalbard is only partly demilitarised', he argues that:

> '[…] Article 9 connotes a rather extensive demilitarization […] (the preclusion of the establishment) of naval bases and military air bases, and the construction of fortifications […] entails a prohibition of such a magnitude, that Svalbard should also be characterized as demilitarized. […] Considering the policy of nearly complete demilitarization […] there is no strong need for including a more extensive demilitarization in the Svalbard Treaty' (Ulfstein 1995: 388–389, 478; for more comprehensive analysis see Østreng 1977; Østreng and Sollie 1977; Ulfstein 1995).

Russia (and also the former Soviet Union) on the other hand, considers Svalbard as being fully demilitarised. According to Reginald Dekanozov:

> '[The Svalbard Treaty] [s]tipulates prohibition of both setting up any constructions and devices which can be used in military purposes and any measures aimed at using the territory in military purposes including such measures which in any way could facilitate its such use in the future' (Dekanozov 1968: 193; see also Timchenko 1992).

As regards to Svalbard's neutralisation, even though the Svalbard Treaty does not explicitly use this term, it can be concluded that a 'prohibition against using Svalbard for warlike purposes' means that Svalbard should be termed as neutralised (Ulfstein 1995: 387). Moreover, state practice has been seen to support this as both the 'Soviet Union and Norway considered Svalbard as neutralised' (Ulfstein 1995: 367).

Why were security provisions inserted into the Svalbard regime?

Even though security considerations are hard to trace in the records of the negotiations, there are certain footholds that help to understand the reasons behind the inclusion of security provisions into the Svalbard Treaty. It is argued that the importance of preventing any possibility of misusing Svalbard was duly recognised during the Paris Peace Conference. So, apart from a general strengthening of this balanced and specially tailored legal arrangement, there were also geopolitical reasons behind keeping Svalbard outside of the range of great powers (Østreng 1977). For example, Fritz Wedel Jarlsberg emphasised before the Spitsbergen Commission the need to prevent the establishment of military bases, especially those which might be used by German submarines. Willy Østreng further maintains that the great powers (especially the USA and France) based their pro-Norwegian view on security considerations. For example, in 1917, the US Secretary of State Robert Lansing had already suggested to 'permit a neutral Scandinavian power to assume territorial sovereignty, rather than to attempt to solve so complex problem' and later in his memorandum suggested that Norway should be this sovereign. The French desired primarily to deter German expansion and to prevent Britain from gaining more from the war (Østreng 1977: 24).

Despite the fact that the 'Svalbard question' found reference in the 1918 Brest-Litovsk Treaty in which Germany and Russia agreed to promote an international agreement for Svalbard in which 'Germany and Russia should have equal rights', it is important to mention that both Germany and Russia were debarred from participation at the Paris Peace Conference as Germany was a defeated party and Russia (due to its new Bolshevik government) was not recognised on the international scene (Ulfstein 1995: 41). Due to the strong historical ties of both states to Svalbard, Norway realised the importance of getting their approval, especially from Russia. It is argued that this 'complaisance towards Germany and the Soviet Union was […] the result of the Norwegian policy of neutrality' (Østreng 1977: 24; Holtsmark 1993). Russia eventually accepted Norwegian sovereignty, albeit with certain reservations. However, this has occasionally been perceived as 'unjust' as Norway is still from time to time accused that it misused its position and 'with legal adeptness and political severity [had] taken advantage […] of economic and military weakness of Russia during the period after the First World War' (Vyleghanin and Zilanov 2007: 37). Russia was eventually allowed to accede to the Svalbard Treaty in 1935, after finally being recognised by the USA (Holtsmark 1993; Ulfstein 1995).

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As regards the reflection of Svalbard's 'peaceful utilisation' in the legal arrangements per se, Geir Ulfstein maintains that Svalbard's neutralisation can be traced back to the 1912 Draft Convention which provided that Svalbard was to be neutral in wartime (Ulfstein 1995). However, there are strong indications that such notions can be seen even earlier. For example, Dekanozov uses the term 'peace-loving character' while describing the aforementioned exchange of diplomatic notes between Swedish-Norwegian and Russian governments in 1871–1872, and these are sometimes referred to as 'first treaty-law regime of Spitsbergen' or the '1872 Agreement' (Dekanozov 1966; Pechurov 1983; Vyleghanin and Zilanov 2007: 9).

The Svalbard TSR in comparison with the Åland Islands and the Antarctic

Even though each of the three compared territories in general represents a *sui generis* regime (for example, in regard to their different historical-political or geographical backgrounds), it is still useful to compare the Svalbard TSR with other TSRs, and through examining the reasons for their creation, detect certain interesting similarities in their security regimes. Some security interactions may also be seen to take place between them, so such an examination will result in a better understanding of the Svalbard TSR.

