Vol. 2 Issue 2

Articles

Journal of Autonomy and Security Studies

Publisher
Åland Islands Peace Institute (ÅIPI)
http://www.peace.ax

Published at: http://www.jass.ax

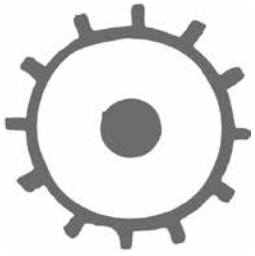
Journal of Autonomy
and Security Studies
ISSN 2489-4265

About JASS

The Journal of Autonomy and Security Studies (JASS) is a peer-reviewed, open access e-journal published by the Åland Islands Peace Institute (AIPI), Mariehamn, Åland, Finland. The journal addresses its overarching theme of peace and security from the perspectives of autonomy, demilitarisation, and minority protection.

Each issue of JASS will include scholarly articles that in some way deal with the subjects mentioned above. Before being accepted, all articles have been subject to a double-blind peer-review process. JASS issues may also include other types of contributions such as project notes, book reviews, and information on pending conferences. JASS is published twice a year – in May and in November.

The editorial board invites articles and other contributions to JASS via the email address submissions@jass.ax and looks forward to proposals on articles, thematic issues, and other suggestions to make JASS a relevant and accessible scholarly journal in its field. It is appreciated if manuscripts sent to us have undergone language editing



Foreword

Readers of The Journal of Autonomy and Security (JASS) studies are well aware of the widening content of the concept of "security" in recent decades. While this development has expanded the agenda of security studies, it has also resulted in a more developed understanding of the fact that "security" – whatever it means in a given situation – is the consequence of other circumstances than itself. Of course, this is a healthy development. It creates both empirical and theoretical challenges.

It is no longer possible to talk about security in general terms in a meaningful way. Instead, more specific approaches are needed. This Issue of JASS is a very good example of this: it contains articles that range from a traditionally formulated context of security, to identity, collective security and ontological security.

In particular, the context of security through demilitarisation is highlighted in some articles, while in other a more explicit or implicit comparative perspective is taken.

Åland, with its international regimes of demilitarisation and neutralisation, is put in perspective in relation to Svalbard as well as to Nagorno-Karabakh. An equally important dimension is the possibility to link security to human rights, or vice versa - something that is developed in an article on North Korea. Finally – and in between all of this – stands an article analysing the development of the identity and ontological security of the Åland Islands.

While this Issue of JASS keeps security as a conceptual thread throughout, the autonomy dimension is not set aside, but is actually explicitly present in most of the articles. In this way we believe, in the editorial group, that the issues raised by the title of the Journal are approached in new and innovative ways.

Kjell-Åke Nordquist
Editor-in-Chief

Table of Contents

Journal of Autonomy and Security Studies

Volume 2 Issue 2

Aspects regarding the Svalbard demilitarisation in relation to Norway joining the Atlantic Alliance in 1949, and reflections on the Åland Islands' demilitarised and neutralised status in the event of a Finnish NATO accession

Åsa Gustafsson

Journal of Autonomy and Security Studies,
2(2) 2018, 10–53

URL: http://jass.ax/volume-2-issue-2-Gustafsson/

Abstract

The article strives to explore certain aspects regarding the Svalbard demilitarisation in relation to Norway joining the Atlantic Alliance, which could be of interest in relation to the Åland Islands' status as demilitarised and neutralised in a situation where Finland would decide to join NATO – although the Svalbard and the Åland Islands' legal regimes are sui generis regimes, differing for a number of fundamental reasons, as parts of a two larger regimes that differ historically, of dissimilar construction and disparate in nature. Taking a closer look at the state of the Svalbard legal regime around the time when Norway joined the Atlantic Alliance in 1949 leads to the conclusion that there were threats towards it from 1944–1947, followed by a reconfirmation of the security provisions in the Svalbard Treaty. Arguably the Åland Islands' legal regime of today is more robust. Seemingly, the application of 'NATO's' arts. 4 and 5 have so far not had any ties to Svalbard. The leeway for interpretation of treaty provisions is arguably of wider scope in the Svalbard case than in the Ålandic one. Any kind of reservation for the Svalbard status at the time of Norway joining the Atlantic Alliance was not considered. The article discusses whether an acknowledgement of the Åland Islands' status would be feasible in the event of a Finnish NATO membership, and finds that a number of issues are still not explored.

Keywords

Svalbard, the Åland Islands, demilitarisation, neutralisation,
North Atlantic Treaty Organization, NATO

About the author: Åsa Gustafsson holds an LL.M., a B.S. in political science, and an M.S. She is currently on leave from the Swedish Ministry for Foreign Affairs for the purpose of completing a doctoral dissertation in public international law with the overarching theme 'Security in the Baltic Sea Region' at Åbo Akademi University.

Acknowledgements: Associate Professor Sia Spiliopoulou Åkermark, Professor Sven G. Holtsmark, and the two anonymous reviewers, for valuable and constructive suggestions.

1. Introduction

References to Svalbard's status as demilitarised seem almost inevitable in discussions on possible effects of a Finnish NATO[1] accession on Åland's status, and have been pronounced both in political contexts and by academics.[2] A common statement is that Norway joining the Atlantic Alliance has not affected Svalbard's status and therefore the conclusion could be drawn that a Finnish NATO accession would not severely affect Åland's demilitarised and neutralised status, implying that a comparison of the legal regimes can be made. These assertations constitute the rationale for this contribution. However, no detailed analysis of the two legal regimes, or direct comparison of them, will be made. That would presumably (if at all feasible) require a comprehensive study, including a discussion of theoretical and methodological issues, which is not possible to include in this limited and tentative contribution. It could perhaps even be argued that it is futile to explore the two regimes in parallel at all, asserting that foreign reactions to the Svalbard regime are specific to the Svalbard context, and reflect peculiarities of that regime and the strategic circumstances of the surrounding areas. Such a standpoint could imply that already at the outset lessons learned from Svalbard may at best have little, or, at worst, no relevance for the Åland Islands. The Åland Islands' and Svalbard legal regimes are indeed *sui generis* regimes. They do differ for a number of fundamental reasons including being parts of a two larger, historically differing, regimes of dissimilar construction and disparate in nature. However, that brings us back to the initial assertation: the rhetorical comparison between the Åland Islands and the Svalbard legal regimes in a NATO context. The author's aim is to examine that assertation, albeit in a limited manner. In order to achieve this aim, the author chooses to explore certain aspects regarding the two legal regimes in parallel, without any pretension of being exhaustive. The focus is on the Svalbard regime, combined with a brief account of the 'corresponding' aspects of the Åland Islands demilitarisation and neutralisation regime. Furthermore, it should be emphasised that this contribution is written from an international law perspective,[3] focusing on the legal regimes. For the purpose of this article, legal regime connotes a set of norms and institutions generally adhered to by the major actors in a policy issue.[4]

1 The creation of a military organisation was not a treaty commitment and had not been planned for from the start. The basic military structures for the Alliance in Europe and the political decision-making machinery, with the North Atlantic Council (NAC) at its centre, were in place by mid-1951, and the entity has been known since then as the North Atlantic Treaty Organization/NATO, see e.g. the Finnish Government 2016d, p. 27. For the sake of readability "NATO" is used in this article as if the organisation was already in place ab initio.

2 E.g. Tiilikainen 2006, p. 353; Rainne, 2008, p. 48; The Åland Islands Government 2015, p. 28; The Finnish Government 2016d, p. 34.

3 There is no intention to compare vast historical events as such, which differ fundamentally for a number of reasons. The issues in the present contribution are assessed on the basis of a traditional legal dogmatics method.

4 Nye 1975, p. 31. It is of interest to note that Spiliopoulou Åkermark, Heinikoski and Kleemola-Juntunen (2018) describe the demilitarisation and neutralisation of the Åland Islands as a regime involving a series

The legal regimes discussed in the article constitute multilateral security arrangements applied to territories. The concepts demilitarisation and neutralisation are somewhat elusive. Using a traditional definition, by demilitarisation it is meant that the territory in question is free from permanent military installations and forces, while neutralisation implies the additional obligations to keep the territory outside war operations in time of armed conflict (but with a possible right of the state exercising sovereignty over the neutralised territory to bring in troops as a defensive measure).[5] Commonly academics have denoted Svalbard's status, based on art. 9 in the Svalbard Treaty, as demilitarised and, in most cases, neutralised.[6] Ulfstein seems to hold a view of a more limited concept regarding the Svalbard demilitarisation, and states for instance that Svalbard is only partly demilitarised.[7] The Norwegian Government does not use these concepts. This author has chosen to use the denotation demilitarisation to describe Svalbard's status. The Åland Islands' status is commonly denoted as demilitarised and neutralised.

A primary objective of this article is to explore how the Svalbard legal regime was viewed at the time when Norway joined the Atlantic Alliance, and what the challenges to it were. In order to determine what kind of challenges it is crucial to examine state practice[8] around that time. An attempt is made to identify state practice related to the Svalbard legal regime, and assess whether such state practice was accepted or contradicted by other states. There is a focus on the time period 1944–51, a choice made by the author, since it seems relevant to examine events around the time of the formal Norwegian decision to join NATO by the Norwegian Parliament on 29 March 1949. Events related to the Svalbard legal regime that took place in this time period were inter alia the Norwegian contacts with the Soviet Union to revise the Svalbard demilitarised status during the crisis 1944–1947, the definite impasse in the negotiations on a Nordic defence union in the beginning of 1949, the Norwegian decision in March 1949 to join NATO, and the Norwegian decision 1951 to confirm the NATO command for Norway. The period 1944–51 is being described in a relatively detailed manner in the article, the purpose being to clarify the 'Svalbard-NATO' circumstances of that time.

---

of regulations, institutions and processes at various levels, national as well as international, p. 21, and; "..the complex regime applying to the Åland Islands is a paradigmatic example of multilevel governance where local (Ålandic), national, international and European norms and institutions co-exist, co-operate, collide and compete and where legal, political, diplomatic and military realities run parallel.", pp. 21–22.

5 Hannikainen 1994, p. 616; Rosas 1997, p. 23.

6 E.g. Hannikainen 1994, p. 649; Ahlström 1997, p. 46; Rainne 2008, p. 48. Ulfstein (1995) states that state practice has supported that Svalbard is neutralised, pp. 366–367.

7 Ulfstein 1995, pp. 388–389, 478.

8 Traditionally, the starting point for discussing sources of international law is art. 38(1) of the Statute of the ICJ. A concept based on art. 38(1)(b) is state practice (or usus or diuturnitas). State practice is a rather wide term and its exact scope is not clear. Brownlie, 2003, lists certain state actions and statements that may qualify as state practice, though admitting that their value may vary depending on the circumstances; p. 6. In this article Brownlie's view is the point of departure. A simplified summary of that position would be that both activity of states and their statements are regarded as state practice.

However, the intention is to examine also a few other aspects for the purpose of drawing at least preliminary conclusions on these topics. Against the above background, the research questions are the following: first, what conclusions can be drawn as concerns the state of the Svalbard demilitarised regime around the time when Norway joined NATO during the period 1944–51? Second, are there any conclusions to be drawn concerning Svalbard in connection with application so far of the 'consultation art. 4' and the 'collective defense art. 5' in NATO's 1949 North Atlantic Treaty (commonly known as the Washington Treaty)? Third, what possible conclusions does an exploration of the main military-strategic[9] assessments of the Svalbard legal regime, limited above all to the time period until 1951, lead to? Fourth, is it possible to draw any conclusions as regards the leeway of interpretation of the provisions in question, where above all Norway's and Finland's respective leeway of interpretation is assessed as of interest? On these four points brief accounts and reflections regarding 'corresponding' aspects of the Åland Islands demilitarised and neutralised regime will be made – in relation to the first research question, focus is on the current state of the Åland Islands regime since that is the issue of interest in relation to a Finnish NATO accession.

A mix of primary and secondary sources has been used for the article. Many of the issues have already been examined by experts and academics,[10] but it is relevant to have a closer look at known facts for the purpose of this contribution. First, the origins of the Svalbard legal regime, some aspects regarding NATO, and Norway's stance on Svalbard at the time of becoming a NATO member, will be examined. Second, certain aspects of the Svalbard and Åland legal regimes will be discussed, namely military-strategic aspects and the leeway of interpretation. Third, a background and introduction to the discussions so far on the Åland Islands in connection with a possible Finnish accession to NATO will be given. Finally, some conclusions will be drawn.

9 In this contribution the term military-strategic is used to denote reasonings based on operational analyses, see Holtsmark 1993, p. 23, note 27. The term geopolitical, not used commonly in this contribution, could be seen as on a higher level of generalisation than military-strategic reasoning. See also Spiliopoulou, Heinikoski, Kleemola-Juntunen 2018, p. 20: "Geopolitical thinking implies that the world is understood as being comprised of competing powers with a focus on hard security, that is, use of military."

10 Concerning Svalbard, sources used are e.g. (in chronological order): Riste 1979, Tamnes 1987, Eriksen 1989, Tamnes, Holtsmark 1993, Ulfstein 1995, Sverdrup 1996, Holtsmark 2004, Ulfstein and Churchill 2010. Holtsmark, 1993 and 2004, has examined the issue based on Soviet material the Ministry for Foreign Affairs of the Russian Federation, with a focus on Soviet policy, encompassing the period from 1920 to 1953. The Norwegian path to NATO has been analysed in detail by Sverdrup 1996.

2. Svalbard and NATO

The purpose of this section is to explore the state of the Svalbard legal regime until around 1951, focusing on the time period when Norway joined the Atlantic Alliance. A 'corresponding' brief account of some aspects of the Åland Islands regime of today is found in section 4.

2.1 The Svalbard Treaty: Developments to 1944

The origins of the Svalbard Treaty[11] have been described and analysed extensively by academics,[12] so only a summary will be given here. The history of Svalbard is connected with the exploitation of resources.[13] During the 17th and 18th centuries there was an extensive degree of hunting in Svalbard and the surrounding waters, especially whale hunting, and at the beginning of the 20th century the coal mining industry was expanding.[14] There were a number of sovereignty claims advanced over Svalbard, but the region's 'no-man's land' status (terra nullius) was widely accepted among interested states up until the 19th century. However, in 1871, the Swedish-Norwegian government proposed the establishment of a permanent settlement together with placing Svalbard under Norwegian sovereignty, but the Russian Czarist government opposed this.[15] After gaining independence from Sweden in 1905, in a notification to relevant parties, Norway suggested the establishment of a new legal regime based on Svalbard's terra nullius status.[16] However, negotiations before World War I did not result in any solution. Norway requested in 1919 that the Paris Peace Conference should examine the legal status of Svalbard and that Norway be granted sovereignty. The conference established the Spitsbergen Commission where representatives of the USA, Great Britain, France, Italy and Japan considered a draft presented by Norway and agreed on a treaty text which would become the Svalbard Treaty. The Treaty was based on Norwegian sovereignty, while preserving earlier terra nullius rights by allowing equal rights for other states to access, hunting and fishing, mining, etc. The peaceful utilisation

11 Treaty of 9 February 1920 relating to Spitsbergen (Svalbard) (hereinafter the Svalbard Treaty).

12 The information in this paragraph builds in particular on Ulfstein 1995; Churchill and Ulfstein 2010. For other sources on Svalbard, see also supra note 10. Holtsmark 1993, p. 8 in note 3, has listed sources for different aspects of the Svalbard issue. Ulfstein states (1995) that there were three main purposes of the Svalbard Treaty; to establish an effective management of the archipelago, the preservation of former terra nullius rights, and facilitating peaceful utilisation of Svalbard, p. 343.

13 Svalbard is an Arctic archipelago lying in the Barents Sea, midway between Norway and the North Pole, and includes all the islands situated between 74° and 81°N and 10°E and 35°E.

14 Holtsmark 1993, p. 29.

15 Responding to Sweden-Norway's query whether Russia would object to the former's assertion of sovereignty over Spitsbergen, the Russians responded in a diplomatic note 15 of May 27, 1871, that the Russian government wanted Svalbard to continue to be, by tacit agreement, a territory with an undecided status open to all states, Ulfstein 1995, p. 37 (note 53).

16 Churchill and Ulfstein 2010, p. 553.

of Svalbard was to be ensured through the stipulations of art. 9 of the Treaty, which reads: "Subject to the rights and duties resulting from the 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."

The Svalbard Treaty was signed on 9 February 1920 and entered into force on 14 August 1925.[17] A separate Norwegian act of law entered into force the same day, the Act of 17 July 1925 No. 11, known as the Svalbard Act.[18] The Svalbard Treaty's founding signatory states were the US, the UK, France, Italy, Japan and Norway. The Treaty is open to accession, and more than 40 parties have acceded to the Treaty to date.[19]

For the purpose of this article the Soviet Union/Russia's positions and actions are crucial, since the interest for Svalbard and the Svalbard issue were becoming increasingly bilateralised between Russia and Norway already from 1920.[20] Russia took no part in the negotiations and was not among the signatory states of the Svalbard Treaty. Initially there were Russians protests against the 1920 Treaty. The new regime in Russia tried for a while to obstruct the implementation of an arrangement which had been negotiated without Russian participation,[21] but in February 1924 Norway received a declaration from the Soviet Union government that it accepted the 1920 Svalbard Treaty: the Soviet Union declared that it did not object to the stipulations of the Treaty, and the Norwegian government undertook to solicit the signatory powers' agreement to Soviet adherence.[22] Around the time of the 1924 Declaration Svalbard was not considered to be of much interest to the Soviet Union,[23] but soon after that the Soviet government started to develop an Arctic policy.[24]

Basically because the United States refused to recognise the Soviet Union, the Soviet Union was only allowed to accede to the Treaty in May 1935.[25] The Soviet accession in 1935 was motivated by economic and legal arguments, not military-strategic ones,[26] and the increased Soviet activity on Svalbard in the 1930s did not mean that the area had been given priority in Soviet foreign policy or strategic thinking. [27] The Arctic did not play any

17 Ibid.
18 Ibid. Furthermore, according to the first paragraph of art. 8 in the Svalbard Treaty, Norway is under a duty to adopt what is known as a mining code. The Mining Code was laid down by the Royal Decree of 7 August 1925.
19 The Norwegian Government 2015, p. 17.
20 Tamnes 1991, p. 8.
21 Holtsmark 1993, p. 17 ff.
22 Ibid., p. 14. Danielsen 1964.
23 Holtsmark 1993, p. 24.
24 Ibid., p. 26.
25 Ibid., p. 22.
26 Ibid., p. 156.
27 Ibid., p. 30.

important role in Soviet military-strategic thinking prior to the outbreak of the Second World War (see section 3.1).[28]

A brief account of some NATO aspects follows below. Thereafter key events from 1944–1951 will be described, with a focus on the status of the Svalbard legal regime.

2.2 NATO

In particular three 'NATO issues', explored below, are assessed as being of interest for this contribution in relation to Svalbard, and the Åland Islands of today: first, the application of art. 4[29] and the core art. 5[30] of the founding Washington Treaty[31] and the consensus requirement attached to these articles, second, the assistance given to states subject of an armed attack, and third, the issue of possible reservations, or similar, to the Washington Treaty.

Any member state can formally invoke art. 4, which provides for a consultation process. As soon as the article has been invoked, the issue is discussed and can potentially lead to some form of joint decision or action on behalf of NATO. The decision is to be taken by consensus. Since NATO's creation in 1949, art. 4 has been invoked several times.[32] Art. 4 is commonly seen as a step on the ladder to art. 5, which helps explain why it is invoked relatively rarely: the invocation of art. 4 should be given careful consideration, since the possible connection to art. 5 gives art. 4 significant weight.

Art. 5 has only been applied once, after the attacks in the United States in 2001. Legally, there is arguably no need for an attacked state to invoke art. 5 – it operates automatically.[33] However, in 2001 there were seemingly several actors involved.[34] Art. 5 does not contain an automatic obligation for the states parties to come to the assistance of an attacked party, or to do so with military means: this choice is left to each individual member state – although politically there would presumably be a pressure to assist.[35] In the North Atlantic Council

28 Ibid., p. 31.

29 Art. 4: "The Parties will consult together whenever, in the opinion of any of them, the territorial integrity, political independence or security of any of the Parties is threatened."

30 Art. 5 begins: "The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all...".

31 The North Atlantic Treaty 1949, commonly known as the Washington Treaty.

32 Recent examples are the request on 26 July 2015 by Turkey that the North Atlantic Council convene under art. 4 in view of the seriousness of the situation following terrorist attacks, and Poland's invocation of art. 4 on 3 March 2014 following increasing tensions in its neighbour Ukraine. See the NATO website https://www.nato.int/cps/su/natohq/topics_49187.htm%20 (visited 2.1.2018).

33 Siedschlag (2001) states that "Artikel 5 beinhaltet eine unbedingte politische (wenngleich nicht notwendigerweise auch militärische, das bleibt jedem einzelnen Staat überlassen) Beistandsverpflichtung: Sie greift automatisch, wenn ein NATO-Staat angegriffen wird und muss nicht erst noch diplomatisch festgestellt werden.", p. 86. Reichard 2006, p. 190.

34 Two accounts of how the initiative to invoke art. 5 started off are given by Assistant Secretary General for Defence Planning and Operations (1999–2003) Edgar Buckley 2006, and Martin Reichard 2006.

35 Reichard 2006, p. 183.

meeting on 12 September 2001 the application of the decision-making was discussed. It was confirmed by the NATO legal adviser that each member state would deem for itself what was "necessary", as stipulated in art. 5, although such action should be appropriate to the scale of the attack, the means of each country, and the steps necessary to restore peace and security.[36] Furthermore, any collective action taken by the NATO, for example military action by NATO forces, would not be launched without specific additional consultation and decision in the Council.[37]

Art. 5 states that an "armed attack" triggers the application of the article. In practice one of the most difficult challenges today is perhaps defining what is, and is not, an armed attack.[38] In 2001, the conclusion was reached that the attacks in the United States were to be seen as armed attacks. The decision to invoke art. 5 was historical, but the concrete measures[39] taken in its implementation were limited compared with the massive military capacity at NATO's disposal.[40] The contributions of Norway after the invocation are of particular interest:[41] Norway supported the mission in Afghanistan with a number of measures, but arguably none of the Norwegian measures were connected to Norwegian territory, at least not in a direct and legal sense.[42]

For states joining the NATO of today, consideration would presumably also be given to NATO's other activities, and the way they are handled and decided on, as well as other aspects, such as the enlarged membership, that make NATO a different organisation than

36 Buckley 2006.

37 Buckley 2006. It is of interest that decision-making in non-article 5 combat operations, legally based on for instance UN Security Council resolutions, is much more flexible. Since substantive decisions are not taken by a straight yes or no vote, those who do not want to participate in a given non-article 5 initiative opt out, without preventing others from moving forward. There are limits to this flexibility, but the 2011 Libyan case indicates that they are very broad, see The Finnish Government 2106d, p. 33.

38 The International Court of Justice has used Resolution 3314 of the United Nations General Assembly, adopted in 1974 and listing all acts which can be qualified as acts of aggression, as the point of departure in its analysis of the notion 'armed attack', see inter alia Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. US) (Merits) 1986.

39 Eight measures were decided on by the member states, see a statement by NATO Secretary-General George Robertson 2001 (only the last two measures are of the kind of response classically understood under collective self-defence).

40 Reichard 2006, pp. 189–190: Criticism regarding the 2001 invocation of art. 5 includes that the United States was from a military point of view not really in need of any help and that NATO's 'war against terrorism' in general went very far and was not checked at every instance against the strict requirements of self-defence in international law. The meeting on 2 October 2001 which produced the "evidence" remains classified.

41 The measures by the contributing state as listed by the United States, see the Department of State webpage; https://2001–2009.state.gov/coalition/cr/fs/12753.htm (visited 5.1.2018).

42 Reichard 2006, p. 189: Seemingly, from a legal standpoint, the invocation of art. 5 after the terrorist attacks 2001 per se was endorsed by most of the scholarship. But the more fundamental question (on which the invocation was legally contingent) whether the attacks really constituted a case justifying self-defence under international law has provoked debate, particularly, if the question was answered in the affirmative, whether the action taken in Afghanistan 2001 conformed with the legal limits of immediacy, proportionality and necessity.

the Atlantic Alliance that Norway joined in 1949 – despite the fact that art. 5 and collective self-defence is back at the centre of NATO.[43]

For Norway, the defence of the Norwegian territory was the focus of considerations preceding the decision to join the Atlantic Alliance. The consensus requirement regarding art. 5 and collective self-defense issues was stressed.[44] In relation to Svalbard, as Ulfstein has pointed out, even though the consensus rule means that Norway is formally in control of the defence of the Norwegian territory, there is reason to pose the question if Norway also has the necessary control in practice, taking into account confidential NATO defence plans and the discretionary powers of the NATO command in time of war.[45]

The issue of assistance to Norway in art. 4 and, above all, art. 5 scenarios, and how such assistance would relate to Svalbard's legal regime, was not considered in the political discussions (cf. the Åland Islands and the French request in 2015, see sec. 4.2). The art. 4 consultations and the art. 5 invocation that have occurred so far have not in any way had ties to Svalbard, so on this point there is seemingly limited (at least based on what is emanating from public sources) experience at hand from an Ålandic perspective.

The Norwegian position in relation to NATO has been described as self-imposed restrictions, with no nuclear weapons, no foreign bases, and "non-provocative" defence of Finnmark, with limited allied military activity eastward of 24° East longitude.[46] It is not a 'NATO tradition' that reservations be made to the founding treaty by states parties; there are no reservations made to the Washington Treaty. The issue of reservations is a sometimes thorny and technical matter. [47] Legally, a state wishing to make a reservation 'of some kind' cannot be 'stopped' – although the reservation and aspects related to it could later be subject to a legal process. Interestingly, in connection with the decision by the

43 The Finnish Government 2016d, p. 29. For a description of the term collective self-defence, see Dinstein 2017, pp. 301–327.

44 The Norwegian Storting's Special Committee 1949, p. 93. Other issues underlined in the Committee's opinion was that the treaty did not in any way create obligations for Norway to accept military bases on Norwegian territory, p. 93. Ulfstein (1995) has concluded that the substantive obligation established in art. 5 in the Washington Treaty does not violate art. 9 in the Svalbard Treaty, p. 372.

45 Ulfstein (1995) has discussed the consensus rule vis-à-vis Norway and Svalbard, pp. 372 ff.

46 The Finnish Government 2016d, p. 34. It can be noted that the concept 'national caveats' is used within NATO, but according to its definition by NATO, as for instance referred to in Resolution 336 on Reducing National Caveats by the NATO Parliamentary Assembly 2005, it is defined as "restrictions placed on the use of national military contingents operating as part of a multinational operation".

47 The International Law Commission (ILC), 2011: The ILC worked on the topic 1993–2011 when a Guide (with its commentaries encompassing more than 600 pages) on the issue of reservations was agreed. See Milanovic and Sicilianos 2013: The rigid system requiring unanimous acceptance of reservations by all treaty parties had already been softened to a more flexible one that would facilitate as broad a membership of multilateral treaties as possible without sacrificing their object and purpose, by the International Court of Justice in the 1951 Advisory Opinion Reservations to the Genocide Convention. The 1969 Vienna Convention on the Law of the Treaties codified the Court's innovation, adding a few more rules here or there, but the Convention was far from being a comprehensive regulatory framework for reservations. The ILC arrived at a kind of "Vienna Convention plus".

United States Senate to ratify the Washington Treaty there were proposals for reservations debated by the Senate, but none of them were agreed on.[48] There is also information about an Icelandic 'attempt' at a reservation, but no such reservation is recorded.[49] Against such a 'NATO tradition of no reservations' it would most likely be seen as difficult politically to insist on any kind of reservation, perhaps to a certain extent depending on the matter – despite the fact that in general, under international law, it would be feasible. Rather, 'self-imposed restrictions', as for instance those by Norway described above, seem to be the 'tradition' followed by NATO.

2.3 Norway's stance on Svalbard when joining NATO, 1944–1951

The purpose of this section is to attempt to assess what the Norwegian concerns were regarding the Svalbard-NATO issue from 1944–1951, how the Svalbard status was taken into account, and what the state of the legal regime was around that time.

Norway was one of the states that signed the Washington Treaty on 4 April 1949. The decision by Norway to join was preceded by intense debates in Norway, influenced by the realities of the Cold War. Until the end of January of 1949 the alternative, a Nordic defense union, comprising Sweden, Denmark and Norway, was discussed in Norway. Svalbard was not to be covered by the Nordic defence union, since Sweden did not wish to include it,[50] which was a concern for Norway, but still seemingly not decisive. However, the three Nordic states could not agree on crucial issues, above all whether the Nordic union in any way could or should be linked to the West – a requirement for Norway, but unthinkable for the neutral Sweden. Early in 1949 it became clear that the negotiations had reached a definite impasse.

No known official written references to the status of Svalbard were made when Norway decided to join the Atlantic Alliance and ratify the Washington Treaty. However, Svalbard was brought up behind closed doors in, for instance, Norwegian contacts with the United States at a crucial point in time in February 1949: on 10 January 1949 Foreign Minister Lange informed the Special Committee[51] that the issue of whether Svalbard should be included in the Atlantic Alliance, should Norway choose to become a member of it, had

48 White 1949.
49 Njarðarson and Már Magnússon 2016.
50 See inter alia Eriksen 1989, p. 151.
51 Meeting of the Norwegian Storting Special Committee for Certain Foreign Affairs and Contingency Issues ("Spesialkomité for særlige utenrikspolitiske spørsmål og beredskapssaker") (hereinafter the Special Committee) on 10 January 1949, pp. 9–10. The stenographic reports from the Committee meetings 1948–49 have been received by the author in personal communication from the Storting. The Special Committee existed 9 April 1948–27 January 1950. For a background to the creation of the Special Committee, see Lövold 2002, pp. 89, 92 f. See also Sverdrup 1996, p. 295. In June 1996 the Storting declassified the 1948–49 stenographic reports from the Special Committee, see the Storting decision, p. 35.

not been clarified yet. Svalbard had not been brought up specifically, asserted Lange, who referred to the fact that Svalbard had not been excluded in the replies that Norway had received from the West.[52] But, asserted Lange, as regards a Nordic defence union, the answer was: Svalbard would not be included.[53] However, in later discussions with the US, Svalbard was discussed: Lange informed the Special Committee on 16 February 1949 that the question was posed to the civil servants at the State Department and the Secretary of State Acheson.[54] Acheson replied that his view was that the entire Norwegian territory was included, and protected by the Alliance.[55] Lange and the Norwegian delegation inquired whether it was possible that some kind of declaration on the issue could be issued by the US, by the Congress or the President. However, President Truman and Acheson's views were that such a measure was hardly possible politically. The membership in the Alliance should be sufficient: if there was an attack on a member state's territory, the US would see that as "a matter of very grave concern", an expression repeated by Lange at home in the Special Committee.[56]

Available official sources that are of interest to examine are those connected to the Storting, including the relevant Committees, not least since the Storting had the last formal say on the ratification of the Washington Treaty. In the Special Committee the issue of whether Norway should join NATO or not was dealt with behind closed doors, without participation of representatives of the Communist Party (NKP). Lövold asserts that the main purpose of setting up the Committee was to exclude the Communist party representatives from taking part in it, since these persons allegedly had created a distrustful relationship between the Government and the Storting.[57] The Communist Party was the fourth largest part in the Storting at the time, but the Norwegian Labour Party (later the Labour Party) (Arbeiderpartiet)[58] had an absolute majority in the Norwegian parliament (from 1945 to 1961). The issue of whether Norway should join NATO or not was debated behind closed doors in the Special Committee. However, in principle the important standpoints regarding the Norwegian NATO membership can be found in open fora, except for the more or less closed internal Labour Party discussions, or deliberations by the Government.[59]

52 The Special Committee on 10 January 1949, p. 17.
53 Ibid.
54 The Norwegian Storting Special Committee on 16 February 1949, p. 11. For a description of the meetings in the United States, see also Sverdrup 1996, p. 329 ff.
55 Ibid. Eriksen sees it from another perspective: he asserts that the neither the US, nor Norway, were considering to set aside the demilitarisation of Svalbard at the time when Norway joined the Atlantic Alliance, Eriksen 1989, p. 151.
56 The Norwegian Storting Special Committee on 16 February 1949, p. 11.
57 Lövold 2002, p. 91. See also footnote 51.
58 The Labour Party is a social democratic party which has had a strong, sometimes dominating, position in Norway.
59 For a detailed analysis of Norway's path to NATO, see Sverdrup 1996.

