Spitsbergen or Svalbard: Treaty Area or State Territory

The Archipelago

Halfway between Mainland Norway and the North Pole lies an archipelago surrounded westwards by the Norwegian Sea and the Greenland Sea, eastwards by the Barents Sea and northwards by the Arctic Ocean. There is no comprehensively documented history of the discovery of the archipelago but it is generally accepted that the name Spitsbergen, meaning, "peaked or pointed mountains" is attributable to the Dutchman Willem Barentsz who named the archipelago upon its discovery in 1596. The significance of these mountainous regions in defining the identity of the archipelago remains pertinent as is seen in the Norwegian submission of the archipelago to the tentative list process, a feature that underpins the Norwegian position that the World Heritage Committee of the World Heritage List considers the archipelago for nomination.
Situated north of Norway between 76º 26' and 80º 50' N and 10º 30' and 28º 10' E, the name Spitsbergen is one of many nomenclatures attributed to this archipelagowith names such as "Grumand", "west Island", "west Spitsbergen", "Greenland" being notable yet disused place names for this archipelago. The current term of Svalbard is used by Norway to denote the archipelago as a whole.

This study will attempt to determine any extent to which these two names have shaped the identity and regime governing the archipelago in international law with the aim of identifying any legal foundations or lack thereof that may feature in a name-focused enquiry.

The Governing Treaty

This archipelago is unique due to the fact that since 1920, there has been a treaty governing it, namely, the 1920 Spitsbergen Treaty and this treaty establishes a regulatory authority and framework governing activities in the archipelago.
Without any overarching authority in charge of archipelago after its discovery by Willem Barentsz, the archipelago remained terra nulliusuntil 1920. Rather unlike the standard process of acquiring sovereign over terra nullius namely, acquisition and discernable administration, sovereignty over the archipelago was conferred to Norway by the Spitsbergen treaty of 1920. "Subject to the stipulations" of this treaty,sovereignty over the archipelago was conferred to Norway with qualifications that intended to establish the equality of all contracting parties vis-à-vis exploitation of the resources in the archipelago as well access rights in accordance with Norwegian laws and regulations (Article 2 Spitsbergen Treaty).The core intention of the contracting parties to this treaty was that of establishing a sovereign authority over the archipelago without prejudicing the equal rights of exploitation and exploration of the contracting parties. Here, the drafters' intention was to balance governance and sovereignty to the benefit of all the contracting parties.
During this process, the archipelago, as a whole, was referred to by the assigning of the term "Spitsbergen" to the archipelago. In practical terms, Norwegian sovereignty

over the treaty area in accordance with the Spitsbergen Treaty was manifested through exclusivelegislative, enforcement and adjudicatory authority over the archipelago.

It is arguable that Norway assumed the administration over the Archipelago through the process of conferring sovereignty by proclamation as well as the resultant recognition of this proclamation by the contracting parties (Anderson 2009, 373). Proclamation by way of the Spitsbergen treaty granted sovereignty to Norway over the archipelago and recognition in the sense that the contracting parties (namely, Norway, The United States, Denmark, France, Italy, Japan, The Netherlands, Sweden, Great Britain and its oversees dominion of India)accepted the legality ofNorway's sovereignty in accordance with the Spitsbergen Treaty of 1920.

Consequently, Norway on 17 July 1925(just before the Spitsbergen Treaty came into force in August 1925) constituted the Act on the Svalbard that established, in section 1, the archipelago, Svalbard as part of the kingdom of Norway.
The Spitsbergen treaty elucidates the remit of this sovereigntyas assumed by Norway in providing that governance of the Archipelago falls under the following categories:

a. The Protection of Native Fauna and Flora (Article 2 Spitsbergen Treaty)
b. Taxies duties and charges with respect to mining regulations (Article 8 Spitsbergen Treaty)
c. Demilitarisation of the Archipelago (Article 9 Spitsbergen Treaty)

Names and Sovereignty

The name 'Spitsbergen' albeit referring to the archipelago in the Spitsbergen Treaty of 1920, is also the nomenclature assigned to the largest island with a permanent population. Constituting more than a third of the archipelago in size, it is undeniable that the territorial preponderance of the Spitsbergen Island may have informed the initial choice of the name to apply to the whole archipelago. However, the Spitsbergen Treaty in creating a legal regime governing a naturally occurring entity is not without its tension and may prove necessary in the growing debate about the scope of the treaty's application. This is especially important as this study wishing to investigate if the name of the archipelago used in the constituent treaty and its current name is a contributing factor to the development of the law governing activities in the archipelago.