As for the wording of security provisions of the respective legal instruments regarding these TSRs, the Svalbard Treaty contains arguably the most loosely defined security provisions. The treaties representing the legal basis of the other TSRs 'contain a rather explicit wording when prohibiting military activities and installations' (Ulfstein 1995: 377).

The Åland Island's TSR is arguably based on the strictest security provisions. Both Svalbard and the Åland Island regimes have their origins in the 19th century and were established at around the same time following the war. The Åland Islands were already demilitarised by the Convention of Paris of 30 March 1856 (1856 Åland Convention) imposed by Britain and France on Russia in the aftermath of the Crimean War (1853–1856), and annexed to the 1856 Paris Peace Treaty. This status, together with neutralisation, was the basis of the consequent Convention Relating to the Non-Fortification and Neutralisation of the Åland Islands of 20 October 1921 (1921 Åland Convention). As the 1856 Åland Convention is somewhat similar in its wording to the Svalbard Treaty as regards to the laconic character of its security provisions, the opposite can be said about the 1921 Åland Convention which focuses fairly exclusively on fleshing out what demilitarisation and neutralisation mean in the context of the Åland Islands.

It is of importance to note that Russia/Soviet Union has perhaps been the most active state as regards to how these two regimes work, and given that both areas have a somewhat stabilising effect and are of significant interest to Russia/Soviet Union as there is a direct interregional dependence:

> 'Ever since 1871 any crisis […] in the Baltic, has provoked increased Russian vigilance in the North. The formula seems to be: the greater danger of a blockade of the Baltic the higher the priority given to free passage to and from Russian harbours in the White Sea' (Østreng 1977: 45).

Already seen from the middle of the 19th century:

> '[S]uccessive Russian governments have given relatively high priority in their foreign policy to establishing and consolidating their position in Svalbard' (Østreng 1974: 3).

This is clearly shown in the case of Svalbard. However, Russia has also indicated a very keen interest in how these security provisions work for the Åland Islands. This is well illustrated by the fact that in both territories the Soviet Union established consulates to monitor the observation of treaty provisions and despite significant staff reductions these still operate today. Additionally, Russia has often been identified as the main threat to these security arrangements, whether justifiably or not. This has continued to be reflected in present-day difficult relations between Russia and the west, where Russia is repeatedly identified as a security threat (Coffey and Kochis 2015; Lucas 2015).

It is worth mentioning that Russia was not amongst the original Treaty parties[2] to the 1921 Åland Convention, as with the Svalbard Treaty. In fact, Russia or the former Soviet Union has never become a party to the Åland Convention, and instead, after the 'separate' Winter War (1939–1940) between the Soviet Union and Finland, imposed a bilateral treaty (1940 Åland Bilateral Treaty) obligating Finland to restore the demilitarised status to a degree corresponding to that of the 1921 Åland Convention. The Continuation War (1940–1944) between the two belligerents soon broke out and Finland again resorted to fortifications; however, the 1944 armistice agreement reactivated the 1940 Åland Bilateral Treaty. Russia later also reaffirmed in the Protocol of 11 July 1992 that this Treaty still remains in force. The 1947 Paris Peace Treaty restored the pre-war situation as regards to the 1856 and 1921 Åland Conventions. An important fact is that whereas Russia/Soviet Union has assumed conventional obligations to respect the demilitarisation of the Åland Islands, it has never recognised any such obligations with regard to its neutralisation (Hannikainen 1994). According to Ålandic historian Kenneth Gustafsson:

> 'Russia was careful to avoid entering into any new formal commitments so as not to lose altogether the chance to one day use the islands for a military purpose' (Chillaud 2006: 37).

Even if the Antarctic regime (better known as the Antarctic Treaty System [ATS]) and its TSR differs fairly clearly from those of the Åland Islands and Svalbard, it is still worth taking a closer look and noticing other interesting commonalities. For example, all of these areas were under the sovereignty claims of numerous states prior to a stable

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situation being achieved. As regards multilateral legal arrangements pertaining to Svalbard and the Åland Islands, the core solution was found by according sovereignty over the respective territory to a relatively small and non-threatening sovereign (Norway and Finland, respectively). Both Denmark (then the Norwegian hegemon) and the United Kingdom made sovereignty claims over Svalbard before the Svalbard Treaty was concluded. Contrastingly, it was Russia, Sweden and Finland who competed for sovereignty over the Åland Islands. The driving force for the Antarctic Treaty on the other hand was the difficult situation caused by the UK, New Zealand, France, Norway, Chile and Argentina all claiming certain sectors of Antarctica as part of their sovereign area, and Cold War rivals the Soviet Union and the US rejecting all of these sovereignty claims. The solution was found in 1959 with a famous agreement to disagree, which basically allowed all states to hold on to their legal claims and positions, but freezing those claims for the duration of the treaty.