The 'sovereignty issue' regarding Svalbard (1944–47, see subsection 2.3.1) had earlier been dealt with by the enlarged Committee for Foreign and Constitutional Affairs (hereinafter the enlarged Foreign Affairs Committee).[60]

An opinion elaborated by the Special Committee,[61] and a Government Bill, dated 22 March 1949,[62] on the issue of whether Norway should join the Atlantic Alliance, were presented to the Storting. Neither of these documents mention Svalbard. The Bill that was presented to the Storting to obtain the Parliament's acceptance of Norway's ratification of the Treaty is quite brief, around 11 pages, and half of that consists of the treaty text.

Already on 3 March 1949 the Storting had taken the decision that Norway should take part in the drafting of the treaty that was being negotiated in Washington.[63] This step can be regarded as constituting the decision for Norway entering the Alliance.[64] From 4 March Norway was represented in the drafting work by its Norwegian Ambassador Morgenstierne in Washington.[65] On 18 March a draft of the Treaty was finalised.[66]

The debate in the Storting took place on 29 March 1949, and the Storting took the formal decision that Norway should join the Atlantic Alliance.[67] Svalbard was not mentioned in the debate, according to the Storting report.[68]

In 1951 the issue of Norway, including Svalbard, being included in the area of responsibility of the newly created NATO Atlantic command, SACLANT, was considered.[69] The Government proposed to the Storting in a Government Bill that Norway should accept to be included under the command.[70] Neither the Bill nor the Opinion by the Parliamentary Enlarged Foreign Relations, Constitutional and Military Committee[71] mention Svalbard. According to Meyer there was a discussion whether it should be mentioned in the Committee opinion that Svalbard was included under the joint command, but only a minority supported it so it was left out.[72] (Interestingly, Holtsmark states that the Soviets had been informed by Jakob Friis, one of the Labour Party's left-wingers, that there was

60 Lövold 2002, pp. 88–89: The enlarged Foreign Affairs Committe played an important role 1945–48. Sverdrup 1996, p. 243: Foreign Minister Lange took care to keep the enlarged Foreign Affairs Committee informed.
61 The Norwegian Storting's Special Committee's Opinion 1949.
62 Norwegian Government Bill St. prp. Nr. 40. (1949).
63 Ibid., p. 3.
64 Sverdrup 1996, p. 337.
65 Ibid.
66 Ibid.
67 The Storting report 29 March 1949, pp. 655–712.
68 Ibid.
69 For an overview of the NATO commando structure 1951–2009, see Pedlow 2009.
70 Norwegian Government Bill: St.prp.nr.20 (1951).
71 The Norwegian Storting enlarged Foreign Affairs Committee Opinion 1951. The Committee made reference to the enclosed statements by the Justice Ministry and professor Castberg and professor Andenaes, p. 70. The statements by the Justice Ministry and the two professors focused on sec 1 and 25 in the Constitutional Act ("Grunnloven") and did not touch on Svalbard.
72 Meyer 1987, p. 97. (Cf. Tamnes 1991, p. 76.)

opposition within the Storting's Foreign Affairs Committee to the inclusion of Svalbard in the Allied command.[73]) In the debate in the Storting on 12 March 1951[74] Svalbard was not touched on, although there were references in the debate to certain disagreements in the Committee, for instance by Friis.[75]

As can be seen from this overview, the official Norwegian documents referred to above in these years did not mention Svalbard. However, Svalbard was brought up in the 1951 diplomatic notes exchanged with the Soviet Union in these years, see further below, where a closer look will be taken at the events and states' measures in the period 1944–51.

2.3.1 1944 until early 1947

In a sudden move, as it was perceived by Norway, on 12 November 1944, the Soviet Union presented Norway with extensive proposals for a change in the international legal status of Svalbard.[76] The Soviet Commissar for Foreign Affairs Vjatjeslav M. Molotov met with the Norwegian Foreign Minister Trygve Lie and demanded inter alia that the Svalbard Treaty should be declared void, and that the Spitsbergen archipelago should be administered as a Soviet-Norwegian condominium, i.e. that it should come under joint Soviet-Norwegian control.[77]

Initially the Norwegians tried to take the initiative,[78] and presented a Norwegian counter proposal for a solution: a joint declaration by the Soviet Union and Norway. This policy culminated in the Norwegian draft declaration of 9 April 1945.[79] The UK and the US was kept informed, but they were not consulted as treaty parties.[80] The Norwegian proposal for a joint declaration would have paved the way for the joint Norwegian-Soviet defence of Svalbard.[81] However, the intention was that the states parties would be heard, as stated in the declaration.[82]

73 Holtsmark 1993, p. 149.
74 The Storting report 12 March 1951, pp. 397–417.
75 Ibid., p. 410, by Jakob Friis, who was very critical to a Norwegian NATO membership, but voted "yes" in the Storting.
76 Holstmark 1993, pp. 5–6.
77 Ibid.
78 The initial handling of the Svalbard issue was kept within the Government and among a few additional advisers, such as Rolf Andvord, H.C. Berg, Frede Castberg, C.J.Hambro, Arne Ording and Arnold Raestad, see Eriksen 1989, pp. 112–162, p. 117. According to Eriksen, the Norwegian Ambassador in Moscow, Rolf Andvord, was the main influence in the political handling of the Svalbard issue, and the military was not involved in the discussions, ibid., p. 118.
79 Ibid., p. 6. The wording of the declaration can be found in for instance the Storting enlarged Foreign Affairs Committee meeting report 16 January 1947, p. 21.
80 Holstmark 1993, pp. 5–6. Statement by Foreign Minister Lange in the enlarged Foreign Affairs Committee 8 May 1946, p. 30.
81 Eriksen 1989, p. 119, 124.
82 For details on the Lange-Molotov meeting, see Sverdrup 1996, p. 269–271. Molotov wanted to avoid mentioning some of the States Parties in the declaration (in discussions in November 1946), and there was no agreement reached on that point. According to Eriksen, 1989, p. 119, the initiative to keep the

The Norwegian policy from November 1944 to April 1945 of "keeping the initiative" proved successful, although it was a policy of enormous risks and could have ended in disaster if the Soviets had demanded immediate implementation of the draft declaration of 9 April 1945 – but this did not happen.[83] The period May 1945–February 1946 has been characterised as a wait-and-see period.[84] Foreign Minister Halvard Lange succeded Trygve Lie in February 1946, which opened for a change of direction regarding the Svalbard issue.[85] There were some attempts towards reorientation by the Norwegian Government in 1946, but not successful ones.[86]

Formally, the discussions in the period 1944–47 about Svalbard's international status were a Norwegian-Soviet bilateral affair. The US did not seem to find the Soviet initiative too disturbing.[87] The British were not that interested in Svalbard either.[88] The Western powers did not put pressure on Norway to resist the Soviet demands, and the Norwegian government did not seek their support.[89] Svalbard was not the subject of discussions between the Soviets and the British or the Americans.[90] Holtsmark asserts that lower and middle level bureaucrats in the Soviet foreign policy apparatus were the driving force behind the attempts in the years 1944–47 to alter Svalbard's international status.[91]

In the period February 1946–January 1947 the Norwegian Foreign Relations Committee and the Storting did not discuss the matter in detail or reach any definite decisions.[92]

---

issue initially between Norway and the Soviet Union, without involvement of other treaty parties, was Norwegian. Olav Riste has described the negotiations in detail in London-regjeringa II, 1979, in particular pp. 315–339.

83 Holtsmark 1993, pp. 161–162. The Soviets were led to believe that there was no need to hasten the conclusion of the talks, which was reinforced by Soviet perceptions of Norwegian attitudes, strengthened by Foreign Minister Trygve Lie's repeated efforts to convince the Soviets that Norway wanted a solution which was "satisfactory" to the Soviet Union.

84 Eriksen 1989, p. 126 ff.

85 Ibid., p. 132.

86 Ibid., pp. 132–135. There were occasional Soviet reminders that the Svalbard issue was still not solved, and in the discussions with Molotov in November 1946, Lange agreed that bilateral negotiations would continue early 1947, although Prime Minister Einar Gerhardsen and Defence Minister Jens Chr. Hauge had wanted to take steps away from the joint defence line. For details on the Lange-Molotov meeting, see Sverdrup 1996, pp. 269–271.

87 Holtsmark 1993, p. 126: "The underlying American attitude was highlighted by the President's Chief of Staff, Admiral William D. Leahy, who stated that it was difficult for him to see that there were any military implications in the acquisition by Russia of bases in Bear Island and the Spitsbergen Archipelago."

88 Ibid., p. 127.

89 Ibid., pp. 162–163.

90 Ibid. Holtsmark has argued that the US was still a decisive actor. From the outset of the discussions, Soviet policy on Svalbard increasingly reflected Soviet perceptions of American interests vis-à-vis Iceland and Greenland: "The Soviet fear of supplying the Americans with additional arguments in support of their plans for bases in Iceland and Greenland was the single most important external factor which restrained the Soviets from forcing through their original demands of November 1944."

91 Ibid., p. 160.

92 Eriksen 1989, p. 131 ff.

2.3.2. Change of direction early 1947

The driving forces behind the reorientation of the Svalbard politics in early 1947 were several.[93] Above all, foreign policy aspects were seen as crucial: Norway should be free from alliances. A strategy of bridge-building between East and West was the right choice for Norway. The fact that Foreign Minister Halvard Lange took over from Trygve Lie played a role.[94]

Also, military and economic arguments were heard in the debate.[95] The military arguments against the joint defence of Svalbard weighed in.[96] Early in January 1947 the Norwegian Government had reached the decision that it would try to get an approval of the enlarged Foreign Affairs Committee and the Storting for a reoriented Svalbard policy.[97] The decision of the Norwegian Storting to reject the idea of a Norwegian-Soviet common defence of Svalbard was taken during a closed session on 15 February 1947.[98]

There are no indications that the Storting's decision in February was the result of American and British pressure,[99] despite the fact that the US and the UK had become more critical towards any changes being made in the Svalbard Treaty.[100] In fact, Foreign Minister Lange informed the Foreign Relations Committee on 15 January 1947 that the Western powers had had a strangely passive attitude regarding the Svalbard issue.[101] The most preferred outcome for the West was the status quo: Norwegian sovereignty and a continued demilitarisation of Svalbard. A 'denial strategy'– to prevent other states from establishing military bases on Svalbard – also became the main track for the Soviet Union.[102]

93 Ibid.
94 Ibid., pp. 131–132.
95 Ibid., p. 140 f.
96 Ibid., p. 141 and note 57: Forsvarsstabens og Forsvarssjefens notat 15.juli 1946 og brev til Forsvarsminister 5. Oktober 1946. Mappe III 36.6/10A. Ut.dept., and Eriksen 1989, p. 142: A common defence of Svalbard would give rise to immense complications regarding sovereignty, military and foreign policy issues. However, Soviet military bases as such seemed less problematic for the military authorities. After all, Svalbard was not of significant importance strategically for Norway, and, was the reasoning, if it really came to it, it would be impossible for Norway to hinder a great power to establish a military foothold on Svalbard.
97 Ibid., p. 137.
98 Holtsmark 1993, p. 122. The decision can be found in Holst 1967, pp. 63–64. Eriksen 1989, p. 143. It was discussed whether legal arguments could be used to reject the idea of a common defence, such as certain articles in the UN Charter, but in the final decision by the Storting the formal legal arguments were not stressed. Instead, the non-alliance and bridge-building arguments were emphasized.
99 Holtsmark 1993, p. 126. Eriksen 1989, p. 144.
100 Eriksen 1989, p. 144, and p. 129: There were disagreements internally in both the US and the UK on the Svalbard issue – the political and military leadership had diverging views – and also between the governments of the US and the UK.
101 The enlarged Foreign Relations Commitee 15 January 1949, pp. 34–35. Eriksen 1989, p. 157. It is conceivable that had the Soviet Union sought to establish (rented) military bases on Svalbard, under continued Norwegian sovereignty, this would have been accepted by the West in 'exchange' for Western bases on Greenland and Iceland.
102 In the words of Eriksen 1989, p. 157 f.

There were no strong Soviet reactions to the Storting decision in February 1947.[103] After the Storting's decision of 15 February 1947,[104] and Lange's letter to Molotov which followed two days later, the Soviet Union made no serious attempts to revive the Norwegian-Soviet negotiations on a change in Svalbard's international status.[105] Foreign Minister Lange stated in Parliamentary Committee meetings in 1947 and 1949 that there had not been any Soviet reactions to the decision by the Storting.[106]

2.3.3 After the reorientation in 1947 – joining the Atlantic Alliance in 1949

In spring 1947 the reorientation seemed to be more or less a success for the Norwegian Government also domestically.[107] From spring 1947 until 1951 the Svalbard issue did not give rise to any demands or protests from the Soviet side.[108] On the Norwegian side, efforts were made to refrain from acting in any way that would draw the Soviet attention to the Svalbard issue. Locally on Svalbard there were efforts to keep a low profile: the small military contingent of 26, left from the days of war, was withdrawn in July 1947.[109]

Interestingly, criticism by Norwegian actors towards the Svalbard Treaty, and art. 9, was voiced occasionally. One example is that Foreign Minister Lange in the enlarged Foreign Affairs Committee on 16 January 1947 stated that "we" have never been of the view that the Svalbard Treaty is satisfactory; it is a weak and inadequate document.[110] Another one is that in 1948 the Norwegian military side clearly stated that it was desirable that art. 9 in the Svalbard Treaty should be repealed.[111]

In the aftermath of the war the issue of the defence of the Norwegian territory was discussed increasingly, taking into the account the weak status of the Norwegian defence, including the lack of defence equipment.[112] It is clear from Foreign Minister Lange's information to the Foreign Affairs Committee and the Special Committee that an important issue that he often brought up with his international interlocutors was the supply of defence equipment.[113]

103 Ibid., p. 146..
104 The Norwegian Storting report 15 February 1947.
105 Holtsmark 1993, p. 124.
106 Foreign Minister Lange stated in an enlarged Foreign Relations Committee meeting (behind closed doors) on 1 September 1947 that there had not been any Soviet reactions to the decision by the Storting, p. 30. He asserted the same in a Special Committee meeting (behind closed doors) on 10 January 1949, p. 16.
107 Eriksen 1989, p. 146.
108 Ibid., p. 149.
109 Ibid., pp. 149–50. Tamnes 1991, p. 61.
110 The enlarged Foreign Relations Committee on 16 January 1947, p. 11.
111 Eriksen 1989, p. 150 and note 80: Forsv.dept til Ut.dept. Uttalelse fra Forsvarsstaben 20. Mars 1948. Mappe V 36.6/10A. Ut.dept.
112 See Sverdrup 1996, on the issue of defence equipment, inter alia p. 126.
113 One example is the meeting of the Special Committee on 4 December 1948, where Foreign Minister Lange informed the Committee about his meetings with the Swedish Foreign Minister Undén and the US Secretary of State Marshall.

In May 1948 Norway received a visit by the Swedish Minister Undén, who brought a proposal for a Nordic defense union with him.[114] In subsequent discussions with Sweden and Denmark it was explored whether a Nordic defense union would be desirable and feasible. On 15 October 1948 a joint defence committee was established with the mission to produce an opinion on the feasibility of a Nordic defence union and also on the possibilities and forms for a cooperation in peacetime without an agreement was included.[115] On 14 January 1949 the joint defense committee delivered its opinion. However, it did not exert any decisive influence on the decisions made in relation to a Nordic defence union.[116]

Sweden made it clear at an early stage that it could not take on a defence of the island Jan Mayen (not part of the Svalbard archipelago) and Svalbard and that was also the point of departure for the joint defence committee.[117] The fact that Svalbard would be excluded in a Nordic defence union was in fact seen as a major problem in Norway, with far-reaching implications, also constitutional.[118] For Norway, it was a goal that Svalbard be covered by a defence alliance, be it Nordic or a Western pact.[119] Nevertheless, Svalbard never really became decisive in the negotiations, since the crucial issue of a link to the West led the negotiations to an impasse.

The three states held final meetings on 22–24 January in Copenhagen and in Oslo on 29–30 January 1949, when it became clear that there was an unsurmountable obstacle for the realisation of a Nordic defence union. In the Storting on 3 February 1949, Foreign Minister Lange informed the Storting that a Nordic defense union would not be explored anymore and gave inter alia the following the reasons. It had been crucial that Sweden could only accept a defence union that in every regard was free and independent vis-à-vis other states not parties to the union.[120] But for Norway it was not a feasible solution not to be able to have any kind of relations regarding the security situation with those to whom Norway had to turn to obtain material to rebuild its defence forces. Norway could not at this stage, beforehand, stay outside the work that was being done to establish a more encompassing solidarity for the states around the Atlantic. Svalbard was not mentioned in Foreign Minister's presentation to the Storting.

114 Sverdrup 1996, p. 303 ff.
115 Norwegian Government Bill 1949, p. 2. See also the debate in the Storting on 3 February 1949, p. 174.
116 Sverdrup 1996, p. 319 ff. The opinion of the joint defence committee discussed issues from a military perspective and was positive towards increased military cooperation between the Nordic states.
117 Eriksen 1989, p. 151. Defence Minister Jens Chr. Hauge in the meeting of the Special Committee on 10 January 1949, p. 2.
118 Foreign Minister Lange in the meeting of the Storting Special Committee on 10 January 1949, p. 11, and discussed in the meeting of the Storting Special Committee on 18 January 1949, p. 9.
119 Tamnes 1991, p. 72.
120 The debate in the Storting on 3 February 1949, pp. 174–176.

Foreign Minister Lange had been approached for the first time in March 1948 regarding a future Atlantic security alliance,[121] eventually to become the Washington Treaty, but the Norwegians had managed to postpone any definite answer for the purpose of exploring the Nordic track first.

There were two Soviet notes of 29 January and 5 February 1949 which warned against Norway joining the Atlantic Alliance – they did not mention Svalbard.[122] The Norwegian reply notes contained assurances that there would be no foreign military bases on Norwegian territory in time of peace and when Norway was not under threat of attack, and Svalbard was not mentioned.[123]

2.3.4 1951 and the Soviet notes

In January 1951 the Norwegian government decided to accept Norway's inclusion in the area of responsibility of the newly created Atlantic command, SACLANT. The Norwegian Storting was informed about the decision.[124] Norway was of the view that the measure to subordinate Norway, including Svalbard, to SACLANT was taken in accordance with international law. After having examined the issue in 1950 and 1951, the conclusion was reached that the wording in art. 9 in the Svalbard Treaty – not to let it be used for warlike purposes – was not an obstacle for Svalbard to be subordinated SACLANT.[125] The conclusion was drawn that the Svalbard Treaty did not hinder an armed defence of Svalbard or preparations for an armed defence to take place, if that would be necessary.[126]

The Soviet idea of protesting against increasing allied military activity in Norway developed gradually from early 1950.[127] The decision by the Norwegian government in January 1951 prompted the Soviets to start preparing of a note of protest. A first draft was ready in early March 1951.[128] Finally, in two notes of 15 October and 12 November 1951, the Soviet Union used art. 9 of the Svalbard Treaty to warn the Norwegian government

121 Sverdrup 1996, p. 296 ff.

122 Holtsmark 1993, pp. 142–43. The Soviet notes of 29 January and 5 February, and the Norwegian responses of 1 February and 5 March, 1949, can be found (in Norwegian translation) in Holst 1967, pp. 65–70. The Norwegian notes, which contained assurances that there would be no foreign military bases on Norwegian territory in time of peace and when Norway was not under threat of attack.

123 Ibid.

124 Holtsmark 1993, p. 148.

125 Tamnes 1991, p. 7.

126 Ibid.: The international law expert Frede Castberg stated that the Svalbard Treaty allowed for a defence of Svalbard "with weapons in hand and also for preparations of such a defence" (in Norwegian: ".. hevdet også at traktaten ga rom for forsvar av Svalbard med våpen i hån dog for å kunne forberede en slik eventualitet rent praktisk."). Ulfstein states that collective self-defence of Svalbard should be accepted in the case of attacks on Svalbard, and such defence of Svalbard under allied command should also be accepted, p. 373.

127 Holtsmark 1993, p. 146 f.

128 Holtsmark 1993, p. 148.

against taking measures which would change the status quo in the area.[129] The Soviet notes was discussed behind closed doors in the Foreign Affairs Committee on 17–19 October, 29 October and 15 November 1951, and a draft reply elaborated.[130]

In the Norwegian reply note of 30 October 1951 to the Soviet Union, the prohibition against establishing naval bases or constructing fortifications was made clear, reading as follows: "In accordance with the obligations Norway has undertaken through the (Svalbard) Treaty, the Norwegian Government has not established, nor will it establish, any military fortification or base whatsoever on the Svalbard archipelago or Bjørnøya. Nor will it allow any other state to do so."[131]

2.4 The state of the Svalbard legal regime 1944–1951

As has been shown, during the chosen period 1944–51 there was a fair amount of diplomatic correspondence involving the Svalbard Treaty, in particular art. 9, between the Soviet Union and Norway. There were contacts also with other states, but the Svalbard Treaty's states parties were formally not involved in the initiatives regarding the Svalbard Treaty. Without performing a detailed examination of the form and content of each measure mentioned above, some general conclusions can still be drawn:

There were clearly challenges to the Svalbard Treaty in the period 1944–47, namely the extensive demands by the Soviet Union in 1944, and the Norwegian counter proposal of 9 April 1945. The Svalbard Treaty was under pressure, although from a legal perspective still not that grave: it did not come to a stage where also other state parties to the Treaty were involved – but politically the threat towards the Treaty seemed real.[132]

129 Ibid., p. 152. Holtsmark has in detail analysed the Soviet reasoning that resulted in the two notes, see Holtsmark 1993, p. 145 ff. Ulfstein 1995, p. 349; for the Note of 12 November see Norwegian Ministry for Foreign Affairs 36 6/10 A VI (1940–49).

130 On 27 October 1951, Foreign Minister Lange told the British Ambassador in Oslo that "the Soviet Government had given the Norwegian Government to understand through the usual channels of the Soviet embassy in Stockholm that the Soviet Note was really aimed not at Norway but at the United States, whom the Soviet Government credited with plans for establishing bases in Spitsbergen as they had done in Iceland" (Tamnes 1991, p. 84). Furthermore, Foreign Minister Lange informed the enlarged Foreign Affairs Committee in a meeting behind closed doors on 29 October that he had received information that the real addressee for the note was the US, which was planning similar military footholds on Svalbard as on Iceland (the enlarged Foreign Affairs Committee meeting 29 October 1951, pp. 3–4). However, the US did not have any such known plans for Svalbard, which did not acquire a place in US doctrines or strategic planning comparable to that of Iceland and Greenland. American analyses from June 1948, August 1949 and January 1952 concluded that the United States had no interest in establishing "facilities" on Svalbard, but that on the other hand it was important to deny use of the island to any hostile power (Holtsmark 1993, p. 28).

131 The Norwegian Government 1999, sec. 4.1.4; Ulfstein 1995, p. 349; for the Note, see Norwegian Ministry for Foreign Affairs 36 6/10 A VI (1940–49).

132 However, perhaps the threat towards the Treaty was not that grave: Holtsmark asserts (1993, p. 9) that in the early post-Second World War period Soviet efforts to alter Svalbard' s international status were checked by the possible adverse effects an offensive policy might have had on far more important Soviet foreign policy goals, and that Soviet policy with regard to Svalbard was basically static, and aimed at the

After the Norwegian reorientation in February 1947 there were no known planned Soviet reactions that contradicted that decision. The Soviet position turned to being a defender of the status quo, of the Svalbard Treaty in general, and of the Treaty's art. 9 in particular.[133]

There have been challenges to the Svalbard Treaty after the time period focused on here,[134] and outright breaches during World War II (as assessed by academics, see sub-section 3.1), and disagreements on a number of issues have surfaced. One of them concerned the building of an airport in 1971. Norway made a declaration in 1971 to all the contracting parties in connection with the decision to build the airport. According to the declaration, the airport is to be "reserved exclusively for civil aviation".[135] But the challenges and disagreements in question have not been directly related to the application of the Washington Treaty or NATO forces.[136] However, within the confines of this contribution is not possible to examine the later challenges in detail.

It would also be of interest to make an assessment of perceptions on the NATO side. This meets with certain challenges, not least since initially, the Alliance was very much a body made up of its member states. There were no specific joint policy statements or decisions that would have been suitable for a statement on Svalbard, had that been assessed as suitable. Later, policy instruments have been elaborated within the structures established, but Svalbard's status has not been included in any such official statements. One public statement was made in 1983 by vice admiral P H Speer, Chief of staff SACLANT; "…due

perpetuation of the status quo. The initiatives from 1944–47 failed to alter this pattern permanently. Also, Tamnes (1987, p. 5 and 1991, p. 76) asserts that in the postwar period Svalbard was at the periphery of the Cold War and super powers tensions.

133 Holtsmark 1993, pp. 144–145. The new and legalistic attitude of the Soviets was displayed in 1950. In June the Norwegians informed the Soviets about a radar station which had been erected at Cap Linne for the use of civilian shipping. Holtsmark has shown that there was an internal Soviet discussion whether the building of the radar station constituted a breach of art. 9 of the Svalbard Treaty because it could also serve military purposes. It was decided not to deliver a protest to the Norwegian government. The Soviet notes of October and November 1951 mark the culmination of this complete turnabout. From then on there was a high degree of symmetry between Soviet and Western (US-UK) evaluations of Svalbard 's role: Both sides were basically more concerned with barring the other side from establishing itself on the archipelago than with creating their own bases.

134 E.g. Koivurova and Holiencin 2017.

135 The Norwegian Government 1999, sec. 4.1.4. In practice, the Norwegian authorities have interpreted this to mean that the purpose of the flight is decisive. Aircraft involved in military missions have not been permitted to use the airport. On the other hand, the declaration does not preclude registered military aircraft from using the airport in connection with civil assignments. In 1974 Norway and the Soviet Union concluded an agreement on the use of the airport by Soviet aircraft. This agreement is still in force between Norway and Russia after the dissolution of the Soviet Union.

136 Nilsen 2017; The NATO Parliamentary Assembly met in Longyearbyen in 2017, which was organised in cooperation with the Storting. The Russian Foreign Ministry protested against the holding of the meeting, stating that "We strongly believe that there are no problems in the Arctic region that require NATO participation to solve, let alone militarily". In May 2012, 26 NATO parliamentarians spent four days in Svalbard to learn more about how strategic changes are affecting the Arctic region.

to treaty restrictions, no forces can be allocated in peacetime for the specific purpose of defending the Spitzbergen Archipelago to the enemy…".[137]

There are incidental mentions of the issue in nowadays declassified documents that are available from within the NATO structure. Seemingly, the Svalbard status was known and referred to at least in some of these accessible examples.[138] The issue of contingency planning for Svalbard was mentioned in the context of the work of the Military Committee.[139]

According to the declassified account of the North Atlantic Council meeting in Rome on 24 November, 1951, Foreign Minister Lange gave a longer presentation about the recent two Soviet notes, and he informed the Council members quite extensively about Svalbard's status.[140] He also stated that: "In our replies to the Soviet Government, we have re-affirmed our intention to respect the provisions of the Spitzbergen Treaty and, I quote 'the Norwegian Government will not establish any military base or fortification within the Spitzbergen Archipelago, or on the Bear Island and will not allow any other State to do so'." [141]

Finally, as concerns EU aspects (certain EU aspects will be dealt with below in section 4.4.2 regarding the Åland Islands), those are not assessed as relevant regarding Norway-Svalbard for the purpose of this article, above all since 'EU events' in Norway are of a much later date than Norway's ratification of the Washington Treaty. Consequently, there were no EU aspects influencing the Norwegian decision and stance on Svalbard in relation to the Atlantic Alliance. Nevertheless, it can be noted that Norway, so far not an EU member, is a party to the European Economic Area (EEA) Agreement which entered into force in 1994.[142] Norway decided to exclude Svalbard: the EEA Agreement applies to the territory

137 Tamnes 1991, note 104, where he quoted John C. Ausland, Nordic Security and the Great Powers (Westview Special Studies in International Security, Westview Press/Boulder and London, 1986), pp. 175–76.

138 NATO International Planning Team of the Standing Group, PT 131/36-DRAFT REV, 11 March 1957, p. 27: " …All the islands in the North Atlantic and the Norwegian and Greenland Sea areas of the Artie Ocean belong to NATO nations, or to those likely to be allied in time of war. Except for Svalbard, which is governed by the terms of the Treaty of 1920, they can all be fortified or developed in peacetime. …".

139 Memorandum for the Members of the Military Committee. Subject: Contingency Plans, Excluding General War References (meetings held 15 September 1965, and 10 November 1965), p. 3: "Areas Suitable for Contingency Plans 8. In considering whether Major NATO Commanders should be instructed to produce further contingency plans it will be necessary to consider suitable areas or sectors for such plans. Possible suggestions are given below: a. Northern Sector (1) Northern Norway as far south as Trondheim (2) Jan Mayen Island (3) Spitzbergen (Svalbard) (4) Bornholm (5) Baltic Straits".

140 According to the verbatim record (p. 30), Lange stated inter alia: "It may perhaps be. useful. Mr. Chairman, in this connection to say two words about the international position, of the Spitzbergen Isles. By a Treaty signed in 1920, Norwegian sovereignty over these islands was recognized. However, considerable limitations in the exercise of Norwegian sovereignty were provided for in the Treaty, the key to which is contained in Article IX. Under Article IX of the Treaty, no fortifications or naval bases may be built in the islands which are never to be used for warlike purposes."

141 Ibid., p. 30.

142 Ulfstein (1995) has analysed the Norwegian stance on Svalbard in relation to the EU and the EEA, pp. 299 ff.

of the Kingdom of Norway, but not to Svalbard.[143] Also, the EU Accession Treaty that was negotiated and signed in June 1994 contained a protocol excluding Svalbard – however, following the Norwegian referendum on 28 November 1994, EU membership was rejected by Norway.

3. The Svalbard and Åland Islands legal regimes

The purpose of this section is to examine, first, military-strategic[144] aspects, and second, the leeway for interpretation of treaty provisions concerning Svalbard, and, more briefly, the Åland Islands.

The effects of war on treaties is a difficult subject under international law, often with uncertain answers.[145] Brief references to events in Svalbard and the Åland Islands during the two world wars will be made below, without any pretention of giving definite answers to questions related to possible breaches of the regimes.

3.1 Military-strategic aspects until around 1951

The origins of the Svalbard regime have been dealt with in the previous section which had a certain focus on the period 1944–51. In addition to what has been referred to above, the following assessments are of interest: with only some minor disturbances, the Svalbard Treaty did not attract much interest until the outbreak of the Second World War, when there was a rising interest by some Soviet actors.[146] The outbreak of the war in September 1939 was behind the first attempts within the Soviet diplomatic community to initiate a policy on Svalbard based on military-strategic considerations.[147] However, the war did not demonstrate the strategic importance of Svalbard. Rather the opposite, Holtsmark asserts; Svalbard played a minor role in Allied or German strategy, and was far outside the operational range of the shore-bound Soviet Northem Fleet.[148] Ostreng states regarding Svalbard's military importance during the war that in a wider context Svalbard did not play any important part.[149] Ulfstein's view is that it must be assumed that the strategic importance of Svalbard is limited, whereas the surrounding waters remain of great strategic interest.[150]

143 Art. 26.
144 On the use of the term military-strategic, supra note 9.
145 Brownlie 2008; Ulfstein 1995, 360 ff.
146 Ibid., pp. 25–34.
147 Ibid.
148 Ibid.
149 Ostreng 1977, p. 49, see also Mathisen 1954, p. 44.
150 Ulfstein 1995, pp. 344–345, p. 386.

