

Mr Feam *Minute below.*
Mr Harding *Minute*

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FALKLAND ISLANDS: EXAMPLES OF SHARED SOVEREIGNTY

1. Research Department have produced the attached paper on Spitzbergen and the Aaland Islands.

SPITZBERGEN

2. Summary of present position: under an international settlement negotiated in 1920, Norway was granted sovereignty over the Spitzbergen archipelago, while other countries (notably the Soviet Union) were granted equal rights of economic access. Spitzbergen's real importance is strategic and the Soviet Union has maintained pressure to strengthen her hold under the guise of economic (mainly coal mining) activities.

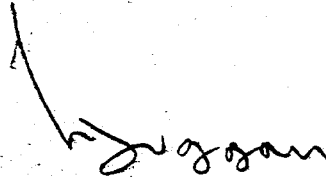
3. Assessment: the granting to Britain of rights similar to those enjoyed by Norway under the Spitzbergen Treaty would probably be unacceptable to Argentina. The Treaty has not settled differences between Norway and the USSR and does not seem to provide a happy precedent.

AALAND ISLANDS

4. Summary of present position: Finland's sovereignty was endorsed, contrary to the Islanders' wishes, by the League of Nations in 1921. But the Islanders were granted home rule and enjoy a large degree of autonomy, reflecting their historically close links with Sweden. The constitutional and administrative arrangements seem to work well in practice. But common Nordic heritage and geographical proximity to both Sweden/Finland played a large part.

5. Assessment: while the Aaland community of 21,000 is nearer in size and poses a similar problem to that in the Falklands, a solution on these lines would go against Islanders' wishes not to have an Argentine administrative presence. There Islanders do not have cultural affinities with Argentina of the sort the Aalanders have with Finland within the Nordic community.

6. Neither example seems to be particularly relevant to the Falklands situation.



27 November 1979

G A Duggan
South America Department

cc: Research Dept

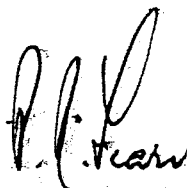
1. This is a useful exercise if only to discard the Spitzbergen and Aaland examples.

2. I agree with Mr Duggan's assessment. The main irrelevance for the Falkland Islands of the Spitzbergen precedent is that it involves no transfer of sovereignty; and for that reason would presumably be of little interest to the Argentines. But Spitzbergen is instructive on the consequences of permitting uncontrolled economic access to third parties. We could expect the Argentines to embark on similarly active salami tactics.

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numbering error by Fearn or
missing page?**

4. On the Aalands, a crucial point - apart from the greater Nordic discipline and commonalty - is that relative equidistance of the Aalands from Finland and Sweden imposes inhibitions on any high-handed action by either party. This is of course not the case on the Falkland Islands.

5. We now need to do more advance homework on the implications (legal, administrative, economic etc.) of a possible lease-back solution for the Falklands. The Department will start work on this, in conjunction with Legal Advisers and Research Department, in order initially to identify the issues requiring more detailed study.



P R Fearn
South America Dept.

30 November 1979

cc
Research Dept.

Thank you. I think this was a useful exercise. If leaseback fails, there are some elements of the Aaland solution that might be worth looking at more closely.

The Embassy Buenos Aires should be sent a copy of the paper and your conclusions.

FALKLAND ISLANDS: EXISTING EXAMPLES OF SHARED SOVEREIGNTY

A. SPITZBERGEN

Norway has sovereignty, but other powers have right of "economic access".

Historical

1. Spitzbergen, a centre for British, Dutch, French, German, Russian, Danish and Norwegian whaling industries since the 18th century, was formally identified by the Norwegian Government as "terra nullius" in 1871. A Norwegian proposal made at this time to annex the archipelago had been rejected by the Norwegian Ministry of the Interior, although Russian was the only one of the interested European powers consulted to raise objections to the proposal. Russia argued inter alia that the Islands' long recognised position as a no man's land available for all states whose subjects wished to make use of its natural resources "best served the international interest".
2. The discovery of extensive coal resources and the wish to exploit them at the end of the 19th century, led to clashes of interest between various European powers (e.g. Russia and Germany in 1899). By 1906, the Norwegian Foreign Ministry felt that, given conflicting interests, there was an increasing need for an international settlement to pre-empt the possibility of any single nation attempting to take possession of the Islands.
3. A Norwegian government initiative in 1907 met with a universally favourable response from the seven interested European powers, who all agreed that ~~(one)~~ a continuation of the existing unregulated circumstances served no-one. In principle, there were no differences: the status of Spitzbergen as "terra nullius" was to remain inviolate; but problems arose in trying to use this framework as the basis of a legal code to

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regulate activities in the archipelago. The final conference of all interested powers convened in Norway in August 1914 was a failure: there were difficulties in producing an acceptable formula (e.g. Britain objected to the idea of a tripartite Norwegian, Swedish, Russian Commission which would have supreme authority over the islands, as it was incompatible with Spitzbergen's status as "terra nullius") and the highly charged atmosphere on the eve of World War I, made a settlement impossible.

