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The Frozen Frontier: Models for International Cooperation

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Current and emerging developments in the polar regions entail an increased conflict-potential as well as an increased cooperation-potential. On this backdrop the author discusses the possibilities for international cooperation on conflict-preventive measures in the polar regions. A key assumption in this context is that international cooperation as such – independently of the object of cooperation – should be ascribed a positive conflict-preventive function. The discussion, however, is here limited to a few subject-areas where international cooperation in the polar regions is of particular interest; notably in scientific research/exploration, economic exploitation, regulatory measures of a practical/operative nature, and regulation of sovereignty- and jurisdiction-status. More particularly, the paper gives a comparative discussion of the Svalbard (Spitsbergen) and Antarctic treaties as models for the regulation of so-called 'new territories' (a term which encompasses, *inter alia*, most of the polar regions). Finally, the author examines the aptness of such models to adapt to changing circumstances, and to cover the need for measures of regulation and control in regions where many parties are involved in the developments.

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I. INTRODUCTION

With regard to the polar regions, we are faced today with a development which, *inter alia*, entails an increased *conflict-potential*, both in relations between individual nations and between national and international interests and goals. This increased conflict-potential consists partly in an aggravation of already existing antagonisms, and partly – and more especially – in the formation of novel lines and patterns of conflict. It is with these factors in mind that we speak of the polar regions as 'new fields of tension in international politics'. This aspect of the development evidently carries with it a need for conflict-preventive measures. At the same time, however, we should recognize that the development with which we are faced in the polar regions has other aspects besides that associated with conflict: it also entails, *inter alia*, an increased *cooperation-potential*, which stems especially from the *new needs*

created by *new activity in new regions*. There are the needs for information, efficient division of labor, optimal exploitation of resources, etc.; needs which are accentuated by the technological and cost-financial problems that arise from the new activity in the polar regions, and that are reflected in the great inequalities of *capability* between the states concerned. Added together, these factors contribute towards creating a more favorable climate for different – and in part novel – forms of international cooperation.

It is against this background that it is of interest to discuss the possibilities for *international cooperation on conflict-preventive measures in the polar regions*. My point of departure will be the view that 'cooperation' and 'conflict' are *inverse magnitudes*; i.e. the more cooperation, the less conflict, and *vice versa*. This entails that international cooperation as such – independently of the

object of cooperation – must be included among positively conflict-preventive measures. My discussion cannot therefore be confined exclusively to measures of cooperation where the specifically conflict-preventive element is explicitly emphasized as the primary objective.

The claim that international cooperation as such – independently of subject-matter or of the object of cooperation – is conflict-preventive, is debatable. Consider the following factors:

- International cooperation shows something of the willingness of parties to settle their accounts by means other than through conflict, and is therefore an index of the positive attitudes of parties with regard to preventing conflict. The fact that several parties initiate cooperation is in itself a factor inspiring mutual trust, and (real) cooperation may have a self-generating effect.
- When cooperation has been initiated, and institutions for this purpose have been set up, these institutions may also be employed for other purposes (communication, discussion, etc.) with constructively conflict-preventive consequences.
- Cooperation in one area of interest may 'infect' other areas, i.e. what in functionalist theory is called the 'spillover' effect. So, for instance, cooperation of a 'technical' nature over (in a security-political sense) neutral and non-controversial subject-matters, may pave the way for other measures of cooperation of a more directly conflict-preventive character.
- Cooperation in several areas of interest may make it possible to modify antagonisms and to prevent the spread of possible conflicts from the areas where there are real conflicts of interest to other areas where an objective basis for conflict is absent. In other words, cooperation may prevent conflicts from becoming cumulative.

Although cooperation in its widest perspective may be conflict-preventive, I here limit the discussion and take a look at a few subject-areas where international cooperation in the polar regions is of particular interest.

Such subject-areas are:

1. Scientific research/exploration.
2. Economic exploitation.
3. Regulatory measures of a practical/operative nature.
4. Regulation of sovereignty- and jurisdiction-status.

Security-politics might be listed as a fifth subject-area. The examples to be discussed, however, are of a character that makes it natural to deal with this topic in the context of 'Regulation of sovereignty- and jurisdiction-status' (section VI).

In the sequel I shall consider examples from these subject-areas, and, in this connection, evaluate the *forms of cooperation* that stand out (suggest themselves) as being the most appropriate. It will be natural here, *inter alia*, to build on the conceptions that were presented in the collection of articles entitled *The Challenge of New Territories* (Universitetsforlaget, Oslo 1974) from the Fridtjof Nansen Foundation at Polhøgda.¹ Besides, I shall to some extent start from, and further develop, my own discussion of security-political cooperation-models, from the article 'International Cooperation in the Polar Regions: A Security-Political Perspective'.² The objective of the present paper is to give a comparative discussion of the Svalbard (Spitsbergen) and Antarctic Treaties as models for the regulation of new territories, as well as to give an analysis of the aptness of the models to adapt to changing circumstances, and to cover the need for measures of regulation and control in regions where many parties are involved in the development.

In this context the dichotomy 'co-

operation-conflict' stands in a focal point. It may therefore be convenient to operate with a relatively far-reaching concept of cooperation, and to regard e.g. international negotiations of a conflict-reducing or -preventive nature as positive measures of cooperation.³

II. THE MODEL-BACKGROUND

In the above-mentioned article, 'International Cooperation in the Polar Regions: A Security-Political Perspective', an analysis was carried out of the significance of both the Svalbard Treaty and the Antarctic Treaty as security-political cooperation-'models'. In this analysis the two treaties were tentatively regarded as two variants of one and the same 'master-model', which was provisionally labelled the 'new-territories' model for international cooperation in the field of security-politics.⁴

Also in the following will the cases of Svalbard and the Antarctic have a central place as examples of cooperation-models. In the context of subject-matter, however, the discussion of models will assume a broader perspective and not be confined to that which has an immediate security-political relevance, as was the case in the above-mentioned article.

III. SCIENTIFIC RESEARCH/ EXPLORATION

The subject-area which has been most extensively made the object of international cooperation in the polar regions is 'scientific research/exploration'. It would seem natural to assume that this fact reflects the nature of the *subject-area* and the *special* (geographic and climatic) *character of the polar regions*. In the first place, the subject-area is relatively non-controversial. In the second place, the research projects in the polar regions are so comprehensive, and the practical scientific work so expensive and difficult, that international cooperation would seem convenient for these

reasons. Such considerations are indicated in the Antarctic Treaty, where we find this formulation of one of the objectives of scientific cooperation: '... to permit maximum economy and efficiency of operations' (art. III). There is obviously an interchange between the nature of the subject-area and the special character of the polar regions, something which may influence in a favorable direction the preconditions of and possibilities for international cooperation.⁵

By 'international cooperation', one presumably thinks primarily of cooperation between states, i.e. cooperation between what we call *national agents*. What characterizes cooperation on the level of scientific research, is the large presence of *subnational agents* (such as private research institutes, individual scientists, etc.) and of *international agents* (such as international associations of scientific organizations). This also characterizes the forms of cooperation, as regards the degree of *formalization*, as well as the degree of *politicization*. So, for instance, one is concerned in this connection with measures of cooperation which cover the entire spectre from the purely private level to the highest political levels.

1. The Arctic

The international scientific cooperation that has taken place in the Arctic, has not so far been made the subject of any comprehensive treaty regulation or to any notable extent been incorporated into permanent organizational forms. So, for instance, the *Svalbard Treaty* is not directly concerned with factors bearing on organized international cooperation as regards the scientific exploration of this region. That is, we cannot speak of any 'Svalbard-model' for international scientific cooperation. Such cooperation has nonetheless taken place to some extent, but this is due to factors other than the Svalbard Treaty, though one should not

entirely disregard the favorable conditions created for such cooperation by the Treaty (I am thinking here of the principles of equal treatment and of right of access and presence, laid down by the Treaty).