Similar to the Svalbard Treaty, not focusing primarily on the TSR, the Antarctic Treaty introduces an even more complex regime which has three main elements. First, it promotes peace, recognising that 'it is in the interest of all mankind that Antarctica shall continue for ever to be used exclusively for peaceful purposes and shall not become the scene or object of international discord', and that the Treaty ensures 'the use of Antarctica for peaceful purposes only' (Preamble of Antarctic Treaty). This includes the prohibition of, inter alia, any measures of a military nature such as the establishment of military bases and fortifications, the carrying out of military manoeuvres (Article I). The next element 'seeks to facilitate and promote the freedom of scientific investigation', and the third element is the aforementioned freezing of sovereignty claims, which has enabled a multilateral international governance approach to prevail in Antarctica with a focus on environmental protection and scientific research (Saul and Stephens 2015: 6).

As opposed to the Åland Islands with almost 30,000 inhabitants located only a few hours by ferry from either Stockholm or Turku, Svalbard and Antarctica are somewhat similar in their locations at the far ends of their opposing hemispheres. Due to their extreme remoteness, they are both attractive locations for scientific research. However, technological progress has brought in to question the effectiveness of their TSRs. For example, in 1985 Harry Almond expressed the fear that:

> 'The spread of militarization outside demilitarized arenas is far more troublesome today than in the past because of the availability of modern weaponry. This spread would seriously jeopardize any attempts to demilitarize such areas as Antarctica' (Almond 1985: 232).

More recently for example, the Australian Strategic Policy Institute maintained that:

> 'The demilitarization of Antarctica was a major goal of the Antarctic Treaty. But the treaty was negotiated in a very different world, strategically, technologically and politically from the one we have today. If we take a broad view of "measures of a military nature", Antarctica is no longer demilitarised, but it's difficult to define the term. Such measures don't necessarily have to be carried out by military personnel. Scientific research and development for military purposes can be carried out by civilian scientists and private sector contractors. Antarctic bases are increasingly used for "dual use" scientific research that's useful for military purposes, including possibly for controlling offensive weapon systems' (ASPI 2013: 9).

As will be shown below, there are also numerous allegations of this type in regard to Svalbard.

Initial challenges to the Svalbard TSR

Svalbard was not a theatre of war during WWI, and neither were its security provisions challenged in the following two decades. However, this changed drastically during WWII (Mathisen 1951).

The German attack on the Soviet Union in June 1941 meant that for the first time, Svalbard became a subject of serious attention. The Soviet Union's proposal in July 1941 for the joint occupation of Svalbard (although only for the duration of the war by Soviet and British forces) was strongly protested by Norway claiming that it breaches Article 9 of the Svalbard Treaty. The Norwegian government in exile also emphasised that setting aside the provisions of the Svalbard Treaty on account of the military situation was for the Norwegian government alone to decide. However, after scepticism from Great Britain towards the proposed occupation of Svalbard, the plan was eventually abandoned and British forces evacuated the Norwegian and Soviet population from Svalbard in late 1941. Soon after, Germany decided to occupy Svalbard and take advantage of the archipelago's proximity to the allied forces supply lines to Murmansk and Arkhangelsk, and also to acquire important meteorological data. The Allied forces decided to send small numbers of Norwegian forces to try to reoccupy Svalbard; the forces were attacked upon their arrival in July 1942 and later by a larger German attack in September 1943. At the end of the war, small forces from both Norway and the Soviet Union were subsequently stationed on the archipelago (Østreng 1977; Holtsmark 1993).

In November 1944, Norway was taken completely by surprise by Soviet proposals to revise the Svalbard Treaty and establish a Russian-Norwegian military condominium on Svalbard, together with a proposal to hand over Bear Island to the Soviet Union. While Norway emphasised the need for the consent of the other Treaty parties, the Soviet Union made its intention to achieve a bilateral solution to the 'Svalbard question' very clear (Holtsmark 1993). Nevertheless, Norway agreed to engage in serious negotiations with the Soviet Union, but as the international situation changed in the following years and as a reaction to Soviet expansionism, Norway decided to join NATO in April 1949 (Lüdecke 2011). Svalbard was consequently

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placed under NATO Command in January 1951, to which the Soviet Union responded with a strong diplomatic note stating that the act violated the Svalbard Treaty, mainly its Article 9. Norway responded by assuring the Soviet Union that in accordance with its obligations under Article 9, Norway would not establish any military fortifications or base, nor would it allow any state to do so (for a more comprehensive analysis see Ulfstein 1995: 348–349, 367–373). Since the Soviet Union could no longer apply pressure on Norway, its position became more of a defender of the *status quo* in the region, and in particular Article 9 of the Svalbard Treaty (Holtsmark 1993). However, despite the Soviet Union giving up its attempt to establish a condominium, it by no means became reluctant towards events surrounding Svalbard (Jørgensen 2003). This is well illustrated in the reactions of other states towards the following events.