As concerns the events in World War II, Ulfstein has analysed art. 9 of the Svalbard Treaty in that context.[151] Ostreng has described the events during the war.[152] Norway placed a military contingent on Svalbard during the war and held that this was not in violation of the Svalbard Treaty since it was Norway's task to prevent other states from using Svalbard for military purposes.[153] There have not been any permanent Norwegian military forces on Svalbard after World War II.[154] The German actions on Svalbard during World War II – inter alia establishment of a small garrison in Longyearbyen 1941–42 and installations in the Western part of Svalbard [155] – are assessed for instance by Ulfstein as violations of arts. 1 and 9 of the Svalbard Treaty.[156] Also the never realised joint plan by the Soviet Union and Great Britain to occupy Svalbard,[157] without informing Norway, would violate arts. 1 and 9, Ulfstein states. The Allies also used Svalbard in different ways, such as for weather reporting and refuelling of vessels,[158] which can be seen as Allied collective self-defence not in breach of the Svalbard Treaty.[159]

When focusing on military-strategic aspects it does not seem far-fetched to formulate the conclusion that in principle it was feasible to set up the Svalbard legal regime since there was not any great interest for Svalbard for military-strategic reasons by powers, and the lack of such military-strategic interest made it possible to establish the regime, and for the same reason it could also be upheld without creating a tense situation for the involved states.

Turning to the Åland Islands, the Islands' legal regime is arguably more robust that the Svalbard regime.[160] The conventions containing the provisions on the demilitarisation and neutralisation of the Åland Islands are the 1856 Convention on the demilitarisation of the Åland Islands (hereinafter the 1856 Convention),[161] annexed to the Treaty of Paris, the 1921 Convention on the Demilitarisation and Neutralisation of the Åland Islands, concluded between ten states (hereinafter the 1921 Convention)[162], the bilateral treaty between

151 1995, pp. 343–389. In this context it is of interest that Ulfstein notes a certain discrepancy between the English text and the French art. 9 text (p. 375). The final clauses of the Svalbard Treaty state that both the French and the English texts are authentic, the implications of which Ulfstein discusses on p. 73 ff, p. 361 and p. 376 ff. Ulfstein's conclusion is that on the basis of a harmonisation of the precise French text and the ambiguous English text, the context and the restrictive principle, the prohibition against using Svalbard for warlike purposes does not preclude military activities short of war (p. 378).

152 Ostreng 1977, pp. 46–54.

153 Ulfstein 1995, pp. 353–354, p. 362; Norwegian Government 1975, p. 9.

154 Ulfstein 1995, p. 154.

155 Ostreng 1977, p. 48; Steen 1954, p. 231–48.

156 Ulfstein 1995, p. 359.

157 Ostreng 1977, p. 46 ff.

158 Ibid., p. 49 f.

159 Ulfstein 1995, p. 362.

160 Regarding the term legal regime see supra note 4.

161 The parties were France, Great Britain and Russia.

162 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.

Finland and the Soviet Union of 1940 (hereinafter the 1940 Bilateral Treaty), and the 1947 Paris Peace Treaty.[163]

The 1856 Convention established the original basis for the demilitarisation in one operative article. The Convention does not refer to peace and war time, and is valid during both.[164] 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".[165] For a brief overview of the core international provisions, see sub-section 3.2.

As regards the origins of the Åland Islands' legal regime, the islands' location has commonly been assessed as implying that they may be of strategic military significance, defensive for Sweden and Finland, but otherwise for greater military powers.[166] In an early assessment from1928, Söderhjelm underlines the military-strategic importance of the Åland Islands.[167] In an analysis from 1992, Gardberg discusses the Åland Islands' strategic value from varying perspectives and for different states and actors.[168]

For the purpose of the present article the following can be noted: the 1856 Convention was in force without any threatening challenges for it until the beginning of the twentieth century, when 'the Åland Islands issue' became a focus of attention again.[169] One of the main reasons for this was a renewed Russian interest in its Western borders, after having encountered obstacles in the East.[170] During World War I, Russia fortified Åland and informed the convention parties France and Great Britain about it, as well as Sweden.[171]

163 The regime has been analysed by many scholars, e.g. Söderhjelm 1928, Björkholm and Rosas 1990; Hannikainen 1994; Rosas 1997; Hannikainen 1997; Ahlström 1997; Spiliopoulou Åkermark 2007; Spiliopoulou Åkermark 2010, Spiliopoulou Åkermark 2017a, Spiliopoulou Åkermark 2017b, Spiliopoulou Åkermark, Heinikoski, Kleemola-Juntunen 2018.

164 E.g. Spiliopoulou Åkermark 2017b, p. 105.

165 Art. 3 in the 1921 Convention contains the core obligation: "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." (In the original French version: "Aucun établissement ou base d'opérations militaires ou navales, aucun établissement ou base d'opération d'aeronautique militaire, ni aucune autre installation utilisée à des fins de guerre ne pourra ètre mainténue ou crée dena la zone décrite à article 2.") In art. 6 conditions applying at time of war are explained.

166 E.g. Hannikainen 1994, p. 615.

167 Söderhjelm 1928. In chapter V, pp. 80–84, Söderhjelm assesses the importance of the Åland Islands from a military perspective, see pp. 80–84. Söderhjelm asserts that the islands do not constitute a danger to the foreign powers anymore after Finland has gained sovereignty over them. Nevertheless, the islands could play a strategic role again if a foreign power would get hold of them, as this would threaten Finland and Sweden (in the original French version: "… la seule éventualité à craindre serait qu'un Etat muni d'une flotte puissante les enlevât à la Finlande et s'en servît pour menacer la Finlande et la Suède...".)

168 Gardberg 1992, pp. 5–9, 40–50.

169 Söderhjelm 1928, p. 118.

170 Ibid.

171 Ibid., p. 126 ff.

The events on Åland in 1918, such as the Swedish and German interest and expeditions to the Islands, have been much discussed and are still subject of research.[172] Within the confines of the present article this will not be elaborated on. The fortifications on the Åland Islands were demolished in 1919 by Finland, the new sovereign of Åland following Finland's secession from Russia in late 1917, and by Sweden. The issue of Åland during World War II (the Winter War and the Continuation War) is still being discussed and is subject of research.[173] For the purpose of this article the following brief reflections are made: during World War II at least both Germany and the Soviet Union had plans to occupy the Islands.[174] Finland resorted to military preparations, including fortifications, to ensure the neutrality of Åland, and informed the parties to the 1921 Convention of its military preparations, and these did not express criticism.[175] In the decades following World War II the demilitarised and neutralised status of Åland has been in existence without any particular difficulties,.[176]

It is not assessed as necessary – or possible – to elaborate on the above events or assessments any further within the framework of the present article; that there was a perception of the Åland Islands as military-strategically important at least until after World War II is supported by expert assessments. When focusing on military-strategic aspects, it does not seem far-fetched to formulate the conclusion that in principle the demilitarisation and neutralisation were established because fortifications on the Åland Islands would constitute a severe military-strategic challenge for other states with strategic interests in the Baltic Sea.

However, the situation of today cannot be assessed based on the same criteria, since the security environment keeps changing, as discussed by experts and academics. For instance, Rotkirch asserted in 1986 that the Åland Islands had lost a great deal of their previously important strategic status.[177] In the final section below, such developments will be touched on.

3.2 Leeway of interpretation

This section is a tentative attempt to explore the margin of interpretation of some of the treaty provisions, with Norway's and Finland's respective margin of interpretation of the regimes particularly in mind.

Regarding Svalbard, art. 9 states quite laconically that the establishment of any naval base, and the construction of any fortification, is not allowed, and that territories may

172 Gustavsson 2012.
173 Gustavsson 2014a, Gustavsson 2014b..
174 Gardberg 1995, pp. 14–15, Tiilikainen 2006, pp. 352–353.
175 Hannikainen 1994, p. 618.
176 Hannikainen 1994, pp. 617–18.
177 Rotkirch 1986, p. 357.

never be used for warlike purposes.[178] The provision is indeed not very detailed compared to the provisions in the Åland case, as has been seen above, and leaves room for discretion. The preparatory works do not at all discuss the wording of art. 9.[179] From 1948 there were signs that the interpretation of art. 9 was expanded, according to Eriksen.[180] Politicians and civil servants were beginning to think through which defence measures were allowed in Svalbard, and politically and militarily possible, in peace and war time.[181]

When taking a closer look at how the regime practice has developed, the Norwegian Government's reports to the Storting seem to play a role: the Norwegian Government has reported at regular intervals to the Storting on Svalbard. The three latest reports on Svalbard were handed over in 1999, in 2009 and in 2016.[182] In the 1999 Svalbard Report it is stated (sec 4.1.4) that "Norwegian policy has been designed to ensure proper compliance with the Treaty and a restrictive practice as regards Norwegian military activities on Svalbard. In dealing with this question in practice, particular emphasis has been placed on factors such as frequency and duration, the nature of the units and whether there is a real need for carrying out the operation". This reinforces the impression that there is a margin of discretion when interpreting art. 9. In fact, when taking a closer look at the three latest Svalbard reports to the Storting, certain developments can be discerned.

One example is that in the 2009 and 2016 Svalbard Reports new formulations referring to the preamble have been inserted. It is stated that the limitations in the Svalbard Treaty, in particular the prohibition against use for warlike purposes, "must be interpreted in light of the preamble of the Treaty".[183] Another example is that in the 1999 report it is stated (sec. 4.1.4) that "Norway is not precluded from implementing *defence measures in time of war* [emphasis added]. Moreover, the principle of Norway's full and absolute

178 Art. 9: "Subject to the rights and duties resulting from the 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."

179 Ulfstein 1995, p. 366.

180 Eriksen 1989, p. 158.

181 Ibid.

182 The three latest reports on Svalbard from the Norwegian Government are the 1999 Svalbard Report, the 2009 Svalbard Report, and the 2016 Svalbard Report. Before that, the 1975 Svalbard Report provided a general review of the Svalbard Treaty and the 1925 Mining Code for Spitsbergen (Svalbard), and the 1986 Svalbard Report gave a more detailed account of legal questions relating to the territorial scope of the Svalbard Treaty.

183 P. 22 in the 2009 Svalbard Report ("must be viewed in light of the preamble of the Treaty ") and p. 21 in the 2016 Svalbard Report ("must be interpreted in light of the preamble of the Treaty). However, in the original Norwegian language versions the same expression have been used: On p. 22 in the Norwegian version of the 2008 Svalbard Report: "..må ses på bakgrunn av den såkalte fortalen («preambelen») i traktaten", and p. 21 in the Norwegian version of the 2015 Svalbard Report: "Disse begrensningene, og da særlig forbudet mot bruk i krigsøyemed, må ses på bakgrunn av den såkalte fortalen («preambelen») i traktaten"

sovereignty over Svalbard applies to foreign military activity on Svalbard, cf. Article 1".[184] In the 2009 Svalbard report it is stated that: "However, the provision is not a prohibition against all military activity. It addresses acts of war or activities for the purpose of waging war. Thus, *defensive actions and other such military measures* [emphasis added] are not covered by the wording".[185] In the 2016 Svalbard report it is stated (p. 21): "It pertains solely to acts of war or activities for the purpose of waging war, and to constructing naval bases or infrastructure that can be classified as fortifications. *Defensive measures and other military measures* [emphasis added] are permitted. The archipelago is covered by provisions of the North Atlantic Treaty, *including Article 5 concerning collective self-defence* [emphasis added]. Norway may individually and collectively implement defensive measures in wartime or under the threat of war." Thus, it seems that a formulation in 1999 on "defence measures in time of war" has developed somewhat into "defensive measures and other military measures", and an explicit sentence on NATO's art. 5 has been added in 2016. The impression is that the Svalbard Reports to a certain extent are used as an instrument in setting practice for the application of art. 9. However, there are not any details in the report, for instance as to approximate number of visits by naval vessels or Coast Guard vessels.[186]

Turning to Åland, the provisions of the regime, in particular in the 1921 Convention, are much more detailed than art. 9 in the Svalbard Treaty (as stated in sub-section 3.1). The single operative article in the 1856 Convention stipulates that the Åland Islands "shall not be fortified, and that no military or naval establishments whatsoever shall be maintained or created there".[187] In the much more detailed 1921 Convention arts. 2 to 7 specify the demilitarisation and neutralisation of Åland. Several authors have summarised the exceptions and clarifications to the demilitarisation and neutralisation regime contained in

184 In the original Norwegian version, p. 29: "Norge er ikke avskåret fra å iverksette forsvarstiltak i krig. Med hensyn til utenlandsk militær virksomhet på Svalbard, gjelder for øvrig prinsippet om Norges fulle og uinnskrenkede suverenitet, jf. artikkel 1."

185 In the original Norwegian version, p. 22: "Bestemmelsen er imidlertid ikke et forbud mot all militær aktivitet. Det retter seg mot krigshandlinger eller aktivitet som har krigsformål. Forsvarstiltak og andre defensive militære tiltak omfattes derfor ikke av ordlyden."

186 The Norwegian Government 2016, pp. 21–22: "Visits by Norwegian naval vessels, Coast Guard vessels, Armed Forces' aircraft or Norwegian military personnel do not infringe the Treaty and are in keeping with long-established practice. Norwegian policy has been designed to ensure proper compliance with the Treaty and restrictive activities in Svalbard. Consideration of the issue of military visits to the archipelago has placed particular emphasis on aspects such as frequency and duration, type of unit, and the need to carry out operations. For example, frequent calls by Norwegian Coast Guard vessels are deemed natural, given the nature of their duties in the waters surrounding Svalbard practice with regard to Norwegian military."

187 Art. 1: "… declares that the Åland Islands shall not be fortified, and that no military or naval establishments whatsoever shall be maintained or created there." (In the original French version: "... déclare que les Iles d´Aland ne seront pas fortifiées, et qu´il n´y sera maintenu ni créé aucun établissement militaire ou naval.).

arts. 4–7 in the 1921 Convention and in the other international provisions.[188] The following is a brief overview of the 1921 Convention. The core art. 3 states that the zone defined in art. 2 must be free from military establishments and bases of operation (including naval and air bases) as well as from any other installations used for war purposes (a similar provision is contained in art. 1 of the 1940 Bilateral Treaty).[189] As a general rule, the 1921 Convention also prohibits visits by military (including naval and air) forces as well as the production, import and transit of weapons or other war material (art. 4, para. 1). Arts. 4, 6 and 7 of the Convention provide for certain rights and obligations of Finland in the event of crisis or war.[190] Art. 6 provides that Åland is to be a neutral zone in war time.[191] Art. 7 stipulates that if the neutrality of Åland is imperilled by an attack, Finland shall take the necessary measures in the neutralised zone to check and repulse the aggressor until such time as the parties to the Convention shall be in a position to intervene to enforce respect for this neutrality – a collective defence of Åland.[192] For an overview of the core treaty obligations of all the relevant conventions of the Åland regime, see for instance Spiliopoulou Åkermark's account in 2017.[193]

It can be noted that there is no Finnish government report or similar on the Åland Islands to the Finnish Parliament, such as the above-mentioned Svalbard reports to the Storting. Nevertheless, Finland seems to have some leeway in interpreting the 1921 Convention.[194]

In sum, the relevant provisions, in particular the 1921 Convention, are much more detailed regarding the Åland Islands regime than the security provisions in the 1920 Svalbard Treaty – but there is room for interpretation also regarding 'the Ålandic provisions'.[195]

188 E.g. Hannikainen 1994, pp. 620–621; Rosas 1997, p.31; Spiliopoulou Åkermark 2007, p 10. See also supra note 163. For an overview of core treaty based obligations of the regime in Spiliopoulou Åkermark 2017b, p. 100.

189 Art. 3 in the 1921 Convention, supra note 165.

190 For an analysis see Rosas 1997, p. 34.

191 Art. 6: "In time of war, the zone described in Article 2 shall be considered as a neutral zone and shall not, directly or indirectly, be used for any purpose connected with military operations." (In the original French version: "En temps de guerre, la zone décrite à l'article 2 sera considérée comme zone neutre et ne sera, directement ni indirectement, l'objet d'une utilisation quelconque ayant trait à des operations militaires. …").

192 Hannikainen 1994, p. 650. For an analysis of collective self-defence and Åland, see Spiliopoulou Åkermark 2017a.

193 Spiliopoulou Åkermark 2017b, p. 100.

194 Rosas 1997, p. 32 ff; Heinikoski 2017, p. 30.

195 Rosas, 1997, has listed a number of problems of interpretation, p. 32 ff.

4. The Åland Islands and NATO

The purpose of this section is to provide a brief account of certain 'NATO factors' of interest from an Ålandic perspective of today as a slightly 'corresponding' section to the account of the Svalbard regime around the time when Norway joined (in section 2).

First, it is discussed to what extent Finland, Åland and academics have examined or drawn any conclusions regarding the Åland Islands' legal regime in the event that Finland would join NATO.

Second, an account of the Åland Islands' status vis-à-vis the EU is made, since official references to the EU acknowledgement of that status as constituting ground for an acknowledgment of the Ålandic status also in a NATO context (should Finland decide to join the Alliance) have been made.[196] Also, the experience of international assistance in the EU (France 2015) in the event of an attack on an EU member state context will be described, since that is of relevance for the possible provision of 'NATO assistance'.

4.1 Finland

First, it is of interest to examine what can be discerned in official documents of the Finnish view on the 'Åland-NATO' issue. The current Finnish stance on a NATO membership is summarised in 2016 in the latest Government Report on Finnish Foreign and Security Policy: "While carefully monitoring the developments in its security environment, Finland maintains the option to seek NATO membership."[197] The Report also mentions, using a 'traditional' formulation, that: "The Province of Åland Islands has a recognised status under international law. This does not prevent Finland from intensifying defence cooperation within the European Union, with international organisations and in the Nordic context."[198]

The 'option formula' in relation to NATO is used also in the 2016 "Report on the Effects of a Possible Finnish NATO Membership", commissioned by the Finnish Foreign Ministry.[199]

196 The Åland Islands Government 2015, p. 28.

197 The Finnish Government 2016a, p. 24. The 'option language' is included also on p. 14 in the 2017 Finnish Defence Report. In 2016, the foreign and security report was separated from the defence report and the latter was presented in February 2017. The Finnish stance on NATO has been formulated along these lines for quite some time. The Government Report on Security Policy delivered to the Parliament in 1995 contained language to this effect, as did subsequent defence policy white books published in 1997, 2001, 2004 and 2009. For details on the Finnish stance, see Forsberg 2017, pp. 97–127, p. 104 ff. Finland joined NATO's Partnership for Peace (PfP) from the start and has also been a full participant in the PfP's planning and review process (PARP) from 1995, when PARP was launched. The Ålandic Government has assessed that the PfP agreement is not of the character that it affects the Åland Island's status as demilitarised and neutralised, see The Åland Islands Government 2015, p. 27.

198 The Finnish Government 2016a, p. 12. For an analysis of the latest Government Reports, which have used slightly varying wordings regarding Åland, see Heinikoski 2017, pp. 31–32.

199 The Finnish Government 2106d, p. 24.

The NATO Report does not cover the consequences of possible NATO membership of Finland for the Åland Islands. [200] Also in this Report it is highlighted that Åland has a special status, but that this does "not prevent Finland from intensifying defence cooperation within the European Union, with international organisations and in the Nordic context."[201]

A previous report on the effects of Finland's possible NATO membership was published by the Foreign Ministry in 2007.[202] The 2007 Report states that: "Any decision on accession would also have to take account of the [1920] Convention relating to the NonFortification and Neutralisation of the Åland Islands … and the [1940] Agreement between Finland and the Soviet Union on the Åland Islands."[203]

If Finland would decide to join NATO, highly complex diplomatic and political processes would be involved. Such an accession would probably also take place in a more charged international atmosphere than earlier enlargements.[204] However, the purpose of this section is not to discuss aspects of Finland's possible decision to join NATO. Instead, the aim is to summarise what has been expressed so far by Finland and Ålandic authorities on Åland and its status in relation to a Finnish NATO membership. As transpires from the quotations above, Åland's recognised or special status under international law has been highlighted in the latest Finnish policy documents, but how it should be taken account for in the event of a Finnish NATO accession is not spelled out.[205]

Second, as concerns Ålandic official positions the following can be noted: In a policy document from the Government of Åland in 2015, it is made clear that the Ålandic Government is of the view that Finland should ensure that the Åland Islands' status is not affected if Finland joins NATO, since Finland in connection with the EU accession and the acceptance of the Lisbon Treaty required that the status of Åland should be recognised and confirmed.[206] (It is clarified in the policy document that an accession to NATO by Finland would not require the approval by the Ålandic Lagting.)

A report is compiled every year by the Ålandic Government and handed over to the Lagting (Parliament of Åland) on issues related to the autonomy of the Åland Islands.[207] In the 2017 report (covering 2016), the Ålandic Government reiterates the view that a possible

200 Ibid., p 4.
201 Ibid., p 12.
202 Sierla 2007.
203 P. 48.
204 The Finnish Government 2016d, p 7.
205 Indications as to a possible Swedish stance are also highly interesting. In a Swedish Government Report, published in 2016 (p. 151), a Swedish NATO membership was discussed in relation to Finland. The conclusion was that an assessment of a Swedish NATO membership must be made from a regional perspective, since a security policy solution that benefits the whole region must also benefit Finland. The Åland Islands are not mentioned in the Report.
206 The Ålandic Government 2015, p. 28.
207 As required in sec. 36 in the procedural rules for the Lagting.

Finnish NATO membership must be construed so that the Åland Islands' demilitarisation and neutralisation are not affected.[208]

Third, the Åland Islands'status in relation to NATO has been discussed to a certain extent by academics. Tiilikainen wrote in 2006[209] that "[t]his author believes that after assessing the political situation NATO would eventually decide not to alter the historical arrangement and leave Åland's international position unchanged."[210] Rainne asserted in 2008 that Åland's special status should be taken into account in the accession negotiations and that there should be a clear common understanding that the Islands' status remains unchanged.[211] Heinikoski stated in 2017 that Finland, if joining NATO, has to make a reservation that no military equipment or personnel could access the demilitarised Ålandic zone, and demand commitment from other states parties to maintain the Ålandic demilitarisation and neutralisation.[212]

4.2 Åland and the EU

The special status of the Åland Islands in the EU has been described and analysed by academics.[213] A fundamental feature is that the "special status that the Åland Islands enjoy under international law" became a part of primary EU law through Protocol No 2 of the Finnish Accession Treaty. Furthermore, in the 2008 Finnish Government Bill on the ratification of the 2007 Lisbon Treaty it was asserted that the new provisions of the Common Foreign and Security Policy (CFSP) did not affect the international legal status of the Åland Islands.[214] At a meeting of the Permanent Representatives in Brussels in December 2010, Finland made a unilateral declaration in connection with the ratification of the Lisbon Treaty, confirming once again the validity of the demilitarisation and neutralisation of the Åland Islands.[215]

The new CFSP provisions in the Lisbon Treaty encompassed commitments for mutual assistance within the EU: the solidarity clause (TFEU, art. 222)[216] and the mutual defence

208 The Ålandic Government 2017a, p. 10. (In the original Swedish language: "Landskapsregeringen vidhåller den uppfattning som tidigare framförts, att ett eventuellt finländskt Natomedlemskap måste konstrueras så, att Ålands demilitarisering och neutralisering inte påverkas.".)
209 Tiilikainen 2006, pp. 352–353.
210 Ibid., pp. 352–353.
211 Rainne 2008, pp. 48–49.
212 Heinikoski 2017, p. 33–34.
213 On the issue of Åland when Finland joined the EU, see the detailed analysis by Fagerlund 1997, pp. 189–256. For a discussion of a more recent date, see Spiliopoulou Åkermark 2017a, 268 ff.
214 The Finnish Government 2008, p. 103.
215 Spiliopoulou Åkermark 2017a, p. 269.
216 Treaty on the functioning of the European Union, art. 222: "1. The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster.".

clause (TEU, art. 42.7).[217] The provisions came into focus after the terrorist attacks in Paris in November 2015. France decided to utilise the mutual assistance clause under art. 42(7) TEU.[218] The option to choose that provision instead of art. 222 (TFEU) has been explained in various ways, one being the preference of dealing bilaterally with the other EU governments without involving the EU institutions.[219] The attacks and the French request triggered the finalising of drafting of legislation on granting and receiving international assistance in Finland. The legislation included the acts proposed in Government Bills 72/2016 on international assistance and 107/2016 on the provision and acceptance of international assistance in matters falling under the competence of the Ministry of Interior.[220] Initially, the Ålandic Government was not content with the lack of references to Åland's status regarding the issue of the provision and acceptance of international assistance, but after references to the Åland Island's status were included the Ålandic Government declared in an opinion to the Finnish Parliament in February 2017 that it was content with the changes made.[221] The legislation came into force in July 2017.

However, in its opinion of February 2017, the Ålandic Government declared that it wished to add that the Ålandic Government and the Finnish Government should examine how situations occurring on the Åland Islands will be handled in practice, and that instructions should be given to authorities.[222]

5. Conclusions

The aim of this contribution was to look closer at certain aspects regarding the assertation that the Norwegian joining of the Atlantic Alliance has not affected Svalbard's status and therefore the conclusion is close at hand that a Finnish NATO accession would not severely affect Åland's demilitarised and neutralised status, implying a comparison of the two legal regimes. The attempt to examine that assertation has been made with the reservation that the Åland Islands and the Svalbard legal regimes are sui generis regimes, differing for a number of fundamental reasons, including being part of two larger regimes that differ historically, are of dissimilar construction, and are disparate in nature.

In order to achieve the aim, the author chose to carry out a parallel exploration of certain aspects related to the two legal regimes, without any pretension of performing a direct

217 Treaty on the European Union, art. 42.7: "If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States."
218 For an analysis, see Spiliopoulou Åkermark 2017a, p. 270 ff.
219 European Parliament Think Tank 2015.
220 The Finnish Government 2016b; Bill RP 72/2016 rd, and The Finnish Government 2016c; RP 107/2016 rd and their limited scope have been critically analysed by Spiliopoulou Åkermark 2017a, p. 270 ff."
221 The Ålandic Government 2017b.
222 Ibid., p. 3.

comparison or in-depth examinations of both of the regimes. A primary objective was to explore the state of the Svalbard legal regime around the time when Norway joined the Atlantic Alliance. Second, the question was posed whether there are any conclusions to be drawn concerning Svalbard in connection with the application so far of 'the consultation art. 4' and 'the collective defense art. 5' in NATO's Washington Treaty. Third, it was asked which conclusions could possibly be drawn based on an exploration of main military-strategic assessments of the Svalbard regime, limited above all to the time period until around 1951. Fourth, the question concerned what possible conclusions could be drawn as regards the leeway of interpretation of the legal regimes, where above all Norway's and Finland's respective leeway of interpretation was assessed as of interest. The focus has been on Svalbard, but 'corresponding' aspects regarding the Åland Islands regime have been briefly examined or reflected on.

First, concerning the state of the Svalbard legal regime, there were clearly challenges to the Svalbard Treaty in the period 1944–47, followed by a reconfirmation of art. 9 in the Svalbard Treaty. At the time of the Norwegian preparations to join a military alliance, the challenges in question were apparently overcome. Turning to the Åland Islands, without trying to assess, or perform any comparison of the 'strength' of regimes, including over time, the Åland Islands' legal regime of today is arguably more robust than the Svalbard regime at the time when Norway joined the Atlantic Alliance. The Åland Islands' status is assessed by several in academics as constituting regional, or European, customary law,[223] and the Åland Islands' status has been recognised by the EU in its primary law. In this context it can also be noted that at times some legal experts have questioned the remaining in force of the 1921 Convention, because the supervisor and guarantor of the Convention – the League of Nations – has been dissolved and the UN has not become the successor of the League of Nations as the supervisor and guarantor of the Convention.[224] However, no state has questioned the demilitarised and neutralised status of Åland.[225]

Second, the art. 4 consultations and the art. 5 invocation in the cases that have occurred so far have not had ties to Svalbard (the contributions of Norway after the art. 5 invocation in 2001 were arguably not connected to Norwegian territory, at least not in a direct and legal sense), so on that point there is seemingly limited experience at hand from the Åland Islands' perspective, at least not based on what is available from public sources. The only

223 Rosas 1997, p. 29: "… rather than labelling the Åland arrangement an "objective regime" or "permanent settlement", we would regard it as part of a European international legal order which is ultimately grounded in customary rather than treaty law. We have argued elsewhere that this regime includes not only the main principles of demilitarisation as they are expressed in the 1921 Convention and the 1940 Bilateral Treaty, but also the basic principle of neutralisation."; Hannikainen 1994, p. 626: "Instead, it can be safely concluded that the demilitarisation and neutralisation of Åland has the status of regional customary law in the Baltic Sea area. Perhaps it is even a European regional customary norm.".

224 Hannikainen 1994, p. 618.

225 Ibid.

invocation of art. 5 so far, in 2001, was not a 'typical' case, so it seems difficult to draw any general or definite conclusions as to possible future art. 5 invocations. The consensus rule was indeed, as far as is known, upheld – but the political pressure should not be underestimated.

Third, an issue present throughout this study has been military-strategic aspects. It is not an easy – perhaps impossible – exercise to assess such aspects – inter alia since they are difficult to isolate. The regimes in question are presumably affected by contextual factors and the sovereignty issues that have influenced developments in Svalbard and the Åland Islands. The conclusions above were formulated as follows: as concerns Svalbard, in principle it was feasible to set up the legal regime since there was not any great interest for Svalbard for military-strategic reasons by powers, and the lack of such military-strategic interest made it possible to establish the regime; for the same reason it could also be upheld without creating a tense situation for the involved states. As regards the Åland Islands, the conclusion formulated was that the demilitarisation and neutralisation were in principle established because fortifications on the Åland Islands would constitute a severe military-strategic challenge for other states with strategic interests in the Baltic Sea. However, an assessment of military-strategic aspects is in a sense a moving target, for a number of reasons. Looking at the situation of today, military forces operate in a completely different manner today than when the Åland Islands and Svalbard legal regimes were agreed between powers. Security aspects are different. New threats have emerged, and the perception of threats has changed, and keeps changing. Extensive new technologies have been developed and changed the ways of defence and warfare and are problematic to define and handle in a demilitarisation context. The military-strategic value of territories in warfare often has to be redefined. Assessment of military-strategic aspects over time is complicated. The security environment keeps changing and new ways of defence and warfare give new meaning to the term military-strategic. Nevertheless, the upholding of such regimes as the Svalbard and Åland Islands regime can still be assessed as contributing to the military-strategic stability in a region, even though the original military-strategic reasons are no longer at hand. The evolving security environment gives rise to the question why the Svalbard and Åland Islands regimes are still seen as valid and legitimate. It is clear that they have a legal validity for the parties concerned, but this is also the case more generally in regard to public international law.[226] Furthermore, both the Svalbard and the Åland Islands multilateral security arrangements are part of larger legal regimes, and can therefore be perceived as valuable also for other reasons than demilitarisation and neutralisation.

226 As discussed by Koivurova and Holiencin 2017.

Fourth, concerning the leeway for interpretation, there is room for interpretation also regarding 'the Ålandic provisions', in particular the 1921 Convention – and historical developments and evolving international law have influenced interpretation – but undeniably they are more detailed than the Svalbard security provisions. Thus, the leeway for interpretation for the Norwegian Government is arguably larger than for the Finnish Government, and it springs to mind that the upholding of a comparatively extensive dialogue with representatives of an autonomy (sometimes 'even' lacking in formal standing), as in the Ålandic case, can influence the scope of the interpretation. The local interlocutor is stronger in the Åland Islands than in Svalbard, inter alia since the Ålandic autonomy includes far more competences (upheld by more resources) than those conferred upon the authorities in Svalbard. A further element to take into account in this context is that both regimes are examples of multilevel governance, an aspect not explored within the scope of this contribution.

