

THE EUROPEAN UNION, ITS OVERSEAS TERRITORIES AND NON-PROLIFERATION: THE CASE OF ARCTIC YELLOWCAKE

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I. INTRODUCTION

There are 26 countries and territories—mainly small islands—outside of mainland Europe that have constitutional ties with a European Union (EU) member state—either Denmark, France, the Netherlands or the United Kingdom.¹ Historically, since the establishment of the Communities in 1957, the EU's relations with these overseas countries and territories (OCTs) have focused on classic development needs. However, the approach has been changing over the past decade to a principle of partnership focused on sustainable development and global issues such as poverty eradication, climate change, democracy, human rights and good governance. Nevertheless, this new and enhanced partnership has yet to address the EU's non-proliferation principles and objectives as set out in its 2003 Strategy against Proliferation of Weapons of Mass Destruction (WMD Strategy).² This hampers not only the EU's ability to effectively mainstream its non-proliferation policies within and outside of its territories, but also the modernization and sustainable development of the OCTs themselves.

The universalization of international non-proliferation obligations across the OCTs varies as much as their levels of independence in relation to their EU member state. Accordingly, this paper looks at the implication of territories that are associated with the EU, but which function outside of its jurisdiction in terms of existing non-proliferation regulations and institutions. It highlights the absence of non-proliferation in the current round of negotiations on the association framework between the EU, the OCTs and their metropolises, and how including non-proliferation

¹ The French outermost region Saint Barthelemy (St Barth) changed its status to OCT as of 1 Jan. 2012, bringing the number of OCTs up to 26.

² Council of the European Union, EU Strategy against Proliferation of Weapons of Mass Destruction, 15708/03, Brussels, 10 Dec. 2003.

SUMMARY

The European Union (EU) Strategy against Proliferation of Weapons of Mass Destruction (WMD Strategy) has been applied unevenly across EU third-party arrangements, hampering the EU's ability to mainstream its non-proliferation policies within and outside of its borders. This inconsistency is visible in the EU's current approach to modernizing the framework for association with its overseas countries and territories (OCTs).

The EU–OCT relationship is shifting as these islands grapple with climate change and a drive toward sustainable and inclusive development within a globalized economy. While they are not considered islands of proliferation concern, effective non-proliferation has yet to make it to their shores. Including EU non-proliferation principles is therefore a necessary component of modernizing the EU–OCT relationship.

The case of Greenland and its potential for exploiting its rich mineral wealth, including large reserves of uranium, demonstrates that a capacity for addressing dual-use export controls and nuclear safety, security and safeguards in OCTs (and their metropolises) will have long-term benefits for the OCT's development and international trade. The principles and objectives of the WMD Strategy should therefore be applied to the EU–OCT relationship, particularly as the EU's relations with its OCTs are moving from a framework based on classic development aid to one based on a mutually reinforcing partnership.

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principles would address not only current gaps in legislation and regulation in the OCTs but also further align the EU's non-proliferation policies with its islands near and far. The case of Greenland, Denmark and the EU illustrates how the absence of non-proliferation objectives in the EU–OCT (as well as metropole–OCT) relationship hampers the full modernization of the economic and security interests of the OCTs. The paper then puts forward recommendations for how to update the EU–OCT relationship in current and future negotiations to ensure that mutually inclusive non-proliferation and security objectives accompany the drive for sustainable development and trade.

II. EUROPE'S OVERSEAS ISLANDS

Europe's overseas islands stretch from the Antarctic to the Arctic and from the Caribbean to the Indian and Pacific oceans. OCT populations are very small, ranging from 48 on Pitcairn to 250 000 in New Caledonia.³ They are all parliamentary democracies, highly remote and uniquely rich in biodiversity. They are all non-sovereign but differ significantly in terms of their degree of autonomy in relation to the member states to which they are linked, as well as in economic and social fields with regard to their geography and climate. In general, defence and foreign affairs usually remain within the remit of the member states. These territories are not a part of the EU and not directly subject to EU law, yet their nationals are in principle EU citizens.

OCTs have been associated with the EU since the 1958 entry into force of the 1957 Treaty establishing the European Economic Community (EEC). At the time, the six founding member states included territories abroad in the form of colonial possessions, protectorates or overseas departments located across the world's five oceans.⁴ In negotiating the EEC Treaty, France, with the largest number of overseas territories, refused to enter the Common Market without special accommodation for its possessions abroad, particularly its African territories. The other founding members agreed to the French idea to extend the Common Market to cover their overseas possessions, departing from the model of the European Coal and Steel

Community (ECSC), which did not apply ECSC law overseas. From this, Europe's OCTs were born.

