1. Introduction to the Svalbard Archipelago


a. The Svalbard islands are located in the Arctic 455 miles (732 km) north of mainland Norway.¹ Spitsbergen is the largest island. They are an historic anomaly belonging to the Kingdom of Norway but with formalized shared access to the islands and their resources.

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b. Disputes over hunting and fishing rights led to the Treaty of Paris or Spitsbergen Treaty, in 1920 and enacted in 1925. The treaty remains an open treaty with 46 signatory states. The Spitsbergen Treaty is now more commonly referred to as the Svalbard Treaty which refers to the entire archipelago. In the literature it is possible to see references to any of the three names for the treaty. This study will use ‘Svalbard Treaty’ to prevent confusion.

c. Since 1925, the Svalbard islands are part of the Kingdom of Norway, and signatories maintain equal rights to fishing, hunting and mining. The treaty recognized only four nautical miles (nm) offshore to be controlled by Norway, in accordance with international maritime custom at the time.

d. In 2003, Norway extended its maritime sovereignty from the historic 4 nm to 12 miles in accordance with the UN Convention on the Law of the Sea (UNCLOS) standards. However, that claim was not approved by all signatory parties to the Svalbard Treaty.

e. Thus far, Norway has not sought to establish an Exclusive Economic Zone (EEZ), but did designate a Fisheries Protection Zone (FPZ) in 1977 covering the same distance of 200 nm. The FPZ is contested by Russia, the EU, Spain, Iceland and the UK.

f. Due to Svalbard’s unique international status, it has residents representing various signatory states. As of 2018, Svalbard has a population of 1,586 Norwegians, 724 other nationals living in Norwegian settlements, 467 people living in Barentsburg and Pyramiden (mostly Russian and Ukrainian), and 10 living in Hornsund where the Polish research station is operating. The chart below shows the distribution by nationality of non-Norwegians residing in Longyearbyen and Ny-Alesund as of 1 January 2016.

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4 Sobrido, 75.


7 Eeg-Henriksen and Sjømæling, 9.
g. There is a clause in the Svalbard Treaty that prohibits the establishment of military bases or use of the islands for warlike purposes.\(^8\) (More to be discussed)

h. Besides hunting and fishing, there is a declining coal mining industry, and international research centers that bring scientific researchers.\(^9\)

i. The warming Arctic climate is the source of increased scientific and commercial activity along with an increase in tourism as Svalbard becomes more accessible. It also results in avalanches, flooding and instable land due to melting permafrost (more to be discussed).

\(^8\) Article 9, “Treaty between Norway, The United States of America, Denmark, France, Italy, Japan, the Netherlands, Great Britain and Ireland and the British overseas Dominions and Sweden concerning Spitsbergen signed in Paris 9th February 1920.”

2. Legal Framework
   a. Svalbard’s complex international status makes some legal review necessary to understand the contention that arises between states sharing access. The first and most central governing document is the Svalbard Treaty. The United Nations Convention on the Law of the Seas (UNCLOS) establishes access rights for coastal, high seas areas and continental shelves relevant to the debate in Svalbard. The 2010 bilateral agreement between Norway and Russia on the delimitation of the Arctic Ocean and Barents Sea finally made progress in clarifying access between the two states. Lastly, Norway’s national regulations apply to residents of Svalbard and have at times created rifts with European parties concerning fishing.

   b. Summary of the Svalbard Treaty 1920
      i. Article 1: The High Contracting Parties undertake to recognize, subject to the stipulations of the present Treaty, the full and absolute sovereignty of Norway over the Archipelago of Spitsbergen
      
      ii. Article 2: Nationals of all the High Contracting Parties shall enjoy equally the rights of fishing and hunting in the territories specified in Article 1 and in their territorial waters. Norway shall be free to maintain, take or decree suitable measures to ensure the preservation and, if necessary, the reconstitution of the fauna and flora of the said regions, and their territorial waters; it being clearly understood that these measures shall always be applicable equally to the nationals of all the High Contracting Parties without any exemption, privilege or favour whatsoever, direct or indirect to the advantage of any one of them.
      