Before Norway's annexation of Svalbard, the archipelago had long been an 'open country' for scientific explorations by a number of nations. The Swedes, in particular, had made significant contributions to its exploration during the second half of the 19th century. In 1928, the Norwegian Government established Norges Svalbard- og Ishavsundersøkelser (Norway's Svalbard and Polar Sea Researches; abbr. NSIU), an organization inaugurated for purposes, *inter alia*, of leading exploration of the archipelago. Although NSIU had clear national objectives, this was also to mark the beginning of institutionalized international scientific cooperation on Svalbard. The Norwegian Government initiated such a policy through a memorandum which was sent to interested foreign Powers shortly after the establishment of NSIU.⁶ The memorandum included proposals for certain measures of coordination of research on Svalbard, as well as offers of various services which NSIU might contribute in this context. After World War II, NSIU was reorganized by the new Norwegian Polar Institute, which has now taken over the functions of NSIU. International cooperation as regards exploration of Svalbard has taken place primarily on a *bilateral* basis between the Norwegian Polar Institute and corresponding (more or less governmental and more or less independent) institutions in other countries. Such cooperation has had the character, *inter alia*, of registration of expeditions (to avoid a duplication of efforts, etc.), as well as a certain exchange of personnel and information, and has not been organized in accordance with any permanent, formalized pattern. As an example of new

fields and forms of cooperation which have come up in recent years, I make especial note of the – rather limited – telemetrics-cooperation which, in the period 1965–1974, took place on Svalbard within the framework of the ESRO-agreement.⁷ The cooperation-partner on the Norwegian side in this case was Norges Teknisk-naturvidenskapelige forskningsråd (Norwegian Technical-Natural-Scientific Research Council; abbr. NTNF), which in turn cooperated on administrative matters with the Norwegian Polar Institute. With regard to scientific cooperation concerning Svalbard, it may be noted that, by virtue of the fact that Svalbard is defined by international law as Norwegian territory and is thus no longer a 'new territory', it is: (a) natural that coordination is carried out through the national agency – the Norwegian Polar Institute; (b) natural that cooperation takes place bilaterally; and (c) neither convenient nor necessary to establish any international agency for such cooperation.

Elsewhere in the Arctic we find examples primarily of bilateral cooperation in scientific research. By and large, such projects have been of a clearly delimited scope (in time and space as well as in respect of subject-area), and have only to a small extent found expression in permanent organizational forms of cooperation.

In 1970 an initiative taken by the American National Science Foundation led towards a broadly conceived multi-lateral research-cooperation in the Arctic. The project, which was termed AIDJEX ('Arctic Ice Dynamic Joint Experiment'),⁸ aimed at a comprehensive thermo-dynamic survey of the Polar Basin, in respect of sea, air, and ice-masses. The project was designed to include, *inter alia*, the U.S., Canada, Japan, the USSR, and Norway, and to span a period of four years. The AIDJEX-cooperation, however, became

confined to a largely trilateral American–Canadian–Japanese affair, and Norwegian participation did not materialize. On the other hand, Norway has involved herself (through the Norwegian Polar Institute) in a corresponding and even more broadly conceived project, POLEKS ('Polyarny Eksperiment'), which has been planned by the Soviets, and is being carried out over a seven years' period in cooperation with the other circumpolar states.⁹

2. The Antarctic

In no other place in the world do we find such comprehensive and extensive international cooperation over scientific research/exploration as in the Antarctic. The chief objective of the Antarctic Treaty was in fact to secure continued and unobstructed scientific exploration of the Antarctic and international cooperation for this purpose. In the preamble to the Treaty this objective is expressed as follows:¹⁰

[Names of the contracting parties] . . . convinced that the establishment of a firm foundation for the continuation and development of such co-operation on the basis of freedom of scientific investigation in the Antarctic as applied during the International Geophysical Year accords with the interests of science and the progress of all mankind. . . . [etc.]

The Treaty, as we see, lays down as a principle the practice which was followed in the International Geophysical Year (IGY). The experiences drawn from the IGY-experiment were decisive for bringing about the Antarctic Treaty and gave the guidelines for the contents of the Treaty. We shall take a closer look at the dominant features of this research-cooperation, 'as applied during the International Geophysical Year'.

IGY was a world-wide arrangement for the gathering of scientific data. It lasted from 1 July 1957 to 31 December 1958,

and was sponsored by the International Council of Scientific Unions (ICSU), with the financial support of the governments of the individual countries. Data from the Antarctic were to have a central place in the program, something which dictated that a number of states (12 in all) participated in research on the South Pole-continent. To avoid political complications, and to allow scientists full freedom in this region, it was decided at a congress held by ICSU in 1955 that none of the activities carried out in connection with IGY should influence sovereignty-relations in the Antarctic.¹¹ Although this 'resolution' could not be regarded as binding on the respective governments, this 'gentlemen's agreement' still came to be an important foundation for the actual research-cooperation which came about during IGY. This cooperation did not consist in joint international projects properly speaking, but took the form, chiefly, of an extensive *coordination* of the projects of the individual nations which jointly constituted the total research/exploration activity. This coordination consisted in, *inter alia*, a distribution of research-tasks and a centralized exchange of information; furthermore, a considerable exchange of scientific personnel took place. It soon became clear that if full use were to be made of the investments in bases and *materiel* which the various nations had made in the Antarctic, scientific cooperation extending beyond the brief IGY-period would be required; even before the end of 1957, ICSU appointed a special committee to consider continued activity beyond IGY. This committee, which has since then presided over the coordination of the scientific endeavors of the various countries in the Antarctic, was termed SCAR (Scientific Committee on Antarctic Research), and was composed of scientists from the 12 countries involved. SCAR's function received political sanction through the conclusion of the Antarctic

Treaty, which expressly prescribes continued cooperation in scientific research (art. III, cf. also the preamble). The Treaty also facilitated the functioning of the continued research-cooperation, *inter alia*, by guaranteeing full freedom of access and presence, but particularly by elevating to a political program the following principles from the IGY-cooperation:

(a) Exchange of scientific observations and results (art. III).

(b) The obligation to give information with regard to bases, expeditions, and activities (art. VII).

(c) Exchange of scientific personnel (art. III).

Since the Antarctic Treaty took effect in 1961, the comprehensive model of cooperation (the 'Antarctic-model') with which I am concerned here has been characterized by a unique form of interchange between the *political* and the *scientific* aspects of cooperation. In section VI, we shall deal in particular with 'political cooperation', which chiefly consists in the so-called consultative meetings. While Treaty-regulated political cooperation takes place at the level of states, the similarly Treaty-regulated scientific cooperation is directed by SCAR, which is subordinated to the non-governmental organization ICSU, and has thereby a formally speaking 'private' character. The relation between the two fields of cooperation has been described as a form of international cooperation where a non-governmental organization (SCAR) almost functions as an executive branch for an inter-governmental 'organization' (i.e. the Antarctic Treaty and its system of consultations).¹² This dualistic form of cooperation may be explained on the background of several particular circumstances, such as:

– The *political* cooperation in which the 'Treaty Organization' is engaged – i.e.

the measures which are treated at the consultative meetings – is chiefly concerned with questions connected with the *scientific* cooperation.

– While SCAR, like other non-governmental organizations (the so-called INGO's), has a permanent organizational form, the 'Treaty Organization' is not an 'organization' in the traditional sense in so far as it lacks a secretariat of its own (i.e. a permanent organ for the preparation and execution of cases).

– Because activities in the Antarctic have chiefly been of a scientific nature, and because the international environment of persons concerned with Antarctic questions is so small, a significant overlap of personnel has emerged between the 'Treaty Organization' (the consultative meetings) and SCAR.¹³ This has created a situation where Antarctic cooperation in the wider sense is based, to a great extent, on personal and, in part, informal contacts, and so may throw light on the special relationship between the scientific and political aspects of Antarctic cooperation.

