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1 **The Svalbard Continental Shelf Controversy:** 2 **Legal Disputes and Political Rivalries**

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7 *Norway's claim to exclusive rights over the continental shelf surrounding the former*
8 *terra nullius Arctic archipelago of Svalbard is controversial, with the unclear scope of*
9 *the Svalbard Treaty recognized as "a main challenge" by Norway's parliament. This*
10 *article explores the nature of this challenge by: (1) giving an account of the legal basis*
11 *of the conflict; (2) analyzing its political context, and (3) discussing the contemporary*
12 *judicial and political processes which may or may not resolve the conflict. This article*
13 *concludes that the issue seems to escape judicial settlement, rendering the controversy*
14 *a matter of international politics. With the world's eyes increasingly on the petroleum*
15 *resources of the Arctic, a clarification over the legal status of the Svalbard shelf is not*
16 *in sight.*

17 **Keywords** Commission on the Limits of the Continental Shelf, continental shelf,
18 Norway, petroleum development, Svalbard

19 **Introduction**

20 Norway, stretching halfway across the Arctic Circle, has one of the largest sea claims
21 in the world. Norway's claimed exclusive economic zones (EEZs) and continental shelf,
22 a treasury of natural resources, make up an area six times larger than the Norwegian
23 mainland.¹ The claimed continental shelf, its outer limits to be produced for the United
24 Nations Commission on the Limits of the Continental Shelf (CLCS) in 2006,² also includes
25 the shelf surrounding Svalbard,³ an archipelago in the Arctic Ocean to which Norway
26 was granted sovereignty by the 1920 Svalbard Treaty.⁴ Several states, including Norway's
27 closest allies, the United States and the United Kingdom, have reserved their positions or
28 protested against Norway's exclusive claim with respect to the continental shelf adjacent
29 to the Svalbard archipelago.⁵ It is argued that the Norwegian claim to the exclusive rights
30 to explore and exploit the resources of the continental shelf adjacent Svalbard violates the
31 1920 Svalbard Treaty, which provides to treaty parties equal rights to Svalbard resource
32 exploitation. While Norway holds that the Treaty has no relevance outside the territorial
33 sea stretching 12 nm from its baseline, others insist that Svalbard has its own continental
34 shelf and that the nondiscrimination principles of the 1920 Treaty applies to the adjacent
35 shelf.

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36 Maritime areas are of vital importance to Norway. Oil, natural gas, and fish are the
37 state's number one, two, and four export products, contributing Nkr 267 billion, 84 billion,
38 and 27 billion respectively to Norway's total export worth of Nkr 553 billion (US\$88
39 billion) in 2004.⁶ In a 2005 Norwegian government White Paper on Arctic Policy, the dispute
40 over jurisdiction in the high northern latitudes was recognized as containing "potential for
41 conflict of interests."⁷ During the reading of the White Paper, the Standing Committee on
42 Foreign Affairs in the Norwegian parliament *Stortinget* remarked:

43 One of Norway's main challenges is that we presently have large areas in the
44 north where Norwegian management or sovereignty is disputed, and where
45 many states have no clear position to the Norwegian view.⁸

46 What are the status and prospects for the regime governing the Svalbard shelf? This article
47 will explore the nature of this "main challenge" by: (1) giving an account of the legal basis
48 for the conflict, (2) analyzing its political context, and (3) discussing contemporary judicial
49 and political processes which may or may not spur conflict resolution.

50 *Theory and Method*

51 Norway's original continental shelf claims overlapped with Russian claims in the Barents
52 Sea, with Icelandic claims in the North Sea, and with Danish claims in both the North
53 and the Greenland seas.⁹ Delimitation of the continental shelf between Iceland and the
54 Norwegian island of Jan Mayen was facilitated by an international conciliation panel in
55 1981,¹⁰ which led to a bilateral agreement.¹¹ The International Court of Justice decided
56 on delimitation between Jan Mayen (Norway) and Greenland (Denmark) in its 14 June
57 1993 ruling.¹² Denmark and Norway agreed on a continental shelf boundary between the
58 mainland of Norway and the Faroe Islands in 1979.¹³ Russia and Norway have jointly
59 defined the disputed area in the Barents Sea and their dispute is being managed through
60 negotiations.¹⁴

61 The role of international law in Norway's many maritime disputes is evident, both in
62 defining the disputed areas and in the procedures employed for resolving them peacefully.
63 Once settled, either by agreement, arbitration or court decision, parties have complied with
64 the outcome. A rational explanation of compliance in a system short of supranational law
65 enforcement is that it is in the State's long-term interest to maintain an international order
66 based on a notion of *pacta sunt servanda*. Short-term gains from noncompliance could
67 threaten a system that is in the state's overall interest to maintain. Regime theorists have
68 concluded that state compliance with international commitments is rationally "possible,
69 even likely."¹⁵

70 Supposing compliance with its outcome and identifying its origin are treaty related, the
71 case-specific conflict over maritime areas surrounding Svalbard is seen as being a judicial
72 dispute. This is reflected in the contemporary literature on the topic, which is predominantly
73 legal in nature. Legal theory, however, falls short of addressing the various possible paths
74 to settlement, and indeed is rendered less purposeful if the conflict is on no such path. This
75 article will suggest the need for a broader theoretical approach to this high-latitude conflict
76 than that provided by a strictly legal perspective.

77 Assuming that the policy on legal and state security issues is rationally shaped and
78 deployed by professional state elites, the following discussion is essentially rationalist.
79 It establishes the foundation for a state-level approach—rather than a more reflectivist

80 investigation on a substate level—leaving states as the primary units of analysis. The
81 Norwegian Ministry of Foreign Affairs is found to be the primary maker of Norwegian
82 policy, an addressee for foreign state reactions to Norwegian policy, and a catalyst in the
83 practice of jurisdiction enforcement in the ocean areas adjacent to Svalbard. Methods of
84 research include elite interviewing, analysis of national and international correspondence,
85 official statements and White Papers, in addition to the investigation of historical records
86 and academic literature. Moreover, a wide range of academic, legal, and technical specialists
87 have been consulted directly to supplement the empirical basis for the analysis below. The
88 use of multiple sources of evidence enhances the validity and reliability of the research
89 results.
90

91 **The Basis for the Conflict**

92 *A Brief History*

93 In 1596 the Dutch explorer Willem Barents staked his nation's mark on the Arctic landmass
94 he discovered¹⁶ on his quest to find a northeast seaway from the Atlantic to the Pacific
95 Ocean.¹⁷ The new land, which Barents named "Spitsbergen" after its rugged coastline,
96 proved to be a lucrative staging area for whale hunting at a time when oil extracted from
97 whale blubber was used in lamps; elastic, strong whale baleens were used in corsets,
98 furniture, and wagons; and whale meat was a common human food.¹⁸

99 Before long, Dutch and English whalers clashed over the most profitable hunting
100 grounds along the west coast of Spitsbergen.¹⁹ While the Dutch embraced the *mare liberum*
101 doctrine set out by Dutch scholar Huig de Groot in 1609 and hence claimed free access to
102 the Spitsbergen waters, London sought sovereignty over the new land and exclusive rights
103 to its marine fauna. English whalers removed the Dutch marker set up by Barents, and in
104 1613 King James I, assuming that Spitsbergen was part of Danish-Norwegian Greenland,
105 offered to buy the land from the Union's King Christian IV.²⁰ In the absence of a reply, King
106 James I declared sovereignty over the land the following year. It had now been suggested
107 for the first time that Spitsbergen may be an island independent of Greenland.²¹ However,
108 England was unable to enforce its claim. In 1618, a Dutch naval fleet overwhelmed the
109 English hunting fleet in Spitsbergen waters, and in the diplomatic aftermath of these clashes
110 England had to allow the militarily superior Dutch free whaling access to the Spitsbergen
111 waters.²² Under the assumption that Spitsbergen was a part of Greenland, with aspirations
112 to control the northern seas, Denmark-Norway also claimed Spitsbergen.²³ King Christian
113 IV sent warships to Spitsbergen waters on several occasions between 1615 and 1643
114 to enforce the claim.²⁴ While England rejected the Danish-Norwegian claim, the Dutch
115 upheld the principle of free access to the high seas. As the stocks of whale and walrus
116 rapidly declined through the 17th century due to overexploitation, the conflicts respecting
117 Spitsbergen jurisdiction faded. By the 18th century the archipelago was considered *terra*
118 *nullius*—no-man's land—and attracted few other than Russian and later Norwegian trappers.

119 The Swedish scientist Adolf Erik Nordenskiöld brought the jurisdictional issue back
120 to life in the second half of the nineteenth century. Having come across exploitable mineral
121 resources, he argued that Spitsbergen should be colonized and annexed by Norway (Norway
122 was now in union with Sweden rather than Denmark). The Norwegian government, however,
123 was sceptical of the Swedish initiative. In 1871 the Ministry of Interior stated that it was not
124 in the national interest of Norway to see changes in the status quo, where "Spitsbergen is
125 a no-man's land and where no state sovereignty is established."²⁵ The annexation initiative

126 was withdrawn. A few decades later, an independent and more ambitious Norway gained
127 a renewed interest in Spitsbergen parallel to increased international mineral resource
128 exploitation, primarily of coal. The jurisdiction issue was raised again and discussed at
129 trilateral conferences in 1910 and 1912 by Norway, Sweden, and Russia, where it was
130 suggested that Spitsbergen should be run as a *condominium* by the three states.²⁶ An
131 international Spitsbergen Conference was summoned to establish a legal regime for the
132 archipelago in 1914, but was dissolved at the outbreak of World War I.