One important issue of interest regarding the Åland Islands is whether a measure acknowledging the Åland Islands' status, should or could be taken in the event of a Finnish NATO membership. As has been described, that issue was not on the agenda at all in relation to Svalbard. Rather, the concern was that Svalbard would be defended also by the alliance in question. The Ålandic position is to advocate that a Finnish NATO membership must be construed so that the Åland Islands' demilitarisation and neutralisation are not affected. The fact that the Åland Islands' status has been recognised by the EU in its primary law seems to speak in favour of a similar path also in a NATO context, not least because the CFSP has been widened through the Lisbon Treaty. However, as concerns reservations, it is seemingly not a 'NATO tradition' that reservations be made to the founding treaty by states parties, and there are no reservations made to the Washington Treaty. Against such a 'NATO tradition of no reservations' it would most likely be seen as difficult politically to insist on any kind of reservation, perhaps to a certain extent depending on the nature of the matter, despite the fact that in general, under international law, it would be feasible. The issue of self-imposed restrictions could perhaps be further examined from different perspectives. Strategic planning is not public, but it would be of interest to analyse these issues further.

The overview in this tentative and limited contribution indicates that the issue of consequences for the Åland Islands' status in the event of a Finnish NATO membership to a certain extent has not been explored. No comprehensive analysis has been made. This is perhaps understandable since implications and consequences will be the result of a number of factors, not least political, which are difficult to assess and politically sensitive as long as there is not a Finnish decision to join. The feasibility of an acknowledgement of the Åland Island's status in particular in relation to art. 5 – how the Åland Island's special status can

be upheld and how a possible acknowledgement is feasible vis-à-vis the NATO command structure – and the issue of Finland receiving international assistance in relation to the Åland Islands' status could be further explored and different scenarios analysed.

References

Ahlström, Christer, 1997, Demilitarised and Neutralised Zones in a European Perspective, in (eds.) Lauri Hannikainen and Frank Horn, Autonomy and Demilitarisation in International Law, Kluwer Law International, the Hague, pp. 41–56

Bilateral Treaty between Finland and the Soviet Union, 1940, available at http://www.kulturstiftelsen.ax/traktater/ (visited 5.1.2018)

Björkholm, Mikaela and Rosas, Allan, 1990, Ålandsöarnas demilitarisering och neutralisering, Åbo Akademis förlag, Åbo

Brownlie, Ian, 2003, Principles of Public International Law, 6th ed., Oxford, New York, Oxford University Press

Brownlie, Ian, 2008, Fourth report on the effect of armed conflicts on treaties, 60th session of the International Law Commission, available at http://legal.un.org/ilc/guide/1_10.shtml (visited 12.2.2018)

Buckley, Edgar, 2006, Invoking article 5, NATO Review, available at
https://www.nato.int/docu/review/2006/Invokation-Article-5/Invoking_Article_5/EN/index.htm (visited 20.1.2018)

Churchill, Robin and Ulfstein, Geir, 2010, The Disputed Maritime Zones Around Svalbard, in (eds.) Nordquist, Myron, Norton Moore, John and H. Heidar, Tomas, Changes in the Arctic Environment and the Law of the Sea, Martinus Nijhoff Publishers, pp. 551–594

Convention on the demilitarisation of the Åland Islands, 1856, annexed to the Treaty of Paris, available at http://www.kulturstiftelsen.ax/traktater/ (visited 5.1.2018)

Convention on the Demilitarisation and Neutralisation of the Åland Islands, 1921, available at http://www.kulturstiftelsen.ax/traktater/ (visited 5.1.2018)

Danielsen, Egil, 1964, Norge-Sovjetunionen. Norsk utenrikspolitikk overfor Sovjetunionen 1917–1940, Oslo, pp. 108–123.

Dinstein, Yoram, 2017, War, Aggression and Self-Defence, Cambridge University Press

Eriksen, Knut Einar, 1989, Svalbardsspörsmålet fra krig til kald krig, in Historiker og veileder. Festskrift til Jakob Sverdrup, Oslo, 1989, pp. 112–162

European Parliament Think Tank website, 2015, available at http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2015)572799 (visited 20.1.2018)

Fagerlund, Niklas, 1997, The Special Status of the Åland Islands in the European Union in (eds.) Lauri Hannikainen and Frank Horn, Autonomy and Demilitarisation in International Law: The Åland Islands in a Changing Europe, Kluwer, pp. 189–256

Finnish Government 2007: Sierla, Antti, 2007, The Effects of Finland's possible NATO membership, available at file:///C:/Users/%C3%85sa/Downloads/UM_Nato_selvitys_English_final%20(1).pdf (visited 15.1.2018).

Finnish Government 2008: Bill on the Lisbon Treaty: RP 23/2008 rd, available at https://www.finlex.fi/sv/esitykset/he/2008/20080023.pdf (visited 10.1.2018)

Finnish Emergency Powers Act (1552/2011)

Finnish Government 2016a: Report on Finnish Foreign and Security Policy, available at file:///C:/Users/%C3%85sa/Downloads/VNKJ082016_Statsr%C3%A5dets_utrikes-och_B5_kansineen_netti_sv%20(1).pdf (visited 10.1.2018)

Finnish Government 2016b: Bill RP 72/2016 rd
Finnish Government 2016c: Bill RP 107/2016 rd
Finnish Government 2016d: Report on the Effects of a Possible Finnish NATO Membership, commissioned by the Finnish Foreign Ministry by Mats Bergquist, François Heisbourg, René Nyberg, Teija Tiilikainen, available at file:///C:/Users/%C3%85sa/Downloads/UM_Nato_arvio_ENG_NETTI_28042016%20(14).pdf (visited 1512.2017)
Finnish Government 2017: Finnish Defence Report, available at https://www.defmin.fi/files/3688/J07_2017_Governments_Defence_Report_Eng_PLM_160217.pdf (visited 15.1.2018)
Forsberg, Tuomas, 2017, Finland and NATO: Strategic Choices and Identity Conceptions in (ed.) Andrew Cottey, The European Neutrals and NATO: Non-alignment, Partnership, Membership?, pp. 97–127
Gardberg, Anders, 1992, Ålands strategiska ställning, Krigshögskolan forskningsrapporter N:r 3, Helsingfors
Gardberg, Anders, 1995, Åland Islands: A Strategic Survey, Finnish Defence Studies 8, National Defence College, Helsinki
Government of the Åland Islands 2015: Policy for the Åland Islands' demilitarisation and neutralisation: Handbook for the Ålandic authorities, available at https://www.lagtinget.ax/sites/www.lagtinget.ax/files/policy2c_demilitarisering_och_neutralisering_0.pdf (visited 15.1.2018)
Government of the Åland Islands 2017a: Redogörelse över självstyrelsepolitiska frågor enligt 36 § arbetsordningen för Ålands lagting, 17 March 2017, available at http://www.regeringen.ax/sites/www.regeringen.ax/files/attachments/protocol/nr12-2017-plenum-rk1.pdf (visited 10.1.2018)
Government of the Åland Islands 2017b: Opinion of 14 February 2017 to the Finnish Parliament, available at http://www.regeringen.ax/sites/www.regeringen.ax/files/attachments/protocol/nr16-2017-enskild-rk1a.pdf (visited 5.1.2018)
Gustavsson, Kenneth, 2012, Ålandsöarna: en säkerhetsrisk? Spelet om den demilitariserade zonen 1919–1939, PQR, Mariehamn
Gustavsson, Kenneth, 2014, Åland 1940 – demilitarisering under sovjetisk kontroll, del 1: Den diplomatiska linjen, Tidskrift i Sjöväsendet Nr. 2, pp. 145–149
Kenneth Gustavsson, 2014, Åland 1940 – demilitarisering under sovjetisk kontroll, del 2: Den militära linjen, Tidskrift i Sjöväsendet Nr. 3, pp. 241–259
Hannikainen, Lauri, 1994, The Continued Validity of the Demilitarised and Neutralised Status of the Aland Islands, Zeitschrift für ausländisches öffentliches Recht und Völkerrecht, Vol. 54, Issue ¾, pp. 614–651
Hannikainen, Lauri, 1997, The International Legal Basis of the Autonomy and the Swedish Character of the Åland Islands, in (eds.) Lauri Hannikainen & Frank Horn, Autonomy and Demilitarisation in International Law, Kluwer Law International, the Hague, pp. 57–83
Heinikoski, Saila, 2017, The Åland Islands, Finland and European Security in the 21 Century, Journal of Autonomy and Security Studies, Vol. 1 Issue 1, pp. 7–45, available at http://jass.ax/volume-1-issue-1-Heinikoski/ (visited 5.1.2018)
Holst, Johan Jörgen, 1967, Norsk sikkerhetspolitikk i strategisk perspektiv, Oslo, Vol. 11

Holtsmark, Sven G., 1993, A Soviet Grab for the High North? USSR, Svalbard, and Northern Norway 1920–1953, Oslo, Institutt for Forsvarsstudier

Holtsmark, Sven G., 2004, Høyt spill. Svalbard-spørsmålet 1944–47, Oslo, Institutt for Forsvarsstudier

International Court of Justice, 1951, Advisory Opinion Reservations to the Genocide Convention, [1951] ICJ Rep 15, available at http://www.icj-cij.org/files/case-related/12/4285.pdf (visited 20.1.2018)

International Court of Justice, 1986, Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. US) (Merits)

International Law Commission, 2011, Guide to Practice on Reservations to Treaties, available at http://legal.un.org/ilc/guide/1_8.shtml (visited 5.1.2018)

Koivurova, Timo and Holiencin Filip, 2017, Demilitarisation and neutralisation of Svalbard: how has the Svalbard regime been able to meet the changing security realities during almost 100 years of existence?, Polar Record, Vol. 53, Issue 2 March 2017 , pp. 131–142

Lövold, Andreas, 2002, Den utvidete utenrikskomiteen som skaper og opprettholder av utenrikspolitisk konsensus, Hovedoppgave i statsvitenskap, Institutt for statsvitenskap, Universitet i Oslo, available at https://www.duo.uio.no/bitstream/handle/10852/14712/6625.pdf?sequence=1 (visited 5.1.2018)

Mathisen, Trygve, 1954, Svalbard in the changing Arctic, Oslo, Gyldendal

Meyer, Johan Kr., 1987, NATO, opposisjonen og den sikkerhetspolitiske debatt i Norge 1949–1953, Hoveduppgave i historie, Universitetet i Bergen

Milanovic, Marko and Sicilianos, Linos-Alexander, 2013, Reservations to Treaties: An Introduction, European Journal of International Law, Volume 24, Issue 4, 1 November, pp. 1055–1059, available at https://academic.oup.com/ejil/article/24/4/1055/606400 (visited 5.1.2018)

NATO International Planning Team of the Standing Group, 1957, PT 131/36-DRAFT REV, 11 March 1957, available at http://archives.nato.int/uploads/r/null/1/0/100517/IPT_131_36_DRAFT_REV_ENG_PDP.pdf (visited 20.1.2018)

NATO Parliamentary Assembly, Resolution 336 on Reducing National Caveats, Policy Recommendations, 15 November 2005

NATO 1951: Verbatim record of the North Atlantic Council in Rome on 24 November, 1951, available at http://archives.nato.int/uploads/r/null/2/0/20012/C_8-VR_2-FINAL_BIL.pdf (visited 25.1.2018)

NATO 1965: Memorandum for the Members of the Military Committee, Subject: Contingency Plans, Excluding General War References: a. Record-MC l84th Meeting held 15 September 1965, b. Record-MC 193rd Meeting held 10 November 1965, available at http://archives.nato.int/uploads/r/nato-archives-online/f/0/1/f01f35d26039042db4820461de3f4712c982369bd04facaf5d346c707e9c853b/MCM-0165-1965_ENG_PDP.pdf (visited 25.1.2018).

NATO 2001: Secretary-General Robertson, 4 October 2001, statement, Brussels, available at https://www.nato.int/docu/speech/2001/s011004b.htm (visited 15.1.2018)

NATO website on art. 4 consultations https://www.nato.int/cps/su/natohq/topics_49187.htm (visited 2.1.2018)

Nilsen, Thomas, 2017, Moscow says NATO meeting on Svalbard is a provocation, The Independent Barents Observer, https://thebarentsobserver.com/en/arctic-security/2017/04/moscow-says-nato-meeting-svalbard-provocation (visited 15.1.2018).
Njarðarson, Sigurjón and Bjarni Már Magnússon, 2016, Iceland's alleged reservation to art. 5 of the North Atlantic Treaty, Vol. 12, No 1, available at http://www.irpa.is/article/view/2219 (visited 20.1.2018).
North Atlantic Treaty (Washington Treaty), 1949, available at https://www.nato.int/cps/en/natohq/official_texts_17120.htm (visited 15.12.2017)
Norwegian Defence Ministry: Forsv.dept til Ut.dept. Uttalelse fra Forsvarsstaben 20. Mars 1948. Mappe V 36.6/10A. Ut.dept.
Norwegian Government 1975: Report No. 39 (1974–75) to the Storting concerning Svalbard 17 January 1975
Norwegian Government 1986: Report No. 40 (1985–86) to the Storting concerning Svalbard 18 April 1986
Norwegian Government 1999: Report No. 9 (1999–2000) to the Storting on Svalbard, 29 October 1999, Norwegian Ministry of Justice and the Police
Norwegian Government 2009: Report No. 22 (2008–2009) to the Storting on Svalbard, 17 April 2009, Norwegian Ministry of Justice and the Police
Norwegian Government 2016: Report No. 32 (2015–2016) to the Storting on Svalbard, 11 May 2016, Norwegian Ministry of Justice and Public Security
Norwegian Government 1949: Bill St. prp. Nr. 40. (1949), available at https://www.stortinget.no/no/Saker-og-publikasjoner/Stortingsforhandlinger/Lesevisning/?p=1949&paid=2&wid=a&psid=DIVL671&pgid=a_0323 (visited 5.1.2018)
Norwegian Government Bill 1951: St.prp.nr.20 (1951), available at https://www.stortinget.no/no/Saker-og-publikasjoner/Stortingsforhandlinger/Lesevisning/?p=1951&paid=2&wid=a&psid=DIVL710&pgid=a_0093 (visited 5.1.2018)
Norwegian Ministry for Foreign Affairs 36 6/10 A VI (1940–49)
Norwegian Storting's report 15 February 1947, available at https://www.stortinget.no/globalassets/pdf/stortingsarkivet/moter-for-lukkede-dorer/1946–1965/470215.pdf (visited 5.1.2018)
Norwegian Storting's report 3 February 1949, available at https://www.stortinget.no/no/Saker-og-publikasjoner/Stortingsforhandlinger/Lesevisning/?p=1949&paid=7&wid=a&psid=DIVL690&pgid=a_0307 (visited 15.1.2018)
Norwegian Storting's report 29 March 1949, available at https://www.stortinget.no/no/Saker-og-publikasjoner/Stortingsforhandlinger/Saksside/?pid=1945-1954&mtid=7&vt=a&did=DIVL9388 (visited 5.1.2018)
Norwegian Storting's Special Committee's Opinion 1949: Innst. 61 (1949), available at https://www.stortinget.no/no/Saker-og-publikasjoner/Stortingsforhandlinger/Lesevisning/?p=1949&paid=6&wid=a&psid=DIVL1553&pgid=a_0112 (visited 5.1.2018)
Norwegian Storting's enlarged Foreign Affairs Committee's Opinion 1951: Innst. S. nr. 40 (19 jan. 1951), available at
https://www.stortinget.no/no/Saker-og-publikasjoner/Stortingsforhandlinger/Lesevisning/?p=1951&paid=6&wid=a1&psid=DIVL1722&pgid=a1_0090 (visited 5.1.2018)

Norwegian Storting's decision on declassification of certain documents 1996: Innst. S. nr. 295 – 1995–96, available at https://www.stortinget.no/globalassets/pdf/innstillinger/stortinget/eldre/innst.-s.-nr.-295-1995-96.pdf (visited 3.1.2018)

Norwegian Storting's enlarged Foreign Affairs Committee meeting, report 8 May 1946, available at https://www.stortinget.no/globalassets/pdf/stortingsarkivet/duuk/1946-1965/460508u.pdf (visited 15.1.2018).

Norwegian Storting's enlarged Foreign Affairs Committee meeting, report 16 January 1947, available at https://www.stortinget.no/globalassets/pdf/stortingsarkivet/duuk/1946-1965/470116u1.pdf (visited 10.1.2018)

Norwegian Storting's enlarged Foreign Affairs Committee meeting, report 1 September 1947, available at https://www.stortinget.no/globalassets/pdf/stortingsarkivet/duuk/1946-1965/470901u.pdf (visited 15.1.2018)

Norwegian Storting's enlarged Foreign Affairs Committee meeting, report 15 January 1949, available at https://www.stortinget.no/globalassets/pdf/stortingsarkivet/duuk/1946-1965/470115u.pdf (visited 20.1.2018)

Norwegian Storting's enlarged Foreign Affairs Committee meeting, report 29 October 1951, available at https://www.stortinget.no/globalassets/pdf/stortingsarkivet/duuk/1946-1965/511029u.pdf (visited 10.1.2018)

Norwegian Storting's Special Committee for Certain Foreign Affairs and Contingency Issues meeting, report 4 December 1948

Norwegian Storting's Special Committee for Certain Foreign Affairs and Contingency Issues meeting, report 10 January 1949

Norwegian Storting's Special Committee for Certain Foreign Affairs and Contingency Issues meeting, report 18 January 1949

Nye, Joseph S., 1975, Ocean Rule Making form a World Politics Perspective, Ocean Development and International Law Journal, 3: 1, pp. 29–52.

Østreng, Willy, 1977, Politics in High Latitudes Politics in high latitudes: The Svalbard archipelago, London, C. Hurst and Company

Paris Peace Treaty 1947, available at http://www.kulturstiftelsen.ax/traktater/ (visited 15.12.2017)

Pedlow, Gregory W., 2009, The Evolution of NATO's Command Structure, 1951–2009, available at https://shape.nato.int/resources/21/evolution%20of%20nato%20cmd%20structure%201951-2009.pdf (visited 15.1.2018)

Protocol 2 to the Finnish EU Accession Treaty, Official Journal C 241/352, available at http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:11994N/PRO/02&from=EN (visited 10.1.2018).

Rainne, Juha, 2008, Legal implications of NATO membership: Focus on Finland and Five Allied States, The Erik Castrén Research Reports 24/2008, Helsinki

Reichard, Martin, 2006, The EU–NATO Relationship: A Legal and Political Perspective. Aldershot: Ashgate Publishing

Riste, Olav, 1979, London-regjeringa, Norge i krigsalliansen 1940–1945, Oslo

Rosas, Allan, The Åland Islands as a Demilitarised and Neutralised Zone, 1997, in (eds.) Lauri Hannikainen and Frank Horn, Autonomy and Demilitarisation in International Law, Kluwer Law International, the Hague, pp. 23–40

Rotkirch, Holger, 1986, The Demilitarization and Neutralization of the Åland Islands: A

Regime ‘in European Interests’ Withstanding Changing Circumstances, Journal of Peace Research 23(4), pp. 357–376.
Siedschlag, Alexander, 2001, Für das Realitätsprinzip: Eine Kritik von Bündnisfall-Politik und Kreuzzugs-Doktrin als Reaktion auf die Terrorangriffe des 11. September, 32 WeltTrends, avaliable at http://www.esci.at/eusipo/wtc_real.pdf (visited 15.1.2018)
Söderhjelm, Johan Otto, 1928, Démilitarisation et neutralisation des Iles d’Aland en 1856 et 1921, Helsingfors
Spiliopoulou Åkermark, Sia, 2007, Ålands demilitarisering och neutralisering: gammal skåpmat eller levande folkrätt? I Harry Jansson (red.), Vitbok för utveckling av Ålands självbestämmanderätt, pp. 75–96, available at http://www.peace.ax/images/stories/pdf/Spiliopoulou.pdf (visited 1.2.2018).
Spiliopoulou Åkermark, Sia, 2010, Ålands demilitarisering och neutralisering: juridisk beständighet och omgivningens föränderlighet, in Ålands demilitarisering och neutralisering mot bakgrund av de nya europeiska utmaningarna, pp. 24–30.
Spiliopoulou Åkermark, Sia, 2017a, 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, Volume 22, Issue 2, pp. 249–274.
Spiliopoulou Åkermark, Sia, 2017b, The Meaning of Airspace Sovereignty Today – A Case Study on Demilitarisation and Functional Airspace Blocks, Nordic Journal of International Law, Volume 86, Issue 1, pp. 91–117.
Spiliopoulou Åkermark, Sia, Heinikoski, Saila, Kleemola-Juntunen, Pirjo, 2018, Demilitarisation and International Law in Context: The Åland Islands, Routledge.
Steen. Erik Anker, 1954, Norges sjokrig 1940–45, Oslo, Gyldendal.
Sverdrup, Jakob, 1996, Inn i storpolitikken 1940–1949, bind 4 i Norsk utenrikspolitikks historie, Universitetsforlaget, Oslo
Tamnes, Rolf, 1987, Svalbard mellom Øst og Vest. Kald krig og lavspenning i nord 1947–1953, in Forsvarsstudier/Defence Studies No. 4, Oslo
Tamnes, Rolf, 1991, Svalbard og stormaktene. Fra ingenmannsland tit Kald Krig, 1870–1953, in Forsvarsstudier/Defence Studies, No. 7, Oslo
Tiilikainen, Teija, 2006, Åland in European Security Policy, in (eds.) Gunilla Herolf, Alyson J. K. Bailes and Bengt Sundelius, The Nordic Countries and the European Security and Defence Policy, Oxford University Press, pp. 349–355
Svalbard Treaty: Treaty of 9 February 1920 relating to Spitsbergen (Svalbard), available at http://app.uio.no/ub/ujur/oversatte-lover/data/lov-19250717-011-eng.pdf (visited 5.1.2018)
Svalbard Mining Code, Royal Decree of 7 August 1925
Ulfstein, Geir, 1995, The Svalbard Treaty. From Terra Nullius to Norwegian Sovereignty, Oslo, Scandinavian University Press
United Nations General Assembly Resolution 3314(XXIX), 1974
United States Department of State website, available at https://2001–2009.state.gov/coalition/cr/fs/12753.htm (visited 5.1.2018)
Vienna Convention on the Law of the Treaties, 1969
White, William S., Three Efforts to Soften NATO Text by Restrictions Decisively

Beaten, New York Times, July 22, 1949, available at https://archive.nytimes.com/www.nytimes.com/library/world/global/072249nato-senate-ratify.html (visited 15.2.2018)

The French Perspective on the Åland Islands: A Cyclic Interest? Between Geopolitics, Historiography, and a Case Study

Matthieu Chillaud

Journal of Autonomy and Security Studies,
2(2) 2018, 54–69

URL: http://jass.ax/volume-2-issue-2-Chillaud/

Abstract

Combining historical depth and political analysis, this article examines the way that France has perceived the strategic role of the Åland Islands, as well as the French role in the construction of their status of demilitarisation and neutralisation. For that, we strove to draw a parallel between, on the one hand, the intensity of French activities in the Baltic Sea in general and on the Åland Islands in particular, and, on the other hand, the amount of literature in social sciences and the humanities that examines the Åland Islands. This exercise substantiates the hypothesis that whilst this region used to be quite well known in France, nowadays this is no longer the case. It is bound to change, as the majority of the riparian States of the Baltic Sea and France belong henceforth to the same security and defence organisations, namely the EU and NATO. Subsequently, France cannot be indifferent to an area in which she has to assume her historical role, so far almost consigned to oblivion.

Keywords

Åland Islands, France, French foreign policy, Historiography

About the author: Matthieu Chillaud (chillaud@gmail.com) holds a PhD in political science (Bordeaux) and in history (Montpellier). He has published extensively on strategic issues in Northern Europe. He is currently completing a book on the history of the academic field of strategic studies in France.

1. Introduction

During Emmanuel Macron's presidential visit in Helsinki in August 2018, a Franco-Finnish statement on European defence[1] was adopted with nonetheless no mention on the special status of demilitarisation and neutralisation of the Åland Islands. Even the French media kept quiet the issue. Was it excessively anecdotal for not being considered as a significant issue? Yet, the Åland Islands used to be important in the French political agenda to such an extent that France has bluntly left her marks on the collective psyche of the islands. The first feeling, which emerges after a quick scrutiny through French literature in the humanities and social sciences that examines the Åland Islands, confirms this curious situation. Whereas numerous articles and books were penned by the French during the interwar period, and even to a certain extent before, nowadays very few of those in France express an interest in the Åland Islands. Indeed, in French newspapers, it is possible, at odd occasions, to find articles about the Åland Islands: for instance, the Åland Islands as a model for Corsica[2], the Åland Islands being able to impede the adoption of the treaty of Lisbon[3], and the Åland Islands as the place where some old champagne was found from a shipwreck.[4] Nonetheless, the topic, is not really familiar for French public.

This apparent paradox should be explained through closer examination. By analysing in historical depth the Åland Islands in the French political-strategic agenda, this article aims precisely to put in perspective the situation of a southern country that has genuinely influenced the destiny of these islands. In order to validate our hypothesis, we shall conduct a geopolitical and historiographical exercise with a case study. Firstly, we shall assess the intensity of the literature in human and social sciences that examines the Åland Islands through the French geopolitical perspective of the area. Then we will discuss the interest of France in the Åland Islands with their quality of 'outermost Baltic power' according to geopolitical and historiographical considerations. Finally, we shall analyse the impact of the 'Åland factor' in the French foreign policy by focusing our study to the period between the Crimean War and the conclusion of the 1921 Convention on the Non-Fortification and Neutralisation of the Åland Islands.

1 Visite d'Emmanuel Macron en Finlande (29-30 August 2018), *Déclaration franco-finlandaise sur la défense européenne*(https://www.diplomatie.gouv.fr/IMG/pdf/18-08-23_declaration_fr-fi_sur_la_defense_europeenne_version_fr_cle88cdff.pdf).
2 *La Tribune* 2005.
3 *Le Monde* 2008.
4 *Le Monde* 2015.

2. The French interest in the Åland Islands: a geopolitical and historiographical perspective

For obvious geostrategic considerations, securing possession of the Åland Islands has always been a common denominator of all the countries which have sovereignty over them. Dominating the entrance of the Gulf of Bothnia, these islands are particularly well-adapted for hosting a strong military base that would dominate the geostrategic approach generally to the Baltic Sea, and particularly to Sweden, Finland, and Russia. As French allies and enemies have always been riparian States of the Baltic Sea for more than two centuries, the Åland Islands have continuously been of great importance for France.

This syllogism only incompletely explains the French familiarity with the Åland Islands. In fact, it responds to a cyclic political agenda of a country that has always endeavoured to position herself in the North. However, her two main geostrategic orientations have always been the East and the South. Regarding the North, it is usually considered that this area has been less part of her zone of interests. Moreover, as Bruno Tertrais bluntly noted, *'Interest in Northern European security issues in France has been limited so far to Northern Europe, and the Arctic region is not on the radar screen of the average French strategist'*.[5] This area was rather peripheral for France, predominantly compared to the Mediterranean area. France is without a doubt a Mediterranean power and has been for centuries. Yet, she has hitherto shown a longstanding presence in Northern Europe, but in a more discreet way.

France has also always considered her interest that the countries which make up Northern Europe, whether neutral or allied to France, should not be the victims of the predatory aims of her foes, namely Germany and Russia. Moreover, it is noteworthy that France has never been in war against a Nordic state, with some exceptions linked to the Napoleonic period.[6] Incidentally, it is precisely during the negotiations in Tilsit that the French Emperor would 'allow' the Russian Tsar to seize Finland, with the Åland Islands, to the detriment of Sweden. *'Keeping Finland without the Åland Islands would be like someone who would accept a chest but would get rid of the keys'*[7] would have said General Caulaincourt, French Ambassador to Russia. However, Sweden was trying to preserve her sovereignty over the Åland Islands. Note that this famous citation may be apocryphal. The following quote is sometimes attributed to Napoléon: *'Taking Finland without going through Åland is like a puzzle lock strongbox without the keys'*.[8] Norman J. Padelford

5 Tertrais 2001, p. 27

6 See Åselius and Caniart 2009 for a global perspective on this topic.

7 '*Garder la Finlande sans les Îles Åland, ce serait comme quelqu'un qui accepterait une malle mais en jetterait les clefs*'. Quoted by van der Vlugt 1920, p. 81. Note that translations of French texts quoted in this article are unofficial translations by the author.

8 '*Prendre la Finlande sans passer par Aland, c'est comme si l'on prenait une cassette à fermeture secrète*

and K. Gösta A. Anderson slightly differently attribute this citation: *'To defend Finland without the Aaland Islands would be the same thing as taking a strongbox of which one had given up the keys'*[9] to the Russian delegate Roumiantzoff, whereas Russia was insisting on the islands during the 1809 peace negotiations.

In any event, whoever the original author and whatever the exact formulation are, this indicates a strong awareness, already at that time, of the geostrategic assets of the Åland Islands as confirmed by M. Bail, the author of a volume compiling letters between Bernadotte and Napoléon published in 1819. M. Bail wrote in the preface: *'The Åland Islands are no less valuable since their distance from the coast is only 34 miles; from the archipelago to Stockholm only 30; from Stockholm itself only 60; and last but not least the Baltic Sea, which separates Sweden and Russia, is frozen throughout the winter, strongly enough to make it possible to transports canons. As a result, Russian armies can rapidly march right through to the heart of Sweden'*.[10]

From the 19th century, each time France was a belligerent against Russia or Germany, the Åland Islands were sometimes peripheral, sometimes central, but never absent from the French strategic and diplomatic agenda. Thus, during the three major times when the Åland Islands were concerned by international conflicts or disputes, France was very active in the establishment of settlements. In the Crimean War (1853–1856), the French and the British attacked the Russians on their western flank by destroying the Fortress of Bormarsund built on the Åland Islands. During the peace negotiations which ensued, Paris and London demanded the demilitarisation of the archipelago. It was French diplomacy, alongside British, that imposed this sanction on Russia in a treaty signed in Paris. After the First World War, it was again French diplomacy, within the League of Nations, that was more active in elaborating the convention on the Non-Fortification and Neutralisation of the Åland Islands. Last but not least, it is in the Treaty of Paris (10th February 1947) that ended the Second World War that the demilitarisation of the Åland Islands was confirmed. Indeed, even if during the after war, she had not the political means to contest Soviet diplomacy and could only align herself with the USSR. France was widely concerned by the future of Finland and the Åland Islands.

Moreover, it is worth noting the multifaceted image between the strategic and diplomatic French activities on the one hand, and the abundancy of the French literature that examines the Åland Islands on the other hand. Distinguish between, on the one hand, 'swashbucklers'

dont on n'a pas les clefs'. Quoted by Tissot 1939, p. 164.

9 Padelford and Anderson 1939, p. 466.

10 *'L'île d' Aland n'est pas moins précieuse, puisqu'elle n'est éloignée de la côte que de 34 milles; de l'archipel, vis-à-vis Stockholm, que de 30 ; de Stockholm même, que de 60; et qu'enfin la Baltique, qui sépare la Suède de la Russie, gèle tous les hivers assez fort pour qu'on puisse y faire passer du canon. Il résulte de là que les armées russes peuvent se trouver en quelques marches au cœur de la Suède'*. Baille 1819, p. 12.

who participated in military operations when France was a belligerent penned by French militaries and, on the other hand, articles and books penned by scholars.

Even if the numerous books and articles ranked in the first category may indeed be of limited interest for historians; by telling them, even by bluntly narrating fights, militaries essentially constructed 'epic tales' to glorify the French army. These may enlighten the French public about the strategic political stakes in the Baltic Sea in general. This category is, indeed, far from homogeneous. Some books can be penned by militaries with the only aim being to celebrate French glory. There is, in that regard, a startling example from the section of the military journal *Journal des opérations de l'artillerie et du génie* that examines the 'Siège de Bormarsund' published in 1854. In the journal, its authors, General Adolphe Niel and Colonel Gaëtan Rochebouët, described the battle in a genuinely epic manner[11]. Baron César de Bazancourt, who was the 'official' historian of the French Second Empire, wrote *L'Expédition de Crimée. La marine française dans la mer Noire et la Baltique* (1869), in which some large sections examine the French naval operations in the Baltic Sea.[12] Commander Frankowski's thesis titled *La Campagne de la Baltique en 1854*, penned at the École Supérieure de Guerre Navale, analysed French naval military operations in the Åland Islands with a strong emphasis on tactical aspects without neglecting the diplomatic and strategic ones.[13] Moreover, some other accounts were written in militaries' memoirs. For instance, Admiral Marius Peltier, who was the Naval Défense attaché in Helsinki and Stockholm between 1940 and 1941, published *Campagne en mer Baltique. Souvenirs* in 1965 and *La Finlande dans la tourmente* in 1966[14] in which there is some very useful information about the French position on the Åland Islands during the interwar period.