The Antarctic-model, with its complicated structure, including, *inter alia*, a mixed scientific and governmental cooperation, is obviously adjusted to the special conditions in the Antarctic. All the same, we can hardly avoid raising the question of the broader applicability of the model to other regions, such as e.g. the Arctic. In this context we may note an offensive towards bringing the Arctic research carried out by various countries into more permanent organizational forms, and towards giving such cooperation a stronger political foundation, which was made in connection with SCAR's meeting in Oslo in August 1970. It was decided then to request ICSU to establish an Arctic sister-organization of SCAR, a so-called SCAB, i.e. 'Scientific Committee for the Arctic Basin'.¹⁴ The

plan for SCAB later seems to have perished out. One reason for this could have been the fact that this part of the Antarctic-model is simply not suited for a transfer to Arctic conditions, something which would have its obvious reason in the fact that Arctic and Antarctic conditions differ in essential respects. In the first place, there is the purely *security-political* difference: while the Antarctic is a region of relatively low sensitivity in security-political respects, the Arctic is a security-political tension-field of the first rank, *inter alia*, because of its position between the Super Powers. In the second place, there is the difference regarding *sovereignty-status*: contrary to what is the case in the Antarctic, *all lands and islands* in the Arctic are subjected to uncontested national sovereignty (for which reason they cannot be considered 'new territories'). To the extent that a possible SCAB-cooperation should include national territories, the established sovereignty-relations would pose an obstacle to such cooperation. Security-political qualms with regard to such cooperation would (though to a varying degree) make themselves felt whether the cooperation concerned only the Arctic Ocean or if it were to include national territories as well.

Another reason why SCAB has not materialized might be that the time is not yet ripe for such a radical innovation. It is not inconceivable that the idea as such could and should be taken up for re-evaluation, e.g. in connection with an Arctic zone-division (treaty-regulated) as has been proposed by Finn Sollie.¹⁵ In such a context one might conceive the possibility of an international authority for the coordination of research/exploration in a specified Arctic zone, e.g. the central Arctic Ocean.

Can it be shown, then, that cooperation with regard to scientific research/exploration in the polar regions has had *actual conflict-preventive consequences*?

In the introduction to this paper I mentioned the possibilities of a so-called 'spill-over' effect, i.e. that cooperation in one subject-area might 'infect' other areas and possibly also pave the way for more directly conflict-preventive measures. My concrete material gives at least one conspicuous example of 'spill-over' effect with positively conflict-preventive consequences. I am here referring to IGY, which was originally a purely scientific cooperation-project, but which paved the way for the Antarctic Treaty and everything which the latter entailed of a broader political (and security-political) cooperation. The specifically conflict-preventive aspects of the Antarctic Treaty will be dealt with individually in a later section; at this point I shall assume the positively conflict-preventive value of the Treaty and confine myself to pointing out the clear causal relationship between IGY and the Treaty. Also, the scientific cooperation which has later taken place within the framework of SCAR – after the conclusion of the Antarctic Treaty – may be regarded in a conflict-preventive perspective. In the first place, the further development of the scientific cooperation in SCAR is an example of precisely the fact that cooperation itself may have a 'self-generating' effect. In the second place, SCAR, as an organ of cooperation, has also become an organ of contact and discussion in a broader context than the purely scientific one, and has thereby served to modify and delimit the latent conflicts which, after all, have all the time been present in the relationship between the parties in the Antarctic. In view of these factors, therefore, it seems valid to conclude that international cooperation on scientific research/exploration in the polar regions has actually had a positively conflict-preventive effect.

IV. ECONOMIC EXPLOITATION

With regard to international cooperation in and over the economic exploitation of

given regions, one may conceive of innumerable forms of cooperation which partly overlap, partly supplement, and complement each other. If we disregard the transnational forms of cooperation which one may meet on the subnational level, we are left with certain major categories of forms of international cooperation in the area concerned:

(a) *Joint international projects* for the exploitation of certain resources in given regions.

(b) International cooperation with regard to the *coordination* of activities of national and subnational agents in the context of the exploitation of certain resources in given regions.

(c) International *technological* cooperation, both in regard to the exploitation of resources and in connection with the problems of transportation and communication related to such exploitation.

In addition there is still another category which, to be sure, extends beyond the special framework of economic exploitation, but which should nonetheless be borne in mind:

(d) International cooperation on the *political* level, in so far as this can create a formal and practical basis for later cooperation in economic exploitation. Such a category of cooperation, however, is more closely related to the topics which will be discussed in section VI.

It should be emphasized that the subject-area 'economic exploitation' has only to a relatively small extent been made the subject of actual international cooperation in the polar regions. To the extent that elements of cooperation have been found, this has been mostly on the bilateral level and has been concerned with tasks within very limited subject-areas. The empirical material testifying to such cooperation hardly constitutes a decent collection of examples to illustrate the categories outlined above.

Neither does it seem to give a satisfactory basis for the deduction of 'models' for international cooperation in this field. This does not mean, however, that the regional regulation-arrangements (see section VI) which have been established for Svalbard and the Antarctic, respectively, do not also show certain aspects of interest for the problem-area related to international cooperation in the economic exploitation of the polar regions. A central element in the Svalbard Treaty concerns precisely the regulation of economic activities in the region, but the Treaty does not thereby offer any model for international cooperation on the economic level: it does not entail any form of joint effort, nor any organized coordination of the activities of the respective national and subnational agents. The Svalbard Treaty may none the less be regarded as an expression of a *political* spirit of cooperation with regard to solving the problems connected with the *economic* exploitation of the region concerned. With specific regard to its economic aspects, the Svalbard Treaty is primarily an *internationalization*-model which expresses the principle of the 'Open Door', i.e. free access to economic activity without regard to nationality, the activity being subjected to the administrative and, to some extent, regulatory authority of one nation (Norway), which is obliged, however, to implement completely equal treatment.

The Antarctic Treaty offers no direct 'model' for international cooperation on economic exploitation. On the other hand, the Treaty does not preclude such cooperation, and can in itself serve as a framework for a possible development of forms of cooperation in this field. Of paramount importance in this context is the *rule of consultation* (Antarctic Treaty, art. IX), which specifies the procedure for cooperation under the Antarctic Treaty, in addition to expressly mentioning several subject-areas where consulta-

tion should take place. Cooperation in economic exploitation is not explicitly mentioned here, but the list of subject-areas is not restrictive, and seems to give the parties sufficient sanction to address themselves to this problem-area also, should they so desire. The point here is that even although the Antarctic Treaty (unlike the Svalbard Treaty) does not offer any 'solution' to problems which may arise in connection with possible economic exploitation, it still offers (still unlike the Svalbard Treaty) an 'apparatus' which makes it possible to tackle such problems through international cooperation.¹⁶