133 The Spitsbergen issue was settled through the peace process following World War
134 I. Norwegian delegates to the 1919 Paris Peace Conference sought sovereignty over
135 Spitsbergen in compensation for Norwegian merchant fleet losses during the war and
136 pointed to Norway's presence at, historical ties to, and economic interests on the
137 archipelago.²⁷ The five great powers—the United States, the United Kingdom, France,
138 Italy, and Japan—responded by establishing a Spitsbergen Commission, which was soon
139 presented with a Franco-Norwegian treaty proposal approved in advance by the United
140 Kingdom and the United States.²⁸ Because the draft treaty guaranteed international interests
141 in the archipelago, the principle of Norwegian sovereignty became widely accepted. On
142 9 February 1920 the Spitsbergen Treaty, crafted by the Commission on basis of the
143 Franco-Norwegian proposal, was signed in Versailles, and 5 years later it entered into
144 force.

145 *The Svalbard Treaty*

146 Article 1 of the Svalbard Treaty recognizes Norway's "full and absolute sovereignty"
147 over the archipelago, defined as being "all islands great or small and rocks appertaining
148 thereto" between 10° and 35° east and between 74° and 81° north (referred to as "the
149 Svalbard box"). However, the Treaty places far-reaching restrictions on Norway's sovereign
150 rights. According to Article 9, Norway cannot establish military bases and cannot use the
151 archipelago for "warlike purposes." Article 8(2) seems to deprive Norway from profiting
152 economically from Svalbard sovereignty as "taxes dues and duties levied shall be devoted
153 exclusively to the said territories." In addition, and the basis of the current shelf dispute,
154 Article 3 of the Treaty provides all parties:

155 equal liberty of access and entry for any reason or object whatever to the waters,
156 fjords and ports of the territories [. . .]. They shall be admitted under the same
157 conditions of equality to the exercise and practice of all maritime, industrial,
158 mining or commercial enterprises both on land and in the territorial waters
159 [. . .].

160 Because the 1920 Treaty was formulated prior to modern law of the sea, it has no reference
161 to contemporary legal terms such as fisheries zones, EEZs, or continental shelves. It does,
162 however, refer to "territorial waters," equivalent to the term *territorial sea* used in modern
163 law of the sea. Today, the Svalbard territorial sea, defined by Norway with reference to the
164 1982 UN Convention on the Law of the Sea, extends 12 nm from the Svalbard baselines.²⁹

165 While Article 3 of the Svalbard Treaty establishes the nondiscriminatory principle,
166 regulations for mineral operations are laid down in the Mining Ordinance which applies to
167 "the entire archipelago"³⁰ and was recognized and authorized as general regulations by the
168 1920 Treaty parties and came into effect on the same date as the Svalbard Treaty entered
169 into force.³¹ The regulations grant extensive rights to discoverers of "natural deposits of
170 coal, mineral oils and other minerals and rocks,"³² allowing first finders claim patents over

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5

171 areas with documented geological discoveries. A claim holder has an exclusive right to
172 extract mineral resources from his or her claim patent.³³

173 The status of the Mining Ordinance has been the subject of disagreement. Since it was
174 created and adopted through international consultation procedures established by Article
175 8(4) in the Svalbard Treaty, it has been argued that the Ordinance has the character of a
176 treaty and can be amended only through the same procedures as it was created.³⁴ Others
177 have argued that the Mining Ordinance is Norwegian legislation provided for within the
178 framework of the Svalbard Treaty, and that it can be altered as any other national legislation
179 by the Norwegian parliament as long as it does not violate Svalbard Treaty provisions.³⁵

180 To date the Ordinance has not been amended, although on 3 June 1966 the Norwegian
181 Ministry of Industry outlined procedures for obtaining petroleum claims without having to
182 produce physical samples.³⁶ In 1967, the Ministry further stated that the Mining Ordinance
183 applied offshore, more specifically to a then still undetermined territorial sea around
184 Svalbard.³⁷

185 *The Law of the Sea*

186 Although continental shelf claims were made prior to 1958, it was Article 2(1) of the
187 1958 Geneva Convention on the Continental Shelf³⁸ that firmly established a coastal
188 state's sovereign right to explore and exploit the natural resources on its continental
189 shelf, understood as being the seabed and submarine subsoil adjacent to its coastline. The
190 Convention entered into force on 10 June 1964, and Norway acceded to it on 9 September
191 1971.

192 One year before ratifying the Continental Shelf Convention, Norway proclaimed a
193 4-mil. belt of territorial sea around Svalbard referencing to the 1958 Convention on the
194 Territorial Sea and Contiguous Zone,³⁹ a move that was explained in a contemporary
195 Norwegian intelligence report.

196 THE purpose of establishing a four-mile territorial sea for Svalbard was
197 obviously to lay the formal foundation to claim *unrestricted Norwegian*
198 *jurisdiction* over the seabed from North Cape to Svalbard as well as around
199 Svalbard, *except from* the areas within the four-mile limits, which would be
200 subject to Svalbard Treaty provisions.⁴⁰ [Emphasis added]

201 Thus, by specifying the limits of territorial waters around Svalbard, Norway sought to
202 restrict the geographical area to which the 1920 Treaty applied. The Norwegian continental
203 shelf area was perceived as one continuous shelf adjacent to its mainland, to which Norway
204 had exclusive rights—apart from the seabed within the belt of territorial sea around
205 Svalbard. By this time, several oil companies had already been drilling for petroleum
206 onshore Svalbard, pursuant to the Svalbard Treaty.

207 In 1970, Norway also initiated negotiations with the Soviet Union over continental
208 shelf delimitation in the Barents Sea. The 1971 intelligence report characterized the Oslo
209 maneuver as a gamble:

210 Summarized, it seems like Norway plays a bold gamble where the aim is
211 twofold: (1) Norwegian control over the continental shelf north of Norway [*sic*]
212 and around Svalbard, and (2) a negotiated and to Norway favorable delimitation
213 of the Norwegian shelf in the east.⁴¹

214 Six years later, new areas were added to Norway. Anticipating the outcome of the Third
215 United Nations Conference on the Law of the Sea (UNCLOS III), Norway passed the
216 Economic Zone Act in 1976⁴² and established a 200-mil. economic zone along its mainland
217 by Royal Decree.⁴³ The Norwegian decision followed a series of diplomatic consultations,
218 which also resulted in the establishment of a softer maritime regime around Svalbard,⁴⁴
219 a 1977 Royal Decree pursuant to the Economic Zone Act proclaimed a 200-mil. fisheries
220 protection zone around the archipelago, as opposed to an economic zone.⁴⁵ The Decree
221 authorized the Ministry of Fisheries to establish fishing regulations for the Svalbard zone.

222 The 1982 Law of the Sea Convention (LOS Convention), which entered into force
223 on 16 November 1994 and was ratified by Norway in June 1996, provides for different
224 legal foundations for sovereign rights to seabed resources. While the continental shelf is
225 determined by its physical geography, to which the coastal state has an inherent right,⁴⁶ the
226 EEZ has a maximum width of 200 nm but must be claimed by the coastal state.

227 The LOS Convention seeks to define the outer limit of the continental shelf. Whereas
228 Article 1 of the 1958 Continental Shelf Convention loosely defined the limits of the
229 continental shelf as the “depth of the superjacent waters admits of the exploitation of the
230 natural resources,” arguably allowing the limits to move with the advance of technology,
231 the LOS Convention specifies geological criteria for determining the precise outer limit of
232 continental margins where they extend beyond 200 nm.⁴⁷ Geological data proposing the
233 outer limits of the continental margin is to be submitted by the coastal state to a UN expert
234 commission, the Commission on the Limits of the Continental Shelf, with the result of the
235 submission and subsequent recommendations “final and binding.”⁴⁸

236 The Svalbard sea territory was again expanded by Norway in 2004 with reference
237 to the LOS Convention. The territorial sea borders around Svalbard, and also along the
238 Norwegian mainland, were moved from 4 to 12 nm.⁴⁹ This expanded the territorial sea area
239 for Svalbard by more than 35%.⁵⁰

240 **Political Context**

241 *Positions and Arguments*

242 Since the 1920 Svalbard Treaty defines the archipelago as the islands and rocks within
243 the Svalbard box and has no reference to areas beyond their territorial waters, Norway
244 has suggested that the Treaty provisions have no relevance to maritime areas such as a
245 200-mil. zone and the continental shelf. Furthermore, since Norway has been awarded
246 “full and absolute sovereignty” as opposed to a mandate over Svalbard, Norway claims to
247 enjoy the LOS Convention privilege of exclusive rights to such ocean areas. Accordingly
248 the continental shelf, to which the Svalbard Treaty is deemed irrelevant, is physically
249 and inherently one continuous seabed adjacent to the Norwegian coastline governed
250 by Norwegian legislation. A distinction between a “Svalbard shelf” and a Norwegian
251 continental shelf is further rejected because: first, it would be pointless since the same legal
252 regime would apply to both in any case;⁵¹ and, second, delimitation between mainland
253 Norway and Svalbard would require the application of a peculiar approach, a negotiation
254 between Norway and Norway.⁵²

255 The Norwegian view has been defended by Carl August Fleischer, who argued that any
256 restrictions on sovereign rights must be stated clearly and unambiguously in the original
257 Svalbard Treaty text.⁵³ This restrictive interpretation implies that all Norway’s obligations
258 are laid down in the 1920 Treaty. Provisions of the Treaty cannot have application to matters
259 or geographical areas not specified in the Treaty at the expense of Norwegian sovereignty.

