

The Scope for Norwegian Commitments Related to International Research on Jan Mayen Island

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Abstract: The main considerations that will govern the scope for Norwegian commitments related to international research operations on Jan Mayen Island are: 1) the physical characteristics of Jan Mayen Island, 2) its legal status in terms of international law as well as national legislation, 3) infrastructure and logistics, and 4) national policies concerning research or related activities. Any Norwegian support to proposed international research activities will require that the operation would be compatible with existing or prospective Norwegian national policies or strategies concerning research or related activities, which could entail the possibility of cooperation with key Norwegian research institutions.

Key words: Norwegian sovereignty, legal obstacles, access regime, environmental protection, regulations, Action Plan

1. INTRODUCTION

As a point of departure in describing the scope for Norwegian commitments related to international research operations on Jan Mayen Island, one will note that there are very few, if any, pre-ordained restrictions limiting the scope of operations that can be contemplated, subject to such variables as one's imagination, the financial resources at one's disposal, and one's priorities. However, there will always be a number of considerations that will narrow down the realistically available options and provide the more or less rigid modalities for the kind of activities that would seem

worthwhile or possible to embark on. This, of course, goes for research operations as well.

2. GENERAL CONSIDERATIONS

For the present purpose it is necessary to identify and outline the main parameters that must be taken into consideration when considering any project dealing with international research operations on Jan Mayen. This would not only apply to prospective endeavors on the part of the Norwegian government, but also to any other activity by any other party, insofar as they would have to take account of relevant rules or guidelines established by Norwegian authorities.

The main parameters that together form the scope for Norwegian commitments (actual or possible) in our context may be roughly grouped in the following categories:

- Physical characteristics including limitations (location, geography, climate).
- Legal status, in terms of *viz.*:
 - international law.
 - national (domestic) legislation.
- Infrastructure and logistics (existing and prospective).
- National policies concerning research or related activities.

3. PHYSICAL CHARACTERISTICS

Any presentation or discussion relating to the scope for prospective operations of any kind would be incomplete without at least a quick look at the physical properties of the object of our attention. Jan Mayen is a small island of just 373 km² (slightly less than 146 square miles). It is located in a rather remote part of the North Atlantic Ocean, between 70 and 72°N, and between 8 and 9°W. To illustrate the remoteness: The island is situated 600 km NE of Iceland, 500 km E of Greenland, 1000 km W of mainland Norway, 1000 km SW of the Spitsbergen Island of the Svalbard archipelago.

Geologically and geo-tectonically, the island is a volcanic outcrop of the Mid-Atlantic Ridge. The island is rocky and mountainous, with the highest peak at 2277m (Mt. Beerenberg), which is a snow-covered and still active volcano. The climate is windy and rather cold, as the island lies in the border zone between the high Arctic and the sub-arctic transitional zone. The coast-line is rough, with no natural harbors. As a result of the climate, the size of the island and its distance from other land areas, the local flora

and fauna do not display a particularly rich biodiversity, at least not with regard to terrestrial species (the surrounding marine areas is a different matter).

Jan Mayen may be considered a desolate mini-universe, a far-off place with a rather inhospitable natural environment. This, obviously, has also had an impact on the character and the extent of human activities.

The island has no indigenous human population and no long-term settlers. Since the early 17th century, the island was visited on and off by a diverse lot, including whalers, adventurers, explorers and even scientists (i.e. the Austro-Hungarian expedition during the 1st International Polar Year 1882-83). No permanent or continuous settlement existed until the establishment of the first meteorological station in 1921. The population which has always consisted of temporary residents reached an all-time high in the late 1960's with approximately 40 souls, mostly personnel from The Norwegian Defence Communication and Data Services Administration, an outfit which is now known as the Defence Logistics Organization. Since then, the number of inhabitants has shrunk to 18 persons, and a further downscaling is envisaged as a result of the forthcoming phasing-out of the Loran-C station.

The logistics and infrastructure associated with the Loran-C system has been both difficult and costly to maintain and upgrade, and has added to the problem that the island is a difficult and costly place to reach. However, it may be worthwhile noting the apparent paradox that those very physical characteristics that make Jan Mayen such a difficult place for research operations (the remote location, the forbidding climate etc.) seem to be the very same factors that make the island such an interesting and attractive place for carrying out scientific observations.