The category of books and articles penned by scholars is less 'confidential'. The most significant book, which deals with all the social aspects of the Åland Islands, is undoubtedly Louis-Antoine Léouzon Le Duc's volume, titled *Les îles d'Åland* (1854).[15] A jurist, René Waultrin, made a brilliant analysis of geostrategic stakes linked to the Åland Islands at the beginning of the 20th century in the *Revue générale de droit international public*. The author is particularly keen to analyse and to bring solutions to security and defence issues through the prism of law while going beyond strict legal analysis.[16] In quantitative terms, it is undoubtedly during the interwar period that the Åland Islands emerged. A real 'buzz' for 'La question des Îles Åland' took hold of French academics.

From the end of the First World War, a considerable amount of research was carried out on the Åland Islands issue. Four doctoral dissertations in international law that

11 Niel and Rochebouët, 1868.
12 Bazancourt 1869.
13 Frankowski 1923.
14 Peltier 1965 and Peltier 1966.
15 Léouzon Le Duc 1854.
16 Waultrin 1907, p. 517–533.

examined the Åland Islands were undertaken in French universities and defended during the interwar period.[17] In addition, some articles were penned that hold the attention of the reader by examining strategic issues on the Åland Islands before the Second World War. For instance, Fernand de Visscher, professor of international law, published 'La question des îles d'Aland' in the *Revue de droit international et de législation comparée* in 1921. The author analysed the issue according to legal and also geopolitical considerations.[18] The geographer Pierre Camena d'Almeida wrote an article in 1922 on physical geography on the Åland Islands in the *Annales de Géographie*[19]. Moreover, Georges Chabot published a small article pointing out geostrategic stakes of the islands in the same review.[20]

The 'proliferation' of literature made sense. Invested with her status of victorious power of the First World War, France was considered a major actor to countries interested in the Åland Islands, principally Sweden and Finland, thanks to her prestige but also her diplomatic and strategic weight in the settlement of the dispute. At the end of the First World War, France prepared a gathering of diplomats, academics, and militaries within a 'Comité d'études', a substantial work which was to settle all the European territorial disputes after the Great War.[21] Even if the Åland Islands issue had not been clearly mentioned per se, it was clear that the voice of France would be one of the most determinant in the pacification in the aftermath of war. In that respect, it made sense that Sweden and Finland would target France by encouraging journalists, scholars, and even militaries and diplomats to be in favour of their respective position.[22]

After the Second World War, the interest in the Åland Islands decreased dramatically when it was put on the back burner. However, there were indeed still some handbooks in international law which sometimes dealt with *'La question des Îles Åland'*. In addition, some scholars who studied the Nordic States became interested in the Åland Islands, but only tangentially. For instance, Jean-Jacques Fol (1977) composed a doctoral dissertation on the independence of Finland.[23] The famous professor of history at *la Sorbonne*, Jean-Baptiste Duroselle, supervised the doctoral dissertation of the Swedish-speaking scholar Jean-Pierre Mousson-Lestang (1988). His PhD examined the Swedish Social Democrats during the First World War.[24] Both doctoral dissertations contained several references to

17 Jégou du Laz 1923; Popovici 1923; Boursot 1923 and Maury 1930.
18 Visscheer 1921, p. 243–284.
19 Camena d'Almeida 1922, p. 174–178.
20 Chabot 1939, p. 328–329
21 Lowczyk 2010.
22 A good example is Jean Denier, alias Raymond Migeot. Hired by Finns, he penned a booklet in 1919 titled *L'Attribution des îles d'Åland* for the Paris Peace Conference. See *A Catalogue of Paris Peace Conference Delegation Propaganda in the Hoover War Library* for an exhaustive list of all the publications written in French (1926, p. 33–35).
23 Fol 1977.
24 Mousson-Lestang 1995 (the dissertation was defended in 1988).

the Åland Islands. Nevertheless, in his book *La Scandinavie et l'Europe de 1945 à nos jours* (1990), Jean-Pierre Mousson-Lestang does not mention the Åland Islands. Likewise, in her doctoral dissertation in political science that examines Finland, nor does Françoise Thiebaut (1990) refer to the Åland Islands. Note two other books, penned by two French authors interested in geostrategic issues in the Baltic Sea area, *Changement de cap en mer Baltique*[25] and, in Europe, *Les Neutres, la neutralité et l'Europe*[26], which are also without references to the Åland Islands.

Indeed, Jean-Baptiste Duroselle (1985), in his *opus magnum Histoire diplomatique de 1919 à nos jours* briefly mentions the Åland Islands, whereas Hervé Coutau-Bégarie (1995), in his book that examines the concept of naval disarmament, analyses the status of disarmament of the islands, incidentally with scepticism.[27] The Norwegian speaking geographer Michel Cabouret published several books on the Nordic states. Amongst all his publications, some of them touch on the Åland Islands, but from a physical geography perspective.[28] Eventually, the feeling is that during this period the Åland Islands were admittedly circumstantial.[29] If France indeed continued, under her remote watchful eye, to be attentive to the legal obligations of the 1856 treaty and the 1921 convention, the strategic configuration of Northern Europe 'frozen' by the Cold war was stable to a certain extent. This did not jeopardise the status of the demilitarisation and neutralisation of the Åland Islands. France was only interested in that region in a very peripheral way.[30]

The situation changed slowly as of 1995, when Sweden and Finland joined the EU. Some articles penned by some French scholars have been published here and there, contributing to the 'rediscovery' of the Åland Islands, even though the issue stays, to a certain extent, quite 'confidential' and confined to the studies of a small circle of scholars. In her doctoral dissertation in political science that examines Swedish neutrality (1995), Nathalie Blanc-Noël mentions the Åland Islands several times.[31] Paul Giniewki (1997) published in the military journal *Revue de défense nationale* an article on the islands.[32] Even if this article may be open to criticism (it contains some mistakes), it can be considered seminal. The author of the present article published a policy paper in 2006 whilst working at the Stockholm International Peace Research Institute (SIPRI) on the concept of geographic disarmament

25 Blanc-Noël 1992.
26 Carton 1992.
27 Coutau-Bégarie 1995, p. 41–43.
28 See, for instance, Cabouret 1984, p. 58–61 and Cabouret 2001, p. 191–207.
29 An exception (that would prove the rule?): a book written by Aurélien Sauvageot, professor of Finnish and Hungarian in Paris at the École des Langues orientales, *Histoire de la Finlande* (1968), in which there is a substantial part that examines the Åland Islands.
30 Mozaffari 2000.
31 Blanc-Noël, 1997 (the dissertation was defended in 1995).
32 Giniewki 1997.

in Northern Europe, a major part of the study examining the Åland Islands.[33] An article which came from this study was thereafter published in French in the *Annuaire français de relations internationales* (2007).[34] A few years later, a book was edited in French that gathers scholars who examine the status of the Åland Islands in historical depth.[35] Last but not least, Christophe Prémat, a French academic and deputy at the National Assembly (representative of the French residing in Northern Europe), wrote an interesting paper that reviews the geopolitical situation of the Åland Islands.[36] Note also a doctoral dissertation recently defended by Louis Clerc. In his work about relations between France and Finland during the interwar period, there is a substantial part on the Åland Island issue.[37]

3. France and the 'Åland factor' on the European diplomatic chessboard between 1853 and 1921

The Åland Islands are subject to the geopolitical iron law: due to their exceptional geostrategic position, they can be a threat for some and an asset for others. As France has been allied with and/or an enemy of most of these countries, she has been, directly or not, concerned by them. Her permanent difficulty has always been to overlap the interests of the security of her allies against her foes. The Bolshevik Revolution, followed by the independence of Finland accepted after a period of hesitation, indeed changed the French perspective on the situation. If the idea of the 'Russian Åland Islands' was off the agenda, France was not willing to choose between Finland and Sweden both claiming sovereignty over the Archipelago. Finally, she defended the idea to hand over the issue to the League of Nations, and did her best to find a modus vivendi to appease all parties concerned.

3.1. 'Running with the hare and hunting with the hounds': the Åland Islands between French allies and enemies

In the French strategic political agenda, the Åland Islands saliently arose during the outbreak of the Crimean War (1853–1856), whereas France and England sought to hit Russia on the western flank. Paris and London proposed to offer the Åland Islands to Sweden if her fleet would assist in their blockage of Kronstadt. Fearing Russian reappraisals after the war, the Swedes refused. Thereupon, French and British decided to destroy the Fortress of Bomarsund.

Through the Treaty of Paris (1856), which ended the war, the victorious countries, France

33 Chillaud 2006.
34 Chillaud 2007.
35 Chillaud 2009.
36 Prémat 2008.
37 Clerc 2007a, p. 93–132.

and England, imposed the demilitarisation of the Åland Islands on the defeated, Russia. Russia was not allowed to undertake any military or naval construction on the islands. The demilitarisation of the Åland Islands was the result of a compromise between, on the one hand, London who wanted to secure the archipelago that was considered to be a threat against Sweden and, on the other hand, Paris who wanted good relations with Russia after the peace agreement. Through a knock-on effect, it turned out to be a genuine 'indirect reward' for Sweden, Auguste Goffroy arguing bluntly that *'the perpetual guarantee of Western powers, the permanent securing of Finnmark, and the assurance of no longer having to fear a Russian citadel or fortress on the islands in front of Stockholm; that's what is contained in the famous 5th point'*.[38] Even if Sweden was not a signatory to the treaty and was particularly concerned when observing Russia's obligation, she has always sought to make herself heard.

For the French, the sovereignty over the Åland Islands was not questioned. The conclusion of the Franco-Russian alliance from 1891 strengthened this perspective, even though the Russians still had to respect the 1856 treaty vis à vis Paris. Nonetheless, as Russia was becoming a major ally against Germany, her perspective became more flexible. For Paris, it was of importance to guarantee that Germany would not use the archipelago for strategic purposes against Russia, and simultaneously to reassure Sweden that a possible Russian defensive rearmament of the Åland Islands would not be a threat against Sweden.

On 23rd April 1908, representatives from Germany, Denmark, France, Great Britain, the Netherlands, and Sweden declared their firm resolution to *'preserve intact, and mutually to respect, the sovereign rights which their countries at present enjoy over their respective territories'* in or bordering the North Sea. In the memorandum signed on the same day by the representatives of the five contracting powers, the North Sea was considered *'to extend eastward as far as its junction with the waters of the Baltic'*. Five days after, a convention under the patronage of Saint Petersburg was signed by Germany, Denmark, Sweden, and Denmark. It guaranteed the Baltic status quo, but avoided any mention of the demilitarisation of the Åland Islands while ambiguously recognising full Russian sovereignty over them. Nobody was really credulous about the motivations of Russia, whose primary aim was, at first, to reassure Sweden, and afterwards to get international approval to revise the treaty of 1856 so as to permit the remilitarisation of the Åland Islands.[39]

At the beginning of the First World War, the Triple Entente wanted Sweden to remain neutral. In spite of her neutrality, Sweden had to consider public opinion on whether to be in favor of the Triple Entente or in favor of the Triple Alliance. It was in this context that the

38 '*Garantie perpétuelle des puissances occidentales*, *fixation définitive du Finmark* (sic)*, assurance de n'avoir plus à redouter dans les îles situées en avant de Stockholm, une citadelle ou une station russe, voilà donc ce que recélait ce fameux 5e point'*. Geffroy A., 1856.

39 Flœckher 1908, p. 271.

issue of the rearmament of the Åland Islands by Russians became particularly salient in Sweden. Because of the intense naval activity of Germany in the Baltic Sea, Russia decided to refortify the Åland Islands from January 1915, but simultaneously assured Sweden that it would be temporary. Fearing that what was temporary would become permanent, Sweden sought guarantees. In order to appease the situation, Russia formally penned her commitment, which was hitherto only verbal. This was supported by Great Britain and France, who wanted more than anything to confine, to the extent possible, the German influence in Northern Europe.

3.2. 'Making the best of a bad job': towards the Finnish solution

After the Bolshevik Revolution and the end of the Great War, understanding the French position on the Åland Islands requires considering French motivations in the new geostrategic and geopolitical landscape of the region. France wanted to avoid the ripple effect of the Russian revolution, to prevent the 'new' Germany from regaining its influence, and to advance her stakes in a region where her influence was rather limited.

One of the first difficulties that France had to tackle was precisely the issue of the Åland Islands. The question had already arisen during the Bolshevik Revolution. After the collapse of Germany and the subsequent annulment of the Treaty of Brest-Litovsk, the legal ownership of the islands remained in doubt between the two main riparian Baltic States. The residents of the islands claimed their right to self-determination and demanded reunification with Sweden. This separatist movement was supported by Sweden but opposed by Finland, who insisted on its sovereignty over the archipelago, and was only willing to offer it an autonomous status. Yet, even though France was persistently the object of very active Swedish diplomacy in favour of the reunification of the Åland Islands with the 'motherland', France did not seem to be willing to immediately appease the Swedes.

In such a complicated game of chess, the French were not willing to disclose their agenda, which turned out to be uncertain anyway. The precept 'the enemies of my enemies are my friends' was hardly apt in such a strategic configuration. On the one hand, it was necessary to immunise the region from 'Bolshevik contagion' (and to simultaneously preserve the Russian borders as much as possible) and, on the other hand, to contain German influence. In addition, it was necessary that the thorny relationships between Finland and Sweden, upheld by sensitive nationalism in the two countries and also in the Åland Islands, did not escalate into warfare.

In the meantime, some of the French considered the possibility of Finland and the Åland Islands as a buffer zone between Russia and Germany. In October 1917, some plans circulated within the French general staff that bluntly evoked the possibility to

grant the whole of Finland and the Åland Islands to neutral Sweden.[40] After a period of consideration, France decided to recognise the independence of Finland in January 1918.[41] Nonetheless, during the Finnish Civil War between the Whites and the Reds, the German military presence in Finland complicated the situation. On the one hand, when the Swedes sent an expeditionary force to the Åland Islands in order to protect the people against the Russians, for the allies, such a decision prevented a possible German intervention, which still took place later. When the Whites won the war, the Åland Islands were occupied by German troops. For the French, the Finns were becoming dangerously too Germanophile. Nonetheless, numerous French militaries and diplomats saw Mannerheim as a reliable partner against the Bolsheviks. Finnish claims over the Åland Islands had to be considered if France were to take advantage of her services against the Bolsheviks.

At the 1919 Paris Peace Conference, Stephen Pichon, the French Minister of Foreign affairs, proposed to postpone the issue of the Åland Islands *sine die* pending the settlement of the Russian problem. Albert Kemmerer, the French representative in the Commission of Baltic Affairs at the Paris Peace Conference, stated that the aim of the commission was not to solve the issue of the Åland islands, but to request the League of Nations to do so. For him, it was necessary to preserve the *status quo*, which could be strategically highly important for a future Russia.[42] Ultimately, in spite of the low esteem for Swedish neutrality, the idea to grant to Sweden the Åland Islands was eventually seen as a lesser evil. On 25th September 1919, French Prime Minister Georges Clemenceau, pleading the case for the Treaty of Versailles, mentioned possible reparations for the iniquities that were imposed on Sweden concerning the issue of the Åland Islands. The aim of the French was, above all, to urge the Finns to cooperate with the White Russians against the Bolsheviks. Nonetheless, the retreat of the latter in Petrograd put an end to the French strategy.

Finland or Sweden? Which one of them would be granted the sovereignity over the Åland Islands? The French stated loud and clear that they had no interest in favouring one of the two parties. Even during King Gustav V of Sweden's visit to Paris in April 1920, the Swedes did not gain much from the French, despite a strong propaganda organised by Stockholm as well as by Helsinki. The idea that a solution had to be found by the League of Nations gained ground, and a commission of jurists was appointed. On the record, France did not wish to interfere. Nonetheless, in accordance with the commission's recommendations, the French urged the Finns to agree to grant to the Åland Islands extensive autonomy as well as total demilitarisation. The principal pending problem was the form of the binding agreement that would facilitate the comprehensive disarmament of the archipelego; a new convention that would wipe the slate clean of the 1856 convention

40 Clerc 2009. p. 56.
41 Clerc 2007b.
42 Clerc 2009, p. 58.

(but in that case, the issue was knowing whether the League of Nations could terminate an international agreement). Perhaps a bilateral agreement between Sweden and Finland? An additional issue was whether Germany should be associated with the new convention. For the French diplomats, French Prime Minister Aristide Briand's instructions to Jean Gout, French negotiator of the 1921 demilitarisation agreement, were clear on at least one point: the preservation of the 1856 convention was of significant importance, especially in order to maintain Russian interests. In the draft written by the French jurist and diplomat Henri Fromageot, a consensus was found.

Based on the commission's report and the consideration of the parties involved, the League of Nations Council adopted a resolution in June 1921, which recognised Finland's sovereignty over the Åland Islands, but recommended autonomy for the territory. The islands were also to remain demilitarised and neutralised. The recommendations of the League of Nations were accepted by the parties to the conflict. The Convention on the Non-Fortification and Neutralisation of the Åland Islands signed on 20th October 1921 widely corresponded with French intentions, even though there was no unanimity among officials in the French Ministry of Foreign affairs divided between those who were in favour of Sweden and those who were in favour of Finland.

4. Conclusion

Neither riparian of the Baltic Sea nor 'Northern power', France has nonetheless considerably influenced the fate of the Åland Islands since the 19th century. Nowadays, very few in France are aware of that. This 'amnesia' could be due to the self-perception that the primary strategic aims of France would (only) be in the South and East of Europe. Yet, France has hitherto shown a strong commitment to Northern Europe. Since the 19th century, notwithstanding the changing strategic configuration in Europe, France has always had allies or enemies/adversaries particularly concerned by the Åland Islands. Her permanent aim was a balancing act. On the one hand, France wanted to preserve the security interests of her allies and simultaneously deny her enemies any of the advantages that the control of the Åland Islands would provide. On the other hand, it was necessary to enforce the legal obligations of demilitarisation and/or neutralisation.

The question has arisen differently since the end of the 1980s. After the Cold War, the reconfiguration of Euro-Atlantic architecture was particularly noticeable in Northern Europe. This was principally due to the independence of the Baltic states, their later membership of the European Union (EU) and the North Atlantic Treaty Organisation (NATO), Sweden's and Finland's membership of the EU. In addition, the subsequent tensions between NATO and Russia in the Baltic Sea area could not disregard France, a country who is at the heart of a network of security organisations of which Nordic and

Baltic states are also members. Moreover, France is a unique major European power within the EU and NATO, and a signatory of all the major international treaties that determine the status of the Åland Islands. In fact, after Brexit, France is henceforth the only country that is both a member of the EU and NATO and part of the 1856 Treaty of Paris. In this respect, France cannot be uninterested by the North, an area in which she must show her commitment and solidarity.

References

A Catalogue of Paris Peace Conference Delegation Propaganda in the Hoover War Library. 1926, Stanford University Press: 33–35.

Baille M, 1819, *Correspondance de Bernadotte, Prince-Royal de Suède avec Napoléon depuis 1810 jusqu'en 1814, précédée d'une notice sur la situation de la Suède, depuis son élévation au trône des Scandinaves*. Paris: L'Huillier. (https://gallica.bnf.fr/ark:/12148/bpt6k61529187.texteImage).

Bazancourt (de) C. Baron, 1869, *L'expédition de Crimée. La marine française dans la mer Noire et la Baltique. Chroniques de la guerre d'Orient*. Paris: Amyot, t. 2. (https://gallica.bnf.fr/ark:/12148/bpt6k65430117/f11.image.texteImage)

Boursot, R., 1923, *La Question des îles d'Åland. Esquisse d'une théorie du droit des peuples à disposer d'eux-mêmes*. Thèse pour le doctorat de sciences politiques, Université de Dijon, Faculté de droit.

Blanc-Noël N., 1992, *Changement de cap en mer baltique*. Paris: Economica, FEDN.

Blanc-Noël N., 1995, *La politique suédoise de neutralité active: de la Seconde Guerre mondiale à l'entrée dans l'Union européenne*. Paris: Economica, ISC.

Cabouret M., 1984, 'L'archipel d'Åland, un curieux cas de géographie politique et administrative', *Hommes et Terres du Nord*, 1: 58–6.

Cabouret M., 2001, 'Le rôle géopolitique et géostratégique des grandes îles de la Baltique à travers l'histoire', in M. Auchet and A. Bourguignon (eds), *Aspect d'une Dynamique régionale. Les pays nordiques dans le contexte de la Baltique*. Nancy: Presses universitaires de Nancy, 191–207.

Camena d'Almeida P., 1922, 'Les îles d'Åland', *Annales de géographie*, 170: 174–178. (https://www.persee.fr/doc/geo_0003-4010_1922_num_31_170_10269).

Carton A., 1992, *Les Neutres, la neutralité et l'Europe*. Paris: FEDN.

Chabot G., 1939, 'La neutralité nordique et les îles Åland', *Annales de géographie*, 273: 328-329. (https://www.persee.fr/doc/geo_0003-4010_1939_num_48_273_11498)

Chillaud M., 2006, *Territorial Disarmament in Northern Europe. The epilogue of a success story?*, Solna, SIPRI Policy Paper n°13, 62 pages. (https://www.sipri.org/publications/2006/sipri-policy-papers/territorial-disarmament-northern-europe-epilogue-success-story)

Chillaud M., 2007, 'Les Îles Åland, un laboratoire insolite de désarmement géographique?', *Annuaire français de Relations internationales*, Bruxelles, Bruylant, 7: 722–735. (http://www.afri-ct.org/article/les-iles-aland-un-laboratoire/).

Chillaud M. (ed), 2009, *Les Îles Åland. Héritage et actualité d'un régime original*. Paris: L'Harmattan.

Clerc L., 2007a, *La Finlande dans la diplomatie française: représentations, forces organisationnelles et intérêt national dans les considérations finlandaises des diplomates et des militaires français (1918–1940)*, thèse d'histoire, sous la direction de Jean-Christophe Romer, Université de Strasbourg.

Clerc L., 2007b, 'De la province russe à l'État scandinave. Évolutions du regard diplomatique français sur la Finlande (1900-1920)' in S. Cœuré and S. Dullin (eds.), *Frontières du Communisme*. Paris: La Découverte, 64–86.

Clerc L, 2009, 'Juge et partie: la France et la question des Îles Åland' dans M. Chillaud (ed.), *Les Îles Åland. Héritage et actualité d'un régime original*. Paris: L'Harmattan, 53–70.

Coutau-Bégarie H., 1995, *Le Désarmement naval*. Paris: Économica, ISC, Bibliothèque stratégique.

Denier J., 1919, *L'Attribution des Îles d'Åland*. Paris: imprimerie de Chantenay.

Duroselle J.-B., 1985, *Histoire Diplomatique de 1919 à nos jours*. Paris: Dalloz, 9e éd.

Fol J.-J., 1977, *Accession de la Finlande à l'indépendance, 1917-1919*, Thèse d'État, Université de Paris I.

Flœckher (de) A, 1908, 'La convention relative à la Baltique et la question de la fortification des îles d'Aland. Exposé du point de vue allemand', *Revue générale de Droit international public*: 271.

Frankowski (de) Capitaine de frégate, 1923-1924, *La Campagne de la Baltique en 1854*. École de guerre navale. (https://gallica.bnf.fr/ark:/12148/bpt6k9767119s?rk=21459;2)

Geoffroy A., 1856, 'La Suède avant et depuis le Traité de Paris. Le Roi Charles-Jean et le roi Oscar dans leurs rapports avec le cabinet russe', *La Revue des deux Mondes*, 2ème période, tome 3: 457–495.

Giniewski, P., 1997, 'Une curiosité historique et politique: l'autonomie des Îles Åland', *Défense nationale*, 2: 87–93.

Jégou du Laz R., 1923, *La Question des îles d'Aland*. Thèse, Faculté de droit de l'Université de Rennes.

2005, 'Une Corse prospère en pleine Baltique', *La Tribune*, 8 April.

2008, 'Les îles finlandaises autonomes d'Åland défendent leur "snus" contre Bruxelles', *Le Monde*, 12 June.

2015, 'Un champagne intact après avoir passé 170 ans sous la mer', *Le Monde*, 21 April.

Maury P., 1930, *La Question des îles d'Åland*. Thèse pour le doctorat en droit (Sciences politiques et économiques) présentée et soutenue le 26 mai 1930, Université de Paris.

Mousson-Lestang, J.-P., 1995, *Le Parti social-démocrate suédois et la politique étrangère de la Suède* (1914–1918). Paris: Presses universitaires de La Sorbonne.

Mozaffari M., 2000, 'France-Scandinavie. Perceptions et relations', *Annuaire français de relations internationales vol. 1*. Brussels: Bruylant, 325–332.

Niel A. général and Rochebouët (de) G. colonel, 1868, 'Siège de Bomarsund en 1854', *Journal des opérations de l'artillerie et du génie*. Paris: J. Corréard. (https://gallica.bnf.fr/ark:/12148/bpt6k6517158d/f7.image.texteImage)

Peltier M. contre-amiral, 1965, 'Campagne en mer Baltique. Souvenirs', *Revue maritime*, 224: 1122-1137.

Peltier M. contre-amiral, 1966, *La Finlande dans la tourmente*. Paris: France-Empire.

Popovici J, 1923, *La Question des îles d'Åland*, Thèse pour le doctorat (sciences politiques et économiques) soutenue le 29 janvier 1923, Université de Paris.

Prémat C., 2009, 'Géopolitique des espaces autonomes: le cas des Îles Åland', *Nordiques*, 17: 27–43. (https://halshs.archives-ouvertes.fr/halshs-00388025/document).

Sauvageot A., 1968, *Histoire de la Finlande*. Paris: Imprimerie nationale.

Sjoestedt E., 1915, 'La Suède et la guerre', *Le Figaro*, 11 August.

Tissot L., 1939, 'La propagande allemande dans les pays nordiques', *Politique étrangère*, 42: 155–168.

Visscher (de) F., 1921, ‘La question des îles d’Aland’, *Revue de droit international et de législation comparée*, 23/4: 243–284. (https://gallica.bnf.fr/ark:/12148/bpt6k61279201/f657.item.r=Aland)

Waultrin R., 1907, ‘La neutralité des îles d’Aland’, *Revue générale de droit international public*: 517–533.

Vlugt van der W., 1920, *La question des îles d’Aland, considérations suggérées par le rapport des juristes*. Paris: imprimerie de J. Dumoulin.

The Nexus between Arms Control and Human Rights in the Case of North Korea. Implications for the human rights agenda

Katja Creutz

Journal of Autonomy and Security Studies,
2(2) 2018, 70–96

http://jass.ax/volume-2-issue-2-/Creutz/

Abstract

The exceptionally poor human rights record of North Korea has for long remained eclipsed by the issue of arms control. The Commission of Inquiry report of 2014 nevertheless centre-staged human rights, and there is increasing evidence to the fact that the two issues are connected. The international community has nevertheless been divided over whether to link human rights and arms control or not, in addition to by what means North Korea should be contained. This article seeks to explore international responses to the North Korean human rights situation from a normative-descriptive approach. The article will explore the rise of softer security concerns next to traditional ones by tracing the building of human rights momentum within the UN. This will be followed by analysis on the nexus between the issue of arms control or broader security concerns and human rights. The risks and opportunities involved in connecting the two subject matters will thereafter be considered from the prism of human rights, after which strategies for future international responses will be discussed. It will be argued that the human rights momentum built in the aftermath of the 2014 Commission of Inquiry report has placed human rights firmly at the centre of international attention. Moreover, the placing of North Korean human rights on the Security Council agenda was a step with long-term political and legal implications.

Keywords

North Korea, international law, arms control, human rights,
United Nations, securitization

About the author: Dr Katja Creutz is an international lawyer who works for the Global Security Programme at the Finnish Institute of International Affairs. Her main fields of expertise are international law and global governance, especially issues of international responsibility. Dr Creutz is also an Affiliated Research Fellow at the Erik Castrén Institute of International Law and Human Rights, University of Helsinki. The article builds upon a previous text of the author, 'Human Rights in the Shadow of Nuclear Arms Control' in Sinkkonen 2016a.

1. Introduction

The international community has long struggled with what to do with the Democratic People's Republic of Korea (DPRK or North Korea) in terms of the security concerns arising from the country's development of weapons of mass destruction. A cat-and-mouse game has been taking place for decades between the Kim Dynasty and various international actors pursuing arms control and the denuclearization of North Korea. In recent years international attention has also been paid to North Korea's human rights record, which commonly is described as the worst in the world and allegedly lacks any comparison in contemporary times. Of these two issues, arms control has traditionally constituted the primary concern of the international community, although the UN Commission of Inquiry (COI) report of 2014 built substantial momentum to address human rights with the Kim Jong-un regime. Despite the fact that there is a clear linkage between the two subject-matters, it has proven difficult to decide on feasible international responses and negotiation strategies, as well as whether these two concerns should be linked or not.

This article seeks to explore international responses to the North Korean human rights situation from the prism of international law, and in particular from a human protection framework. Though it examines the risk of securitization and its consequences upon the human rights project, the primary aim is not to analyze arms control and human rights from the theoretical framework of securitization. Rather, the approach will be normative-descriptive, seeking to unravel the current human rights situation while also exploring how to best reach a minimum level of international human rights law. Central to this is the question of legal implications rising out of the linkage between human rights and arms control.

In this pursuit, the article will first explore the rise of softer security concerns next to hard security by tracing the building of human rights momentum within the UN (Section 2). This will be followed by analysis on the nexus between the issue of arms control or broader security concerns and human rights. The risks and opportunities involved in connecting the two subject matters will thereafter be considered from the prism of human rights, after which strategies for future international responses aimed at improving the North Korean human rights situation will be discussed (Section 3). It will be argued that the human rights momentum built in the aftermath of the 2014 COI report has placed human rights firmly at centre of international attention, which nonetheless involves a risk of securitization of human rights. At the same time, the nascent linkage between arms control and human rights in the UN Security Council has given rise to legal effects that in the long-term can benefit the human rights agenda.

2. From Hard to Soft Security Concerns: The Rise of Human Rights

2.1. Traditional Precedence of Arms Control over Human Rights

North Korea has for years been considered a threat to international peace and security, as well as a potential source and site for great power confrontation due to the unresolved conflict of the 1950s.[1] The core of the threat lies in the proliferation of nuclear weapons, as well as developing arms able to deliver them, which is regarded by the UN Security Council (UNSC or SC) as a threat to international peace and security – both generally and with respect to North Korea.[2] North Korea has since the 1950s shown interest in and sought to develop its nuclear capabilities; a 'nuclear inferiority complex' has characterized the country's strategic thinking from the start.[3] One of the country's basic survival strategies has been to use its nuclear programme for regime survival: by fabricating military crises and agreeing to solve them, North Korea has been able to receive almost unconditional economic aid from international actors, only with the aim to produce a new conflict once it runs out of money.[4] At the same time, the nuclear weapons programme has ensured that the regime stays intact from outside interventions. Nuclear weapons have thus constituted a rational instrument whereby international actors are kept at distance, rather than being the pet project of a mad man.[5]

The international community has attempted to respond to North Korea's nuclear yearn through various policies of engagement and coercion, but the issue has emerged as one of the most divisive foreign policy matters, in particularly for the U.S. and its partners in Asia.[6] No lasting solution to the problem has been found; instead, North Korea has continued to hoax the international community with empty promises while proceeding with its nuclear weapons programme. The fast development of the programme has, however, taken the international community by surprise. The first nuclear test was conducted in 2006, and since then the pace of testing has only accelerated. So far the country has tested six nuclear devices, the latest testing occurring in September 2017 with a large enough explosion to be a thermonuclear weapon.[7] Despite the fact that the nuclear explosions have been quite small by international standards the latest nuclear explosion was seven times the atomic bomb dropped over Hiroshima, and it demonstrated that North Korea has advanced in its nuclear technology.[8] According to SIPRI statistics, North Korea may potentially have

1 For an in-depth discussion on the North Korean conundrum, see Sinkkonen 2017a.
2 Generally, see UNSC Res. 1540 (2004), and with respect to North Korea, see UNSC Res. 2407 (2018), preamble.
3 Clemens Jr. 2016, p. 90.
4 Lankov 2013, pp. 145–157.
5 Lankov 2017.
6 Cha and Kang 2004, p. 229.
7 Lewis 2017.
8 Berkowitz, Karklis and Schaul 2017.

produced 10–20 nuclear weapons,[9] but the opacity of the country's nuclear programme makes it impossible to know.