260 In cases of doubt, such as interpreting the geographical term *waters* in Article 3, Norwegian
261 sovereignty considerations should prevail over international exploitation rights. Fleischer
262 found support for his interpretation in the Spitsbergen Commission Report from the 1919
263 Paris Peace Conference, where it provides that all restrictions on Norwegian sovereignty
264 over Svalbard are stated in the Treaty, and “pour le surplus il y a lieu d’appliquer la
265 souveraineté de la Norvège.”⁵⁴

266 Prior to becoming Norway’s Foreign Minister (1993–94), Johan Jørgen Holst of
267 the Norwegian Institute of International Affairs pointed to the fruitlessness of making
268 assumptions about how the Svalbard Treaty would have been designed in 1919–20 if the
269 drafters had knowledge of future legal developments, since it presupposes that Norway
270 would have accepted sovereignty over the archipelago even if it meant a relinquishment of
271 rights to its *ab initio* extensive and now promising continental shelf.⁵⁵

272 Iceland and Russia, on the other hand, are the most vigorous opponents of Norway’s
273 view,⁵⁶ both formally protesting against Norwegian policy. As Norwegian sovereignty
274 over Svalbard is founded on a treaty rather than customary law, they argue that Norway’s
275 sovereignty is restricted. The Norwegian sovereignty granted by the 1920 Treaty is curtailed
276 both geographically and in scope, and consequently does not provide to Norway a coastal
277 state’s legal access to claim or enforce a 200-mil. fisheries protection zone in the waters
278 around Svalbard, or to claim jurisdiction on the continental shelf adjacent to Svalbard.
279 Iceland and Russia, however, do not assert what kind of regime or authority should govern
280 the Svalbard continental shelf, if any.

281 Article 31 of the Vienna Convention on the Law of the Treaties,⁵⁷ not acceded to by
282 Norway, requires that a treaty be interpreted “in good faith in accordance with the ordinary
283 meaning to be given to the terms of the treaty in their context and in the light of its objects
284 and purpose.” What is referred to as effective treaty interpretation could suggest that the
285 Svalbard Treaty’s provisions serve to protect the other treaty parties’ interests more than
286 Norwegian sovereign rights. The argument would be that the purpose of the Svalbard
287 Treaty was to provide a degree of law and order to a *terra nullius* area, without altering the
288 international legal character of it. Authors have indeed referred to Svalbard as “close to an
289 internationalised area” or “l’internationalisation imparfaite.”⁵⁸ In the late Professor Johs.
290 Andenæs’ classic Norwegian law textbook, *Statsforvaltningen i Norge*, it was stated:

291 The sovereignty over Svalbard does not have the same exclusive character as
292 sovereignty over territory elsewhere. It contains first of all a right and a duty to
293 administer the area in the common interest of the international community.⁵⁹

294 A third view, and what appears to be the prevailing opinion internationally, provides
295 recognition of Norway’s full sovereignty over Svalbard and its jurisdiction in the maritime
296 areas around the archipelago, but also concludes that Svalbard Treaty provisions must
297 apply to these areas. Norwegian jurisdiction, originating in the 1920 Treaty, has necessarily
298 the same geographical application as the Treaty provisions (i.e. the nondiscrimination
299 principles must have the same physical extension as Norwegian jurisdiction). In 1986 the
300 United Kingdom stated that, “in our view Svalbard has its own continental shelf, to which
301 the regime of the Treaty of Paris [Svalbard Treaty] applies. The extent of this shelf has not
302 yet been determined.”⁶⁰

303 Robin Churchill and Geir Ulfstein arrived at the same conclusion in their 1992 book
304 *Marine Management in Disputed Areas*.⁶¹ In a later work, Ulfstein reiterated that the
305 geographical area to which the Svalbard Treaty applies has grown due to evolutionary
306 concepts.⁶² Ulfstein argued that interpreted dynamically, the 1920 Treaty not only should

307 be effectively understood in the context of what was intended when it was drafted in 1920,
308 but also comply with subsequent legal and social changes.⁶³ Since the Svalbard Treaty was
309 devised as a permanent settlement of the legal status of the archipelago, interpretations of
310 the Treaty must consult developments in international law, in this case the emergence of
311 a new law of the sea, and other evolutionary concepts, such as the dynamic meaning of
312 Svalbard “waters.” As the nondiscriminatory principle of the Svalbard Treaty was explicitly
313 applied to all legal maritime areas known 85 years ago, Ulfstein suggested the 1920 Treaty
314 should also apply to the areas that are added to Svalbard through the development of
315 international law.

316 Churchill and Ulfstein argued that the term *waters* not only should be projected to
317 the declared 200-mil. zone but, because archipelagos generate continental shelves under
318 international law and since Norway already has used Svalbard as basis for the fisheries
319 protection zone, it follows that Svalbard also has a continental shelf—separate from the
320 mainland shelf—to which the 1920 Treaty provisions must apply.⁶⁴

321 *Controversies Beyond the Territorial Sea*

322 Norwegian jurisdiction *within* the Svalbard territorial sea has not been challenged in recent
323 years, although the 1996–99 Deputy Governor of Svalbard Rune B. Hansen explained in
324 an article that he “on several occasions experienced that the Norwegian resolve to mark
325 sovereignty was put to the test,” without elaborating.⁶⁵ In a 1999–2000 White Paper on
326 Svalbard, the government asserted that “Norwegian sovereignty over the archipelago has
327 never stood stronger.”⁶⁶

328 International conflict over the status of Svalbard has arisen regarding the 200-mil.
329 fisheries protection zone. Although Norway claimed to have the legal basis to create
330 a Norwegian economic zone around the archipelago, it chose not to reserve the zone
331 exclusively to nationals. In 1986, Norway introduced quota regulations to the fisheries
332 protection zone,⁶⁷ allowing cod quotas to states with a historical record of fishing in
333 the zone. The regulations were developed further in 1994, breaking the quotas down for
334 individual states. Consistent with the nondiscriminatory principle,⁶⁸ historical fishing was
335 explicitly chosen as the criterion for allocation. In the 2005 White Paper on Arctic Policy,
336 the Ministry of Foreign Affairs specified: “Regulations for the fisheries protection zone are
337 designed so that they will not conflict with the Svalbard Treaty, even if it had applied to the
338 fisheries protection zone.”⁶⁹

339 In 1993, the Norwegian Coast Guard stepped up its enforcement of Norwegian
340 jurisdiction in the Svalbard 200-mil. zone by firing warning shots and the following
341 year it began cutting fishing gear trawled by vessels without quotas in the zone.⁷⁰ On
342 5 August 1994, the crew on the Icelandic-owned trawler *Hagangur II* resisted Norwegian
343 enforcement firing at Coast Guard personnel with small arms, whereupon the Coast Guard
344 vessel *Senja* fired two rounds of nonexplosive shells at the trawler.⁷¹ The *Hagangur II*
345 became the first vessel seized by Norwegian authorities in the Svalbard zone, followed in
346 the fall of 1994 by two other Icelandic-owned trawlers.⁷²

347 As a rule the Norwegian Coast Guard refrains from taking sanctions against Russian
348 vessels violating regulations in the Svalbard zone.⁷³ When the Coast Guard seized the
349 Russian trawler *Chernigov* in the 200-mil. Svalbard zone in spring 2001, the Norwegian
350 ambassador to Russia was presented with a sharp formal protest, and Russia questioned the
351 future of bilateral fisheries cooperation.⁷⁴ The chairman of the Russian State Fisheries
352 Committee, Yevgeniy Nazdratenko (later to become deputy secretary of the Security
353 Council), threatened to have Norwegian Coast Guard vessels sunk if they intervened

354 again,⁷⁵ and Russian patrol vessels were deployed to the Svalbard zone to “protect” Russian
355 trawlers from the Norwegian Coast Guard.⁷⁶ The following summer the Russian Northern
356 Fleet deployed its large antisubmarine warfare (ASW) destroyer *Severomorsk* to the zone,
357 a highly unusual power demonstration that was seen as being tied to the *Chernigov* seizure.
358 Sensitive to the tension in the Svalbard zone, the Norwegian Ministry of Foreign Affairs
359 instructed the Norwegian Coast Guard to abort its planned seizure of the Russian trawler
360 *Okeanor* in 2004.⁷⁷

361 Iceland has repeatedly expressed its disapproval of its North Atlantic Treaty
362 Organization (NATO) ally, protesting the Norwegian enforcement of jurisdiction in the
363 200-mil. zone around Svalbard. In 2003 Icelandic Prime Minister David Oddsson, in a
364 dispute over herring quotas in the fisheries protection zone, threatened to bring a case to
365 the International Court of Justice if the “Norwegian Coast Guard arrests Icelandic vessels
366 fishing herring at Svalbard.”⁷⁸ The following year, Magnus Thor Hafsteinsson of the
367 opposition Liberal Party announced he would raise the Svalbard issue in the Icelandic
368 parliament *Althingi* and also called for a confrontation with Norway in the International
369 Court of Justice.⁷⁹

370 International protests have also been brought about when Norway has made exclusive
371 moves onto the disputed Svalbard shelf. In 1985 the Norwegian government announced to
372 its petroleum industry the opening of a new exploration area north of its mainland, stretching
373 beyond latitude 74° north—the southern limit of the Svalbard box. The exploration area
374 Barents Sea South crossed into the Svalbard box by half a degree, a political litmus
375 test that resulted in a stronger international reaction than Norway had anticipated.⁸⁰ The
376 announcement sparked warnings from the Soviet Union and a sharp note from the United
377 Kingdom, but in 1989 Norway still elected to establish the northern limit of the Barents
378 Sea South program area at 74°30'.⁸¹ However, no exploration blocks have been announced
379 in the northernmost parts of the Barents Sea South by the Norwegian government, thus
380 allowing the issue to cool.

