Demilitarisation under pressure: The demilitarised status of the Åland Islands and Svalbard in a changing international order

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Demilitarisation under pressure: The demilitarised status of the Åland Islands and Svalbard in a changing international order*

1. Demilitarisation regimes in a state interest-driven international order

Recently, several states have announced withdrawals from multilateral treaties on the ground of national interests implying a shift away from a rules-based order toward interest-driven policies. In 2025, Finland, Estonia, Latvia, Lithuania and Poland withdrew from the Ottawa Convention[1] on the prohibition of anti-personnel mines justified by national security reasons considering Russia not being a treaty party. In 2026, the US announced its withdrawal from 66 international organisations and treaties which it claims to be contrary to its national interests.[2]

This trend has sparked a debate on the possibility of Finland to similarly terminate the Åland Convention[3] regulating the demilitarised and neutralised status of the Åland Islands under Finnish sovereignty. The security environment and the Finnish NATO accession indicate changed circumstances that could justify the termination of the Åland Convention, enabling a remilitarisation of the Åland Islands, for strengthening the national security of Finland. A similar discussion has been identified concerning Svalbard, a demilitarised zone in the Arctic ruled under Norwegian sovereignty, as Russia

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[1] Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (adopted 18 September 1997, entry into force 1 March 1999) 2056 UNTS 211 (Ottawa Convention).

[2] The White House, 'Withdrawing the United States from 66 International Organizations, Conventions, and Treaties that Are Contrary to the Interests of the United States' (7 January 2026) <https://www.whitehouse.gov/presidential-actions/2026/01/withdrawing-the-united-states-from-international-organizations-conventions-and-treaties-that-are-contrary-to-the-interests-of-the-united-states/> accessed 26 January 2026.

[3] Convention Relating to the Non-Fortification and Neutralisation of the Åland Islands (adopted 20 October 1921, entry into force 6 April 1922) 9 League of Nations Treaty Series, 211 Finnish Treaty Series 1/1922 (Åland Convention).

has increased its presence in the area.[4] A recent study by an American think tank lists both Svalbard and the Åland Islands as two of five Nordic-Baltic regions at high risk of Russian aggression.[5] On this basis, it is relevant to revisit the status of the demilitarisation of the Åland Islands and Svalbard, regulated in treaties originating from the early 20th century, in the contemporary geopolitical reality.

At first thought, withdrawing from the Åland Convention and the Svalbard Treaty[6] would seem to be in line with the increasing trend of states prioritising national interests before international obligations. However, demilitarisation regimes can be understood as holding special status in international law making them more resistant to withdrawal. The purpose of this paper is to analyse the legal status of demilitarisation regimes in the context of both a changing security environment and changing treaty practice. The analysis is done through a comparison of the legal frameworks regulating the Åland and Svalbard demilitarisation regimes as well as a study of recent state practice on the compliance of the treaties. The impact of a possible re-evaluation of *rebus sic stantibus* — a principle of international law justifying the termination of a treaty on the ground of changed circumstances — is also analysed.

2. The Åland Islands

2.1 The Åland Convention

The Åland demilitarisation regime is regulated in several legal instruments with the Åland Convention of 1921 being the most detailed one.[7] The Åland Convention originates from a successful dispute settlement between Finland and Sweden

[4] Colin Wall and Njord Wegge, 'The Russian Arctic Threat. Consequences of the Ukraine War' (2023) Center for Strategic and International Studies 1.

[5] Richard D. Hooker Jr, 'Putin's Next Move?: Five Russian Attack Scenarios Europe Must Prepare For' (2026) The Atlantic Council of the United States, Report.

[6] Treaty concerning the Archipelago of Spitsbergen (adopted 9 February 1920, entry into force 14 August 1925) 2 League of Nations Treaty Series 7 (1920) (Svalbard Treaty).

[7] In addition to the Åland Convention (n 3), the Åland demilitarisation is regulated in the Convention on the Demilitarisation of the Åland Islands between France, the United Kingdom and Russia annexed to the Paris Peace Treaty of 1856 (adopted 30 March 1856, entry into force 27 April 1856); Treaty Between Finland and the Union of Socialist Soviet Republics Concerning the Åland Islands (adopted 11 October 1940, entry into force 13 March 1948) (Moscow Peace Treaty) and its continued validity in Protocol Between the Government of the Russian Federation and the Government of the Republic of Finland Concerning Inventory of the Basis According to Contract Law for the Bilateral Relations Between Finland and Russia (11 July 1992); Treaty of Peace with Finland in the Paris Peace Treaties of 1947 (adopted 10 February 1947, entry into force 15 September 1947) 48 UNTS 203, art 5 confirming the continued validity of the demilitarisation of the Åland Islands.

authorised under the League of Nations. The Åland Island Dispute concerned whether the Islands situated in the Baltic Sea should form part of the sovereign state of Finland or Sweden. As part of a balanced solution, it was decided that the Åland Islands would remain under Finnish sovereignty granted that Finland would protect the autonomy, the Swedish language and culture, and the demilitarisation of the Islands. Since then, the demilitarised status of the Åland Islands has remained unchanged.

