

Kristoffer Bjørklund

Norwegian oil policy on Svalbard

The Caltex case 1960–67



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Abbreviations

MFA	The Ministry of Foreign Affairs
MI	The Ministry of Industry
NPN	Norsk Polar Navigasjon

abstract

Norwegian oil policy on Svalbard started in 1961 when the American oil company, Caltex, won claims on the archipelago. When conferring the claims, the Ministry of Industry ignored a statute pertaining to handing in deposit samples. Geological indications of the possibility of oil being present were deemed sufficient. Whether this decision might have foreign political implications, especially vis-à-vis the Soviet Union, was not considered. However, the lenient treatment of Caltex established a precedent. The Svalbard Treaty's principle of non-discrimination created opportunities for other companies. Soon, both the Norwegian company, Norsk Polar Navigasjon, and the Russian company, Arktikugol, started searching for oil on Svalbard.

To the Norwegian Ministry of Foreign Affairs it became evident that the government had to take a more active approach on Svalbard if Norway was to control the situation. This policy was initially challenged by Caltex and the Ministry of Industry, but by the summer of 1963, Norwegian Svalbard policy had taken a new course. From then on the Norwegian government utilized its legislative authority to a much larger degree than before, resulting in several regulatory actions on the archipelago.

KEYWORDS: Svalbard, Spitsbergen, Norwegian oil policy, Norwegian foreign policy, High North

Introduction

Located between 10° and 35° East and between 74° and 81° North, the archipelago of Svalbard is the northernmost part of Norway. Once imagined as the jewel of Norway's Arctic possessions, it was recognized as Norwegian by the Svalbard Treaty of 1920.¹ The treaty subjected the recognition of Norwegian sovereignty to stipulations, which have caused a number of disputes between Norway and other parties to the treaty, some of which remain unresolved. The sovereign's sole right to petroleum deposits on the continental shelf surrounding the archipelago and fishery regulation in the adjacent seas are the main bones of contention. This study analyzes the formative stages of Norwegian oil policy on Svalbard from 1960 to 1967. But notably, current disputes and the dispute analyzed in this study basically follow the same lines: it is a question of the real content of Norwegian sovereignty.

During the scope of time of this study, the American oil company Caltex² was a central figure. Throughout the 1960s it was keenly interested in Svalbard, and although it was not the only company interested, it was the first one. Norwegian oil policy on Svalbard thus largely resulted from the challenges created by Caltex's activity on the archipelago. Moreover, the Norwegian authorities' treatment of Caltex was harshly criticized, giving rise to the phrase "the Caltex case".

This study is in six chapters. In the first chapter, the theme and research questions of the study are introduced, as are theoretical perspectives and research contributions. Chapter two summarizes Svalbard's history from the beginning of the 1900s to the 1960s, focusing on

1 Its official name is "Treaty between Norway, The United States of America, Denmark, France, Italy, Japan, the Netherlands, Great Britain and Ireland and the British overseas Dominions and Sweden concerning Spitsbergen signed in Paris 9th February 1920". For simplicity, "the Svalbard Treaty" or "the treaty" will be used in this study.

2 California Asiatic Oil Company & Texas Overseas Petroleum Company.

the archipelago's position in international law and on foreign political challenges to Norway's sovereignty over Svalbard. Chapters three and four deal with oil interests on Svalbard, and how the Norwegian authorities managed these. The way in which oil interests challenged Norwegian sovereignty and the reaction of the Norwegian authorities to this are focused on. The concluding chapter summarizes the research findings and synthesizes the arguments introduced in the previous chapters.

Research questions

The Svalbard Treaty and the Cold War both strongly influenced Norway's Svalbard policy. According to MP Torstein Selvik (Norwegian Labour Party), "... practically all Svalbard matters have a foreign political aspect, and in many cases the foreign political aspect is dominant".³ The Caltex case was no different. This main aim of this study is to investigate how oil interests threatened to undermine Norwegian sovereignty over the archipelago, and how Norwegian countermeasures reversed this development. As a result, Norway's exercise of sovereignty became strengthened from 1960 to 1967. Within this main framework, three more questions will be asked.

First, the Norwegian oil policy for Svalbard was first drafted at the Ministry of Industry (MI) and was based on how Caltex's modern oil exploration techniques could fit with old regulations designed for coal mining. The result was surprisingly liberal. Based on seemingly little preparatory work, Caltex won the sole right to search for and extract petroleum from areas comprising more than two hundred thousand hectares. How did Caltex manage to obtain such good terms on Svalbard, and can any ulterior motives be found behind the decision?

Second, there were unique bureaucratic conditions at the MI at the beginning of the 1960s. At the same time, the ministry was an important institution for Norwegian Svalbard policy. Did complications and disagreement within the government's administrative machinery complicate the Norwegian authorities' treatment of Caltex, and, if so, which consequences did this have for the administration of Svalbard?

The questions above touch upon different dimensions of Norway's Svalbard policy (foreign, oil, administrative and environmental policy).

3 SA, Closed sitting in the Storting, 25 February 1965, p. 3 (author's translation).

The border lines between these have always been blurred. The third and final issue in this study is thus to examine the relationship between the various dimensions.

Svalbard and the Cold War literature

This study will be informed rather than dictated by theory. But to help identify the place of Norwegian oil policy on Svalbard within the analytical framework of Norwegian Cold War history, I have found it useful to draw upon an article by the historian, Rolf Tamnes, in which he accounts for three theories concerning Norwegian foreign-political decision-making processes during the Cold War: *one-party politics*, *international frameworks*, and *institutional interests*.⁴ The question is whether Norwegian oil policy on Svalbard between 1960 and 1967 can be analyzed within any of these perspectives.

The thesis concerning the perspective of *one-party politics* for the years 1945–1965 is that Norway's foreign policy decision-making process was formulated and concluded within the political apparatus of the Labour Party.⁵ The government was an executive for the Labour Party, while the Storting was demoted to rubberstamping decisions de facto already carried.⁶ A great deal suggests that the *one-party politics* perspective is fairly precise, but that its validity decreased during the 1950s, as intraparty disagreements over security policy took form.⁷ Moreover, Labour lost its majority in the Storting in 1961.⁸ It therefore seems reasonable to assume that the *one-party politics* perspective is not valid for the temporal focus of this study, 1960–1967.

The *international framework* perspective has its theoretical foundation in the realist school of thought, with military strength and industrial and economic potential providing the foundation for understanding a country's foreign political decisions.⁹ Norway was an insignificant international figure whose foreign policy was characterized

4 R. Tamnes, "Ettpartistat, småstat og særinteresser. Tre skoler i norsk sikkerhetspolitikk" [One Party State, Small State and Special Interests. Three Schools of Thought in Norwegian Security Policy], *Nytt Norsk Tidsskrift*, no. 3 (1986): 42.

5 Within Norwegian historiography, this perspective is accredited to Prof. Jens Arup Seip, and is known as the "Seip School of Thought".

6 The Storting is the Norwegian parliament.

7 R. Tamnes, "Ettpartistat ...": 43–44, 48.

8 In Norway, unlike in the UK or the US, elections result in a multiparty system. The Labour Party continued to occupy the executive branch until 1965.

9 Within Norwegian historiography, this perspective is accredited to Prof. Magne Skodvin, and is known as the "Skodvin School of Thought".

by limited manoeuvrability within an international framework. As a small country Norway had limited options for influencing this framework. Therefore, the major theoretical difference between the *international framework* perspective and the *one-party politics* perspective is in the emphasis of the external frame.

The *institutional interest* perspective is very much similar to the political scientist Graham T. Allison's *Bureaucratic Politics Paradigm*,¹⁰ but its academic origins stem from the sociologist Stein Rokkan's theory of corporative pluralism from 1964. In a study of the channels of influence available to Norway's opposition parties, it was concluded that they increasingly promoted their interests through special interest organizations and corporative amalgamations.¹¹ As a continuation of Rokkan's theory, the *institutional interest* perspective suggests that Norway's foreign policy was also affected by national forces outside the Labour Party and the Government's reach.¹² The foreign-political decision-making process became more fragmented due to institutional growth and strengthened sector competence. The ministries became more strongly attached to interest organizations. The Storting's committees were also closely interlinked with special interests. Politicians and bureaucrats identified themselves with segmental interests and increasingly acted to benefit these interests.¹³

However, historians generally agree that the political leadership could largely shape the major issues. Tamnes writes in this regard that "... the Cabinet as college has played an important part in central questions of security policy". The same may be said of the Storting's Enlarged Committee on Foreign Affairs, which was "... composed of the parliamentary elite, [and] upheld national and coordinating perspectives in a different manner ..." than the other committees.¹⁴

It seems plausible, however, to assume that the *institutional interest* perspective can provide some insight into the Caltex case and oil policy on Svalbard – before this became a topic for Norway's political leadership. Extensive special sector interests may have paved the way for a ministry which considered itself to be in a position to challenge

10 G. T. Allison, "Conceptual Models and the Cuban Missile Crisis", *The American Political Science Review*, no. 3 (1969).

11 S. Rokkan, *Stat, nasjon, klasse. Essays i politisk sosiologi* [State, nation, class. Essays in political sociology] (Oslo: Universitetsforlaget, 1987) pp. 95–99.

12 Within Norwegian historiography, this perspective is accredited to Prof. Gudmund Hernes, and is known as the "Hernes School of Thought".

13 R. Tamnes, "Ettpartistat ...": 54.

14 Ibid: 54, 58–60 (author's translation).

other ministries on overlapping policy issues. The Government's and the Enlarged Committee on Foreign Affairs' assessments of the Caltex case are thus important, as both institutions are regarded as possible coordinators of and checks on ministerial and segmental interests.

Perceptions of threats and the "Svalbard System"

The postulate of the *international framework* perspective has been largely accepted by Norwegian historians and political scientists interested in Svalbard. Tor Bjørn Arlov and Arild Moe have for example asserted that foreign and security political conditions always have been decisive for the Norwegian authorities' handling of Svalbard. Norway's prudence has been motivated by the proximity of the Soviet Union and a concern that the Cold War conflict could undermine Norwegian exercise of sovereignty.¹⁵

As a continuation of the above, more specific theses of Norwegian Svalbard policy have been proposed. Tamnes has pointed out an interplay between three types of threats which the Norwegian authorities have faced in matters concerning Svalbard. The *primary threat* was the Soviet Union; Norway could neither counterbalance the Soviets nor establish a policy of deterrence against them in the region. At the same time two *secondary threats* existed, both of which could trigger the primary one: Western activities (*the external secondary threat*), and even some non-official Norwegian enterprises (*the domestic secondary threat*), could threaten Norway's interests by provoking a negative reaction from Moscow. To maintain the status quo and reassure the Soviet Union, the Norwegian authorities were extremely wary of any Western and Norwegian activities. This policy of screening *secondary threats* was most conspicuous in questions of a military potential.¹⁶

Tamnes has also asserted that a decisive factor in the archipelago's "... position in the international system" has been which countries have had an interest in Svalbard. Regarding the scope of time of this study,

15 T. B. Arlov, *Svalbards historie* [Svalbard's History], Oslo, p. 422–26; A. Moe, 1983: *Utenrikspolitiske rammebetingelser og norsk Svalbard-politikk* [Foreign political conditions and Norwegian Svalbard policy], master thesis in political science (Oslo: University of Oslo, 1996), pp. 136–38, 141–49.

16 R. Tamnes, *Svalbard og den politiske avmakt. Striden om flyplass, olje og telemetri-stasjon. 1955–1970* [Svalbard and political impotence. The dispute over the airport, oil and the telemetry station, 1959–1970], Forsvarsstudier, no. 1 (Oslo: Norwegian Institute for Defence Studies, 1992), p. 5.

it is important to be aware that "... the inner circle of the Svalbard System comprised Norway and the Soviet Union". The Cold War and Norway's integration into the Western Bloc allowed for increased Western interest, but because of the threat pattern, Norway limited the magnitude and scope of integration through policies of screening and regional low tension. Western interests remained modest.¹⁷

The historian Geir Lundestad has categorized Europe's place in Moscow's foreign policy in the years after World War II. Countries were divided into different spheres – from inner ones to outer ones – based on their geographical proximity to the Soviet Union and the Kremlin's analysis of the significance of the nation concerned for Soviet security.¹⁸ Norway was in the outer sphere, indicating that Moscow found little reason to involve itself heavily with the country. However, in the Arctic an older Russian screening policy existed and continues to exist, which is not primarily based on military aspects and political consolidation, but on nationalism, Arctic imperialism, scientists, hunters, fishermen, and adventurers: this is where a Russian desire to exclude other powers from the High North has its roots. But the obverse of this is that after Svalbard became Norwegian, a Russian fear surfaced that Norway would expel Russian interests from the archipelago. The desire to exclude others and the fear of being excluded have both increased as the Arctic region gained in strategic importance.¹⁹

Methodological approach

There is much literature on the Cold War and Norway. Research in the last decade has largely been based on the foundation laid by *Norsk utenrikspolitikkens historie* – a six-volume work on the history of Norway's foreign relations. Much of the literature also deals with Svalbard's

17 R. Tamnes, *Svalbard og stormaktene. Fra ingenmannsland til Kald Krig, 1870–1953* [Svalbard and the great powers. From no man's land to cold war 1870–1953], Forsvarsstudier, no. 7 (Oslo: Norwegian Institute for Defence Studies, 1991), p. 9. The chronological scope of Tamnes' "Svalbard System" is 1870–1953. However, based on other historical literature, for example *Norsk utenrikspolitikkens historie*, vol. V, by K. E. Eriksen and H. Pharo (1995), and vol. VI, by R. Tamnes (1997), it is reasonable to contend that Norway and the Soviet Union were the only countries significantly interested in Svalbard up until 1973. (Author's translation.)

18 G. Lundestad, *Øst-Vest-Nord-Sør* [East – West – North – South] (Oslo: Universitetsforlaget, 2000), p. 35.

19 R. Tamnes, *Svalbard mellom Øst og Vest. Kald krig og lavspenning i nord, 1947–1953* [Svalbard in between the East and the West. Cold War and low tension in the north, 1947–1953], Forsvarsstudier, no. 4 (Oslo: Norwegian Institute for Defence Studies, 1987), p. 33.

unique legal status and the various security problems arising on the archipelago.²⁰

But no publications deal specifically with the Caltex case and Norwegian oil policy on Svalbard.²¹ Accordingly, this study is based mainly on primary source material, such as documents from the Ministries of Industry, Justice, the Environment, and Local Government, held at Norway's National Archive (RA). There I also discovered valuable information in the private archive of Norway's former minister of foreign affairs, John Lyng.

The Storting's archive (SA) was also interesting, particularly concerning the aftermath of an explosion which occurred in one of Kings Bay's pits on Svalbard in November 1962: the "Kings Bay accident". Twenty-one miners lost their lives, and the accident caused considerable political turmoil in Norway. The Labour Party Government had to leave office for the first time in almost thirty years, albeit for only twenty-eight days. The significance of the accident to this study is that an investigation of the MI was launched shortly afterwards, producing three reports, two of which deal specifically with the relationship between Caltex and the MI. The reports were debated three times behind closed doors in the Storting. I have also used material from the Enlarged Foreign Affairs and Constitution Committee, the Industry Committee, *Stortingstidende*,²² and several propositions and reports.

The Ministry of Foreign Affairs (MFA) has handed over written material about Svalbard to the National Archive for the period up until 1959. I applied for access to the ministry's material concerning the Caltex case, which was rejected, a sign of the matter's sensitive nature. After appealing I was granted conditional access.²³ The material was interesting, but also posed a methodological problem as the documents deemed relevant had been selected by others. The comprehensive ma-

20 H. Pharo, "Norway during the Cold War: A Historiographical Survey of the Recent Literature", in *The Cold War – and the Nordic Countries*, ed. T. B. Olesen (Odense: University Press of Southern Denmark, 2004), pp. 134–135.

21 Closest are R. Tamnes' study from 1992, *Svalbard og den politiske avmækt. Striden om flyplass, olje og telemetri-stasjon, 1955–1970*, and A. R. Haugan's master thesis from 1997, "Et vernekupp", in which he analysed relations between oil activity and environmental protection. There have also been some contributions from a jurisprudential perspective. Especially Prof. J. Andenæs' article from 1984, "Suverenitet og eiendomsrett på Svalbard", deserves mentioning. There he reproduced a legal opinion he wrote for Caltex in 1962, elaborating on some points. However, though the article provides insight into his legal analysis, it is not historical research.

22 The Storting's official news gazette.

23 "Conditional access" includes a ban on listing documents' journal numbers, quoting written material, or referring to persons still in active duty.

terial I have examined from several archives should nevertheless ensure that the information presented here is reasonably satisfactory.

I have interviewed three people who worked with Norwegian oil policy on Svalbard at the MFA.²⁴ The interviews were useful, but recollection is an active process.²⁵ The interviews have been used as supplements and have been correlated with the written material. The MI's leading civil servants from the 1960s have all died, so the body of informants is unrepresentative, although both the MI's former Secretary General Karl Skjerdal and Principal Officer Harry Lindstrøm have written books about their involvement in the Caltex case.

Because Caltex was an American company and the US was Norway's security storm sail during the Cold War, I have examined the archives of the US State Department at the National Archives and Records Administration (NARA). However, Svalbard was not prioritized by the US which is reflected in NARA's archives which contain few documents about Svalbard.

24 The people interviewed were former executive officers at the MFA, respectively Leif Terje Løddesøl and Carl August Fleischer from the legal affairs department, and Wilum Steen from the 4th political section.

25 K. Kjeldstadli, *Fortida er ikke hva den en gang var* [The past is not as it once was] (Oslo: Universitetsforlaget, 1999), p. 196.

Historical background

Looking back on his career, John Lyng once said that when the phone rang at night when he was minister of foreign affairs (1965–1972), he thought of Svalbard. This illustrates that the archipelago was seen as a challenging arena for Norwegian foreign policy. Soviet interests on the archipelago caused the MFA to act with caution so as not to irritate Moscow. At times other ministries felt that Norwegian Svalbard policy was too restrained. Prime Minister Trygve Bratteli warned against placing too much emphasis on the foreign-political aspects in Norwegian Svalbard policy.²⁶

The challenges associated with Svalbard were complicated. The military-strategic sensitivity of the area, combined with the implications of the Svalbard Treaty, resulted in Norway not having “... free right of disposal over the area”, according to Prime Minister Einar Gerhardsen.²⁷ The Soviet mining communities were not regulated by the Norwegian authorities, and Moscow wanted to transform Norwegian sovereignty into a bilateral arrangement. Norway had also tended to neglect Svalbard for quite some time. In 1925 Prime Minister Johan Ludwig Mowinckel said that Norway should seek to “... avoid the many confining articles”. This was to be achieved by using “... all our efforts to make Svalbard Norwegian”. But Mowinckel’s statement was never translated into action. In 1973, Foreign Minister Dagfinn Vårvik pointed out a “... strongly rooted passivity towards foreign interests on Svalbard – first and foremost Soviet interests

26 R. Tamnes, *Norsk utenrikspolitikkens historie* [The history of Norwegian foreign policy], vol. VI, *Oljealder 1965–1995* [The age of petroleum 1965–1995] (Oslo: Universitetsforlaget, 1995), p. 257. T. Bratteli headed Norway’s government twice: 1971–72 and 1973–76.

27 E. Gerhardsen headed Norway’s government three times: 1945–51, 1955–63, and 1963–65 (author’s translation).

– which has been an unavoidable consequence of the pennywise policy that has been adhered to”.²⁸

The Svalbard Treaty

The interest in oil on Svalbard sheds light on several sensitive aspects of Norway’s sovereignty over the archipelago. To understand fully the complexity of the case, one must familiarize oneself with those parts of the Svalbard Treaty that had repercussions for the Caltex case and Norwegian oil policy on Svalbard.

Before 1920, Svalbard was a *terra nullius* by the standards of international law, a no man’s land. For business ventures this meant that Svalbard was a *terra communis*, a “free-for-all land”. Not only Norwegian companies were active on the archipelago. Thus, before World War I, it was difficult for the Norwegian authorities to assert that Svalbard should be a part of Norway.²⁹

At the same time, however, the burgeoning coal-mining industry on Svalbard led to a realization that regulatory authority was needed. Conflicts between hunters and mining companies, and between employees and employers, demonstrated that any continuation of the *terra nullius* regime would lead to chaos. Moreover, the notion that Svalbard should rightfully become a part of the kingdom grew steadily stronger in Norway. But the international response to such ideas was negative. A Norwegian proposal from 1909, suggesting that Norway should assume certain administrative duties on the archipelago, was rejected by both Stockholm and St Petersburg. The governments in Berlin, London and Paris all supported the Swedish and Russian rejections.³⁰

But the international arena was about to change dramatically in the wake of World War I and the Russian Revolution. In December 1918, just before the Versailles Conference, the Norwegian newspaper *Haalogaland* wrote:

Russia’s interests on Svalbard are gone ... The same can be said of Germany’s. Norway has the lion’s share of stakes on Svalbard ... Norway has suffered like no other neutral country during the war.

28 All quotations in the above paragraph can be found in R. Tamnes: *Norsk utenrikspolitikk ...*, p. 257 (author’s translation).

29 R. Berg: “Spitsbergen-saken 1905–1925” [The Spitsbergen issue 1905–1920], *Historisk Tidsskrift*, no. 4 (1993): 473–474.

30 *Ibid.*: 473.

There has been talk of compensation. We do not want much ... However, the loss could be made up in one certain way: restored recognition of our sovereignty over the ancient Norwegian territory: Svalbard ...³¹

In March 1919 Norway's representative to the peace conference in Paris, Fredrik Wedel Jarlsberg, was instructed by his government to strive to gain sovereignty over Svalbard. Thus in April Wedel Jarlsberg announced before the conference that Norway wanted full sovereignty over Svalbard, but that this would be subject to certain provisions ensuring the rights of foreign nationals. Sweden proposed Norway administer the archipelago on the behalf of the international community.³²

Two factors worked to Norway's advantage: first, the Norwegian proposition had a moral dimension to it. During the war, forty-nine percent of the merchant navy had been destroyed and about 2,000 sailors had lost their lives.³³ In other words, Norway's contribution to the entente's cause had come at a high price. Second, the US adopted a positive stance to Wedel Jarlsberg's proposal. The Swedish proposal was rejected, and in February 1920 a binding international treaty was completed.³⁴

Thereby the signatories recognized "... subject to the stipulations of the present Treaty, the full and absolute sovereignty of Norway ..." over Svalbard.³⁵ This is Article I of the treaty and may be called its general disposition. The other articles consist of special rules pertaining to Article I. Concerning business ventures, the quintessence of the special rules is a ban on discrimination: Norway cannot discriminate – based on nationality – against companies from the signatory powers. Any business activity Norwegian citizens and Norwegian companies

31 *Haalogaland*, 12.4.1918, paraphrased in R. Berg, "Spitsbergen-saken ...", p. 479 (author's translation).

32 R. E. Fife, "Folkerettslige spørsmål i tilknytning til Svalbard og de omkringliggende havområder" [Matters of International Law regarding Svalbard and the surrounding seas], in *Studiehefte – Studietur nord* (Oslo: Utenriksdepartementet, 2007), pp. 18–19.

33 R. Berg, *Norsk utenrikspolitikkens historie* [The history of Norwegian foreign policy], vol. II, *Norge på egen hånd 1905–1920* [Norway on its own] (Oslo: Universitetsforlaget, 1995), pp. 255–256.

34 R. Berg: "Spitsbergen-saken ...": 480.

35 The Svalbard Treaty, Article I.

are allowed to carry out must also be permissible for foreign companies and nationals.³⁶

Article 8 pertains especially to the mining industry and Norway's economic rights. It states:

Norway undertakes to provide for the territories specified in Article 1 mining regulations which, especially from the point of view of imports, taxes or charges of any kind ... shall exclude all privileges, monopolies or favours for the benefit of the State or of the nationals of any one of the High Contracting Parties, including Norway ... Taxes, dues and duties levied shall be devoted exclusively to the said territories and shall not exceed what is required for the object in view.

In other words, Article 8 establishes that Norway is obliged to provide a mining ordinance, regulations for the mining industry, which in turn will ensure no discrimination against Norwegian or foreign nationals in terms of taxes and duties. Taxes levied on Svalbard by the Norwegian authorities may amount to no more than what is required to run the archipelago. Norway's exercise of sovereignty is further limited by Article 9 which states that the archipelago shall be free of naval bases and fortifications, i.e. that no structures may be established to conduct offensive warfare.

Such limitations on the exercise of sovereignty can be compared to servitudes on property ownership rights. A servitude is a device that limits an owner's freedom of decision over his or her own property. Exercising ownership rights is thus restricted, but ownership rights are not desisted from. Such servitudes were introduced in the Svalbard Treaty because Norwegian companies were not alone on Svalbard. Without servitudes, non-Norwegian interests would risk being excluded from any further economic exploitation of the archipelago.³⁷

For a small country like Norway, the Svalbard Treaty is a fairly static frame for Norwegian sovereignty. Norway has under most circumstances obliged itself not to discriminate against the signatory powers. Thus almost all Svalbard policy has a foreign-political aspect. Norway's status as a small country has exposed the treaty's international dimension. This has often resulted in "... Norwegian sovereignty

36 RA, Records of the Ministry of Industry, 1A15211, memo on Svalbard by J. Evensen, 21 March 1963.

37 R. Berg, "Spitsbergen-saken ...": 474-76.

over Svalbard being far more limited than that over the rest of the country".³⁸

That Norway's legal position is not optimal is agreed upon by Norwegians. One fundamental and recurrent problem has been whether it is Norwegian sovereignty or the exceptions from it that shall be valid outside the explicit areas covered by the treaty's stipulation articles. From the perspective of international law, the answer is reasonably clear. That the stipulation articles must be interpreted restrictively is supported both by the preparatory work for the treaty and international law.³⁹

However, international law does not operate in an arena bereft of politics. Between Norway and the Soviet Union especially, there has been disagreement about the prerogative of Norwegian sovereignty. Thus the Svalbard Treaty was subject to a thorough analysis by the MFA in the years after World War II: the conclusion was that the treaty had considerable weaknesses. Norway's Chief of Staff, Lt General Ole Berg, agreed. In March 1948 he pointed out that "... it is unsatisfactory that Norway's sovereignty on Svalbard is so strongly stipulated by all the special rules which the Svalbard Treaty contains".⁴⁰

At the same time it was clear that it would not be possible to change the treaty in any way that would suit Norwegian interests. The signatory powers could veto any proposals. Any Norwegian initiative was thus deemed futile. However, should the treaty be subjected to debate at the behest of any of the signatory powers, Norwegian desiderata would be made clear, the MFA maintained.⁴¹

International power relations after World War I, the creation of the Svalbard Treaty, and Norway's desire to change the treaty thirty years later are interesting, especially in relation to the *international framework* perspective. It seems fair to say that Russia's fall from grace represented a change on the international arena which allowed for an active Norwegian Svalbard policy and sovereignty over the archipelago. When the Norwegian authorities were investigating the possibilities of changing the treaty, Russia had returned in the form of the

38 J. Lyng, *Vaktskifte. Erindringer 1953–1965* [Changing the guard. Memoirs 1953–1965] (Oslo: Cappelen, 1973), p. 252 (author's translation).