381 Subsequently, Norway has adopted a type of nondiscrimination regime for the Svalbard
382 shelf—in the sense that the Barents Sea north of the latitude 74° north has in effect
383 not yet been opened for exploration or exploitation to any parties. With today’s pace of
384 development, it is not likely to be opened in near future. Moreover, no foreign attempts
385 have been made to exploit Svalbard shelf resources and no one has demanded a search
386 license from the Commissioner of Mines at Svalbard to areas beyond territorial borders.⁸²

387 In the event of petroleum exploration beyond latitude 74° north, Norway would not be
388 able to adopt a nondiscrimination petroleum management parallel to the fisheries regime
389 based on historical activity. Norway therefore could be confronted with a set of treaty-related
390 questions, including whether the Mining Ordinance (already made valid to the offshore)
391 applies outside the territorial sea of Svalbard and whether taxation beyond the strict limits
392 set by the Treaty is prohibited with respect to activities on the shelf.

393 ***Petroleum Interests***

394 The continental shelf surrounding Svalbard has been attracting interest as the Arctic emerges
395 as an important—and less icy⁸³—global petroleum region. The United States Geological
396 Survey assessed that at least one-fourth of all the world’s undiscovered petroleum reserves
397 is located in the Arctic.⁸⁴ The volumetrically largest petroleum province in the world is
398 located in the West Siberian Basin, and there are several other important basins in the
399 Arctic parts of Russia, Norway, Canada, and the United States. Numerous geologically
400 promising provinces are present in these latitudes.⁸⁵ Over the past few years, oil companies

401 have shown more interest in the Norwegian Barents Sea based on soaring oil prices,
402 promising oil discoveries in the “Goliat” structure north of mainland Norway, technological
403 developments, and the March 2002 parliamentary approval for exploitation of the “Snøhvit”
404 natural gas field in the southern Barents Sea.⁸⁶ To date, 63 exploration wells have been
405 drilled in the Norwegian part of the Barents Sea.⁸⁷

406 The Barents Sea North, in contrast to the Barents Sea South has not been opened
407 for exploration. Based on existing geological data, the Norwegian Petroleum Directorate
408 has estimated that a total of 290 million Sm³[Au—please check Sm³?] oil equivalents are
409 located in the northern parts of the Barents Sea⁸⁸ which surround Svalbard. The Norwegian
410 Petroleum Directorate has repeatedly claimed it is possible that large petroleum discoveries
411 exist in the northern regions of the shelf,⁸⁹ and in fall 2005, it initiated drilling in the Barents
412 Sea North on the east coast of Svalbard to “gain more knowledge about the resource potential
413 in the area.”⁹⁰ Looking to the Barents Sea, Norway’s oil minister Thorhild Widvey stated
414 in a press release on 15 May 2005 that, “I believe the north [*nordområdene*] will develop
415 into one of Europe’s most important petroleum-producing regions. Here, Norway has great
416 opportunities.”⁹¹

417 For years, Russia has demonstrated its interest in the Svalbard shelf. Although closed
418 for petroleum exploration, the Russian joint stock company Marine Arctic Geological
419 Expedition (MAGE) resumed annual seismic surveys on the continental shelf around
420 Svalbard in 2002.⁹² MAGE founded “to explore new hydrocarbon provinces on the Arctic
421 shelf,”⁹³ also explored the Svalbard shelf from 1980 to 1988 on behalf of the Russian
422 state.⁹⁴ Norway consented to the seismic activity as *scientific research* in accordance with
423 the Law of the Sea Convention Part XIII, as opposed to *petroleum exploration* which
424 is prohibited.⁹⁵ Despite this, the petroleum surveying company used its seismic vessel
425 *Professor Kurentsov*, equipped to explore the petroleum resource potential, on the disputed
426 shelf. Senior Geologist Fridtjof Riis at the Commissioner of Mines at Svalbard has offered
427 the following assessment of the activity:

428 The seismic MAGE collects seems to be conventional deep-water seismic of
429 the kind used in oil exploration. The way the transects are placed will normally
430 show if they are most interested in regional mapping or oil exploration.⁹⁶

431 In its notification to Norwegian authorities, MAGE labeled its activity as seismic “research
432 concerning the natural resources of the continental shelf or its physical characteristics.”⁹⁷
433 On the same form, the Russian company stated that visits to the ship by Norwegian scientists
434 or authorities would not be accepted. It added that the research data would not be presented
435 to Norway, but would be placed in the Russian State Geological Archives in 2007.⁹⁸ Denied
436 Russian seismic data, at the request of the Ministry of Foreign Affairs,⁹⁹ the Norwegian
437 Petroleum Directorate informed MAGE in 2005 that, “[u]pon completion of this cruise,
438 the need for scientific data from this area will be considered to have been fulfilled.”¹⁰⁰ The
439 Ministry of Foreign Affairs turned directly to the Russian Embassy in Oslo on 23 March
440 2005 and stressed that, “exploring petroleum occurrences in the area is prohibited.”¹⁰¹
441 Norway placed emphasis on breaches of the conditions for the Russian expeditions, adding
442 that “further permissions with similar content cannot be expected.”¹⁰² The Norwegian letter
443 pointed to Article 253 of the LOS Convention giving coastal states the right to “require the
444 suspension of any marine scientific research activity in progress” on its continental shelf,
445 if the researching state does not grant access to research data on its request or if research is
446 not conducted in accordance with its notification to the coastal state.¹⁰³ It is unclear whether

447 Russia will seek to continue its seismic exploration on the Svalbard shelf in 2006,¹⁰⁴ and
448 how Norway would respond to such a wish or activity.

449 **Conflict Resolution**

450 *Court Settlement*

451 The Svalbard Treaty itself does not outline procedures for settling disputes over treaty
452 interpretation. Nor has the Treaty been considered by an international court, treaty
453 conference, or tribunal. The question of the Treaty's geographical application, however, was
454 raised in the Norwegian Supreme Court in the 1996 *Påtalemyndigheten v. Sigurd Haraldson,*
455 *Rederiet Utgerdarfelag Dalvinginga HF, Jon Nolsø Olsen and Rederiet Skridjökull HF*
456 *case.*¹⁰⁵ In August 1994 1 month after Norway excluded vessels from outside Russia, the
457 European Union (EU), the Faroe Islands, and Poland from fishing cod in the Svalbard
458 zone, two Icelandic-owned trawlers registered in Iceland and Panama were seized by the
459 Norwegian Coast Guard and the captains and the ship owners were put to trial for illegal
460 fishing. When the case reached the supreme court in 1996, the defendants argued that
461 "Norway's jurisdiction goes so far as—and no longer than—authorized by the treaty."¹⁰⁶
462 Moreover, they claimed that the Svalbard Treaty should be considered on the same terms as
463 national legislation. It was argued that the quota regime violated the nondiscrimination
464 principle established by the Svalbard Treaty. The condition of equality—set by the
465 Treaty—was absolute, the defendants argued.

466 The supreme court, however, ruled that Norway had jurisdiction in the 200-mil. fisheries
467 protection zone, which was lawfully authorized in the Economic Zone Act of 1976, allowing
468 the establishment of sea areas off the Kingdom of Norway. According to the Svalbard
469 Act of 1925, the kingdom includes Svalbard. Furthermore, national regulations based on
470 traditional fishing were found to be nondiscriminatory. Accordingly, the supreme court
471 did not consider whether the Svalbard Treaty provisions should or should not apply to the
472 200-mil. zone. The court stated:

473 It is not necessary . . . to decide on the geographical application of the Svalbard
474 Treaty, as I cannot see that Norway's treaty obligations in any event have been
475 neglected through the cod fish regulations implemented.¹⁰⁷

476 The jurisdiction issue was raised again in Norwegian courts in the 2004 *Påtalemyndigheten*
477 *v. Pesqueres Laurak Bat S. A.* case.¹⁰⁸ Two Spanish trawlers fishing in the 200-
478 mil. Svalbard zone were seized by Norwegian authorities after inspections uncovered
479 serious discrepancies between logged and real catches. The defendants invoked the
480 nondiscriminatory principle of the Svalbard Treaty and argued that if the Treaty provisions
481 do not apply beyond the established belt of territorial sea, neither does the provision granting
482 Norway jurisdiction. It was further argued that Norway's enforcement of jurisdiction was
483 "fundamentally discriminatory" and in violation with Treaty obligations.