'Dual use' installations: military scientific research in disguise?

Russia/Soviet Union has consistently criticised the scientific facilities erected on Svalbard by Norway (often in cooperation with other states) and has perceived them as 'dual use objects' – namely the civilian installations that could potentially be used for both civil and military purposes (Åtland 2003). In 1950, the Soviet Union had protested against a radar station at Kapp Linné that was to be used to help civilian shipping (Holtsmark 1993).

In 1958, fearing military implications, the Soviet Union protested against a Norwegian plan to construct an airfield on Svalbard, initially in the Ny-Ålesund area; however, the plan was soon after abandoned. For example, Dekanozov argued that:

> 'Construction of an airfield in Spitsbergen is admissible only on the condition that its use for military purposes is totally ruled out. Construction of a truly civil airfield by Norway and Soviet Union and their control over it would be the best solution of the problem' (Dekanozov 1968: 194; Holst 1967; Ulfstein 1995).

The plan was revived in 1971, and mutual cooperation regarding the airport in Longyearbyen was achieved under more favourable circumstances and accompanied with stronger assurances between Norway and the Soviet Union. As a result, this led to an agreement in 1974 assuring that the airport will be reserved exclusively for civil aviation. This also resulted in the permanent stationing of Russian staff at the airport, which provided an important safety factor (Østreng 1977). Construction of the airport was completed in 1975, but in 1978 it was the Norwegian press who protested against the construction of a Russian heliport fearing it could facilitate the use of military helicopters (Østreng 1978; Chillaud 2006).

Svalbard's great potential for high latitude atmospheric research and commercial satellite projects was recognised very early on. In November 1964, Norwegian permission for the European Space Research Organization (ESRO) to establish a telemetric station near Ny-Ålesund (located circa. 110 km from Longyearbyen) aroused even stronger suspicions. Its chief task was to transmit and receive signals from satellites. The Soviet government made several protests expressing a fear that the station could be used for military purposes, in particular for carrying out cosmic, radio-technological and other forms of intelligence activity over the territory of the Soviet Union, and that the facility's real purpose could only be determined by the constant surveillance and supervision of its activities by Soviet experts (Machowski 1995). Dekanozov argued that the 'ESRO station is evidence of military plans since it mostly consists of NATO members and can be switched into military system for NATO' (Dekanozov 1968: 193). The Soviet Union, as well as other countries, were eventually granted the right to inspect the facility numerous times, until it was closed in 1974 (Østreng 1977).

Arguably, the strongest allegations of dual use occurred in the late 1990s and at the beginning of the new millennium in connection with the European Incoherent Scatter Scientific Association (EISCAT) Svalbard Radar (ESR), Svalbard Satellite Station (SvalSat) and the Svalbard Rocket Range (SvalRak). ESR is an incoherent scatter radar located near Longyearbyen, which is designed to study the upper atmosphere and the interaction between the Sun and the Earth. SvalSat, also located near Longyearbyen, is capable of downloading data from all polar orbiting satellites and is the world leader in this field. SvalRak is situated in Ny-Ålesund and as the world's northernmost launch site it is well-suited, for example, for sending instruments into space to research the Earth's magnetic field.

These scientific facilities were portrayed by Russian media as a means of increasing western military activity in the Arctic under the cover of scientific research, especially their ability to detect and collect military sensitive data (Rivetov 2003). This perspective is also well illustrated in the statements of the former Chief of Staff of the Russian Northern Fleet, Rear Admiral Mikhail Motsak, who amongst other things pointed out that ESR has the capacity to monitor the flight paths of intercontinental ballistic missiles and submarine-launched ballistic missiles, and that SvalRak has a nearby airstrip which can be used by heavy transport aircraft, and also has potential military use (Motsak 2000). These types of allegations of the 'dual use' as military-purpose or military-intelligence gathering objects did not only come from Russia/Soviet Union. In 2011, Norwegian journalist Bård Wormdal claimed that, for example, SvalSat is regularly used to download data that is used for military purposes. Similar accusations (that is, increasing militarisation, downloading military data from satellites and other types of suspicious activities undertaken under the guise of science) have been also made against similar facilities located in Antarctica; for example, the Chinese station for facilitating the BeiDou satellite navigation system or the Troll satellite station (TrollSat). It is important to point out that TrollSat is run by the same operator as SvalSat (Kongsberg Satellite

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Services [KSAT]), which is jointly owned by the Norwegian Space Centre, a Norwegian government agency and Kongsberg Gruppen, a Norwegian commercial enterprise with predominant state ownership (Wormdal 2011; ASPI 2013; Darby 2014).