The Åland Convention regulates in detail the presence of Finnish forces on the Islands including some exceptions to the demilitarisation and neutralisation. In time of peace, if exceptional circumstances demand, Finland may send armed forces necessary for the maintenance of order.[8] The Finnish Government also has the right for one or two of its light surface warships to visit the Islands from time to time and to grant one warship of any Power at a time a right to anchor temporarily within the neutralised zone.[9]

The aim of the Åland Convention to create a long-lasting peace resolution resulted in it to obtain an almost perpetual character. The Åland Convention does not include termination or withdrawal clauses. In fact, the preamble declares that the parties agreed on the demilitarisation and neutralisation for the Islands to "never become a cause of danger from the military point of view".[10] In addition, Art. 8 of the Åland Convention states that the convention "shall remain in force in spite of any changes that may take place in the present *status quo* in the Baltic Sea".[11] Art. 8 suggests that *rebus sic stantibus* is not applicable to the Åland Convention.[12] However, it is unlikely that the treaty parties intended to create a rigid convention prohibiting a re-evaluation of it even in the case of an unforeseen change and hindering the application of the well-recognised customary principle of *rebus sic stantibus*. An argument could be made that *rebus sic stantibus* is applicable to the Åland Convention as a whole, including Art. 8. In other words, a fundamental change could invalidate the relevance of Art. 8 itself. Despite the permanent character of the Åland Convention, *rebus sic stantibus* could be applicable to the Åland Convention, but with an even higher legal threshold.[13] It appears that some states are cautious to accept that *rebus sic stantibus* could not be applied to all treaties. For instance, in the *Nationality Decrees case* before the Permanent Court of

[8] Åland Convention (n 3) art 4(a).

[9] Åland Convention (n 3) art 4(b).

[10] Åland Convention (n 3) preamble.

[11] Åland Convention (n 3) art 8.

[12] See Holger Rotkirch, 'The Demilitarization and Neutralization of the Åland Islands: A Regime "in European Interests" Withstanding Changing Circumstances' (1986) 23 Journal of Peace Research 357, 370.

[13] See also Lauri Hannikainen, 'The Continued Validity of the Demilitarised and Neutralised Status of the Åland Islands' (1994) 54 Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 614, 637.

International Justice (PCIJ), France claimed that "perpetual treaties are always subject to extinction by virtue of the principle *rebus sic stantibus*".[14] While the PCIJ did not rule on the validity of this argument, it held that the question of the duration of treaties concern international law and is not a matter that falls exclusively within the jurisdiction of France.[15] It could therefore equally be suggested that *rebus sic stantibus* is nonetheless applicable to the Åland Convention.

2.2 A demilitarised zone in NATO

One argument in favour of terminating the Åland Convention is that it creates a defence void in the Baltic Sea and constitutes a vulnerability to the national security of Finland.[16] The main concern is that Finland has an obligation to defend the Åland Islands in the event of an armed attack while not being able to have military operations or installations on the Åland Islands otherwise. This obligation is argued to challenge the ability of Finnish military forces to defend the sovereignty throughout Finnish territory.[17] A remilitarisation of the Åland Islands would in this view be necessary because of the unpredictable security environment. The legal issue is whether the changed security environment fulfils the requirements to invoke *rebus sic stantibus*.

Even though the Åland Convention was concluded more than one hundred years ago, there appears to be no sign from the Finnish Government to deviate from its standpoint in upholding the demilitarised status. The validity of the Åland Convention has been confirmed throughout the years, for instance, in the application of the Finnish EU-membership and most recently at the Finnish NATO accession. In the government proposal on Finland's accession to NATO, the Finnish Government concluded that a demilitarisation regime and a NATO membership do not exclude one another. The special status of the Åland Islands does not hinder the Finnish NATO accession, nor does the NATO membership affect the status of the demilitarisation and neutralisation of the

[14] *Nationality Decrees in Tunis and Morocco* (Advisory Opinion) (PCIJ, 8 January-7 February 1923), Series C, No. 2, 187.

[15] *Nationality Decrees in Tunis and Morocco* (Advisory Opinion) (PCIJ, 7 February 1923), Series B, No. 4, 29.

[16] Daniel Forsell, 'Ahvenanmaan demilitarisoinnin päättäminen – Valtiosopimusoikeudellinen tarkastelu' (August 2025) National Defence University, Thesis. See also Pertti Joenniemi, 'Åland in the New Europe: A Case of Post-Sovereign Political Life' in Lauri Hannikainen and Frank Horn (eds), *Autonomy and Demilitarisation in International Law: The Åland Islands in a Changing Europe* (Kluwer Law International 1997), 10–11.

[17] Forsell (n 16) 9.

Åland Islands.[18] The Finnish Government further clarified that the demilitarisation does not affect the applicability of Art. 5 of the North Atlantic Treaty.[19] Not only is the Finnish NATO accession compatible with the Åland demilitarisation but it enhances the national security of Finland and the Baltic Sea region.

The Finnish Ministry for Foreign Affairs initiated a study on the special international status of the Åland Islands that was conducted in 2023. The purpose of the study was to clarify legal obligations regarding the demilitarisation due to the Russian armed attack against Ukraine and the Finnish NATO accession. The study considers possible measures under international treaty law for Finland to unilaterally denounce its obligations regarding the demilitarisation and to close down the Russian consulate in Mariehamn. Not only did the study confirm the continued validity of the demilitarisation and neutralisation but it also addressed the customary status of the key elements covered in the Åland Convention.[20]

2.3 Customary law aspects

Several experts and academic scholars have addressed the customary law aspects of the Åland demilitarisation regime.[21] A recurring argument for the customary status of the demilitarisation of the Åland Islands is firstly based on a statement by the Commission of Jurists. The League of Nations called upon a Commission of Jurists to examine the Åland Island Dispute and the status of the demilitarisation from 1856 between France, the United Kingdom and Russia. The Commission observed that the demilitarisation had a European character regulating European interests that cannot be abolished by the acts

[18] See the Finnish Government Proposal: GP 315/2022, 'Regeringens proposition till riksdagen om godkännande och sättande i kraft av nordatlantiska fördraget och avtalet om status för Nordatlantiska fördragsorganisationen, nationella representanter och organisationens internationella personal', 66. See also The North Atlantic Treaty (adopted 4 April 1949, entry into force 24 August 1949) 34 UNTS 243 art 5.

[19] GP 315/2022 (n 18) 66.