484 In fact, Russian fishing vessels do not report to Norwegian authorities.
485 The limited control with Russian vessels must be regarded as an unfair
486 discrimination against other nations. Over the last 25 years there have been only
487 two Russian seizures in the protection zone, compared to numerous seizures in
488 the mainland zone.¹⁰⁹

489 The *Nord-Troms Tingrett* judgment concluded that the 200-mil. Svalbard zone was
490 internationally recognized: “The establishment of the fisheries protection zone has not
491 caused any state to file a case against Norway to the court in The Hague. Accordingly, the
492 fisheries protection zone has been legally recognized.”¹¹⁰ The court further repeated the
493 1996 supreme court conclusion that the 200-mil. zone quota regime is nondiscriminatory
494 and hence in line with Treaty provisions even if they did apply to the zone, and the majority
495 of the court could not see that vessels from Russia were favored over other nationalities
496 in Norwegian Svalbard zone enforcement. The ruling has been appealed to the higher
497 *Hålogaland Lagmannsrett* court. The final outcome of the *Pesqueres Laurak Bat S. A.* case
498 and its political aftermath is uncertain and the EU Commission is watching the procedure
499 closely.¹¹¹

500 After decades of conflict, no state has moved to challenge Norway at the International
501 Court of Justice with respect to interpretation or application of the Svalbard Treaty. Although
502 Norway recognizes the compulsory jurisdiction of the court, Russia does not.¹¹² Neither
503 does Iceland, which took no part in the 1973 International Court of Justice *Fisheries*
504 *Jurisdiction Case*,¹¹³ arguing that fisheries were of “vital interests of the people of Iceland”
505 and that therefore Iceland was “not willing to confer jurisdiction on the Court” in such
506 matters.¹¹⁴

507 For Russia, the present Svalbard regime has even been found to be quite favorable.
508 Kristian Åtland, a researcher at the Norwegian Defense Research Establishment, pointed
509 to the fact that Russia takes one-fourth of its total Barents Sea fish catch from the Svalbard
510 zone.

511 In a broader perspective, little suggest that Russian authorities have an interest
512 in provoking a judicial chaos in the fisheries protection zone. This would lead
513 to increased pressure from third states with no tradition of fishing there.¹¹⁵

514 This situation is less applicable to Iceland, which sees itself as being deprived of cod quotas
515 in the fisheries protection zone and chronically dissatisfied with its Svalbard quotas on
516 Norwegian spring-spawning herring. Accordingly, Iceland has initiated an assessment of
517 the risk of filing a case against Norway.¹¹⁶ Although controversial, the Svalbard fishing
518 regime functions as intended in the sense that Norwegian regulations are generally respected
519 and provide a sustainable management of the resources in the area.¹¹⁷ Collapse of the fish
520 stocks due to mismanagement, as happened with the herring in the 1960s, would also affect
521 Iceland’s industry. With an economy heavily dependent on fish exports,¹¹⁸ Iceland requires
522 sustainable management of ocean resources and successfully challenging Norway’s fishing
523 regime regarding Svalbard may not be in Iceland’s best interests.

524 Even if the Svalbard Treaty provisions were made applicable to the 200-mil. zone by
525 an international decision, Norway would retain jurisdiction in the area. Further, allowing
526 fishing quotas based on historical activity would most likely remain recognized as a
527 nondiscriminatory allocation principle in international law. A decision favorable to Iceland
528 could lead to a stricter enforcement of Norwegian jurisdiction and regulations in the
529 200-mil. zone, as it no longer could be legally disputed. Hence, it is not necessarily in
530 Iceland’s best interests to seek a judicial confrontation over the present regime, which
531 in its flexible, unsettled form can be perceived as favorable to it. By filing a case and
532 not being successful, Iceland could risk paving the way for a Norwegian EEZ around
533 Svalbard.

534 The Svalbard offshore picture is complicated by the fact that petroleum resources in
535 the continental shelf surrounding Svalbard cannot be governed in the same way as fish

536 in the 200-mil. zone. States favored by the present fisheries regime could hardly expect
537 similarly lucrative stakes on the shelf if it were opened for exploitation. Indications of large
538 petroleum reservoirs in the disputed shelf could therefore distort their assessments of the
539 risks associated with bringing a case on the geographical scope of the Svalbard Treaty
540 before an international tribunal.

541 In general, incentives for filing a case against Norway would be stronger for states
542 not already benefiting from the present management of Norwegian Sea and Barents Sea
543 resources. Moreover, prospects of large petroleum reserves could accelerate the need for
544 clarity regarding the Svalbard continental shelf.

545 *The Role of the CLCS*

546 One process that is proceeding is the establishment by Norway of the outer limit of
547 its continental margin. In 2006, Norway will make its submission to the CLCS. The
548 Commission, composed of experts on geology, geophysics, and hydrography,¹¹⁹ is to
549 make recommendations on the outer limits of shelves stretching beyond 200 mil., based
550 on technical data submitted from coastal states. According to Article 76(8) of the LOS
551 Convention, the outer limits of the continental shelf established by the coastal state “on the
552 basis” of the CLCS recommendations “shall be final and binding.”

553 Claiming one continuous continental shelf, the disputed Svalbard shelf is expected
554 to be incorporated in the Norwegian submission to the CLCS. The Commission is to be
555 informed by the coastal state making the submission about situations of “unresolved land or
556 maritime disputes.”¹²⁰ For instance, Russia and Norway have jointly defined the shelf area
557 affected by their long-term delimitation dispute in the Barents Sea and made this known to
558 the CLCS when Russia submitted its proposed outer limits to the CLCS.¹²¹ According to
559 Norway, their joint statement enables the CLCS to consider the already submitted Russian
560 claim, and also the later submission from Norway.

561 Without predestining the outcome of delimitation discussions undertaken by
562 Norway and Russia, this enables the commission to consider the question of the
563 physical extension of the continental shelf and thereby its outer limits toward
564 the international seabed in the Arctic Ocean.¹²²

565 Without prior approval from all parties to a dispute, the CLCS does not have competence
566 to consider submitted outer limit claims.¹²³ What constitutes “disputes” is not elaborated
567 on, but the Charter of the United Nations distinguishes between a *situation* “which might
568 lead to international friction or give rise to a dispute,”¹²⁴ and a *dispute* “the continuance
569 of which is likely to endanger the maintenance of international peace and security.”¹²⁵ If
570 the Svalbard shelf issue were defined as the latter, all parties to the dispute would have
571 to consent before the outer limits of the entire northern region of the Norwegian shelf
572 claim could be weighed by the CLCS. “All parties” in this context could imply parties
573 to the Svalbard Treaty, although receiving approval from each of an indefinite number of
574 parties¹²⁶ would seem highly complicated, if not illusionary.

575 The LOS Convention indicates that the CLCS itself is not in position to determine
576 whether the Svalbard issue constitutes an unsolved maritime dispute that Norway should
577 report to the Commission.¹²⁷ Norway, however, does not seem to view the Svalbard
578 controversy as relevant for its CLCS submission. Director General Rolf Einar Fife of the
579 Department for Legal Affairs at the Ministry of Foreign Affairs stated to *Svalbardposten*:

580 This is quite unproblematic. It is a technical job, and it has nothing to do with
581 the Svalbard Treaty. The treaty has no relevance to modern law of the sea. [. . .]
582 The work has proceeded steadily, and there are clear technical criteria for what
583 to examine.¹²⁸

584 In the event that the Svalbard continental shelf is not seen as disputed, a CLCS
585 recommendation might lead to Norway's consolidating jurisdiction over a single,
586 continuous shelf that stretches from its mainland, encompasses Svalbard, and extends
587 far into the Arctic Ocean where it plunges into the deep sea some 800 nm from northern
588 Norway.¹²⁹

589 The case for a large "no-man's continental shelf" in the Barents Sea, within the shelf
590 limits that Norway is bound by, arguably would be weakened. A firm establishment of
591 Norwegian jurisdiction over the entire shelf does not, however, settle whether Svalbard
592 Treaty provisions should apply to parts of it. On one hand, it can be argued that shelf limits
593 determined in line with Commission recommendations also establish the geographical area
594 to which the LOS Convention applies. Accordingly, when final and binding, the outer limits
595 of the shelf also decide the physical extension of the exclusive shelf rights of the coastal
596 state. Within such limits, modern law of the sea could be said to prevail over other legal
597 regimes.

598 On the other hand, as the CLCS is an expert panel explicitly without competence to
599 settle disputes, the dominant opinion is that the CLCS procedure is of a technical rather than
600 legal character. Even if the CLCS recommendation of the outer limits confirms Norwegian
601 jurisdiction over the entire shelf, it does not settle what provisions apply to the shelf. Since
602 the dispute over the Svalbard shelf is not about the physical characteristics of the shelf, the
603 establishment of its geological limits would leave the dispute unresolved.