4. At the 1919 Paris Peace Conference, Norway with the support of France and the United States, pressed for an urgent resolution of the Spitzbergen problem. There was more than one school of thought in Norwegian government circles but the view that prevailed was that the only workable solution would be to abandon the principle of "terra nullius" and to grant Norway sovereignty over the archipelago.

The 1920 Settlement

5. The settlement reached in 1920, which granted Norway sovereignty, was only a modest success for Norwegian diplomacy, due largely to the strong line taken by Britain in the negotiations of the Big Five (Britain, France, Italy, Japan and USA; both Germany and Russia were excluded; and neutral countries like Sweden, although consulted, were not official participants). Britain, with the strong support of Sweden, secured economic rights in the archipelago on the promise that the treaty should be open to all nations and insisted that the Islands should remain unfortified, with Norway as guarantor of the archipelago's demilitarised status. The Treaty was ultimately accepted by Norway, despite disappointment that Spitzbergen had not been quietly assimilated into the Kingdom, and signed on February 9, 1920. It was agreed that all nations

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should have the right of accession on equal terms once the Treaty had been ratified. Most of the nine signatory states ratified during 1924 and the Treaty came into force in 1925. 28 states have since acceded in addition to the original nine signatories.*

6. The Treaty has not served to remove the archipelago from the theatre of international politics. It made few people happy and some were more dissatisfied than others. But given the strategic sensitivity of the area, it is probable that no other likely settlement would in the long run have had better results.

Soviet Objections

7. The Soviet Union has been the only power to contest the Treaty, and since the 1940s, whenever it has done so seriously, it has felt obliged to invoke arguments which tacitly recognise the Treaty's legality and has clearly been aware of the legal difficulties in its position. It had adhered to the Treaty in 1935 without qualifications or reservation and in 1924 when the Soviet Government declared its intention to do so, it had given an undertaking that it would not in future raise objections "against the Spitzbergen Treaty or against the Mining Regulations provided for therein".

8. During the 1940s the prime concern of the Soviet Union was apparently revision not cancellation of the 1920 Treaty and was aimed expressly at Article 9 of the Treaty which established the demilitarised status of the archipelago. The high point of Soviet demands - the proposal for a Soviet/Norwegian condominium - was raised only once in 1944 and coincided with

/Norway's

* Great Britain (Dominions, Commonwealth, Empire) USA, Denmark, France, Italy, Japan, Norway, Sweden and Netherlands.

Norway's moment of greatest weakness as a government in exile. The request that Bear Island (Bjornoya) should be placed under the exclusive control of the Soviet Union was raised in both 1944 and again in 1946, but on the latter occasion only in a very tentative manner. The Soviet Government at the end of the war, was apparently, prepared to confine its demands for change to Article 9 of the Treaty. So far as is known, there have been no direct representations from the Soviet Union to the Norwegian Government for revision or cancellation of the Treaty since the 1940s. The Russians have however remained very sensitive to military developments that might affect the status of the Islands, and the issue of Norwegian membership of NATO brought a predictable reversal to the old arguments regarding Soviet historical claims. However while Norway was not persuaded to change its mind about NATO, the Norwegian Government has been doubly anxious since joining to ensure that Spitzbergen should not become an area of conflict in the cold war. When in 1965 the siting of an ESRO telemetry station on Spitzbergen brought a renewal of Soviet protest, Norway did its best to meet Russian demands although it stood firm on the issue of sovereignty. The Soviet Union contended that Norway was in breach of the 1920 Treaty. According to this new Article Five also stated that scientific research projects could only be agreed after consultation with all signatories. There is genuine doubt about what the clause actually does specify, but the Norwegian Government rejected the Russian construction and insisted that its authority was supreme in this matter. Russian interest in establishing a legal point was clearly minimal; when Norway invited the Soviet Union to send experts to inspect the site of the communications station the Soviet Union, once satisfied that it was unsuitable for military purposes, soon dropped the matter.