[20] See Ministry for Foreign Affairs of Finland, Report on the special status of Åland under international law and on the legal issues related to the Russian Consulate in Mariehamn (2023) Publications of the Ministry for Foreign Affairs 2023:22, Helsinki.

[21] Rotkirch (n 12) 373; Hannikainen (n 13) 626; Allan Rosas, 'The Åland Islands as a Demilitarised and Neutralised Zone' in Lauri Hannikainen and Frank Horn (eds), *Autonomy and Demilitarisation in International Law: The Åland Islands in a Changing Europe* (Kluwer Law International 1997), 29; Ministry for Foreign Affairs of Finland (n 20) 11; Allan Rosas, 'The Demilitarisation and Neutralisation of the Åland Islands: Customary Law Aspects' in Gudmundur Alfredsson and Göran Lindholm (eds), *The Autonomy of the Åland Islands: Constitutional and International Law Challenges* (Brill Nijhoff 2024), 82–99; Ove Bring, 'On the Expression "The Special Status of Åland under International Law": a Formula with Potential' in Gudmundur Alfredsson and Göran Lindholm (eds), *The Autonomy of the Åland Islands: Constitutional and International Law Challenges* (Brill Nijhoff 2024), 77.

of one singular State,[22] suggesting a regional customary character at the least. Secondly, in Art. 9 of the Åland Convention, the Council of the League of Nations is requested to inform all members of the League of Nations of the provisions laid down in the Åland Convention that should "in the interest of general peace, be respected by all as part of the actual rules of conduct among Governments".[23] This wording implies that the Åland Convention was intended to achieve general recognition applicable also to third tates since the convention itself only has ten parties. Thirdly, the demilitarisation has continuously been recognised in various legal documents and political statements throughout the years supporting the *opinio juris* on the matter while state practice respecting the demilitarisation has been consistent.[24] If the demilitarisation of the Åland Islands holds customary status, the relevance of an invalidation of the Åland Convention can be questioned.

However, identifying customary law is not straightforward. For example, the Court of Justice of the European Union (CJEU) has admitted the complexity of customary international law claiming that "a principle of customary international law does not have the same degree of precision as a provision of an international agreement".[25] If the demilitarisation and neutralisation hold the status of customary law, the essential provisions of the Åland Convention would remain in force despite its termination, though with less precision.[26] The question then remains which provisions in the Åland Convention can be considered as the key elements holding customary status.

3. Svalbard

3.1 The Svalbard Treaty

Svalbard in the Arctic has historically been a region of interest to great naval powers. Similar to the Åland Island Dispute settlement, the demilitarisation of Svalbard played an important role in reaching a balanced solution in the legal arrangement of the region

[22] Report of the International Commission of Jurists entrusted by the Council of the League of Nations with the task of giving an advisory opinion upon the legal aspects of the Aaland Islands question (1920) League of Nations Official Journal, Special Supplement, No 3, 17–18.

[23] Åland Convention (n 3) art 9.

[24] For a recent systematic study on the customary law aspects of the Åland demilitarisation regime see Rosas 2024 (n 21) 82–99 and Bring (n 21) 77, 78–80. See also Rotkirch (n 12) 373; Hannikainen (n 13) 626; Rosas 1997 (n 21) 29; Ministry for Foreign Affairs of Finland (n 20) 11–12.

[25] *Air Transport Association of America* Case C-366/10 (CJEU 2011), para 110. See also Rosas 2024 (n 21) 85.

[26] See also Ministry for Foreign Affairs of Finland (n 20) 12.

after a history of multiple naval powers exercising an interest in the area and its resources. After a time of holding the legal status of a *terra nullius* region — though not without controversy[27] — the Svalbard Treaty established the Norwegian sovereignty of Svalbard in 1925.[28] Considering the strategic and commercial value of the archipelago, it was generally agreed that a multilateral agreement should grant neutral Norway the sovereignty of Svalbard.

Regardless of the treaty granting Norway the "full and absolute"[29] sovereignty, it simultaneously limits Norway's exercise of its sovereign rights. In Art. 3 of the Svalbard Treaty, a part of the *terra nullius* aspect has been preserved in the sense that all parties have the equal right of access and entry to the waters, fjords and ports for maritime, industrial, mining and commercial operations. In Art. 9 of the treaty, Norway has been restricted from fortifying Svalbard and has undertaken not to use it for warlike purposes. Art. 9 of the Svalbard Treaty thus constitutes the legal basis of the demilitarisation of Svalbard. The demilitarisation of Svalbard is also highlighted in the preamble of the Svalbard Treaty declaring that the purpose of the demilitarised status of the Islands is to "assure their development and peaceful utilisation".[30]

While the Åland demilitarisation regime is extensively regulated by multiple legal instruments with the Åland Convention being the most detailed one, the Svalbard regime is solely based on Art. 9 of the Svalbard Treaty:

> Subject to the right and duties resulting from admission of Norway to the League of Nations, Norway undertakes not to create nor to allow the establishment of any naval base in the territories specified in Article 1 and not to construct any fortification in the said territories, which may never be used for warlike purposes.[31]

The brevity of Art. 9 results in ambiguities in its practical meaning. According to a report of the Ministry of Justice and the Police of Norway, Art. 9 does not prohibit all military activity, such as defence measures and visits of Norwegian military aircrafts or

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[27] Timo Koivurova and Filip Holiencin, 'Demilitarisation and neutralisation of Svalbard: How has the Svalbard regime been able to meet the changing security realities during almost 100 years of existence?' (2017) 53 Polar record 131.

[28] Svalbard Treaty (n 6) art 1. For an extensive presentation of the history of Svalbard, see Trygve Mathisen, *Svalbard in International Politics 1871–1925: The Solution of a Unique International Problem* (nr 101, Norsk Polarinstitutt 1954).