39 RA, Records of the Ministry of Industry, 1A152512, memo on Svalbard by Prof. C. A. Fleischer, 27 October 1970.

40 RA, Records of the Ministry of Defence, H-260, Note to the Minister of Defence, 20 March 1948 (author's translation).

41 RA, Records of the Ministry of Foreign Affairs, 2nd Political Section memo on the Svalbard Treaty, 10 June 1947.

Soviet Union. Thus it seemed impossible to achieve any change that would strengthen Norway's position. Power relations within the international arena were decisive in both cases.

The mining ordinance

Concerning economic activities, mining – mostly coal mining – has attracted Norwegians and foreign nationals to Svalbard. Article 8 obliges Norway to provide a mining ordinance, which was implemented by Royal Decree in 1925. Though the mining ordinance is no treaty, since the 1960s there has been disagreement over its legal posture. Whether the ordinance constitutes an internationally binding obligation, or whether it is merely an international obligation to provide a mining ordinance compatible with the criteria listed in article 8, has been at the heart of the debate. There is still no agreement on this matter, and this study will not seek to provide a final answer. But the interpretation of the mining ordinance by the Norwegian authorities was central to the terms of development granted to the oil companies on Svalbard.⁴²

The ordinance establishes that nationals from the signatory powers shall have equal rights to exploit coal, mineral oils, and other minerals. Anyone intending to search for such deposits on private or state land must have a license from the mining commissioner. The Norwegian authorities cannot prohibit searching for deposits.⁴³ Anyone who discovers a mineral deposit gains, in preference to subsequent discoverers, the right to the discovery if a discovery point is created and the mining commissioner is informed thereof. Notification of the discovery must include data about the nature of the discovery and also include a deposit sample. If the data are incomplete, the right to the discovery is retained if the defects are remedied by a date set by the mining commissioner.⁴⁴

If the notification is deemed valid, the discoverer can demand a claim on the discovery point. After notification in the official *Mining Gazette*, the mining commissioner may conduct a survey of the claim.

42 RA, Records of the Ministry of Industry, 1A15211, memo on Svalbard by J. Evensen, 21 March 1963.

43 After 1971, several areas on Svalbard became nature reserves, thereby limiting the areas available for deposit searches. But in the 1960s, searching for minerals was basically a common right.

44 SA, Recommendation for claims on Svalbard, 15 November 1964, p. 1.

If all necessary requirements are met, a claim not exceeding 1,000 hectares may be granted. The mining commissioner's decision can be contested within six months after a claim has been granted. After finalization of the claim, the holder has sole rights to extract all minerals and oils within that claim.

This right is lost if the claim holder, within four years after 1 October the year after the claim has been finalized, does not commence mining operations on the claim to such an extent that in the course of each successive five year period at least 1,500 man-days work are used in mining operations on the claim. However, a dispensation from this may be granted by the mining commissioner. This duty to work the claim and the requirement for a mineral sample are based upon a desire to avoid having large areas occupied for a lengthy period of time for no reason.⁴⁵

Section 19 of the mining ordinance was central to oil exploration on Svalbard. It establishes that "The proprietor of any ground on which a claim has been given is entitled to participation in the operations for not exceeding one fourth." This means that if a company discovers a deposit, for example of oil, on land that belongs to someone else, then that someone can demand to participate in a quarter of the claim.⁴⁶

The Svalbard Act

The Svalbard Act is a Norwegian statute. As a national statute – not a treaty – it differs from the Svalbard Treaty. By virtue of Norway's full and absolute sovereignty over Svalbard, the Norwegian government may implement any law it wishes on Svalbard, but such cannot conflict with the provisions of the Svalbard Treaty. Of relevance to Norwegian oil policy was the section 22 of the Svalbard Act which establishes that "All land which is not assigned to any person as his property pursuant to the Treaty relating to Svalbard shall be State land and as such be subject to the State's right of ownership."⁴⁷ In other words, the Norwegian government has proclaimed itself to be the rightful owner to all land which was not in private ownership when the treaty was signed.

45 Royal Decree, 8.7.1925, Mining Ordinance for Spitsbergen (Svalbard).

46 Ibid.

47 The Svalbard Act of 22 June 1928.

Svalbard and the Cold War

In addition to the legal complication stemming from the Svalbard Treaty, Norwegian Svalbard policy was challenged by power-political relations during the Cold War. Svalbard was affected by the Cold War in two ways: first, in connection with the Arctic ambitions and the race between the superpowers; second, in connection with Norway's increased association with the Western Bloc.⁴⁸

Soviet Svalbard policy

Soviet foreign policy was rather ambitious in the years after World War II, with Moscow actively seeking to exclude other powers from its neighbouring areas. This policy also found expression in the High North. In 1926, the Soviet Union had already codified the sector principle.⁴⁹ This policy was expanded after the war: Moscow would not allow any foreign involvement east of the sector line.⁵⁰

This policy of exclusion also included an expanding military dimension, reflecting that the High North was transforming into an arena in the arms race between East and West. The Kola region was significant for early warning and defence. By the end of the 1950s, the Soviet Northern Fleet was Moscow's biggest maritime force. By the end of the 1960s, it was the core element in the Soviet construction of a strategic submarine and oceangoing fleet.⁵¹ Svalbard's strategic potential had thus increased by the early 1960s. The archipelago was so close to Soviet territory that any Western base there could threaten the Soviet Union's ability to reach the oceans.⁵² This growing strategic sensitivity, combined with historically determined interests, created a clear pattern in Soviet Svalbard policy: Moscow saw it as important to prevent any Western power from gaining a stronger foothold on Svalbard, and wanted Norwegian acceptance for the notion of a privileged Soviet position on the archipelago.⁵³

48 R. Tamnes, *Svalbard og stormaktene ...*, pp. 6, 62.

49 The Russians drew a line from the Finnish-Soviet border of that time, following the meridian, and up to the North Pole. This Sector Decree expressed that all islands east of the line (and west of an equivalent line on the Soviet Union's eastside towards Alaska) were considered part of the Soviet Union by Moscow.

50 R. Tamnes, *Svalbard og stormaktene ...*, p. 6, 62.

51 R. Tamnes, *The United States and the Cold War in the High North* (Oslo: Ad Notam, 1991), pp. 55, 106, 202.

52 R. Tamnes, *Svalbard og stormaktene ...*, pp. 63–65.

53 O. G. Skagestad, *Norsk Polarpolitikk* [Norwegian Polar policy] (Oslo: Dreyer, 1975), pp. 67–68.

US Svalbard policy

The US security analysis of Svalbard can in the main be considered the opposite of the Soviet stance. The US ascribed less importance to Svalbard than did the Soviets because the archipelago was, quite simply, further away from US territory. The main focus of US Svalbard policy was to prevent the Soviets from strengthening their position and use the archipelago as a launch pad for offensive operations. As the National Security Council stated in autumn 1949: “United States security interests in the Spitzbergen archipelago lie in supporting Norway in maintaining her sovereignty over these islands and preventing their military use by a hostile power”. This did not mean, however, that the US was prepared to go to war over Svalbard. During February–March 1949, possible responses in case of a Soviet thrust on the archipelago were discussed in Washington. Several options were considered, but the US authorities dismissed the idea of overtly declaring war. This illustrates Svalbard’s position as a vulnerable outpost.⁵⁴

The point of departure for US Svalbard analysis remained much the same up until the 1970s. However, the arms race in general and the continued expansion of the Kola bases in particular did contribute to an increase in Svalbard’s potential for early warning and weather forecasting. In this context the US thought there was a need for strengthened surveillance of Soviet activities on Svalbard. Thus in March 1971, in a conversation with the Norwegian minister of justice, the American ambassador to Norway, Philip Crowe, suggested establishing a mail office in Barentsburg. It would be “... invaluable as a means of keeping tabs on what the Russians are doing up there”.⁵⁵

A useful measure of both American and Soviet interest in Svalbard was the archipelago’s location and accessibility. By and large the potential of Svalbard’s location, meaning the archipelago’s possible strategic value, was considered limited. The same can be said of Svalbard’s accessibility. This resulted in both the US and the Soviet Union being satisfied with denying the other side a stronger foothold on the archipelago. Both countries therefore approached Svalbard politics from a perspective of denial. Moscow was, however, somewhat more inter-

54 R. Tamnes, *Svalbard og stormaktene ...*, p. 67.

55 NARA, College Park, Maryland, USA, Record Groups 59, Records of the Department of State, Box 2513, POL 32-6 NOR, Minutes from conversation between Ambassador Crowe and Minister of Justice Endresen.

ested than Washington because of the archipelago's proximity to Kola and historical Russian attachments to the High North.⁵⁶

Norwegian Svalbard policy

The Norwegian government was not very interested in Svalbard. Insofar as Norway had a Svalbard policy – which did not become conspicuous until the mid 1960s – its goal was to secure Norwegian sovereignty and preserve low regional tension. Realizing this was possible as long as the superpowers never developed any greater interest in the archipelago. There was, however, little room for manoeuvre on the Norwegian side. The Norwegian government feared that Svalbard's strategic potential could cause the superpowers to increase their involvement. To counter such developments, Norwegian Svalbard policy was, to a larger extent than usual in Norwegian security policy, characterized by a reassurance of peaceful intentions towards the Soviet Union and a screening of Western powers.⁵⁷ Notably, this resulted in a most central axiom of Norwegian post-World War II security policy not being applied to Svalbard: that allied assistance had to be prepared at times of peace to be effective at times of war.⁵⁸ The combination of Norway's policy of preserving low tension, and a lack of interest in Svalbard amongst Norwegian politicians, resulted in a Svalbard policy which Rolf Tamnes has labelled a "non-policy", meaning a state involving the Norwegian authorities not undertaking independent initiatives on the archipelago, and only reacting to developments from overseas which would have implications for Svalbard. This "non-policy" continued unchallenged until the 1960s.⁵⁹

Why did Norwegian Svalbard policy take such a cautious approach? By the end of World War II, Norway and the Soviet Union were the only nations possessing active interests in Svalbard. This created a clear asymmetrical power pattern disadvantaging Norway, resulting in a potential pressure on Norway to accommodate the Soviet Union. The Soviets also had large coal-mining settlements on Svalbard. Thus the archipelago was more physically accessible to Soviet interests. During

56 R. Tamnes, *Svalbard mellom Øst og Vest*, p. 31.

57 See also R. Tamnes: "Integration and Screening. The Two Faces of Norwegian Alliance Policy, 1945–1986", in *Forsvarsstudier*, 1987. To prevent the secondary threat, the Western powers, from igniting the primary threat, the Soviet Union, it was deemed wise to limit Norwegian participation in some of NATO's integrated military collaboration. This policy has been called "screening".

58 R. Tamnes, *Svalbard mellom Øst og Vest*, p. 35–36.

59 R. Tamnes, *Svalbard og stormaktene ...*, p. 68.

conversations with Danish and Swedish colleagues in March 1948, Norway's Prime Minister Gerhardsen summed up the situation thus: "The Russians have a large workforce up there, and we know that there is no long stretch between a worker's and a soldier's uniform".⁶⁰

In addition, Norwegian-Soviet relations concerning Svalbard got off to a most troublesome start at the end of World War II. The Norwegian government was deeply concerned when Soviet Foreign Minister Vyacheslav Molotov during a night-time meeting with his Norwegian counterpart, Trygve Lie, boldly suggested Svalbard be subject to joint Soviet-Norwegian administration, and that Norway turn over sovereignty of Bear Island to the Soviet Union. Molotov emphasized the notion of a historically privileged Russian position on the archipelago, and claimed the Svalbard Treaty did not attend to these interests. However, it was Svalbard's maritime strategic potential that received the lion's share of attention: the Soviet Union was surrounded - the only way out was to the north.⁶¹

The reserved reaction by Britain and the US made Norway's position acute. Svalbard's strategic value was close to nil for the Western powers in 1944. This disengagement contributed to narrowing Norway's room for manoeuvre by accentuating the asymmetrical relations between Norway and the Soviet Union. Under pressure, the Norwegian government opened up for a deal involving joint defensive responsibilities on Svalbard. But as a sign that other security issues were of greater concern to the Kremlin than the future destiny of Svalbard, Moscow did not follow up on the Norwegian signals.⁶²

Not until the autumn of 1946 did Molotov address the topic again. By then, however, the circumstances had changed. The Cold War had started to imprint itself on East-West relations. The Norwegian authorities, headed by the Storting's majority, were increasingly scared by ideas of military cooperation that could lead Norway into the Soviet camp. Norway's freedom of action was also greater: Soviet forces, which had liberated Finnmark, the northernmost county of mainland Norway, had returned home; the Norwegian government was no longer in exile; and the Western powers were showing more interest

60 Quoted in R. Tamnes, *Svalbard mellom Øst og Vest*, pp. 18–20 (author's translation).

61 O. Riste, *Svalbard-krisen, 1944–1945* [The Svalbard Crisis 1944–1945], FHFS-Notat, no. 5 (Oslo: Forsvarshistorisk forskningssenter, 1981), pp. 1–3.

62 S. G. Holtmark, *Høyt spill. Svalbardspørsmålet, 1944–1947* [High stakes. The Svalbard issue 1944–47], *Forsvarsstudier*, no. 1 (Oslo: Norwegian Institute for Defence Studies, 2004), pp. 83–85.

in their small-state allies from World War II. Thus the Norwegian government dared reject military cooperation with the Soviets on Svalbard. However, in July 1947, to counter Soviet criticism of the Norwegian rejection, a Norwegian garrison that had been in place on the archipelago since the war was withdrawn. Following up rejections with reassuring actions would become a rather usual element in Norwegian Svalbard politics.⁶³

In Norway, this so-called “Svalbard Crisis” in part made the MFA shy away from engaging in any active Svalbard policy. The events had demonstrated the difference in power between Norway and the Soviet Union, and caused Norwegian Svalbard policy to take a distinctly cautious approach for the next two decades. Especially Article 9 in the Svalbard Treaty, concerning limitations on military presence, was interpreted sacrosanctly. During the early days of the Korean War, one of the MFA’s leading civil servants, Ambassador Rolv Andvord, summed up the situation:

The situation is now that, almost as if by a miracle, we have quietly escaped an utterly embarrassing and tough situation as far as this archipelago is concerned, and there are very strong reasons to believe that any kind of action by Norway to initiate any military enterprise on Svalbard will be used by the Soviet Union to readdress this exceedingly delicate issue, which could easily lead us into vast difficulties.⁶⁴

The Norwegian authorities thus decided that it was in the nation’s interest to aspire to the conditions of the 1920s on Svalbard when the treaty was signed: low great power interest. It became important not to draw Moscow’s attention. From the end of the 1940s and up until the beginning of the 1960s, the Norwegian government was therefore focused sharply on the treaty’s stipulations.⁶⁵ It may be said that

63 K. E. Eriksen, “Svalbardspørsmålet fra krig til kald krig” [The Svalbard issue from war to Cold War], in *Historiker og veileder: Festskrift til Jakob Sverdrup* [Historian and tutor: Festschrift for Jakob Sverdrup], eds. T. Bergh and H. Pharo, (Oslo: Tiden, 1989), pp. 149–51.

64 K. E. Eriksen and H. Pharo, *Norsk utenrikspolitikkens historie* [The history of Norwegian foreign policy] vol. IV, *Kald krig og internasjonalisering 1949–1965* [Cold war and internationalization 1949–1965] (Oslo: Universitetsforlaget, 1995), pp. 371–72 (author’s translation).

65 K. E. Eriksen, “Svalbardspørsmålet ...”, p. 155.

Norway chose to "... strongly limit its exercise of sovereignty on the archipelago".⁶⁶

Svalbard, the North Atlantic Treaty and SACLANT

As with the situation prior to the Svalbard Treaty of 1920, developments on the international arena led to a strengthening of Norwegian sovereignty over the archipelago from the late 1940s. As Norwegian security policy became more firmly attached to the West, the question of whether Svalbard should be a part of the Western bloc arose. For the Norwegian authorities it was important that participation in the North Atlantic Treaty included the entire state – thus avoiding parts of the country being classified as second-rate land. The guarantees of the Atlantic Treaty would thus also encompass Svalbard.⁶⁷

The outbreak of the Korean War in 1950, the subsequent reorganization of the Atlantic Treaty cooperation into the North Atlantic Treaty Organization, and the founding of SACLANT,⁶⁸ also had repercussions for Svalbard. For the Norwegian government this was once again a matter of principle: the reorganization had to include Svalbard, which would otherwise be defined as second-class territory compared to the Norwegian mainland. The archipelago was included under SACLANT's area of responsibility in 1951. Just like with Norway's the inclusion in the North Atlantic Treaty, this development signalled a consolidation of Norwegian sovereignty.⁶⁹

But objections were voiced. In autumn 1951, Moscow protested that Svalbard's inclusion under SACLANT's area of responsibility implied "... permission for NATO's armed forces under American command to make military arrangements [on Svalbard]". It was highlighted, as in 1944, that Svalbard was of strategic and economic significance to the Soviet Union. The Soviets were on the watch for NATO bases on Svalbard, and inclusion in SACLANT was contrary to Norway's treaty obligations, Moscow claimed. The Norwegian government dismissed the objections. The Svalbard Treaty granted the legal authority to self-defence. In October that same year, however, Norway's foreign minister, Halvard Lange, announced that "... construction of military

66 K. E. Eriksen and H. Pharo, *Norsk utenrikspolitikkens ...*, pp. 65, 371 (author's translation).

67 R. Tamnes, *Svalbard mellom Øst og Vest*, pp. 18–19, 21–24.

68 Supreme Allied Commander Atlantic.

69 K. E. Eriksen, "Svalbardspørsmålet ...", p. 151–52.

bases on Svalbard has never been of interest". Lange's reassurance was quietly accepted by the Russians.⁷⁰

But even though the guarantee of the North Atlantic Pact and the organization of SACLANT were operationalized for Svalbard, this was not primarily of military importance to Norway. The archipelago's fate in war would after all be of little importance for the defence of the Norwegian mainland. For the Norwegian authorities, as mentioned, it was mainly important that Svalbard's security posture did not differ from the rest of the country's. The most important element was that Moscow accepted that Norway's government had the authority to decide the archipelago's security alliances. Other signatory powers could not undermine Norway's integration into the Western bloc by claiming this could not include Svalbard.

After the end of the Svalbard crisis in 1947, and up until the first years of the 1950s, Norwegian Svalbard politics were not under much pressure. Nevertheless, this period is interesting as an illustration of the *international framework* approach to Norwegian Svalbard policy: movements on the international arena – beyond Norwegian control – forced issues onto the archipelago. That Moscow's Svalbard policy was wholly redirected during this period is also important. While the Soviet Union had demanded treaty alterations and military cooperation in 1944, the country was now using the stipulations of the Svalbard Treaty concerning military activity as the basis for its protests against Svalbard's inclusion under SACLANT.⁷¹

But the Soviets were interpreting the treaty differently from the Norwegian Government: one might say they were using a reverse method. By borrowing a notion from Professor Dr Juris Carl August Fleischer, it may be said that the Soviet Union was applying a method of "maximal interpretation": Regarding matters beyond the areas explicitly regulated by the treaty's stipulations, the exceptions from Norwegian sovereignty exercise should be applied.⁷² This argument would be a typical Soviet reason for objecting to almost all Norwegian engagements on the archipelago. As well as being due to the power struggle between East and West, this perspective can also be ascribed to a Russian fear of being excluded from Svalbard.

70 R. Tamnes, *Svalbard mellom Øst og Vest*, p. 29 (author's translation).

71 S. G. Holtmark, *Høyt spill*, pp. 161–164; R. Tamnes, *Svalbard mellom Øst og Vest*, pp. 79–84.

72 C. A. Fleischer, *Korrupsjonskultur, kameraderi og tillitssvikt i Norge* [Culture of corruption, camaraderie and failure of confidence in Norway] (Oslo: Koloritt, 2006) p. 452.

Also, by the end of the 1950s the balance of power was still overwhelmingly in Moscow's favour. The objective of Norwegian Svalbard policy thus remained stable: a desire to avoid regional rivalry between the superpowers. This was to be achieved through non-engagement: Norwegian and Western self-restraint would make the Soviets limit their ambitions in the High North. In other words, it was important for Norwegian Svalbard policy that the Norwegian government controlled the *secondary threats*.⁷³

The problem of the airport

On Svalbard, one particular problem gave the Norwegian authorities trouble: the question of the airport, which was not solved until 1974. In the 1950s, the Norwegian air force had flown civilian transport missions to Svalbard, landing on an ice runway in Adventdal. Such activities did not noticeably irritate the Russian. But when there was talk of constructing a large, permanent airport on the archipelago, Moscow protested. The airport question emerged as a difficult issue for the Norwegian government, and oil exploration on the archipelago would complicate this matter additionally for the authorities.⁷⁴

Whether to build an airport first arose in the summer of 1956 when two brothers went to Svalbard to investigate the matter. They had solid professional qualifications: one, Einar Sverre Pedersen, was chief navigator for the airline SAS, and had experience of developing trans-arctic routes; the other, Gunnar Sverre Pedersen, was a lieutenant colonel and engineer, specializing in airport construction. Like many Norwegians before them, they were bewitched by the Arctic. Helge Ingstad once wrote about one of them that he had "... a longing for the polar regions' pristine mountains and endless plains ..."⁷⁵

The brothers concluded that Svalbard had great potential. Einar Sverre Pedersen envisaged the archipelago as "... the earth's aerogeographical centre", and that Svalbard could become "... an impressive air traffic station".⁷⁶ However, neither the Norwegian state nor SAS was interested in financing the project, so the brothers had to find the necessary capital themselves. With several Norwegian

73 R. Tamnes: *Svalbard og stormaktene* ..., p. 70.

74 Ibid.

75 In preface of E. S. Pedersen, *Polarbasillen. Tredve år rundt Arktis* [Polar fever. 30 years in the Arctic] (Oslo: Cappelen, 1969), p. 2 (author's translation).

76 E. S. Pedersen, "Svalbard i flyvningens tidsalder" [Svalbard in the era of airplanes], in *Polarboken* [The Polar book] (Oslo: Polarklubben, 1961–62), p. 1 (author's translation).

shareholders backing them, they established a company called Norsk Polar Navigasjon (NPN) in October 1958. Construction work was scheduled to start in June 1959.⁷⁷

Initially the Norwegian government was not deprecatory of the Pedersen brothers' plan. Foreign Minister Lange stated in November 1958 that an airport could strengthen business development on the archipelago, and that "... one must say that Norwegian interests will be well served by a civilian airport on Svalbard".⁷⁸ At the same time the government did not think that the project would be implemented in the nearest future.⁷⁹

The Kremlin saw it differently. In November 1958, the Russians had already pointed out that the size of the proposed airport would allow large and heavy planes to land. Thus the plan for the airport could not be seen as anything but a part of a NATO-led base expansion, thus violating the Svalbard Treaty. The question of whether the treaty had been violated was put to the MFA's expert on international law, Professor Frede Castberg, who concluded that there were no obstacles in the treaty to building a civilian airport. However, in line with its policy of not challenging the Soviet Union on Svalbard issues, the government did not want to push the issue. But shortly after, in January 1959, the government became aware that the airport plan had advanced more rapidly than anticipated. It also became clear that the Pedersen brothers were working in association with Colonel Joseph Fletcher from the US air force and were receiving financial aid from the Arctic Institute of North America. Acknowledging that such associations would provoke the Soviets, the Norwegian government decided that the Pedersen brothers' airport dream would have to be terminated.⁸⁰

Why was an airport on Svalbard perceived as so dangerous? First, the Norwegian government was increasingly aware that the Arctic now occupied a central place in the strategic race between East and West: it was thus problematic that the airport had military potential. It could cause Soviet mistrust and increase the tension around Svalbard. Second, in light of the asymmetrical power gap between Norway and the Soviet Union, it was likely that the airport would fall under Soviet

77 R. Tamnes, *Svalbard og den politiske ...*, pp. 15–16.

78 SA, *Stortingstidende*, 5. November 1958, p. 2858–59 (author's translation).

79 RA, Government Conference, 31 December 1958.

80 R. Tamnes, *Svalbard og den politiske ...*, pp. 17–19, 24–25.

control should war break out. Third, it was not unthinkable that the Russians would demand their own airport be built on Svalbard, claiming the Svalbard Treaty's principle of non-discrimination as justification. Therefore the Ministry of Defence and military experts were sceptical of the airport plans.

It seems clear that the decision to stop construction of an airport was taken out of consideration for power political realities – it was feared that the *secondary threats* could cause reactions from the *primary threat*. In November 1959 the Norwegian government did, however, inform the Russians that it was Norway's right to build a civilian airport on Svalbard, emphasizing that there were no such plans or desires at the time. After a while, the Norwegian authorities also made it clear to the Pedersen brothers that an airport on Svalbard was out of the question. During the beginning of the 1960s, the brothers thus concluded that an airport could not be constructed in the short term. With that NPN decided to turn its hand to another business venture: oil exploration.⁸¹

Business activity on Svalbard

The Norwegian “non-policy” on Svalbard resulted largely from a desire to keep the archipelago away from rivalry between the superpowers. In tandem with this, limiting Soviet influence by securing certain Norwegian and western economic activities was also an aim. This was based on a fear of the dire security consequences which would result if the Soviet Union's engagement on Svalbard became too conspicuous.