Other challenges

As Svalbard represents a geopolitically and economically complex area with various interests from different states, it is also an object of 'a complex legal debate related to the limits of Norwegian sovereignty' (Laruelle 2014: 106). Seen from a wider perspective, these seemingly unrelated issues also have a potential direct effect on Svalbard TSR, as they might not only create additional tensions in the area, but also they have potential implications on the geographical scope of demilitarisation and neutralisation, should the application of the Svalbard Treaty's provisions be extended beyond the territorial sea.

The origins of these legal disputes have caused divergent interpretations, and lie in the out-dated and sometimes unclear wording of the Svalbard Treaty. Furthermore, immense developments have been made in the area of the Law of the Sea, and there are concepts of exclusive economic zones and continental shelf, which could not have been envisaged by the treaty's negotiators in the early 20th century. Regarding the geographical scope of the Svalbard Treaty, Norway relies strictly on its wording and maintains that its provisions '[a]ppl(y) to the land territory, internal waters and territorial waters' (MJP 1999). This view was contested for the first time in 1970 by means of a formal protest from the Soviet Union, which was soon joined by other states (Pedersen 2008a). It was '[a]gainst this background that Norway chose in 1977 until further notice to establish a fisheries protection zone (FPZ) [of 200 nautical miles around Svalbard] rather than a full economic zone [Exclusive economic zone (EEZ)]' (MFA 2005). This act was again opposed by the Soviet government, which found Norway's act illegal and in a diplomatic note in 1977 expressed its right to 'take similar actions to protect the interests of the USSR', and also by other states (Åtland and Pedersen 2014: 29).

Norway has also substantiated its sovereignty in the adjacent waters around Svalbard by claiming that Svalbard does not generate a continental shelf of its own but instead lies on the continental shelf that is the prolongation of the Norwegian mainland. Together with Russia/Soviet Union, Hungary, Spain, Poland, Portugal, Iceland and Czechoslovakia have questioned Norway's authority outside the territorial seas. The UK, Denmark and the Netherlands have argued that the Svalbard Treaty 'is applicable to maritime zones […], they [however] recognize[d] Norway's jurisdictional rights […] in these zones'. Furthermore, the US, France and Germany have reserved any rights they may have under the Svalbard Treaty in the adjacent waters, while, Canada, for example, has expressed support for the Norwegian view (Archer and Scrivener 1982; Fløistad 2008; Pedersen 2008a: 7, 22–23; Pedersen 2008b; Pedersen 2008c; Pedersen 2009a; Churchill and Ulfstein 2010; Pedersen 2011; Molenaar 2012).

Alyson Bailes argues that while 'the risk of ambiguity leading to international disputes is perfectly illustrated by the difference between Norway and others over how far the treaty regime should extend at sea […], the risk of its leading to actual conflict is minimal; but it clearly does not help with the responsible management of Svalbard's surroundings in general' (Bailes 2011: 35). Jensen Øystein and Stein Rottem support this view by presenting a mediating picture of security concerns in Norway's Arctic waters and argue that dispassionate diplomacy is more likely to resolve conflicts than military confrontation. They further maintain that:

> '[A] legal clarification could […] serve as a security policy strategy for Norway as much as for other states […] it would profit the interests of all states […] to establish some form of regulatory mechanism over activities in the waters around the archipelago. As a starting point, an appreciation of the substantive legal problems […] could as a practical step help offset some of the tensions and potentials for conflict' (Jensen and Rottem 2010: 81).

Norway is, however, not very keen on a potential revision of the Svalbard Treaty. Andreas Østhagen argues that 'it has been long-standing Norway Arctic foreign policy to avoid any international debate on the topic' (Østhagen 2011).