[29] Svalbard Treaty (n 6) art 1.

[30] Svalbard Treaty (n 6) preamble.

[31] Svalbard Treaty (n 6) art 9.

personnel.[32] The Ministry explains that Art. 9 must be interpreted in the light of the preamble where the parties declare that Svalbard is to be "provided with an equitable regime, in order to assure their development and peaceful utilisation".[33] The emphasis is thus on the creation of an equitable regime allowing the parties equal access to the region for commercial purposes. Therefore, as Norway exercises sovereignty over Svalbard, it has a duty to ensure that none of the parties with access to Svalbard will use it for warlike purposes.[34] This is also the opinion of Østhagen, who rejects any ambiguities concerning Art. 9 by observing that the Svalbard Treaty does not prohibit military activity completely; it rather limits the prohibition to specifically military activity of warlike purposes.[35]

Østhagen goes even further by claiming that Svalbard is not demilitarised, since in his view, a demilitarised zone is by definition a zone where military activity is completely prohibited.[36] Another interpretation of Art. 9 is that the term "warlike purposes" refers to the "commencement of an international armed conflict on or from Svalbard",[37] although this would not have much relevance in current circumstances considering the prohibition of use of force in Art. 2(4) of the UN Charter.[38] However, at the time of the conclusion of the Svalbard Treaty the use of force and self-defence were not clearly regulated. In that sense, Art. 9 may merely prohibit Norway from using Svalbard as a source of aggression meaning that any other military presence than with the purpose of initiating an armed attack is allowed. In the present time, this would mean that Art. 9 is quite meaningless since Art. 2(4) of the UN Charter already prohibits the use of force apart from self-defence. A similar phrase was included in the League of Nations resolution about the Åland Islands to "never become a cause of danger from the military point of view".[39] However, since the Åland Convention further regulates the Finnish military presence on the Åland Islands, the proper meaning of the phrase "cause of

[32] Norwegian Ministry of Justice and the Police, 'Svalbard' (17 April 2009) Report No. 22 (2008–2009) to the Storting, 22–23.

[33] *Ibid*. For the citation, see Svalbard Treaty (n 6) preamble.

[34] Norwegian Ministry of Justice and the Police (n 32) 22.

[35] Andreas Østhagen, 'The Myths of Svalbard Geopolitics: An Arctic Case Study' (2024) 167 Marine Policy 1, 5.

[36] *Ibid*. See also Andreas Østhagen, Otto Svendsen and Max Bergmann, 'Arctic Geopolitics: The Svalbard Archipelago' (2023) Center for Strategic and International Studies, 6.

[37] Geir Ulfstein, 'Spitsbergen/Svalbard' (last updated September 2019) Max Planck Encyclopedias of Public International Law para 35.

[38] Charter of the United Nations (adopted 26 June 1945, entry into force 24 October 1945) 892 UNTS 119 (UN Charter) art 2(4).

[39] Council of the League of Nations, 'Aaland Islands' (24 June 1921) resolution S364/29/5, 2.

danger" is irrelevant. The Svalbard Treaty, in contrast, does not contain further details on the Norwegian military presence, hence the interpretation of the wording "warlike purposes" could affect the demilitarised status of Svalbard.

It could also be suggested that the concept of demilitarisation includes measures of military nature carried out by civilians, for instance, scientific research for military or war purposes.[40] Military measures in disguise should arguably be prohibited, since Art. 9 clearly prohibits the zone from being used for warlike purposes. What is also clear is that Norway is not allowed to establish a naval base nor to fortify the zone. Since Norway may not use the zone for warlike purposes, it is also compelling that Art. 9 of the Svalbard Treaty prevents Norway from using Svalbard to defend other parts of Norway in case of an armed attack not directed at Svalbard.[41]

Compared to the Åland Convention, the Svalbard regime is less extensive allowing Norway to have unrestricted military presence in the area to defend the equitable regime. While the Svalbard and Åland demilitarisation regimes can be considered *sui generis* creating respective unique regimes, they are both stabilising security arrangements created around the same time at peace negotiations on international level. In addition, the absence of withdrawal and termination clauses and the wordings of the provisions imply that the regimes have been concluded to withstand change. Both territories are also part of NATO where their objectives to remain demilitarised have been respected. The regimes are thus comparable, and their respective status should be considered in parallel since they meet similar challenges with their shared proximity to Russia who is continuously identified as an unpredictable security threat to Euro-Atlantic States.

3.2 Changing dynamics in the Arctic

The report of the Norwegian Ministry of Justice and the Police on Svalbard policy from 2009 begins with confirming substantial changes in Svalbard, such as climate change, increased population and greater activity in sea and air in the High North area.[42] It also recognises the continuous objectives of the Svalbard policy, for instance, the proper observance of the Svalbard Treaty, maintenance of peace and stability in the area and the consistent and firm enforcement of sovereignty. According to the report, these

[40] Sam Bateman, 'Pressures on Demilitarisation' in Australian Strategic Policy Institute (ed.), 'Cold Calculations: Australia's Antarctic Challenges' (October 2013) 66 Strategic Insights, 9.

[41] See also Ulfstein (n 37) para 36 and Jensen Øystein, 'The Svalbard Treaty and Norwegian Sovereignty' (2020) 11 Arctic Review on Law and Politics 82, 86.