      iii. Article 3: The nationals of all the High Contracting Parties shall have equal liberty of access and entry for any reason or object whatever to the waters, fjords and ports of the territories specified in Article 1; subject to the observance of local laws and regulations, they may carry on there without impediment all maritime, industrial, mining and commercial operations on a footing of absolute equality.
      
      iv. Article 4: Subject to international obligations arising out of a state of war, owners of landed property shall always be at liberty to establish and use for their own purposes wireless telegraphy installations, which shall be free to communicate on private business with fixed or moving wireless stations, including those on board ships and aircraft.
      
      v. Article 5: The High Contracting Parties recognise the utility of establishing an international meteorological station in the territories specified in Article 1, the organisation of which shall form the subject of a subsequent Convention.
      
      vi. Article 6: Subject to the provisions of the present Article, acquired rights of nationals of the High Contracting Parties shall be recognised.

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vii. Article 7: With regard to methods of acquisition, enjoyment and exercise of the right of ownership of property, including mineral rights, in the territories specified in Article 1, Norway undertakes to grant to all nationals of the High Contracting Parties treatment based on complete equality and in conformity with the stipulations of the present Treaty. Expropriation may be resorted to only on grounds of public utility and on payment of proper compensation.

viii. Article 8: Norway undertakes to provide for the territories specified in Article 1 mining regulations which, especially from the point of view of imposts, taxes or charges of any kind, and of general or particular labour conditions, shall exclude all privileges, monopolies or favours for the benefit of the State or of the nationals of any one of the High Contracting Parties, including Norway.

ix. Article 9: Subject to the rights and duties resulting from the admission of Norway to the League of Nations, Norway undertakes not to create nor to allow the establishment of any naval base in the territories specified in Article 1 and not to construct any fortification in the said territories, which may never be used for warlike purposes.

x. Article 10: Claims in the territories specified in Article 1 which they may have to put forward shall be presented under the conditions laid down in the present Treaty (Article 6 and Annex) through the intermediary of the Danish Government, who declare their willingness to lend their good offices for this purpose. The present Treaty, of which the French and English texts are both authentic, shall be ratified.

c. UNCLOS

i. UNCLOS recognizes the rights of islands to internal waters, territorial sea and contiguous zone, an EEZ and a continental shelf. For Svalbard this means that Norway has the right to claim an EEZ up to 200 nm, as long as the Treaty of Svalbard principle of equal access is maintained.

ii. Article 77, paragraph 4: The outer continental shelf is under coastal state jurisdiction. Article 77 applies to fishing in and around Svalbard and in the Loophole. The Loophole is in international waters, but harvesting sedentary species is currently considered on a continental shelf resource and thus on either Russian or Norwegian territory. (relevant to the snow crab fishing dispute to be discussed)

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d. Review of the **2010 Bilateral Agreement on the Maritime Delimitation Zone in the Barents Sea and the Arctic Ocean** (between the Russian Federation and the Kingdom of Norway)

   i. On September 15, 2010 the foreign ministers of Norway and Russia signed a treaty on maritime delimitation and cooperation in the Barents Sea and the Arctic Ocean.13

   ii. The Barents Sea is fully enclosed by the 200-nautical-mile (nm) limits of the Norwegian Svalbard Archipelago to the northwest, the Russian Franz Josef Land and Novaya Zemlya to the north and the east, and the adjacent mainland coasts of Norway and Russia to the south.14

   iii. All economically significant fish stocks have been overexploited in the past, but the introduction of certain fishing bans, management measures, and efforts against illegal, unregulated, and unreported fishing are effective in helping stocks to recover.