As we can see, instances of international cooperation in the economic exploitation of the polar regions are very few and not very suitable as a basis from which to conclude anything about the possible conflict-preventive consequences of cooperation on this level. Neither do practical/political factors seem to indicate that we are faced with any radical developments with regard to this type of international cooperation. We shall, however, add a reservation concerning especially the possibilities for *technological* cooperation in connection with economic exploitation. In this field the tasks are so enormous that the capability of individual nations will not always be sufficient; a fact which naturally suggests international cooperation. Moreover, because of, *inter alia*, consideration for the safety of personnel and nature, the need will arise for technological cooperation towards developing safe methods for the exploitative activity. In the long run such technological cooperation may possibly be a gateway to more direct exploitative cooperation. With regard to the desirability of such a development, it should be mentioned that it is precisely economic exploitation that is usually considered – on the basis of experiences from other geographical environs – as being one of the subject-areas where in-

ternational cooperation has the greatest conflict-preventive effect.¹⁷

V. REGULATORY MEASURES OF A PRACTICAL/OPERATIVE KIND

In the *Arctic* we find a number of examples of international cooperation-measures which come under this general heading. Such cooperation has been of a bilateral as well as a multilateral nature; primarily, however, what is involved is bilateral, *subject-related ad hoc* cooperation. The topics which have so far been made the subject of such regulatory cooperation are situated chiefly in the intersection between conservation/preservation and the control of resource-exploitation. As an example of multilateral cooperation, I might mention that of the Arctic states over the coordination of national measures for the preservation of the polar bear population. This eventually led to the signing in Oslo on 15 November 1973 of the five-nation *Agreement on the Conservation of the Polar Bear*. Other examples are the *International Convention for the Northwest Atlantic Fisheries* (ICNAF) of 1949 and the *North-East Atlantic Fisheries Convention* (NEAFC) of 1959. In this connection we should also note the cooperation on weather report and weather forecast services which is coordinated through the WMO (the World Meteorological Organization) and includes concretely, *inter alia*, the 'tapping' of observational data from the (American) weather satellites which traverse the polar regions. In this field a certain bilateral American-Soviet cooperation takes place as well. A typical instance of bilateral cooperation is, moreover, the Norwegian-Soviet Sealing Commission (established in accordance with a 1957 agreement), which has been in function since 1965, working out measures for regulating the catch and conserving stocks of seals in the north-eastern part of the Atlantic Ocean (the Barents Sea).

The Danish-Norwegian *Agreement Concerning the East Greenland Fishery* of 1967 may also be regarded from the perspective of cooperation.

It is, however, true of much of the bilateral cooperation which has taken place in the Arctic that it has not been adapted to any formalized organizational framework, but has simply arisen locally on an informal basis because of practical needs. (This is the case with regard to relations between the Norwegian and Soviet local populations on Svalbard, and also with regard to activity which has been conducted by both Americans and Canadians in the North American Arctic.)

The principles of the *Svalbard Treaty* for the regulation of economic activity have been relatively superficially touched upon in the preceding, and it may be in order to consider this regulation as a 'model' for the types of regulatory cooperation with which we are concerned here. The *Svalbard Treaty* guarantees all the Treaty parties and their subjects free and equal access to conduct economic activity in the region (art. 3); for the rest the regulation of this activity is a unilateral Norwegian concern, which is not meant to be the subject of any international cooperation. The *Svalbard Treaty*, however, was quite a unique 'package-solution', where the regulation of economic activity must be viewed in the context of the more comprehensive Treaty regulation of the political (including international-legal and security-political) status. These factors will be discussed more thoroughly in section VI.

The *Antarctic Treaty* is to a great extent adapted with an eye to the development of cooperation over practical/operative regulatory measures. The key to this topic is found in Treaty art. IX, i.e. in the stipulations on the *consultation-system* and the *recommendation-system*. Article IX gives the parties a positive mandate for 'consulting together on ...

and recommending to their governments ... measures regarding', *inter alia*, 'use of the Antarctic for peaceful purposes only' and 'preservation and conservation of living resources in the Antarctic', etc. The recommendation-system, which in practice means quite an extensive coordination of the various national measures taken, has in fact been actively employed and has resulted in quite a comprehensive framework of rules. Among the subject-areas where the various national measures with regard to the Antarctic have been coordinated through the recommendation-system may be mentioned the *regulation of telecommunications*, the *conservation of historical landmarks*, and the *preservation of fauna and flora*.¹⁸ One field which has so far been excluded from the Antarctic cooperation, but which the parties now apparently have to address themselves to, is the coordination of the various national attitudes and of concrete measures in connection with a possible regulation of economic activity in the Antarctic. The question of the consequences of the exploitation of resources in the Antarctic was informally discussed at the consultative meeting in Tokyo in 1970. At the consultative meeting in Wellington in 1972 a recommendation was adopted¹⁹ to the effect that the question of resources in the Antarctic should be thoroughly studied and then taken up for discussion at the next consultative meeting, which subsequently took place in Oslo in June 1975. (We may here find an interesting example of the above-mentioned 'spill-over' effect.) In this field it may prove fruitful with regard to the Antarctic to arrive at an arrangement employing certain of the principles of the *Svalbard Treaty* for the regulation of economic activity (e.g. the combination: free access, equal treatment, national administration).

Although the *Antarctic Treaty* does not formally prescribe any limits as regards what cases may be discussed,

practical/political considerations decide to what extent parties find it possible to cooperate in the coordination of their respective measures of regulation. Such cooperation, however, has to some extent also taken place *outside* the framework of the formal apparatus of the Antarctic Treaty. An example is the international *whaling convention* of 1946,²⁰ which stemmed from the time before the Antarctic Treaty came about and has since functioned independently of the latter. Although a boundary-case, the international *seal convention* for the Antarctic – concluded in 1972 – may also be mentioned. This convention was prepared through the apparatus of the Antarctic Treaty and ratified by the Treaty parties, but in such a way that it opens up access to participation by nations other than the Treaty parties. Both the whaling convention and the seal convention prescribe hunting quotas and hunting methods.

Existing cooperation in the polar regions with regard to regulatory measures of a practical/operative kind is characterized by a certain limitation in terms of subject-areas, in so far as the measures have been primarily of the type conservation/control/preservation of living resources. Although conservation and the control of resources are and will remain pertinent topics, there is reason to predict that future cooperation on coordination in the polar regions will, to an increasing degree, have to also include regulatory measures of an 'operative' kind, more properly speaking, connected with the increasing economic activity in these regions (and perhaps primarily the activity connected with transportation and communication). The need for such cooperation will become acute, especially in the Arctic. In the somewhat longer run corresponding needs for cooperation will make themselves felt in the Antarctic, even if not to the same degree as in the Arctic. The contrast between the Arctic and the Antarctic is of a dual

nature: while the *needs* for cooperation are greater in the Arctic, the corresponding *potentialities* for cooperation are equally clearly greater in the Antarctic – through the consultative 'apparatus' of the Antarctic Treaty, the equivalent of which is lacking in the Arctic.

Can it be shown that international cooperation on regulatory measures of a practical/operative kind in the polar regions has had *real conflict-preventive* effects? It is possible that the concrete, individual cases, in the regulation of which the parties have been able to cooperate, have not, by and large, been among the most controversial ones. We must still assume, however, that, to the extent that the cases which have been regulated in this way have contained a latent conflict-potential, the measures have also served to prevent conflict. This seems for instance to have been the case with regard to the regulation of economic activity under the Svalbard Treaty. With regard to the regulation-cooperation which takes place within the framework of the Antarctic Treaty, it is obvious that this cooperation has had effects of the kind initially sketched in this paper, i.e. the effect of creating mutual trust, the self-generating effect, the 'spill-over' effect, as well as the modification and delimitation of conflicts. Overall, there seems to be reason to conclude that international cooperation in the field which we have called 'regulatory measures of a practical/operative kind' has had, and may continue to have, a certain conflict-preventive effect.