Over the decades some OCTs have become independent states and subsequently withdrawn from the OCT association, most of them African, Caribbean and Pacific (ACP) states. The ACP states and OCTs then went separate but parallel ways; the former were independent countries and the latter non-sovereign. Until 1991 the EEC's relations with its OCTs essentially involved simpler versions of its agreements with the ACP states, providing the same preferential privileges regarding trade, sustainable development, and regional cooperation or integration. Essentially, 'whenever an ACP–EEC Convention of Lomé [on aid and trade] is signed, the Council takes an autonomous Decision on Association of the OCT to the EEC'.⁵ Unlike ACP decisions, which were negotiated by the respective governments, OCT decisions were mostly made and passed down by the metropole member state and the Commission. At the same time, trade arrangements for products originating in the OCTs were more open than those that originated in the ACP states. Member states, for example, are subject to the free trade rules whereas the OCTs have been entitled to take protectionist measures.⁶ The rule became truly effective for all OCT exports under the 1991 Overseas Association Decision.

Another category, outermost regions (ORs), was created in 1991 as some OCTs moved closer to the metropole state. Unlike OCTs, these small islands were formally integrated into the member state. EU law applies in ORs, with the possibility of derogating from the EU acquis, while OCTs are not considered part of the EU and therefore not directly subject to EU law. The OR categorization includes France's Overseas Departments, Spain's Canary Islands and Portugal's Azores and Madeira. Article 355 of the Treaty on the Functioning of the European Union allows an OCT to change its status to an OR without requiring treaty amendments.⁷

⁵ European Commission, 'The European Community and the Overseas Countries and Territories', Europe information, DE 76, Oct. 1993, p. 7.

⁶ Custos, D., 'Implications of the European integration for the overseas', ed. D. Kochenov, *EU Law of the Overseas: Outermost Regions, Associated Overseas Countries and Territories, Territories Sui Generis* (Kluwer Law International: Alphen aan den Rijn, 2011), p. 108.

⁷ Hannibal, I. et al, 'Facilitating the OCTs in Brussels', eds R. Adler-Nissen and U. P. Gad, *European Integration and Postcolonial Sovereignty Games: The EU Overseas Countries and Territories*, forthcoming 2013, pp. 32–33.

³ The Antarctic territories of France and the UK have no permanent civilian populations

⁴ The founding member states were Belgium, France, Germany, Italy, Luxembourg and the Netherlands.

A further development in 1991 was a new principle of partnership, when the Council of the EEC adopted a decision on OCT association that included terms different to those for the ACP states. This new partnership arrangement would eventually pave the way for OCTs to become more independent actors directly involved in negotiations with the EU while gaining access to some of the EU's internal funding programmes (i.e. for research, education and training, innovation and competitiveness, and culture and media). EU–OCT interaction then further developed to include institutionalized tripartite meetings with the Commission, the OCT and the metropole member state, and in 2002 the OCT Association was established.⁸

Modernizing the EU–OCT relationship

Historically, the approach to EU–OCT cooperation has been based on classic development aid, which is no longer seen as effective or reflective of the economic and social status of OCTs—a number of which are better off (per capita) than the average EU member state.⁹ Given its reiterations over the years, the OCT–EU trade relationship has become ‘one of the most favourable ever granted by the Community’.¹⁰ In its 2008 Green Paper on future relations between the EU and the OCTs, the European Commission proposed the need to improve and modernize the EU–OCT relationship. The Commission highlighted that the current arrangement did not

take into account the potential of OCTs as strategically important outposts, spread all over the world, as proponents of the EU's values. In addition, the wider international context has evolved, in particular as a consequence of globalisation, the ongoing liberalisation of international trade and also the increased regional integration of the ACP countries. All these factors require a thorough renovation of the partnership between the OCTs and the EU.¹¹

Current EU–OCT relations were established by Decision 2011/822/EC, the Greenland Decision and the Greenland Fisheries Partnership Agreement, which

all expire at the end of 2013.¹² However, these relations are still analogous to the EU–ACP relationship and the Green Paper therefore calls for maximizing the potential of the preferential OCT regime by modernizing its rules of origin. It calls for a new approach based on a sustainable development strategy for OCTs to reduce their vulnerabilities and support their competitiveness while stimulating further economic and social linkages on a regional and global level. It suggests that a renewed partnership could have reciprocal institutional, economic, social and cultural advantages, including benefits in the field of security and environmental protection. The idea is not to broaden assistance to the OCTs, but rather to focus on specific areas and provide better access for OCTs to various EU programmes for which they are eligible.¹³ It also specifically highlights the need for OCTs to improve their compliance with EU export standards.

Notably, the Green Paper, subsequent EU–OCT forums and the 2009 Commission Communication on the elements for a new partnership do not address issues related to non-proliferation.¹⁴ This is even more significant given the OCT comparison with ACP states. The 2005 revision of the Cotonou Agreement that the EU has with ACP states was the first legally binding agreement in force to contain the WMD clause introduced by the EU's 2003 WMD Strategy. Yet the clause and EU non-proliferation principles are absent from the EU–OCT relationship. There is a focus in the Commission Communication on a new partnership to promote centres of excellence, with future relations encouraging and assisting OCTs (financially or otherwise) to ‘upgrade’ local legislation in areas relevant to the EU *acquis* where gaps still exist, including standardizing customs procedures and

⁸ For further discussion about the role of the OCT association see Hannibal et al (note 7), p. 33–35.