   iv. Additionally, the Barents Sea may hold vast hydrocarbon resources. The 2008 U.S. Geological Survey estimated the mean undiscovered, conventional, technically recoverable petroleum resources in the Barents Sea Shelf to include eleven billion barrels of crude oil, 380 trillion cubic feet of natural gas, and two billion barrels of natural gas liquids.15

   v. In 1957, Norway and the Soviet Union agreed on their first maritime boundary in the Arctic. It was not until after each State claimed exclusive rights to the continental shelf in 1963 and 1968 that Norway and Russia entered into informal talks about their maritime boundary in the Barents Sea in 1970. Norway favored the 1958 Convention default rule: a boundary line following the median line between the respective coasts. The Soviet Union argued that a number of special circumstances (i.e., geographic, geologic, demographic, strategic, and climatic factors) justified a boundary line coinciding with the meridian of longitude 32°.16

   vi. In 1977, Norway unilaterally established a FPZ and although disputed, both states agreed to draw a single maritime boundary for the continental shelf and the FPZ, but could not agree on the boundary line. They did however agree to a provisional agreement for fishing to preserve stocks. The Grey Zone Agreement was initially limited to one year, but was after renewed continuously on a yearly basis.17

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14 Neuman.


16 Neuman.

17 Neuman.
vii. In 2007, Norway and Russia revised the 1957 Agreement, extending the maritime boundary in the Varangerfjord area northwards to the intersection of Norway’s preferred median line and Russia’s sector line in the Barents Sea. It was not until April 2010 that Norwegian Prime Minister Jens Stoltenberg publicly announced that negotiations had been completed. The 2010 Agreement was signed in Murmansk, Russia on September 15th, 2010.18

viii. The 2010 Agreement defines the maritime delimitation line by eight points and splits the disputed area nearly in half. The underlying calculation accounts for the longer Russian coastline, but factors Russia invoked earlier do not seem to have influenced the boundary line. The 2010 Agreement entitles Russia to exercise certain rights and jurisdiction derived from Norway’s FPZ jurisdiction within 200 nm of the Norwegian mainland and beyond 200 nm off the Russian coast.

ix. The 2010 Agreement will not affect the application of agreements on fisheries cooperation between the States Parties. However, the 2010 Agreement terminates the Grey Zone Agreement of 1978 as well as the 1980s moratorium on the exploration and exploitation of hydrocarbon resources.

x. Additionally, there are provisions for the coordinated exploitation of transboundary hydrocarbon resources.19

e. The Kingdom of Norway’s White Paper on Svalbard
i. Norway publishes a White Paper on Svalbard policy every ten years, with the most recent version published in 2016. The principles outlined are the following:20
   1. Consistent and firm enforcement of sovereignty
   2. Proper observance to the Svalbard Treaty and control to ensure compliance with the Treaty
   3. Maintenance of peace and stability in the area
   4. Preservation of the area’s distinctive natural wilderness
   5. Maintenance of Norwegian communities in the archipelago

ii. Under Norwegian law, Svalbard has internal waters, a territorial sea and FPZ.21 In Chapter 3 of the White Paper, Norway has sovereignty over 12 nms to include the airspace above. It also specifies that all private legal persons in Svalbard must adhere to Norwegian rules and administration in the same manner as on the mainland.22

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18 Neuman.
19 Neuman.
iii. The Paper also states that in accordance with the international Treaty, only the parties (the states) may demand equal treatment by Norway on behalf of their national citizens and companies.

iv. According to the White Paper, non-discrimination does not apply to all types of activity in Svalbard, but only those specified in Articles 2 and 3 of the Treaty, hunting and fishing and maritime, industrial, mining and commercial operations. What the requirement for equal treatment covers from case to case must be determined on the basis of an interpretation of the Treaty- which Norway reserves as its right.

v. The prohibition against using Svalbard for warlike purposes is generally applicable and applies to all parties to the Treaty. By virtue of its sovereignty, Norway has a particular duty to ensure that no one violates this prohibition. However, it also interprets Article 9 of the Svalbard Treaty as not forbidding military activity, only acts to wage war or build fortifications.

vi. Chapter 3 asserts that the archipelago is covered by provisions of the North Atlantic Treaty, including possibly invoking Article 5 so that Norway may individually and collectively implement defensive measures in wartime or under the threat of war.

vii. It also precludes that the prohibition against fortification pertains to specific reinforced structures usually equipped with artillery positions, that does not affect all installations or structures of a military nature or significance. It further allows for Norwegian Armed forces aircraft and military personnel on Svalbard yet prohibits all foreign military activity.

viii. Research activities were not included in the Svalbard Treaty, so Norway does not consider the right nor equal right extended to nationals of the parties to the Treaty for research. Yet Norway independently asserts its willingness to encourage international research cooperation.

ix. Free trade agreements between Norway and the European Economic Community and the Convention establishing the European Free Trade Association continue to apply to Svalbard. However, as a consequence of the provision in Article 3 of the Svalbard Treaty governing access, Svalbard is not covered by the Schengen agreement.