VI. REGULATION OF SOVEREIGNTY- AND JURISDICTION-STATUS

The Svalbard Treaty of 9 February 1920 had several objectives, the chief of which may be summarized as follows: to regulate the political and legal status of the archipelago, in order thereby to regulate

the economic activity taking place there.²¹ I shall recapitulate several factors which may illuminate those aspects of the Treaty which pertain to international cooperation on the regulation of sovereignty- and jurisdiction-status. Before the Svalbard Treaty came into being, the archipelago was considered a 'no-man's land' (*terra nullius*). With the increasing multinational activity (i.e. primarily coal-mining) which took place on Svalbard after the turn of the century, the anarchic conditions grew ever more untenable, and the need for a normalization of the conditions grew ever more apparent. The point of departure for the discussions on the Svalbard question at the Versailles Conference in the fall of 1919 was the fact that Norway now wanted to gain sovereignty over the archipelago and eyed an opportunity to achieve this in connection with the Peace Conference following World War I. This Norwegian viewpoint was confirmed by the international convention – i.e. the Svalbard Treaty – which was the result of these discussions. While Norway was granted full and absolute sovereignty, the exercise of sovereignty, however, depended on certain rather strict conditions. The salient principles of the Treaty are the demilitarization and neutralization of the region, and, moreover, free access for and equal treatment of the Treaty parties and their subjects with regard to the conduct of certain forms of economic activity on Svalbard. The 'Svalbard-model' for the regulation of sovereignty- and jurisdiction-status shows a number of interesting features, of which three, in particular, will be emphasized as essential:

(1) Sovereignty-status is established *not* by the unilateral actions of an individual state, nor by bilateral convention between two states, but as the result of cooperation and agreement among a number of states. Multilateral cooperation of this kind is not, however, based on any prin-

ciple of universality, but involves an *exclusive group* of states which, by virtue of their particular regional interests and/or positions of power, assume the authority and responsibility for regulating sovereignty- and jurisdiction-status in the region concerned.

(2) Sovereignty-status is established in accordance with the principle of *national, territorial* sovereignty. This principle entails that the concept of sovereignty is regarded as indivisible and as tied to the nation-state. The Svalbard-model thus involves that one state – viz. in this concrete instance, Norway – is accorded the 'full and absolute sovereignty'²² over the region.

(3) National sovereignty ('the full and absolute sovereignty') is made conditional upon certain significant restrictions on the exercise of sovereignty and upon positive obligations imposed on the state to which it is accorded (i.e. Norway). These restrictions and obligations are partly of a security-political character, and partly intended to benefit the interests of other nations and of their citizens in this region.

The content of the *Antarctic Treaty*, its background, and the particular circumstances surrounding its conclusion have been more thoroughly dealt with elsewhere.²³ Here I shall look at the conditions which, in particular, may illuminate the aspects of the Treaty that pertain to international cooperation on the regulation of sovereignty- and jurisdiction-status.

During the first half of the 20th century seven states, all told, put forward numerous, partly conflicting, claims to sovereignty over regions in the Antarctic. At no point did the claims to sovereignty receive general international recognition, and so the need arose for a normalization of conditions. The first serious attempt to find an international solution was an American initiative in 1948 which pro-

posed the establishment of a *condominium* over the continent with participation by the seven claimants plus the U.S. itself. With this end in view the Americans wished to initiate a number of bilateral negotiations to prepare the ground for a possible conference which would decide the future status of the Antarctic.²⁴ These efforts were to no avail.

A second American initiative ten years later gave rise to the international negotiations which resulted in the Antarctic Treaty. The factor which proved decisive in concluding the Antarctic Treaty, however, was those needs and potentialities for cooperation revealed by the experiences of the International Geophysical Year (IGY 1957-58) (cf. section III where IGY is discussed more extensively). With regard to the Antarctic, IGY signified an experiment with a novel type of international cooperation: an extensive international scientific cooperation, based on the full freedom of access and presence. This cooperation included all nations which had active interests in the Antarctic continent, and was made possible through the tacit understanding that the positions of the parties concerned would not be affected with regard to claims to sovereignty or prerogatives.

The chief objective of the Antarctic Treaty was to secure continued and unobstructed scientific exploration of the Antarctic and international cooperation for this purpose.

The Antarctic Treaty was signed in Washington on 1 December 1959, and took effect on 23 June 1961. Among the subject-areas covered by the Treaty, it is natural that affairs concerning international scientific cooperation should occupy a focal position. In addition, the Treaty prescribes demilitarization of the whole continent, atomic-test ban, etc. The Treaty in some measure also clarifies and regulates problems which arise with regard to the jurisdiction-status of this continent (or, more precisely, the region

defined as all land, islands, and solid ice south of 60° S.Lat.).

From our perspective, the Antarctic Treaty may be regarded as an expression of the cooperation of 12 countries towards clarifying the problems of sovereignty and jurisdiction which had arisen in the region concerned. These 12, which in 1958-59 took part in the negotiations leading to the Antarctic Treaty, included all the countries that had manifested a particular activity in and interest for the Antarctic (including the seven laying claims to sovereignty), and were, moreover, identical with the group of states which, in 1957-58, participated in the comprehensive scientific cooperation which took place in the Antarctic during the International Geophysical Year (IGY).

The 'Antarctic-model' for the regulation of jurisdictional questions shows certain features which must be regarded as essential for this model, and which will therefore be emphasized as particularly interesting:

(1) Cooperation in the Antarctic-model is not based on any principle of universality, but concerns an *exclusive group* of states which, by virtue of their particular regional interests and/or positions of power, assume the authority and responsibility for regulating the problems concerned in the given region. (The Treaty, to be sure, is open to accession by all states which are members of the U.N. Acceding states will not, however, be able to participate in the consultative meetings on an equal footing with the original signatories, unless the former have demonstrated their interest by conducting active operations in the Antarctic).²⁵

(2) The most prominent feature of this solution-model is its character of being a 'non-solution'.²⁶ By this apparently dialectical paradox is meant the following: no final clarification was made of the

sovereignty-status, but the sovereignty-conflicts were temporarily buried through a 'freeze', as it were, on the *status quo*, through a formulation which entailed that none of the parties were either vindicated or forced to retreat from their positions of principle.²⁷ In the Antarctic-model, then, the principle of national occupation is not accorded international recognition. The 'freeze' on the national claims and positions purported, *inter alia*, to facilitate a further (functional) co-operation in fields where this was feasible. As an instrument for the further development of such cooperation, the Treaty instituted an arrangement for *consultations* between the parties and a system for the adoption of *recommendations* for measures of cooperation.²⁸

(3) The Antarctic-model entails a positive limitation of the exercise of national sovereignty, as a consequence, *inter alia*, of the principles of:

- temporary (though without a specified time-limit) moratorium on claims to national sovereignty,
- non-military use, and the right of inspection,
- the obligations with regard to the functional cooperation and the development of the latter,
- freedom of movement (for scientific personnel, etc.) across the boundaries for the national claims.

Taken jointly, these factors must be assumed to work in the direction of a gradual *de facto* internationalization of the sovereignty-status of the Antarctic.²⁹ To some extent, therefore, the Antarctic-model has the character of being an *internationalization-model* for the regulation of sovereignty- and jurisdiction-status.

The fact that the Antarctic-model has the character of being a *de facto* internationalization-model does not preclude, however, that the model leaves room, at the same time, for an at least implicit

preservation of an – albeit limited – concept of *national* sovereignty.

What can a comparison of the two co-operation-models tell us about the *forms of cooperation*?

As regards participation in cooperation, both models are based on the principle of exclusiveness: the questions concerned are regulated by an exclusive group of states which, by virtue of their particular regional interests and/or positions of power, assume the authority and responsibility for concluding agreements with wide-ranging consequences for the political status of each of the given regions. In neither model, however, is the exclusiveness in question absolute; it has a valve opening to the world-wide community at large. The exclusiveness concerns only the negotiations on the framing of the Treaties, while other parties are later allowed to accede to them, thereby attaining to the rights and obligations which the exclusive group has previously stipulated. (In the Antarctic, as already noted, the exclusiveness is somewhat stronger, inasmuch as the states must have demonstrated their interest.)