After World War II, the Soviet Union and Norway were the only countries interested in maintaining business activities on Svalbard – mainly coal mining. Norwegian operations recommenced in 1945. The Russians also swiftly re-established mining activities in Barentsburg, Grumantbyen and Pyramiden. In the early 1950s, there were approximately 2,000 Russians on Svalbard.⁸²

The Norwegian mining industry consisted of two companies: the privately owned Store Norske Spitsbergen Kullkompani and the state-owned Kings Bay Kullkompani. The Norwegian authorities wielded considerable influence over Store Norske as well, for example through

81 R. Tamnes, *Svalbard og den politiske ...*, pp. 20, 34–35, 38.

82 *Ibid.*, p. 34–35, 38, 68, 79.

a judicially registered agreement from 1933, through which the State could appoint two members to Store Norske's board.⁸³

The problem with Norwegian mining on Svalbard was that it was not economically feasible, due essentially to general technological developments in the world. In particular, the continuing disappearance of steam locomotives affected the demand for coal. In 1957, Western Europe imported 108 million tons of coal; by 1959 this had dropped to 72 million tons. Heading into the 1960s, tough competition from several countries and the increasing accessibility of oil and gas contributed to a steady fall in the price of coal. Of equal importance is that no one expected the coal market to turn around. The coal-producing countries had large stocks. In September 1959, the MI concluded that the future looked bleak as far as coal prices were concerned.⁸⁴

As a result the Norwegian State covered the coal companies' deficits through various means – this may seem strange, bearing in mind the bleak prospects for coal, so why did the State bankroll the coal companies? Quite simply, coal mining was first and foremost a tool for maintaining a Norwegian presence on the archipelago. But if Norwegian coal mining was closed down, the Russians would have been alone in their economic activities on Svalbard. This could have strengthened their claim to a privileged status.⁸⁵

The mining companies' position in Norwegian Svalbard policy found clear expression in connection with the closing down of Kings Bay's pits in Ny-Ålesund in 1963. The matter of shutting down the pits was presented to the MFA. The ministry's response was as follows:

Based on a desire to consolidate Svalbard's character as Norwegian land, it is the Ministry of Foreign Affairs' general opinion that the Government should place considerable emphasis on, at the very least, maintaining the current level of Norwegian economic activity. Especially in light of the strongly increasing foreign interests and activity on the archipelago in recent years, the Government should seek to make conditions favourable for the expansion of Norwegian activities on Svalbard. To the extent that, for various reasons, it may be necessary to shut down exist-

83 SA, Recommendation on the Ministry of Industry's administration, 15 November 1963, p. 123.

84 A. Hoel, "Svalbards historie, 1956–1965" [Svalbard's history 1956–1965], in *Svalbard*, vol. III (Oslo: S. Kildahl, 1966), pp. 1242–45, 1247, 1249, 1255.

85 R. Tamnes, *Svalbard og stormaktene ...*, p. 79.

ing enterprises on Svalbard, such enterprises ought to be replaced by other types of activities.⁸⁶

In Ny-Ålesund the situation seemed hopeless regarding further activity in the pits. The estimated costs of rebuilding and improving security for the workers after the Kings Bay disaster were ominous: mining operations ceased in the area. However, in line with the view of the MFA, the MI emphasized that mining could be resumed later. In addition, Ny-Ålesund was proposed as a possible tourist destination and as a scientific centre for the forthcoming construction of a station for the European Space Research Organization (ESRO).⁸⁷

But the State's willingness to guarantee for Norwegian enterprises varied. Not all initiatives were welcomed. The reason why Store Norske and Kings Bay were given financial support was due to these mining companies being a Norwegian presence on Svalbard. At the same time the government's influence over the companies ensured any risk-taking which might provoke the Russian was avoided. Former executive officer at the MFA, Leif Terje Løddesøl, summed up the government's view on Norwegian business activity thus: "We wanted positive Norwegian activity which underlined that Svalbard was a part of Norway."⁸⁸ The mining companies fitted into this picture.

Though Russian coal production was somewhat greater, there are good reasons to doubt its profitability. In the 1950s, the Russian settlements on Svalbard consisted of approximately 2,000 people. In comparison, Kings Bay had only 224 people engaged in mining activity on a year-round basis in 1960/61. Considering that coal mining was the only production enterprise on Svalbard, the Russian settlements probably generated much less than they cost.⁸⁹

Similar assessments existed at the time. According to the US ambassador to Norway, the mining commissioner once told him in a conversation in August 1970 that Russian mining had to be in deficit:

86 SA, Proposition to the Storting no. 146 (1962–63), p. 30–31 (author's translation).

87 A. Hoel, "Svalbards historie ...", pp. 1279–80. In 1963 the European Space Research Organization (ESRO) wanted to establish a station on Svalbard for the reception of telemetry signals from the organization's satellites. The Soviet Union feared it was a concealed intelligence operation. The dispute ended with a deal between Norway and the Soviet Union, allowing the Russians to visit the station. It became operative in 1967 and was shut down in 1974. For more information on the ESRO dispute, see R. Tamnes, *Svalbard og den politiske ...*

88 Interview with Leif Terje Løddesøl, 11 April 2007 (author's translation).

89 A. Hoel: "Svalbards historie ...", pp. 1246, 1499.

... it was quite obvious ... that the Russian coal operations are not a profitable enterprise from an economic standpoint. The Soviet mines on Svalbard produce about 400.000 tons per year – the same as the Norwegian mines – but they use twice as many men to produce it and the output per miner is about three tons per day as against seven for the Norwegians. Furthermore, the quality of the Russian coal is the poorest presently mined in Svalbard and production would not be considered economically feasible in any Western economy.

Why then were mining operations retained? According to the ambassador, there was no doubt as to the reason:

There is no question that the Soviet Union runs its mines primarily, if not solely, as an excuse to keep a political pressure in a strategically important island, and it is also logical to assume that it maintains a good many more men at Barentsburg than are justified by the coal it manages to extract. It is also logical to assume that the miners have some military training and in the case of an emergency would be able to use it.⁹⁰

Doubtless, maintaining Norwegian business activities on Svalbard was motivated by a need to mark sovereignty through physical presence. It also seems reasonable to assume that the Russians had political motives. Therefore, the two nations with the strongest interests in the archipelago did not create any economic surplus through their engagement, but chose to retain their business activities to mark their rights and interests in the area.

The Cold War and Norwegian sovereignty

The development of Norway's Svalbard regime up until the 1960s forms a mixed picture. On the one hand, Norwegian sovereignty was clearly strengthened through Norway's incorporation in the Western bloc and the subsequent integration in NATO's operative structures. And the Soviet Union's calls for revising the Svalbard Treaty and joint defence of the archipelago were not made again.

90 NARA, College Park, Maryland, USA, Record Groups 59, Records of the Department of State, POL NOR-USSR 1/1.70, Svalbard, C:195-197. Aerogram from Ambassador Crowe to State Dep.

But the Soviet Union was negative to most Norwegian dispositions. The Svalbard Treaty granted free access to the archipelago, and Norwegian and Western enterprises were hidden attempts to militarize Svalbard, Moscow claimed. At the same time the Norwegian authorities regarded Svalbard as vulnerable to power political thrusts from the Soviet Union. At a time of strained relations between East and West, it was deemed unwise to challenge the Russians over an archipelago that mattered little – economically and militarily – to Norway as a whole. The Norwegian authorities accepted the prerogative of power relations, and Norway's Svalbard policy became a "non-policy". Thus at the beginning of the 1960s, Norway's sovereignty exercise was minimal compared to its legal authority granted by the treaty.

Svalbard remained a common land economically and a grey area in the East-West struggle. Within Norway's administration it was accepted that the Russians had a special position as a consequence of their historical affiliation, settlements, geographical proximity and military power. This Norwegian low profile was in tune with the wishes of the Western powers, which never developed a strong interest in Svalbard.⁹¹ After all, the archipelago's strategic value was never more than a potential one, but it was also significant that Norway did not want any stronger Western engagement.⁹²

At the same time, it was an important prerequisite for Norway's profile of low regional tension that Svalbard's strategic and economic value to the superpowers be limited. This prerequisite would soon be tested.

91 K. E. Eriksen and H. Pharo, *Norsk utenrikspolitikks ...*, p. 64–65.

92 R. Tamnes, *Svalbard og stormaktene ...*, p. 62.

Oil exploration on Svalbard

Svalbard has for a number of years attracted people looking for riches under the earth's crust. Optimism was especially high from the end of the nineteenth century and through to the interwar years. The English prospector, Ernest Mansfield, described a peninsula near Ny-Ålesund as “[n]othing less than an island of pure marble”.⁹³ In 1917 rumour had it that gold could be found, and in 1919 the first attempt to drill for oil was carried out, with lean pickings. By the end of the 1920s it was clear that coal mining was the only economically feasible mineral on Svalbard.⁹⁴ However, during the 1960s interest in oil on the archipelago blossomed. The subsequent influx of companies was so great that Norway's minister of industry, Kjell Holler, maintained in October 1961 that “... a race is taking place between American and Russian companies looking for oil on Svalbard”.⁹⁵

For the Norwegian authorities, the potential discovery of oil painted a contrasted picture – Norwegian coal companies were troubled by low profits: oil could offer an alternative.⁹⁶ But oil exploration also challenged Norway's exercise of sovereignty. The oil companies had such large resources at their disposal that the governor of Svalbard could not monitor the exploration.⁹⁷ In addition, the oil exploration revealed a sensitive aspect to Norwegian sovereignty over the archipelago. The situation seemed so potentially detrimental that several of

93 “En øy av ren marmor” [An island of pure marble], *Aftenposten*, 2 May 2007 (author's translation).

94 A. Hoel, “Svalbards historie ...”, pp. 1030, 1332.

95 RA, Government Conference, 26 October 1961 (author's translation).

96 UD, 36.6/60, bind II, JN. 011122. Letter from MFA to the Ministry of the Environment (ME)

97 T. B. Arlov and A. H. Hoel, “Kulldrift i kald krig” [Coal mining in cold war], in *Norsk Polarhistorie* [Norwegian polar history] vol. III, ed. H. D. Jølle (Oslo: Gyldendal, 2004), p. 406. During the first half of the 1960s the governor's means of transport was a boat in the summer and a dog sledge in the winter. Caltex, however, transported its crew by helicopter.

the Ministry of Foreign Affairs' employees hoped that the oil companies "... would not discover any oil on Svalbard".⁹⁸

This chapter seeks to explain how the "oil race" started on Svalbard. As we shall see, decisions taken right at the start were vital for the ensuing race, and in enabling the oil companies to establish themselves outside of governmental control on Svalbard. Why the MI treated Caltex the way it did, and how oil exploration came to threaten Norway's sovereignty exercise on Svalbard is this chapter's chief concern.

Caltex – primus motor

On 18 March 1960, after receiving an inquiry from the MFA, the Norwegian Polar Institute reported that it knew of several foreign companies that had shown an interest in oil exploration on Svalbard. The most active was the American company, Caltex. Through its affiliate Amoseas⁹⁹ it had acquired aerial photographs of Svalbard, and was now in full swing with equipping a geological expedition to the archipelago the next summer. In Norway the company had set up a subsidiary, Norsk Caltex Oil A/S, which was led by Director Arild Lindbom. Caltex had also sent a lawyer to Norway in the middle of March to make enquiries about regional mining rights.¹⁰⁰

In addition to Caltex, Shell planned to send a geological expedition to Svalbard during the summer of 1960. Canadian Husky Oil Ltd had contacted the Norwegian embassy in Ottawa and the Norwegian Polar Institute about terms for licences and geological conditions. Hoard & Spradlin, an Oklahoma-based company, had been in touch with the county governor and former UN secretary general, Trygve Lie, and the Norwegian embassy in Washington about terms for exploration and other oil operations on Svalbard. A German scientist, Professor Julius Büdel, also planned a visit to Svalbard the next summer. His stated purpose was to carry out a topographical survey. However, he rented a boat for 4,000 kroner a day, suggesting that there were not just scientific interests behind his expedition, the Polar Institute stated.¹⁰¹ Norwegian interests, represented by NPN, also participated from the

98 Interview with Willum Steen, 28 August 2007 (author's translation).

99 American Overseas Petroleum Ltd.

100 UD, 36.6/39, bind I.

101 Ibid.

outset. Compared to its competitors, however, it was considered a mere minnow.¹⁰²

Why this interest in Svalbard? First, technological developments played a role. During the 1950s oil had been discovered in Canada, Alaska, and on the Yamal Peninsula in Siberia. Thus interest in the Arctic region grew amongst oil companies.¹⁰³ One of Caltex's geologists explained that the company had studied charts and aerial photographs from several Arctic regions. Svalbard was not the only area that looked promising, but because "... the tax regime applicable in Spitsbergen is generally favorable", a closer examination was justified.¹⁰⁴

Against this background, Caltex sent an expedition to Svalbard during the summer of 1960. It revealed several interesting areas, but some were problematic in that they had already been claimed or were owned by the mining company, Store Norske. Should oil be discovered on Store Norske's property, the company would be entitled to participate twenty-five percent in the operations. If oil was discovered on Store Norske's claim, the company would have the sole right to extract it. However, Store Norske could desist from asserting its extraction right. Caltex thus sought to reach an agreement with the mining company according to which Store Norske would receive 12.5 % of any oil's gross value in exchange for the mining company's extraction and participation rights. Store Norske's director, Atle Bjørkum, was favorably inclined to Caltex's suggestion.¹⁰⁵

However, such an agreement concerned parties other than just Caltex and Store Norske. Store Norske had in a judicially registered agreement from 1933 pledged not to sell, let, or mortgage any of its property or mining rights without the MI's consent. Thus in October 1960, Store Norske communicated Caltex's suggestion to the ministry, where it was dealt with by Principal Officer Harry Garman Lindstrøm. Lindstrøm was sympathetic to the proposal, but prior to making a final decision he contacted the MFA. In a letter from 25 October, Lindstrøm wrote that Caltex had given notice of 190 discovery points to the mining commissioner, whereas some were on Store Norske's land. Furthermore, he noted that an agreement between Caltex and Store Norske could be to the government's advantage: through its influence

102 R. Tamnes, *Svalbard og den politiske ...*, pp. 47–48.

103 E. S. Pedersen, "Polarbasillen ...", p. 230.

104 "Search in the Arctic", *Oil – Life Stream of Progress*, no. 2 (1968). The geologist's name was Douglas Klemme.

105 UD, 36.6/39, bind II.

over Store Norske, the MI would keep better informed about work carried out by Caltex. The MFA had no objections.¹⁰⁶

So during the autumn of 1960, the MFA knew that there was substantial interest in oil exploration on Svalbard, and that Caltex operated on a large scale. However, the ministry did not know that the applicability of the mining ordinance to purported oil deposits would cause serious problems in terms of interpretation.¹⁰⁷

Geological indications

As mentioned in chapter two, the mining ordinance was designed to regulate coal-mining activities. How should it be applied to oil exploration? This question was raised for the first time in December 1960 by Executive Officer Thorgrim Haga at the MI's mining section. At that time Caltex had notified the mining commissioner of 201 discovery points. The points were marked correctly, but the oil company had not handed in a deposit sample, required by the mining ordinance. Instead the company had documented located anticlines,¹⁰⁸ with layers that possibly could trap oil.¹⁰⁹

This requirement for a sample implied that a physical sample of oil, or soil/rocks with traces of oil, had to be handed in. Unlike with coal mining, oil samples could not be found without drilling. Caltex broached this issue, claiming it would cost between 1 and 1 ½ million dollars per hole, and drilling several holes would be necessary. Thus a deposit sample could not be secured within the ten-month limit laid down by the mining ordinance. The company suggested an arrangement involving a time limit being set for providing a deposit sample while the claims were conferred. If this limit was not respected, the claims would lapse. The mining commissioner was perplexed as to how to resolve the issue and chose to consult the MI.

Thus, in an internal memo, Executive Officer Haga raised the question of whether providing a deposit sample was an absolute precondition for obtaining claims. Referring to the mining ordinance's wording, he concluded that this was indeed the case. This provision

106 UD, 36.6/39, bind II.

107 SA, Additional recommendation for claims on Svalbard, 1 October 1965.

108 n arch-shaped fold in rock in which rock layers are upwardly convex. The oldest rock layers form the core of the fold, and outwards from the core progressively younger rocks occur. Anticlines may form hydrocarbon traps, particularly in folds with reservoir-quality rocks at their core and impermeable seals in the outer layers of the fold. A syncline is the opposite type of fold, having downwardly convex layers with young rocks at the core.

109 SA, Recommendation for claims on Svalbard, 15 August 1964, p. 1.

was supposed to ensure that large areas would not be occupied without sufficient reason. Haga suggested this dilemma could be solved by granting a deferment on providing a sample for up to five years. Claims could be granted if deposits were found within this period. Otherwise, there would be no basis for a discovery notice. Haga then underlined that it was important that any arrangement decided upon had a strong legal basis in the mining ordinance, as "... there are strong interests associated with oil exploration on Svalbard, not least of a foreign-political character". In light of the Soviet position on the archipelago, it was important that any decision to give American companies an opportunity be legal.¹¹⁰

However, the MI did not take any further action. Haga's memo was not dealt with until the ministry, in January 1961, became aware that the mining commissioner had held a claim survey for 201 discovery notifications from Caltex – but the company had not handed in deposit samples. Only then was the issue examined more closely. Principal Officer Lindstrøm, Director General Egil Hammel, and Secretary General Karl Olai Skjerdal all agreed with Haga's original conclusion. On 27 January 1961, in a telegram from the ministry to the mining commissioner, the following was emphasized:

In connection with oil exploration on Svalbard it has been asked whether the Mining Ordinance's provision ... on handing in a deposit sample must be fulfilled prior to granting claims ... The Ministry has looked at the question and has concluded that the answer must be yes. If conditions are such that it cannot reasonably be expected that a deposit sample be handed in at the same time as the discovery notification, the mining commissioner may ... grant the necessary deferment to satisfy this provision. The ministry assumes that the mining commissioner will use this interpretation as a basis when assessing notifications of oil discoveries.¹¹¹

In a telegram dated 14 February 1961, after an inquiry from the mining commissioner, the MI elaborated on its finding: granting claims on the condition that deposit samples be handed in within a certain time was not an option. At the time of a discovery notification, a deferment

110 SA, Additional recommendation for claims on Svalbard, 1 October 1965, Enclosure I, p. 5 (author's translation).

111 SA, Recommendation for claims on Svalbard, 8.15.1964, p. 2 (author's translation).

could be granted, and when a deposit sample was handed in claims could be conferred. The telegram was written by Haga, and proofread by Lindstrøm and Skjerdal. The mining commissioner followed the MI's directives, and on 28 February, in the official *Mining Gazette*, the claim surveys were retracted.¹¹²

After the mining commissioner had retracted the claim surveys, Caltex decided to raise the issue directly with the MI. First the company's representatives had a meeting with Executive Officer Lindstrøm, and on 27 March 1961 a meeting was held with Minister of Industry Kjell Holler, and American and Norwegian representatives of Caltex, among others. During the meeting, Caltex's representatives claimed that handing in deposit samples was a provision unheard of in modern oil legislation. If the provision was upheld, the company would be forced to cease its activities on Svalbard for economic reasons. A conservative interpretation would force Caltex to hand in samples from all its discovery points. Considering that a sample could only be obtained by drilling a borehole at the price of 1 to 1½ million dollars, the combined costs could exceed 300 million dollars. The company was not willing to risk such an amount without acquiring right of security to its potential discoveries. At the same time, Caltex stressed that a clarification of the issue was urgent in light of the company's scheduled work the forthcoming summer.¹¹³

The meetings with Caltex caused a fundamental change in Lindstrøm's view on how the mining ordinance should be applied to oil exploration. In two internal memos from 24 and 30 March 1961, Lindstrøm argued that claims should be awarded even though this meant disregarding the ordinance's provision pertaining to deposit samples. According to Lindstrøm, no one had considered oil deposits far beneath the earth's crust when the mining ordinance was moulded. If someone had, its provisions on the matter would have been more precise. Because Lindstrøm thought the mining ordinance could not be amended by Norway alone, it was impossible to correct its old vintage. He claimed the ordinance had to be interpreted in accordance with the spirit of the law. In his own opinion, it was the intention of the legislators to enable exploitation of Svalbard's natural resources.

112 SA, Recommendation for claims on Svalbard, 15 August 1964, p. 2.

113 RA, John Lyng's private archive, Storting papers (1964-65); SA, Recommendation for claims on Svalbard, 15 August 1964, p. 2. The date of Lindstrøm's first meeting with Caltex is unknown. A letter the company sent to the ministry, dated 24 March 1961, reveals that Caltex had already had one meeting with Lindstrøm at that time.

Thus he spoke in favour of an emphatically liberal interpretation of the ordinance.¹¹⁴

He went far in expounding specific provisions of the mining ordinance so that claims could be conferred to Caltex in the manner the company desired. Section 9 of the ordinance, sub-section 1 stated that: “Anybody who, by lawful search, shall discover a natural deposit, containing or supposed to contain minerals ... acquires thereby ... a right to the discovery”. As well as the requirement for a legally valid notification, it is stated in the same section, sub-section 2 d that there shall be: “Information of the nature of the discovery under reference to a sample, handed over at the same time ...” Lindstrøm argued that the words “supposed to contain” in section 9, sub-section 1 were listed next to the word “containing”. And if the words “supposed to contain” had any meaning, the requirements in section 2 d could not be perceived as absolute. An interpretation that accepted geological indications instead of deposit samples could therefore be justifiable. In addition, Lindstrøm argued Caltex’s case on a more practical basis: the purpose of the provision requiring a sample was to provide evidence that something had been found – and he was of the opinion that Caltex had provided such evidence:

The proof [Caltex] has generated in the form of geological examination material is more extensive and more convincing than many of the samples that are handed in. On the basis of the knowledge [Caltex’s] geologists has obtained in several countries over many years, [Caltex] thinks one should be able to discover oil on Svalbard.¹¹⁵

For Lindstrøm there was no doubt. He recommended the retraction be reversed and the claim survey be held. Remarkably, he thought it unnecessary to inform the Ministry of Justice and Ministry of Foreign Affairs of the matter. According to Lindstrøm, the Ministry of Justice’s employees did not have much “... knowledge about the regulations and laws regarding Svalbard ... In addition, as a starting point one should

114 SA, Additional recommendation for claims on Svalbard, 1 October 1965, Enclosure 2, p. 3.

115 SA, Additional recommendation for claims on Svalbard, 1 October 1965, Enclosure 4, p. 6 (author’s translation). A more reasonable interpretation of the meaning of the phrase “supposed to contain” is that the applicant is not obliged to scientifically verify the content of a discovery. This is the mining commissioner’s duty. In other words, the applicant is not acting unlawfully if he or she hands in a deposit sample supposing it is marble, and then the mining commissioner’s investigation reveals that it is only quartz.

take the view that it is the Ministry of Industry that interprets the statutes regarding Svalbard". It would suffice to inform the MFA, who already knew of the agreement between Caltex and Store Norske, after the issue had been settled, Lindstrøm claimed. However, if Minister Holler wanted to, he could "... give an account to the government in a short memo".¹¹⁶

Not all the civil servants at the Ministry of Industry shared Lindstrøm's view. In a memo from 6 April 1961, Director General Egil Hammel stood by the conclusion Executive Officer Haga had arrived at in his memo of 2 December 1960. As mentioned, Haga had concluded that a deferment of five years could be granted for handing in deposit samples. During that time Caltex would have prior right to claims. But for a claim survey to become final, the company would have to hand in samples within the five-year period. Also, Hammel emphasized that since the MI had no experience of oil exploration, it would be hard to verify Caltex's assertions. Thus the Norwegian Polar Institute should be consulted. If it emerged that modifying the rules was necessary because of difficulties involved in providing a sample and amending the mining ordinance, then the Polar Institute should be contacted in any case. It could assist in establishing what geological evidence should be required. If claims were awarded as a mere matter of opinion, the result could "... easily be that large areas gets booked up on a more or less shaky basis" – in other words, the opposite of the spirit of the mining ordinance.¹¹⁷

If the claims were granted at their maximum extension, Hammel continued, they would compromise 2,000 km, or 1/30 of Svalbard. That the area was so large suggested to Hammel that Caltex's evidence was too flimsy. An area of such great size could give the company all the potential oil deposits on Svalbard. He was also of the opinion that the Russians would pay close attention to the issue, and "... we cannot disregard that we might be accused of favouring the Americans". Precisely because of the matter's foreign policy aspect, he dissuaded from ignoring the mining ordinance's provision requiring a sample without consulting the MFA.¹¹⁸

Secretary General Skjerdal, however, concluded that Caltex's claims had to be conferred. He stated that the company could demand

116 Ibid (author's translation).

117 SA, Additional recommendation for claims on Svalbard, 1 October 1965, Enclosure 5, p. 1 (author's translation).

118 Ibid, p. 2 (author's translation).

the claim survey be honoured as the mining commissioner had already sanctioned its discoveries, and the MI did not have the opportunity to review the mining commissioner's decision. If a third party thought the conditions for a claim survey had not been met, that party would have to commence court proceedings. On 7 April 1961, Skjerdal raised the issue with Minister Holler. On 15 April the question was privately forwarded to Secretary General Rolv Ryssdal at the Ministry of Justice, supposedly at Holler's request.

On 17 April Ryssdal's answer came, written by Director General Carl Stabel, chief of the Ministry of Justice's legislation department. Stabel did not agree with Skjerdal's arguments for awarding Caltex's claims. It was underlined that a civil servant was in no position to establish legal rights for private entities in violation of statutory provisions. Like Haga and Hammel, Stabel noted that the rationale behind the provision requiring a sample was to avoid having large areas occupied for several years without proper reason. He also noted that handing in a deposit sample was "... an absolute condition for valid discovery notifications, and thus the right to claims and the sole right to the discovery".¹¹⁹

However, Stabel was of the opinion that drilling for oil had not been foreseen when the mining ordinance was framed: there should thus be room to modify the interpretation of the provision concerning samples. "But to go as far as Principal Officer Lindstrøm wants to – that is to consider the provision as *unwritten* as far as oil notifications are concerned – must seem very dubious considering the rationale behind the provision." The prerequisite for any modification would have to be that the basis for exemption offered the same strength of evidence as a deposit sample. Caltex asserted that geological indications created a basis for assuming that oil could be present. In this regard Stabel wrote that he for one thought that

... deposit samples normally establish a considerably stronger probability for existence. Awarding claims on the basis of an "assumption" that there "might" be oil at the discovery point, seems to be in poor accordance with the rationale behind the provision on deposit samples.¹²⁰

119 SA, Recommendation for claims on Svalbard, 15 November 1964, p. 2 (author's translation).

120 SA, Additional recommendation for claims on Svalbard, 1 October 1965, Enclosure 7, p. 1–2. "*Unwritten*" emphasized in original document (author's translation).