4. LEGAL STATUS IN TERMS OF INTERNATIONAL LAW

4.1 Norwegian sovereignty

Any international activities with regard to Jan Mayen Island must take into account the status of the territory in terms of international law, or more specifically, take note of the trivial but nevertheless crucial fact that this is Norwegian territory.

Up until 1922 the legal status of Jan Mayen was *terra nullius* i.e. "no-man's land". In that year the island was annexed by the Norwegian Meteorological Institute on behalf of the Kingdom of Norway, and by Royal resolution (Order-in-Council) of 8 May 1929 the Norwegian government

reconfirmed the legal status of the island by a formal decree of Norwegian sovereignty.

The further legal basis for the exercise of Norwegian jurisdiction was established by the Jan Mayen Act of 27 February 1930, which, *inter alia*, decided that Jan Mayen is an integral part of the Kingdom of Norway.

Thus, the legal status of Jan Mayen is basically the same as the Svalbard archipelago, and unlike the Norwegian possessions in the Antarctic, which are dependencies, and not integral parts of the Kingdom. Until 1995, the island was administered by the Governor of Svalbard. However, the Svalbard Treaty does not apply to Jan Mayen, which means that Norwegian jurisdiction can be exercised without any considerations concerning restrictions contained in that Treaty. Or, to put it in another way: The position of the Norwegian government with regard to international research operations or any other kind of operations on Jan Mayen, is not affected by any specific obligations or restrictions in terms of international agreements or any other instrument of international law.

The island's status as a part of the Kingdom means that any international conventions or agreements which Norway is a party to and is bound by, will also apply to the territory of Jan Mayen, unless Norway has taken a reservation in this respect in connection with the ratification.

It should be noted that the Norwegian sovereignty over Jan Mayen is unquestioned and unquestionable. The sovereignty is not dependent on any official presence or any particular kind of activity, and it has not been disputed by any other country.

4.2 The continental shelf and the Jan Mayen Fishery Zone

The 1982 U.N. Convention on Law of the Sea (UNCLOS) lays down the rules on what kind of international legal authority over sea, seabeds and underground that can be claimed on the basis of sovereignty over islands. The main rule is that islands provide the same legal basis as other coastal areas. The rights under the Convention apply to islands independently of such factors as area, population size and socio-economic considerations.

The decisive factor with regard to jurisdiction is whether the area satisfies the Convention's definition of "island". There is no doubt that this is the case for Jan Mayen. Thus, the Norwegian sovereignty over Jan Mayen gives Norway the right to the continental shelf around the island, and the right to establish maritime zones. Accordingly, and also pursuant to the Act of 17 December 1976 concerning Norway's Economic Zone, the Jan Mayen Fishery Zone was established by government regulation of 23 May 1980.

4.3 Delimitations

The delimitations between *viz.* fishery zone/EEZ and continental shelf between Jan Mayen and Iceland were established by agreements of *viz.* 28 May 1980 and 22 October 1981 between Norway and Iceland. After the conclusion of the 1980 agreement Norway established a fisheries limit of 200 n. miles around Jan Mayen. The delimitation did not, however, follow the generally accepted method of using the median line. Instead, the boundary was drawn in a way that reduced the area in the border zone with Iceland, whereas Iceland kept a full EEZ of 200 n. miles. One argument in favour of this solution was that the land area of Iceland is larger than that of Jan Mayen. Another argument was that Iceland's population had a greater need for access to the fish stocks than Norwegians, or the Norwegians on Jan Mayen in particular. The validity of such arguments in terms of international law is doubtful, but Norway nevertheless opted for accommodating the Icelandic views.

The method for the delimitation in the sea between Jan Mayen and Greenland was settled by the International Court of Justice in the Hague in a verdict of 14 June 1993. The Court interpreted the 1958 Geneva Convention on the Continental Shelf in the light of common international law. The verdict confirmed that population size and other socio-economic considerations were not relevant to the delimitation issue. On the other hand it was taken into account that Greenland had a relatively longer coastline adjacent to the sea area in question, and that Greenland should be given a reasonable access to the fish resources in the disputed area. The verdict was subsequently used as the basis for the delimitation agreement of 18 December 1995 between Norway and Denmark concerning the area between Jan Mayen and Greenland.