9. The Soviet Union had been a substantial presence on Spitzbergen since the 1930s. (During the 1930s the Soviet Union rapidly expanded its operations, buying up bankrupt and ailing concerns when the depression made the price of Spitzbergen coal uncompetitive.) There were some 25,000 Russians on Spitzbergen in 1979.

10. Under the terms of the Treaty and the Norwegian mining regulations for the archipelago, proprietary rights lapse if a mine is not worked, or becomes worked out. Yet at one abandoned Soviet mining settlement, Soviet representatives have taken advantage of other Norwegian regulations to maintain their proprietary rights; another mine has been leased for 25 years. But coal reserves on Spitzbergen have diminished considerably and only one mine produces coal in comparatively large quantities. In 1974 only the Norwegians and Russians were engaged in coal mining, the latter having 2,000 men mining some 400,000 tons of coal in that year. While no statistics are to hand on the production costs of Spitzbergen coal, it seems that both Norway and the Soviet Union are mining coal, on a subsidised basis, for political and strategic motives. The Norwegian Prime Minister admitted in August 1975 that successive Norwegian Governments had neglected Spitzbergen, while the Soviet Union has pushed ahead with coal mining and oil drilling. Norwegian Governments intended to reverse this trend by stepping up development under a strengthened administration. Oslo however does not seem to have done a great deal about the frequently flagrant disregard, on the part of the Russians, of the limits on their rights, e.g. the power station built at Barentsburg (a mining township with 1,300 Russians) is unlicensed by the Norwegians and the construction and operation of the helicopter base at Cape Heer infringes the Norwegian Royal Air Transport Decree of November 1973.

11. Recently the Soviet Government has been more assertive in claiming special rights in Spitzbergen. During sets of talks with the Norwegians in February 1974 on various legal and scientific matters, and on the status of the new international airport on Spitzbergen, the Russians refused to accept many of the administrative regulations which the Norwegians are empowered to draw up under the treaty, arguing that joint regulations should be issued based on prior bilateral agreements. They also refused to accept that Norwegian aviation regulations should apply to Russian aircraft, and insisted that the proposed airport should have some Russian ground staff. The resulting agreement between Norway and the Soviet Union substantially met Russian requirements for the airport, but the Norwegians refused to conclude any bilateral agreements about the exploitation of natural resources or co-operative scientific work which might affect the rights of the other signatories of the 1920 Treaty.

Law of the Sea aspects

12. Norwegian difficulties have been compounded by their wish to reach agreement with the Russians on the unresolved issue of the median line between Norway and the Soviet Union in the Barents Sea. The area is strategically important to both countries as well as being an important fishing zone and potentially rich in oil. The Soviet Government disputes the application in the Barents Sea of the "median line" principle outlined in the 1958 UN Convention on the Continental Shelf, and favours a line based on converging meridians, akin to the so-called "sector principle" which would place the dividing line considerably further west and give the Soviet Union sovereignty over an additional 155,000 sq kms of continental shelf.

13. The continental shelf issue has also served to demonstrate that the interests of Norway and of the western signatories of the 1920 Treaty are not necessarily identical (Norway claims that the sea bed area outside the four miles of territorial waters around Spitzbergen is part of the unbroken Norwegian continental shelf. The British and United States Governments have also reserved their positions on this Norwegian claim). It has also demonstrated that Norway's NATO allies will have to weigh these differences against the strong probability that failure to support the Norwegian Government against Russian pressure will lead to the progressive erosion and final elimination of the rights of the contracting parties to the 1920 Treaty. Already the Russians have succeeded in establishing in many practical ways, their thesis that Spitzbergen is a kind of joint bilateral operations.

14. It was hoped that the 1920 Treaty would be a guarantee of effective policing measures on the Islands. Having secured equality of economic access, Britain in 1920 was anxious to effect a speedy ratification of the Treaty, as it was felt that British interests were being disadvantaged by the absence of effective law and order. (There were complaints made by UK mining firms to the FO about Norwegian claim jumping, etc). However, the economic decline of the late 1920s rather overtook the urgent need for the authority of the Treaty's mining and other regulations. Today, few of the signatories of the 1920 Treaty are making use of their rights of economic access. Other than the Norwegian and Soviet oil and coal enterprises, French and US firms had concessions to explore for oil in 1974.