⁹ Gad, U. P. and Adler-Nissen, R., ‘Introduction: postcolonial sovereignty games’, eds R. Adler-Nissen and U. P. Gad (note 7), p. 7.

¹⁰ European Commission, ‘Future relations between the EU and the Overseas Countries and Territories’, Green Paper, COM (2008) 383 final, 25 June 2008, p. 4.

¹¹ European Commission (note 10), p. 3.

¹² European Commission, Indicative Roadmap concerning the Proposal for Council Decision replacing Council Decision 2001/822/EC of 27 Nov. 2001 on the association of the overseas countries and territories with the European Community (‘Overseas Association Decision’), 19 Oct. 2010; Decision 2006/526/EC of 17 July 2006 on the relations between the European Community on the one hand, and Greenland and the Kingdom of Denmark on the other, *Official Journal of the European Union*, L208, 29 July 2006; and Fisheries Partnership Agreement between the European Community on the one hand, and the Government of Denmark and the Home Rule Government of Greenland, on the other hand, *Official Journal of the European Union*, L172/4, June 2007.

¹³ European Commission, Indicative Roadmap (note 12).

¹⁴ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, ‘Elements for a new partnership between the EU and OCTs’, COM (2009) 623 final, 6 Nov. 2009.

facilitating regional and international trade. However, despite the mention of export standards in the Green Paper, there is no specific statement addressing vulnerabilities in the export control of dual-use goods—that is, goods with both military and civilian uses—in OCTs or the legislative weaknesses that still exist regarding international non-proliferation obligations. The majority of OCTs do not export dual-use items, but that eventuality is changing as proliferation dynamics are evolving—with deceptive trade practices, financial networks and the control of raw materials becoming areas of focus. Moreover, as Greenland embarks on developing its mining sector, potentially including its large uranium reserves, the inclusion of non-proliferation becomes an even more important element to modernizing the EU–OCT relationship.

III. GREENLAND: A SPECIAL CASE

The Kingdom of Denmark is made up of Denmark, Greenland and the Faroe Islands; the relations between Denmark and its two overseas regions are known as the Danish Realm (or the Commonwealth of the Realm). Within the Danish Realm, Greenland and the Faroe Islands enjoy autonomous authority in domestic affairs while Denmark remains constitutionally responsible for foreign, defence, security and monetary affairs. The Faroe Islands obtained home rule in 1948 and Greenland in 1979, with the 2009 Act on Greenland Self-government providing the Arctic island with further autonomy including control of the courts, accounting and auditing, and its natural resources. Both territories have small populations: around 49 000 across 17 (of 18) islands in the Faroe Islands and almost 57 000 in Greenland (the world's largest island). Both have economies dependent on fishing. Of the two, Greenland is the only one with OCT status.¹⁵

Unlike the Faroe Islands, which never joined the EU, Greenland was part of the EEC for 12 years. Indeed, Greenland is the only example of a territory that has formally withdrawn from the EEC. In 1972, when Denmark held a referendum on joining the EEC, the Danish mainland voted 63.3 per cent in favour while 70 per cent of Greenlandic voters were against accession. At the time, Greenland had been an integral part of Denmark since the 1953 Constitution and was therefore

obliged to join the EEC with the Danish majority. For Denmark, the advantages of EEC membership were linked to industry and agriculture; for Greenland, the disadvantages were linked to its fisheries and a wish to protect them from European fleets in Greenland's waters.¹⁶ With the 1978 Greenland Home Rule Act, Greenland became a 'distinct community within the Kingdom of Denmark'¹⁷—along the lines of the home rule introduced in the Faroe Islands in 1948. One of the first political tasks of the Home Rule Government of Greenland was to withdraw from the EEC in order to ensure full sovereignty over Greenlandic fishing territory and minimize 'the direct influence from outside Greenland'.¹⁸ Another referendum in 1982 upheld the majority vote in favour (53 per cent) of withdrawal and, after two years of negotiations, Greenland formally withdrew from the EEC on 1 February 1985 and was given OCT status.¹⁹

The 1985 Greenland Treaty treated Greenland as a special case and established a comprehensive partnership between the EEC and Greenland. The EEC, the Danish Government and the Greenland Government signed a fisheries protocol on 13 March 1987, which was in force until the end of 1989. It was then renegotiated until the end of 1994, when compensation was raised from 26.5 million European currency units (ECUs) to 34.25 million ECUs per year.²⁰ Similar protocols have been negotiated since then, essentially providing a fisheries agreement in which the EU keeps its fishing rights and Greenland its financial contribution as they did before EEC withdrawal and Greenland is given tariff-free access to the EU for fishery products.

Outside of fisheries, EU financial assistance to Greenland from 2007 until 2013 amounts to €25 million per year.²¹ This amount was earmarked for the Greenland Education Programme, which involves the entire reform of Greenland's education and training sector. As financial assistance to Greenland is financed from the EU's general budget (and not the European Development Fund), financing agreements have to

¹⁶ Blockmans, S., 'External Action Pursued by the OCTs', ed. D. Kochenov (note 6), p. 313.