What is more, progress has also been made in missile development, which is a necessary component of delivering the nuclear warheads. After 20 missile tests in 2017, including inter-continental ballistic missiles (ICBMs), the latest ICBM test in November 2017 stretched to a height of 4,500 km, thus making it potentially capable of reaching continental United States, including its capital Washington DC.[10] North Korea has also increased its missile mobility by developing capabilities of both sub-marine and land-launched missiles.[11] Still, there appears to be disagreement with how far North Korea is from producing an ICBM with a nuclear warhead that could threaten the United States,[12] its main rival throughout its existence.

But the question of North Korea's nuclear programme is not the only concern of the international community when it comes to that country. The first reports about North Korean political prison camps were published in the 1980s,[13] but it was not until 2003 that the UN human rights machinery placed North Korea on the agenda. Hence, arms control and denuclearization have constituted the primary concerns of the international community for decades.[14] Although the interest in North Korea's human rights situation is of much more recent origin than that of denuclearization of the peninsula, it is of no less urgency. The general perception is that the human rights situation is exceptionally terrible in North Korea,[15] and the recent years show no improvement.

Three generations of the Kim Dynasty have ruled North Korea with an iron fist. The rule has been grounded on the *Juche* state ideology, which places the military first, as well as the discriminatory social class system, *Songbun*. The extensive use of political prison camps and policies of mass starvation has resulted in the death of hundreds of thousands, if not millions, of North Koreans. For example, it is estimated that 500,000 starved to death in 1995, and still today up to 100,000 remain detained in the country's several prison camps.[16] The use of collective punishment, malnutrition, public and secret executions, torture and no freedom of opinion or belief, leave North Korea generally described as the most repressive state in the world,[17] a situation of *sui generis*.

9 SIPRI 2017.
10 Berkowitz, Karklis and Schaul 2017.
11 Sinkkonen 2017b, p. 30.
12 Id, p.31.
13 Kagan, Oh and Weissbrodt 1988.
14 Chubb 2014, p. 51; U.S. Congressional Research Service 2018, p. 25.
15 Some critical remarks have been made concerning this representation of North Korea as the worst place on earth. See, e.g., Hong 2013; Smith 2014; Shin and Choi 2013.
16 NKDB estimates there to be 80,000–130,000 persons imprisoned in political prison camps. See NKDB 2016a, p. 11.
17 For a recent overview of the situation, see, ibid.

But the deprivation of North Koreans does not stop at the country's borders. Its neighbouring states, China and Russia, both engage in a policy of repatriation,[18] whereby North Korean defectors are not treated as refugees but as economic migrants.[19] Those who are repatriated nevertheless face consequences, as they are likely to be punished with detention, forced labour or other forms of ill-treatment.[20] Another issue that North Koreans suffer from is the phenomenon of forced labour abroad. According to estimations, up to 50,000 North Koreans work for state-controlled firms in various sectors abroad in neighbouring states China and Russia,[21] but also in many other parts of the world, such as Africa and Europe. These workers remain outside of international or domestic labour laws and are vulnerable to excessive working hours and to occupational accidents and diseases.[22] The workers receive only a fraction of their salaries and the North Korean regime confiscates the rest, which may amount to up to 70 per cent. This practice resembles an unacceptable system of forced labour as they often work in 'slave-like conditions'.[23]

2.2. The Building of a Human Rights Momentum in the UN

The international community has for the last 15 years resolutely condemned the North Korean regime for its human rights violations next to the persistent focus on arms control and denuclearization. Indeed, recent years show a tendency where more states are joining forces to this effect, both within the UN Human Rights Council (HRC) and the General Assembly (UNGA).[24] The UNGA has for 13 consecutive years adopted resolutions condemning the North Korean human rights situation, and for the last four years this has been done by consensus without a vote.[25] International responses to the issue of human rights violations have nevertheless been overshadowed by strategic concerns over North Korea's nuclearization.[26] Forceful actions beyond engagement and condemnation, such as intervening militarily, have so far been out of question because of the intimate connection to great power politics as well as North Korea's demonstrations of increased nuclear and missile capability.

18 U.S. Department of State 2017a, p. 126.
19 Haggard and Noland 2011, p. 3.
20 Amnesty International 2017, p. 220.
21 The estimations range from 50,000–70,000 dispatched North Korean laborers in about 40 countries worldwide. See, NKDB 2016b, pp. 4–5.
22 Amnesty International 2017, p. 220.
23 Luhn 2017.
24 This is visible, for instance, in the fact that the resolutions on North Korean human rights are getting stronger in terms of language, and at the same time more states rally up behind the resolutions. For voting results both in the UNGA and the HRC, see Korea Institute for National Unification 2015, pp. 43–44.
25 Oh 2017.
26 Yeo 2014, p. 84.

2.2.1. North Korea in the Multilateral Human Rights System

North Korea is formally part of the multilateral human rights system with its ratification of human rights conventions, namely the International Covenant for Civil and Political Rights (ICCPR), the International Covenant for Economic, Social and Cultural Rights (IESCR), the Convention on the Rights of the Child (CRC) and its Optional Protocol on the sale of children, child prostitution and child pornography, and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). As late as December 2016 North Korea also ratified the Convention on the Rights of Persons with Disabilities (ICRPD). Despite these formal commitments, it is noteworthy that the country sought to withdraw from the ICCPR in 1997, but was not allowed to do so because the treaty lacks a withdrawal clause. Moreover, it has been claimed that North Korea has one of the worst cooperation records in the world with the UN human rights mechanisms.[27] It refuses to recognise the actions of the HRC or the UNGA condemning its human rights situation, and it has not extended a standing invitation to UN Rapporteurs to enter the country.

As a state party to the human rights treaties it has ratified, the country is nonetheless within the monitoring ambit of UN human rights treaty bodies. Despite the country's random and incomplete reporting, there have lately been some signs of North Korean participation in the UN human rights system, as it in 2016 issued two reports to treaty monitoring bodies. The first was submitted to the Committee on the Rights of the Child and the second to the Committee on the Discrimination against Women.[28] North Korea seems hesitantly willing to engage in discussions on the implementation of human rights treaties protecting the rights of vulnerable groups, as it also for the first time allowed a UN independent expert on the rights of persons with disabilities to visit the country in May 2017.[29] In fact, it has been claimed that North Korea has improved its human rights record in one field, namely the rights of persons with disabilities.[30] It has also been noted that the 2014 COI report motivated North Korea to increase its cooperation with the UPR in 2014.[31]

It is nonetheless indisputable that North Korea's formal commitment to multilateral human rights treaties has not translated into human rights protection on the ground, which is why the UN has paid extra attention to the North Korean situation. Next to the normal institutional mechanisms within the UN human rights machinery, the so-called Special Procedures have played a great role in addressing the North Korean situation. The first decisive step was taken with the establishment of a Special Rapporteur on the Democratic People's Republic of Korea by the former Commission on Human Rights.[32] The mandate

27 Human Rights Watch 2013.
28 UN Doc. CRC/C/PRK/5, 25 October 2016, and UN Doc. CEDAW/C/PRK/2.4, 1 June 2016.
29 Catarina Devandas Aguilar visited Pyongyang from 3–8 May 2017.
30 Feffer 2017.
31 Chow 2017.
32 Situation of Human Rights in the Democratic People's Republic of Korea, Commission on Human Rights

was motivated by the concern for the 'systematic, widespread and grave violations of human rights', including torture, extrajudicial and arbitrary detentions, prison camps and forced labour,[33] and it has been renewed annually.[34] The first ten years of the mandate focused on following the situation without proposing any major concrete actions to be taken. The year 2013 constituted a turning point in this aspect, when the report urged the HRC to establish a Commission of Inquiry (COI) to investigate the systematic and widespread abuses committed in North Korea, which it did by consensus. With this move, a long overdue reluctance to scrutinize human rights in North Korea in any meaningful way was overcome, despite the uncertainties surrounding the situation due to the inaccessibility of the country.[35] North Korea's unwillingness to cooperate with the UN was also seen as wearing the patience of international society thin.[36]

2.2.2. Centre-staging Human Rights: The 2014 COI Report and Its Aftermath

The scrutiny of the North Korean human rights situation by the three member Commission of Inquiry, led by Australian Michael Kirby, lifted human rights from the shadow of the arms control issue. In its report of February 2014, the COI found in spite of North Korea's non-cooperation that 'systematic, widespread and gross human rights violations have been and are being committed'.[37] The level of abuses committed by the state machinery was in many instances seen to amount to crimes against humanity.[38] The COI further found that the policies taken at the highest state level that support torture, enforced disappearances, execution, starvation and much more 'reveal a State that does not have any parallel in the contemporary world'.[39] Instead, the abuses were likened to the horrors committed by the Nazi regime.[40] Another notable feature of North Korea's record was that its political system ensured impunity for all perpetrators of human rights violations, including those involved in the commission of crimes against humanity. The report also urged the Security Council to refer the situation for investigation to the International Criminal Court (ICC), or to alternatively create an *ad hoc* tribunal.[41] It also recommended the Security Council

Resolution 2004/13, 15 April 2004,UN Doc.E/CN.4/RES/2004/13, para. 5.

33 Id, para.1.

34 The current Special Rapporteur on North Korea is Tomás Ojea Quintana from Argentina, who was appointed in 2017.

35 Cohen 2013.

36 Ibid.

37 UN Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea, Summary Report, UN Doc. A/HRC/25/63, 7 February 2014, para. 24.

38 Id, para. 24.

39 Id, para. 80.

40 Statement by Inquiry Chairman Michael Kirby during the press conference, see, Walker 2014.

41 UN Commission of Inquiry on Human Rights in the Democratic People's Republic of Korea, Summary Report, UN Doc. A/HRC/25/63, 7 February 2014, para. 87.

to impose targeted sanctions on those who appear most responsible for the commission of crimes against humanity.[42]

As a result of the egregious human rights situation reaching international headlines, important factual background and political momentum was gained for involving the Security Council in the matter. To that point the Council had only been engaged with the testing of nuclear and ballistic missiles. This unique move was mastered by excellent timing and hard diplomatic work, as the composition of the Security Council benefited the furthering of the human rights agenda. Before the first ever formal meeting on North Korean human rights violations, the report had been discussed at the Security Council in a so-called Arria formula meeting which China and Russia decided not to attend.[43] After numerous diplomatic twists and turns, the North Korean human rights situation was finally placed on the Security Council agenda on 22 December 2014.[44]

The significance of this action lies in the fact that the North Korean human rights situation is now considered a threat to international peace and security, and that the SC is competent to take decisions with respect to the situation. One concrete measure which the Council could decide upon, and which is pursued by the human rights machinery of the world organization, is the importance of bringing the perpetrators to justice by way of a Security Council referral to the ICC. Although the Council has held four annual discussions about the human rights situation in North Korea, nothing concrete has come out of it as yet. Instead, some major powers have resisted even placing the topic on Council agenda, and a SC referral to the ICC seems remote, not to mention the imposition of UN sanctions due to human rights abuses.[45]

The permanent members of the SC hold diametrically opposite stances on the issue. China and Russia have resisted the annual discussions, and even required procedural voting in order to stop North Korean abuses from being debated in the Council.[46] Since their veto power does not apply to procedural issues they have been unable to stop the deliberations. China has repeatedly pointed out that it rejects the 'politicization of human rights issues'.[47] It has asked the Council to 'focus on the big picture and avoid any rhetoric

42 Id, para. 93 (a).
43 Kirby 2015, p. 23.
44 UN Security Council Press Release, 'Security Council, in Divided Vote, Puts the Democratic People's Republic of Korea's Situation on Agenda Following Findings of Unspeakable Human Rights Abuses', UN Doc. SC/11720(2014), 22 December 2014. The decision was taken with China and Russia voting against, and Chad and Nigeria abstaining.
45 Willis 2017.
46 This was a noticeable move as it was the first demand for a procedural vote in this regard in eight years. See, International Coalition for the Responsibility to Protect (ICRtoP), 2015. See also, UN Security Council, 'Security Council Narrowly Adopts Procedural Vote to Authorize Discussion on Human Rights Situation in Democratic People's Republic of Korea', SC/12615, 9 December 2016, <www.un.org/press/en/2016/sc12615.doc.htm> (accessed 28 June 2017).
47 U.N. Security Council, 'Security Council Narrowly Adopts Procedural Vote to Authorize Discussion on

or action that might lead to the escalation of tensions', because discussing the North Korean human rights situation is 'contrary to the goal of stabilizing the Korean Peninsula'.[48] While Russia concurred with the Chinese statement that the SC should not deliberate on human rights, it also defended its pejorative position with claims on the necessity to maintain the effectiveness of the Council without 'loading up its agenda'.[49] Many states nevertheless endorsed the discussion of human rights because the issue was seen to represent 'a flip side of the country's nuclear ambitions'.[50] All in all, the COI report ended up changing the discussion on North Korea,[51] which must be understood as the momentum itself. Human rights are now an accepted and central part of the discussion on North Korea.[52]

3. The Link between Human Rights and Arms Control

3.1. A principled and practical link

There is a clear connection between North Korea's nuclear weapons programme and its dire human rights record, both in principled and practical terms: security and human rights are linked, as one cannot have one without the other. In the post-cold war era, security is no longer perceived only as inter-state security and the defence of the territorial integrity of states.[53] Neither should security be understood narrowly as 'global security to be free from the threat of nuclear holocaust'.[54] Indeed, the question of security is much broader than the military perspective of it.[55] This is captured in the concept of human security, which understands security to have different components, including economic security, food security, health security, environmental security, personal security, community security and political security.[56] All individuals should thus enjoy not only 'freedom from fear, but also freedom from want'.[57] Clearly, North Koreans fall short of many, if not all, aspects of human security,[58] human rights concerns being one integral part of the equation.

There is also an international dimension to the security and human rights nexus: if a regime does not respect the human rights of its own population, it will not respect those of others.[59] To start with, North Korea's abductions and detentions of foreign nationals, such

Human Rights Situation in Democratic People's Republic of Korea', SC/12615, 9 December 2016, <www.un.org/press/en/2016/sc12615.doc.htm> (accessed 28 June 2017).

48 Ibid.
49 Ibid.
50 Id, statement by Ukraine.
51 Cha and Lloyd 2016.
52 Ibid.
53 Soh 2007, p. 4.
54 United Nations Development Programme (UNDP) 1994, p. 22.
55 Ryngaert and Noortmann 2014, p. 1.
56 UNDP 1994, pp. 24–25.
57 UN World Summit Outcome Document, UN Doc. A/RES/60/1, 24 October 2005, at para. 143.
58 Scarlatoiu 2015, p. 128.
59 Cha and Lloyd 2016.

as citizens from the U.S., Japan and South Korea, have made it clear that the rights of third country nationals are ignored and the sovereignty of the respective states are violated.[60] Next to the historic abductions of the 1970s and 1980s, there have also been recent cases of arbitrary detentions, which was demonstrated by the arrest and prosecution of the American student Otto Wambier in 2016–2017. In addition, the North Korean regime is seen as a danger to other populations, both regional and overseas, because of its possession of weapons of mass destruction. Any military confrontation between North Korea and another state could affect the lives of millions of people. It has been estimated that with his nuclear arsenal Kim Jong-un's regime could kill up to 3.8 million people, mainly in South Korea and Japan.[61]

The practical connections between the nuclear weapons programme and the rights of North Koreans are many, as the human rights violations underwrite North Korea's nuclearization.[62] First, the forced labour practices abroad are directly used to finance the nuclear programme,[63] and according to estimations North Korea's forced labour practices bring in 120 million to 230 million USD to the regime annually.[64] Second, both nuclearization and human rights violations contribute to keeping Kim Jong-un's regime in place. Nuclear weapons are a shield towards outward interference, and the systematic human rights violations ensure state control back at home. Indeed, it has been claimed that the single end of the human rights violations is to keep Kim Jong-un in power.[65] Additionally, the state's official doctrine placing the military first has directly contributed to the starvation of millions of North Koreans, as resources are diverted to the million-man army and the nuclear programme.[66] According to estimations, the country spends as much as a third of its GDP on military expenditures. Militarization and the arms race thus affect both directly and indirectly the enjoyment of human rights.[67]

The security-human rights nexus has also been expressly recognized by the United States and a number of other UN member states when they have noticed that the nuclear programme is being developed at the expense of the people of North Korea. U.S. Ambassador to the UN Nikki Haley has stated in the context of evaluating the SC's work that 'there is hardly an issue on our agenda that does not involve the concern for human

60 See, e.g., Government of Japan 2017.
61 Crilly 2017.
62 U.S. Department of State 2017b.
63 Cha and Lloyd 2016.
64 Database Center for North Korean Human Rights (NKDB) 2016b, p. 12.
65 U.S. Ambassador to the UN Nikki Haley, Speech delivered at the UNSC meeting on North Korean Human Rights, 11 December 2017, https://usun.state.gov/remarks/8210 (accessed 28 August 2018).
66 Ulferts and Howard, 2017, p. 89.
67 Report of the Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea, UN Doc. A/HRC/37/69, 9 March 2018, at para. 39.

rights'.[68] As late as December 2017 she also stated with respect to North Korea that '[w]e continue to think there is a separation between peace and security and human rights and there's not'.[69] Indeed, the U.S. has in its own national actions towards North Korea already early on recognised the need to address human rights alongside arms control.

In recent years the U.S. has moved towards a linkage between (peaceful) disarmament and human rights violations. Following Pyongyang's fourth nuclear test in January 2016, the U.S. government imposed sanctions upon North Korean key leadership and repressive state entities due to human rights abuses.[70] The North Korea Sanctions and Policy Enhancement Act of 2016 draws upon a connection between the issue of North Korean nuclear weapons programme and its human rights abuses, as its policy statement lays down: 'In order to achieve the peaceful disarmament of North Korea, Congress finds that it is necessary… (2) to sanction the persons, including financial institutions that facilitate…serious human rights abuses…'.[71] Thus, the U.S. is the first country to impose sanctions on North Korean leadership due to its systematic human rights violations.

Similarly to U.S. Congressional action on human rights, the Trump administration also formally maintains that human rights are a U.S. priority in the case of North Korea.[72] Despite this formal stance, President Trump reportedly failed to address the dire human rights situation with Kim Jong-un in the Singapore summit in June 2018. Foreign policy pundits as well as human rights organizations and activists have urged for the administration to keep human rights on the agenda despite the primacy of denuclearization. However, the reluctance by President Trump to raise the issue of human rights follows previous paths where U.S. negotiators have often been unwilling to raise human rights concerns at high-level meetings with foreign leaders.[73]

Small signs of rapprochement between the two topics of arms control and human rights are also visible in the UNSC handling of the North Korean threats, despite the issues remaining separate agenda items. The human suffering of North Koreans has crept step by step into the Council's resolutions. In November 2016, when it condemned North Korea's nuclear arms testing, the Council urged North Korea to 'respect the welfare and inherent

68 Besheer 2017.
69 Nichols 2017.
70 North Korea Sanctions and Policy Enhancement Act of 2016, Public Law 114–122, 18 February 2016, H.R.757.
71 Id, sec. 101.
72 See, U.S. Ambassador to the UN Nikki Haley, Speech delivered at the UNSC meeting on North Korean Human Rights, 11 December 2017, https://usun.state.gov/remarks/8210 (accessed 28 August 2018). President Trump also spoke about the brutalities committed by the North Korean regime in his 2018 State of the Union Address on 30 January 2018, https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-state-union-address/ (accessed 5 November 2018). For more on the current U.S. policy on North Korea, see, Enos 2018.
73 Enos 2018, p. 8.

dignity' of its people.[74] In 2017, the Security Council paid more detailed attention to the impact of the country's nuclear pursuits upon the people of DPRK, noting that 'over half of the people of the DPRK suffer from major insecurities in food and medical care', in particular pregnant women and children under five.[75] It also condemned the overseas labour missions, and took action to hinder these. In its resolution 2397 (2017) the Council further highlighted the nexus between nuclearization and human suffering when it noted:

'[The Council] *[r]eiterates* it deep concern at the grave hardship that the people in DPRK are subjected to, *condemns* the DPRK for pursuing nuclear weapons and ballistic missiles instead of the welfare of its people while people in the DPRK have great unmet needs, *emphasizes* the necessity of the DPRK respecting and ensuring the welfare and inherent dignity of people in the DPRK, and *demands* that the DPRK stop diverting its scarce resources toward its development of nuclear weapons and ballistic missiles at the cost of the people in the DPRK'.[76]

To sum up, the topic of human rights is closing in on the denuclearization agenda also in the Security Council's actions, despite China's and Russia's firm reluctance to perceive North Korea as a crisis of 'human rights and peace and security'.[77] For these two countries it has always been more problematic to deal with human rights than arms control.[78]

3.2. Implications of Linkage for Human Rights: Risk and Opportunity

Although most states share the view that North Korean human rights conditions are egregious, and that the topic is connected to the broader issue of security, it appears problematic to formulate common approaches to the problem of human rights.[79] Two central dilemmas feature in the debate on how to address the dual threat posed by North Korea; next to the thorny issue of bundling human rights and security issues together, there is also the dilemma of appropriate strategy, namely whether to use carrots or sticks on the North Korean state. This question is pressing as the human rights question is in the ascendant, and there are signs of increasing consensus 'to pursue human rights and the nuclear issue simultaneously'.[80] Although the policy of linking human rights with arms control and denuclearization may appear logical and an inescapable development, there are both risks and opportunities with such an approach from the perspective of human protection.

74 UNSC Res. 2321 (2016), para. 45.
75 UNSC Res. 2371 (2017), para. 17.
76 UNSC Res. 2397 (2017), para. 23. (emphases in original).
77 U.S. Ambassador to the UN Nikki Haley, Speech delivered at the UNSC meeting on North Korean Human Rights, 11 December 2017, https://usun.state.gov/remarks/8210 (accessed 28 August 2018).
78 Clemens Jr. 2016, p. 310.
79 Feffer 2005; Yeo 2014, p. 72.
80 Yeo 2018.

3.2.1. Risk of Securitization

There is a risk that human rights will be securitized when the link between human rights and security translates into policy-making. One example of evidence that the North Korean human rights situation is being brought into the realm of security logics is the fact that the UN Security Council, the primary international body charged with international peace and security, has addressed these concerns.

Securitization of non-traditional security issues, such as human rights or infectious diseases, is an extreme form of politicization where normal politics is suspended.[81] It does not indicate that a factual existential threat is at hand, but rather that an actor seeks to bring a certain topic into the security sphere.[82] The Copenhagen school posits that the central element of securitization is thus the so-called speech act, which defines securitization as an inter-subjective, discursive and dynamic process.[83] A successful process of securitization means that an issue becomes a priority requiring extra resources and measures outside of the normal toolbox.[84] Securitization of an issue thus signals that the stakes are raised.[85] For the North Korean case of connecting human rights with denuclearisation, the latter of which is markedly military and falls within the traditional concept of security, human rights are brought closer to the language and means of security, even if the two topics were to remain separate. This coupling may next to the benefits of greater visibility entail risks for the human rights agenda, especially since it has been claimed that conflating the two issues 'reduces policy options to a choice between military intervention and economic sanctions'.[86]

First, it is noticeable that the production of knowledge of North Korea in general, but also with respect to the North Korean human rights situation, is highly securitized and even militarized.[87] The dominant understanding of North Korea is that the country is a problem, both a nuclear and a humanitarian one, which the international community has to solve.[88] The humanitarian discussions are premised on the suffering and exploitation of North Koreans, not on serious research.[89] Hazel Smith, for example, claims that the international community's perception of the North Korean human rights situation is skewed, as it contains 'inconsistencies, misrepresentations, and sometimes downright untruths'.[90] To illustrate this point there are some available statistics and information on

81 Milani 2018, p. 15.
82 Hakala 2018, p. 27.
83 Buzan, Waever and de Wilde 1998.
84 Milani 2018, p. 15.
85 Balzacq 2005, p. 188.
86 Bell and Fattig 2018, p. 34.
87 Smith 2000, p. 593; Choi 2015, p. 14.
88 Choi 2015, p. 1.
89 Ryang 2009, p. 4.
90 Smith 2014, p. 134.

social and economic rights which show that recent charges of, for example, food violations might be exaggerated or at least not evidence-based.[91]

What is more, the human rights record portrayed by the international community often fails to see the country through contextual and historical lenses. The North Korean population has for decades indirectly suffered the consequences of sanctions and the withholding of humanitarian and development aid.[92] The costs of this so-called violence of human rights have been born by the North Korean population.[93] Indeed, as has been noticed, 'human rights critiques of North Korea have served hegemonic interests, cordoning off the North Korean state's alleged crimes for discrete consideration, while turning a blind eye to the violence of human rights as well as the brutality of the world economic system'.[94] The lack of close analysis on North Korean human rights, or even portraying the human rights situation as being as bad as it is, contributes to the creation of 'a febrile policy environment'.[95]

Such a perception about North Korea in turn affects policy-making, narrowing policy options to the goals of national security instruments.[96] There is a danger that the human rights situation is used to instruct policy-making in support of interventionist policies, in 'grand regime change strategy',[97] which has been the case in particular in U.S. foreign policy-making. Indeed, the different U.S. administrations have differed on the linkage between human rights and nuclear talks. Whereas the Clinton regime pursued separation of the topics, the Bush administration had a comprehensive approach where human rights represented part of a larger comprehensive plan of getting rid of dictators.[98] This alternative makes human rights a tool or a weapon in the hands of national security strategists, triggering claims of the 'weaponization of human rights'.[99]

However, it is noticeable that human rights organizations and advocates are also divided on the correct way to meet the North Korean human suffering, not only with respect to the issue of linkage between arms control and human rights, but also in terms of appropriate policies. In particular, U.S. human rights organizations feature both pragmatists, who prefer long-term engagement and working with the current regime on human rights, as well as hardliners, who believe in coercion and more short-term action.[100] To this effect,

91 Id, esp. p. 133 et seqq.
92 Hong 2013, p. 516.
93 Ibid; See also the DPKR National UPR Report, UN Doc. A/HRC//WG.6//19/PRK/1, 30 January 2014, para. 125.
94 Hong 2013, p. 516.
95 Smith 2014, p. 141.
96 Ibid.
97 Feffer 2005.
98 Yeo 2014.
99 Feffer 2006, p. 3.
100 Yeo 2014.

human rights organizations themselves have contributed to the politicisation of human rights.[101]

The dichotomy in human rights advocacy is reflected also in the actions undertaken within the UN. The UN human rights machinery employs a two-track strategy of engagement and accountability for crimes against humanity, the latter objective now being actively pursued.[102] Indeed, the primary goal of the international community next to a general improvement of the human rights situation is to hold the North Korean state leaders accountable for the international crimes committed. In furtherance of this aim, the HRC established a group of independent experts to explore mechanisms of accountability that would be suitable in the North Korean context. This group of two experts issued its report in February 2017,[103] which relies on several accountability strategies that complement each other. It noted that despite practical and political challenges there is a legal base for neighbouring states to prosecute North Korean perpetrators, while an *ad hoc* tribunal remains another viable alternative. The report further calls for efforts to continue to work for a referral by the Security Council to the ICC for the prosecution of high-level cases.[104] While awaiting tangible accountability avenues to open up, the UN has strengthened its Seoul field office with experts on legal accountability and an international repository preparing for a future accountability process of North Korean leaders.[105] The aim is not only to document the abuses but also to gain a better understanding of the North Korean system and to identify those most responsible for it.

There is thus in practical terms an increasing convergence between the aims of nuclear arms control and some of the human rights policies, namely to weaken the North Korean government,[106] or to even achieve regime change. This is due to the fact that international criminal justice is conditioned on an interventionist form of politics.[107] Although human rights actors, whether national or international, rarely explicitly demand regime change, the main line of focus in the UN human rights machinery is nowadays accountability of the main designers behind the state-based violence in North Korea, paradoxically next to the traditional policy of engagement. Holding perpetrators accountable naturally means that the regime would be ousted, and those responsible for crimes put behind bars and effectively removed from power. The consequences of accountability are in effect the

101 Ibid.
102 UNGA Res. 71/202 'Situation of Human Rights in the Democratic People's Republic of Korea', 19 December 2016. China dissociated itself from the consensus. See, Richardson 2017.
103 Report of the Group of Independent Experts on Accountability, UN Doc. A/HRC/34/66/Add.1, 24 February 2017 (hereinafter Accountability Report). The experts were: Ms. Sonja Biserko (Serbia) and Sara Hossain (Bangladesh).
104 Id, para. 68 et seqq.
105 Ibid.
106 Bell and Fattig 2018, p. 40.
107 Rodman 2013, p. 63.

same as regime change, although it might not entail a complete collapse of the North Korean state.

The linkage of human rights to hard security and the agenda of governmental breakdown may thus create greater human rights problems than they try to solve.[108] From a human rights perspective, regime change has rarely proved successful and would most likely entail a continuation of human suffering. Forcing a successful regime change from the outside is extremely difficult as has been witnessed recently in Iraq and Libya, the end-result being more instability and suffering for the ordinary people. As Paul Liem has stated: '"Regime change" is a blunt instrument, allowing no paths to human security other than the collapse of state'.[109] Thus, one should be extremely careful to use human rights as a tool for other foreign and security policy goals, such as nuclear disarmament and non-proliferation.

3.2.2. Production of Legal Effects

Placing the North Korean human rights situation on the Security Council agenda is a serious step[110] which has not only many political implications, but also legal ones. Thus, from an international legal standpoint it is not irrelevant that North Korean human rights have been brought within the realm of the Security Council. In fact, this may provide an opportunity to strengthen existing international legal obligations pertaining to the North Korean human rights situation, or even to create new ones.

The Security Council is able to take decisions that legally bind all the member states of the world organization within the realm of international peace and security.[111] As laid down in article 25 of the UN Charter, the member states of the world organization 'agree to accept and carry out the decisions of the Security Council'. The International Court of Justice has in its case-law held that the decisive factor in determining whether Security Council resolutions are legally binding or not is the language adopted, as it is indicative of the Council's intentions.[112]

In its primary task to maintain and restore international peace and security the Security Council is engaged in a variety of activities, the legal effects of which greatly vary,[113] ranging from situation-specific measures to 'the capacity to enact rules of a general nature when it acts to maintain international peace and security'.[114] Indeed, it has exercised its powers to secure international peace and security so expansively and creatively in the post-

108 Feffer 2005.
109 Liem 2014, p. 124.
110 Kirby 2015, p. 32.
111 Popovski and Fraser 2014, p. i.
112 Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, ICJ Reports 1971, para. 114.
113 Breakey 2014a, p. 51.
114 Wouters and Odermatt 2014, p. 73.

cold war era that many academics as well as states have claimed that the Security Council exercises legislative powers.[115] For example, the creation of the two *ad hoc* international criminal tribunals by UNSC resolutions directly obligating UN member states to cooperate with them has been understood as legislative activity.

The North Korean human rights situation is a country-specific situation, and any adopted measures will remain geographically limited to this particular state. This basic form of Security Council operation does not entail general law-making, but rather the creation of international legal obligations upon the parties to the particular situation.[116] As the Security Council has not yet adopted any specific human rights resolutions on North Korea there are consequently no direct legal obligations placed upon the UN member states on how to address the particular case of North Korean human rights.