15. The severe limitations imposed on Norwegian sovereignty have also undermined the Norwegian Government's authority. The Norwegian concessions to Russian demands are in part a recognition of this fact but also stem from the wish to avoid trouble. The Norwegian Government have been most unwilling to impose sanctions on the Soviets for flouting regulations,

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although there are instances when the Russians have been persuaded to abide by the rules. (In 1976 Moscow abandoned an attempt to increase the number of observers at the airport by arranging "visits", which was in clear infringement of an agreement with Oslo). Most of the difficulties on Spitzbergen stem from the limited nature of the Norwegian Government's authority. The tendency of the Soviets to ignore Norwegian sovereignty, coupled with the amplitude of legitimate rights of access has put Norway in a difficult position. The Norwegian state mining corporation, in recognition of the Island's strategic importance has given few concession areas on Bear Island to other companies. However the Russians (who once demanded the return of Bear Island on the grounds that it did not belong to the Spitzbergen archipelago) are sending increasing numbers of "scientific expeditions" to the Island and their rights entitle them to set up a permanent research station.

Parallels with the Falklands

16. The issue of who should have sovereignty was never a major stumbling block in the Spitzbergen negotiations; the concept of "terra nullius" was universally recognised in principle and the inhabitants of the Islands were itinerant whalers. The issue of sovereignty did not involve the 'human factor' as it does in Falklands, where the wishes of the inhabitants are a primary concern in the British Government's negotiations with Argentina. The Soviet Union, the only government to contest the Spitzbergen Treaty, has been mainly concerned to ensure a continuing Soviet strategic presence in the area. (Although the Soviet Union in representations to the Norwegian government has made passing reference to Russian economic interests).

17. The Spitzbergen Treaty has not proved an entirely satisfactory solution and recent differences over the demarcation of the continental shelf and exploration of the oil and fishing resources of the Barents Seas have lent a new edge to the long-standing conflict of interests between Norway and the Soviet Union.

/B.

B. AALAND ISLANDS

Finland has sovereignty but the Islanders enjoy certain special rights which reflect their close ethnic, cultural and linguistic links with Sweden.

Historical

18. The strategic position of the Aaland Islands in the Baltic, mid way between Sweden and Finland, have resulted in their unavoidable involvement in every conflict for mastery of the Baltic. After the Russo-Swedish war of 1808-9, the Swedes renounced their claim to sovereignty over the Aalands, which became part of the Grand Duchy of Finland (and part of the Russian Empire). The Aalanders however have always considered themselves as part of Sweden (although there is a strong sense of "Aaland identity").

19. When the Russian revolutionaries recognised Finnish independence in December 1917, the Aalanders sent a petition to King Gustav seeking the "reunion of the archipelago with Sweden". Feelings ran high on all sides, and in Sweden itself there was talk of settling the question by force. A deputation of Aalanders raised the problem of their independence at the Paris Peace Conference, and the 'Aaland Question' was the first issue to be brought before the newly established League of Nations in 1920. A League of Nations Commission, sent to Aaland, held a referendum to determine the Islanders' wishes. The Commission reported back to the League that although the desire of the Aalanders was overwhelmingly for union with Sweden, they accepted Finland's claim to sovereignty over the Islands. (The League was only too well aware of the delicacy of the issue in the post war climate of national self-determination, but justified the ruling on the grounds that while a minority had the right to fair and just

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treatment within the State, it could not be permitted to separate itself from or incorporate itself into a country just because it wanted to do so. Such a doctrine would, the League thought, lead to international anarchy).

20. The League undertook to ensure that the rights and interests of the inhabitants were neither damaged nor threatened. The agreement concluded in June 1921 made major concessions to the Aalanders e.g. Swedish would be the official language; immigrants could not vote until they had been resident for 5 years; in choosing a governor for the province the Aalanders were given the right to present a list of candidates to the Helsinki government; Aalanders were given the right of pre-emption in the purchase of land etc. One observer considered that the guarantees given to the Aalanders amounted to "the most far-reaching minority rights enjoyed by any group in Europe".

21. The first Home Rule Law of 1921, which was accepted by the Aalanders after some hesitation, divided legislative competence between Finland and Aaland in such a way that the branches of jurisprudence reserved to Finland were specified in the Law, the unspecified remainder being reserved to Aaland. In the second, revised Home Rule Law of 1951, the spheres of competence of both Finland and Aaland were delineated (see attached papers giving the major provisions of the Home Rule Law 1951, taken from Roy Gronneberg: Island Governments). The Islands are also demilitarised in accordance with the League's recommendations. (Demilitarisation dates from an 1856 treaty between the French, the British and the Russians at the end of the Crimean War).

/Present...