In addition to these judicial considerations, Stabel noted that consideration must be paid to the way in which the other signatory powers would interpret the provision concerning samples, and their reaction if they thought the treaty had been violated. The obvious deviation from the wording of the mining ordinance which Lindstrøm was suggesting could be considered favouritism. Finally, Stabel advised that the MFA be consulted if this had not already taken place. He referred to the fact that the ministry, and its embassy in Moscow, were both concerned with another type of American-inspired activity on Svalbard at that time: the question of the airport.¹²¹

So at this point both Haga and Hammel at the Ministry of Industry, and Stabel at the Ministry of Justice, had voiced their opinions, saying that the provision for deposit samples was an absolute; a provision based on avoiding having large areas occupied without good reason. Haga also stressed that there were foreign political interests associated with oil exploration on Svalbard, and both Hammel and Stabel advised that the MFA should be consulted. Haga and Hammel also wanted to hear the Polar Institute's professional opinion on Caltex's geological indications.

Minister Holler, however, took none of this into account. He chose to settle the issue by himself, consulting neither the MFA nor the Polar Institute. Just after he had received the legislation department's statement, on Holler's orders a telegram was sent to the mining commissioner, notifying him that the MI would waive its previous objections to holding claim surveys on the areas Caltex had notified. The commissioner later stated that "... the telegram was like an order, and I had no other option than to undertake the claim surveys".¹²²

The first part of Norwegian oil policy on Svalbard was thus cast. The geographical implications were considerable: in a strategically sensitive region, Caltex had won sole rights to extract oil and minerals on areas covering approximately 2,000 km. For Norwegian sovereignty, the issue was just as piquant. The opportunities the MI had to control Caltex's access to Svalbard were not used. Without committing to any form of return services or obligations, Caltex was allowed far beyond the limitations on Norway's exercise of sovereignty in the Svalbard Treaty.

121 Ibid, p. 3.

122 "Bergmester Welde var imot å foreta Caltex-konsernets utmål på Svalbard" [Mining Commissioner Welde opposed awarding Caltex claims on Svalbard], *Verdens Gang*, 26 August 1965 (author's translation).

Behind the scenes at the Ministry of Industry

“A more devastating criticism of a ministry and its leader than in this case is fortunately hard to find.”¹²³ Thus did MP Kjell Bondevik (Norwegian Christian Democratic Party) open his comments on the Caltex case when in 1965 it was assessed by the Norwegian Storting. Amongst the MPs there was broad consensus that the Ministry of Industry’s mode of treatment had been despicable.

Circumstances at the MI largely determined the concessions given to Caltex, and in the wake of the Kings Bay accident, these circumstances surfaced. On 4 July 1963, Holler resigned. Lindstrøm resigned in October, and found himself at the centre of a police investigation.¹²⁴ In addition, Skjerdal and Hammel were given leave of duty. Against the background of information the Norwegian government had received about the circumstances surrounding Lindstrøm, an investigative committee was established in the middle of November to examine the MI’s administrative methods.¹²⁵

The committee harshly criticised the MI in three different reports, in which Lindstrøm and Skjerdal were particularly focused on. But there was another important factor: since World War II, the MI had risen to become a professional and self-confident institution possessing politically important responsibilities. As we shall see, this institutional self-confidence in part led to the decision not to consult others on the matter of the deposit sample. The first part of Norwegian oil policy on Svalbard was largely formed by the MI’s sympathy with Caltex’s dispositions and a notion that industrial activity on Svalbard was the ministry’s exclusive area of responsibility. This pattern is not unlike the emphasis of the *institutional interest* perspective on strong connections between ministries and respective sector interests, and its influence on foreign-policy decisions.

The ministry after the war

Industrial development was a key political goal in Norway after World War II. To this end, the MI was established in 1946. Up until the 1960s, its responsibilities steadily grew to include most matters concerning

123 SA, Closed sitting in the Storting, 14 May 1965 (author’s translation).

124 On 21 October, four days after Lindstrøm resigned, he was arrested on suspicion of financial malpractice.

125 SA, Report to the Storting no. 36. (1964–65), p. 1.

Svalbard.¹²⁶ For the ministry to fulfil its designated tasks, a number of new departments and sections were founded. In 1946 the Directorate of Industry was established. It had seven sections when it was reorganized in 1958 and merged with the Industry Department. The MI set up a separate section for issues of a general industrial-economic nature in 1955. The ministry's management was also strengthened by the establishment of a deputy ministerial post from 1947–1958, and in 1956 the post of secretary general was created.¹²⁷

Linked to the MI's growth, a fundamental problem surfaced. Several of its civil servants were representatives on boards of state-owned companies, and carried out tasks for institutions belonging to the MI. Thus the civil servants' impartiality was questioned, as in addition to their work at the ministry, they also worked for the companies and institutions in question. Lindstrøm, for example, was secretary to the Kongsberg Silver Mines Liquidation Committee, while managing issues pertaining to silver mines at the MI. He was also secretary to the Coke Commission and was in charge of the MI's dealings with coke.¹²⁸

Abuse of such positions was at the forefront of the criminal investigation of Lindstrøm, who altogether had seventeen committee duties. During his trial in November 1965, he told the court that “[m]y work as Executive Officer was only a fraction of everything else”.¹²⁹ Lindstrøm was not the only civil servant having professional engagements elsewhere.¹³⁰ This was in fact a dominant trait at the MI, and it indicates a development implying that several of the ministries' civil servants were strongly linked to the industrial sector's interests.¹³¹

While the MI was strengthening its professional basis for influence and several of its employees were forming strong bonds with the industrial segment, a development took place in the Storting's executive procedure which undermined the foreign-policy aspect of Norway's

126 One exception: The governor of Svalbard was in 1953 transferred back to the Ministry of Justice after having previously been under the Ministry of Industry.

127 SA, Recommendation on the Ministry of Industry's administration, 15 November 1963, p. 11

128 Ibid, pp. 48, 138–39.

129 H. Markussen, *Prosesen mot Lindstrøm. Et politisk justismord* [The process against Lindstrøm. A political miscarriage of justice] (Oslo: Dokumentarforlaget, 2000), p. 158 (author's translation).

130 Secretary General Skjerdal was for example a member of the Kings Bay's board of directors.

131 SA, Recommendation on the Ministry of Industry's administration, 15 November 1963, pp. 48, 138–39.

Svalbard policy. MP Torstein Selvik (Labour Party) summarized the development thus:

Originally, all Svalbard issues were handled by the Standing Committee of Foreign Affairs in acknowledgement that these were vital national questions, and Norwegian interests vis-à-vis other powers were to be attended to. When I first came to the Storting 15–16 years ago, the senior members of this assembly, and especially those concerned with foreign policy, very strongly asserted that this should be a rule, an unbreakable rule that had to be enforced consistently, that everything regarding Svalbard should be managed by the Standing Committee of Foreign Affairs. However, the predominant view over time has been that these issues should go to the respective sub-committees. I deplore this development. I have repeatedly tried to reconnect these issues to the Standing Committee of Foreign Affairs, to make it the main committee for Svalbard issues. However, little can be done when the majority is of a different opinion.¹³²

This development was important, especially in terms of the *institutional interests* postulate on fragmentation of the State's power. The growth of the MI's staff and organizational capacity helped elevate the industrial establishment to a powerful institutional force. This created a foundation for a tug-of-war over the professional responsibility for Svalbard between the MI and other ministries dealing with the archipelago. At the same time, MPs' opportunities to limit the industrial segment's influence on Svalbard decreased as a result of Svalbard issues being managed by respective sub-committees, and not by the Standing Committee of Foreign Affairs.¹³³

Extraordinary management procedures

In addition, much suggests that Lindstrøm's position at the MI helped bring about the strong influence that considerations for Caltex had on Norwegian oil policy on Svalbard. Unorthodox management procedures and, one might say, arbitrariness gave him a considerable influence over the ministry's administration of Svalbard issues. This also drew the attention of the investigative committee. Ordinary ministerial management procedures were considered solid and adequate,

¹³² SA, Closed sitting in the Storting, 5 February 1965, p. 3 (author's translation).

¹³³ R. Tamnes, "Ettpartistat ...", p. 56.

according to the committee as cases within the section concerned were assessed by both an executive officer and a principal officer. The intention of this was to ensure a solid analysis before any decision was made. Hence, normal procedure was for the matter at hand to be analyzed further before a final decision was taken at a higher level.¹³⁴

This procedure was largely adhered to when ordinary issues were being assessed. But this was not the case when the issues at hand were more complex and comprehensive, and this is indicative of the efficient way in which Lindstrøm made his mark. During his trial he told the court that his capacity for work and education made him self-confident. He was both a jurist and a mining engineer,¹³⁵ and he enjoyed his peers' confidence, especially from Skjerdal. Holler also valued Lindstrøm and his efficiency. This was a mutual relation. Lindstrøm said of Holler that "I have never met a superior, and I have met quite a few superiors during my days, who worked as efficiently as Holler ... By and large we had similar opinions on how different issues should be managed, and we spoke the same language".¹³⁶

Because of the confidence in him and his effectiveness, Lindstrøm was allowed to work, as it were, separate from the rest of the Ministry – i.e. outside of normal management procedures. The more complex cases went straight to him without first being assessed by an executive officer. Skjerdal trusted his appraisals, and for the sake of efficiency Holler was often the only one who looked through his work. However, as minister he did not have time to closely examine the results.¹³⁷

This included Svalbard issues. Originally it was intended that Haga should be the first official responsible for dealing with such matters. According to Lindstrøm, Haga was "... very methodical and thorough". But to Lindstrøm, efficiency was the greatest virtue. Haga could have "... been more productive, in the sense that he could have completed more work". Accordingly, most Svalbard issues were dealt with by Lindstrøm alone. He saw no problem in that: on the contrary, in his opinion "... all Svalbard-issues should be concentrated in one

134 SA, Recommendation on the Ministry of Industry's administration, 15 November 1963, p. 138.

135 In addition to his formal education, Lindstrøm spoke French, German, English, Italian and Russian. At the time of his arrest he was learning Chinese.

136 H. Markussen, *Prossessen mot ...*, pp. 156–57 (author's translation).

137 SA, Recommendation on the Ministry of Industry's administration, 15 November 1963, p. 49; Interview with Prof. C. A. Fleischer, 19 April 2007.

section, under one specific person. I am of the opinion that the Mining Section should be the one".¹³⁸

Lindstrøm's monopoly on dealing with complex and comprehensive issues went so far that his subordinates at the mining section ended up feeling left out. In March 1963, Lindstrøm's superior, Director General Hammel, expressed that the executive officers should be used more. Lindstrøm did not agree: he considered his own skills unsurpassed. Regarding Hammel's request, he wrote that he had "... no need for and do not ask for and do not want any help to manage the Mining Section". Lindstrøm was of the opinion that the mining section was one of the best managed sections in the Government's administrative machinery. Regarding his own work, there was no doubt: "... I complete as much work as a dozen executive officers + a few principal officers, and one could also add a couple of director generals".¹³⁹

Based on the above, the investigation committee concluded that the MI lacked the checks ordinary management procedures provided: thus the actual management system had not failed, but the lack of monitoring, especially of Lindstrøm's work, was at fault. This would have consequences for the ministry's oil policy.¹⁴⁰

Caltex at the Ministry of Industry

As shown, institutional developments at the MI and Lindstrøm's "separate" position influenced the managing of several of the ministry's areas of responsibility, including Svalbard. Caltex was no exception. At the MFA in particular, several people were surprised about the MI's stance on the matter. Executive officer at the legal affairs department, Leif Terje Løddesøl, summarized cooperation with the MI thus: "At that time we felt that they were working against us, and we wondered why."¹⁴¹

One of the first questions that arose in connection with the treatment of Caltex by the MI was why Lindstrøm so eagerly wanted to liberalize the criteria for claims without consulting any other insti-

138 H. Lindstrøm, *Notatsamling med kommentarer* [Collection of memos with comments], (no page numbers given, unknown publication date). In connection with his own appeal hearings and lawsuits against the investigation committee and several newspapers, Lindstrøm put together a collection of different memos which had compromised a substantial part of the criticism directed at him. The only copy publically available was lost from the Sophus Bugge university library in 1987 (author's translation).

139 SA, Recommendation on the Ministry of Industry's administration, 15 November 1963, pp. 49, 138 (author's translation).

140 *Ibid.*, p. 138.

141 Interview with Leif Terje Løddesøl, 11 March 2007 (author's translation).

tutions. Based on the investigating commission's reports and several books that Lindstrøm wrote, it seems fair to conclude that he was motivated by practical and principle considerations.

Concerning practical considerations, it weighed heavy that the mining ordinance was out-of-date in terms of technological development within oil exploration. Lindstrøm claimed that the ordinance did not take the technological realities of modern oil exploration into account. As mentioned, Caltex stated that the cost per borehole would be between 1 and 1½ million dollars. All in all the costs for providing a sample deposit could amount to several hundred million dollars. According to Caltex, provisions requiring deposit samples were unheard of in modern oil legislation.¹⁴²

Lindstrøm was quite certain that geological indications did not prove the existence of oil. However, based on his professional experience he was also aware that a deposit sample, for example of coal, did not prove the existence of a profitable deposit. In other words, current practice did not take profitability into consideration: nor would a modification have to.¹⁴³

Lindstrøm's principle considerations were coloured by his view of Norwegian sovereignty over Svalbard. According to Lindstrøm, the Svalbard Treaty and the mining ordinance obliged Norway to make conditions favourable for economic activity on the archipelago.¹⁴⁴ This had consequences for his oil policy. In 1965, when testifying at Lindstrøm's trial, Caltex's director in Norway, Arild Lindbom, told the court he was under the impression that Lindstrøm wanted to achieve something on Svalbard. Oil industry fitted this idea.¹⁴⁵

In addition, Lindstrøm was of the opinion that Caltex had honest intentions. It was possible to be conferred claims on the basis of a mineral sample and still only search for oil. According to section 14 of the mining ordinance, a claimholder acquires "... the sole right to extract all the minerals and rocks ... within the claim ...", including oil. This means that if a claim is awarded on the basis of a mineral sample, the

142 H. Lindstrøm, *Svalbard og norske nutidspolitikeres behandling av norske interesser i Svalbardområdet. En samtidshistorie om nasjonal galskap* [Svalbard and contemporary Norwegian politicians' treatment of Norwegian interests in the Svalbard area. A contemporary history of national insanity] (Oslo: H. Lindstrøm, 1965), pp. 15, 38–39.

143 H. Lindstrøm: *Svalbard ...*, p. 17.

144 Ibid, pp. 7, 14–15.

145 H. Markussen, *Prossessen mot ...*, p. 168

company in question would win sole rights to oil exploitation, if there is oil on the claim.¹⁴⁶

Caltex was aware of this option. Director Lindbom summarized it thus: “We could have got claims by handing in gravel.”¹⁴⁷ However, the company did not want to exploit this loophole. Caltex’s representatives informed Lindstrøm, Skjerdal, and Holler about this viewpoint during their meeting at the MI on 27 March 1961. According to Lindstrøm, the company stated that it was only interested in oil. All claims that were shown not to contain oil would be abandoned. However, it was underlined that starting exploratory drilling without claim rights was out of the question: claim rights were a security the company needed before it would invest millions in drilling.

Holler, Skjerdal, and Lindstrøm sympathized with Caltex dissatisfaction concerning the requirement for deposit samples. Lindstrøm especially was influenced by the company’s decision to raise the issue with the MI instead of demanding claims on the basis of minerals. And in retrospect it was not the decision to modify the interpretation of the mining ordinance that was most strongly criticized. The Norwegian government wanted business activity on Svalbard, and oil stood out as a supplement to coal. The problem was that the MI did not seek any advice in establishing the professional criteria for what would constitute acceptable geological indications. Thus it was Caltex’s geologists who set the standard for the theoretical production of evidence required for claims, not the Norwegian authorities. Norway’s regulatory authority was not activated.¹⁴⁸

Why were the other relevant institutions excluded? To formulate technical criteria for acceptable geological indications of oil, the Norwegian Polar Institute would have been a natural partner for the mining section. However, to Lindstrøm such an idea was impudent. He disliked the Polar Institute, regarding it as challenging the mining section’s professional expertise and as competing for money from the budget.

146 Royal Decree, 7 August 1925, Mining Ordinance for Spitsbergen (Svalbard)

147 H. Markussen, *Prosesen mot ...*, p. 168 (author’s translation). Lindstrøm shared Lindbom’s understanding. It was, however, incorrect. With reference to mining industry being a business enterprise, it was established by Oslo City Court in the so-called “Berabo case” in 1974, that deposit samples must demonstrate probability. So winning claims on the basis of “gravel”, meaning minerals impossible to trade at any conceivable profit, was not an option.

148 H. Lindstrøm: *Svalbard ...*, pp. 38–39.

Importantly, he was of the opinion that interpreting the mining ordinance was the domain of the mining commissioner and the MI. As the Polar Institute took claims on behalf of the State, it was in no position to take a stand on questions of evidence. This was a principle for Lindstrøm, but nor did he have any confidence in the Polar Institute's professional value. Throughout his career at the MI, he had never "... seen any instances in which the Norwegian Polar Institute could have provided the Mining Commissioner with any sort of advice regarding his work on Svalbard".¹⁴⁹

That he had to compete with the Polar Institute for money from the budget did not increase his cooperativeness. Also, he fundamentally disagreed with the Polar Institute's preferences. He "... opposed having this institute using a large portion of its time and energy on exploring the South Pole area together with other 'great powers'. We should obviously focus our time and resources on more obvious tasks".¹⁵⁰ He was clearly thinking of Svalbard:

For the Mining Section, and I am sure it was true of the rest of the Ministry of Industry's leadership, it was important first and foremost to focus on the underdeveloped state of our own research before spending large amounts of money on researching the South Pole and other remote areas. For the Mining Section, it was important to have a good head for business in studying Svalbard, and stop flying around on mountain tops, looking for ancient fossils ... my task was to ensure that ... such work came after we had ensured an economic basis in this country.¹⁵¹

In other words, Lindstrøm had no faith in the Polar Institute's professional qualifications or utilitarian value. That the institute played an important part as a Norwegian standard bearer in the polar regions mattered little. To Lindstrøm this was clearly of secondary importance compared to the work of the mining section. Against this background he was opposed to involving the Polar Institute in the issue of deposit samples.

Because of Svalbard's rooting in international law and its position between East and West, it was Lindstrøm's insistence on not consulting the MFA that most surprised his contemporaries. Several factors were

149 Ibid, pp. 19, 22 (author's translation).

150 Ibid, pp. 19, 25 (author's translation).

151 Ibid, p. 28 (author's translation).

significant. At its base lay an old grudge against Norwegian foreign affairs: “I am one of those who have never been particularly impressed by Norwegian foreign policy. 1940 – was a rule with no exceptions.”¹⁵²

That the MFA cooperated with the Polar Institute was also important as this challenged the mining section’s professional competence. Lindstrøm was vexed at the MFA treating the Polar Institute as “... their special experts on questions of geology and mining industry in the Antarctic and Arctic regions”. Personally he could not remember a single instance of his section receiving similar requests from the MFA. It also annoyed him that the MFA often put its weight behind the Polar Institute in budgetary matters at the Ministry of Finance. This positioned the MI “... against opponents we had not taken into account”.¹⁵³

However, the decisive factor was that Lindstrøm was of the opinion that the MFA should not be involved in mining and industry issues on Svalbard. In 1965 he wrote:

To avoid any discussion and any doubt, I will start by underlining that while working with Svalbard issues I have always been of the basic opinion that one should not present anything related to the Mining Ordinance for Svalbard to the Ministry of Foreign Affairs.¹⁵⁴

Once again his view of administrative procedures was driven by principle: the mining ordinance should be interpreted by the mining commissioner. Only in cases of doubt should the MI be consulted. Whether to award Caltex claims on the basis of geological indications was one such case. In that respect the MI had “... the right to contact the Ministry of Justice, but no obligation to contact the Ministry of Foreign Affairs”.¹⁵⁵

This negativity to involving the MFA was also linked to Lindstrøm ascribing a “maximal interpretation” analysis of the Svalbard Treaty: it was the intention of the treaty that foreigners should have the right to engage in economic activity on Svalbard. It was Norway’s duty to make sure this happened unhindered. Lindstrøm thus claimed it was

152 H. Lindstrøm, *Svalbard ...*, p. 98 (author’s translation). In April 1940 Germany invaded Norway, catching the Norwegian authorities unawares. After the war, the MFA’s leadership was frequently blamed for not having foreseen the attack.

153 *Ibid.*, p. 28 (author’s translation).

154 *Ibid.*, p. 27 (author’s translation).

155 H. Lindstrøm, *Svalbard ...*, p. 29 (author’s translation).

“... obvious to everyone that the interpretation and application of the Mining Ordinance cannot and should not be done by the Ministry of Foreign Affairs, and that one cannot give special considerations to Norwegian foreign policy”.¹⁵⁶ In other words, Lindstrøm’s dealings with Caltex were directed by a belief in economic ventures taking legal preference over Norwegian exercise of sovereignty on Svalbard. Thus the MFA should not be contacted.

Caltex and the government

Lindstrøm’s standpoint was clear. And he received support from Minister Holler, who eventually settled the matter. After the meeting with Caltex’s representatives on 27 March 1961, Holler informed Lindstrøm and Skjerdal that he would raise the matter of the deposit sample at a government conference. Both Lindstrøm and Skjerdal later claimed that Holler said that this had been done, and that the Government had given its consent to the MI’s solution. Thus there was no longer any reason to claim that the MFA should be approached.¹⁵⁷

However, it emerged that none of the government’s members could remember Holler mentioning this. And nor were there any minutes from the government conferences on the matter. Norwegian newspapers accused Holler of lying.¹⁵⁸ To avoid a media debate about Holler’s credibility, the government asked the investigative committee to meet up again and examine the question. The committee’s members agreed.

Since the issue to be investigated regarded events that had taken place some years back, the committee pointed out that one could not put decisive weight on whether members of the government that might have been involved in debating the issue could not remember it. On the other hand, Svalbard issues were seen as especially delicate, thus making them easier to recollect. In this regard the committee drew attention to the testimony of Jens Haugland, who was minister of justice when the matter of the deposit sample was handled by the Ministry of Justice. Haugland remembered that he was orientated by his own secretary general, Rolv Ryssdal, about the MI’s unofficial submission of the issue. Therefore he found it inconceivable that he

156 Ibid (author’s translation).

157 K. Skjerdal, *I demokratiets navn* [In the name of democracy] (Oslo: Cappelen, 1967), p. 203.

158 “Fra vondt til verre” [From bad to worse], *Verdens Gang*, 23 August 1965.

would not be able to recollect debating the same issue at a government conference.¹⁵⁹

The investigation committee found no information that could validate Holler's assertion that the issue of samples had been presented to the Government. Holler, however, refused to admit any wrongdoing. In light of this deadlock, the committee concluded that "... in any case he has presented the matter in such a fashion that neither the prime minister nor the other members of the government have been able to comprehend its importance".¹⁶⁰

Why was this so important? At the time this was a matter of whose responsibility it was. However, for this study it is of importance to the explanatory power of the *institutional interest* perspective. Tamnes has pointed out that the Government and the Standing Committee of Foreign Affairs coordinated foreign-policy issues pushed to the surface by sector interests. Thus the political leadership should largely have been able to shape Norway's foreign policy. But the investigative committee's conclusions – like MP Selvik's reference to the absence of Svalbard issues in the Standing Committee of Foreign Affairs – illustrate that the deposit sample issue had been settled in favour of Caltex without being first checked by the Cabinet or the Standing Committee of Foreign Affairs.