Naming as Establishing Zones of Authority

Proceeding from the hypothesis that the name used by parties to the Spitsbergen Treaty may be linked to the changing nature of the archipelago in the light of spatial developments in the law of the sea, this study notes how the archipelago was referred to as Spitsbergen in Article 1 of the Spitsbergen treaty.
The treaty area comprises of all the islands between 10º and 35º Longitude East and 74º and 81º Latitude North. In noting some of the constituent islands in terms of size, the archipelago is made of the largest island, Spitsbergen, Northeast land (Nordaustlandet), Barents (Barentsøya), Edge (Edgeøya), Prince Charles Foreland (Forlandet) amongst other smaller ones such as Seven Islands (Sjøaure).

Article 2 of the Spitsbergen treaty in defining Norwegian sovereignty over this archipelago stated the remit covered as being the land territories and the territorial waters of the archipelago.

Article 2 and 3of the Spitsbergen Treaty defines the notion of equality of rights of all the contracting parties. This is developed further in article 7 with respect to the rights of the contracting parties. Here,"with regard to methods of acquisition, enjoyment and exercise of the right of ownership of property including mineral rights" applicable in the aforementioned territories specified in article 1, Norway undertakes to grant all the contracting parties treatment based on complete equality.

Therefore it may be argued that with regards to non-contracting parties to the Spitsbergen treaty, Norway's territorial jurisdiction may be "assumed as unrestricted"(Molenaar 2012, 11).

Stipulations on aspects of economic and administrative matters as well as article 9 and its provisions on demilitarisation define the remit of equitable use. It has been argued that the Spitsbergen Treatyinitially ensured that the nature of sovereignty that may be established by Norway in Norwegian territory (one that is absolute) is of a different hue in comparison withsovereignty in the Spitsbergen treaty area (Anderson 2009, 373-4).

This argument is countered by the fact that in July 1925, before the Svalbard Treaty came into force, the 1925 Svalbard Act declared in the first chapter "Svalbard is part of the Kingdom of Norway." Section 1 defined the Svalbard, the area noted in the Spitsbergen treaty, as "Bjørnøya (Bear Island), West Spitsbergen, Nordostlandet, Barents Island, Edge Island, Kong Karls Land, Hopen, PrinsKarlsForland and all other islands, islets and reefs between 10 ° and 35 ° east of Greenwich length and between 74 ° and 81 ° north latitude". Section 2 of the Svalbard Act then stated that here, Norwegian civil law and criminal law and the Norwegian legislation on the administration of justice applied unless otherwise specified." Based on these rights the royal decree detailing the mining regulation governing the Svalbard was declared less than a month later.

Examining the Svalbard act of 1925, the lack of mention or use of the nomenclature "Spitsbergen" in establishing the remit of Norwegian sovereignty over the whole archipelago might have been an indicator of Norwegian intention in ensuring that the archipelago's assigned name moves away from the terms of sovereignty defined by the Spitsbergen Treaty towards a territory with growing claims to new maritime zones.

One may take the view that whilst the term Spitsbergen may be used to refer to the archipelago and the territorial waters in 1925, the development of the law of the sea and the extension of zones claimable by the archipelago means a changing identity for the archipelago. With the development of more seaward territory linked to the archipelago, the nature of the territorial jurisdiction of Norway, which may have been unrestricted, is in need of redefinition.

Norway takes the view that the legislative and enforcement jurisdiction of Norway in the offshore zones of the archipelago is beyond the remit of the Spitsbergen treaty as is seen in the Norwegian submission to the Commission for the Limits of

TheContinental Shelf (CLCS) in relation to the North-East Atlantic and the Arctic of 2006 (Executive Summary Continental Shelf Submission of Norway in Respect of Areas in the Arctic Ocean, the Barents Sea and the Norwegian Sea 2006).