Long-lasting disagreements pertaining the non-recognition of the Norwegian sovereignty beyond the territorial sea have already led to a several heated events in the FPZ. In the 1990s, Norway authorised the Norwegian Coast Guard (NCG) to use force to prevent what is regarded as illegal fishing (Pedersen 2006), and from 1994 there have been numerous arrests of, for example, Icelandic, Spanish, German or Norwegian vessels. However, while the arrests of the Russian trawlers *Novokuybyshevsk* in 1998 and *Chernigov* in 2001 might serve as the most illustrative examples of harsh diplomatic reactions (even going as far as the Chairman of the State Fisheries Committee Yevgeniy Nazdratenko threatening to 'shoot and sink' vessels of the NCG if they ever try to arrest a Russian fishing vessel in the FPZ again), the aftermath of the so-called 'Electron incident' in 2005 on the other hand shows non-escalatory and non-securitisation behaviours suggesting a genuine interest from Russia in maintaining political stability in the region. In this incident, the Russian trawler *Electron* was being chased by the NCG, but managed to escape into Russian waters while the Norwegian inspectors were still on board (the non-securitisation aftermath of this event is analysed in Åtland and Pedersen 2014 and particularly in Åtland and Bruusgaard 2009). The international controversy over the legal status of the maritime areas around Svalbard was seen by the Norwegian government as a challenge to peace and stability in the region (MFA 2006). Despite this 'enduring international tension', fish stock management in the FPZ has been seen generally as a success (Pedersen

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2008a: 8). However, the legal uncertainty regarding the waters around Svalbard still persists and arrests by the NCG are still carried out.

Furthermore, despite the moratorium on hydrocarbon development and currently diving oil prices, commercial exploration might become a reality in the adjacent waters around Svalbard in the foreseeable future. This is made all the more plausible when seen against the backdrop of climate change and the shortening of oil and gas reserves elsewhere. This is a particularly sensitive topic as the tax burden of 78% corresponding to Norway's mainland petroleum legislation could be lowered to approximately 1%, should the Svalbard Treaty's provisions guaranteeing the right of economic exploitation based on complete equality be made applicable in the adjacent waters (Oreshenkov 2010; Laruelle 2014). Arild Moe argues that:

> 'The dispute has not become heated since it has remained uncertain whether the areas in question have any promising geological structures for oil and gas deposits. Little is known, because very limited seismic surveying has been carried out' (Moe 2010: 14).

According to the United States Geological Survey, approximately 25% of all the world's undiscovered petroleum reserves are located in the Arctic (Pedersen 2006). Furthermore, the Norwegian Petroleum Directorate has commissioned the mapping of the disputed shelf around Svalbard in 2014. Also, they have unprecedentedly pushed the official sea ice boundary further north, and in the latest (23rd) licensing round announced in January 2015, of the 57 newly introduced blocks announced for oil drilling, three are situated in the southern part of the so-called 'Svalbard zone'. This triggered the issue of a sharp diplomatic note, since Russia believes that these blocks belong to Svalbard's continental shelf, and thus are covered by the provisions of the Svalbard Treaty (Staalesen 2014; Aarø 2015).

The aforementioned controversies regarding the allocation of blocks for oil drilling, the disputed status of surrounding waters or allegations towards the use of scientific facilities on Svalbard are significantly undermining Norwegian sovereignty in the area, and this is further emphasised by the fact that it is no longer only Russia who criticises it (Lieungh 2011; Grydehøj 2013; Johnsen 2015; Vegstein 2015).

In addition to the challenges discussed above, since the 1970s, Russia/Soviet Union has consistently protested against the visits of Norwegian naval vessels and military planes to the area (White Paper 1975; White Paper 1985; Ulfstein 1995; Pedersen 2009b). However, a political compromise may have been reached, as according to recent information, Russia has now also used the airport on Longyearbyen for transporting personnel and equipment in connection with its military exercises close to the North Pole (Pettersen 2016a, Pettersen 2016b).

After almost 40 years of negotiations, in 2010 Russia finally reached an agreement with Norway on maritime delimitation and cooperation in the Barents Sea and the Arctic Ocean, which cancelled the so-called Grey Zone Agreement from 1978 that regulated fishing in this disputed area. Although not settling these issues in the disputed areas around Svalbard, it certainly contributed to the stability of the overall region (Henriksen and Ulfstein 2011). Moe sees this act more as a 'broader Russian strategy to secure resource rights and stability in the Arctic' than as one which has been triggered by pressure from the oil companies as is commonly believed (Nilsen 2013). Russia is, however, scaling up for hydrocarbon exploitation in the Arctic, and further-developing its infrastructure. In this regard, Marlene Laruelle points out that the 'civil-military cooperation, which expanded in the 2000s […] is set to become one of the main trends in the future'. She also highlights the rise of non-conventional threats amongst which she includes the risk of small-scale conflicts arising around energy deposits and concludes:

> 'The Arctic will be more subject to non-traditional threats than to classic military-centred conflicts. Security will have to be assured at least in part in a collegial manner through international cooperation' (Laruelle 2014: 120, 127, 129).