¹⁷ Greenland Home Rule Act, Act No. 577, 29 Nov. 1978, Section 1.

¹⁸ Greenland Representation to the EU, Brussels, 'The Greenland Treaty of 1985', <<http://eu.nanoq.gl/Emner/EuGl/The%20Greenland%20Treaty.aspx>>.

¹⁹ Gad, U. P., 'Greenland projecting sovereignty: Denmark protecting sovereignty away', eds R. Adler-Nissen and U. P. Gad (note 7), p. 54.

²⁰ European Commission (note 5), p. 7.

²¹ €175 million in total for the entire 7-year period.

¹⁵ Citizens of the Faroe Islands are not considered citizens of the EU. However, Faroese can become EU citizens by changing their residence to the Danish mainland.

be concluded annually. The European Commission's June 2011 proposal for a Council Decision notes that there is a need for broadening and strengthening future relations between the EU and Greenland, 'taking into account the importance of fisheries and the need for structural and sectoral orientated reforms in Greenland'.²² The proposal suggests that the EU–Greenland partnership should include a framework for discussions on global issues where dialogue could be beneficial to both sides. Specifically, it states that the 'increasing impact of climate change on human activity and the environment, maritime transport, natural resources, including raw materials, as well as research and innovation, calls for dialogue and enhanced cooperation'.²³ The proposal goes further, to include the mutual crossover in objectives of other EU strategies such as the 2020 Strategy, the Arctic Policy and the Communication on commodity markets and raw materials in future cooperation activities with Greenland.²⁴ However, Greenland's mining and uranium potential involves a range of domestic, regional and foreign policy questions that challenge not only the Kingdom of Denmark's non-nuclear policies but also the non-proliferation role of the EU in relation to its OCTs.

Arctic yellowcake

Uranium was discovered in Greenland in 1955 when it was initially considered—and then discarded—as a domestic source of nuclear energy. A resolution in the Danish Parliament on 29 March 1985 formally excluded nuclear energy from the national energy grid and, three years later, the Joint Committee on Mining in Greenland made a decision not to issue licences for exploration or mining for radioactive materials. At the time, the debate was contextualized by the global anti-nuclear movement, the Chernobyl disaster, East–West relations, Thule's nuclear past and Denmark's 1988 'nuclear elections' over the Kingdom of Denmark's non-

nuclear status and port visits.²⁵ So while the term 'zero tolerance' is a rather new buzz phrase, the policy itself has been in place for almost twenty-five years.

To date, this has been a good policy. Greenland and Denmark do not have the necessary export controls or regulatory system in place to address the nuclear safety, security and safeguards of uranium mining. Times are, however, changing—and challenging—the policy. Greenland is abundant with minerals such as rare earth elements (REEs), copper, iron and aluminium—resources that are critical for the island's drive towards eventual economic and political independence. The thawing of permafrost and melting ice caps are improving access to these deposits with increasing external pressure to change the policy to allow the extraction of uranium as a by-product. Pre-feasibility studies by the Kvanefeld Project in south-west Greenland indicate that it alone could potentially supply 20 per cent of global REE demand.²⁶ The discovery of REEs is particularly significant as China currently controls more than 95 per cent of the world's supply of these elements. However, the challenge for policymakers is that Kvanefeld's REMs are mixed in with millions of tonnes of uranium, which comprises about 20 per cent of the value of the minerals producible from this site. In short, in order to mine REMs, uranium would also have to be extracted.²⁷

Uranium mining is still domestically controversial, however, raising concerns about ecological and human safety in the sensitive Arctic environment. In July 2010 Greenland's governing coalition put forward the Qoornoq Agreement, which stated that the zero tolerance policy regarding mining of radioactive elements was upheld but with a view to being revised in the course of the current election term (2009–13).²⁸ In 2012 Greenland's Parliament began to relax the policy by granting permission to two companies to include radioactive elements in the exploration phase while prospecting and exploring for REEs. The Parliament was expected to debate the zero tolerance policy

²² European Commission, Proposal for a Council Decision on the relations between the EU on the one hand, and Greenland and the Kingdom of Denmark on the other, Brussels, COM (2011) 846 final, 12 June 2011.

²³ European Commission (note 22), par. 11, p. 8.

²⁴ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'Tackling the Challenges in Commodity Markets and on Raw Materials', COM (2011) 25 final, 2 Feb. 2011.

²⁵ Vestergaard, C., 'Going non-nuclear in the nuclear alliance: the Danish experience in NATO', *European Security*, forthcoming 2013.

²⁶ Bourguoin, F. and Vestergaard, C., 'Debatten om multolerance' [The debate on zero tolerance], *Jyllands-Posten*, 23 Nov. 2012.

²⁷ Bourguoin and Vestergaard (note 26).