[42] Norwegian Ministry of Justice and the Police (n 32) 7, 12.

objectives have broad political support and have remained unchanged for a long period of time due to their success.[43]

Similar to the study on the Åland Islands initiated by the Finnish Ministry for Foreign Affairs, the Norwegian Minister of Defence authorised a group of experts on Norwegian security and defence policy to investigate the ability of Norwegian armed forces to respond to severe crises and war after the Russian annexation of Crimea in 2014 and the increased Russian military activity in the Arctic.[44] While the report observes an asymmetry in the Norwegian-Russian power relations and a risk of Russian military build-up and seek of control in the North, it claims that military conflicts based on regional differences in the North are unlikely to arise.[45] In the report, the experts nonetheless recommend Norway to prepare for a military conflict and to increase its investment in defence, for instance through improving its rapid-response units and strengthening its military presence in exposed areas with the support of its allies in a unified effort.[46]

In a recent study, five Nordic-Baltic regions are listed to be at most risk of a Russian aggression on NATO territory.[47] Both Svalbard and the Åland Islands are on the list. According to the study, Russia has strategic objectives to punish previously neutral Sweden and Finland for joining NATO, and to fracture NATO and the EU.[48] The study presents recommendations to deter Russian aggression in the Nordic-Baltic region.[49] In regard to the Åland Islands, the study suggests that since Russia is not a treaty party, an amendment of the Åland Convention could allow the positioning of defence forces on the Islands.[50] While the study admits that stationing military forces on the Islands is currently incompatible with the Åland Convention, it does not address the fact that the Åland demilitarisation is regulated in additional legal documents nor does it consider its possible customary status. Svalbard is also recommended to be stationed with a military or paramilitary unit.[51] This measure would, in contrast, be in compliance with the

[43] Norwegian Ministry of Justice and the Police (n 32) 7.

[44] Expert Commission on Norwegian Security and Defence Policy, 'Unified Effort', (28 April 2015) Norwegian Ministry of Defence.

[45] *Ibid*. 20, 22.

[46] *Ibid*. 89.

[47] Hooker (n 5).

[48] Hooker (n 5) 8.

[49] Hooker (n 5) 2.

[50] Hooker (n 5) 16.

[51] Hooker (n 5) 13–14.

Svalbard Treaty as the treaty does not explicitly prohibit Norway from taking defensive measures on Svalbard.

The Norwegian Navy and the Norwegian Government have recently stated that the existing NATO forces are adequate in the current situation and provide Norway with sufficient protection.[52] During the celebration in 2025 to mark 100 years of Svalbard being a part of Norway, the Norwegian Prime Minister affirmed Norway's sovereignty over Svalbard and the importance to exercise its authority over the archipelago in accordance with principles of international law.[53] NATO has also recently made a realignment of defence strategies because of the changing security environment where it included Finland, Sweden and Denmark to the NATO Joint Force Command Norfolk (JFCNF).[54] This will strengthen close coordination in the area of responsibility of the JFCNF across North America and Europe, especially in the Arctic.[55] However, recent statements by the Trump administration have taken a turn on Arctic relations and potentially the NATO alliance as a whole. The US President Trump expressed the need to acquire Greenland on the ground of national interests, such as economic and security reasons,[56] and to monitor the increased Russian and Chinese military activity in the area.[57] The statements posed a threat to the Danish sovereignty of Greenland as President Trump did not initially rule out the use of military force to seize the territory.[58]

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[52] Frederik Van Lokeren, 'What a militarized Svalbard would mean for Russia' (17 April 2025) Naval News <https://www.navalnews.com/naval-news/2025/04/what-a-militarized-svalbard-would-mean-for-russia/> accessed 28 November 2025.

[53] Office of the Prime Minister, 'Major celebration to mark Svalbard's 100th anniversary as part of the Kingdom of Norway' (14 April 2025) Press release <https://www.regjeringen.no/en/whats-new/major-celebration-to-mark-svalbards-100th-anniversary-as-part-of-the-kingdom-of-norway/id3115866/> accessed 28 November 2025.

[54] JFCNF, 'Joint Force Command Norfolk Welcomes Nordic Allies to its Area of Responsibility' (5 December 2025) <https://jfcnorfolk.nato.int/activity/joint-force-command-norfolk-welcomes-nordic-allies-to-its-area-of-responsibility> accessed 8 December 2025.

[55] *Ibid*.

[56] Meredith Schwartz and Gracelin Baskaran, 'Greenland, Rare Earths, and Arctic Security' (2026) Center for Strategic and International Studies, Report, 1.

[57] Diana Roy and Jonathan Masters, 'The Trump Administration's Push for Greenland: What to Know' (2026) Council on Foreign Relations <https://www.cfr.org/articles/greenlands-independence-what-would-mean-us-interests> accessed 20 January 2026.

[58] *Ibid*.

4. A progressive interpretation of *rebus sic stantibus*

4.1 Vital state interests versus shared expectations

Rebus sic stantibus could justify a re-evaluation of the validity of the Åland Convention and the Svalbard Treaty. The International Law Commission (ILC) has observed that *rebus sic stantibus* had in the past been "a tacit condition implied in every 'perpetual' treaty".[59] In other words, the principle had been vaguely and broadly applied as a valid exception to the *pacta sunt servanda* principle to dissolve treaties. Safeguarding the possibility for a state to withdraw from a perpetual treaty due to a fundamental change would be in line with the principle of sovereignty since a state cannot be bound to a treaty in circumstances it did not intend to.[60] With this in mind, the ILC decided to codify the principle into Art. 62 of the Vienna Convention on the Law of Treaties (VCLT).[61] The imprecise character of *rebus sic stantibus* would however give states a degree of sovereignty that could jeopardise the function of treaty law,[62] hence the ILC decided to reject the implicit character of *rebus sic stantibus* to avoid its abuse and instead formulate it as an objective rule of law with several conditions: changed circumstances of fundamental character; unforeseen by the parties; that impact the essential basis of the treaty; and that radically changes the obligations to be performed.