There is little doubt that geopolitical and hard-security concerns in relation to west–east antagonism have been significant in shaping the great powers' policies during the Cold War, and the residues of this can be still be seen today. However, Russia is in the post cold war era and the high north is perceived more as a geoeconomic factor than a geopolitical threat (Godzimirski 2007). Against the backdrop of recently frozen high-level political discussions as an aftermath of Russia's annexation of Crimea in March 2014 and its increased military activity in the Arctic, the Norwegian government commissioned an expert report headed by Rolf Tamnes, which concluded that the risk of an outright conflict in the Norwegian-Russian North is limited; however, it maintains that the Ukrainian crisis marked the end of a long period of peace in Europe, and this has serious implications on the security situation in the north (Staalesen 2015).

Conclusions

The Svalbard Treaty has now been in existence without any amendment for almost 100 years. As has been analysed above, both the Svalbard and Åland Islands TSRs have their origins in the great power politics of the 19th century. The policy of stabilising the security situation in a certain region via a multilateral treaty has found only one expression after WWII – that of the Antarctic Treaty. During the United Nations era, different solutions have been advanced to stabilise areas temporarily, such as buffer zones or nuclear free zones. Given that there is practically no area that does not fall under the sovereignty of a particular state, it is difficult to see how TSRs like those of Svalbard, the Åland Islands or Antarctica could be used as models for future stabilisation efforts.

How then have the Svalbard regime and its security provisions been able to meet the challenges the regime has

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faced during its existence? It can be argued that when the Svalbard regime first faced a situation to which its security provisions clearly applied – WWII – the regime failed. In this setting, German activity on Svalbard is seen as a violation of the Svalbard Treaty (and particularly Article 9), but the actions of the Allied/Norwegian forces are seen as self-defence and therefore acceptable. On the other hand, the security provisions of the Åland Islands were better respected during WWII. Here, despite resorting to fortification, Finland ensured the area's neutrality and unlike Russia during WWI, did not use military strategic location of Åland actively as a base for its military operations. Even such a remote territory as Antarctica did not avoid the attention of both Axis and Allied powers during WWII, and its role is also discussed in connection with the Falklands War of 1982.

Thus it seems very difficult to shield territories from the impacts and attentions of such large-scale wars such as those which took place during the 20th century. However, the Svalbard regime has been able to keep the archipelago demilitarised, even during the heightened tensions of the Cold War, so this can be counted as a clear success for the Svalbard regime.

Norway has been accused a number of times (mainly by Russia/Soviet Union) of violating the Svalbard Treaty, and Article 9 in particular, but it is difficult to verify in most instances whether this is actually the case. There are many reasons for this ambiguity. First, there is no mechanism for dealing with such accusations in the Svalbard Treaty. Though very little used, the possibility for inspection is enshrined in the Antarctic Treaty[3] (Saul and Stephens 2015: 6). Moreover, it is difficult to say whether the treaty has been violated when the security provisions of the Svalbard Treaty are so general and open-ended. Hence, one can argue that the vast changes that have taken place in the security environment can be accommodated because of the general nature of Article 9, and Norway can claim they are in compliance with the security provisions. The other side of the coin is that states can as easily accuse Norway of violating these security provisions, also because of their generality and open-endedness. Overall, the Svalbard regime has been well able to tackle the security challenges it has faced, in the sense that it has not become militarised in a conventional way. However, the extensive development of new technologies has profoundly changed the security environment. For instance, the significance of geographical remoteness as a defence factor of a certain territory has almost entirely been diminished by intercontinental capabilities, and while conventional means of warfare are still perceived as a real threat, non-conventional means of warfare are increasing (PST 2010; PST 2016: 7)[4].

Why is it then that even though the security environment has changed significantly in many fields (for example, geopolitics, security threats, military technology and how military operations are carried out, etc.), the Svalbard regime and its security provisions are still seen widely as both valid and legitimate? Bailes argues that:

> '[O]ld ideals of demilitarization and neutralization […] made sense in a world where security was all about wars and the military […] but today's security problems – at least in the Northern Hemisphere – arise overwhelmingly within state frontiers, whether we think of internal conflict, terrorism and violent crime or of infrastructure breakdowns, natural disasters and disease. Rather, they demand a clear and legitimate sovereign power that obeys international (and its own) laws' (Bailes 2011: 36).

It is of interest that not only is the Svalbard regime and its TSR still in existence, but so are the general regimes of the Åland Islands and the Antarctic. They hence have a clear legal validity for the parties concerned, but arguably, this can be extended more generally in regards to public international law. There are some challenges in the offshore areas surrounding Svalbard, and perhaps this is also related to the general idea of the opening Arctic regions for wider use – for example, China's demand for an increased presence or North Korea who recently acceded to the Svalbard Treaty. But, at the very least, the Svalbard regime is widely seen as legitimate, as is also the case for the Åland Island and Antarctic regimes, at least in terms of their original coverage area and the outer extents of the territorial seas. This can partly be explained by the fact that when the Svalbard and Antarctic regimes are analysed, they are normally evaluated as general regimes, advancing values other than demilitarisation and neutralisation. As such, the security architecture of these regimes is often left untreated or given only marginal assessment.