²⁸ The government coalition included the centre-left Inuit Ataqatigiit and its two government partners, the centre-right Demokraatit and the conservative Kattusseqatigiit Partiiat. In Nov. 2010 the opposition conservative party Atassut also signed the agreement, leaving the social democrat Siumut party as the only non-signatory to the agreement.

Table 1. The Danish Realm's mixed safeguards

	Denmark	Greenland	Faroe Islands
EU membership	Member state	OCT (and EU citizens)	Not in EU, not an OCT
NPT safeguards	INFCIRC/193 and INFCIRC/193/Add.8 (Additional Protocol)	INFCIRC/176 (no Additional Protocol)	INFCIRC/193 (no Additional Protocol)
Convention on Assistance in Case of a Nuclear Accident or Radiological Emergency	Party	–	–
Convention on Nuclear Safety	Party	–	–
International Convention for the Suppression of Acts of Nuclear Terrorism	Party	–	–
Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management	Party	–	–
Convention on the Physical Protection of Nuclear Material and 2005 Amendment	Party	–	–

– = not applicable; EU = European Union; OCT = overseas country and territory

during its autumn 2012 session, but the debate has been postponed to spring 2013—which could be before, during or after Greenland's elections.²⁹

Whether a by-product or not, uranium mining requires a specific regulatory body with international obligations that have to be met by both Greenland and Denmark before mining licences for REEs can be issued in many areas in Greenland. This process will take years to put in place: global experience is a minimum of five years, but it usually takes more than a decade to develop and establish. If Greenland does decide to allow uranium production, there is a range of cooperation activities that Greenland, Denmark and the EU can focus on together to ensure a safe, secure and regulated process for radioactive extraction. One such activity is the establishment of a training centre to assist in developing Greenlandic and Danish capacity with regard to the nuclear safety, security and safeguards that accompany uranium exportation. Such a centre could potentially become a world leader for emerging uranium suppliers, with the possibility to study and implement the highest universal standards for uranium transparency, transport and tracking. This suggestion specifically addresses the need to add transparency to an otherwise opaque front end of the nuclear fuel cycle while furthering the approach of effective multilateralism—paragraph 18 of the WMD Strategy, in particular, states that the EU 'will make best use of, and seek improvements to, existing

verification mechanisms and systems'.³⁰ A training centre or programme on uranium mining, transport and export could use competencies from regional civil society engaged in the study of natural uranium, which in turn could be used as a learning hub for new and emerging suppliers globally.³¹

The WMD Strategy can, therefore, be a useful tool in EU–Greenland relations. However, the potential for uranium mining is not only surrounded by issues of education and transparency, the first order of business for Denmark, Greenland and the EU should be to address the mixed legal matrix that currently defines the Kingdom of Denmark.

The Kingdom of Denmark's mixed safeguards

The Danish Kingdom as a whole has ratified all the main non-proliferation and disarmament treaties such as the 1968 Non-Proliferation Treaty, the 1993 Chemical Weapons Convention, the 1972 Biological and Toxin Weapons Convention and the 1996

²⁹ Elections can be called at any time from Jan. 2013 to the last possible date of 2 June 2013.

³⁰ Vestergaard, C. and Bourgoignie, F., *Should Greenland Mine Its Uranium?*, Danish Institute for International Studies (DIIS) Policy Brief (DIIS: Copenhagen, April 2012); and Council of the European Union (note 2).

³¹ The Danish Institute for International Studies (DIIS) and Stockholm International Peace Research Institute (SIPRI), for example, are working jointly on a project researching the global governance of natural uranium up until the point of conversion. Both institutes also have the capacity to combine expertise to provide training and awareness raising on the non-proliferation *acquis*.

Comprehensive Nuclear-Test-Ban Treaty.³² However, NPT safeguards and the Additional Protocol are not applied evenly across the Kingdom of Denmark. Today, the safeguards agreement (INFCIRC/193) between the International Atomic Energy Agency (IAEA) and the EU covers Denmark and the Faroe Islands, but not Greenland. Greenland had been a party to that agreement until its withdrawal from the EEC (and Euratom) in 1985, when it returned to the safeguards agreement (INFCIRC/176) that the Kingdom had with the IAEA before it joined the EEC in 1973. Denmark has also had an Additional Protocol with the IAEA in place since 1998, but it does not apply to Greenland or the Faroe Islands. Moreover, whereas Denmark obtains its export control lists from Brussels, Greenland is not a part of the EU and is currently responsible for its own dual-use exports.

Accordingly, non-proliferation requirements are mixed across the Kingdom, providing disparities and confusion within the legal non-proliferation architecture for which Denmark is internationally responsible. Complicating matters more, Denmark is also party to five other nuclear conventions that are not yet applicable to Greenland and the Faroe Islands. The Danish Realm is therefore subject to a mixture of nuclear safety, security and safeguards commitments as shown in table 1.