604 *Negotiation and Diplomacy*

605 Norway sees no need to initiate a negotiated settlement over the Svalbard continental shelf
606 dispute. As Minister of Foreign Affairs Jan Petersen state:

607 In our opinion the shelf question around Svalbard is settled. We have a clear
608 understanding of how the judicial questions are to be understood. We have to
609 note that not everyone agrees, but in that case it would be up to these others to
610 take initiative and to try their case.¹³⁰

611 However, Article 33(1) of the Charter of the United Nations imposes on all parties to
612 a dispute the duty to seek a solution by peaceful means. Dispute settlement is normally
613 first sought through negotiation. In the case of the maritime delimitation dispute between
614 Norway and Russia, bilateral negotiations have been taking place since the early 1970s.
615 A similar approach has not been applied to the Svalbard shelf conflict. Although Russia
616 has emerged as the prime challenger to the Norwegian shelf claim, the two states have
617 not brought the Svalbard question into their bilateral negotiations over jurisdiction in the
618 Barents Sea. State Secretary Kim Traavik at the Ministry of Foreign Affairs confirmed that
619 there is no interest in attaching the Svalbard issue to bilateral jurisdictional negotiations
620 with Russia since it is "not a question of delimitation."¹³¹

621 While also ruling out negotiations over shelf jurisdiction, Minister of Foreign Affairs
622 Petersen presently has found no reason to provoke the international community by opening
623 the Barents Sea North for petroleum exploration in the near future. He stated that "we

624 cannot enter the disputed areas, but there are many opportunities in the undisputed areas.”¹³²
625 Traavik confirmed that Barents Sea North exploitation “lays some where in the future, so
626 we have some time.”¹³³

627 The Svalbard Treaty interpretation issue likewise has not been raised in the Russo-
628 Norwegian energy dialogue, which seemed to take a new turn when the two states signed an
629 energy partnership agreement in summer 2005.¹³⁴ During Prime Minister Bondevik’s June
630 visit to the Kremlin, Russian President Vladimir Putin told him “we have good prospects in
631 the field of oil and gas.”¹³⁵ Two Norwegian companies are considered on equal terms with
632 other foreign short-listed petroleum corporations as stakeholders in “Shtokmanovskoye,”
633 one of the world’s largest gas fields located in the Russian Barents Sea.

634 Rather than being concerned with a settlement of Svalbard issues through diplomatic
635 relations with Russia, Norway has increasingly sought recognition of its view from its tradi-
636 tional military allies. In 2005, the government initiated the so-called *nordområdedialoger*
637 with the United States, Germany, the United Kingdom, France, Canada, and the EU.
638 The dialogues include a wide range of Arctic-related topics, but winning support—or,
639 rather understanding—for the Norwegian interpretation of international law is an important
640 element. When Prime Minister Kjell Magne Bondevik presented the government White
641 Paper on Arctic Policy at a press conference in 2005, he stated that: “we work to gain
642 understanding for the Norwegian view internationally.”¹³⁶ Traavik also confirmed that
643 disputes over Svalbard Treaty interpretations would be discussed in *nordområdedialogene*
644 with what he called “our most important partners.”¹³⁷ When asked about the prospects of
645 opening the Barents Sea North for petroleum exploration, he stated:

646 One of the reasons for wanting these broad *nordområdedialoger* is that we
647 want to explain to our partners and make them aware of all dimensions around
648 these issues, and I am sure it will become part of their basis for assessment.¹³⁸

649 The parliament *Stortinget* supports the government strategy. On 9 June 2005, the Standing
650 Committee on Foreign Affairs unanimously stated that “bilateral dialogues with Canada,
651 France, the United Kingdom, Germany, the USA and the EU will become very important
652 in the time to come” and stressed the need for obtaining “international understanding for
653 the necessary control and enforcement measures” in the Svalbard zone.¹³⁹

654 Handling the Svalbard issue as a matter of international politics, Norway is seeking
655 reassurances from traditional military allies in Europe and North America and seeking
656 improved conditions for enforcing jurisdiction in Svalbard waters. A political rather than
657 legal approach to Svalbard disputes calls for an analysis of the international *structure*
658 relevant to Arctic waters.

659 The Norwegian diplomatic initiatives can be understood as an attempt to increase the
660 state’s leverage in a post-cold war political balancing act where its traditional allies have not
661 only military, but also strategic, petroleum interests in the north. Further structural analysis
662 falls outside the scope of this article, but evidently the dispute over the Svalbard shelf will
663 remain susceptible to policy shifts and international structural changes so long as the issue
664 escapes resolution.

665 **Conclusions**

666 The controversy over the Svalbard continental shelf is seen primarily as a legal conflict
667 arising from differences in treaty interpretation. Norway holds that its granting of

668 sovereignty over Svalbard in the 1920 Svalbard Treaty is sufficient to allow it exclusive
669 rights to maritime areas beyond the Treaty-governed Svalbard territory. Iceland and Russia
670 question the legal basis for Norway's claimed jurisdiction over geographical areas not
671 specified by the Svalbard Treaty. A third view, held by the United Kingdom and others,
672 questions Norway's exclusivity to such maritime areas, arguing that the nondiscriminatory
673 principles of the Svalbard Treaty must be applied.

674 The dispute is not soon to be settled by a judicial process. This article has noted that the
675 challenging states, benefiting from the present resource management regime in the Barents
676 Sea, even after decades of conflict may continue to refrain from submitting a case to an
677 International Court. The article has also concluded that the determination of the outer limits
678 of the Norwegian continental shelf, even if based on the recommendation of the CLCS, will
679 not offer a final settlement to the issue—although it could cement Norwegian jurisdiction
680 over the shelf. Norway, while having its enforcement on the disputed shelf challenged by
681 Russian seismic activity, is not seeking a negotiated settlement because it already regards
682 the shelf question as legally clarified.

683 Norway's diplomatic efforts to win international understanding for its resource
684 management off Svalbard will not result in a settlement either, although it could raise
685 recognition of the present regime. In the absence of a definitive settlement, Norwegian
686 policy on shelf exploration and jurisdiction enforcement will remain responsive to shifts in
687 foreign policy, sentiments, and international structures.

688 With an increased international focus on the north as a strategic global petroleum
689 region, the unclear legal status of the Svalbard shelf leaves it susceptible to new energy and
690 economic alliances, altered assessments of state interests, the introduction of new political
691 actors to the region, and the evaporation of cold war NATO loyalty. While on a political
692 rather than an adjudicative track, the dispute over the Svalbard continental shelf calls for a
693 wider analytical approach than legal approaches can offer.

694 Notes

695 1. Norwegian Continental Shelf 01/2004.

696 2. T. Pedersen, "Vil kreve sokkelen under Nordpol-isen" in Svalbardposten 09/2003 and
697 Statement by the Chairman of the Commission on the Limits of the Continental Shelf (CLCS)
698 on the progress of work in the Commission on 30 April 2004, available at [www.un.org/Depts/los/
699 clcs_new/clcs/home.html](http://www.un.org/Depts/los/clcs_new/clcs/home.html).

700 3. Norway renamed the archipelago from the Dutch "Spitsbergen" to Old Norse "Svalbard"
701 in 1925. There is now the Svalbard archipelago and its largest island, Spitsbergen (formerly known
702 as Western Spitsbergen). In this article, Spitsbergen will apply to the archipelago prior to 1925,
703 otherwise Svalbard will be used.

704 4. Treaty Concerning the Archipelago of Spitsbergen, 2 *L.N.T.S.* 7 (hereinafter the 1920
705 Svalbard Treaty).

706 5. See A. C. Sjaastad and J. K. Sogan, *Politikk og sikkerhet i Norskehavsområdet. Om de*
707 *enkelte land og våre felles problemer* (Oslo: Dreyers Forlag, 1975), 232. See also G. Ulfstein, *The*
708 *Svalbard Treaty* (Oslo: Scandinavian University Press, 1995), 422.

709 6. "Exports by sections and divisions of the SITC [Standard International Trade Classifica-
710 tion]," Statistics Norway, available at www.ssb.no/muh/mu2004/tab09-01.html.

711 7. St. meld. nr. 30 (2004–2005) Muligheter og utfordringer i nord, at 7 (trans. from
712 Norwegian).

713 8. Innst. S. nr. 264 (2004–2005) Innstilling fra utenrikskomiteen om muligheter og
714 utfordringer i nord (trans. from Norwegian).

715 9. Norwegian Continental Shelf 01/2004.