Oil exploration and the Airport Question

Although Norsk Polar Navigasjon (NPN) put its airport plans on hold following the negative response from the Norwegian government, its commitment to business ventures on Svalbard were not just superficial. The company sent three expeditions to Svalbard to look for oil as early as 1960. Unlike Caltex, it was not that concerned with securing claim rights in advance. The first test drilling took place in July 1961.¹⁶¹ But not after claim surveys on 15 August 1962 was the company awarded claims, thirty in all.¹⁶²

The explanation for NPN risking drilling before its rights had been secured is simple. First, it did not use equipment as demanding of capital as Caltex – indeed, its expeditions almost seemed "voluntary". While Caltex covered large areas by helicopter, the Pedersen

159 SA, Additional recommendation for claims on Svalbard, 1 October 1965, pp. 13, 29–30.

160 Ibid, p. 52 (author's translation).

161 E. S. Pedersen, "Svalbard i flyvningens ...", p. 229.

162 SA, Report to the Storting no. 37 (1964–65), pp. 2–3.

brothers picked their way through the icy wastes by boat, tractor, or by foot. The area explored by the company was small, but this kept costs low. In addition, the company had found slate with traces of oil in the area where its trial drilling had taken place in 1961. It would not have been possible to deny the company claims on the areas where deposit samples had been discovered. Thus claim rights had essentially been secured. However, the company got wind that geological indications were also acceptable as a basis for claims. The Pedersen brothers therefore extended the company's claim application. When the claim survey was held in August 1962, NPN won three claims based on deposit samples and twenty-seven based on geological indications.¹⁶³

However, the Norwegian authorities were not enthusiastic about NPN's achievements. Indeed, it is important to point out that the authorities were suspicious of the company even prior to 1960. NPN had resisted for as long as possible the authorities' attempts to stop the plans for an airport, much to the Government's displeasure. The Norwegian authorities were also worried that Gunnar Sverre Pedersen's association with the military would cause suspicions in Moscow that military plans loomed in the background. This uneasiness was so deeply engrained that the Norwegian government wanted to exclude Lt Colonel Pedersen, not just from any airport plans, but from Svalbard in general. That the brothers thought it was wrong to be so considerate towards the Soviet Union's objections did not improve matters.¹⁶⁴

Hence the government was sceptical to NPN's oil exploration intentions. That the company had no financial strength and no experience of oil exploration in comparison with the other interested parties in Svalbard, strengthened the government's mistrust. It was assumed that the primary objective of exploring for oil was to promote airport construction. During the autumn of 1960, both the governor and Norway's chief of military intelligence, Vilhelm Evang, suspected that NPN would construct runways on its claims. The government shared this view. During a government conference in October 1961, Minister of Foreign Affairs Halvard Lange noted that the company had not found oil, but was working on the same areas on which it had previously wanted to construct airfields. Minister of Industry Holler

163 RA, Records of the Ministry of Industry, 1A15211, Memo on Svalbard by J. Evensen, 21 March 1963.

164 R. Tamnes, *Svalbard og den politiske ...*, pp. 31–32.

assumed that oil exploration was "... acting as camouflage for certain other plans".¹⁶⁵

Such uneasiness was justified. NPN's oil ventures had an independent rationale, but at the same time the company hoped that oil activities would create a demand for airports. According to NPN's annual report for 1960, oil exploration would "... ensure the necessary foundation for construction of airports and development of transport operations in the polar regions".¹⁶⁶ In line with this strategy, the company actively sought to play on a notion of an increasing demand for air freight. In the company's annual rapport for 1961, it was evident that the board was continuing to work with issues of transportation in the Arctic, and that it "... sees an opportunity to establish a local air connection between the company's claims as soon as in 1962".¹⁶⁷ In February 1963 Einar Sverre Pedersen applied for permission to fly from Alaska to Svalbard. He wanted to land "... on a natural landing place close to Ny-Ålesund and Brøggerhalvøa". The intention of the flight, he wrote, was "... to stimulate the shared interest for flying in these areas". The MFA suspected that it was the Pedersen brothers' intention to expand the proposed landing field.¹⁶⁸

This plan – poorly veiled by oil exploration – was to have repercussions. Soviet suspicion of Western activity in the area was based on a fear that it might be a smokescreen for something else. The Russians knew of NPN's airport plans, and could not "... comprehend that a private Norwegian company was allowed to search for oil in such a sensitive area, especially since one of its participants was an active officer in the Norwegian military".¹⁶⁹

Because of this, NPN's oil exploration drew unwanted attention to the area. Such attention was undesirable "... primarily because of the tense strategic relationship with the Soviet Union".¹⁷⁰ The company's indefatigable pursuit of an airport was noted with displeasure. However, according to the mining ordinance, there were few opportunities to halt NPN's oil exploration. The Norwegian government

165 RA, SMK, Government Conference, 26 October 1961 (author's translation).

166 R. Tamnes, *Svalbard og den politiske ...*, p. 35 (author's translation).

167 Ibid (author's translation).

168 RA, Records of the Ministry of Industry, 1A15211, Memo on Svalbard by J. Evensen, 21 March 1963 (author's translation). The Directorate of Civil Aviation notified Mr Pedersen that permission for non-commercial flights was unnecessary. However, it was added that any kind of improvement of a "natural landing place" was forbidden.

169 Interview with Willum Steen, 28 August 2007 (author's translation).

170 Ibid.

thus settled for a different approach: NPN was too weak to accomplish anything on its own. Through strengthened regulatory measures, it would be forced to accept the government's will.¹⁷¹

Claims and oil: evolving towards a terra communis

By the summer of 1962 two companies had been awarded claims intended for oil exploration on Svalbard: Caltex and NPN. Compared to coal mining, confined to certain areas, the geographical area for economic activity had expanded considerably, a development Caltex had pushed forward. NPN remained a dwarf by comparison, both technologically and financially.

Why was this development dangerous? First, it could lead to foreign political complications. In relation to Tamnes' description of the threat pattern on Svalbard, approving Caltex's claim application meant that the MI had incautiously "... paved the way for an external secondary threat ...", which in turn would open up for the domestic secondary threat in the form of NPN. This could cause the Soviets to accuse Norway of deliberately encouraging and favouring American capitalism and its Norwegian footmen on Svalbard.¹⁷²

Neither were there any gains from a Norwegian sovereignty perspective. The right to regulate the criteria for oil claims was abandoned. At a time when Norwegian exercise of sovereignty was at a level of minimal activity, this was a serious development. And as mentioned, Norway's foreign-policy leadership wanted Norwegian economic activity that underlined Norwegian supremacy without provoking Soviet reactions. Caltex was American, and NPN was too strongly connected to the airport question and the Norwegian military to fit the picture.

At the same time this generous treatment of Caltex could spell further problems. A precedent had been set. As non-discrimination was an important principle in the Svalbard Treaty, the Russians now also had good reasons for acquiring new claims. In other words, a legal basis for expanding Soviet involvement on Svalbard had been created. If Soviet and American interests were to compete over the archipelago's resources, it could cause unpredictable consequences.

In sum this meant that by making conditions favourable for the *external* and *domestic secondary threat*, the MI had opened for a reaction from the *primary threat*, the Soviet Union – which Norway could hardly

171 Interview with Leif Terje Løddesøl, 11 April 2007.

172 R. Tamnes, *Svalbard og den politiske ...*, p. 48 (author's translation).

contain either politically or legally. The archipelago could in reality revert back to its previous status as an unregulated *terra communis* – as it had been prior to the Svalbard Treaty which laid the foundation for the Norwegian takeover in 1925.¹⁷³

173 Ibid.

Property rights on Svalbard

Claims awarded in conflict with the mining ordinance were not the only problem for Norwegian Svalbard policy. Whether the State had participation rights to operations on Caltex claims would also prove especially difficult to handle, threatening to expose sensitive sides of Norwegian sovereignty over Svalbard. Potentially, this could also end up being a case between Norway and the United States at the International Court of Justice.

In one corner was the Norwegian State: as property owner, the government thought itself entitled to a share in any profit and the foreign-policy leadership in particular stressed the importance of having Norway's participation rights acknowledged. In the other corner was Caltex. The company – which in addition to geology was also attracted to Svalbard's low taxes – did not want to share any potential yields. However, this pattern of conflict was complicated by the appearance of the Ministry of Industry, acting again as Caltex's best man. In addition, the company was supported by legal quarters.

The question of participation rights caused a forceful ministerial turf war, helping to reveal the unique working conditions and personalities that defined the MI at the time. Like chapter three, this part of the study will show how circumstances within the administration impeded management of the issue. A solution to the conflict did not emerge until after the MI's leadership had been replaced.

Superficially, the conflict seemed to be about the government's financial interests. Any oil discovered could yield large revenues. The financial perspective was significant, but Norwegian sovereignty consideration determined the Norwegian government's stance. This part of the study will show how Caltex's dispositions challenged Norwegian sovereignty by claiming that this did not include property ownership

over Svalbard's unclaimed land, and how the Norwegian government reacted to this.

Evensen and the MFA's Svalbard policy

The legal affairs department mainly handled Svalbard questions at the MFA. As with the Ministry of Justice's legislation department, the legal affairs department was traditionally strongly focused on theoretical legal interpretations. But this changed rapidly after July 1961, when Jens Evensen – new to the MFA – became the department's director general. Evensen's appointment was connected to the minister of foreign affairs, Lange, and his desire to have a legal affairs department which could operate more practically. Evensen did not disappoint. As director general he was pragmatic, vigorous, and enjoyed Lange's confidence.¹⁷⁴

It was Evensen's "... manifesto that the legal affairs department should be a judicial-political department. It should play a part in guarding Norwegian interests". International law should not immediately dictate Norwegian foreign policy, but the latter could find support in the former if this benefitted foreign-policy goals, including Svalbard. Prior to the conflict over participation rights, Evensen had pointed out that the department had to have a "... more active view on the Svalbard Treaty".¹⁷⁵

The MFA's attitude to activity on Svalbard was emphatically restrictive, and it generally discouraged from being persistent in promoting national interests there. Rooted in an idea of impotence, this was a legacy from the Svalbard crisis. The archipelago was seen as an outpost not worth risking one's neck for. This attitude was supported by members of the ministry's establishment, including Assistant Director General Egil Amlie and Principal Officer Knut Hedemann, but also by politicians. As late as in June 1965, the chairman of the Standing Committee of Foreign Affairs, Finn Moe (Labour) stated that Svalbard was "... if not a burden, then at least a very heavy responsibility".¹⁷⁶

Evensen represented the obverse to this line of thinking. With his encouragement, new employees at the legal affairs department took a more active approach to the Svalbard Treaty. Especially Leif Terje

174 B. R. Retzer, *Makten, myten og mennesket Jens Evensen* [The power, myth and person of Jens Evensen] (Gjøvik: bbg, 1999), pp. 77–79.

175 Interview with Prof. C. A. Fleischer, 19 April 2007 (author's translation).

176 UD, 36.6/39, bind II; SA, Closed sitting in the Storting, 18 May 1965 (author's translation).

Løddesøl and Carl August Fleischer¹⁷⁷ were given relatively free hands.¹⁷⁸ Willum Steen from the 4th political section was also a “... strong supporter of the Norwegian State marking itself in the polar regions, not least on Svalbard”.¹⁷⁹ With Evensen this group supported an “active interpretation” of the treaty: The legal affairs department should aim to create more freedom of action for Norwegian Svalbard policy. Focus should thus be on the treaty’s possibilities, not its limitations.¹⁸⁰

Significantly, Evensen’s active Svalbard policy was supported by Minister Lange. This was an important development with consequences beyond the Caltex Case. In real terms this meant that the legal affairs department – and over time the entire ministry – readjusted their view on Svalbard. Norway was to mark actively its presence on Svalbard.¹⁸¹

Right to participation

The mining ordinance was again at front of stage. According to the ordinance, a claim holder had sole rights to extract all minerals and oils within the claim. But the ordinance also provides the landowner with a right to participate in operations on the claim not exceeding one quarter. And the Svalbard Act of 1925 establishes that all land on Svalbard is State property, except for treaty property, meaning land occupied before the Svalbard Treaty’s entry into force. Accordingly, the Norwegian State has a right of participation not exceeding one quarter in operations on claims on state land.¹⁸²

The State’s participation right was discussed by the MI in November 1961. Because of Caltex’s claims, the MI started to make preparations for participation. But a confidential MFA memo from 1947 surfaced, raising doubts over the State’s participation right. The MI, a relevant professional partner in the matter, had received a copy of the memo. But no conclusion had been reached in 1947. Lindstrøm thus approached the MFA to hear a second opinion on the matter.¹⁸³

177 C. A. Fleischer started working for the MFA in 1960. He worked full time for the MFA until January 1962, when he also started working as a lecturer at the University of Oslo (UiO). He completed his PhD in 1964 and became a professor in 1969. He has been employed by both the UiO and the MFA throughout his career.

178 Interview with Leif Terje Løddesøl, 11 April 2007.

179 Interview with Willum Steen, 28 August 2007 (author’s translation).

180 Interview with Prof. C. A. Fleischer, 19 April 2007.

181 Ibid.

182 SA, Report to the Storting no. 37 (1964–65), p. 1.

183 UD, 36.6/39, bind II.

At the MFA, the issue was subjected to considerable analysis from the end of November 1961. Willum Steen noted that section 22 of the Svalbard Act laid down that all land which was not treaty property, was to be considered State property. The Svalbard Act thus clarified a question to which the treaty did not provide an answer. Steen presumed that the Act built on Article 1 of the treaty which establishes Norway's full and absolute sovereignty over Svalbard, thus enabling the State to claim ownership over unoccupied land with the same rights as ascribed private landowners. If this was correct, the State had participation rights.¹⁸⁴

But Steen was concerned that trouble with the signatory powers could be sparked off. It could be argued that access to participation in claims on all areas not subject to private ownership would constitute a privileged position for Norway that may not have been intended when the Svalbard Treaty was moulded. Article 1 of the Svalbard Treaty, granting Norway sovereignty over Svalbard, but subject to stipulations, also seemed to curtail section 22 of the Svalbard Act. Neither could it be ruled out that Norway and the signatory powers had regarded the areas not subject to private ownership as a sort of no-man's land during the preparatory work on the treaty: that Norway should have sovereignty over these areas, but not ownership in the sense of private law.¹⁸⁵

Steen was in effect raising the fundamental question about the Svalbard Treaty: was it the principle of absolute sovereignty or limited sovereignty exercise that should be applied when analysing issues not covered by the treaty's explicit stipulation articles? From the perspective of international law, one could not prescribe the stipulation articles new areas of application. Thus Norway had ownership and participation rights. However, in light of Articles 7 and 8 in the treaty one could assert that participation rights would constitute a non-intended privilege for Norway. It was a matter of interpretation. When a treaty's intention was in doubt, the practice in international law was that:

The whole of the treaty must be taken into consideration, if the meaning of any one of its provisions is doubtful; and not only the wording of the treaty, but also its purpose, the motives which led to its conclusion, and the conditions prevailing at the time.¹⁸⁶

184 UD, 36.6/39, bind II.

185 Ibid.

186 L. Oppenheim and H. Lauterpacht, *Oppenheim's International Law*, 8th edition (London: Longmans, 1955), p. 953.

But was there any material outside the Svalbard Treaty that could shed light on the issue? Steen drew attention to a record from negotiations between Norway and Sweden in 1920 over a draft of the mining ordinance. In the first draft, it said in section 19 that: “The proprietor of any *private* ground on which a claim has been given is entitled to participation ...” This was changed by the Norwegian authorities to: “The proprietor of any ground on which a claim has been given is entitled to participation ...” It was stated that the reason for removing the word “private” was only to ensure that the State, if it acquired private land, would have the same rights as private landowners.¹⁸⁷ This standpoint could possibly imply that there was an obligation vis-à-vis Sweden for Norway to refrain from invoking participation rights on State land, according to Steen.¹⁸⁸

The next question was whether Norway was bound by this. The record had been the backdrop for the MFA’s memo from 1947, written by Executive Officer Gustav Heiberg. Principal Officer Erik Colban and Professor Frede Castberg¹⁸⁹ continued working with the matter of this record with Heiberg. They never came to an agreement, and in January 1948 three different standpoints were recorded. Heiberg concluded doubtfully that the record constituted a binding obligation towards Sweden. Colban asserted that it implied a civil judicial obligation which Norway could seek annulled. Castberg’s view was that the record was only preparatory work of interpretative value. However, this could hardly mean that the State had to limit its participation right without this being explicitly stipulated by the mining ordinance, which was not the case.¹⁹⁰

Though the question went unanswered, Steen recommended that the State invoke participation rights for two reasons. First, such a position could be well advocated. Second, it was highly doubtful that objections to invoking such a right would be raised by Sweden or any other signatory power. But first and foremost Steen argued that strengthening Norway’s position on Svalbard was principally desirable. And in cases when there was doubt as to whether the Svalbard

187 UD, Records from negotiations between Norway and Sweden, 26–27 March 1920.

188 UD, 36.6/39, bind II. The word “*private*” is not emphasized in the original.

189 Prof. Frede Casberg was as mentioned in chapter II the MFA’s advisor in international law.

190 UD, 36.6/39, bind II.

Treaty limited Norway's position, this could be achieved by establishing a practice which served Norwegian interests.¹⁹¹

In January 1962 the issue was passed on to Director General Evensen, who also maintained that the section 22 of the Svalbard Act gave the State the same rights over State land as a private landowner would have over private land. The question was whether this standpoint was compatible with the provisions of the Svalbard Treaty and mining ordinance. Whether Norway had entered into a binding obligation to Sweden during the negotiations in 1920 was therefore important. The answer would have far-reaching consequences. In accordance with the Treaty's principle of non-discrimination, Norway would have the same obligations to the other signatory powers as to Sweden.¹⁹²

Evensen concluded that since section 22 of the Svalbard Act had been in force since 1925 without being opposed, it would be illogical if the authorities now failed to invoke participation rights. And such action would probably not cause Stockholm to raise objections.¹⁹³ At the same time the issue was of significance for Evensen's objectives for Svalbard: that "... Norway through a wise and active Svalbard policy will be able to emphasize and strengthen its rights", made for invoking participation rights.¹⁹⁴

Oil claims revisited

The MI's approach to the MFA regarding the State's participation right was a turning point for Norwegian oil policy on Svalbard. From then, oil-policy management was no longer the exclusive domain of the MI, and became instead subject to broader political analysis. The realities of foreign affairs and regional threat patterns had caught up with the MI's lenient treatment of Caltex.

During the winter of 1961–62, in connection with work on the issue of participation rights, the MFA became aware that interpreting the mining ordinance was problematic when dealing with oil claims. Evensen was shocked by how easily claims had been conferred to the oil companies. He pointed out that NPN's geological indications consisted only of references to a book from 1937 by the geologists Adolf

191 Ibid.

192 UD, 36.6/39, bind II.

193 Ibid.

194 RA, Records of the Ministry of Industry, 1A15211, Memo on Svalbard by J. Evensen, 4 February 1962 (author's translation).

Hoel and Ander Orvin, *Das festungeprofil auf Spitsbergen*, and one from 1940 by Orvin alone, *Outline of the Geological History of Spitsbergen*.¹⁹⁵

Evensen was not in a position to evaluate the quality of Caltex's geological data, but he found it worrying that the company had been conferred sole extraction rights to such large areas without any substantial commitments or economic obligations being demanded of the company. In addition, it was generally supposed that the company's claims consisted of the areas on Svalbard where the probability of discovering oil was greatest. In practical terms this implied "... an advance booking of considerable areas ...", and "... may cause foreign political complications". He feared that the Soviet Union would accuse Norway of greatly favouring American interests.¹⁹⁶

The legal affairs department quickly decided that stricter demands were necessary. Evensen's goal was two-fold: first, he wanted Caltex and NPN – so far the only companies with claims awarded based on geological indications – to be subject to much stricter treatment in terms of the other provisions in the mining ordinance, especially the obligation to work the claims; second, Evensen wanted to tighten the MI's liberal claim criteria. In sum, he wanted to activate Norway's rights and opportunities to regulate the oil companies' terms and development.¹⁹⁷

But a conflict between the MI and the MFA was now brewing, the core of which was to be found in Evensen championing a fundamentally different opinion on Norway's position on Svalbard than his colleagues at the MI. Lindstrøm asserted that it was Norway's duty to make conditions favourable for business ventures on the archipelago. It was "... illegal to take special foreign political considerations into account when managing Svalbard".¹⁹⁸ Evensen, on the other hand, asserted that outside of the Svalbard Treaty's non-discrimination principle, it was up to Norway to decide how activity should be conducted. The crux of the matter was that Norway's sovereignty

... does not represent any clearly defined areas of responsibility for Norway's sovereignty exercise. The sovereignty's contents

195 Ibid.

196 RA, Records of the Ministry of Industry, 1A15211, Memo on Svalbard by J. Evensen, 4 February 1962 (author's translation).

197 Ibid. As mentioned in chapter 2, all claim rights are lost if the claim holder from the 1 October, the same year as the claim is finalized, and four years on, does not carry out a certain amount of work. The State may grant a dispensation from this duty to work the claim.

198 H. Lindstrøm, *Svalbard ...*, p. 116 (author's translation).

proper can be strengthened or weakened by later custom. Thus if one neglects to enforce the opportunities available and the control which the Mining Ordinance provides ... then Norway's authority and its opportunity to control the development is weakened.¹⁹⁹

The main point for Evensen was that the MI was surrendering a control mechanism by acting so liberally in the claim issue. If referring to pre-war literature was all one had to do to be awarded claims, then the authorities had no real control over the basis on which oil companies were given opportunities. Norway's sovereignty exercise was thus an empty shell, a serious development that had to be reversed. The Caltex case became the first test of Evensen's ambition to have a more active Svalbard policy.

Andenæs' contention of the participation right

Participating in Caltex's claims could imply that the State might have to pay for one quarter of operational costs. Because Caltex had only completed preparatory investigations, it was impossible for the MI to calculate what such costs might amount to: the question was raised with Caltex at the end of March 1962.

However, in its response of 4 May the same year, Caltex contested the State's participation right. The company referred to a legal opinion from Professor Johs. Andenæs at the faculty of law at the University of Oslo who maintained that participation rights could only be invoked by owners of treaty land, and not by the State basing its ownership rights on section 22 of the Svalbard Act.²⁰⁰

That Andenæs was the mastermind behind Caltex's contention is noteworthy. Although the State's participation right on Svalbard was a matter of international and property law, Andenæs' specialty was criminal and constitutional law,²⁰¹ but by the same token he was a

199 RA, Records of the Ministry of Industry, 1A15211, Memo on Svalbard by J. Evensen, 21 March 1963 (author's translation).

200 SA, Report to the Storting no. 37 (1964–65), p. 1.

201 C. Smith, "Tonene strømmet tilbake" [The memories are returning], in *Etter overveielse* [After reconsideration] J. Andenæs (Oslo: Universitetsforlaget, 1992), p. viii. Andenæs dealt with many spheres during his career. However, according to Prof. Dr juris Carsten Smith "... criminal law was at centre stage" of Andenæs' work. This description is especially precise up to 1962. At that time over eighty per cent of his publications regarded criminal law.

well-known public figure. In 1935 he had completed an excellent final university examination. He played a prominent role in the public prosecutor's team during trials against alleged Nazi collaborators after World War II, and, despite his young age, he became professor of law at the University of Oslo in 1945. In the following years, he created a position for himself as Norway's leading jurist. He was, according to his colleague, Professor Carsten Smith, "... a leading legal researcher, a leading figure in our public lives ... Few jurists in Norwegian history have had such influence over legal affairs". He was a jurisprudential factotum that had the ear of the Storting, the Government and the courts alike.²⁰²

Andenæs' public reputation was important. During meetings between Lindstrøm and Caltex it became evident that the MI lacked a complete survey of property ownership on Svalbard. Lindstrøm then entered into cooperation with Caltex to have such a survey produced. Furthermore, Andenæs was contacted by the company "... because the job presupposed access to the Ministry's archives, and thus one wanted a person with public credibility to be responsible for the survey".²⁰³ Andenæs accepted the task and his assistant, lecturer Ole Lund, was granted permission to utilize the ministry's archives.²⁰⁴ The survey was completed on 18 March 1962.²⁰⁵

However, Andenæs was also solicited by Caltex to take a stand regarding the State's participation right. He was told by Lindstrøm that the State had no interests in the matter, and he accepted the assignment. This work resulted in a legal opinion of 26 April 1962.²⁰⁶ Lindstrøm saw no problem in assisting in compiling a legal opinion to the State's disadvantage. Nor did Caltex have any doubts as this

202 "Johs. Andenæs' minneord" [Memorial speech for Johs. Andenæs], *Lov og Rett*, no. 6 (2003): 381–382 (author's translation).

203 Anneus Schjødt, quoted in "Andenæs' advokat redegjør" [Andenæs' solicitor gives account], *Morgenbladet*, 16 February 1974 (author's translation). Schjødt was Andenæs' solicitor in a defamation issue regarding the Caltex Case.

204 Lund was given unhindered access by Lindstrøm. Even Lindstrøm's closest colleagues did not know this until Haga once encountered Lund in the MI's archives. Haga noted Lund was alone and stepped in. If there was anything that Lund needed, Haga could help him search for publically available material, but nothing else. Lund, who already knew the MI's filing codes, replied that he would like to see the files regarding airports on Svalbard. Beyond this episode, the extent of Lund's access is unknown. However, it was not his first day in the MI's archive. In addition, Lindstrøm was in the habit of keeping documents at his own flat. When Haga notified the authorities of the circumstances after Lindstrøm's departure, he drew attention to one of the MFA's memos which had vanished. Not surprisingly, Haga's information astonished the MFA.

205 RA, Records of the Ministry of Industry, 1A15212, Survey of property rights on Svalbard by Prof. Andenæs.

206 The legal opinion was called: *Om den norske stats rett til å delta i grubedrift på statsgrunn på Svalbard*.

development unfolded. That it was a highly regarded and inspirational legal scholar who contested the State's participation right created legitimacy. No one in the MI's leadership gave any thought to how such cooperation would appear from a Soviet perspective.²⁰⁷

This intimate cooperation between Lindstrøm and Caltex was unknown outside the MI, but the MFA knew that Andenæs had taken on work for the company. Andenæs had approached lecturer Carl August Fleischer as early as January 1962 and asked for his assistance. The assignment was to write about Norway's rights on Svalbard and whether it was possible to assert that they were limited. When Fleischer became aware that Caltex was the customer, he declared that he could take no part in the job as he also worked for the MFA's legal affairs department.²⁰⁸

Evensen thus found out through Fleischer that Andenæs was to prepare a legal opinion for Caltex. At the same time it was a fact that Professor Castberg had written a confidential legal opinion about the participation right, with the background provided by Heiberg's memo from 1947.²⁰⁹ However, Castberg had sent a copy of his legal opinion to Andenæs. Because of its confidential nature Andenæs could not openly debate its content. As the primary study on the State's rights on Svalbard during that time it could, however, influence his point of view. Thus there was a certain expectation at the MFA that Andenæs' final product would be coloured by factors in Castberg's legal opinion that were to Norway's disadvantage.²¹⁰

The translation error

However, it emerged that the MFA was unprepared for the reasoning in Andenæs' legal opinion. Right of participation for the State would constitute a favoured position in violation of the treaty's principle of equal treatment, Andenæs claimed. And based on the English translation of the mining ordinance it could be proven that the State was not entitled to such a right. Then, through Caltex's correspondence with the MI, the MFA became aware that the English translation of section

207 UD, 36.6/39, bind II.

208 C. A. Fleischer, *Korrupsjonskultur ...*, pp. 448–449.

209 Castberg's opinion can be found in: *Utredninger om folkerettslige spørsmål 1942–51*. As mentioned, his view was that the record only had interpretative value and could hardly mean that the State had to limit its participation right.