Notably, the Parliament of Greenland did decide in favour of the Additional Protocol on 18 May 2004, but it is unclear why it has not yet entered into force for Greenland.³³ The Danish Prime Minister's Office handles strategic issues regarding Greenland directly with the Danish Ministry of Foreign Affairs responsible for international treaties. Therefore, whether Greenland followed up or not, Denmark is constitutionally responsible for the Kingdom's foreign policy. More notably, Greenland's decision came less than six months after the EU's 2003 WMD Strategy, which included universalizing the Additional Protocol as one of its stated goals. In this example, the OCT was ahead of its metropole on EU non-proliferation policies.

³² Greenland houses an infrasound station and an auxiliary seismic station as part of the Comprehensive Nuclear-Test-Ban Treaty Organization's (CTBTO) International Monitoring System.

³³ Parliament of Greenland, 'Dagsordenens punkt 10' [Agenda item 10], <http://cms.inatsisartut.gl/groenlands_landsting/landstingssamlinger/fm_2004/mdage_fortryk/17/fortryk?lang=da> (in Danish).

This experience of mixed safeguards is not unique to the Kingdom of Denmark.³⁴ In the Kingdom of the Netherlands (which includes the Netherlands itself and its OCTs), the metropole is party to the Additional Protocol while its OCTs are not.³⁵ The IAEA has noted this disparity and encouraged Denmark and the Netherlands 'to conclude an Additional Protocol in connection with [their respective agreements] so that a broader conclusion can be drawn for the territor[ies] covered by the agreement[s]'.³⁶ In contrast to these two non-nuclear weapon states, the EU's two nuclear weapon states (France and the UK) have streamlined safeguards across their OCTs, with the Additional Protocol extending to all of their territories. In 2011 France introduced Law 2011-266, which updated and equalized the WMD treaties across France and its territories.³⁷ Interestingly, one of Europe's oldest institutions, Euratom, may be able to help the non-nuclear weapon states metropolises and their OCTs to fully harmonize their non-proliferation and foreign policies.

A role for Euratom?

The European Atomic Energy Community (Euratom) is Europe's oldest non-proliferation institution. A major motivation for its establishment in 1957 was the desire to pool resources and create a Europe-wide nuclear energy industry. With uranium reserves limited in continental Europe, ore supplies for Europe's nuclear reactors were initially dependent on the rich deposits found in its overseas assets. It was an economic necessity, therefore, for the Euratom Treaty to apply to the European territory of member states and 'to the

³⁴ Outside of the EU, New Zealand is party to the Additional Protocol while its self-governing islands (the Cook Islands and Niue) are not.

³⁵ The OCTs of the Kingdom of the Netherlands are Aruba, Bonaire, Curaçao, Sint Maarten, Saba, and Sint Eustatius (previously known as the Netherlands Antilles). Aruba became a separate country within the Kingdom of the Netherlands in 1986. The rest of the Netherlands Antilles was dissolved on 10 Oct. 2012 with Curaçao and Sint Maarten becoming 2 new constituent countries of the Kingdom and the 3 other islands becoming special municipalities of the Netherlands; the latter will remain OCTs until at least 2015.

³⁶ International Atomic Energy Agency (IAEA), 'Safeguards Statement for 2009 and Background to the Safeguards Statement', <<http://www.iaea.org/OurWork/SV/Safeguards/es/es2009.html#ftn12>>, footnotes 12–13.

³⁷ Loi no 20110266 du 14 mars 2011 relative à la lutte contre la prolifération des armes de destruction massive et de leurs vecteurs [Law no. 20110266 of 14 March 2011 on the fight against the proliferation of weapons of mass destruction and their means of delivery].

non-European territories within their jurisdiction'.³⁸ While the European Steel and Coal Community followed the principle of exclusion, applying only to the European territory of member states, the Euratom Treaty extended its legal scope to its mineral-rich territories abroad. However, exceptions were made in Article 198 of the treaty: it did not apply to the Faroe Islands, Greenland or the UK's Sovereign Base Areas on Cyprus and it only partially applied to the UK's Isle of Man and Channel Islands.³⁹

The Euratom Treaty did apply to Greenland for 12 years: from 1973, with Denmark's accession to the EEC, until the 1985 Treaty of Greenland when Greenland formally withdrew from the EEC. Accordingly, Greenland's potential to become a supplier of natural uranium adds a legal layer of complexity to the Kingdom of Denmark's mixed safeguards reporting obligations. As Denmark is part of Euratom, but Greenland is not part of the EU, the question is can Greenland go through Euratom or does Denmark need to report Greenland's uranium activities directly to the IAEA? In short, the answer is 'either or'. As Euratom is a separate legal entity from the EU, Greenland can rejoin Euratom through a treaty modification for enlargement without rejoining the EU.⁴⁰ There is also the option for Denmark and Greenland to carry out their Additional Protocol reporting directly to the IAEA. But this requires a capacity from the Danish Ministry of Foreign Affairs and Greenland that neither currently has—and that both would be stretched to provide. Nonetheless, it would not be an issue for Euratom in terms of its relations with Denmark if the Kingdom decided to report Greenland's safeguards directly to the IAEA.