Despite the lack of concrete measures by the Security Council, the fact that human rights are discussed as a separate agenda item therein constitutes already a small, but important, step forward. The placement of human rights on the SC agenda will make it easier in the future to proceed with the possible prosecution of North Korean leaders in case a window of opportunity would open, as only one state can refer the matter to the SC debate.[117] While the prospects of achieving consensus between the permanent members of the Security Council on, for example, adopting human rights based sanctions or a referral to the ICC are small at this point, this does not mean that the Security Council action has no legal impact on the situation.

The nascent linkage between human suffering in North Korea and the issue of denuclearization provided for by the Security Council's non-proliferation resolutions in recent years may prove a way to impose international legal obligations on UN member states to protect the human rights of North Koreans. First, UNSC resolution 2397 of 2017 with regard to non-proliferation took decisive action against the practice of forced labour abroad. By deciding that member states must repatriate North Koreans working abroad, as well as deciding that they shall report on the implementation of these measures, the Council clearly indicated the binding nature for all UN member states to put an end to this practice of forced labour. It further noted that repatriation may be prohibited 'subject to applicable national and international law, including international refugee law and international human rights law'.[118] All UN member states with North Korean workers must hence refrain from repatriating North Koreans that may be persecuted back home.

Second, the same resolution imposes international legal obligations upon North Korea, since the Security Council 'demands that the DPRK stop diverting its scarce resources

115 Talmon 2005, p. 128; Popovksi and Fraser 2014.
116 Breakey 2014b, p. 203.
117 Kirby 2015, p. 26.
118 UNSC Res 2397 (2017), para. 8.

toward the development of nuclear weapons and ballistic missiles at the cost of the people in the DPRK'.[119] The Security Council has previously used the word 'demand' in connection to previously existing international legal obligations of the addressee, but it can also be used to create new legal obligations,[120] in this case upon North Korea. From a legal point of view it is also noticeable that the Security Council has with respect to this issue escalated its wording; in previous resolutions it 'regrets the DPRK's massive diversion of scarce resources',[121] whereas it in the latest resolution on non-proliferation it 'demands' North Korea to stop its policy of diverting resources away from its people.

All in all, despite the fact that the Security Council has so far failed to adopt any direct measures with regard to the North Korean human rights situation, the issue has been touched upon in legally binding Security Council resolutions on non-proliferation. The nascent linkage between arms control and human rights can thus serve to strengthen the international legal framework applicable to the North Korean human rights situation, in addition to which specific features of the situation, such as forced labour, may be addressed.

3.3. Future Strategies

The policy options with regard to North Korea are often presented in black and white terms where the policy of engagement is juxtaposed with that of coercion, including regime change, yet there exists a range of mixed options ranging from economic engagement to quiet diplomacy.[122] The lack of knowledge about what tactic actually would relieve the suffering of ordinary North Koreans has generated calls for more research on the linkage between human rights and arms control,[123] but it has also prompted pundits to call for functional diversity,[124] where all the eggs are not placed in the same basket. Allegedly, a diversified approach would have the greatest chance of success, since the international actors involved in North Korea view the country differently and have distinctive operating conditions.[125] However, from the prism of human protection, any forcible regime change policies must be removed from the table.[126]

Whatever policy option is chosen, the old constellation where human rights were completely in the shadow of nuclear arms control is gone. If human rights were before seen as a nuisance to be avoided in order not overload the agenda or jeopardize nuclear talks, the situation today is that few would disregard the question. The human rights momentum

119 Id, para. 23 (emphasis in original).
120 Joyner 2017.
121 UNSC Res. 2375 (2017), para. 25 (emphasis in original).
122 Feffer 2005; Clemens Jr., 2016, pp. 329–352.
123 Cha and Lloyd 2016.
124 Feffer 2005.
125 Ibid.
126 Ibid.

shows that the subject matter is on the agenda to stay, which is shown by the numerous calls on President Trump to discuss human rights at his Singapore meeting with Kim Jong-un in June 2018.[127] Similarly, the embryonic link between arms control and human rights in the Security Council's non-proliferation resolutions attests to the heightened attention to the human suffering of North Koreans. In fact, binding Security Council resolutions on small, but specific, aspects of the human rights problems may help to take the human rights momentum one step further.

Interestingly, the failure of the international community to stop North Korea's nuclearization may tilt the balance from traditional security concerns to non-traditional. There have been claims calling for accepting North Korea as a nuclear state,[128] and to focus on the human rights situation instead.[129] Only in this way could North Korea arguably be socialized into the international community, and accept the obligations of a 'normal state'.[130] A nuclear recognition – whether tacit or explicit- would allegedly widen the opportunities at hand in spite of potential risks.[131] Such an approach would potentially attract North Korea to the negotiating table, shift more money to the ordinary North Koreans, and alleviate human suffering. However, presently there seems to be no indication of such an option being viable among the main stakeholders.

A policy of engagement seems the preferred route as it would allow the possibility to 'create values for key stakeholders'.[132] The route of engagement, however, requires cooperation from the North Korean regime: 'only in the context of ongoing relationships can issues of human rights and economic reform be addressed'.[133] It seems that the extensive human rights criticism has had some effect, albeit very limited, upon the willingness of the North Korean regime to engage with the human rights machinery. Although some feel that no changes have occurred in Pyongyang,[134] the shift to accountability in the UN human rights machinery upset Kim Jong-Un. The calls for a referral of the North Korean situation to the ICC in the COI report was said to have alarmed the North Korean leader to such an extent that Pyongyang abandoned its policy of non-engagement and launched 'a charm offensive'.[135] In fact, when the UN General Assembly's third committee focusing on human rights was drafting its resolution on North Korea in consideration of the COI report in October 2014, a North Korean delegation surprisingly met for the first time with the then UN Special Rapporteur on its country, Marzuki Darusman. Its representatives

127 Miles 2018; Bibbins Sedaca 2018.
128 Lankov 2013, p.252.
129 Bell and Fattig 2018; Ben-Meir 2017.
130 Bell and Fattig 2018, p. 40.
131 Jenkin 2018.
132 Clemens Jr. 2016, p. 329.
133 Feffer 2003, p. 166.
134 Clemens Jr. 2016, p. 121; Bell and Fattig 2018, p. 40.
135 Kirby 2014, p. 3; Fifield 2014.

tried to persuade the committee to drop a reference to the ICC in the draft resolution it was preparing in exchange for an invitation for Special Rapporteur Darusman to visit Pyongyang.[136] When the General Assembly nevertheless went ahead with the resolution containing a mention of referral to the ICC, North Korea withdrew its invitation to the EU's human rights official,[137] and the UN Special Rapporteur was never extended an invitation. Also, other political manoeuvres show that the COI report had an effect upon North Korea; in 2014 it increased its participation in the UPR and accepted 113 recommendations made to it,[138] and it also signed as well as ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.[139] There have also been some 'unconfirmed' reports about improvement of the conditions in detention facilities.[140]

These engagement efforts from North Korea's side should be used for any human rights promotion and improved communication with the regime, which should be headed by the UN. The international community could in particular start to seek progress in human rights issues that are not a threat to the regime, as the issue of disability rights have demonstrated.[141] At the same time extensive human rights pressure is continuously needed, as the tiny threads of optimism do not extend to the crimes of humanity revealed by the world organization.

One must, however, be wary of the fact that the policy of engagement, similarly to the opposite policy of coercion, is predicated on a desire to 'contain North Korea'.[142] The policy of engagement comes with 'specific, pre-set goals', namely to disarm North Korea and transform its political, social and economic system into what the international community sees fit.[143] The North Korean human rights project is not to be seen as a neutral endeavour without strategic goals. It builds on a Western understanding of human rights, with an individualized conception of the right-holder in a social system grounded in free market and capitalism, which is distinct from a traditional socialist understanding of human rights. When the day comes that human rights issues are seriously addressed with and in North Korea the human rights agenda should be decided in an inclusive process where North

136 Bellamy 2014, p. 238; Security Council Report, Monthly Forecast, November 2014 – DPRK (North Korea), 30 October 2014, <www.securitycouncilreport.org/monthly-forecast/2014-11/dprk_north_korea_9.php> (accessed 29 June 2017).
137 'North Korea Says it Has Invited European Union Human Rights Official To Visit', South China Morning Post, 31 October 2014, <www.scmp.com/news/asia/article/1628934/north-korea-says-it-has-invited-european-union-human-rights-official-visit> (accessed 29 June 2017).
138 Report of the Working Group on the Universal Periodic Review, DPRK, UN Doc. A/HRC/27/10/Add.1, 12 September 2014, para. 5.
139 North Korea signed the Optional Protocol 9 September 2014 and ratified it in November the same year.
140 Roberta Cohen 2017.
141 Feffer 2017.
142 Choi 2015, p. 15.
143 Id, p. 17.

Koreans partake in the formulation of their own human rights system, with or without a touch of North Korean 'otherness'.

4. Conclusions

The international community has clearly stepped up its engagement in the North Korean human rights situation with the COI report and the placing of the topic on the Security Council agenda. Awareness of past and present human rights violations has risen, and the vast majority of states seem prepared to condemn North Korea's repressive government for its crimes against humanity. Human rights are now an integral part of the threats posed by North Korea to international peace and security, no longer to be shadowed by concerns over nuclear North Korea. In spite of the progress on the issue of human rights, the international actors involved are divided over how to deal with the multiple challenges. It appears unclear whether human rights and arms control should be dealt with jointly, as well as what the correct policies are in dealing with North Korea.

There are increasing signs of connecting the issues of arms control and human rights, although major powers such as China and Russia reject such a strategy. Such an approach entails both risks and opportunities. The strategy of linkage may increase the visibility of the important question of human rights, and even pave way for new international legal obligations on UN member states pertaining to the North Korean human rights situation. At the same time, linkage entails a risk of securitization, where human rights are at the danger of becoming tools for interventionist policies aiming to overthrow the North Korean regime. What is more, the human rights movement is not an innocent bystander with respect to the question of whether governmental collapse is to be aimed at or not. The recent focus on criminal accountability in the UN human rights machinery is also based upon a de facto removal of North Korean leaders from power, which stands in contradiction to the policy of engagement otherwise pursued.

The human rights momentum which exists today has guaranteed that human rights must be an integral part of any international responses to North Korea. The impact of the pressure upon North Korea since 2014 has triggered small, but important, openings of interaction with the UN human rights machinery. Although no quick improvements in the North Korean human rights situation are in sight, any opportunities for communication must be utilized as far as possible. It is important that there are concerted efforts via the world organization, where possible national responses, such as that of the U.S., stand supportive of communal engagement in order to suppress charges of the politicisation of human rights. It is also crucial that North Koreans are given ownership over their own human rights system, should that day come.

References

Amnesty International, 2017, Amnesty International Report 2016/17. The State of the World's Human Rights.

Balzacq, Thierry, 2005, 'The Three Faces of Securitization: Political Agency, Audience and Context', European Journal of International Relations, vol. 11, pp. 171–200.

Bell, Markus and Geoffrey Fattig, 2018, 'Socializing a Nuclear North Korea: Human Security in Northeast Asia', North Korea Review, vol. 14, pp. 30–48.

Bellamy, Alex J., 2015, 'A Chronic Protection Problem: The DPRK and the Responsibility to Protect', International Affairs, vol. 91, pp. 225–244.

Ben-Meir, Alon, 2017, 'The US has to Accept North Korea as a Nuclear Power', Huffington Post 7 September 2017, https://www.huffingtonpost.com/entry/the-us-has-to-accept-north-korea-as-a-nuclear-power_us_59b169ade4b0d0c16bb52aa0 (accessed 3 September 2018).

Berkowitz, Bonnie, Laris Karklis and Kevin Schaul, 2017, 'How Four Recent Launches Signaled New Leaps in North Korea's Missile Capabilities', Washington Post 28 November 2017, https://www.washingtonpost.com/graphics/2017/world/north-korea-launch/?utm_term=.78896e85ceff (accessed 23 August 2018).

Besheer, Margaret, 2017, 'US Calls Human Rights Debate in UN Security Council', VOA, 18 April 2017, <www.voanews.com/a/us-call-human-rights-debate-in-un-security-council/3816287.html> (accessed 29 June 2017).

Bibbins Sedaca, Nicole, 2018, 'North Korea Is a Human Rights Disaster. Trump Shouldn't Turn a Blind Eye', Foreign Policy 8 June 2018.

Breakey, Hugh, 2014a, 'Parsing Security Council Resolutions. A Five-Dimensional Taxonomy of Normative Properties' in Vesselin Popovski and Trudy Fraser (eds), The Security Council as Global Legislator. Routledge, London and New York, pp. 51–70.

Breakey, Hugh, 2014b, 'Protection on Civilians and Law Making in the Security Council' in Vesselin Popovski and Trudy Fraser (eds), The Security Council as Global Legislator. Routledge, London and New York, pp. 202–223.

Buzan, Barry, Ole Weaver and Jaap de Wilde, 1998, Security: A New Framework for Analysis. Lynne Rienners Publishers Inc, London.

Cha, Victor and Lindsey Lloyd, 'The Security-Human Rights Nexus in North Korea', Foreign Policy 4 March 2016, https://foreignpolicy.com/2016/03/04/north-korea-china-kim-jong-un/ (accessed 28 August 2018).

Cha, Victor D., and David C. Kang, 2004, 'The Debate over North Korea', Political Science Quarterly, vol. 119, pp. 229–254.

Choi, Shine, 2015, Re-Imagining North Korea in International Politics. Problems and Alternatives. Routledge, London.

Chow, Jonathan T., 2017, 'North Korea's Participation in the Universal Periodic Review of Human Rights', Australian Journal of International Affairs, vol. 71, pp. 146–163.

Chubb, Danielle, 2014, 'North Korean Human Rights and the International Community: Responding to the UN Commission of Inquiry', Asia-Pacific Journal on Human Rights and the Law, vol. 15, pp. 51–72.

Clemens Jr., Walter C. Jr., 2016, North Korea and the World. Human Rights, Arms Control and Strategies for Negotiation. University Press of Kentucky, Kentucky.

Cohen, Roberta, 2017, 'A New UN Approach to Human Rights in North Korea: The 2017 Special Rapporteur's Report', 38 North 7 December 2017, https://www.38north.org/2017/12/rcohen120717/ (accessed 3 September 2018).

Cohen, Roberta, 2013, 'North Korea Faces Heightened Human Rights Scrutiny', Foreign Affairs, 21 March 2013.

Crilly, Rob, 2017, 'North Korea Could Kill Almost 4 Million People in Seoul and Tokyo with Retaliatory Nuclear Attack', Telegraph 6 October 2017, https://www.telegraph.co.uk/news/2017/10/06/north-korea-could-kill-almost-four-million-people-seoul-tokyo/ (accessed 28 August 2018).

Enos, Olivia, 2018, 'Backgrounder. Why the U.S. Must Discuss North Korea's Prison Camps at the Trump-Kim Summit', The Heritage Foundation, 1 June 2018, https://www.heritage.org/sites/default/files/2018-06/BG3322_1.pdf (accessed 5 November 2018).

Feffer, John, 2017, 'Human Rights Violator? N Korea Fares Well with regard to Disability Rights', Business Standard 1 October 2017, https://www.business-standard.com/article/international/human-rights-violator-n-korea-fares-well-with-regard-to-disability-rights-117100100128_1.html (accessed 31 August 2018).

Feffer, John, 2006, 'Human Rights in North Korea and the U.S. Strategy of Linkage', 4 Asia-Pacific Journal, vol. 4, pp. 1–16.

Feffer, John, 2005, 'To Link or Not to Link: The Human Rights Question in North Korea. A Way Forward for Human Rights in North Korea', Foreign Policy in Focus 16 December 2005.

Feffer, John, 2003, North Korea, South Korea. US Policy at a Time of Crisis. Seven Stories Press, New York.

Fifield, Anna, 2014, 'U.N. Human Rights Report Says It's Time to Hold North Korea to Account – in Court', Washington Post, 28 October 2014, <www.washingtonpost.com/world/north-korea-launches-campaign-to-avoid-icc-referral-over-human-rights/2014/10/28/724be586-5ddd-11e4-827b-2d813561bdfd_story.html?utm_term=.633d7b5d7e06> (accessed 29 June 2017).

Government of Japan, Headquarters for the Abduction Issue, 2017, 'Abductions of Japanese Citizens by North Korea. For Their Immediate Return', May 2017. https://www.mofa.go.jp/files/000305207.pdf (accessed 28 August 2018).

Haggard, Stephen, and Marcus Noland, 2011, Witness to Transformation: Refugee Insights into North Korea. Peterson Institute for International Economics, Washington DC.

Hakala, Emma, 2018, International Organisations and the Securitization of the Environment in Post-Conflict Western Balkans, Academic Dissertation, Faculty of Social Sciences, University of Helsinki. Unigrafia, Helsinki, Finland.

Hong, Christine, 2013, 'Reframing North Korean Human Rights. Introduction', 45 Critical Asian Studies, vol. 45, pp. 511–532.

Human Rights Watch, 2013, 'UPR Submission: Democratic People's Republic of Korea', 17 September 2013, https://www.hrw.org/news/2013/09/17/upr-submission-democratic-peoples-republic-korea (accessed 30 August 2018).

International Coalition for the Responsibility to Protect (ICRtoP), 2015, 'The Responsibility to Protect and the Democratic People's Republic of Korea', March 2015, <responsibilitytoprotect.org/UPDATE%20DPRK%20QA%20Most%20Recent.pdf> (accessed 28 June 2017).

Jenkin, Graham W, 2018, 'The Strategic Wisdom of Accommodating North Korea's Nuclear Status', The Diplomat 28 March 2018, https://thediplomat.com/2018/03/the-strategic-wisdom-of-accommodating-north-koreas-nuclear-status/ (accessed 28 August 2018).

Joyner, Dan, 2017, 'Legal Bindingness of Security Council Resolutions Generally, and Resolution 2334 on the Israeli Settlements in Particular', European Journal of International Law Talk, 9 January 2017, https://www.ejiltalk.org/legal-bindingness-of-security-council-resolutions-generally-and-resolution-2334-on-the-israeli-settlements-in-particular/ (accessed 5 November 2018).

Kagan, Richard, Matthew Oh and David Weissbrodt, 1988, Human Rights in the DPRK. Minnesota Lawyers International Human Rights Committee. Asia Watch, Washington DC.

Kirby, Michael, 2015, 'The UN Report on North Korea and the Security Council: Security and Human Rights', No 2759 (2015).

Kirby, Michael, 2014, 'Special Section on North Korea. Introduction', 15 Asia-Pacific Journal on Human Rights and the Law, vol. 15, pp. 1–12.

Korea Institute for National Unification, 2015, White Paper on Human Rights in North Korea 2015. Seoul, South Korea.

Lankov, Andrei, 2017, 'Kim Jong Un Is a Survivor, Not A Madman', Foreign Policy 26 April 2017.

Lankov, Andrei, 2013, The Real North Korea. Oxford University Press, Oxford.

Lewis, Jeffrey, 2017, 'Welcome to the Thermonuclear Club, North Korea!', Foreign Policy 4 Sept 2017.

Liem, Paul, 2014, 'Peace as a North Korean Human Right', Critical Asian Studies, vol. 46, pp. 113–126.

Luhn, Alec, 2017, '"Like Prisoners of War": North Korean Labour Behind Russia 2018 World Cup', Guardian 4 June 2017, <www.theguardian.com/football/2017/jun/04/like-prisoners-of-war-north-korean-labour-russia-world-cup-st-petersburg-stadium-zenit-arena> (accessed 20 September 2017).

Milani, Marco, 2018, 'Securitizing Cooperation: Nuclear Politics and Inter-Korean Relations', North Korean Review, vol. 14, pp. 11–29.

Miles, Tom, 2018, 'Don't Forget Human Rights in North Korea, U.N. Says', Reuters 25 April 2018, https://www.reuters.com/article/us-northkorea-missiles-rights/dont-forget-human-rights-in-north-korea-u-n-says-idUSKBN1HW1RI (accessed 8 June 2018).

Nichols, Michelle, 2017, 'China Fails to Stop U.N. Meeting on N. Korea Human Rights Abuses', Reuters 11 December 2017, https://www.reuters.com/article/northkorea-rights-un/china-fails-to-stop-u-n-meeting-on-n-korea-human-rights-abuses-idUSL1N1OB0VU (accessed 28 August 2018).

North Korea Database Center, 2016a, An Evaluation Report of the North Korean Human Rights Situation after the 2014 UN Commission of Inquiry Report. Based on an Analysis of NKDB's Database, Seoul, South Korea.

North Korea Database Center, 2016b, A Prison with no Fence. The Reality of Slave Labor Worse than North Korea. Seoul, South Korea.

Oh, Jennie, 2017, 'U.N. Resolution Calls for Inter-Korean Family Reunions', UPI 19 December 2017, https://www.upi.com/UN-resolution-calls-for-inter-Korean-family-reunions/2831513729477/ (accessed 30 August 2018).

Popovski, Vesselin and Trudy Fraser, 2014, The Security Council as Global Legislator. Routledge, London and New York.

Richardson, Sophie, 2017, 'China, North Korea, and human Rights "Dialogue"', Human Rights Watch 26 January 2017, <www.hrw.org/news/2017/01/26/china-north-korea-and-human-rights-dialogue> (accessed 28 June 2017).

Rodman, Kenneth A., 2013, 'Justice is Interventionist: The Political Sources of the Judicial Reach of the Special Court for Sierra Leone' in Dawn L. Rothe et als (eds), The Realities of International Criminal Justice. Brill, pp. 63–92.

Ryang, Sonia, 2009, 'Going Beyond Security and Enemy Rhetoric' in Sonia Ryang (ed.) North Korea: Toward A Better Understanding. Lexington Books, Lanham, pp. 1–22.

Ryngaert, Cedric and Math Noortmann 2014, 'Human Security and International Law: The Challenge of Non-State Actors' in Cedric Ryngaert and Math Noortmann (eds), Human Security and International Law: The Challenge of Non-State Actors. Intersentia, Cambridge, pp. 1–11.

Scarlatoiu, Greg, 2015, 'Human Security in North Korea', International Journal of Korean Studies, vol. XIX, pp.125–161.

Shin, Sanghyuk S., and Choi, Ricky Y., 2013, 'Misdiagnosis and Misrepresentations. Application of the Right-to-Health Framework in North Korea', Critical Asian Studies, vol. 45, pp. 593–614.

Sinkkonen, Elina (ed.), 2017a, The North Korean Conundrum. International Responses and Future Challenges. FIIA Report 52/2017. Helsinki, Finland.

Sinkkonen, Elina, 2017b, 'Overview of the North Korea Issue' in Elina Sinkkonen (ed.), The North Korean Conundrum. International Responses and Future Challenges, FIIA Report 52/2017. Helsinki, Finland, pp. 23–42.

SIPRI, 2017, 'North Korea's Military Nuclear Capabilities', http://www.sipriyearbook.org/view/9780198811800/sipri-9780198811800-chapter-11-div1-65.xml (accessed 21 August 2018).

Smith, Hazel, 2014, 'Crimes against Humanity? Unpacking the North Korean Human Rights Debate', Critical Asian Studies, vol. 46, pp. 127–143.

Smith, Hazel, 2000, 'Bad, Mad, Sad or Rational Actor? Why the 'Securitization' Paradigm Makes for Poor Policy Analysis of North Korea', International Affairs, vol. 76, pp. 593–617.

Soh, Changrok, 2007, 'Enhancing Human Security in North Korea Through Development of a Human Rights Regime in Asia', Korea Review of International Studies, vol. 10, pp. 3–22.

Talmon, Stefan, 2005, 'The Security Council as World Legislature', American Journal of International Law, vol. 99, pp. 175–193.

Ulferts, Gregory, and Terry L. Howard, 2017, 'North Korean Human Rights Abuses and Their Consequences', North Korean Review, vol. 13, pp. 84–92.

United Nations Development Programme (UNDP), 1994, Human Development Report 1994. Oxford University Press, New York.

U.S. Congressional Research Service, 2018, 'North Korea: U.S. Relations, Nuclear Diplomacy, and Internal Situation, 27 July 2018, https://fas.org/sgp/crs/nuke/R41259.pdf (accessed 28 August 2018).

US Department of State, 2017a, Trafficking in Persons Report 2017.

U.S. Department of State, 2017b, 'Report on Serious Human Rights Abuses and Censorship in North Korea', 26 October 2017, https://www.state.gov/j/drl/rls/275095.htm (accessed 28 August 2018).

Walker, Peter, 2014, 'North Korea Human Rights Abuses Resembles Those of the Nazis, Says UN', Guardian 18 February 2014, <www.theguardian.com/world/2014/feb/17/north-korea-human-rights-abuses-united-nations> (accessed 29 June 2017).

Willis, Ben, 2017, 'How Careful Human Rights Diplomacy is Finally Putting Real Pressure on North Korea', Independent 27 January 2017, <www.independent.co.uk/news/world/politics/how-careful-human-rights-diplomacy-is-finally-putting-real-pressure-on-north-korea-a7548921.html> (accessed 28 June 2017).

Wouters, Jan and Jed Odermatt, 'Quis custodiet consilium securitatis? Reflections on the Law-making Powers of the Security Council' in Vesselin Popovski and Trudy Fraser (eds), The Security Council as Global Legislator. Routledge, London and New York, pp. 71–96.

Yeo, Andrew, 2018, 'In Pursuit of North Korean Human Rights and Denuclearization', Lawfare 18 March 2018.

Yeo Andrew I., 2014, 'Alleviating Misery: The Politics of North Korean Human Rights in U.S. Foreign Policy', 10 North Korean Review, vol. 10, pp. 71–87.

The Future of Åland Islands' Identity

Pertti Joenniemi

Journal of Autonomy and Security Studies,
2(2) 2018, 98–104

http://jass.ax/volume-2-issue-2-Joenniemi/

Keywords

Difference, similarity, identity, internationalization, narratives, ontological security

About the author: Phil. Dr. Pertti Joenniemi has during his long career worked for a number of well-known peace research institutes and academic institutions in the Nordic countries and is the author of a large number of articles and books within this field. He is Senior Adviser to the Åland Islands Peace Institute.

1. A Deviant Case

The aim of this contribution is to zoom in on the identity of the Åland Islands. It is to argue that it is bound to change, not just because of altered external conditions, but above all due to a profound change in the way identities felt to be secure are constructed in the first place. In making my argument, I am drawing on the concept of ontological security, which refers to an actor's ability to 'go on' in everyday life without slipping into a state characterized by a high level of debilitating anxiety. It requires as a secure sense of being that the actor is able to establish and maintain a sense of order and stability in regard to its salient environment (e.g. Giddens 1991).

Of particular importance for ontological security is the development of a coherent biographical narrative of self-identity that locates the actor – such as Åland – in time and place and in relation to salient others. Such narratives provide a core conception of who the self claims to be, and are important as they establish expectations about the nature of the environment within which they exist and provide a sense of orientation for the self in respect of its behavior vis-à-vis others. In addition, ontological security as a secure sense of being requires a certain permanence over time as to relationships with significant others, whether premised in the sphere of international politics on friendship or on enmity. It may also be noted that actors will seek to routinize their conceptions of self-identity, with such routines becoming performative of their sense of ontological security.

It needs to be noted, however, that ontological security is not a state of being, but always a work in progress. It may remain relatively stable even over quite long periods of time, but is nonetheless always open and therefore also in danger of breaking down, particularly in the face of unexpected and challenging events and developments (Kinnvall 2004: 745; Steele 2008: 10–12). Change may also occur in the sense that the constitutive pre-eminence of difference may decline and be substituted by that of being alike.

My claim here is that Åland is at the verge of such a breakdown. Arguably, the constellation that has over quite a long period of time provided the difference crucial for Åland's ontological security is being undermined. This then implies that the Ålanders are faced with the task of re-constructing a secure sense of being not just under significantly altered conditions, but also through a qualitatively different process with similarity and being alike to be foregrounded and with difference becoming less prominent. It is, however, also claimed that the challenge consisting of altered conditions is quite manageable for a variety of reasons, and that it may well be conducive to a situation in which Åland turns out to be rather exemplary and at best even a model to be copied by other actors facing similar challenges in the construction of their ontological security.

2. An Entity In-between

Notably, while securitization and the production of enemy images have traditionally been central in the production of the difference required for the construction of an ontologically secure state of being (e.g. Rumelili 2015), Åland has for historical reasons been compelled to apply a rather different approach. This is mainly because the Islands are neither a state nor an ordinary regional entity within a state. Åland instead stands out as a historical compromise to a territorial dispute between Finland and Sweden with the question of Åland's belonging settled in 1921 by the League of Nations. It was then ruled that the island should remain part of Finland – despite most of the islanders seeing Sweden as their historical 'mother' country – although granted an autonomous standing accompanied by various economic cultural and linguistic rights. In addition, the Islands were to remain demilitarized and neutralized, and in this sense quite extraordinary in nature.

Overall, the League of Nations placed the Ålanders in an ontologically insecure in-between position as an entity out of the ordinary. The League did so by rejecting their demand to join Sweden, but they were at the same time provided with the status of a co-sovereign actor within Finland, as well as granted some rights, i.e. ingredients of difference crucially important for the Ålandic regaining of a self-understanding and identity felt to be ontologically secure. It is as such accepted that the Islands are part of Finland, albeit it is at the same time essential for the Islands that there also remains space for dissimilarity and difference. The self-narratives have pertained to expressions such as Ö-riket (realm of islands) and 'archipelago', thus articulating a special and non-statist form of being, and the routines applied in aspiring for ontological security have revolved around defending their exceptional posture, including efforts of keeping in some crucial regards a distance from mainland Finland.[1]

One important aspect of the specificity of Åland consists of its neutralization and demilitarization. In depicting themselves as something out of the ordinary, the Islands can actually draw upon a considerable historical legacy. Russia's defeat in the Crimean War implied, in one of its aspects, that Åland was elevated above anything merely local in being provided with features of internationalization. The term 'neutralized' used in the 1856 convention between France, England and Russia implied that Åland was exempt from various military activities. Their demilitarized and neutralized standing has on occasions been challenged, but it has nonetheless stood the test of time.[2] Their character as a rather special entity at the sidelines of European power politics has been further strengthened by

1 For more a detailed description of Åland's position vis-á-vis mainland Finland, see for example Teija Tiilikainen (2002).

2 For a comprehensive presentation, see Spiliopoulou Åkermark, Sia, Heinikoski, Saila and Kleemola-Juntunen, Pirjo (2018), *Demilitarisation and International Law in Context*. The Åland Islands. New York: Routledge.

the fact that the islanders have been exempt from compulsory military service, which is still applicable in the rest of Finland.

3. The Islands of Peace

The neutralization and demilitarization of the Islands thus implies that the ordinary relationship between ontological security and physical security has been reversed. It works in an unconventional way, as being included into the sphere of military defense would deprive the islanders of their ontological security, whereas staying outside – or going against military preparations as an 'Island of Peace'– provides them with a secure state of being in identity-related terms. Or stated somewhat differently: the difference required for the construction of an identity felt to be ontologically secure is based on staying aloof from any military activities, with a key aspect of Åland's very being thus consisting of its nature as a neutralized and de-militarized zone located in the middle of the Baltic Sea.

Finland has as such approved the neutralized and demilitarized nature of the Islands and has at times even advocated it as a positive model to be copied in the context of various conflicts and territorial disputes. However, on occasions some quite deviant views have been present in the Finnish debate. In fact, standard power political thinking has been conducive to the argument that Åland actually stands out as a military vacuum and that it might therefore attract offensive military measures in a situation of crisis. Arguably, the neutralization and demilitarization detracts from Finland's territorial security and that this 'problem' should be settled by doing away with Åland's neutralization and demilitarization. In other words, normalcy should prevail in the sense of similarity inside and difference outside. Thus, from the perspective of ontological security, the debate is not just about military security but pertains more generally to Finland's ontological security with the Ålandic difference seen as conflicting with the country's essence as a fully sovereign state, and therefore also a fully secure entity in ontological terms.