210 Interview with Prof. C. A. Fleischer, 19 April 2007.

19 of the mining ordinance did not conform to the original Norwegian version.²¹¹

As mentioned, section 19 of the mining ordinance lays down that the “proprietor of any ground on which a claim has been given is entitled to participation ...”²¹² At the same time, section 22 of the Svalbard Act establishes that “All land which is not assigned to any person as his property pursuant to the Treaty relating to Svalbard shall be State land and as such subject to the State’s right of ownership.”²¹³

By comparing the two provisions above the State’s participation in operations on State land seems obvious. This was the conclusion reached by Steen and Evensen. Andenæs, however, asserted that it was erroneous. He pointed out an English translation of section 19 of the mining ordinance, which stated that: “The proprietor of any *private* ground on which a claim has been given is entitled to participation ...”²¹⁴

It seemed like the English translation distinguished between land owned by the State and land owned by private owners. According to Andenæs, participation rights were thus limited to the latter.²¹⁵ As a consequence of this, the legal affairs department’s Assistant Director General, Egil Amlie, started to work on uncovering what was written in the first translations sent to the signatory powers.²¹⁶

Prior to changes being suggested, a draft of the mining ordinance had been translated into English and French at the request of the MFA. In turn, these translations had been changed in tandem with changes in the original Norwegian draft. However, Amlie discovered that during these successive translations an error had occurred. The translator had simply forgotten to make the changes in the English translation that should have come after the expression “The proprietor of any private ground” was changed to “The proprietor of any ground” in the

211 UD, 36.6/39, bind II.

212 Royal Decree, 7 August 1925, Mining Ordinance for Spitsbergen (Svalbard).

213 The Svalbard Act of 17 July 1925, section 22.

214 UD, “Mining Ordinance for Spitsbergen (Svalbard), Presented by the Norwegian Government (Translation)”, 1921, p. 7. The word “private” is not emphasized in the original document.

215 J. Andenæs, “Suverenitet og eiendomsrett på Svalbard” [Sovereignty and property rights on Svalbard], in *Etter overveielse* [After reconsideration], J. Andenæs (Oslo: Universitetsforlaget, 1992), p. 28. Andenæs did not intend to publish the legal opinion he wrote for Caltex. In the article “Problemer om folkerett og sikkerhet i Nordområdene (DNAK, 84/1983) it was criticized by Prof. C. A. Fleischer. To reply, Andenæs found it necessary to publish the legal opinion in the article “Suverenitet og eiendomsrett på Svalbard”, *Institutt for offentlig retts skrifterserie*, no. 1 (1984), and reprinted in his book *Etter overveielse* from 1992.

216 UD, 36.6/39, bind II.

Norwegian text. Thus the modification the Norwegian authorities gave to their Swedish counterparts during the negotiations in 1920 was never given to recipients of the English translation, for example the United States. “The proprietor of any private ground”, from the first Norwegian draft, was left unaltered. However, in the French translation the proper change had been made.²¹⁷

Similar to the status of the Norwegian-Swedish negotiations in 1920, the question was now whether the Norwegian government could be held responsible for the translation error. Could it be argued that the English document was just a translation, and since the Norwegian text was the original, it was thus the only authentic version? Amlie concluded that such an argument was of no use as it was Norway that had introduced the official translations, and thus the country was responsible for the translations’ validity. They were binding.²¹⁸

In spite of the translation error, Amlie thought a great deal of prestige was linked to asserting participation rights. He warned that the Storting and media would question why the government would not stand up to Caltex, despite the clear wording of the Svalbard Act and mining ordinance. At the same time, he was of the opinion that asserting participation rights would lead to a dispute with Caltex, and perhaps the American government, who might invoke the English translation. If the State did not lose for any other reason, it was, according to Amlie, highly probable that it would lose on that basis. The issue had become so delicate, both politically and tactically, that it should be forwarded to the Cabinet.²¹⁹

A legal challenge to Norway’s Svalbard regime

Amlie considered Andenæs’ conclusion solid. Evensen thought it was “... very well-founded”.²²⁰ Unlike Heiberg and Castberg’s work with the record from the Norwegian-Swedish negotiations in 1920, the reference to the translation error was new. But what consequences would

217 UD, 36.6/39, bind II.

218 Ibid.

219 Ibid.

220 RA, Records of the Ministry of Industry, 1A15211, Memo on Svalbard by J. Evensen, 21 March 1963 (author’s translation). As mentioned, Andenæs’ legal opinion was later questioned, e.g. in *Studier i folkerett* from 1997 by Prof. C. A. Fleischer. However, that Caltex had a strong case was the predominant view in the period in question.

accepting Andenæs' legal opinion or a court ruling in his favour have for the State?²²¹

First, the State would be cut off from any revenue from oil discovered on Caltex's claims, and the State's opportunity to collect taxes was already limited by the article 8 of the Svalbard Treaty. An acceptance of Andenæs' legal opinion would also deny the State income from all mining industry on State land, meaning almost all of Svalbard. Thus Svalbard's economic potential could easily become second-rate compared to the rest of Norway. This was a worrying development, but the economic aspect was nevertheless not the most alarming part of Andenæs' legal opinion. His analysis of the mining ordinance – a Norwegian Royal Decree – was more concerning. However, Andenæs asserted unequivocally that it was "... clear that the Mining Ordinance has been created as part of a binding international treaty which must be seen as a supplement to the Svalbard Treaty".²²²

To support his reasoning, he called on the final sub-section of Article 8 of the treaty, which states:

Three months before the date fixed for their coming into force, the draft mining regulations shall be communicated by the Norwegian Government to the other Contracting Powers. If during this period one or more of the said Powers propose to modify these regulations before they are applied, such proposals shall be communicated by the Norwegian Government to the other contracting Powers in order that they may be submitted to examination and the decision of a Commission composed of one representative of each of the said Powers. This Commission shall meet at the invitation of the Norwegian Government and shall come to a decision within a period of three months from the date of its first meeting. Its decisions shall be taken by a majority.²²³

However, this procedure was never carried out. Through unofficial negotiations with the other parties, agreement was reached. Nevertheless, Andenæs asserted that Article 8 gave the signatory powers "... a co-determination right ...", and thus the State was "... bound by the texts which were hereby built on", including the English translation of the mining ordinance. That neither Norway nor any of the other

221 UD, 36.6/39, bind II.

222 J. Andenæs, "Suverenitet og ...", p. 21 (author's translation).

223 The Svalbard Treaty, Article 8.

signatory powers viewed the ordinance as a treaty mattered not. There was no doubt about the translation's status: "That it is an internationally binding contract is certain."²²⁴

Why was this conclusion dangerous for the Norwegian authorities? First, the State would be bound by the translation error. Second, it affected the government's authority over the mining ordinance. As an internationally binding contract, the interpretation of the mining ordinance would concern the signatory powers in the same way as it did Norway. The mining ordinance would thus become a guarantor of legal rights for the signatory powers' citizens rather than a regulation tool for the Norwegian State. Mining could become a right of the signatory powers' citizens. Strengthening Norway's sovereignty exercise – through tightening the requirements for acquiring and maintaining claims – would be hard.²²⁵

At the same time, it was clear that changing the ordinance's provisions was out of the question. The reason was judicial and political. The legal aspect was connected to Article 8 being analysed in a way that made it impossible for Norway to amend the ordinance without following the same procedure the article prescribed. The political aspect reflected the *international framework's* postulate of Norway's limited influence on the international arena: During the Cold War's bloc structure, it would probably be impossible to achieve any change that could strengthen Norway's position.²²⁶

In other words, Andenæs' legal analysis and conclusion threatened to weaken the Norwegian government's authority on Svalbard in several ways: economically, by cutting the State off from income from all mining industry; politically, by giving foreign companies extended rights on the archipelago; and judicially, in the sense that if the State did not have the same rights over Svalbard's unclaimed land as over the rest of the country, then Norway's sovereignty over Svalbard was of a poorer quality.

How did the MFA react to this development? That the State did not have ownership rights over Svalbard's unclaimed land was not explicitly expressed in the Svalbard Treaty. It was a matter of interpretation.

224 J. Andenæs, "Suverenitet og ...", pp. 21, 36 (author's translation).

225 Interview with Prof. C. A. Fleischer, 19 April 2007.

226 F. Castberg, *Utredninger om folkerettslige spørsmål, 1922–1941* [Opinions on matters of International Law, 1922–1941] (Oslo: Ministry of Foreign Affairs, 1950), p. 380. Castberg's opinion was later questioned, including in *Petroleumsvrett* from 1983 by Prof. C. A. Fleischer. However, as with Andenæs' legal opinion, it was the contemporary view that Castberg's arguments were solid.

The issue of participation rights thus touched upon a core issue of the treaty: could the treaty's stipulations be given an enlarged area of application? Is it the principle of Norwegian sovereignty or the exceptions which shall be valid outside that which the treaty explicitly lays down?

For the legal affairs department, the answer was unequivocal: "... Norway is not obligated to tolerate any confinements of its sovereignty exercise on the archipelago beyond those that are mentioned explicitly in the Treaty". This was a very important principle, especially because of the pressure powerlessness vis-à-vis the Soviet Union placed on Norway's sovereignty. "Sovereignty is not a clearly defined term", Evensen stated. Its meaning depended on "... the extent of Norway's enforcement of its rights" By practising the authority of regulation, exercising sovereignty would be strengthened. By practising the right of participation, the country's sovereign position would be underlined.²²⁷

So at this point it was no longer a question of maintaining the status quo in Norwegian Svalbard policy. Abstaining from participation in Caltex's claims could have serious repercussions for Norwegian sovereignty. Recognizing Norway's participation rights, on the other hand, would strengthen the principle of absolute sovereignty. So even though the judicial options seemed limited, the legal affairs department decided that the State should demand participation, and that Caltex should be notified thereof. The MI followed the recommendation notifying Caltex of its claim to participation on 22 June 1962. Thus Andenæs' legal opinion was put aside. This was, in light of Andenæs' professional reputation and prestige, a bold decision by Evensen. Whether Caltex would accept it remained to be seen.²²⁸

Soviet suspicions

The oil-prospecting activities had not gone unnoticed. Since the end of World War II, Moscow had followed Norwegian and Western actions on Svalbard with Argus eyes. In September 1960 *The Red Star*, a news organ for the Soviet army, dissected geological expeditions by NATO countries on Svalbard that year with strong scepticism. According to the paper it was highly probable that "... the American 'prospectors'

²²⁷ RA, Records of the Ministry of Industry, 1A15211, Memo on Svalbard by J. Evensen, 21 March 1963 (author's translation).

²²⁸ UD, 36.6/39, bind II.

and their partners in the aggressive block are attracted by the Svalbard archipelago's strategic position ... These undertakings cannot be described as anything but hostile actions towards the Soviet Union".²²⁹

On 23 June, one day after the MI had informed Caltex that the State would demand participation rights, the MFA received a new enquiry about oil exploration on Svalbard. This time it was from the governor of Svalbard. He informed the ministry that the Soviet consul and deputy consul in Barentsburg, the director of Arktikugol, a geologist and an interpreter had been to see him. In addition to a list of all foreign and Norwegian expeditions to Svalbard that year, they wanted information on all of Caltex's and NPN's claims. Furthermore, they were interested in knowing what rights a claimholder possessed, and to what extent a claimholder could refuse to have other activities on his claims.²³⁰

The Soviet interest was not surprising, but because of Caltex's contesting of Norway's participation rights, the issue became even more sensitive. If the government accepted Andenæs' legal opinion it would, as mentioned, be a step towards Norway's Svalbard regime being nothing but a caretaker mission over an international *terra communis*. In this regard, the link between Arktikugol and the Kremlin leadership was significant. Arktikugol's coal mining, in all likelihood unprofitable, was probably motivated by a desire to maintain a political presence in a strategically sensitive area. And during the Cold War it was the predominant view that Arktikugol operated as Moscow's lieutenant on the archipelago.²³¹

At first the MFA feared a negative Soviet reaction since American interests had won such good terms on Svalbard. But if the Norwegian authorities accepted Andenæs' legal opinion – which would award Caltex new rights – the same concessions would have to be awarded to Arktikugol, because of the Svalbard Treaty's non-discrimination principle, resulting in a more favourable position for the Soviet company to expand its activities on the archipelago.

At the same time, matters could deteriorate further if the State did not manage to assert its right to regulate business ventures. The legal affairs department "... feared that political problems could arise

229 *The Red Star*, quoted in *Aftenposten*, 7 September 1960 (author's translation).

230 UD, 36.6/39, bind II.

231 NARA, College Park, Maryland, USA, Record Groups 59, Records of the Department of State, POL NOR-USSR 1/1.70, Svalbard, C:195-197; R. Tamnes, *Svalbard og stormaktene ...*, p. 71.

if the petroleum activities were not regulated and controlled”.²³² Unregulated, Russian and American companies would have room to operate unchecked on Svalbard. The state prior to Norwegian sovereignty being awarded in 1920 threatened to return. Also, the regional low tension could increase if conflicts between Caltex and Arktikugol arose over the archipelago’s resources.

The repercussions of Soviet interest could be significant. Caltex was an insignificant figure compared to the pressure Moscow could apply on Norwegian authorities. Evensen noted that it was first and foremost the Soviet Union that had objected to Norway’s Svalbard regime in the past. For the sake of peaceful relations it was desirable this did not reoccur. Evensen therefore asserted that it was “... tactically sound to engage in a dispute over participation rights, and thus indirectly over our sovereignty’s extent, with [Caltex] first ... Then in the next round Norway will be in a stronger position to assert the same rights towards the Russians”. In other words, the Soviet interest provided foreign political arguments for Evensen’s dispositions towards the American company.²³³

Lindstrøm and Holler versus Evensen and Lange

In the summer of 1962 the MFA and the MI pulled in opposite directions. At the MFA, the analysis of the Caltex’s involvement in Svalbard was guided by a desire to strengthen Norway’s position on the archipelago. Participation rights would “... help underline our sovereignty over the area”, Evensen maintained. Thus the MFA would not let go of its demand as long as there was reasonable hope of winning any future trial.²³⁴

Then there was the MI. It is noteworthy that key actors at this ministry adopted a fundamentally different stance on participation rights than the officials at the MFA. The MFA’s dispositions were, according to Lindstrøm, “... in total opposition to the spirit and idea behind the Svalbard Treaty ...” Norway could not put such “... ob-

232 Interview with Leif Terje Løddesøl, 11 April 2007 (author’s translation).

233 RA, Records of the Ministry of Industry, 1A15211, Memo on Svalbard by J. Evensen, 21 March 1963 (author’s translation).

234 Ibid.

stacles in the way of [Caltex] when it comes to exploiting Svalbard's natural wealth".²³⁵

The MI's reaction to the MFA's approach came in a letter on 16 July 1962. In it Lindstrøm presented an extensive argument why the State should not demand participation rights. Caltex had unofficially informed him that if the State persisted, no further exploration would be carried out that summer. Lindstrøm feared that Caltex would leave Svalbard and warned that companies from other countries would replace Caltex.²³⁶

Also, Lindstrøm was of the opinion that the State's right to participation was highly uncertain. If it proved to be a legitimate right, then both he and Caltex considered that such would include expenses for trial drilling, and not just claim operations. And if the State initiated participation, it would have to activate its right to all claims on Svalbard, regardless of company and nationality, which would prove expensive and complex. Nor did Lindstrøm regard recognizing participation rights as desirable, unlike the MFA. He thought that the State should not assert this right until it had been definitely decided whether the State wanted to participate. As a solution he suggested that the State should assert its participation right in principle, but not activate it vis-à-vis Caltex's claims.²³⁷

Lindstrøm's arguments and proposals met with little sympathy at the MFA. In a letter of reply to the MI on 27 July 1962, the MFA's points of view were presented by Willum Steen. He agreed that doubts could be raised over the State's participation rights on two counts: it could not be proven that anyone had such a right in mind at the time of the preparation of the mining ordinance and Svalbard Treaty; and the translation error weakened the State's procedural capacity. However, Steen pointed out that the political analysis of the issue compromised a most central dimension. He underlined that Norway had several obligations on Svalbard; thus it was only reasonable that the State to the largest extent possible should take part in utilization of the archipelago's natural resources.²³⁸

Lindstrøm's argument that the State, if its participation right were recognized, would have to participate in all claims on Svalbard and

235 RA, Records of the Ministry of Industry, 1A15212, Note on participation rights by H. Lindstrøm 9 August 1962 (author's translation).

236 UD, 36.6/39, bind II.

237 Ibid.

238 Ibid.

bear one quarter of exploratory costs, somewhat irritated the MFA. It was far from an obvious conclusion. Steen asserted that, as a principle, the State was free to consider claim participation on a commercial basis. Whether the State wanted to participate in Caltex's claims or not was a question that, apart from the desire to strengthen Norway's position, had to be decided by assessing the chances of discovering commercially viable findings.²³⁹

However, the MFA's irritation was primarily due to the fact that assessing the chances of discovering commercial findings had been made difficult, as Caltex had been awarded claims without handing in deposit samples. Thus no one knew if there was any oil at all on Svalbard, much less commercially viable deposits. If the State had to contribute to exploration costs, the MI's liberal claim practice could prove costly for Norway. Evensen summarized the paradox thus:

Having done Caltex a favour by not demanding deposit samples by the letter of the law before awarding these extensive claims, one has made it possible for Caltex to contend that Norway, if participation rights are asserted, also has to share the expenses for test drilling to find out whether there is even any oil at all!²⁴⁰

Steen pointed this out to Lindstrøm. He wrote that from people claiming to have discovered petroleum, the State should demand a substantial degree of documentation to have a more solid basis for assessing claim participation.²⁴¹

In conclusion, Steen summarized the MFA's point of view. The issue of participation rights concerned Norway's sovereignty exercise on Svalbard to a considerable degree. A positive result would strengthen Norway's position on the archipelago. It was pointed out that the authorities could grant an exemption from the duty to work the claims, and this could be of tactical value for Norway vis-à-vis Caltex. Cooperation with Caltex did not necessarily have to consist of participation in claim operations. Norway could also accept a part of the operations' profit. However, the idea of the State asserting its participation right in principle, but choosing not to activate it regarding Caltex's claims, was out of the question. This would create a precedent

239 UD, 36.6/39, bind II.

240 RA, Records of the Ministry of Industry, 1A15211, Memo on Svalbard by J. Evensen, 21 March 1963 (author's translation).

241 UD, 36.6/39, bind II.

which Norway would find it difficult to wriggle out of later. Because the issue had so many important aspects, the MFA concluded that it had to be discussed in Cabinet. In the meantime the MI was advised not to take any final decisions. That the issue should be coordinated with other institutions and ministries would be the MFA's policy from then on.²⁴²

The MI's leadership was not content with the MFA's conclusions. Lindstrøm in particular was becoming impatient – but there was little he could do. The problem's source was a Cabinet Directive from 1909. It was normal procedure that when two ministries disagreed, the matter was referred to a government conference. The MI could not settle the problem on its own, as it had with the deposit sample issue. However, consideration in Cabinet would take time and Lindstrøm especially was keen to provide Caltex with a swift answer. This resulted in him, and later Minister Holler, trying to make the MFA alter its conclusion about the MI's suggestion. Accordingly, asserting participation rights, but not activating them vis-à-vis Caltex's claims seemed the path to take.²⁴³

Lindstrøm's ultimatum

On 8 August 1962, after receiving Steen's letter from 27 July, Lindstrøm phoned Steen to inform him personally that Caltex would withdraw from oil exploration on Svalbard if the State invoked participation rights. He claimed the Russians would take over Caltex's claims if the company withdrew. Furthermore, Lindstrøm informed Steen that Professor Andenæs again had notified the MI unofficially that the State would lose a trial over participation rights. Steen excused himself by saying the MFA was planning to have an internal meeting about the matter within the next few days.²⁴⁴

That Caltex wanted to withdraw, even though the company had strong chances of winning in court, was not the case. For reasons that are hard to comprehend, Lindstrøm had at this time become obsessed with getting his opinion accepted as policy. He was highly indignant that the MFA had become involved in interpreting the mining ordinance and desperate to have the matter settled in Caltex's favour. The State could levy some taxes on oil production on Svalbard, which

242 Ibid.

243 UD, 36.6/39, bind II.

244 Ibid.

according to Lindstrøm, should be satisfactory. In an internal memo he justified his opinion: It was not Norway's privilege to "...sit at high table".²⁴⁵

However, the MFA had no plans to contact Lindstrøm prior to a government conference. On 1 September, Lindstrøm sent a letter, calling for an answer. As it led nowhere, Lindstrøm phoned Steen a second time. Lindstrøm was angry. He was going to meet representatives from Caltex at two o'clock the same day. If he did not hear anything from the MFA by that time, he would inform the company that the State would not invoke its participation right.²⁴⁶

Steen was bewildered. Being given such an ultimatum by a principal officer at another ministry was not just part of the course for a newly hired junior executive officer. Time was scarce. Lindstrøm had called just before lunch. By his own superior Steen was told that this was the legal affairs department's business. Steen decided to go straight to the top – to Jens Evensen. He gave Evensen a short briefing and underlined that Lindstrøm's deadline was fast approaching. "And what would you like me to do, Mr Steen?" Evensen asked. "You are a director general and can call on anyone, even Minister Holler himself," Steen replied. Evensen concurred. He phoned Holler and said it regarded the Caltex issue. Steen overheard Holler "... bark on the phone: 'Yes. Get yourself over here right away!'". Evensen looked smiling at Steen and said: "I better go then." Later that day he phoned Steen, ensuring him that everything was under control.²⁴⁷

Evensen thus explained his motives to Holler. Participation rights would increase Norwegian control and revenues, and underline sovereignty. Beyond that, it is unknown what was said at the meeting. No one took minutes. However, some information can be deduced. Holler found no reason to change his opinion. Cooperation between the two ministries was at rock bottom from the autumn of 1962 until spring of 1963. Up until April 1963, Holler repeatedly tried to persuade the MFA to change its opinion.

Because of the Kings Bay accident on 5 November 1962, the issue of participation rights stood still for a while. Not until 10 January 1963 did the MI pick up the thread. In a letter to Lange, Holler wrote that the matter of the State's participation rights had been forwarded

245 Ibid; RA, Records of the Ministry of Industry, 1A15212, Note on participation rights by H. Lindstrøm, 9 August 1962 (author's translation).

246 Interview with Willum Steen, 28 August 2007.

247 *ibid* (author's translation).

to the Ministry of Justice's legislation department, where General Director Stabel had concluded that the State's legal position was weak. After the meeting with Evensen, Holler assumed that the MFA's motive for demanding participation was to gain better control over oil activity on Svalbard. But personally Holler could not see how participating in operations would lead to any new control measures, especially if the State settled for a part of Caltex's profit. He thus asserted that the only reason to insist on participation was financial. But the sums involved were hardly astronomic and there was thus little reason to risk having a trial whose outcome would be uncertain. Holler also doubted that Caltex would be interested in negotiating economic compensation based on State participation rights which the company denied existed. In conclusion, Holler echoed Lindstrøm's suggested solution: the State should assert its participation right in principle, but choose not to invoke in the case of Caltex. Like Lindstrøm, Holler thought this a matter of urgency.²⁴⁸

As he did not receive a reply, Holler sent a new letter to Lange on 12 March 1963, and reminded him of the matter. Still no answer came, so Holler sent a third letter to Lange on 23 March the same year. He wrote that Caltex had come with a new enquiry about the matter, and noted that it was taking rather too long to get a final answer.²⁴⁹

Neither Lange nor the civil servants at the MFA bowed to Holler's pressure. Evensen, who was tired of Lindstrøm's and Holler's references to the legislation department's acceptance of the MI's position, wrote an opinion on a cluster of Svalbard issues, with the State's participation right as the central theme. He concluded that the State's position was not as weak as Stabel had asserted. There were other interpretative options of the legal material in question, and defending Norway's participation right could be based on Norway's sovereignty over the archipelago. However, the strongest argument in Norway's favour was not of purely legal nature. As mentioned, Evensen was pragmatic and his approach to the participation issue was coloured by this attitude. Court proceedings would in the first instance have to take place in Norway. And Norwegian courts had to "... base their rulings on *Norwegian law*", Evensen noted. He was referring to the relationship between Norwegian and international law. Norwegian sources of law, especially Norwegian statutes, must be the basis for Norwegian court

248 UD, 36.6/39, bind II.

249 Ibid.

rulings – even in cases of a discrepancy between Norwegian and international law.²⁵⁰ This was important because the mining ordinance is a Royal Decree from 1925. By comparison, the English text on which Andenæs based his legal opinion is a translation of a draft of a mining ordinance from 1921. It was in other words not a part of Norwegian law. Combined with the expression “right of ownership” in section 22 of the Svalbard Act, this resulted in the participation right issue standing “... legally much stronger before a Norwegian court than potentially before an international court”.²⁵¹

If the matter were brought before the International Court of Justice in The Hague, Norwegian law would no longer take precedence. In such a case, prior to a trial in The Hague, the United States would have to claim that Norway had violated the Svalbard Treaty. However, the MFA was not particularly concerned about American reactions. As mentioned, the treaty’s principle of non-discrimination would mean that concessions granted to Caltex would also have to be awarded to Arktikugol. In light of the Cold War and the United States’ “denial approach” to Svalbard, this was a question of whether the American government would endorse a policy which would reduce Norway’s exercise of sovereignty over Soviet activities. Evensen for one claimed that it was “... unlikely that the company’s country of origin will call Norway to account before an international court”. So it was not the validity of Andenæs’ reasoning that attracted Evensen’s main focus, but its applicability as a source of law. This was discussed with Stabel’s executive at the Ministry of Justice, Secretary General Rolv Ryssdal. Both Ryssdal and his superior, Minister of Justice Jens Haugland, were of the opinion that the MFA had to stand fast to its position. And so it was settled. A final decision therefore had to be taken by the Cabinet.²⁵²

Lindstrøm was enraged by the turn of events. That the Ministry of Justice had sided with Evensen was a defeat. And he regarded the MFA’s critical approach to the MI’s mining policy as a personal insult. He reacted vociferously on 16 April 1963, writing:

250 As a rule, Norwegian courts apply the principle of dualism, meaning that municipal and international law are two separate legal entities and that neither has the power to create or change the rules of the other.

251 RA, Records of the Ministry of Industry, 1A15211, Memo on Svalbard by J. Evensen, 21 March 1963 (author’s translation), the term “*Norwegian*” emphasized in original document.