The two models, however, also reflect two clearly different forms of cooperation. In the case of Svalbard, international cooperation may be regarded as concluded by and through the signing of the Treaty, which gives a *final, national* solution, with defined limits to the exercise of sovereignty. The regulation of sovereignty- and jurisdiction-status offered by the Antarctic model is, on the contrary, a temporary and incomplete solution (or, if one likes, a 'non-solution'). On the other hand, cooperation in the Antarctic does not end by and through the signing of the Treaty. On the contrary, the Treaty-arrangement itself is of such a character that it expressly presupposes continued cooperation, *inter alia*, in the form of periodical consultations among the parties. (These consultations may also

concern questions of jurisdiction, and hence of sovereignty.) This activity is accommodated by a special apparatus in the so-called *consultative meetings*.³⁰ The Antarctic-model may be characterized, then, in a simplified and perhaps far-fetched fashion, as a 'cooperation-apparatus without a solution', while the Svalbard-model, for its part, may be termed a 'solution without a cooperation-apparatus'. With a view to these factors, it is natural to emphasize the *dynamic* character of the Antarctic-model, as compared to the *static* or finished character of the Svalbard-model. On the other hand I wish to warn against over-emphasizing the *effects* of this difference. The fact that we are concerned, in the case of Svalbard, with a finally settled sovereignty- and jurisdiction-status, does not entail that the problem-area surrounding this status is without current interest. Although the exercise of authority on Svalbard is a unilateral Norwegian affair, it also has its international aspects, with a need for further clarification.

This is true, *inter alia*, of the concrete significance of:

- The limitations and obligations with regard to the exercise of sovereignty which the Svalbard Treaty imposes on Norway.
- Changes in the political situation and its conditions as a consequence of developments internationally as well as locally on Svalbard.

While Norway has full sovereignty over Svalbard unilaterally, it is not inconceivable that in the exercise of that sovereignty she may find it appropriate to take into account international considerations which will not be brought to bear on the exercise of authority in the rest of the national territory (cf. e.g. the so-called 'airport case').

In this connection it should also be noted that the possible static and dy-

amic potentials of the Svalbard- and Antarctic-models, respectively, cannot be gathered just from the models themselves, but must also be deduced from the practical/political situation in which, at any one time, one is situated.

The theme on international cooperation in the polar regions on the specifically *security-political* level is dealt with more extensively in my article 'International Cooperation in the Polar Regions: A Security-Political Perspective', and will therefore only be summarily mentioned here. Both the Svalbard Treaty and the Antarctic Treaty explicitly regulate the security-political status of the respective regions, and both may be regarded as models for international cooperation on the security-political level. An account was given in the above-mentioned article of how the Svalbard- and Antarctic-models might be viewed as two variants of one and the same 'master-model', which I tentatively termed the 'new-territories' model for international cooperation in the field of security-politics. (The point of departure for such an approach was the factor that both regions in question – Svalbard and the Antarctic – were what we understand by 'new territories' at those points in time when security-political treaty-regulation of the regions took place. There are, moreover, important similarities between the security-political aspects of the two Treaties, e.g. with regard to demilitarization and neutralization, as well as the possibilities for observation and control.)

In this context what I shall focus on in particular, however, are the *actual conflict-preventive consequences* which the two models for international cooperation in the relevant fields – regulation of sovereignty- and jurisdiction-status and security-politics – may be said to have had. I shall therefore consider the most important features of the models, and take a look especially at their conflict-preventive consequences:

(a) The Svalbard-model entails a final *regulation of sovereignty-status*. Much of the conflict-potential accumulating in the region prior to 1920 stemmed directly from Svalbard's status as 'no man's land'. Such conflict-potential was partly of a directly strategic nature – a Svalbard without a master might easily become a pawn in a (strategically motivated) political gamble – and partly arose from matters of an economic nature, concerning the anarchy which had reigned with regard to rights of ownership and use. Through the fact that the sovereignty of one nation – Norway – was treaty-stipulated and gained general international recognition, such conflict (to the extent that it had been due to the earlier status as 'no man's land') ceased of its own accord. On looking at the development which has taken place on Svalbard since 1920, it will be seen that the solution to the question of sovereignty has, by and large, been respected, and there has been a corresponding limitation of the above-mentioned conflict-potential as a consequence. It seems safe, therefore, to assert that the solution to the question of sovereignty which we find in the Svalbard-model, has had a positively conflict-preventive effect in this region.

(b) What corresponds, in the Antarctic-model, to the solution to the question of sovereignty found in the Svalbard-model, is the temporary (though not finite) moratorium on national annexations and the 'freeze' on the positions of the various parties with regard to claims to sovereignty. This 'non-solution', which formally differs clearly from the definitive national solution found in the Svalbard-model, seems to have a great deal in common with the Svalbard-model as regards its practical conflict-preventive consequences. It is true that in the Antarctic prior to 1959 there was no conflict-potential directly matching that on Svalbard prior to 1920, not even when particular regard is paid to the conflict-

potential which evidently had its roots in the insufficiently regulated sovereignty-status. In the Antarctic sovereignty-question the conflict-potential was tied, in particular, to the 'access-problem', i.e. the desire of the various parties (especially with a view to possibilities for future development) to secure their access to the conduct of activities in greater or lesser parts of the Antarctic, unobstructed by the claims of other nations to national dominion. The 'freeze' stipulated by the Antarctic-model did not render the access-problem obsolete, but postponed indefinitely possible disagreements stemming from this problem-situation. Even although the 'freeze' could not altogether remove the conflict-potential stemming from unclarity as to sovereignty-status, this conflict-potential has been rather effectively neutralized. On looking at the development that has taken place in the Antarctic since 1959, a clear trend can be seen: the somewhat tense situation with regard to the questions of sovereignty which reigned in the 1950's, has undergone a marked *détente*. Altogether there is little doubt that the 'freeze' on national claims and positions which has been achieved with regard to the sovereignty-question in the Antarctic has had a conflict-preventive effect in this part of the world.

(c) Both the Svalbard-model and the Antarctic-model offer *security-political solutions* through their principles of demilitarization, neutralization, and non-military use. In both regions, there are what one may call security-political 'zone-arrangements', with such substantially great similarities that, as mentioned before, they may be regarded as two variants of one and the same 'master-model' for security-political cooperation-solutions. It goes almost without saying that security-political solutions also aim at preventing conflict. To the extent that the stipulations of demilitarization have been observed, we should be warranted

in concluding, therefore, that the models have also had practical conflict-preventive consequences. The development on Svalbard since 1920 shows that the stipulation on demilitarization has been observed, and that the security-political status of the region has been respected during the entire period, with one exception, and this has to do with the special situation which arose during World War II when the islands were temporarily occupied by Norwegian forces.³¹ Altogether the experiences warrant the claim that the security-political solution achieved on Svalbard has functioned as intended. As regards the Antarctic, the picture is perfectly clear: the stipulation of demilitarization has been fully respected throughout, and all experiences indicate that the security-political solution achieved here has functioned as intended.³²

Altogether, it can be warranted in concluding that the security-political solutions offered by the Svalbard- and Antarctic-models have had a positively conflict-preventive effect in the two regions, by and through the fact that these regions have been held outside the military-political power-gamble.

(d) In addition to the security-political solutions, including demilitarization, etc., the two models give the parties concerned the opportunity, through *observation*, to maintain that *control* of the development in the two regions which is necessary to preserve the credibility and functional effectiveness of the security-political solutions. The opportunity for such observation and control is allowed for in the two models in different ways. Thus, in the Antarctic-model we find the principle of the right of the parties to unlimited *inspection* (cf. art. VII of the Antarctic Treaty). This principle is absent from the Svalbard-model, which, however, gives the parties a general right to free and unobstructed access to and presence in the region (art. 3 of the Svalbard Treaty),

i.e. a *right of presence*. (Such a right of presence is found, for practical purposes, in the Antarctic as well, as a consequence of the right of inspection and the general freedom of movement in connection with scientific activity.)

We will assume that the opportunity for observation and control which the parties involved have had on Svalbard, by virtue of the right of presence, has been an important factor with regard to preserving the credibility and functional effectiveness of the Svalbard Treaty as a security-political solution-model. This assumption is confirmed by the findings presented by Willy Østreng, in his article 'Svalbard and High Politics'.³³ In the case of Svalbard, one may also detect a 'spill-over' effect of a broader regional character, in so far as Svalbard's special status has presumably contributed to maintaining the so-called 'Nordic balance', thereby creating a less tense situation for the Nordic countries in general.