Rejoining Euratom, however, could prove to be politically sensitive for an island that has voted—twice—to leave the EU. Yet Euratom membership is not EU membership, nor is it a step back towards it. Euratom is a technical, non-proliferation institution that is not based in Brussels. Its 150 safeguards inspectors are supported by a technical support unit and a nuclear materials accountancy unit based in Luxembourg, and it is connected to the IAEA and international nuclear non-proliferation treaties and obligations. In 2010 Euratom inspectors carried out

more than 1400 inspections, of which about 60 per cent were in France and the UK (Europe's two possessors of nuclear weapons).⁴¹ If Greenland were to join Euratom, it would be the first time that a non-EU member country did so—which would set a precedent and open opportunities. The Euratom route would be advantageous for Greenland and Denmark as it is not only cheaper than going directly to the IAEA, but it also streamlines the Realm's mixed safeguards by automatically applying the Additional Protocol and four (of the five) nuclear conventions that Greenland still remains outside of (see table 1).⁴²

The Greenland case demonstrates that if Denmark and Greenland had addressed the Parliament of Greenland's decision on the Additional Protocol back in 2004, a lot of the currently outstanding legal authorities regarding uranium would have been addressed and a safeguards structure would already be in place for Greenland—whether through Euratom or the IAEA. It also demonstrates that Euratom could potentially play a universalizing role for the Kingdom of the Netherlands as well. As the Netherlands Antilles are non-European Dutch territories not covered by the Euratom Treaty, they have separate agreements with the IAEA based on the IAEA Model Agreement and the safeguards obligation under Additional Protocol I to the Treaty of Tlateloco.⁴³ Now that the Antilles has broken up into smaller units, there may be a need for capacity building and the universalization of the Additional Protocol and other international nuclear non-proliferation instruments within their new legal structure.⁴⁴

IV. CONCLUSIONS AND POLICY RECOMMENDATIONS

The EU's non-proliferation policies are applied unevenly across EU third-party arrangements, hampering the EU's ability to mainstream its

⁴¹ Szymanski, P., Director, Directorate for Nuclear Safeguards, Directorate General for Energy, European Commission, 'The Euratom regional safeguards system', <<http://www.iaea.org/newscenter/focus/iaeanwfz/euratom211111.pdf>>, p. 4.

⁴² The International Convention for the Suppression of Acts of Nuclear Terrorism is only applied through states, so the Kingdom of Denmark would therefore be responsible.

⁴³ Burgers, J. H., 'The Netherlands and disarmament', ed. H. F. van Panhuys, *International Law in the Netherlands* (TCM Asser Institute: The Hague, 1979), p. 284.

⁴⁴ At the time of writing, Euratom was not able to provide a comment on the situation regarding the former Netherlands Antilles. It was still looking into the issue.

³⁸ Consolidated version of the Treaty establishing the European Atomic Energy Community, *Official Journal of the European Union*, C84/1, 30 Mar. 2010, Art. 198. Known as the Euratom Treaty.

³⁹ Euratom Treaty (note 38), Art. 198 (d).

⁴⁰ Euratom officials, Communication with author, 9 Nov. 2012.

non-proliferation policies within and outside of its borders. This inconsistency is visible within its current approach to modernizing the EU–OCT framework: from one focused on classical development aid to one based on mutual interests in social, cultural, economic, climate and trade cooperation. The changing relationship of the EU–OCT relationship and the changing nature of many of the OCTs themselves offer an opportunity to include non-proliferation objectives in the current round of association negotiations. The example of Greenland’s potential for exporting uranium raises a specific set of needs for the most northern of Europe’s OCTs, but OCTs in general are not fully aligned with their metropolises and the EU’s non-proliferation policy—particularly those of the non-nuclear weapon states. There is a range of cooperation activities specific to the EU’s non-proliferation principles that could further strengthen the EU–OCT partnership as well as the application of international non-proliferation norms. This paper makes four main policy recommendations.

1. *Addressing regulatory and legislative gaps.* This should be the focus in relation to export controls and international non-proliferation obligations (particularly the Additional Protocol). The EU should include a provision to provide such assistance to OCTs and their metropolises, which could be framed in a similar way to the 2005 revision of the Cotonou Agreement with the ACP states. The revised agreement includes a non-proliferation clause that OCTs may or may not want to adopt. If they do, OCTs could consider a restriction put forward by the ACP states specifically prohibiting the manufacture and stockpiling of WMD in their territories—something that may be of particular interest to those OCTs with a legacy of nuclear testing and weapons storage such as French Polynesia and Greenland.⁴⁵ Indeed, formalizing the non-nuclear status of these islands more strongly within the EU could also be an important first step for Greenland in operationalizing its support for an Arctic free of nuclear weapons. The revised agreement also provides added assurance that financial and technical

⁴⁵ France conducted nuclear tests in the atolls of French Polynesia between 1966 and 1996. It was also revealed in the 1990s that the USA had housed approximately 50 nuclear weapons at the Thule base and flown 3 nuclear-armed bombers routinely over the island as part of the US 24/7 airborne alert system—which was finally shut down after an armed-bomber crashed into the ice off Thule in 1968. *Grønland under den kolde krig. Dansk og amerikansk sikkerhedspolitik 1945–68*, English summary available at <<http://www.ciaonet.org/wps/dup03/>>.

assistance for non-proliferation cooperation in the ACP states will be ‘financed by specific instruments other than those intended for the financing of ACP–EC cooperation’.⁴⁶ This means that non-proliferation funds from the EU will not be diverted from funds for development assistance—a concern expressed by the ACP states during negotiations. The same assurance should apply for OCTs.