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3. Primary Actors’ Positions

a. Norway
   i. Norway adamantly defends its interpretation of the Svalbard Treaty as inclusive of waters as well as land in the territorial box defining the Svalbard archipelago encompassing 24,209 square miles.29
   
   ii. Norway reiterates its commitment to international cooperation, while also mentioning the right to invoke Article 5 of the North Atlantic Treaty in Svalbard if it deems necessary.
   
   iii. Norway follows the Svalbard Treaty based on its interpretation, but does not consider its military prohibited from involvement, only conducting warfare from Svalbard.
   
   iv. Norway has continued to enforce its national regulations despite opposition by the EU and other actors operating in Svalbard.
   
   v. Norway issued petroleum exploration licenses for the seabed off the coast of Svalbard in January 2015 which it considers its national resource, free from the stipulations of the Svalbard Treaty.30

b. Russia
   i. Russia shows continued compliance with Norway and other Svalbard parties in practice but makes official complaints against Norway’s interpretation of the Treaty and subsequent restrictions.
      1. Russia’s official protests to Norway do not interfere with compliance on the ground in Svalbard, the tension for now, remains political and may be in order to further Russia’s future plans and legal claims.31
      2. The signing of the bilateral agreement between Norway and Russia for Svalbard was considered an example of continued Arctic cooperation.

   ii. However, Russia is not acquiescent to NATO presence in and around Svalbard.32
      1. Russia protested the NATO Parliamentary Assembly meeting on Svalbard in 2017.33 The military restrictions of Article 9 of the Svalbard Treaty are ambiguous. Russia contests it has been violated on several occasions.

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31 Fert-Malka and Bouffard.
33 Fert-Malka and Bouffard.
2. Exceptions to Russia’s perceived peaceful cooperation are the unannounced military operations conducted close to Norway’s territory. For example, Norway was not informed about a Northern Fleet exercise in May 2018.

iii. The installation of Svalbard Radar (1996) and the Svalbard Satellite Station (1997) have upset Russia with arguments that they could be used to monitor ballistic missile flight paths.

iv. The sustained Russian presence in Barentsburg and Pyramiden are considered a political decision to keep a foothold in Svalbard.
   1. The coal mine in Barentsburg operates at a loss and is even labelled a social project to employ eastern Ukrainians seeking employment.
   2. Russia plans to diversify and expand its presence on the Archipelago for tourism activities, a fish processing center, and more scientific research.

v. Political tension between Norway and Russia is rising. Russia’s continuous complaints are against Norway’s management of Svalbard, its interpretation of the Svalbard Treaty, increasing military presence and activity. Growing geopolitical tension beyond Svalbard make spillover a risk.
   1. Russia is opposed to environmental restrictions and protections imposed by Norwegian national law.
   2. Russia routinely challenges Norway’s management of Svalbard concerning mining, fisheries and civilian safety infrastructure.
   3. Russia among other signatory states, contends the FPZ and Norway’s licenses to exploit Svalbard’s continental shelf.
   4. Norway introduced deportation rules in September 2016 that Russia considers a “serious irritant in Russian-Norwegian relations.” Norway asserts that sanctions against Russia (and thus travel bans against particular personnel) apply in Svalbard.
   5. Russia also contends the use of taxes and fees levied by Norway, and considers that Barentsburg does not receive a fair portion of economic support.