The high threshold has resulted in Art. 62 to rarely be invoked as if it only exists to fill a theoretical void than to be applied in practice. The current circumstances regarding the Åland Convention or the Svalbard Treaty do not fulfil the criteria listed in Art. 62 VCLT for invoking *rebus sic stantibus*. The security environment has not changed the essential basis of the treaties since the demilitarisation regimes were concluded during instability in the first place. Nor have the circumstances changed in a way that radically transforms the obligation of Finland and Norway to keep the Åland Islands and Svalbard demilitarised. Therefore, it is relevant to consider whether a change in national interests is a legitimate reason to invalidate demilitarisation regimes, or whether the special character of the regimes make them resistant to change. Previous research suggests that the threshold for invoking *rebus sic stantibus* may in fact have been lowered as it has become increasingly invoked among states to derogate from treaty obligations on the

[59] ILC, 'Draft Articles on the Law of Treaties with Commentaries' YBILC (1966) vol II, 258 para 7.

[60] See also James Wilford Garner, 'The Doctrine of Rebus Sic Stantibus and the Termination of Treaties' (1927) 21 The American Journal of International Law 509, 516.

[61] Vienna Convention on the Law of Treaties (adopted 23 May 1969, entry into force 27 January 1980) 1155 UNTS 331.

[62] Robert Kolb, 'The Construction of the *Rebus Sic Stantibus* Clause in International Law: Exception, Rule, or Remote Spectator?' in Lorand Bartels and Federica Paddeu (eds), *Exceptions in International Law* (Oxford Academic 2020), 276.

ground of national interests.[63] For instance, in 2024, Finland passed the Border Security Act,[64] an exceptive act that allows Finland to limit the reception of applications for international protection, which has been criticised for violating international and EU law.[65] Similar domestic legislation has been passed in Latvia, Lithuania and Poland for automatic detention of asylum seekers on the ground of national security due to the large inflow of asylum seekers from Belarus in 2021.[66]

The progressive interpretation of *rebus sic stantibus* is based on the vital state interest theory, which claims that a state can legitimately terminate a treaty when its continued compliance would threaten the preservation or vital development of a state.[67] In the *Fisheries Jurisdiction case*, before the International Court of Justice (ICJ), Iceland claimed that the fisheries agreement at issue was no longer applicable on the basis of the vital interests of the nation and owing to changed circumstances.[68] Iceland argued that there had been a change of circumstances regarding fishing techniques and on the legal opinion on fisheries jurisdiction.[69] Being a coastal state, Iceland is especially dependent on coastal fisheries for its livelihood and economic development.[70] Therefore, recognising the vital interest of the people of Iceland, the Government of Iceland did not want to confer jurisdiction on the court in a case involving the extent of the fishery limits of Iceland.[71] The ICJ, on the contrary, rejected Iceland's claim. The court noted that while the motives for Iceland to be part of the agreement to begin with might have become

[63] See Julian Kulaga, 'A Renaissance of the Doctrine of Rebus Sic Stantibus?' (2020) 69 The International and Comparative Law Quarterly 477.

[64] Act on Temporary Measures to Combat Instrumentalised Migration, Statute Book of Finland 482/2024 (Border Security Act).

[65] Non-Discrimination Ombudsman, 'Undantagslagen som begränsar att söka asyl strider mot grundläggande och mänskliga rättigheter samt EU-rätten' (7 May 2025) <https://yhdenvertaisuusvaltuutettu.fi/sv/-/undantagslagen-som-begransar-att-soka-asyl-strider-mot-grundlaggande-och-manskliga-rattigheter-samt-eu-ratten> accessed 29 October 2025.

[66] Juri Huttunen, 'Countering Instrumentalised Migration: The case for Border Closure Through a Derogation under the ECHR' (2 January 2024) EJIL:Talk! <https://www.ejiltalk.org/countering-instrumentalised-migration-the-case-for-border-closure-through-a-derogation-under-the-echr/> accessed 3 December 2025.

[67] See Kulaga (n 63) on the increase of the adoption of the vital interest theory.

[68] *Fisheries Jurisdiction case (UK v. Iceland*) (Judgment) (ICJ, 2 February 1973), para 37.

[69] *Ibid.* para 30.

[70] *Ibid.* para 42.

[71] *Ibid.* para 37.

less compelling, the object and purpose of the treaty which constituted the essential basis of the consent to the treaty were much wider and had not changed.[72]

In the *Gabčíkovo-Nagymaros case*,[73] the ICJ was tasked to consider the applicability of Art. 62 VCLT. Hungary claimed that political, economic and environmental changes cumulatively justified the termination of a bilateral treaty with Slovakia on the operation of joint system of locks on the Danube River.[74] The ICJ rejected the applicability of Art. 62 VCLT as it observed that the negative and conditional formulation of Art. 62 indicates that *rebus sic stantibus* is to be applied "only in exceptional cases"[75] for the protection of stable treaty relations. In its interpretation, the ICJ emphasised the object and purpose of the treaty in question. According to the ICJ, a link between the changed circumstance and the object and purpose of the treaty is necessary to recognise whether the circumstance was essential for the treaty parties to consent to the treaty in the first place. In the case, the ICJ ultimately decided that the *pacta sunt servanda* principle prevails. It is commonly agreed upon that the application of *rebus sic stantibus* should be made in balance with *pacta sunt servanda* for the protection of treaty stability.[76]

Using the object and purpose as a reference point in the application of fundamental change of circumstances indicates that the ICJ considers the shared expectations of all treaty parties rather than individual state views. Establishing the shared expectations ensures stability in treaty relations and is in line with the principles of good faith and *pacta sunt servanda*.[77] This is also in accordance with the view of the ILC. While not explicitly formulated in Art. 62, the ILC expressed in its draft articles that a subjective change in the attitude or policy of a government does not amount to a fundamental change.[78] At the time of its drafting, some members of the ILC were in favour of including a provision in the VCLT to clearly state that such a policy change "could never be invoked as a ground for terminating, withdrawing from or suspending the operation of a treaty", while other members rejected this idea noting that a "radical change of political

[72] *Ibid.* paras 32, 34.