252 Ibid; UD, 36.6/39, bind II (author’s translation).

For nine years now I have paid close attention to the Ministry of Foreign Affairs' work with Svalbard. It has been a strange show of ignorance and dilettantism. It has been depressing to see the endless ignorance with which the Ministry of Foreign Affairs conducts Svalbard matters. My flesh creeps whenever I am reminded that this is the same ministry that manages our foreign relations.

In fairly essential areas their competence is almost absent. Would it not be to our country's advantage if Lange + Evensen + several of the Ministry of Foreign Affairs' executives took up studying Norwegian foreign relations and let Congo Negroes, flatfooted Bush Negroes, and cowed Maharajas solve their own problems. Reading about our foreign policy leadership's well intentioned advice to "the recently emancipated people" of the world has a fool's touch to it.

It is now high time to write an unpleasant letter to the Ministry of Foreign Affairs. It's the only thing they'd understand.²⁵³

But to Holler the situation was different now. By the spring of 1963 he was weighed down by other matters, especially the investigation of the Kings Bay accident. As a result of meetings between representatives from the MFA's legal affairs department and the MI's leadership, it became clear that the MFA would not budge. In the end Holler accepted the MFA's position on the need for a stricter policy for awarding claims, and that the participation right issue had to be settled at a government conference.²⁵⁴

This was also decisive for Lindstrøm's position. Though he disapproved, during April–May 1963 he accepted that little could be done about the MFA's decision. On 18 May 1963 he wrote that the MFA "... still seems to labour under the illusion that Norway can win a trial over participation rights ... [It is] certain that we will lose ...". Lindstrøm was tired of the issue. "I am pretty indifferent to the outcome of this case. The only sad part is that the defendant in a pos-

253 H. Lindstrøm, *Svalbard ...*, p. 97; SA, Recommendation for the Ministry of Industry's administration, 15 November 1963, p. 138–39 (author's translation).

254 RA, Records of the Ministry of Industry, 1A15212, Note on participation rights by H. Lindstrøm, 17 May 1963.

sible trial will be the Ministry of Industry. It ought to have been the Ministry of Foreign Affairs.”²⁵⁵

Arktikugol demands claim rights

Before Holler’s decision to accept the MFA’s stance, a development occurred highlighting the legal affairs department’s desire to tighten the criteria for conferring claims. In January 1963 the mining commissioner received discovery notices for seventy-one claims from Arktikugol. The possibility of the Soviets discovering oil on Svalbard dismayed the Norwegian authorities: a stronger Soviet presence was highly undesirable. Even if this did not influence the MI’s stance on the issue of participation rights, it is clear that it did lead to a reassessment of the criteria for awarding claims. Even Lindstrøm gradually came to accept a stricter regulation policy.²⁵⁶

All of Arktikugol’s claim applications were based on geological indications. Again the commissioner contacted the MI for instructions. It is noteworthy that Lindstrøm adopted on this occasion a very different approach to his executive work with Caltex: at the beginning of May 1963 he contacted the Norwegian Polar Institute for a professional assessment of Arktikugol’s geological material.²⁵⁷

The Polar Institute, unfamiliar with the divergence from the mining ordinance at the time of Caltex’s claim survey, was of the opinion that discovery point notifications which properly documented the existence of conditions for entrapped hydrocarbons could be accepted. However, Arktikugol’s geological data documented no such conditions. On the contrary, the Institute asserted that it was unlikely that indications of such conditions existed at several of the discovery points. The conclusion was clear: Arktikugol had not documented geological prerequisites indicating the existence of petroleum.²⁵⁸

Lindstrøm then sent a copy of the Polar Institute’s assessment to the commissioner. He wrote that the MI was of the opinion that claims could not be awarded. There were two reasons for this: Arktikugol’s claim applications overlapped with existing claims; but Lindstrøm’s primary objection was that since the authorities had gone far in accepting applications based on geological indications, such indications

255 Ibid (author’s translation).

256 SA, Recommendation for claims on Svalbard, 15 August 1964; Interview with Leif Terje Løddesøl, 11 April 2007

257 UD, 36.6/39, bind II.

258 Ibid.

had to be sufficiently documented. As was evident from the Polar Institute's letter, this was not the case in this instance.

Furthermore, Lindstrøm asked the commissioner to examine closely the Polar Institute's assessment, telling him that it should form the basis for evaluating claim applications in the future. In conclusion, Lindstrøm told the commissioner not to inform Arktikugol of the matter before the MFA had assessed the issue. At the end of May 1962, Lindstrøm wrote to the MFA, informing the ministry that the MI advised against conferring Arktikugol's claims. He wanted the MFA's opinion. Enclosed were both Lindstrøm's letter to the mining commissioner and the Polar Institute's assessment.²⁵⁹

Lindstrøm's new approach was welcomed by the MFA. The legal affairs department pointed out that the ministry had previously underlined the need for the strict enforcement of the mining ordinance. The Polar Institute's opinion was a step in that direction – beyond that the ministry had no comments.²⁶⁰

Soviet protests

This Norwegian rejection did not go down well. At the end of September 1963, the Soviet trade representative on Svalbard approached the mining commissioner, asserting that Arktikugol was entitled to claim rights because Norway could not treat Caltex and Soviet companies differently. The Russians concluded by asking the mining commissioner to raise the matter with the MI.²⁶¹

On 10 October 1963, as a result of the Soviet objection, a meeting was held between representatives from the MI, the Norwegian Polar Institute and the mining commissioner. The Polar Institute reiterated that Arktikugol's geological indications were far from sufficient, while noting that the material which formed the basis for Caltex's claims was no better. The MI suggested that the problem could be solved by letting Norwegian geologists inform Soviet colleagues why Arktikugol's documentation was insufficient. However, this proposal was put aside, as the MFA feared it would insult the Russians. But clarifying the matter was also important. At the beginning of November 1963, the Soviet Union's ambassador raised the issue with Lange, claiming the matter

259 UD, 36.6/39, bind II.

260 Ibid.

261 Ibid.

had been delayed by Norway – if Arktikugol's claim applications were not recognised, this would constitute a violation of the treaty.²⁶²

The Norwegian authorities were in a tight spot. There was consensus that tightening claim criteria was necessary. But how could Arktikugol be encouraged to accept a Norwegian rejection without Moscow crying discrimination? The answer to this would be important for Evensen's policy of tightening general regulatory practice on Svalbard. The MFA concluded that the only viable option was to persuade Caltex to surrender some of the claims the company already had been awarded, making the legal affairs department's task even more formidable: not only was Caltex to be persuaded to accept the State's participation rights; the company was also to be talked into giving up several awarded claims.²⁶³

Negotiations with Caltex

Three weeks after the MFA had agreed to reject Arktikugol's application, the dispute concerning the State's participation rights took a new turn. On 24 June 1963, the matter was raised at government conference. Both the Ministry of Industry, the Ministry of Justice and the Ministry of Foreign Affairs had doubts about the State's right to participate, but since the foreign-affairs leadership was of the opinion that extensive interests were connected to the demand, it should not be surrendered.²⁶⁴

However, the MFA did not want any commotion over the issue, so it was decided that the MI should approach Caltex and suggest a royalty scheme as a practical utilization of the participation right. Holler suggested a cautious approach. The State should propose a royalty of five percent. But Lange disagreed, asserting that the authorities should under no circumstances start off with a modest percentage: five per cent was far too little. The MFA's objection was accepted.²⁶⁵

262 Ibid; SA, Recommendation for claims on Svalbard, 15 August 1964.

263 Interview with Leif Terje Løddesøl, 11 April 2007.

264 RA, Government Conference, 24 June 1963.

265 Ibid.

On 11 July the same year, Trygve Lie, who had become minister of industry,²⁶⁶ approached Caltex to notify the company that the government wanted negotiations on the payment of royalties based on the State being recognized as the land owner with participation rights. In return, the State would not invoke its right. In a letter from 23 October 1963, the company accepted the State's point of departure. Caltex wanted negotiations to start as quickly as possible.²⁶⁷

But why did the company – which, it was acknowledged, had a good legal case – accept negotiations about royalties to the State? According to Lindstrøm, the explanation was simple: Caltex "... have had such excellent cooperation with the Ministry of Industry that they thought Norway should also benefit from a possible positive oil discovery on Svalbard".²⁶⁸ Professor Andenæs asserted many years later that the company chose to cooperate with the Norwegian authorities because it did not want "... to be at odds with the State, whose goodwill the company in many ways depended on ..."²⁶⁹ The reality, however, was more complex.

First, the company arrived critically at the decision. Caltex was informed in July that the State wanted to negotiate a royalty agreement, but did not respond until the end of October, as it needed persuading, which was Evensen's task. He and some of his staff from the legal affairs department had several meetings with the company between July and October 1963. But persuading the company was no easy task: Caltex did not want any expenditure because of a right it disputed even existed for the State; Evensen for his part aimed to tighten claim criteria and reduce the company's rights.²⁷⁰

Even though Evensen was of the opinion that Andenæs' conclusion was not the only possible one, he did not want any debate on the legal aspects. He chose to approach Caltex with a political argument: stronger Norwegian regulation would in the long term be in the company's interests. Any development towards an unregulated *terra communis* could lead to stronger Soviet engagement. And as the US

266 In the aftermath of the King's Bay accident, Kjell Holler resigned as minister of industry on 4 July 1963. Trygve Lie occupied the post until 28 August, when he left the executive together with the rest of Gerhardsen's Labour Party Government. Lie returned to the MI post on 19 September the same year, when Labour returned to executive office.

267 UD, 36.6/39, bind III.

268 H. Lindstrøm, *Svalbard ...*, p. 78 (author's translation).

269 J. Andenæs, "Suverenitet og ...", p. 35 (author's translation).

270 Interview with Leif Terje Løddesøl, 11 April 2007.

was not demonstrating any particular interest in Svalbard at the time, this would leave Caltex unprotected. Thus regulation policy had to be tightened, and the importance of participation rights for Norway was also stressed, which could in fact be to Caltex's advantage. The prospect of a joint petroleum venture with Norway could dampen Arktikugol's desire to start operations. Caltex would lose a competitor, and Norway would have its sovereignty underlined. This argument was gradually accepted by the oil company.²⁷¹

However, other circumstance may also have been considered. Caltex had lost some of its most eager supporters. Kjell Holler was replaced by Trygve Lie in July 1963: this was an important development as Lie and Evensen knew each other well. They had first worked together in 1946, and "Trygve Lie had faith in Evensen's abilities ..."²⁷²

Few people had had equally unnerving experiences with the Soviet Union and Svalbard as Trygve Lie.²⁷³ And he agreed with Evensen that it was wise to test the extent of Norway's sovereignty by way of an American rather than a Soviet company. However, the relationship between Lie and Lindstrøm was tense. Lindstrøm had, according to Secretary General Skjerdal, become "... a fly in Minister Lie's ointment",²⁷⁴ while Lindstrøm "... wanted Trygve Lie to go to blazes". On 30 September 1963, Lindstrøm went on sick leave and resigned on 17 October. By 21 October, he had been arrested on suspicion of embezzlement.²⁷⁵ The sweet harmony between Lie and Evensen – combined with Holler's and Lindstrøm's departures – resulted in Caltex no longer finding support within Norway's executive and administrative machinery. The coalition between the interests of the oil sector and the MI had been broken, and Norwegian oil policy on Svalbard increasingly became guided by Norwegian sovereignty interests.

At the same time, it also became clear that the US would not support Caltex. The Norwegian authorities had not raised the matter of participation rights with their American counterparts. This was a matter of principle: Svalbard was a part of Norway, not international common land. So Caltex was the natural partner for dialogue with the Norwegian authorities, not the US government. Nor was there

271 UD, 36.6/39, bind II; Interview with Leif Terje Løddesøl, 11 April 2007.

272 B. R. Retzer, *Makten ...*, p. 85 (author's translation).

273 As mentioned in chapter 2, Trygve Lie was Norway's minister of foreign affairs during the first stage of the Svalbard Crisis.

274 K. Skjerdal, *I demokratiets ...*, p. 224 (author's translation).

275 H. Markussen, *Prosesen mot ...*, pp. 14–15, 91 (author's translation).

any American pressure on Norwegian Svalbard policy at the time. However, during the summer of 1963 the US's position did become topical as the American vice president, Lyndon Baines Johnson, was to visit Norway soon after. Because Johnson, like one half of Caltex, was from Texas, it was possible that the issue interested him. At the beginning of July 1963 the MFA thus initiated some careful preparations for discussing the problems connected with Caltex's involvement on Svalbard with Johnson.²⁷⁶

As with Caltex, the legal affairs department decided that it was not expedient to discuss the specific legal topics with Johnson. If the vice president chose to raise the issue, then the political motives should be emphasized. Recognizing participation rights would strengthen Norway's position to invoke the same rights vis-à-vis Arktikugol. If the right of participation was not recognized, then Norway would lose one of its few possibilities to control the burgeoning Soviet activity on the archipelago. Norwegian participation in potential Soviet oil operations on Svalbard could reduce Russian incentives for starting up oil exploration on the archipelago. From Norway's point of view, this would undoubtedly be favourable – and probably the US would be of the same opinion.²⁷⁷

However, the US showed no signs of intervening for Caltex. But it is also reasonable to assume that the company did not want any assistance. A dispute in The Hague could take years. It would be difficult for the company to start operations without a clear judicial scope. During the autumn of 1963, Caltex's options were limited. The company must in all likelihood have concluded that without any American support or Norwegian regulatory authority, it would be vulnerable to Soviet interests on Svalbard. Hence the risks would be larger. Therefore

276 UD, 36.6/39, bind II; Interview with Leif Terje Løddesøl, 11 April 2007.

277 UD, 36.6/39, bind II.

the company chose to enter into negotiations with the Norwegian authorities.²⁷⁸

The royalty agreement

Negotiating with Caltex was Evensen's task and he needed some time to prepare: first, he had to familiarize himself with the petroleum legislation in other countries; second, he wanted to wait and see whether the criminal investigation of Lindstrøm revealed any criminal dealings.²⁷⁹

Negotiations started in April 1964 and the parties quickly reached agreement. The State was to be awarded a royalty of ten per cent based on the gross value of the oil and gas at port in Svalbard. In September a draft contract was completed, which read as follows:

(1) In consideration of the waiver and renunciation stated in Paragraph 2 herein below, the State shall be entitled to receive from the undersigned a royalty equal to 10 % of its gross proceeds (less transportation and other costs from field storage) derived from the sale at deep water port of loading in Spitsbergen of liquid and gaseous hydrocarbons produced by the undersigned from the area in Spitsbergen covered by the 201 mining claims published in the Norsk Lysingsblad No. 165 dated July 20, 1962 and any mining claims granted to the Mining Ordinance for Spitsbergen of August 7, 1925 on land owned by the Norwegian State under article 22, Paragraph 1, of the Svalbard Act of 17th July, 1925, No. 11.

(2) The State waives and renounces any and all rights or participation which it may have pursuant to Article 19 of the Mining

278 The US State Department's archives were rather one dimensional regarding this matter. The American authorities do not seem to have taken much interest in Svalbard until the 1970s, and then predominantly related to the archipelago's continental shelf. In addition, two circumstances – though of a hypothetical nature – deserve mentioning: first, it is not certain that the US, or any other country, would have argued that the English translation of the mining ordinance constituted an agreement under international law. To elevate something intended to be an unofficial presentation into a binding agreement could have had unpredictable consequences for the US in a reverse situation; second, the US recognised the international court's *limited* jurisdiction. If Norway could prove that the reservations would have encompassed participation right issues in a reverse situation, it would considerably strengthen Norway's case. As shown in the Norwegian-French Gold Clause Case from 1958, there was no basis for arguing that laws which one did not consider binding to oneself could bind other parties.

279 Beyond Lindstrøm's obsession with making conditions favourable for Caltex, the investigation did not reveal any illegalities between the former principal officer and the oil company.

Ordinance for Spitsbergen of August 7, 1925 in the operations of the undersigned in respect of the area covered by any of the claims mentioned in Paragraph 1, whether heretofore or hereafter granted.²⁸⁰

According to the Norwegian Constitution, the Storting's consent was unnecessary.²⁸¹ Of late, however, the Storting's members had shown such a keen interest in Svalbard that Evensen thought it wise to air the issue with the Standing Committee of Foreign Affairs and the Standing Committee of Industry.²⁸²

Evensen's advice was followed. On 7 April 1965, during a joint meeting between the committees, the draft was put forward. The committee members objected to one condition. By accepting the proposal, the State would thereby renounce the right to participation if minerals were discovered on Caltex's claims.²⁸³ Evensen, who thought the proposal needed no amending, viewed the objection as theoretical. The company was not interested in anything but oil. But the MPs stood firm, and the Government agreed. There had been a lot of noise over the MI and Svalbard and the Government had no desire to provide the opposition parties with ammunition. The draft could not be accepted.²⁸⁴

Evensen had to approach Caltex again. He apologized for the Storting's attitude, but it was beyond his power to do anything about it. The company, who wanted to start test drilling in the summer of 1965, was accommodating. The draft agreement's second paragraph was thus changed as follows:

(2) The State waives and renounces any and all rights of participation *in the exploitation of liquid and gaseous hydro-carbons* which it may have pursuant to Article 19 of the Mining Ordinance for Spitsbergen of August 7, 1925 in the operations of the undersigned in respect of the area covered by any of the claims mentioned in Paragraph 1, whether heretofore or hereafter granted. *As regards participation in the exploitation of other minerals which may*

280 UD, 36.6/39, bind III.

281 This is not certain. It was Evensen's opinion.

282 UD, 36.6/39, bind III.

283 RA, John Lyng's private archive, Storting papers 1964-65.

284 UD, 36.6/39, bind III.

*be discovered in the future, such participation shall be subject to special agreement between the parties.*²⁸⁵

Hence the contract only pertained to oil and gas. If Caltex discovered other minerals that the company wanted to mine, the matter of participation would have to be raised anew. Evensen was pleased the problem had been solved so smoothly, telling the Minister of Industry Karl Trasti and Foreign Minister Lange that the agreement was very favourable for the State²⁸⁶. First, Evensen claimed that Caltex had now acknowledged the State's right to participation. Second, Evensen underlined that a royalty, as opposed to invoking participation rights, would ensure the State avoided any economic risk. Petroleum operations could involve substantial investment by Norwegian standards. How much ten percent of the gross value was, compared to twenty-five percent of the net value, could not be established with certainty. This would depend on the size of a discovery, production costs, petroleum prices, and so on. But to Evensen, one thing was certain: ten percent of the gross value was significantly more than twenty-five percent of the net profit.²⁸⁷

Was Evensen's positive assessment of the contract correct? In a strict legal sense, it is clear from the text of the contract that Caltex did not recognize the State's right to participate per se. At the same time, the contract implied recognition of the State's sovereignty over Svalbard's unclaimed land. In other words, it can be said that the contract signalled a de facto recognition of the State's ownership and right of participation. The precedent created was equally important. The underlying problem was that the treaty was not explicit about ownership rights. In international law it was usual to build upon established practice. And a favourable practice had now been established for Norway. Caltex accepted that beyond the treaty's explicit stipulations, it was the principle of full and absolute Norwegian sovereignty that applied.²⁸⁸

As Evensen pointed out, the State was freed from any economic commitments. This was definitely a blessing. Though the State may

285 UD, 36.6/39, bind III.

286 During the winter of 1963/64, Lie fell ill. Karl Trasti became minister of industry on 20 January 1964.

287 UD, 36.6/39, bind III.

288 Interview with Leif Terje Løddesøl, 11 April 2007; interview with Prof. C. A. Fleischer, 19 April 2007.

have to finance one quarter of Caltex's expenditure for petroleum exploration because of the MI's liberal claims practice, the royalty would mean the State "... avoided gambling, but would still get a slice of the winnings".²⁸⁹

Nevertheless, the Norwegian authorities would have had more options for monitoring Caltex if it had joined as co-owner of the claims. But this was unacceptable to the company. In light of ten percent of the gross value probably being greater than twenty-five percent of the net profits, it is reasonable to assume that this was due to operational considerations and a liberal corporate ideology. The State was seen as neither a desirable nor natural business partner. In this regard it is noteworthy that the contract between Store Norske and Caltex also involved the former replacing its participation and mining rights on its private land and claims with a royalty fee.

It is also clear that participation per se was not the most precarious issue for the Norwegian authorities. The essential objective in asserting participation rights was to underline that Norwegian sovereignty included the right of ownership to Svalbard's unclaimed land. In this respect the royalty contract equalled active participation. In the way the Norwegian authorities analyzed it, the royalty contract strengthened "... the arguments for a stricter Norwegian regulatory practice". The royalty contract underlined Norwegian sovereignty. And Norwegian sovereignty underlined Norwegian regulatory authority. Thus the State was in a stronger position than before to tighten its regulatory grip, which Evensen had identified as important at the outset of the issue of participation rights.²⁹⁰

By the Storting, the contract was relatively well received. The government and the opposition agreed that Norwegian oil policy on Svalbard had got off to a very rocky start but that the royalty contract was a step in the right direction. The situation at the MI, however, called for attention. Jon Leirfall (Norwegian Centre Party) for one expressed that he found it strange that Kjell Holler had for several years been given memos of the type Lindstrøm wrote without "... speculating on whether the mental health of the person concerned is such that it is safe to entrust him with large and serious tasks".²⁹¹ However, this did not develop into a serious political issue, as the case was raised

289 Interview with Willum Steen, 28 August 2007 (author's translation).

290 Interview with Leif Terje Løddesøl, 11 April 2007 (author's translation).

291 SA, Closed sitting in the Storting, 18 June 1965, p. 15 (author's translation).

in the Storting in 1965. By then Holler had already resigned and Lindstrøm was under arrest. In addition, there was the sensitive nature of the issue of participation rights and it was also uncertain whether Arktikugol would accept a royalty arrangement. The Storting's considerations were thus kept secret.²⁹²

Arktikugol's claims

While the terms between the Norwegian authorities and Caltex had been settled, Arktikugol's claims were still unresolved. After meetings between the legal affairs department and Caltex, it became clear that the company was not willing to surrender any of its claims. By agreeing to pay a royalty, the company thought it had gone far to accommodate the State. So whether the State could turn down Arktikugol's claims remained an open question.²⁹³

Legally it was not obvious that the Norwegian authorities had to accommodate the Soviet company. It could forcefully be asserted that claims based on geological indications were illegal. Even though the MI had acted unlawfully, this did not provide a basis for continued illegal practice. However, the Norwegian authorities were of the opinion that Moscow would never accept such a position. Power political terms thus dictated a different strategy: a fear of triggering Soviet reactions – *the primary threat* – resulted in it being decided in the spring of 1965 that the quality specifications for geological indications could not be tightened until after Arktikugol had been awarded claims on the same basis as Caltex.²⁹⁴

However, at about the same time Arktikugol signalled that it would accept the same terms as Caltex. On 17 June 1965 the Soviet company entered into a royalty contract with the State. Seen in a larger perspective, this was of invaluable importance. As mentioned, international law does not operate in a power political vacuum. Though the Norwegian authorities did not fear the US coming out in Caltex's favour, it was, based on past experience, likely that Moscow would intervene on behalf of Arktikugol. That this did not occur was significant. It signalled Soviet recognition of Norway's right of ownership to and regulation of Svalbard. Norway's hold on its sovereignty was

292 SA, Closed sitting in the Storting, 25 January 1965, 14 May 1965, 18 June 1965.

293 UD, 36.6/39, bind II.

294 SA, Recommendation for claims on Svalbard, 15 August 1964.

thus strengthened without creating political problems with its eastern neighbour. This was a victory for the MFA.²⁹⁵

Why did Arktikugol accept paying a royalty? There is no clear answer, but in terms of negotiation tactics the company may have painted itself into a corner. The Russians' main objection had been that Arktikugol could not be treated differently from Caltex, regardless of the validity of the basis of the claims. Thus it would be hard to demand preferential treatment in the next round. At the same time, the Russians were far behind their counterparts. Even NPN had secured claim rights. And according to Evensen, strengthening Norway's regulatory authority, and thus control over American enterprises, may also have been in the Soviet Union's interest. After all, Norway was quite attentive to Soviet objections. If royalty payments and stricter Norwegian regulation could limit Caltex's further operations on Svalbard, this would probably be seen as positive from a Soviet point of view.²⁹⁶

Norsk Polar Navigasjon

In light of the result of the issue of participation rights vis-à-vis Caltex and Arktikugol, it is rather strange that the relationship between the Norwegian authorities and NPN did not arrive at a satisfactory result to begin with. On 25 September 1963, the MI demanded participation in twenty-seven of the company's claim. The main reason for this was that the authorities were facing final negotiations with Caltex. The Ministry therefore also clarified that royalty payments could replace participation rights.²⁹⁷

But a royalty was no option for NPN. Unlike Caltex, the company wanted the State to invoke its participation rights, which would strengthen the Norwegian dimension of its operations and make the State contribute to its exploratory expenses.²⁹⁸ Against this background NPN sent a draft contract to the State in February 1964. The Norwegian authorities, who did not consider themselves obliged to finance the company's search operations, asserted that the draft was unacceptable. When disagreement between a land owner and claim holder arises, it is, according to the mining ordinance, the mining

295 RA, Records of the Ministry of Industry, 1A15211, Note on petroleum searches on Svalbard, 21 May 1976.

296 RA, Records of the Ministry of Industry, 1A15211, Memo on Svalbard by J. Evensen, 21 March 1963.

297 RA, John Lyng's private archive, Storting papers 1964-65.

298 R. Tamnes, *Svalbard og den politiske ...*, p. 52.

commissioner's duty to set the terms for participation. In March 1964 the MI therefore demanded that the mining commissioner draw up a contract.²⁹⁹

The mining commissioner presented his contract proposal on 24 November 1964. It was essentially similar to NPN's draft. Consequently the company had no qualms about accepting it. Although the Norwegian authorities were not satisfied, beyond renouncing participation, little could be done: the mining ordinance establishes that when one of the parties cannot accept the mining commissioner's proposal, then that party must withdraw. The State waived its right of participation in NPN's first claims.³⁰⁰

However, not reaching agreement with NPN gave rise to a problem: as the State's ownership right was regarded as uncertain in terms of international law, it was important to establish a practice in favour of Norway. And the contracts with Caltex and Arktikugol did not imply explicit recognition of participation rights. MP Bernt Ingvaldsen (Norwegian Conservative Party) thus expressed that "... it would be natural to consider whether the State should utilize the participation right ... towards NPN, for thereby one would also in real terms establish the principle of the State's right of participation".³⁰¹ There was in other words a solid argument for cooperating with NPN. And since the company occupied only a limited number of claims, insuperable expense would not be involved. In light of the principle importance of the participation right, why would the Norwegian authorities not accept cooperation with NPN?