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35 Wither, 33.
39 Fert-Malka and Bouffard
40 Vasilyev.
41 Vasilyev.
6. The most recent point of contention is the use of helicopters. Norway’s aviation authorities limit Russian corporation Arktikugol’s use of helicopters to support of its coal mine. Russia wants to expand helicopter use.\(^{42}\)

c. The European Union (EU)
   i. The EU itself is not party to the Svalbard Treaty, yet 20 of the EU’s 28 member states are,\(^{43}\) so the EU does have an interest on the part of its members. Additionally, the EU Common Fisheries Policy manages fishing activities of its member states and issues licenses including in the area surrounding Svalbard.

   ii. The EU is often critical of Norway’s interpretation of the Svalbard Treaty, and has denounced Norway’s seizure of certain EU member state fishing vessels.\(^{44}\) A Lithuanian vessel was seized by Norway in international waters near the Svalbard archipelago, and a Latvian fishing vessel was arrested and fined in waters off Svalbard in 2017.\(^{45}\)

   iii. Although, the EU has taken a clearly stated position, the European Commission admits that its actions at the time (2004 response to Norway’s capture of a Spanish vessel) were precipitate and that is not competent to rule on this issue alone.\(^{46}\)

   iv. More recently, the European Commission protested against Norway’s introduction of legislation regulating haddock fishing.\(^{47}\)

   v. Through its national regulations, Norway can unilaterally and quickly decide on fishing by-catch percentage limits, this type of regulation receives strong criticism from Europêche.\(^{48}\) (more to be discussed in the international disputes section)

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\(^{42}\) Vasilyev.

\(^{43}\) Sobrido, “Treaty of Paris,” 81

\(^{44}\) Hansen, 162.

\(^{45}\) Morgane Fert-Malka and Troy Bouffard.

\(^{46}\) Sobrido, “Treaty of Paris,” 84.


d. **EU Arctic states**  
i. EU states that are members of the Arctic Council include Denmark by way of Greenland, and Finland, while Norway and Iceland are part of the European Economic Area.

ii. Iceland accuses Norway of not respecting the Svalbard Treaty’s principle of equal access. Since the 1990s, there have been several incidents involving arrests of Icelandic vessels.
   1. In 1994, Norway seized Icelandic fishing vessel Hanangur II. 49
   2. In 1996 the Supreme Court of Norway allocated fishing quotas based off historic precedent which excluded Iceland causing contention. 50

e. **European non-Arctic states**  
i. EU member states that are not geographically in the Arctic region yet have a continued active presence in Svalbard, include Spain, Portugal, Latvia, Lithuania and Germany. They are parties to the Svalbard Treaty and access the waters surrounding Svalbard for fishing.

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4. **Interests of additional signatory states**

a. China
   
i. China is a party to the Svalbard Treaty and has been present on Svalbard for scientific research since 2004 with the Yellow River research station.\(^{51}\)
   
   ii. China is a partner at the EISCAT (European Incoherent Scatter Scientific Association) and the Norwegian Polar Institute, both of which are located on Svalbard.\(^ {52}\)
   
   iii. The Chinese intended to build a radar station on Svalbard. Norwegian Politian urged Norway to purchase the rest of the private land.\(^ {53}\)

b. Japan
   
i. SvalRak is a launch station for research rockets at Ny-Ålesund. Along with Norwegian researchers, the staff of the facility are primarily Japanese and American.\(^ {54}\)
   
   ii. Japan also participates in EISCAT and the Norwegian Polar Institute.\(^ {55}\)

c. South Korea
   
i. In 2002, South Korea established Dasan Arctic Science Station (Ny-Alesund) and signed the Svalbard Treaty in 2012.\(^ {56}\) South Korea also partners with the Norwegian Polar Institute for scientific research in Svalbard.\(^ {57}\)
   
   ii. South Korea is expanding its role in the region, becoming an observer in the Arctic Council in 2013.\(^ {58}\)

d. India
   
i. India was an original signatory in 1920 and has a scientific research station at Ny-Alesund.\(^ {59}\) India is a partner with the Norwegian Polar Institute.\(^ {60}\)

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\(^{51}\) P. Whitney Lackenbauer, Adam Lajeunesse, James Manicom, and Frédéric Lasserre, *China’s Arctic Ambitions and What They Mean for Canada*, University of Calgary Press: Calgary, 2018, 60.