[73] *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* (Judgment) (ICJ, 25 September 1997).

[74] *Ibid*. para 104.

[75] *Ibid*.

[76] Christina Binder, 'Stability and Change in Times of Fragmentation: The Limits of Pacta Sunt Servanda Revisited' (2012) 25 Leiden journal of international law 909, 911.

[77] On the shared expectations as an approach to understand fundamental change of circumstances, see Oliver J. Lissitzyn, 'Treaties and Changed Circumstances (Rebus Sic Stantibus)' (1967) 61 American Journal of International Law 895, 896.

[78] ILC (n 59) 259 para 10.

alignment by the Government of a country might make it unacceptable, *from the point of view of both parties*, to continue the treaty."[79]

According to the shared expectations approach, a changing mindset in the Finnish security policy considering the NATO membership and an increased interest to build a preparedness for external threats, does not meet the conditions for the invocation of fundamental change of circumstances. Instead, it is essential to examine the issue from the perspective of all treaty parties through the object and purpose of the treaty. The objective of the Åland Convention can be found in its preamble stating that the Islands should never become a cause of danger in military aspects. The essential basis for the parties to agree to the Åland Convention was, firstly, the fact that the League of Nations called for such an international agreement as part of the solution of the Åland Island Dispute and as one of the required conditions for the Finnish sovereignty over the Islands, and secondly, the uncertain security environment in the Baltic Sea region which encouraged the creation of a permanent settlement with the purpose of ensuring neutrality in that region of the Baltic Sea. It is thus evident that an increasingly uncertain security environment in Europe due to the Russian armed attack against Ukraine, does not constitute a fundamental change from the original circumstances at the conclusion of the Åland Convention, nor does it constitute an unforeseen development of the security situation. The circumstances have not changed in a manner that makes the objective of keeping the Åland Islands out of warlike purposes difficult to realise, and the same interpretation applies to Svalbard.

In the *Racke case*,[80] the Court of Justice of the European Union (CJEU) assessed whether an agreement between the European Economic Community and Yugoslavia had been suspended in accordance with international law. In the case, the CJEU confirmed the applicability of *rebus sic stantibus* as it was clear that the circumstances had changed in a manner that the objectives of the agreement were at risk. Peace and capable institutions in Yugoslavia constituted an essential basis for the parties to agree to the treaty. This comparison clarifies that an uncertain security environment does not imperil the objective of keeping the Åland Islands and Svalbard out of warlike purposes. The essential basis for the parties to become bound by the Åland Convention and the Svalbard Treaty was indeed not a stable security environment to begin with.

4.2 Objective regimes

International courts have yet to address the invocation of *rebus sic stantibus* from the perspective of national security, let alone with the involvement of a demilitarised region.

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[79] ILC (n 59) 259 para 10.

[80] *A. Racke GmbH&Co v. Hauptzollamt Mainz* Case C-162/96 (Judgment) (CJEU, 16 June 1998).

As it appears that demilitarisation regimes hold special status in international law, also this legal issue requires further assessment. It seems in general difficult to legally argue for a remilitarisation of a demilitarised zone on the ground of security interests. The demilitarisation regimes of the Åland Islands and Svalbard could be considered as holding the status of so-called objective regimes or permanent settlements.[81] An objective regime creates obligations and rights valid *erga omnes*, meaning that all states or states of a region must comply with the rule.[82] The VCLT declares that a rule in a treaty may in fact become binding upon a third state as a customary rule.[83] The ILC considered including a separate provision on objective regimes in the VCLT since some members of the ILC acknowledged their existence and argued for their special treatment.[84] The members specifically mentioned treaties regulating the neutralisation or demilitarisation of regions, such as the Antarctic Treaty.[85] In the report to the ILC, special rapporteur Waldock included a draft article on the regulation of objective regimes:

> A treaty establishes an objective regime when it appears from its terms and from the circumstances of its conclusion that the intention of the parties is to create in the general interest general obligations and rights relating to a particular region, State, territory, locality, river, waterway, or to a particular area of sea, sea-bed, or air-space; provided that the parties include among their number any State having territorial competence with reference to the subject-matter of the treaty, or that any such State has consented to the provision in question.[86]

Objective regimes are characterised by the fact that they are established in common interest. This objective regime status is more likely to become acknowledged when the treaty is linked to the opinion of a recognised international organisation, such as the League of Nations which would endorse the general interest in the matter.[87] The Antarctic Treaty declares that Antarctica is a demilitarised zone only to be used for peaceful purposes and thus prohibits any military activities.[88] In the preamble, it states that it is "in the interest of all mankind that Antarctica shall continue for ever to be used

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[81] Hannikainen (n 13) 624 and Niklas Fagerlund, *Ålands folkrättsliga status och EG* (Åbo Akademis Tryckeri 1993), 99.

[82] Hannikainen (n 13) 624–625 and ILC (n 59) 231 para 4.

[83] VCLT (n 61) art 38.

[84] ILC (n 59) 231 para 4.

[85] ILC (n 59) 231 para 4.

[86] ILC, 'Third Report on the law of treaties, by Sir Humphrey Waldock, Special Rapporteur' YBILC (1964) vol II UN Doc A/CN.4/167, art 63(1).

[87] Fagerlund (n 81) 101.

[88] The Antarctic Treaty (adopted 1 December 1959, entry into force 23 June 1961) 402 UNTS 71, art 1.

exclusively for peaceful purposes".[89] Similar language can be found in the Åland Convention. Art. 9 of the Åland Convention requests the Council of the League of Nations to inform the Members of the League of Nations of the provisions laid down in the Åland Convention with the purpose of the legal status of the Åland Islands to, "in the interest of general peace, be respected by all as part of the actual rules of conduct among Governments".[90] This wording implies, alongside with Art. 8 and the preamble of the Åland Convention, that the convention was intended to win general recognition and thus to create an objective regime binding to third states. The text of the Åland Convention in combination with its link to the opinion of the Council of the League of Nations indicate a strong basis for an objective regime status.