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17

- 716 10. Jan Mayen Conciliation Report, reprinted in 20 *I.L.M.* 797 (1981).
- 717 11. Agreement on the Continental Shelf between Iceland and Jan Mayen, Oct. 22, 1981,
- 718 reprinted in 21 *I.L.M.* 1222 (1982).
- 719 12. Greenland/Jan Mayen Maritime Delimitation, [1993] *I.C.J. Rep.* 38.
- 720 13. *Agreement between the Government of the Kingdom of Denmark and the Government of*
- 721 *the Kingdom of Norway concerning the delimitation of the continental shelf in the area between the*
- 722 *Faroe Islands and Norway and concerning the boundary between the fishery zone near the Faroe*
- 723 *Islands and the Norwegian economic zone*, June 15, 1979.
- 724 14. Stortingsmelding nr. 30 (2004–2005) Muligheter og utfordringer i nord, at 22–23.
- 725 15. K. Raustialia and A.M. Slaughter, "International Law, International Relations and
- 726 Compliance" in *Handbook of International Relations*, ed. W. Carlsnaes, T. Risse, and B.A. Simmons
- 727 (London: Sage, 2005), 540.
- 728 16. Russia claims that *pomors* (Russian merchants) discovered Svalbard first, perhaps as early
- 729 as in the fifteenth century. Based on twelfth century Icelandic sailing annals, Norway believes that
- 730 Norse explorers discovered it first. See T. B. Arlov, *Svalbards historie* (Trondheim: Tapir Akademisk
- 731 Forlag, 2003), 50–53, for further discussion.
- 732 17. T. Mathisen, *Svalbard i internasjonal politikk 1871–1925* (Oslo: Aschehoug, 1951), 3.
- 733 18. Arlov, *supra* note 16, at 62–63.
- 734 19. M. Conway, *No Man's Land: A History of Spitsbergen from Its Discovery in 1596 to the*
- 735 *Beginning of the Scientific Exploration of the Country* (Oslo: Damms Antikvariat, 1995 [Cambridge
- 736 University Press, 1906]), 51–64.
- 737 20. Mathisen, *supra* note 17, at 3.
- 738 21. Conway, *supra* note 19, at 65.
- 739 22. A. Hoel, *Svalbard* (Oslo: Sverre Kildahls Boktrykker, 1966) 44–46.
- 740 23. Arlov, *supra* note 16, at 72.
- 741 24. Hoel, *supra* note 22, at 48, and Sjaastad and Skogan, *supra* note 5, at 219.
- 742 25. Lecture by the Ministry on 10 March 1871, quoted in Hoel, *supra* note 22, at 61 (trans.
- 743 from Norwegian).
- 744 26. See R. Berg, *Norge på egen hand 1905–1920. Norsk utenrikspolitisk historie, Bind 2* (Oslo:
- 745 Universitetsforlaget, 1995), 169–171.
- 746 27. *Ibid.*, at 278–279.
- 747 28. W. Østreng, *Økonomi og politisk suverenitet: Interessespillet om Svalbards politiske status*
- 748 (Oslo: Universitetsforlaget, 1974), 51.
- 749 29. Lov om Norges territorialfarvann og tilstøtende sone, June 27, 2003, art. 2 and 5.
- 750 30. Mining Ordinance for Spitsbergen (Svalbard), chap. I, sec. 1.
- 751 31. Royal Decree, Bergverksordning for Spitsbergen (Mining Ordinance for Spitsbergen),
- 752 Aug. 7, 1925.
- 753 32. Mining Ordinance for Spitsbergen (Svalbard), chap. I, Sec. 2.
- 754 33. *Ibid.*, chap. III, sec. 14.
- 755 34. See R. Churchill and G. Ulfstein, *Marine Management in Disputed Areas: The Case of the*
- 756 *Barents Sea* (London: Routledge, 1992), 31–32. See also Ulfstein, *supra* note 5, at 312–316.
- 757 35. See C. A. Fleischer, *Svalbardtraktaten. En utredning hvor også nye styreformer på*
- 758 *Svalbard vurderes* (1997), at 11–16, and C. A. Fleischer, "Svalbards folkerettslige stilling," in *Norges*
- 759 *havretts-og ressurspolitikk*, ed. A. Treholt, K. N. Dahl, E. Hysvær, and I. Nes (Oslo: Tiden Norsk
- 760 Forlag, 1976), 139–140.
- 761 36. Letter from the Norwegian Ministry of Industry and Håndverk to the Commissioner of Q2
- 762 Mines at Svalbard dated 3 June 1966, reprinted in *Bergverksvirksomhet på Svalbard. Lover og regler*
- 763 *mm* (Jan. 2002): 11.
- 764 37. Letter from the Norwegian Ministry of Industry and Håndverk to the Commissioner of
- 765 Mines at Svalbard dated 11 March 1967, reprinted in *Bergverksvirksomhet på Svalbard. Lover og*
- 766 *regler mm* (Jan. 2002): 16.
- 767 38. 499 *U.N.T.S.* 311.
- 768 39. 516 *U.N.T.S.* 205.

- 769 40. O. G. Skagestad, *De norske besittelser i Nord-Ishavet. En sikkerhetspolitisk analyse.*
770 *Utarbeidet i 1971 på oppdrag av E-staben (Forsvarets Overkommando), declassified on May 27,*
771 *2004, at 25 (trans. from Norwegian).*
- 772 41. *Ibid.*, at 26 (trans. from Norwegian).
- 773 42. Lov om Norges økonomiske sone, Dec. 17, 1976.
- 774 43. Forskrift om Norges økonomiske sone, Dec. 17, 1976.
- 775 44. S. Andresen, B. Fløistad, A. Underdal, and W. Østreng, *Forvaltningen av norske*
776 *havområder* (Oslo: Fridtjof Nansens Institutt, 1985), 24, and St.meld. nr. 30 (2004–2005) *Muligheter*
777 *og utfordringer i nord*, at 23.
- 778 45. Forskrift om fiskevernsone ved Svalbard, June 3, 1977.
- 779 46. See 1982 LOS Convention, art. 77, and R. R. Churchill and A. V. Lowe, *The Law of the*
780 *Sea* (Manchester: Manchester University Press, 1999) 144–145, and Ulfstein, *supra* note 5, at 424.
- 781 47. 1982 LOS Convention, art. 76, and see, generally Churchill and Lowe, *supra* note 46, at
782 148–150.
- 783 48. 1982 LOS Convention, art. 76(8).
- 784 49. Lov om Norges territorialfarvann og tilstøtende sone, June 27, 2003.
- 785 50. T. Pedersen, "Svalbard vokser med 35 prosent" in *Svalbardposten* 38/2002.
- 786 51. C. A. Fleischer, "Den økonomiske sone, kontinentalsokkelen og territorialgrensen" in
787 Treholt et al., *supra* note 35, at 91.
- 788 52. C. A. Fleischer, *Petroleumsrett* (Oslo: Universitetsforlaget, 1983), 215–216.
- 789 53. C. A. Fleischer, *Folkerett* (Oslo: Universitetsforlaget, 1988), 31–32, 34, and C. A. Fleischer,
790 *Svalbardtraktaten*, *supra* note 35, at 5–7.
- 791 54. Quoted in Fleischer, *Svalbardtraktaten*, *supra* note 35, at 46.
- 792 55. J. J. Holst, "Norsk havretts- og nordpolitikk" in *Norsk Utenrikspolitikk*, ed. J. J. Holst and
793 D. Heradstveit (Oslo: Tano, 1985), 362.
- 794 56. St. meld. nr. 30 (2004–2005) *Muligheter og utfordringer i nord*, at 23.
- 795 57. 1155 *U.N.T.S.* 331.
- 796 58. R. Hofman, "Spitsbergen/Svalbard" in *Encyclopedia of Public International Law*
797 (Amsterdam: North Holland, 1990), and L. Delbez, "Le concept d'internationalisation," in *R.G.D.I.P.*,
798 1967, Tome LXXI, respectively, quoted in Ulfstein, *supra* note 5, at 123–124.
- 799 59. J. Andenæs, *Statsforvaltningen i Norge* (Oslo: Tano, 1990), 84 (trans. from Norwegian).
800 The formulation has been changed in later editions.
- 801 60. House of Lords Debates, vol. 477, July 2, 1986, quoted in Ulfstein, *supra* note 5, at 422.
- 802 61. Churchill and Ulfstein, *supra* note 34, at 40–51.
- 803 62. Ulfstein, *supra* note 5, at 87–89.
- 804 63. *Ibid.*, at 83–89, 479.
- 805 64. Churchill and Ulfstein, *supra* note 34.
- 806 65. R. B. Hansen, "Kriminalitet og strafferett på Svalbard—Del I," in *Lov og rett 2000*, at 574
807 (trans. from Norwegian).
- 808 66. Stortingsmelding nr. 9 (1999–2000) *Svalbard*, at 9 (trans. from Norwegian).
- 809 67. Stortingsmelding nr. 45 (2003–2004) *Om dei fiskeriavtalane Noreg har inngått med andre*
810 *land for 2004 og fisket etter avtalane i 2002 og 2003*, at 12.
- 811 68. Traditional fishing has been accepted as a nondiscriminatory allocation principle by the
812 European Court in the *Anklagemyndigheden v. Jack Noble Kerr* case and the *Albert Romkes v. Officier*
813 *van Justitie for the District of Zwolle* case. See Ulfstein, *supra* note 5, at 452.
- 814 69. St.meld. nr. 30 (2004–2005) *Muligheter og utfordringer i nord*, at 23 (trans. from
815 Norwegian).
- 816 70. G. A. M. Osen, "Norsk suverenitet og myndighetsutøvelse," lecture on Ulvikseminaret
817 2004, available at [www.sms1835.no/xTest/faste_arrangement/Ulvikseminar/Ulvik2004/Foredrag/](http://www.sms1835.no/xTest/faste_arrangement/Ulvikseminar/Ulvik2004/Foredrag/Foredrag%20nr%2013.htm)
818 [Foredrag%20nr%2013.htm](http://www.sms1835.no/xTest/faste_arrangement/Ulvikseminar/Ulvik2004/Foredrag/Foredrag%20nr%2013.htm).
- 819 71. *Aftenposten*, Aug. 8, 1994.
- 820 72. Osen, *supra* note 70.
- 821 73. G. Hønneland, *Barentsbrytninger. Norsk nordområdepolitikk etter den kalde krigen*
822 (Kristiansand S, Høyskoleforlaget, 2005), 85.