Present practice

22. The arrangements for the government of the Aaland Islands seem to have worked well in practice. One historian of the period has said " . . . having accepted the (League's) decision, both governments conformed to it with Scandinavian honesty". Some emigration in the inter-war period was probably prompted by Finnish chauvinism and there were occasional displays of resentment at the more outward manifestations of Finnish identity (such as the addition of Ahvenanmaa to Aaland on maps and official documents), but on the whole life in Aaland was orderly and quiet. This remains true today. More Aalanders emigrated to Sweden during the 1970's but for economic rather than political reasons, as the Island's farm economy cannot compete with Sweden or Finland. The common language makes Sweden the obvious choice for would be Aaland emigrants. There are some 21,000 people living on the Islands at present.

Parallels with the Falklands

23. The Aaland Islands have obvious similarities to the Falkland Islands in a group of people whose ethnic, cultural and linguistic links are predominantly, if not entirely, with one country, and whose stated preference was to be governed by that country. The rights of the Aaland minority have been fairly extensively safeguarded, but Finnish sovereignty is far from being titular.

24. This 'shared sovereignty' arrangement would seem to have worked well in the Aaland Islands primarily because of the peoples concerned and the geographical proximity of both Sweden and Finland. The existence of a common Nordic labour market is also smoothing out differentials. The Aaland Islands are recognised within the Scandinavian community and the Islands are entitled to appoint one member of the Finnish delegation to the Nordic Council, enabling them to play a part in inter-Scandinavian affairs.

Main provisions of Home Rule Law, 28th December 1951

Matters reserved to Åland included:—

- Internal matters, such as local administration, the police force, building control and physical planning, fire control and electrical installations;
- Financial matters, such as the budgetting and long-term financial planning of the Province of Åland, the property of the Province, and the taxes and charges of the Province;
- Social and Health services. Nursing and veterinary services;
- Culture and Education, such as tuition, art, literature, science sport and youth activities, free training, libraries and museums and care of ancient monuments;
- Industries, such as support for the promotion of industries, questions of employment and the labour market, manufacturing, farming, forestry, fishing, tourism and nature and environmental conservation;
- Roads and traffic, such as the building of roads and bridges, road traffic and motor vehicles, and local navigation;

Finland retains the following major branches of administration and jurisprudence:—

- The Constitutional legislation of Åland;
- Foreign affairs;
- Defence;
- General penal legislation and law administration;
- Family, guardianship and inheritance law, and civil law;

The Åland "Parliament" (Landsting) consists of 30 members, elected for a four year term. The Landsting is led by a body consisting of a Speaker and two Vice-Speakers. Matters are drafted by one of four special committees (the Standing Committee on Laws; the Judiciary and Economic Committee; the Culture Committee; and the Finance Committee) and then submitted to the Landsting for final consideration. Legislative matters are also dealt with in the Standing Committee on Miscellaneous Affairs.

The Åland "Government" (Landskapstyrelse) consists of the Governor (Lantråd) is Chairman and six members chosen by the Landsting for a two-year period. The members of the Landskapstyrelse, like the Lantråd, must resign if they lose the confidence of the Landsting.

The Government of Finland is represented in Åland by the

"County Governor" (Landshövding) who is appointed by the President of Finland after agreement with the Speaker of the Landsting. The Landshövding is the head of the "County Government Board" (Länsstyrelse), which together with the central authorities of the Government of Finland, deals with business with Åland belonging to the general administration of Finland. The main part of this business is of a judicial nature.

Laws passed by the Landsting are called Provincial Laws to distinguish them from laws passed by the Finnish Parliament, and must be submitted to the Finnish President before being made effective. There are only two grounds on which the President may veto legislation — firstly, that the law concerns a matter which falls outwith the legislative competence of the Landsting, or secondly, that the law may endanger the internal or external security of the state.

Åland is financed through a special system of payments and counterpayments which involve the state collecting all direct and indirect taxes in Åland on the same scale as elsewhere in Finland, but in return finances Åland through a block grant, the size of which is fixed by a special body, known as the Åland Delegation. Two members each are appointed by the Province of Åland and the Government of Finland, under the Chairmanship of either the County Governor or another person appointed by the President of Finland in consultation with the Speaker of the Landsting. In addition, the Landsting may collect various small taxes peculiar to Åland.

The Åland Islands are entitled to appoint one member of the Finnish delegation to the Nordic Council, enabling this small island community to play its part in Inter-Scandinavian affairs.

Åland's flag, consisting of a yellow-edged red cross on a blue ground, is a variation of the Swedish flag; and was granted during a Presidential visit in 1955.