With regard to the Antarctic, there is reason to believe that the arrangement of inspection has taken care of the functions of observation and control which are necessary for preserving the credibility and functional effectiveness of the security-political solution-model. The significance of such an arrangement of inspection lies not so much in the use actually made of it, as in the assurance for the parties of knowing that they may inspect, and in the warning entailed by the knowledge that they may themselves be inspected. The formal differences between the Svalbard- and Antarctic-models with regard to the opportunity for mutual observation and control seem to some extent to disappear when the practical consequences are examined. In both regions, the available opportunities for observation and control, whether through direct inspection or through the general right of presence, seem to have signified a substantial (and probably necessary) strengthening of the respective security-

political solution-models. To that extent, it seems clear that these opportunities for observation and control have had a practical conflict-preventive effect.

VII. THE RELATIONSHIP BETWEEN FORM AND CONTENT OF COOPERATION

I have looked at a number of concrete examples of international cooperation in certain selected subject-areas in the polar regions, and have tried, in particular, to gain an insight into the *forms of cooperation* that have been practiced, as well as to form a picture of the actual *conflict-preventive* effects of cooperation. My purpose was to try to deduce something about what forms of cooperation might possibly stand out as models of current interest for a further developed international cooperation, favorable to an orderly and peaceful development in the polar regions.

The material covered gives us a rather multifarious picture of the totality of forms of cooperation.³⁴ These forms of cooperation fall roughly into three categories:

(1) *Subject-related ad hoc* cooperation without any greatly formalized, organizational framework. Such cooperation is for the most part bilateral and of a strongly limited character (in respect of subject-matter, geography, etc.).

(2) International *conventions* (formalized agreements) for the regulation of limited subject-areas.

(3) International *conventions* for a comprehensive subject-related regulation of large geographical regions. (That is to say, for practical purposes, the Svalbard and Antarctic Treaties.)

As regards the third and last category, it was shown earlier how the Svalbard and Antarctic Treaties may be regarded partly as two variants of one and the same 'master-model' for international cooperation in the security-political field,

and partly as two clearly different models for the regulation of 'new territories' (a 'static' and a 'dynamic' model, respectively).

In all these categories of forms of cooperation there is obviously a certain connection between the *form* and *content* of cooperation. This must be taken into account in an analysis of the usefulness and current interest of the various forms of cooperation as models for international cooperation, in so far as such cooperation should serve to meet the needs for measures of regulation and control in the polar regions.

Certain needs have been, and will remain, of such a nature that they can be most conveniently met through a subject-related *ad hoc* cooperation. For other needs, international conventions covering limited subject-areas (and of a relatively 'technical' or 'apolitical' character) will be sufficient.

To the extent that they are employed, both these forms of cooperation will undoubtedly have a positively conflict-preventive effect. But they do not touch upon the question at the very core of the problem-situation surrounding the 'new territories', viz. that concerning the need for regulating the legal and political status of the regions concerned. This is a central question, for several reasons. One is that the legal and political status of the regions is of essential significance for international cooperation which might take place within other subject-areas with regard to these regions. Another reason is that the existing status of these regions (i.e. the absence of either the sovereignty of any individual state, or the regulatory authority of any international agency) is potentially so conflict-creating that regulation in this field must in itself be granted a formidable conflict-preventive value. It was for both these reasons that the 'regulation of sovereignty- and jurisdiction-status' was made the subject of a rather thorough discussion in this survey

of the individual relevant subject-areas of international cooperation in the polar regions. And, concerning models covering these more comprehensive needs for regulation, we are left, for practical purposes, with the Svalbard and Antarctic Treaties. Both have been framed in a fashion adapted to their respective contents, and reflect, *inter alia*, several differences with regard to subject-orientation (economic vs. scientific activity) with regard to the needs and possibilities for 'internationalization' of the respective regions, and with regard to the need for flexibility.

VIII. FURTHER APPLICABILITY OF THE MODELS

A cue to an understanding of the problems of the 'new territories', in general, and hence to an understanding of the problems which the development entails for the polar regions, in particular, is the word *change*. New activity in new regions creates new needs which are not always identical from one region to another (cf. the contrasts between the Arctic and the Antarctic), and change through time (e.g. the needs in the Antarctic in 1975 are not quite the same as those in 1959). Where many parties are engaged in the development, their different motives, objectives, and assumptions will constitute uncertainty-factors which have to be taken into account. When discussing models for appropriate political frameworks for international cooperation on conflict-preventive measures in the polar regions, it is therefore of the highest importance to evaluate the properties of such models with regard to *adaptation to altered conditions*.

As regards the Svalbard Treaty, we know that it was concluded under very special circumstances; it aimed at a permanent solution to quite special problems in a particular region. The solution achieved was, in many ways, a static one that gave Svalbard a status which, in sig-

nificant respects, diverges from what we understand by a 'new territory'. On a more superficial level the Svalbard-model may thus seem rather irrelevant for our purposes. It should be evident, also, that a direct transference of the entire Svalbard Treaty to other regions will hardly be in question. Nonetheless, it should also be clear that the Svalbard-model contains at least two elements of principle which it might be highly pertinent to take into consideration. One is the principle of *regional demilitarization*, the other, the principle of *free and internationalized right of access*, preferably related to the conduct of certain types of activity (more specifically, in the case of Svalbard, economic exploitation). Both principles would be highly pertinent in connection with a possible zone-regulation of the Arctic. Both principles, moreover, are being seriously discussed in connection with other 'new territories'; I am referring here, *inter alia*, to the efforts which for a number of years have been made through the U.N., in order to bring about a general seabed convention. These principles are of such a character that they may – even if in varying degrees and in different manners – be built into flexible regulation-models which will be able to accommodate the necessary options for variations, and be adapted to the local character, special needs, and altered conditions of the individual regions in question.

The *Antarctic Treaty* has been described as an introduction to one of the 'most rapidly growing branches of international law which concerns the *peaceful and orderly regulation of new environments opened up with new techniques . . .*'.³⁵ The Antarctic Treaty, with its flexible structure and dynamic potential as regards the construction of an ever more extensive international cooperation, seems to be particularly apt as a model for the regulation of 'new territories', especially as regards the adaptability of

the model to changed circumstances. It must not be forgotten, however, that the Antarctic-model is also rooted in quite special conditions and circumstances, and so it is unrealistic to believe that the total structure of the Antarctic cooperation may simply be transferred to other regions, such as e.g. the Arctic. There is reason to believe, however, that certain of the elements of the Antarctic Treaty may be adaptable to different environments. The principles of *demilitarization* and of *free and internationalized right of access and presence* naturally stand out in this respect. The most innovative, and for that reason perhaps also the most interesting, element of the Antarctic Treaty is still the *consultative apparatus*, which enables the parties to engage in constructive, conflict-preventive cooperation, without thereby committing them to any given 'solution' to the problems posed by the development and the changing conditions. With a view to the development in the Arctic, where the conflict-potential is so comprehensive that the parties involved cannot be expected to agree upon any radical political 'New Deal', it is conceivable that just such a consultative 'apparatus' may be a useful, practical gateway to a cooperation towards meeting the needs for measures of regulation and control.

As seen in the preceding, the Svalbard- and Antarctic-models both contain an element of principle concerning certain degrees and forms of *exclusiveness*, as regards especially the nature and scope of international participation. This principle should probably not be pushed too far; ideally, one should presumably prefer cooperation-models to be as open or 'universal' as possible. On the other hand, the experiences gathered, *inter alia*, from the U.N. show how difficult it can often be to translate cooperation-ideals into practical deeds when the framework is such a universal model. One should not, therefore, disregard the

practical advantages which in certain regions may be gained by reducing the number of cooperation-parties to those who are significantly affected by developments in these regions.