These kinds of critical and deviant arguments have been present even on the ministerial level, with the Minister of Defense, Jussi Niinistö, claiming on a number of occasions that a demilitarized Åland stands out as a military vacuum, with this then constituting a potential problem for the defence of Finland. Moreover, it is in his view unfair that the Ålanders are exempted from serving as conscripts and he therefore recommends – for difference to be traded for similarity – that they are included among those for whom civil service is obligatory. The arguments advanced by Niinistö rest in general on the claim that the security situation in the Baltic Sea region has seriously deteriorated and that this then makes it mandatory to reconsider and revise some aspects of Åland's special status.[3]

3 See the interviews with Minister of Defense Jussi Niinistö in Hufvudstadsbladet 28.09.2017 and in Helsingin Sanomat 26.05.2018.

From the perspective of the islanders this implies that one crucial aspect of the difference that provides them with an ontologically secure state of being is under doubt. However, at the same time the discourse also signals that the difference is still there and remains relevant as to its constitutive impact. As the rights and exemptions important in view of the self-understanding of the Ålanders will most certainly remain – in being part and parcel of the rules set by initially by the League of Nations and hence not an internal Finnish question to be settled in the sphere of domestic policies – the outcome of the dispute actually strengthens the identity-related security of the Ålanders, rather than the other way around. One aspect of the difference employed in defining their being in a manner felt to be ontologically secure is still there and remains highly relevant. The general feeling that security in the Baltic Sea area has over recent years deteriorated (despite the region remaining void of any serious political conflicts) implies that there is in fact a discourse in place that continues to furnish the Ålanders with the ingredients required for an ontologically secure state of being.

4. Competition, not Confrontation

While the discourses pertaining to military security continue to furnish the islanders with some aspects of the difference needed in the construction of an identity felt to be ontologically durable, there are other – and increasingly significant – discourses that threaten to undermine their difference-based ontological security. They do so in foregrounding similarity and being alike as the prime ground for identities felt to be ontologically secure, whereas difference tends to be relegated to a secondary concern.

The foregrounding of similarity hinges on how states increasingly come into being not as warfare states as they used to do over a rather long period of time, but as competition states. A central role in such a context is attributed to international cooperation in terms of economic, social and cultural interaction. Crucially, the key constitutive questions are therefore not about staying aloof and drawing on difference, but being present and participating. They pertain to being basically alike and competing within a hierarchic constellation with other like-minded entities instead of trying to stay at the sidelines in order to secure one's difference as sovereign and independent beings (Cerny 2007; Pedersen 2011). The increase in interdependence and constitutive dominance of being alike then also implies that difference declines radically in terms of its constitutive value.

It therefore also follows that a profound change is underway as to the frame employed and the way the Ålanders aspire to gain ontological security. As such, the old world of power politics is still to some extent in place, although it increasingly lacks in credibility as there has during the last three decades been a profound shortage of traditional power political and inter-state wars. The changes then also imply that some of the core ingredients

underpinning Ålandic identity such as neutrality, demilitarization and being exempted from conscription are bound to suffer as to their constitutive impact in ontological terms. It may also be safely argued that the development towards the pre-eminence of competition states at the expense of warfare states is bound to problematize and endanger Åland's ontological security.

It may, however, also be noted that Åland has quite a number of strengths that should make it relatively easy for the Islands to adapt to the more general change in international relations with warfare states turning increasingly into competition states and similarity subsequently growing in priority at the expense of difference in the construction of identities felt to be ontologically secure. Åland is in many ways rather internationalized in the sense of a rich network of contacts and has, among other things, a long tradition of shipping as well as many other types of international activities. It has, in fact, due to quite successful interaction, turned into one of the most prosperous regions in Europe. It has been part of the EU since 1995 (as part of Finland, although to some extent on terms of its own) with this then implying that mainland Finland and Åland are increasingly similar in the sense that they are subject to the same EU-related rules and regulations. They are facing similar external challenges and it then also follows that it is their common interest to downgrade rather than upgrade or preserve extant differences in their mutual relations.

At large, Åland is quite internationalised in character and is in several respects – such as managing immigration – actually ahead of the rest of Finland. It may thus at least in some ways figure as a model in terms of successful adaptation to the growing prevalence of similarity in an integrating world. This then also entails a rather profound change in the construction of identities felt to be ontologically secure, as the parties are bound to draw on above all on being in key regards similar to each other with difference relegated to a secondary concern.

One important move allowing the Islands to be similar, and yet also in some respect different, from the rest of Finland consists of Åland being on its way of gaining a seat of its own in the European Parliament. This step testifies that there are ways and means for constructing an Ålandic identity, felt to be ontologically secure even if the previous pre-eminence of difference becomes undermined and identities have first and foremost to be based on being similar to significant others.

References

Cerny, Philip (2007), Paradoxes of the competition state: the dynamics of political globalization'. *Government and Opposition,* 32(3): 677–97.

Giddens, Anthony (1991), *Modernity and self-identity*. Cambridge: Polity Press.

Kinnvall, Catarina (2004), 'Globalization and Religious Nationalism: Self, Identity, and the Search for Ontological Security'. *Political Psychology* 25(5): 741–67.

Pedersen, Ove, K. ((2011), *Konkurrencestaten*. Riga: Hans Reitzels Forlag.

Rumelili, Bahar (2015), 'Ontological (in)security and peace anxieties. A framework for conflict resolution', in Rumelili, Bahar (ed.), *Conflict Resolution and Ontological Insecurity. Peace Anxieties*. London and New York: Routledge.

Spiliopoulou Åkermark, Sia, Heinikoski, Saila and Kleemola-Juntunen, Pirjo (2018), *Demilitarisation and International Law in Context. The Åland Islands*. London and New York: Routledge Focus.

Steele, Brent (2008), *Ontological Security in International Relations*. New York: Routledge.

Tiilikainen, Teija (2002), *The Åland Islands, Finland and European Security.* Mariehamn: Åland Islands Peace Institute.

Comparing the Åland Islands Precedent and the Nagorno-Karabakh Conflict

Research Note

Kamal Makili-Aliyev

Journal of Autonomy and Security Studies,
2(2) 2018, 106–117

http://jass.ax/volume-2-issue-2-Aliyev/

Abstract

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

Keywords

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

About the author: Dr. Kamal Makili-Aliyev is a researcher at the Faculty of Law of Lund University and a programme officer at the Raoul Wallenberg Institute of Human Rights and Humanitarian Law. He has been studying the Nagorno-Karabakh Conflict from the perspective of international law for almost a decade and is currently fascinated by the idea of the possibility of a resolution of the conflict through tools of autonomy.

1. Introduction

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

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

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

2. Historical Context Considered

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

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

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

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

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

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

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

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

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

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

3. Main Issues

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

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

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

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

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

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

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

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

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

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

4. Discussion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Concluding Remarks

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

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

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

References

Articles, monographs, book chapters

A. L. Altstadt, *The Azerbaijani Turks: Power and Identity Under Russian Rule*, Stanford, California, Hoover Institution, Press, 1992.

James Barros, *The Åland Islands Question: Its Settlement by the League of the Nations*, New Haven and London, Yale University Press, 1968.

Svante E. Cornell, *The Nagorno-Karabakh Conflict*, Department of East European Studies. Report no. 46, Department of East European Studies, Uppsala University, 1999.

Matts Dreijer, *The history of the Åland people. I:1 From the Stone Age to Gustavus Wasa*, Mariehamn, 1986, p. 561.

Gunnar Jansson, "Introduction", in *Autonomy and Demilitarisation in International Law: The Åland Islands in a Changing Europe*, Lauri Hannikainen and Frank Horn eds., Kluwer Law International, 2007.

Kamer Kasim, *The Nagorno-Karabakh Conflict: Regional Implications and the peace process*. – Caucasus International (Ankara, Moda Ofset Basim Yayin), 2012, No:1, Vol.2

Tim Potier, *Conflict in Nagorno-Karabakh, Abkhazia and South Ossetia. A legal appraisal*, The Hague: Kluwer Law International, 2001.

Christopher Rossi, *Nagorno-Karabakh and the Minsk Group: The Imperfect Appeal of Soft Law in an Overlapping Neighborhood*, 52(1) Texas International Law Journal 45-70 (2017)

Markku Suksi, "Prosperity and happiness through autonomy. The self-government of the Åland Islands in Finland", in *Practicing Self-Government. A Comparative Study of Autonomous Regions*, Yash Ghai and Sophia Woodman eds., Cambridge University Press, 2013.

Unto Vesa, "The Åland Islands As a Conflict Resolution Model", in *Territorial Issues in Europe and East Asia: Colonialism, War Occupation, and Conflict Resolution*, Northeast Asian Foundation, 2009, pp. 35–59.

Christopher Zurcher, P*ost-Soviet Wars, Rebellion, Ethnic Conflict, and Nationhood in the Caucasus*, New York: New York University Press, 2007.

Other sources

1975 Helsinki Final Act, https://www.osce.org/helsinki-final-act?download=true

Chiragov and Others v. Armenia [GC], no. 13216/05, ECHR 2015, http://hudoc.echr.coe.int/eng?i=001-155353

International Crisis Group, *Europe Report No. 187, Nagorno-Karabakh: Risking War*, In. 2 (2007).

What is the essence of the institution of demilitarisation?

Reflections upon Completion of the Research Project "Demilitarisation in an increasingly militarised world – International perspectives in a multilevel framework: the case of the Åland Islands"

Research Note

Sia Spiliopoulou Åkermark

Journal of Autonomy and Security Studies,
2(2) 2018, 118–126

http://jass.ax/volume-2-issue-2-Spiliopoulou/

Keywords

Collective Security, Civil, Diplomacy, Military, Militarisation, Multilevel Governance, Åland Islands, Finland, Demilitarisation, Neutralisation, Sovereignty, Proliferation Security Initiative, SUCBAS, Law and Politics

About the author and the project: Sia Spiliopoulou Åkermark is Associate Professor of International Law and Director of the Åland Islands Peace Institute. She has had the pleasure of heading the research project discussed in the present article. Many thanks go to all researchers involved in it over the years, namely Timo Koivurova, Pirjo Kleemola-Juntunen, Saila Heinikoski, Filip Holiencin and Yannick Poullie for all their hard work, support, and for fruitful and pleasant cooperation. Our discussions have been enriched by the generous input and wise questions of the Scientific Advisors of the project: Lauri Hannikainen, professor emeritus; Allan Rosas, Professor, Judge at the EU Court of Justice; Gregory Simons, associate professor/docent, Uppsala Center for Russian Studies; Kenneth Gustavsson, associate professor/docent, Åland museum; Said Mahmoudi, professor emeritus; Päivi Kaukoranta, Director General Legal Affairs and ambassador, Finnish MFA; Matthieu Chillaud, PhD, France/Estonia; Geir Ulfstein, Professor, University of Oslo, Norway; Willy Østreng, professor emeritus, director, former vice-president of the Norwegian Academy for Polar Research. Alison Bailes, guest professor and ambassador (UK) was a member of the advisory board until spring 2016.

1. Introduction: background, research questions and theoretical framework

The three years long research project "Demilitarisation in an increasingly militarised world – International perspectives in a multilevel framework: the case of the Åland Islands" is approaching its completion.[1] This interdisciplinary research effort started in autumn 2015, was largely completed in spring 2018, and has focused on the following main question:

How is the demilitarisation and neutralisation regime of the Åland Islands affected by the many, new and varying modes of military-civilian cooperation in the Baltic Sea?

We worked across various scientific fields including law, politics, European integration, international relations, geopolitics and history, with emphasis on the concepts, the normative frameworks, the institutions and the debates concerning the continuum of demilitarisation – militarisation.[2]

In spite of its role as a test case of a geographically limited but multilaterally based comprehensive territorial demilitarisation and neutralisation, the demilitarisation and neutralisation of the Åland Islands has not attracted much scientific attention.[3] While the autonomous status of the Åland Islands and the Åland solution as an international agreement have received considerable attention in Finnish and international research and are also seen as a useful source of inspiration in efforts for the solution of conflicts, the same cannot be said about the demilitarisation and neutralisation of the islands. The reasons behind this absence of scientific treatment may be multiple, including the difficulty in obtaining research grants for such studies, or a mental state according to which the demilitarisation and neutralisation can be explained only as a case of a "military vacuum" or, more generally, the demilitarisation and neutralisation regime is to be viewed as a deviation and an abnormality in relation to "full state sovereignty".[4]

This absence of scientific treatment of the demilitarisation and neutralisation is all the more remarkable in view of the fact that this legal regime has been in place since 1856 and was expanded through the neutralisation of the islands in 1921. Söderhjelm published his doctoral thesis in French under the title *Démilitarisation et neutralisation des Iles d'Aland en 1856 et 1921* in Helsinki in 1928. The next major work focusing on international

1 The project has been funded mainly by the Finnish Kone Foundation, but it has also received a contribution from the Åland Culture Foundation (*Ålands kulturstiftelse*). The generosity and unbureaucratic ethos of both those institutions have been crucial in facilitating co-operation between the two institutions involved, namely the Åland Islands Peace Institute in Mariehamn and the Nordic and Environmental Law Institute and Arctic Centre at the University of Lapland in Rovaniemi.

2 For more information on the research project as such, see http://www.peace.ax/en/research/research-projects (visited 06.09.2018).

3 Cf. Peter Stearns, *Demilitarization in the Contemporary World.* Urbana: University of Illinois Press, 2013, which focuses on more recent cases of state-wide demilitarisation.

4 Sia Spiliopoulou Åkermark, Saila Heinikoski and Pirjo Kleemola-Juntunen, *Demilitarisation and International Law in Context. The Åland Islands*. Routledge Focus (2018), 3–20 & 96–112.

legal and political aspects appeared in 1997, when Lauri Hannikainen's and Frank Horn's edited volume *Autonomy and Demilitarisation in International Law: The Åland Islands in a Changing Europe* (published by Kluwer Law in the Hague) was released. This volume gave a much-needed update covering most major aspects of the so-called Åland Example, namely the self-government, the cultural and linguistic guarantees, as well as the demilitarisation and neutralisation of the islands. This edited work was written and published after the end of the Cold War and immediately after the entry of Finland and the Åland Islands in the European Union. However, edited volumes are seldom able, and are not intended, to present a coherent argument or a theoretical assessment of an issue. This is, we hope, one of the contributions of the new book entitled *Demilitarisation and International Law in Context. The Åland Islands* (2018). The research grants by the Kone Foundation and the Åland Culture Foundation made possible a long term and comprehensive scientific endeavour which has allowed for the development of new theoretical as well as empirical insights. During the research project it has been possible to engage with wider society through interviews, debate articles and open seminars on Åland, in Rovaniemi, in Helsinki, and elsewhere.[5] Such an endeavour has also created new networks of researchers and institutions from across the world. The final research results of the research project are expected in 2019, well ahead of the centenary of the adoption of the 1921 Convention on the Demilitarisation and Neutralisation of the Åland Islands.

2. Project outcome and results

In order to answer the core research question described in the previous section the project researchers have looked at a broad range of particular aspects, such as the effects of modern technology on the demilitarisation and neutralisation of the Åland Islands; the fusion of civil and military aspects in international relations and activities; and the proliferation of different forms of military-civilian cooperation, often in a non-formalised and non-treaty-based mode. The demilitarisation and neutralisation of Åland has also been studied in comparison to the Svalbard treaty.

The first results were published in 2016 by junior researcher Yannick Poullie, in an article entitled "Åland's demilitarisation and neutralisation at the end of the Cold War: Parliamentary discussions in Åland and Finland 1988–1995".[6] Poullie's abstract explains the thrust of the argument: as a region that is simultaneously demilitarised, neutralised

5 See for instance, Sia Spiliopoulou Åkermark, *Ahvenanmaan demilitarisointi pohjautuu 1850-luvun Krimin sotaan – saariryhmän nykyinen asema hyödyttää Suomea*, Helsingin Sanomat 21.10.2016, http://www.hs.fi/paakirjoitukset/art-2000002926416.html (visited 06.09.2018) and interview with Timo Koivurova in High North News (13.03.2017), http://www.highnorthnews.com/svalbard-treaty-meets-new-challenges/ (visited 06.09.2018).

6 International Journal on Minority and Group Rights Vol. 23, Issue 2 (2016) 179–210.

and autonomous, the Åland Islands represent a unique and long-established case in international law. However, this status was never independent of surrounding events. The early 1990s saw both the end of the Cold War and Finland's accession to the European Union. This paper offers an analysis of the discussion regarding Åland's demilitarised and neutralised status among both Finnish and Ålandic legislators during this period. It finds that Finnish policy-makers saw little need to discuss the matter. Åland's officials continuously criticised the Finnish Defence Forces' presence in the region as excessive and proved unwilling to let the issue rest. Against formal obstacles, they established themselves as a relevant actor, facilitated by differing approaches of political, diplomatic and military officials in Finland. Other sovereign states showed only limited interest in the discussion, making it appear mainly as a domestic issue at the time. However, as we have been able to show throughout the project, this is not the complete picture. For instance, also during the same period of time, in 1992, Estonia registered with the Secretariat of the United Nations a declaration of continuity with regard to the position of Estonia as state party to the 1921 demilitarisation convention, confirming thus both its own commitment as well as the continued validity of the convention itself.[7] Finland and the Russian Federation signed in 1992 a bilateral agreement which replaced the so called Friendship Treaty of 1948, as well as a protocol concerning the succession by the Russian Federation to other bilateral agreements between Finland and the Soviet Union. The 1940 bilateral treaty on the Åland Islands was among those explicitly included in the new protocol.[8]

Project researchers have published several other articles in scientific and peer-reviewed journals. Several texts are available open access. Saila Heinikoski has written mainly in the field of Finnish and European Union security politics.[9] During the project time, Saila Heinikoski, was also able to finalise and defend at the University of Turku her doctoral dissertation in political science entitled *European Borders of Justice – Practical Reasoning on Free Movement within the European Union* (2017).

7 Sia Spiliopoulou Åkermark, Saila Heinikoski and Pirjo Kleemola-Juntunen, *Demilitarisation and International Law in Context. The Åland Islands*. Routledge Focus (2018), 32–33.

8 Finnish Treaty Series 63/1992 *Överenskommelse med Ryska federationen om grunderna för relationen mellan länderna*. Finnish Treaty Series 24/1940 *Treaty between Finland and the Union of Socialist Soviet Republics concerning the Åland Islands*. Many of the documents pertaining to the international status of the Åland Islands can also be accessed in various languages here: http://www.kulturstiftelsen.ax/internationella-avtal (visited 06.09.2018).

9 Saila Heinikoski, "The Åland Islands, Finland and European security in the 21st century", *Journal of Autonomy and Security Studies*, Vol. 1(1) 2017, 7–45). Available Open Access at: http://jass.ax/volume-1-issue-1-Heinikoski/; "Pool It or Lose It? A contrastive analysis of discourses concerning EU military integration and demilitarization in the Baltic sea" (*Journal on Baltic Security*, 2017; 3(1):32–47). Available Open Access at: https://www.degruyter.com/view/j/jobs.2017.3.issue-1/jobs-2017-0002/jobs-2017-0002.xml?format=INT

Timo Koivurova and Filip Holiencin have written an article concerning the demilitarisation of Svalbard/Spitzbergen.[10] They explore the origins, interpretation and practice concerning Article 9 of the Svalbard Treaty (1920, in force 1925) which provides in a rather brief passage:

> Subject to the rights and duties resulting from the 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.

Koivurova and Holiencin examine the dual ambition of a peaceful utilization of the islands while permitting industrial activities for many different states parties. The Svalbard Treaty granted sovereignty to Norway, while trying to keep the islands out of the grip of the great powers. Koivurova and Holiencin discuss the absence of a dispute solving mechanism in the Svalbard treaty as well as the increasing pressures due to commercial and geopolitical interests in the region.

Pirjo Kleemola-Juntunen has been the maritime law expert and postdoc researcher of the project. She has explored the civil-military nature of the Proliferation Security Initiative and issues of passage rights through international straits, focusing on the Åland Strait which is adjacent to the demilitarised and neutralised zone of the Åland Islands along the maritime border between Finland and Sweden.[11] Kleemola-Juntunen has also contributed to a book on maritime law in Finnish and is currently preparing a monograph on the Åland Strait.[12]

Sia Spiliopoulou Åkermark has focused on international legal aspects, military-civilian fusion in what is called Sea Surveillance Co-operation in the Baltic Sea (SUCBAS), the interface between domestic and international law, and in particular on matters pertaining to the demilitarisation in the airspace above the Åland Islands.[13]

---

10 Timo Koivurova and Filip Holiencin, "Demilitarisation and neutralisation of Svalbard: how has the Svalbard regime been able to meet the changing security realities during almost 100 years of existence?" (2017), Polar Record, Vol. 53(2) 131–142.

11 Pirjo Kleemola-Juntunen, "The Right of Innocent Passage: The Challenge of the Proliferation Security Initiative and the Implications for the Territorial Waters of the Åland Islands" in T*he Future of the Law of the Sea: Bridging Gaps between National, Individual and Common Interests*, ed. Gemma Andreone, Springer publisher (2017), 239–269. Available Open Access: http://www.springer.com/la/book/9783319512730; *Straits in the Baltic Sea: What Passage Rights Apply?* in "Regulatory Gaps in Baltic Sea Governance: Selected Issues", ed. Henrik Ringbom, Springer, MARE Publication Series, Vol. 18, 2018, 21–44.

12 Timo Koivurova, Henrik Ringbom, Pirjo Kleemola-Juntunen, *Merioikeus ja Itämeri* (Tietosanoma, 2017); Pirjo Kleemola-Juntunen, *The Åland Strait* (forthcoming, Brill).

13 Sia Spiliopoulou Åkermark, 'The Meaning of Airspace Sovereignty Today – A Case Study on Demilitarisation and Functional Airspace Blocks' 86 *Nordic Journal of International Law* (2017) 91–117; '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', *J Conflict Security Law* 2017 Vol. 22(2), 249–274;

The main and condensed outcome of the project is a book co-authored by three of the project researchers.[14] The book covers in its 128 pages, including a map, tables and illustrations, the more than 162 years old institution of the demilitarisation of the Åland Islands. It offers in a condensed form some of the core elements of the research findings. The authors argue that the demilitarisation and neutralisation of the Åland Islands is a confirmation of, and – at the same time – an exception to, the collective security system in present-day international affairs. Its core idea is that there is no need for military presence in the territory of the islands and that they are to be kept out of military activities. A restricted use of military force has a confidence building effect in cases where competing interests may be so intense that banning the very presence of military force remains the only viable option. The demilitarisation and neutralisation of the Åland Islands does not prohibit completely all military presence and activity, but it introduces considerable limitations to them differentiating between the rights and obligations of Finland and those of other states. While there seems to be general agreement among legal experts concerning the customary law standing and even an objective regime status of the demilitarisation of the islands, an institution that has been in place since 1856, the neutralisation of the islands is much more recent and has only been put to the test once, namely during the Second World War. The demilitarisation is also, paradoxically, both a limitation to and, at the same time, a confirmation of Finnish sovereignty.

The regime of the Åland Islands is thus the result of pragmatic and contingent political compromises where diplomatic and legal tools have precedence over the use of force. As such, the case of the Åland Islands offers an alternative trajectory to the increased militarisation we witness around the world today. Through parliamentary and archival materials, international treaties and academic works, the authors examine the legal rules and institutional structures of the demilitarisation regime. In this process the book reassesses core concepts of international law and international affairs, such as sovereignty and security, and introduces a theoretical view on the empirical case study of the Åland Islands. The book covers legal, political and policy discursive aspects of demilitarisation, international co-operation, defence and security matters around the Baltic Sea with a broader European and global relevance.

'Old rules and new technology. Drones and the demilitarization and neutralization of the Åland Islands' (forthcoming in *Finnish Yearbook of International Law*).

14 Sia Spiliopoulou Åkermark, Saila Heinikoski and Pirjo Kleemola-Juntunen, *Demilitarisation and International Law in Context. The Åland Islands*. Routledge Focus (2018).

3. Concluding reflections

On the basis of the collected wisdom in the project output it can be argued that there are in fact three main lines along which the Åland demilitarisation regime can be observed.

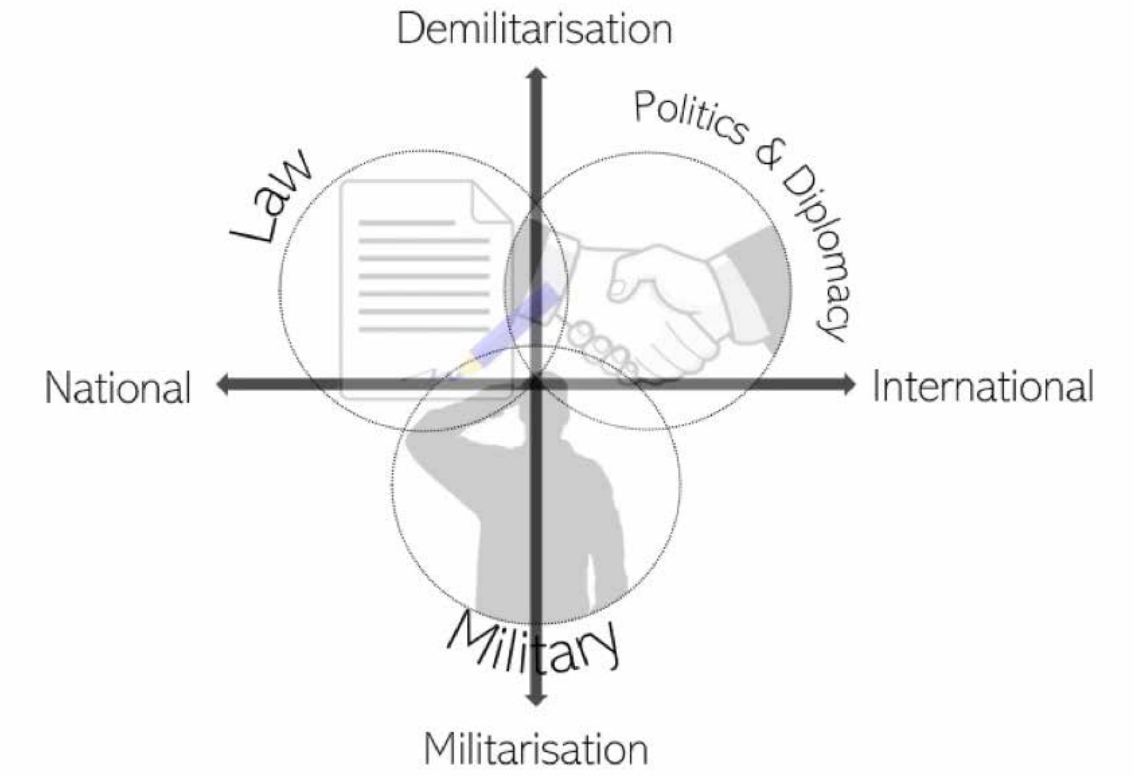
Firstly, there is the continuum of the militarisation – demilitarisation with shifts in time, space and functional areas. While we here speak of a continuum, in law this relationship is understood as binary. Something which is defined as military cannot be at the same time civilian. This distinction is crucial as a precondition of basic rules of humanitarian law and the law of war. Enemies, partaking in the military sphere, can be attacked during war. Civilians and civilian places should be protected are remain outside the reach of hostilities, something which is all too often disregarded in contemporary warfare. Domestically too, the constitutional and other legal rules and decision-making processes differ under conditions of war and conditions of peace.

Secondly, there is the continuum of the national and the international, where international legal rules concerning air or maritime law, the demilitarisation and neutralisation of the Åland Islands as found in a number of international legal conventions and in customary law, or the decisions of the League of Nations Council and the agreement on the Åland Question in 1921, coexist side by side with the constitutional framework of the Åland Islands as part of the Republic of Finland. While representatives from the Åland Islands often highlight the international dimensions of the regime and other states, including Sweden and the Russian Federation, follow discretely developments in the geographical region and subject area, the predisposition of Finnish authorities is that of emphasising the internal and constitutional dimension of the regime. As regards the Finnish view, this is the case in fact ever since the discussions on the so-called Åland dispute in the early 20th century. The first set of actors signal the message ‘don’t forget us; the Åland regime is an international regime’, the second category signals ‘we keep an eye’, while the third one argues ‘this is mainly a matter of internal affairs’.

The above two lines (the militarisation/demilitarisation and the national/international) operate within three distinct forms of exercise of state power and of international affairs. There is legal regulation and multiple legally binding agreements forming a web of rights and obligations which connect different states, national as well as international actors. There are domestic and international politics and diplomacy and, finally, there is military logic and military priorities, so called geopolitics. The demilitarisation and neutralisation of the Åland Islands is thus situated in the area where these three fields meet and interact and is an excellent example of what is often referred to as multilevel governance. The democratic entrenchment of such multilevel governance remains an evolving project.

The above account could be illustrated as follows:

Figure 1. The lines and core elements of the collective security regime of the Åland Islands[15]



The three fields of societal and state decision-making and activity, namely the political-diplomatic, the legal and the military coexist under conditions of delicate balance in the case of Finland, including the Åland Islands.[16] The position of those three fields is not constant over time or in various specific functional areas. Each field holds a different position and level of prominence at each given point of time, including as regards the Åland Example and the demilitarisation and neutralisation of the Åland Islands. The long-term effort of the regime as a whole has been to minimise military presence and activity in the demilitarised zone, moving thereby the military box higher up along the militarisation – demilitarisation axis. It has also been found that while the central Finnish authorities often emphasise and focus on the domestic dimensions of the Åland solution, for instance the constitutional framework and national legislation or institutions, the Ålandic authorities often highlight the international dimensions and the international legal basis of the Åland regime. However, as also discussed (though without focusing on the Åland Islands) by

15 Many thanks go to Hasan Akintug and Lauren Stevens, interns at the Åland Islands Peace Institute, for their assistance in the technical editing of Figure 1. This figure is a new output of the knowledge generated in the project and has not been published previously. © The Åland Islands Peace Institute and the authors.

16 George Maude, "Problems of Finnish Statecraft: The aftermath of legitimation", *Diplomacy and Statecraft* 1:1 (1990), 19–39.

George Maude, different actors within the Finnish state or on the Åland Islands, as well as different experts and academic voices, may hold different positions on the factual or appropriate position and on the descriptive or normative understanding of the three boxes (law, politics & diplomacy, military) along the national – international and militarised – demilitarised axes.[17] While this is indeed the case, the complexity of the Åland Islands regime have prompted seasoned diplomats, such as Finnish ambassador René Nyberg, to compare this regime to a wooden 3D puzzle, easy to disentangle but difficult to put back together again.[18]

17 Ibid. See also Saila Heinikoski, "The Åland Islands, Finland and European Security in the 21st Century", *Journal of Autonomy and Security Studies* 1, No. 1 (2017), 8–45.

18 René Nyberg, "Åland är som en träknut – lätt att plocka isär, men svår att sätta ihop", *Hufvudstadsbladet,* 24 November 2015.

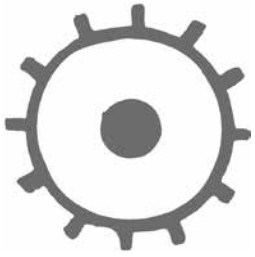
Call for Papers

The editors welcome submissions of manuscripts that focus on, or relate to, the topics and intersections of security, autonomy arrangements, and minority issues. Apart from reviewed articles, JASS also welcomes other kinds of contributions, such as essays, book reviews, conference papers and research related project notes.

Articles should not exceed 12 000 words (excluding references) and be written in British or American English. For other contributions, such as book reviews, conference reports, project- and research notes, the maximum length is 4 000 words. The layout of the text should be in single-column format and kept as simple as possible.

Manuscripts to be considered for Issue I/2019 should be submitted by 15th January 2019. The deadline for Issue II/2019 is 15th August 2019.

Further details on the submission process can be found at:
www.jass.ax/submissions



Journal of
Autonomy and
Security Studies

Journal of
Autonomy and
Security Studies