First of all, the attitude of the foreign affairs leadership towards NPN was "... characterized by scepticism".³⁰² The company had not hidden its hope that the interests of the petroleum sector on Svalbard would create a demand for air transportation services to and from the archipelago. The Norwegian authorities noticed with some irritation that NPN seemed to be right. For example, in July 1965 Caltex expressed that its work on Svalbard was in trouble due to the lack of options for air transportation.³⁰³ In addition, the Norwegian authorities

299 SA, Report to the Storting, no. 37 (1964–1965), p. 3–4.

300 RA, John Lyng's private archive, Storting papers 1964–1965.

301 SA, Closed sitting in the Storting, 14 May 1965 (author's translation).

302 Interview with Leif Terje Løddesøl, 11 April 2007 (author's translation).

303 UD, 36.6/39, bind III. Due to poor air transportation, Caltex approached the Norwegian authorities, asking for assistance from the Norwegian air force. The MFA claimed this could result in Soviet suspicions of collaboration between NATO and Caltex. The request was thus declined.

viewed NPN as too lacking in capital and technology to discover any oil. At the MFA, employees mocked the level of competence, telling jokes about the company using manual drills for test drilling.³⁰⁴ NPN appeared amateurish compared to Caltex.³⁰⁵

At the same time, the mining commissioner's proposal was wholly lacking in terms of the State's end goals. The MI asserted that the proposal had gone beyond the letter of the law in several ways. Also, it was not specified whether the State had to cover one quarter of exploration expenses. The State would have buy in and pay NPN up to five million Norwegian kroner. But the State would not acquire any right of co-determination to the assets for which it would have to pay.³⁰⁶

The majority of the Storting's Standing Committee on Industry seconded the negative assessment of the proposal. The Committee's chair, Olaf Watnebryn (Labour), summarized the State's assessment as follows:

We are only going to pay and have no influence over the conditions, guidelines or programme for exploration. Based on the information we have, I believe one can safely say that due to the equipment, the tools this company has, and its lack of experience, it is not easy to take it seriously. So in light of the state of affairs today I do not believe it would be advisable for the State to agree to a proposal such as the one arrived at by the mining commissioner.³⁰⁷

A joint venture with NPN would in other words not give the State effective control over the company. Beyond the symbolic value associated with Norwegian sovereignty – which the Norwegian authorities reckoned was in any case secured by the royalty contracts – control was the main aim of invoking participation rights. And combined with NPN's unstoppable airport ambitions, it could be politically risky for the government to associate itself with the company. Also, at this point of time Norwegian oil policy on Svalbard was influenced by developments in the North Sea, where a fundamental feature was that "... one wanted to deal with large companies ... financially solid if any damage

304 Interview with Willum Steen, 28 August 2007.

305 Interview with Leif Terje Løddesøl, 11 April 2007.

306 SA, Report to the Storting no. 37 (1964–1965), pp. 4–5.

307 SA, Closed sitting in the Storting, 14 May 1965 (author's translation).

was caused ... and technologically competent". The Pedersen brothers had nothing "to contribute".³⁰⁸

NPN's claims revisited

It was "... rather usual to think in Norway that NPN would soon fall out of the race with the US and the Soviet Union".³⁰⁹ The Norwegian authorities were also of that belief. But the Pedersen brothers, showing great endurance and determination, clearly showed the company would not quit its Svalbard ventures.

In August 1965, only a few months after the mining commissioner's proposal had been rejected by the Storting, NPN wanted a further thirty-nine claims. By 1966 the company had reported fifty-one new discovery points. The company's geological documentation was in all its essential aspects strengthened. In addition, in 1965 a new government was formed.³¹⁰ The change was for the better for the company. The new minister of industry, Sverre Walter Rostoft (Conservative), was more positive to the Pedersen brothers. NPN was conferred all the claims it applied for.³¹¹

In the long term it would be unacceptable to let NPN continue without demanding participation, which could result in accusations of preferential treatment. It was clear that the Norwegian authorities had to invoke the right of participation again. Initially, the dividing line between the company and the State was the same as before. The State did not want to pay for exploration while NPN needed capital. Once again the mining commissioner had to draft a contract proposal. For the claims applied for in 1965 a proposal was complete by May 1967. For the claims applied for in 1966 a proposal was complete by October 1968.³¹²

Previously it had been the Norwegian authorities which had been dissatisfied with the contract proposal. This time it was much more pleasing, possibly because it had been written by a new mining com-

308 Interview with Prof C. A. Fleischer, 19 April 2007 (author's translation).

309 E. S. Pedersen, "Polarbasillen ...", p. 230 (author's translation).

310 On 12 October 1965 a centre-right coalition comprising the Liberal Party, the Conservative Party, the Christian Democratic Party and the Centre Party won the executive. The Government was led by Per Borten.

311 Note from conversation between G. S. Pedersen, E. S. Pedersen and R. Tamnes, 30 March 1987.

312 RA, Records of the Ministry of Industry, 1A15212, Note on petroleum exploration on Svalbard, 21 May 1976.

missioner, Tormod Johnsen.³¹³ In the new proposal the State still had to cover one quarter of operational costs, but not until after oil had been discovered and its commercial utilization had been agreed upon. This last part was essential. The State would not have to finance a company which it did not believe would discover any oil. And should NPN, contrary to expectations, make a profitable discovery, the money generated would cover the State's expenses.³¹⁴

The Ministry of Industry, the Ministry of Foreign Affairs, and the Ministry of Justice gave its consent to the proposal, as did the Storting. But NPN was dissatisfied: according to the company's attorney, an arrangement in which the State would only participate in commercial operations was "... unacceptable, unreasonable, and in dispute with the Mining Ordinance ...". But now the company had the same problem which the State had had in 1965. The mining commissioner's proposal could not be re-examined. If NPN did not accept the commissioner's terms, the company would have to surrender its new claims. In practice, this would spell an end to its petroleum activity on Svalbard. Faced with such consequences, the choice was simple. NPN accepted the commissioner's proposal.³¹⁵

313 The MI could not instruct the mining commissioner since the ministry represented one of the contractual parties. The mining commissioner was free in moulding the proposal. That the contents in the two proposals were different can be explained by the fact that the first proposal had been written by Mining Commissioner Gunnar Mikalsen. However, Mikalsen quickly resigned on 1 November 1964. Preparing the contract plus the rest of the mining commissioner's workload was consequently borne by Mikalsen's assistant, Jan Hatle. A second explanation is that Mikalsen and Hatle sympathized with NPN and tried to take advantage of the situation. Mikalsen was later investigated by the police because of allegedly illegal dealings with the company BERABO, dating from 5 October 1964. Mikalsen was purported to have given confidential documents to the company. After Mikalsen resigned as mining commissioner, he started to work for BERABO. Hatle followed suit shortly after. The investigation, which did not commence until 1972, was dropped due to the breach of a five-year limitation period. Even though Mikalsen and Hatle did not necessarily sympathize with NPN while drafting the first proposal, it may be asserted that they did not feel any great loyalty to the Ministry of Industry during the autumn of 1964. And if Mikalsen and Hatle's proposal had been accepted, then BERABO could have demanded the same terms in the next round. Tormod Johnsen, who was mining commissioner when the State again invoked its participation rights vis-à-vis NPN in 1967 and 1968, had no such links, either to BERABO or NPN. He was equally free in drafting a proposal, but he arrived at a different result.

314 RA, Records of the Ministry of Industry, 1A15212. Letter to the Svalbard Panel by K. Dæhlin, 23 June 1967.

315 SA, Proposition to the Storting, no. 16 (1967-1968), p. 6-9 (author's translation).

1961–1967: The State’s right of ownership reformed

The most far-ranging consequence of the dispute over participation rights essentially concerned the true meaning of Norway’s sovereignty over Svalbard. The Ministry of Industry – unhindered by considerations for Norwegian sovereignty and foreign policy – had basically made Svalbard an international industrial park. In addition, the powerlessness vis-à-vis the Soviet Union had already considerably strained Norway’s sovereignty exercise, and made the situation very piquant. If Caltex were given unlimited freedom of action, this might not embitter only Norwegian-Soviet relations, but also open up for an uncontrollable expansion of Russian industrial activity on the archipelago. The State’s right to participation thus pertained to more than just financial issues. It was “... to a large extent a matter of principle and had to be seen in a broader perspective”.³¹⁶

For the Ministry of Foreign Affairs, the conclusion was crystal clear: Norwegian oil policy had to change drastically. However, this turnaround was obstructed for as long as possible by the MI. In addition, Caltex appeared to have a solid case, but because of the matter’s importance Evensen would not give in. He approached the problem in a way that was typical of his direction of the legal affairs department: jurisprudential perspectives should not dictate Norwegian foreign policy. Guided by pragmatic rather than legal analysis, Evensen asserted that as long as the dispute over participation rights was being processed by the Norwegian courts, a great deal of the potency of Andenæs’ legal opinion would be lost. There was little probability of American involvement.

That Evensen’s approach was supported by Minister of Foreign Affairs Lange, Minister of Justice Haugland, and Secretary General Ryssdal was important. It was also significant that the undertow of the Kings Bay-accident had sucked under Minister of Industry Holler, Principal Officer Lindstrøm, and Secretary General Skjerdal. With Lie’s entry to the MI, the Norwegian authorities stood united behind the demand for participation rights. The coalition between Caltex and the MI, which had earlier dominated the decision-making process, had been broken. With sovereignty considerations as its chief concern, Norwegian oil policy became more coordinated. But Caltex’s

316 Interview with Willum Steen, 28 August 2007 (author’s translation).

position became more vulnerable. And by referring to consequences that Caltex's dispositions could create, Evensen visualized the need for strengthening Norwegian regulatory authority if economic ventures were to operate under stable terms. But to strengthen regulatory authority, the country's sovereign position had to be underlined. Thus the company had to accept paying royalty: Caltex accepted the State's demands in the end.

When Arktikugol applied for oil exploration, the Norwegian policy of stricter regulation hit an obstacle: objections from Moscow. The Norwegian authorities, recognizing that power political relations still carried decisive weight on Svalbard, had to let the Soviet company in before introducing stricter claim terms. However, that Arktikugol accepted the same royalty contract as Caltex was a boon. With that, both American and Soviet interests had de facto recognized Norway as proprietor of Svalbard's unclaimed land, and consequently was entitled to a certain "... co-ownership of the enterprises' operations".³¹⁷ Norway's position was further strengthened when NPN entered into a participation rights contract in 1967. Within a judicially uncertain area, a practice had been established which underlined Norwegian sovereignty. In sum, a relatively comprehensive development in Norway's position on the archipelago can be identified. In 1961 the Norwegian regime was about to slide back to an unregulated *terra communis*. In 1967 the situation was different. The recognition of Norway's primacy on Svalbard's unclaimed land, which was offered de facto by the royalty and participation contracts, the archipelago was to a larger extent than before a *terra norvegica*.

So the outcome of the dispute over participation rights led to a clearer sovereignty position for Norway, but what did this mean for Norway's regulatory authority? As mentioned, Evensen pointed out that the real content of national sovereignty depended on the degree to which rights were asserted. Accordingly, highlighting Norway's sovereignty would not be of much value "non-policy" since the end of World War II continued.

Participation rights were the first acid test of Evensen's active Svalbard policy. His approach quickly won through at the Ministry of Foreign Affairs and Ministry of Justice. And thanks to replacing the leadership at the Ministry of Industry, the bureaucracy at the three ministries became attuned to the importance of underlining

317 Interview with Prof. C. A. Fleischer, 19 April 2007 (author's translation).

Norwegian rights on the archipelago. The Government's decision to seek a royalty arrangement, and the Storting's passing of the contract, show that Evensen's policy also had political approval. It can be asserted that the problems associated with Caltex's activities, combined with factors such as the Kings Bay accident, the ESRO Case, and the question of the airport, created a consciousness, both within the executive's administrative machinery and in the Storting, that Norway's disengagement from Svalbard had to stop. The royalty and participation contracts were especially important in this regard because they "... underlined that Norway had regulatory authority as a consequence of its sovereignty".³¹⁸ Thus the Caltex case was important, not just for placing Svalbard on the political and bureaucratic agenda, but also because it constituted a platform for strengthening Norway's sovereignty exercise.

318 Interview with Leif Terje Løddesøl, 11 April 2007 (author's translation).

Conclusion

The “non-policy”

Between 1960 and 1967, Norwegian oil policy on Svalbard developed extensively. Initially, it was very much a “non-policy”: the Norwegian authorities did not undertake independent initiatives on the archipelago, and only reacted to overseas developments which might affect Svalbard. Since the 1930s, Norwegian politicians had been little interested in Svalbard. After World War II, insofar as Norway had a Svalbard policy, the goals thereof were to secure Norwegian sovereignty by preserving low regional tension. Realizing this was regarded as dependent on the great powers – especially the Soviet Union – not developing a greater interest in the archipelago. To counter any stronger foreign engagement, Norwegian Svalbard policy was, to a larger extent than was usual in Norwegian security policy, characterized by reassuring the Soviet Union of the country’s peaceful intentions and by screening Western powers. The Norwegian government was focused sharply on the stipulations of the treaty. The Norwegian authorities chose to place “... strong limitations on their sovereignty exercise on the archipelago”. This “non-policy” continued unchallenged until the 1960s.³¹⁹

Caltex and the Ministry of Industry

How did Caltex manage to achieve such favourable terms on Svalbard? First, it is clear that the Ministry of Industry sympathized with Caltex concerning the difficulties involved in acquiring deposit samples. Further, the ministry was impressed by the company raising the matter instead of trying to obtain claims based on mineral sample

319 K. E. Eriksen and H. Pharo, *Norsk utenrikspolitikkens ...*, pp. 65, 371; R. Tamnes, *Svalbard og stormaktene ...*, p. 68 (author’s translation).

deposits. Caltex's ability to influence the ministry grew as the latter was strongly protective of mining policy on the archipelago. It was this combination of Caltex and the Ministry of Industry that settled the matter: the Ministry of Foreign Affairs, the Government or the Storting had no opportunity to voice their opinions, and foreign policy played no part in the analysis. This was decisive for Caltex obtaining such good terms on Svalbard.

At the same time, it is fair to say that unique circumstances at the Ministry of Industry permitted the situation illustrated above. Principal Officer Harry Lindstrøm's part was particularly essential in this regard. He practically had a monopoly on the ministry's Svalbard cases and distrusted the Ministry of Foreign Affairs. That this was accepted by Minister Kjell Holler and Secretary General Karl Skjærdal sealed the Ministry of Industry's solo run in the deposit sample issue and helped seal Caltex's profitable terms.

Why was this a challenge for Norwegian sovereignty? Independent of the Ministry of Industry's treatment of Caltex, the possibility of discovering oil was a challenge in itself. The right to search for oil and minerals was by and large everyman's on Svalbard. If oil – a strategic resource – was discovered, the Norwegian authorities risked Svalbard becoming the *locus in quo* of American and Soviet oil companies. Heightened interest from the great powers could lead to the disintegration of the low regional tension. And if conflicts arose between American and Soviet interests on the archipelago, Norway's sovereignty exercise could prove challenging. So it was problematic that Caltex had been let in so easily. It did not take long for Arktikugol to report its own geological indications. That oil exploration implied disturbing elements for Norwegian foreign policy in a Cold War perspective is clear.

Moreover, by virtue of the Ministry of Industry's treatment of Caltex, the impression that Norwegian sovereignty was no more than a caretaker mission widened to include economic interests. It was Norway's duty to prepare conditions for economic activity, the Ministry of Industry asserted. Out of consideration for Caltex, the right to regulate the criteria for oil claims was surrendered. In other words, a practice evolved leading to considerations for Norwegian sovereignty being subject to considerations for economic activity. As Norwegian sovereignty was already very inactive, the situation was piquant. This de-

velopment became even more serious when Caltex disputed the State's right to participation in claims on unclaimed land.

Caltex's contention was built upon a legal opinion written by Professor Johs. Andenæs. Based on an assumption that the State's right of ownership to Svalbard's un-claimed land did not provide the same rights as those held by private landowners, Andenæs concluded that participation rights could not be invoked by the State. If this opinion had been accepted, it would largely confirm that the State's sovereignty over Svalbard was qualitatively different from that over the rest of Norway. If this development had not been reversed, the Norwegian "non-policy" would have been confirmed both politically and legally. Svalbard would in reality be a *terra communis*.

The ministerial tug of war

By December 1961, in connection with the participation rights issue, the Ministry of Foreign Affairs became aware of the circumstances surrounding oil claims on Svalbard. Thus Norwegian oil policy on the archipelago became entangled in foreign political threat patterns. The Ministry of Foreign Affairs' point of departure was twofold, and represents a clear break from the cautious "non-policy" of the 1940s and 1950s: the real content of sovereignty over Svalbard depended on the extent to which Norway's rights were enforced, and Norway was not obliged to accept any limitations on its exercise of sovereignty beyond the explicit stipulations of the Svalbard Treaty. Therefore, it became the ministry's policy that Norway's regulatory authority had to be vigorously practised. But if Norway did not have rights of ownership to Svalbard's unclaimed land as under ordinary constitutional law, the authority to regulate the area would be weak. The issue of the State's right to participation in claims on the archipelago's unclaimed land thus concerned both how regulatory authority could be practised and the real content of the sovereignty. This was an important matter of principle which greatly concerned Norway's national interests on Svalbard.

As shown in chapter four, the relationship between the Ministry of Industry and the Ministry of Foreign Affairs soured after the issue of participation rights surfaced. This was particularly evident between the summer of 1962 until the spring of 1963. The Ministry of Foreign Affairs asserted that the Norwegian authorities had to control oil exploration, and thus Norway's regulatory authority had to be invoked actively. Practice concerning claims was far too lenient and the

State should demand participation rights regardless of what Professor Andenæs thought of the matter.

At the Ministry of Industry, Lindstrøm was particularly indignant at the Ministry of Foreign Affairs' opposition to the Ministry of Industry's treatment of Caltex. Lindstrøm's antipathy to the Ministry of Foreign Affairs and his lack of ability to see that mining policy could have foreign political consequences precluded any chance of agreement. That the administration was not united hindered any broad analysis of the matter. Thus the final decision was taken at a government conference. Supported by the Ministry of Justice, the Ministry of Foreign Affairs' policy of the active implementation of the sovereign's sole rights won through.

With a change of minister and new civil servants at the Ministry of Industry, policy moved towards the Ministry of Foreign Affairs' direction by the autumn of 1963. Thus Norwegian Svalbard policy broke with "non-policy". It was established that Norway had to conduct an engaged and regulating policy to strengthen its sovereignty on Svalbard. And the new focus on sovereign's rights yielded positive results: royalty contracts with Caltex and Arktikugol, and a participation rights contract with Norsk Polar Navigasjon, implied that the real content of Norway's sovereignty over Svalbard was recognized by international and national actors to include the right of ownership to the archipelago's unclaimed land. Consequently, the State's right to regulate extensively the terms for companies operating on that unclaimed land was established.

Between 1960 and 1967, the course of developments is clear. At the outset, oil interests posed a challenge for Norwegian sovereignty – especially because of the Ministry of Industry's lenient treatment of Caltex and the company disputing the State's right to participation. Norwegian countermeasures reversed this development. Through its sovereignty over Svalbard, the State had ownership rights to the unclaimed land and the authority to regulate economic activity on the archipelago.

The 1970s: an active Svalbard policy

The outcome of the Caltex case led to a highlighted sovereignty position, but what did this mean for the future of Norway's Svalbard policy? The Ministry of Foreign Affairs asserted that the real content of sovereignty was dependent on the degree to which rights were en-

forced. Accordingly, highlighting Norway's sovereignty would not be of much value if the "non-policy" remained unchanged.

Significantly, the focus on Svalbard in the 1960s and the recognition of a need for a more active approach became permanent policy features. This was first seen in a reform to strengthen Norway's governance of Svalbard. To avoid a repetition of events, there was a need for regularly exchanging information between Svalbard institutions. As a consequence, an inter-ministerial coordinating body, the Svalbard Committee, was established in 1965. It became an arena where the Ministry of Foreign Affairs could monitor the foreign political aspects of Svalbard issues.

Furthermore, during the latter part of the 1960s, but especially during the next decade, Norway started in earnest to make its mark on Svalbard. The archipelago was drawn into a process of modernization taking place in the rest of Norway. In 1971, the government decided to construct an airport on Svalbard, and regulation increased strongly. New regulations pertaining to traffic, economic activity, safe oil drilling, air transport, radio transmitters and a rise in claim fees demonstrated that the State was making increased use of its regulatory authority, even vis-à-vis the relatively autonomous Soviet settlements.³²⁰

The Norwegian authorities' efforts were largely successful. But Norwegian regulatory policy was a step in the wrong direction from the point of view of the Soviet Union, desirous of a privileged position on Svalbard. In practice, however, Soviet companies complied with the regulatory measures, a victory for Norwegian Svalbard policy.³²¹

The Caltex case and Cold War history

In chapter one, three perspectives to analyze Norwegian foreign-political decision-making process during the Cold War were introduced. The question was whether any of these could shed light on the circumstances behind oil exploration on Svalbard. As presumed, the *one-party politics* perspective – i.e. that Norway's foreign-political decision-making processes were the exclusive domain of the Labour Party – was not accurate, as Norwegian oil policy was first moulded by the Ministry of Industry alone. There was no political involvement

320 R. Tamnes, *Norsk utenrikspolitikkes ...*, pp. 257, 264, 269–270; UD, 36.6/60, bind II, JN.026931. Note from Ambassador Vennemoe to Foreign Minister Vårvik, 5 July 1973

321 R. Tamnes: *Norsk utenrikspolitikkes ...*, pp. 257–258; UD, 36.6/60, bind II, JN.026931. Note from Ambassador Vennemoe to Foreign Minister Vårvik, 5 July 1973

in the decision to confer Caltex claims. Nor was tightening regulatory practice initiated by politicians, but by civil servants at the Ministry of Foreign Affairs. The idea that the Storting had been reduced to rubberstamping decisions already taken is also not valid. In the 1960s, the members of the Storting became increasingly concerned with Svalbard issues. That the Ministry of Foreign Affairs' first draft contract with Caltex was rejected by the Storting demonstrates the participation and influence of parliament.

The *institutional interest* perspective's emphasis on cooperation between special interest groups and the bureaucracy provides a more accurate account of oil policy on Svalbard. From the end of the 1940s, the Ministry of Industry experienced institutional growth and acquired responsibility for more and more Svalbard matters. When Caltex announced its interest in Svalbard, the ministry sympathized with the company. Petroleum activities were seen as a purely industrial matter of no concern to the Ministry of Foreign Affairs. The Ministry of Industry's identification with Caltex is further illustrated by its strong efforts to hinder participation rights being invoked.

However, when the Ministry of Industry's leadership was replaced in 1963, the validity of the *institutional interest* perspective ends. The Ministry of Foreign Affairs took a leading role and the Government and the Storting became involved. The Norwegian authorities' approach to oil interests became more coordinated and its analysis focused mainly on national interests. Accordingly, the *institutional interest* perspective only captures essential parts of the opening phase of Norwegian oil policy on Svalbard.

The *international framework* perspective is the most precise angle of approach for oil policy on the archipelago. The Cold War turned the High North into a strategically sensitive region, and the Svalbard Treaty permitted Soviet activity on Svalbard. With the Ministry of Foreign Affairs' active involvement in the Caltex Case, considerations for sovereignty became decisive for the Norwegian authorities' dispositions.

The relevance of the *international framework* perspective is further underlined by Norway's inability to influence external factors. Norway and the Soviet Union remained "... the inner circle of the Svalbard System ..."³²² Oil exploration did not rally the Western allies togeth-

322 R. Tamnes: *Svalbard og stormaktene ...*, p. 9 (author's translation).

er in support of Norway. So even though Norwegian Svalbard policy became more active, Norway's room for manoeuvre remained limited.

The importance of the external framework is also reflected by the *threat pattern*. The Norwegian authorities viewed the Soviet Union as the *primary threat*, while foreign and Norwegian actors constituted *secondary threats*. The Caltex case largely confirms this pattern. If extended activity by Western and Norwegian companies were permitted, the Soviets would demand the same. Indeed, not long after Caltex and Norsk Polar Navigasjon had been conferred claims, Arktikugol entered the fray. Likewise, the Ministry of Foreign Affairs assumed that participation rights could not be invoked vis-à-vis Arktikugol without Caltex first having accepted them.

Moreover, the significance of the threat pattern was evident even after Norway's Svalbard policy became more active. Norwegian exercise of sovereignty had to follow a narrow path. On the one hand, a more forceful policy could lead to reactions from Moscow, potentially adversely affecting future sovereignty exercise. On the other hand, if the Norwegian authorities were compliant, this could also undermine sovereignty. To some extent this gave Norwegian Svalbard policy an aspect of "... catch 22. Whichever action chosen could go awry".³²³

Although the Cold War certainly influenced the external framework of Norwegian Svalbard policies, there are, as noted in the first chapter, unresolved legal issues between Norway and some of the parties to the Svalbard Treaty. As with the issue of participation rights, from a Norwegian standpoint the heart of the matter is the real content of Norwegian sovereignty. Accepting the opposing legal arguments would have consequences graver than just financial losses. In this regard the Caltex case is not a unique Cold War episode: the legal disputes still exist, but the Cold War emphasized the security political element in having foreign nationals operating extensively on Norwegian soil.

323 Interview with Prof. C. A. Fleischer, 19 April 2007 (author's translation).

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³²⁴ As mentioned, in connection with his own appeal hearings and lawsuits against the investigation committee and several newspapers, Lindstrøm put together a collection of different memos which had compromised a substantial part of the criticism directed at him. The only copy publically available was lost from the Sophus Bugge university library in 1987. The author received a copy of the collection from Lindstrøm's biographer, Mr Hjalmar Markussen.

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