The potential objective regime status of the Åland Convention and the Svalbard Treaty is important in the sense that a unilateral termination would arguably not be possible.[91] The ILC nonetheless decided that it is not necessary to grant objective regimes that create *erga omnes* obligations a separate provision in the VCLT since they should originate from the general interest which is likely already customary law. The ILC thus decided against including a rule that a treaty considered an objective regime could instantly create *erga omnes* obligations since it cannot be ensured that such a treaty has general support to immediately create a customary rule.[92]

Due to the ambiguity surrounding the regulation of objective regimes, it seems difficult to establish obligations toward third states based on their possible objective regime character in treaty law.[93] The reason for this is the general rule that a treaty does not create obligations for a third state without its consent, which is also recognised in Art. 34 VCLT. However, this is not absolute, as provisions of customary status create obligations for all states with or without their consent. It is thus more likely that non-parties to the conventions are bound by the demilitarisation and neutralisation regulations based on their customary aspects, supported by Art. 38 VCLT.[94] As mentioned above, central provisions of the Åland Convention could be considered to hold customary law status.[95] While the Norwegian sovereignty of Svalbard under the

[89] *Ibid*. preamble.

[90] Åland Convention (n 3) art 9.

[91] However, see Hannikainen (n 13) 637.

[92] ILC (n 59) 231 para 4.

[93] Rosas 1997 (n 21) 28.

[94] See also Rosas 1997 (n 21) 29.

[95] *Supra* note 21.

Svalbard Treaty is binding for third states as customary law,[96] it is disputed whether its Art. 9 is considered to constitute customary law especially since the full demilitarisation has been contested.

5. Conclusions

The purpose of this paper was to examine the legal status of demilitarisation regimes in the context of a changing international order both regarding security policies and treaty practice. Comparing Svalbard and the Åland Islands reveals that demilitarisation regimes are characterised by their resistance to change. This is due to the shared expectation for these regimes to regulate regions of high strategic interest, and therefore to remain outside of warlike uses. In the area of demilitarisation and neutrality, scholars seem especially convinced of the objective regime status of demilitarised zones.[97] The reason for this is the link between the universal acceptance of peace and security as central objectives of international society and demilitarisation regimes supporting this objective.[98]

There are also additional reasons for restricting particular zones for warlike purposes. For instance, the Antarctic Treaty also ensures the continued freedom of scientific investigation,[99] and the freezing of sovereignty claims.[100] The Åland Convention is part of the peace resolution where the autonomy and Swedish character of the Åland Islands were secured while the Svalbard Treaty regulates the equitable character of Svalbard ensuring the parties' equal access and entry on the territory for commercial and scientific purposes. Militarisation of these regions could thus imperil other aspects tied with the regimes. For this reason, it is difficult to argue in favour of an invalidation of a demilitarised region on the ground of national security, since a militarisation could affect the shared intentions and objectives of the treaty to secure other common interests or rights connected to the regime.

Now that Finland is a NATO member, both Svalbard and the Åland Islands are protected by Art. 5 of the North Atlantic Treaty in case of an armed attack, which arguably

[96] Ulfstein (n 37) para 24.

[97] Waldock (n 86) 28 para 6 and Richard A. Barnes, 'Objective Regimes Revisited' in B.S. Chimni, Miyoshi Masahiro and Surya P. Subedi (eds), *Asian Yearbook of International Law* (Brill 2004), 128–130.

[98] See also Barnes (n 97) 130.

[99] The Antarctic Treaty (n 88) art 2.

[100] Koivurova and Holiencin (n 27) 135.

enhances the security of the regions. The close cooperation with their allies should suffice as an adjustment to the contemporary reality, while the invalidation of the demilitarisation regimes does not seem sufficiently supported neither by the shared expectations nor national security reasons. Several adopted instruments or official statements followed by political developments relevant to the status of the Åland Islands and Svalbard indicate that their respective continued demilitarised status are integral parts of Finnish and Norwegian government policy.[101]

Finland and Norway both consented to limit their sovereignty by accepting the demilitarised status of the Åland Islands and Svalbard and have regularly expressed their continued consent. While the purpose of *rebus sic stantibus* is to safeguard the sovereignty of states during times of change and it is applicable to all treaties, it is a rare exception to *pacta sunt servanda* with a high legal threshold of application. Invoking the principle to invalidate the Åland Convention or the Svalbard Treaty on the ground of national security cannot currently be based on Art. 62 VCLT. The restrictive approach of *rebus sic stantibus* is not without justification; allowing a broader and subjective interpretation of the principle would inevitably result in insecure treaty relations. Whether an amendment of the Åland Convention that would allow the positioning of defence forces on the Islands similar to the Svalbard Treaty is legally feasible requires further research on the customary status of the regime, considering that the provisions restricting Finnish military presence may not hold customary status. Whether an amendment is politically plausible is a different question.

In conclusion, demilitarisation regimes are of special character considering that they constitute objective regimes. Because of the similar status of Svalbard and the Åland Islands, their joint security coordination and their proximity to Russia, a remilitarisation of the Åland Islands could impact the demilitarised status of Svalbard and vice versa. Therefore, Norway and Finland should adopt a unified position regarding their respective demilitarised regions. The regimes have been created to resist geopolitical change and to maintain peace in areas of previous military conflict. The purpose of demilitarised zones is for the regions to remain neutral especially during periods of uncertainty and armed conflicts.

[101] See also Rosas 2024 (n 21) 96.

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