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19

- 823 74. K. Åtland, "Svalbard og russisk sikkerhetstenkning," *FFI-fokus*, 01/2004, 4–5.
- 824 75. *Ibid.*, at 5.
- 825 76. *Izvestija*, Oct. 17, 2001 and *Rosbalt*, Apr. 25, 2001, quoted in J. H. Jørgensen, "Svalbard:
826 Russiske persepsjoner og politikktutforming," *Internasjonal Politikk*, 2/2004, 182.
- 827 77. *Fiskeribladet*, quoted by NRK on July 20, 2004, available at [http://www.nrk.no/nyheter/
828 distrikt/nrk_finnmark/3945514.html](http://www.nrk.no/nyheter/distrikt/nrk_finnmark/3945514.html).
- 829 78. NRK, May 9, 2003, available at www.nrk.no/nyheter/innenriks/2744925.html.
- 830 79. NRK, Aug. 16, 2004, available at www.nrk.no/nyheter/innenriks/4002122.html.
- 831 80. R. Tamnes, *Oljealder 1965–1995. Norsk utenrikspolitisk historie, Bind 6* (Oslo: Univer-
832 sitetsforlaget, 1997), 328–329.
- 833 81. *Ibid.*
- 834 82. Stated by representative at the Commissioner of Mines at Svalbard in telephone interview
835 on June 3, 2005.
- 836 83. The report *Impacts of a Warmer Arctic: Arctic Climate Impact Assessment* (Cambridge
837 University Press, 2004), 13, concluded that the "average extent of sea-ice cover in summer has
838 declined by 15–20% over the last 30 years. This decline is expected to accelerate, with the near total
839 loss of sea ice in summer projected for late this century."
- 840 84. The USGS Petroleum Assessment 2000, quoted in an e-mail from Dr. Donald Gautier at **Q4**
841 the U.S. Geological Survey to the author on May 10, 2005. The assessment does not include the
842 Norwegian part of the Barents Sea.
- 843 85. Stated in an e-mail from Dr. Donald Gautier at the U.S. Geological Survey to the author
844 on May 10, 2005.
- 845 86. *Petroleumsforekomstene på norsk kontinentalsokkel 2003*, at 54.
- 846 87. "Leting i Barentshavet feirer 25 år," Aug. 15, 2005.
- 847 88. Slideshow by Per Blystad at the Norwegian Petroleum Directorate, e-mailed to the author
848 on May 12, 2005.
- 849 89. See *Petroleumsressursene på norsk kontinentalsokkel 2003*, at 19–28.
- 850 90. Norwegian Petroleum Directorate press release, "Nye grunne borer i Barentshavet nord,"
851 Aug. 17, 2005 (trans. from Norwegian).
- 852 91. Norwegian Ministry of Petroleum and Energy press release, "Økt satsning på nor-
853 dområdene," May 15, 2005 (trans. from Norwegian).
- 854 92. Notification from MAGE to Norwegian Petroleum Directorate, Ministry of Foreign Affairs
855 of Norway and Directorate of Fisheries, dated Jan. 18, 2005.
- 856 93. MAGE home page, available at www.mage.ru/eng/about.html.
- 857 94. Notification from MAGE to Norwegian Petroleum Directorate, Ministry of Foreign Affairs
858 of Norway and Directorate of Fisheries, dated Jan. 18, 2005.
- 859 95. T. Pedersen, "Russisk tokt på sokkelen," in *Svalbardposten*, 10/2004.
- 860 96. E-mail from Fridtjof Riis to the author on June 8, 2005.
- 861 97. Notification from MAGE to Norwegian Petroleum Directorate, Ministry of Foreign Affairs
862 of Norway and Directorate of Fisheries, dated Jan. 18, 2005.
- 863 98. *Ibid.*
- 864 99. Letter from Ministry of Foreign Affairs to the Norwegian Petroleum Directorate, Mar. 4,
865 2005.
- 866 100. Letter from the Norwegian Petroleum Directorate to MAGE, Mar. 29, 2005.
- 867 101. Letter from the Ministry of Foreign Affairs to the Russian Embassy in Oslo, Mar. 23, 2005
868 (trans. from Norwegian).
- 869 102. *Ibid.*
- 870 103. *Ibid.*
- 871 104. MAGE has not responded to the author's inquiries.
- 872 105. Supreme Court ruling in case Inr 45b/1996 snr 197/1995 of May 7, 1996.
- 873 106. *Ibid.*, at 6 (trans. from Norwegian).
- 874 107. *Ibid.*, at 13 (trans. from Norwegian).
- 875 108. Nord-Troms Tingrett ruling in cases 04-1285M, 04-1940M and 04-1941M of Dec. 20,
876 2004.

- 877 109. *Ibid.*, at 10 (trans. from Norwegian).
878 110. *Ibid.*, at 11 (trans. from Norwegian).
879 111. P. Christiansen, "Folkerett og politikk i nord" in *Aftenposten*, June 28, 2005.
880 112. International Court of Justice home page, available at www.icj-cij.org/icjwww/igeneralinformation/ibook/Bbookchapter3.HTM.
881
882 113. Fisheries Jurisdiction [1973] *I.C.J. Rep.* 3 and [1974] *I.C.J. Rep.* 3.
883 114. Letter from the Minister of Foreign Affairs of Iceland to the International Court, on May
884 29, 1972, reproduced in Fisheries Jurisdiction, [1973] *I.C.J. Rep.* 3, 7–8.
885 115. Åtland, *supra* note 74, at 5 (trans. from Norwegian). Jørgen Holten Jørgensen concluded
886 similarly. See Jørgensen, *supra* note 74.
887 116. Christiansen, *supra* note 111, and Norges Fiskarlag home page available at
888 <http://www.fiskarlaget.no/nyheter/news.asp?Key=233>.
889 117. A. H. Hoel, "Fiskeriforvaltningen i nordområdene" in *Horisont* (forthcoming). See also
890 Hønneland, *supra* note 73, at 85–88.
891 118. Iceland's fishing industry provides 70% of its export earnings. CIA: The World Factbook,
892 available at www.cia.gov/cia/publications/factbook/geos/ic.html#Econ.
893 119. 1982 LOS Convention, Annex II, Commission on the Limits of the Continental Shelf, art.
894 2 (1).
895 120. Rules of Procedure of the CLCS, Appendix I, art. 2(a), available on the CLCS Web site,
896 *supra* note 2. See also art. 9 of Annex II, *supra* note 119.
897 121. Stortingsmelding nr. 30 (2004–2005) Muligheter og utfordringer i nord, at 23 (trans. from
898 Norwegian).
899 122. Stortingsmelding nr. 30 (2004–2005) Muligheter og utfordringer i nord, at 23 (trans. from
900 Norwegian).
901 123. Rules of Procedure of the CLCS, *supra* note 120, art. 1 and 5(a).
902 124. U.N. Charter, art. 34.
903 125. U.N. Charter, art. 33(1).
904 126. The governor of Svalbard suggested there are 39 parties to the Svalbard Treaty, available at
905 www.sysseimannen.svalbard.no/eng/. Geir Ulfstein estimated that, after the dissolution of the Soviet
906 Union, Yugoslavia, and Czechoslovakia and the unification of Germany, there are 41 parties. See
907 Ulfstein, *supra* note 5, at 157–163 for further discussion.
908 127. Personal correspondence by e-mail with representative of the United Nations on May 6,
909 2005. The officer added that the issue is "of speculative nature and we are not in a position to offer
910 any comment."
911 128. T. Pedersen, "Vil kreve sokkelen under Nordpol-isen" in *Svalbardposten*, 09/2003 (trans.
912 from Norwegian).
913 129. In a press release of Aug. 12, 2005, the Norwegian Petroleum Directorate indicated that
914 the northern limit of the Norwegian shelf is between 84° and 85° north.
915 130. Interview with Minister of Foreign Affairs Jan Petersen on Apr. 15, 2005 (trans. from
916 Norwegian).
917 131. Interview with State Secretary Kim Traavik on Apr. 15, 2005 (trans. from Norwegian).
918 132. Interview with Minister of Foreign Affairs Jan Petersen on Apr. 15, 2005 (trans. from
919 Norwegian).
920 133. Interview with State Secretary Kim Traavik on Apr. 15, 2005 (trans. from Norwegian).
921 134. Reuters, June 20, 2005.
922 135. Reuters, June 20, 2005.
923 136. Prime Minister Kjell Magne Bondevik at press conference in Tromsø, Apr. 15, 2005 (trans.
924 from Norwegian).
925 137. Interview with State Secretary Kim Traavik on Apr. 15, 2005 (trans. from Norwegian).
926 138. Interview with State Secretary Kim Traavik on Apr. 15, 2005 (trans. from Norwegian).
927 139. Innst. S. nr. 264 (2004–2005) Innstilling fra utenrikskomiteen om muligheter og
928 utfordringer i nord (trans. from Norwegian).