The main concern of the Svalbard TSR is that it does not include any mechanism for studying accusations that Svalbard is being used for warlike purposes, for example, that the satellite data downloaded from Svalbard is either of a military character or being used for a military purpose. We argue that at the very least, this goes against the spirit of the Svalbard Treaty and there should be serious consideration given as to how to create a mechanism for dealing with such accusations. After all, it is not impossible to create a type of review mechanism for the Svalbard Treaty, without requiring any formal amendment, in order to lend more transparency to the regime. A good example is the 1973 Polar Bear Agreement, which created the mechanism of meeting of the parties monitoring the progress of the Convention on a biennial basis in 2009 when it became clear that the Arctic Ocean sea ice habitat of the polar bears was melting at an accelerated rate (Bankes 2009). Norway could thus re-establish its 'open door policy' that it employed successfully during the Cold War with regard to the extensive assurances and inspection possibilities that have been raised in situations concerning the Svalbard area (Østreng 1977: 59).

Yet, any suggestion for an improvement of the Svalbard regime and its security provision needs to recognise that although the Svalbard TSR has not been seriously challenged by any contracting party for a considerable

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time, perhaps this is partly due to the fact that there are no multilateral mechanisms that allow the parties to meet and interact. Pressures for introducing this type of development may arise in the future when many of the contracting parties to the Svalbard Treaty have a more tangible presence in the Arctic, especially given the new economic possibilities created by climate change and melting Arctic sea ice to use the water areas close to the archipelago.

Currently, it is Norway alone that will decide whether the security situation needs to be reassessed. Yet, it is also the case that the Svalbard regime is very inviting in its nature, and allows access to any state. In this regard, more and more states may become interested in Svalbard affairs and will become increasingly aware of the security realities of the archipelago. In the course of time, it may well be that Norway sees it to be in its own interests to increase the level of transparency over these security issues. This process of change can take place in many ways, but perhaps the most realistic first step would be for Norway to clarify its position to the other contracting parties to the Svalbard Treaty regarding allegations of it breaching the security provision of the treaty. This could take place, for example, via a unilateral notification to other contracting parties of what has been alleged and an appropriate clarification of the situation. Given the generally responsible and balanced stewardship that Norway has so far exercised in Svalbard, there is every reason to believe that transparency over security issues in the area will increase one way or the other in the future.

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Supplementary material

To view supplementary material for this article, please visit https://doi.org/10.1017/S0032247416000838

Notes

1. The original contracting parties of the 1920 Svalbard Treaty were Denmark, France, Great Britain and Ireland and the British Overseas Dominions (Australia, Canada, India, New Zealand and South Africa), Italy, Japan, the Netherlands, Norway, Sweden and the USA. As of today, the Svalbard Treaty has more than 40 state parties, the others being Afghanistan, Albania, Argentina, Austria, Belgium, Bulgaria, Chile, China, Denmark, Dominican Republic, Egypt, Estonia, Finland, Germany, Greece, Hungary, Monaco, Poland, Portugal, Romania, Russia, Saudi Arabia, Spain, Switzerland, Venezuela, and more recently Iceland, Czech Republic, South Korea, Lithuania and North Korea.
2. The original contracting parties to the 1921 Åland Convention were Finland, Sweden, Britain, Germany, France, Denmark, Poland, Italy, Estonia and Latvia. It is important to point out, that neither Norway nor Lithuania is party to this treaty.
3. Article VII of the Antarctic Treaty reads: '[I]n order to promote the objectives and ensure the observance of the provisions of the present Treaty, each Contracting Party […] shall have the right to designate observers to carry out any inspection provided for by the present Article. […] Each observer […] shall have complete freedom of access at any time to any or all areas of Antarctica. […] All areas of Antarctica, including all stations, installations and equipment within those areas, and all ships and aircraft at points of discharging or embarking cargoes or personnel in Antarctica, shall be open at all times to inspection by any observers'.
4. Even though intelligence activity does not constitute a new threat, the immense developments in technology certainly give a brand new means for its conduct. For example in their 2010 Threat Assessment (PST 2010), the Norwegian Police Security Service (PST) warned of an increase in intelligence activities with regard to unresolved legal issues in the FPZ and interpretation of Svalbard Treaty, and this is continuously perceived as a general threat to the 'Norwegian Government's political freedom of action' and 'natural resource-related interests'.

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