In this submission, no reference is made to the Spitsbergen treaty or to Spitsbergen but rather there is a move toward the connection of the Norwegian mainland to the continental shelf upon which on finds the archipelago (*id*., pp.9, 14, 16). In arguing that the Spitsbergen treaty "cannot be applied in relation to legal concepts stemming from the modern law of the sea"(Øystein Jensen &SveinVigelandRottem2010, 80), the movement towards the use of "Svalbard" instead of Spitsbergen as a way towards a redefinition of the archipelago and its maritime zones may be arguable.

Furthermore, in response of states such as the Russian Federation, to the Norwegian submission, there is specific use and reference to the archipelago as Spitsbergen and also to the Spitsbergen Treaty (Russian Federation Note Verbale dated 21 February 2007, 2).

However, this hypothesis remains speculative without legal support through sufficient state practice as further investigation into use of these terms highlight that in practice both terms are transposable. The UK, in taking the position that "Svalbard has its own shelf to which the regime of the Treaty of Paris applies" (House of Lords Debates Vol. 477*,* 2 July 1986 quoted byPedersen 2008, 60) in direct contrast to the Norwegian position shows that the name used to define this archipelago does not form a core part of the debate. With regards to Norway's view, the Norwegian1925 Mining regulations' used of both the term Spitsbergen and Svalbard to refer to the treaty area and with regard to contracting parties, states such as Spain in its *note verbale* in response to the Norwegian submission to the CLCS also does the same.

Naming the Scope of Treaty Area

One may take the view that moves beyond the Spitsbergen Treaty to the treaty area itself by linking the names to the scope of the treaty area. The extension of the territorial waters around the archipelago from the 4-nautical miles previously claimed by Norway to 12 nautical miles in accordance with the United Nations Convention on the Law of the Sea Convention (LOSC) and the definition of an exclusive fisheries zone around the archipelago all point towards a more sea-ward identity of the archipelago. An identity best represented by the name Svalbard or "cold shores".

Here, one may argue that the Spitsbergen treaty covers the land territory of the archipelago as well as the territorial waters whereas the name Svalbard incorporates any offshore areas claimable. The fact that at the time of drafting, the Spitsbergen treaty could not anticipate the establishment of maritime zones could be a reason why the treaty is not mentioned by Norway where the maritime zone under consideration is not the territorial sea.

Whereas in the territorial waters, sovereignty essentially means complete authority over the zone, in the case of the continental shelf or a fisheries zone a legitimate claim leads tosovereign rights over the resources found in the zone. This literal interpretation of the Spitsbergen treaty (Pedersen 2011,123), argues Norway, is the

reason why the Spitsbergen treaty cannot apply in these offshore areas (Pedersen 2009, 322-323) and may be used to show a continued use of the term Svalbard Archipelago instead of Spitsbergen.

This view however suggests maritime zones are separate units in the law of the sea. This is a view that is immediately debunked by the fact that a state cannot claim a territorial sea without delineating the baselines. Moreover, case law links the continental shelf to the coasts through the principle of coastal adjacency, the geographic correlation between the coast and the submerged areas off the coastal states land domain (Tunisia v. Libya Case 1982, para. 73) As the basis of a coastal states legal title to the continental shelf's resources, it is a highly unlikely to adopt an approach that separates the concept of the continental shelf from the coastal areas.

Furthermore, regardless of the name used to describe the archipelago there remains increased focus on the maritime areas surrounding the archipelago and the applicable law in relation to the management of activities in these maritime areas. With instances of seizures of vessels in the maritime areas of the fisheries protection zone as declared by the Norwegian government such as the 2011 arrest of the Russian trawler "sapphire II" for dumping of fish in the fisheries protection zone near the archipelago and the resultant furore over Russian allegations of a "provocative act of capture", the issue remains that of determining applicable sovereign rights.

Tensions over the exercise of Norwegian jurisdiction in the offshore areas off the coasts of the archipelago can only be resolved through detailing the maritime areas claimable by the archipelago and the rights of Norway and the contracting parties in accordance thereof

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