4.4 Territorial waters

The island of Jan Mayen has its own sea territory. By governmental decree of 25 February 1812, the territorial waters of Norway were ruled to comprise the waters within a distance of 4 n. miles from the coast. As a result of the annexation of Jan Mayen, this rule was also introduced here. The more precise definition of the territorial limits was established by Royal resolution (Order-in-Council) of 30 June 1955.

As from 1 January 2004, Norway has extended its territorial limits from 4 to 12 n. miles. This enlargement has also taken effect with regard to Jan Mayen.

5. LEGAL STATUS IN TERMS OF NATIONAL LEGISLATION

5.1 General and basic legislation

National (domestic) legislation defines how public matters are organized, and - to put it in simple terms - defines what you can and what you cannot do.

In terms of the Jan Mayen Act of 27 February 1930, § 2, Norwegian civil law, criminal law and administration of justice apply on the island. Other Norwegian laws apply only to the extent that this has been explicitly so decided by the government.

There is no privately owned land and no privately owned buildings, and the law forbids private acquisition of government property.

The Jan Mayen Act applies to the island's land territory and its territorial waters. Outside of the territorial limits, laws and regulations must have their legal basis in the aforementioned Act of 17 December 1976 concerning Norway's Economic Zone, or, they must be based on the presumption that Norwegian legislation apply in accordance with inter-legal rules (cfr. § 12 of the Norwegian Criminal Code).

With regard to the continental shelf, the legal basis for regulations is to be found in two acts from the 60's: *Viz.* the Act of 21 June 1963 and the Act of 29 November 1966. The latter concerns petroleum operations, the former concerns scientific exploration for and exploitation of other kinds of resources under the sea-bed. These acts have a general field of application, and do not relate to the seabed around Jan Mayen in particular.

As mentioned briefly above, the administration of Jan Mayen was previously the responsibility of the Governor of Svalbard. As this was felt to be an awkward and not very logical arrangement, the government decided on 25 August 1994 to transfer the administrative responsibilities to the County Governor of "Nordland fylke". The administration of justice is the responsibility of the Salten District Court, and police matters are the responsibility of the Police Commissioner of the city of Bodø.

The Head of the Loran-C station is the ranking local representative of civilian and military authorities, and is entrusted with the task of enforcing laws and regulations, and taking care of Norwegian interests.

If there were to be any mining operations, those would fall under the jurisdiction of the mine superintendant of Svalbard and Jan Mayen, whose office is presently located in Trondheim.

5.2 Specific regulations concerning the access of foreign nationals to Jan Mayen

The present regulations (FOR 1962-06-01 nr 01) came into force in 1962 and contain 7 main articles with 15 paragraphs and numerous subparagraphs, spelling out detailed rules and restrictions concerning passport and visa requirements, entrance and exit control, residence permits, work permits, access denial and deportation rules. Of particular interest with regard to prospective international research operations are the paragraphs dealing with residence and work permits, which run like this:

§ 8. A foreign national arriving at Jan Mayen may be issued with a police permit to stay on the island for the maximum of one week provided that he will be able to leave the island by sea or air at the time of expiry of the permit. If a foreign national intends to stay for more than one week, he must obtain advance permission from the Ministry of Justice.

§ 9. The police shall keep a register of foreign nationals who have been issued with a permit to stay on the island.

§ 10. A foreign national who intends to seek any kind of work on Jan Mayen must obtain in advance a specific permit from the Ministry of Justice.

5.3 Specific legislation concerning environment protection

There is no unified body or single piece of comprehensive legislation covering the various aspects of environment protection on Jan Mayen. Most of the relevant rules are laid down in a number of separate governmental regulations which have their legal basis in legislation of a broader or more sweeping character, such as the Jan Mayen Act of 27 February 1930. Such rules include:

- Temporary regulation of 28 May 1971 concerning the natural environment on Svalbard and Jan Mayen.
- Regulation of 23 April 1976 concerning mining operations on Jan Mayen.
- Regulation of 11 August 1978 concerning the management of wildlife and freshwater fish on Svalbard and Jan Mayen.
- Regulation of 21 June 1974 concerning protection of objects of cultural heritage.

The question of revising these rules and amalgamating them into a single, consolidated regulation, was addressed and dealt with by the select committee which in 1998-98 prepared and drafted the proposed new

Environment Protection Act concerning Svalbard, which was eventually adopted in 2002.