Demilitarized zones, free right of access and presence, together with organs for political and practical consultations can never, neither singly nor jointly, give any ironclad guarantee against power-political conflict, either in the polar regions or in other parts of the world. What such arrangements *can* give, however, is partly a positive reduction of the total amount of conflict-potential, and partly an opportunity for the parties involved to tackle the conflict-laden problems which new developments entail. The achievement of precisely these things may in the long run prove of decisive significance for securing a peaceful and harmonious development in the polar regions.

NOTES

¹ Cf., in particular, Gunnar Skagestad & Kim Traavik, 'New Problems - Old Solutions', in the Fridtjof Nansen Foundation's collection of articles, *The Challenge of New Territories*, Universitetsforlaget, Oslo 1974, pp. 39-51. (Also published in *Cooperation and Conflict*, Nos. 2/3, 1974, pp. 91-103.)

² G. Skagestad, 'Internasjonalt samarbeid i polarområdene: Et sikkerhetspolitisk perspektiv' (International Cooperation in the Polar Regions: A Security-Political Perspective) in *Norsk Militært Tidsskrift*, No. 11, November 1974, pp. 455-466.

³ Such cooperation-oriented types of negotiations correspond - roughly sketched - to what is termed, in the theory of negotiations, 'integrative negotiations', which, in its turn, is closely related to what the games theorists call 'varying-sum games'; cf. Richard E. Walton and Robert B. McKersie, *A Behavioral Theory of Labor Negotiations*, McGraw-Hill, New York 1965, p. 4.

⁴ Cf., in addition, Skagestad & Traavik, *op. cit.*, where the perspective of the model analysis is expanded to encompass the Continental Shelf Convention of 1958.

⁵ In support of this assumption, one could quote Philip M. Smith, 'Prospects for International Cooperation on the Moon: The Antarctic Analogy', *Bulletin of the Atomic Scientists*,

Vol. XXV, No. 7 (September 1969); and Hugh Odishaw, 'International Cooperation', *International Science and Technology*.

⁶ Cf. Trygve Mathisen, *Svalbard in the Changing Arctic*, Oslo 1954, p. 27.

⁷ Agreement concerning the Kongsfjord Telemetry Station on Svalbard, of 21 September 1965. The text of the agreement is printed *in extenso* in *The Treaties of Norway*, Vol. III, Oslo 1968, pp. 1630-1631.

⁸ Cf. Walter Sullivan, 'U.S. and Soviet Press Studies of a Colder Arctic', *New York Times*, 18 July 1970.

⁹ Cf. the *Perspektivanalyse av 1973* of the Norwegian Polar Institute, p. 51.

¹⁰ The Antarctic Treaty of 1 December 1959. The text of the Treaty is printed *in extenso* in *The Treaties of Norway*, Vol. III, Oslo 1968, pp. 517-520.

¹¹ CSAGI *Bulletin d'Information*, No. 7, 1956, p. 17.

¹² Ulf Engh, *Antarktistraktaten - En ny type internasjonal organisasjon*, Fridtjof Nansen Foundation (study AA:P107), 1970, p. 5.

¹³ Truls Hanevold, 'The Antarctic Treaty Consultative Meetings - Form and Procedure', *Cooperation and Conflict*, Nos. 3/4, 1971, p. 193.

¹⁴ Cf., *inter alios*, Svein Andreassen, 'Aktuelle polarproblemer' (Current Polar Problems), *Arbeiderbladet*, 16 September 1970.

¹⁵ Cf., in particular, Finn Sollie, 'The New Development in the Polar Regions', *The Challenge of New Territories*, pp. 35-36. (Also published in *Cooperation and Conflict*, Nos. 2/3, 1974, pp. 87-88.)

¹⁶ F. Sollie, 'The Political Experiment in Antarctica', *Bulletin of the Atomic Scientists*, Vol. XXVI, No. 10 (December 1970), p. 21.

¹⁷ Cf. e.g. Ernst B. Haas, *The Uniting of Europe*, Stanford University Press 1958.

¹⁸ Cf. T. Hanevold, *Suverenitet og samarbeid. Antarktis i samarbeidets tegn* (Sovereignty and Cooperation. The Antarctic in the Sign of Cooperation), Fridtjof Nansen Foundation (study AA:H003), 1971, p. 57.

¹⁹ Recommendation VII-6 'Antarctic Resources - Effects of Mineral Exploration', *Antarctic Treaty. Report of the Seventh Consultative Meeting 30 October-10 November 1972*, Ministry of Foreign Affairs, Wellington 1973, p. 22.

²⁰ Cf. Per Overrein and Knut Midgaard, *Spillet om hvalen i Antarktis* (The Contest for the Whale in the Antarctic), mimeographed study, Institute of Political Science, Oslo 1970, esp. p. 9.

²¹ For a more thorough account of the circumstances behind the conclusion of the Svalbard Treaty, cf. Willy Østreng, *Økonomi og politisk suverenitet. Interessespillet om Svalbards politiske status* (The Economy and

Political Sovereignty. The Interaction of various Interests on Svalbard's Political Status), Universitetsforlaget, Oslo 1974.

²² Treaty concerning Spitsbergen (The Svalbard Treaty) of 9 February 1920, Art. 1. The text of the Treaty is printed *in extenso* in *The Treaties of Norway*, Vol. I, Oslo 1967, pp. 413-415.

²³ Cf. e.g. Hanevold, *op. cit.* (note 18, *supra*).

²⁴ John Hanessian, jr., 'The Antarctic Treaty', *The International and Comparative Law Quarterly*, London, July 1960, pp. 438-444.

²⁵ The Antarctic Treaty (Art. IX, para. 2), *The Treaties of Norway*, Vol. I, Oslo 1967. Also cf. G. Skagestad, 'The Antarctic: "Troubles" Revisited', *Bulletin of Peace Proposals*, Vol. IV, No. 4 (1973), pp. 383-384.

²⁶ Sollie, *op. cit.* (note 16, *supra*), p. 19.

²⁷ The Antarctic Treaty, *op. cit.*, Art. IV.

²⁸ *Ibid.*, Art. IX.

²⁹ F. Sollie, 'Arctic and Antarctic - Current Problems in the Polar Regions', *Cooperation and Conflict*, No. 2, 1969, p. 139.

³⁰ With regard to the consultative meeting, Art. IX of the Antarctic Treaty explicitly states that they may also deal with 'questions relating to the exercise of jurisdiction in the Antarctic'. There is, thus, a positive mandate for continued cooperation in the regulation of questions of jurisdiction.

³¹ Mathisen, *op. cit.* (note 6, *supra*), pp. 38-45.

³² Cf. G. Skagestad, 'Antarktis i sikkerhetspolitisk perspektiv' (The Antarctic in a Security-Political Perspective) in *Internasjonal Politikk*, No. 4, October/December 1974, pp. 765-782.

³³ W. Østreng, 'Svalbards situasjon i storpolitisk perspektiv' (Svalbard and High Politics) in *Internasjonal Politikk*, No. 3, July/September 1974, pp. 679-701 (see esp. pp. 698-699).

³⁴ This, in turn, reflects the variegated spectre of types of cooperation, which we may illustrate by listing various criteria for such a type classification. One such criterion is the one on which we based those examples of cooperation which we dealt with in the preceding section of this article, namely the respective *subject-areas* of cooperation. Other criteria for such a type classification will include, *viz.*, the *level* of cooperation (e.g. inter-governmental or lower-level); the *character* of cooperation (three dimensions: *ad hoc* vs. institutionalized, one-way assistance vs. mutual contributions, joint projects vs. coordination of separate national projects); the *extent* of cooperation (large-scale vs. small-scale); and the pattern of *participation* in the cooperation (bilateral vs. multilateral, exclusive vs. open).

³⁵ H. G. Darwin, 'The Outer Space Treaty', *British Year Book of International Law 1967*, Oxford University Press 1969, p. 278.