2. *Providing funding for OCTs in non-proliferation capacity building.* This should be included in the EU financial framework for 2014–20. The EU WMD Strategy includes the reinforcement of export controls both within and outside the EU to improve information exchange across member states while also providing assistance to third countries to prevent the unauthorized transfer of WMD-related material and technology. The EU’s Instrument for Nuclear Safety Cooperation and the European Joint Research Centre (JRC) could be used cooperatively to build capacity in the area of safeguards. Non-proliferation funds from the EU should not be diverted from funds already earmarked for OCT development.

3. *Considering Euratom membership.* OCTs may want to join Euratom—a separate legal entity from the EU, based in Luxembourg—to ensure harmonized safeguards and international treaty obligations as well as the nuclear technical capacity that may be required in the future. Euratom could coordinate with the JRC on research concerning nuclear safety and security specifically for OCTs that require such assistance.

4. *Setting up a training centre on uranium safety, security and safeguards.* This provision can only be operationalized if Greenland lifts its zero tolerance policy and allows uranium extraction. Training and education specific to the uranium industry on nuclear safety, security and safeguards should be available to Greenlandic, Danish, regional and international officials. The centre or training programme could use competencies from regional civil society already engaged in the study of natural uranium and could also be a learning hub for new and emerging uranium suppliers globally.

⁴⁶ Grip, L., ‘The EU Non-Proliferation Clause: a preliminary assessment’, SIPRI Background Paper, Nov. 2009, <http://books.sipri.org/product_info?c_product_id=394>, p. 13.

ABBREVIATIONS

ACP	African, Caribbean and Pacific
EEC	European Economic Community
EU	European Union
IAEA	International Atomic Energy Agency
OCT	Overseas country and territory
OR	Outermost region
REE	Rare earth element
WMD	Weapon(s) of mass destruction

A EUROPEAN NETWORK

In July 2010 the Council of the European Union decided to create a network bringing together foreign policy institutions and research centres from across the EU to encourage political and security-related dialogue and the long-term discussion of measures to combat the proliferation of weapons of mass destruction (WMD) and their delivery systems.

STRUCTURE

The EU Non-Proliferation Consortium is managed jointly by four institutes entrusted with the project, in close cooperation with the representative of the High Representative of the Union for Foreign Affairs and Security Policy. The four institutes are the Fondation pour la recherche stratégique (FRS) in Paris, the Peace Research Institute in Frankfurt (PRIF), the International Institute for Strategic Studies (IISS) in London, and Stockholm International Peace Research Institute (SIPRI). The Consortium began its work in January 2011 and forms the core of a wider network of European non-proliferation think tanks and research centres which will be closely associated with the activities of the Consortium.

MISSION

The main aim of the network of independent non-proliferation think tanks is to encourage discussion of measures to combat the proliferation of weapons of mass destruction and their delivery systems within civil society, particularly among experts, researchers and academics. The scope of activities shall also cover issues related to conventional weapons. The fruits of the network discussions can be submitted in the form of reports and recommendations to the responsible officials within the European Union.

It is expected that this network will support EU action to counter proliferation. To that end, the network can also establish cooperation with specialized institutions and research centres in third countries, in particular in those with which the EU is conducting specific non-proliferation dialogues.

<http://www.nonproliferation.eu>



FOUNDATION FOR STRATEGIC RESEARCH

FRS is an independent research centre and the leading French think tank on defence and security issues. Its team of experts in a variety of fields contributes to the strategic debate in France and abroad, and provides unique expertise across the board of defence and security studies.

<http://www.frstrategie.org>



PEACE RESEARCH INSTITUTE IN FRANKFURT

PRIF is the largest as well as the oldest peace research institute in Germany. PRIF's work is directed towards carrying out research on peace and conflict, with a special emphasis on issues of arms control, non-proliferation and disarmament.

<http://www.hsfc.de>



INTERNATIONAL INSTITUTE FOR STRATEGIC STUDIES

IISS is an independent centre for research, information and debate on the problems of conflict, however caused, that have, or potentially have, an important military content. It aims to provide the best possible analysis on strategic trends and to facilitate contacts.

<http://www.iiss.org/>



STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTE

SIPRI is an independent international institute dedicated to research into conflict, armaments, arms control and disarmament. Established in 1966, SIPRI provides data, analysis and recommendations, based on open sources, to policymakers, researchers, media and the interested public.

<http://www.sipri.org/>