The outcome of this work as far as Jan Mayen is concerned, can be summarized as follows:

1. Jan Mayen is not included in or covered by the Svalbard Environment Act.
2. No further measures were taken to consolidate the various existing regulations concerning Jan Mayen.
3. The Jan Mayen Act of 27 February 1930 was amended to include the sentence "The King may issue regulations concerning environment protection on Jan Mayen".

Thus, the existing regulations were given a more up-dated legal basis. This does not make much of a difference in practical terms as far as the consequences for research operations are concerned. It should, however, be noted that when addressing these issues, the select committee re-iterated and reconfirmed the guiding principle which is considered paramount in Norwegian policies on the environment and nature management, namely that environment considerations shall be given preference whenever there may be a conflict with other interests or considerations.

The main point to be noted here is that any kind of activity on Jan Mayen - including research operations in general and prospective international research operations in particular - must take into consideration the stringent requirements that these regulations entail.

An environmental action plan for Jan Mayen for the years 2000 to 2005 has been published by the County Governor of Nordland fylke, in cooperation with the Norwegian Directorate for Nature Management, the Norwegian Polar Institute and the Directorate for Culture Heritage (Anon. 2000). It contains detailed and extensive information on the current environment regime as well as on prospective future rules and regulations.

6. NATIONAL POLICIES CONCERNING RESEARCH OR RELATED ACTIVITIES

When discussing the scope for Norwegian commitments related to international research operations on Jan Mayen Island, a key question that needs to be addressed is: How do such prospective research operations fit together with the broader national policies, strategies or plans?

To spell it out more specifically: Is there a *modicum* of compatibility? Is there a potential for useful synergies? Or perhaps even a potential for institutional co-operation, such as joint ventures with regard to projects? Or conversely, are there any contradictory objectives, any insurmountable

obstacles? Such questions cannot be answered on a general level, but have to be considered on the basis of the character of the respective individual research operations that may be proposed. Meanwhile, it would be useful to familiarize oneself with the main plans and strategies that may be labeled "national policies" in this area.

It must also be added that, to the extent that one would envisage any "commitments" on the part of the Norwegian government, related to international research operations on Jan Mayen, it would not only be useful, but essentially necessary for any would-be operator to familiarize oneself with such plans and strategies. It probably goes without saying that any involvement by the Norwegian government in research operations would only take place in terms of, or on the basis of, declared government policy, as laid down in a relevant policy document.

Policy documents which deal with Jan Mayen in particular are scarce, but the Jan Mayen situation should be considered in the broader context of Norwegian research policies in general, and more specifically, in the context of Norwegian policies concerning research in the Arctic.

In December 1998 a working group headed by the Research Council of Norway presented a report in which it identified a number of subject areas where there were special opportunities for cooperation and synergy, and described future development projects. The subject areas concerned accord with the priorities established in the Research Council's strategic plan for Norwegian research in the Arctic (1995).

A brief description of the subject areas and projects were given in the Parliamentary (Storting) White Paper no. 9 (1999-2000) concerning Svalbard, chapter 8.5.4. A similar presentation was given in the Parliamentary White Paper no. 39 (1998-99) on national research policies, esp. chapter 5.2.2. Although the descriptions mentioned here deal exclusively with Svalbard, it stands to reason that similar considerations (with regard to past experience as well as current and future tasks) would be applicable to the Jan Mayen situation.

A more recent policy document which addresses these issues has been prepared by the Norwegian National Committee for Polar Research. This document, which is called "Strategic Plan for research in the Arctic 2003-2007", has apparently not yet been endorsed by the Norwegian Research Council, which means that the status of this Strategic Plan is still "unofficial". With this reservation, the draft Strategic Plan may give some useful indications concerning the key elements and main directions of Norwegian national policies on research matters in relation to Jan Mayen.

The obvious advice to any party entertaining plans for research operations related to Jan Mayen, would be to familiarize themselves with existing policies, plans and strategies. The equally obvious next step would

be to establish contacts with the relevant responsible research institutions and agencies with a view to finding some common ground that would facilitate fruitful cooperation.

While noting that there is a number of potentially relevant institutions and agencies, one cannot overlook the fact that the Norwegian Polar Institute plays a central role in research activities in the Arctic. Thus, for any plans for research operations related to Jan Mayen to get off the ground, it would be a definite advantage to be able to solicit the cooperation of the Polar Institute (which of course would be contingent on the compatibility of such plans with the Institute's own priorities).

REFERENCES

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