\(^{58}\) Sakhuja, Vijay, and Kapil Narula, 44.

\(^{59}\) Sakhuja, Vijay, and Kapil Narula, 44.

5. Economic Development

a. Despite abundant permafrost and glacier cover, natural resources on the islands include coal, iron ore, copper, zinc, phosphate, wildlife and fish.\(^6\)\(^1\)

b. There is likely oil and gas located offshore. In 2017, the Norwegian Petroleum Directorate published an assessment anticipating unprecedented amounts of oil and natural gas.\(^6\)\(^2\) Currently, it is still expensive for oil companies to operate in the Arctic and it requires unconventional technology.\(^6\)\(^3\) If oil and gas exploitation again becomes profitable the uncertainties surrounding jurisdiction of offshore resources will need to be resolved.

c. The tourism industry has grown substantially since the start of the initiative in the 1990s. One reason is the Norwegian government’s decision to develop tourism in response to the decline in coal mining.

d. In 2015, enterprises associated with the tourism and leisure industry in Longyearbyen, Svea and Ny-Ålesund had a turnover of more than NOK 630 million (64.9 million euro).\(^6\)\(^4\)

1. The number of passengers on cruise vessels to Svalbard has rapidly increased from approximately 25,000 in 2011 to 41,000 visitors in 2016.\(^6\)\(^5\)

e. The Russian mining company showed interest in resuming its activities in Grumantbyen and Colesbukta, and has applied for permission to construct a road from Barentsburg to Colesbukta.\(^6\)\(^6\)

f. Norwegian coal mining production is now 10% what it was during peak coal production. Store Norske now operates just one mine pit with 45 personnel. The last pit is expected to close in the next 10-15 years.\(^6\)\(^7\)

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\(^6\)\(^4\) Eeg-Henriksen and Sjømæling, 16.

\(^6\)\(^5\) Eeg-Henriksen and Sjømæling, 17.

\(^6\)\(^6\) Norwegian Polar Institute, “Svalbard.”

6. Environmental Concerns
   a. The Norwegian Centre for Climate Services (NCCS) published a report in January 2019 titled, *Climate in Svalbard 2100* that models climate change projections based on historic and current data dating back to 1971. The current situation is that Svalbard is experiencing the greatest air temperature increase of any populated area in the world at an average increase of 4 degree Celsius (7.2 degrees Fahrenheit).  

   b. The summary of the report includes consequences of climate change already impacting the archipelago, and predictions based on modeling for the coming decades.
      i. Air temperature rise is expected to be in the range of 7 to 10 degree Celsius in the period of 2071 and 2100.
      ii. Increased precipitation will be 45-65% more than currently experienced with more frequent and intense rainfall.
      iii. Increased flooding is the result of rising glacier melt and more precipitation.
      iv. Near surface permafrost will thaw in coastal and low altitude areas.
      v. There will be more frequent occurrences of landslides and avalanches.
      vi. The loss of glacial mass will contribute to global sea level rise.
      vii. In the next 50 years sea water temperatures are expected to rise 1 degree Celsius.

   c. The air temperature increase experienced in Svalbard is occurring 5 times faster than the global average. Winter temperatures show an increase in 7 degrees Celsius since 1971.  

   d. Inhabitants and wildlife are being impacted by the effects of climate change such as:
      i. The avalanche of 2015 (resulted from increased rainfall that froze and destabilized subsequent snow cover). Communities of Longyearbyen are considered high risk to future avalanches with 150 homes being relocated.
      ii. Flooding of the global seed vault caused by permafrost melt.
      iii. Harbors are now accessible to ships year-round.
      iv. Arctic plankton are being pushed further north by Atlantic plankton. Animals (such as the auk bird) rely on the Arctic plankton and are losing their food source.

   e. In order to lessen the degree of impact from climate change, the Council chief of Longyearbyen, Arild Olsen plans to make the city carbon neutral within 10 years. He plans to achieve this with solar polar during summer months and a hydrogen power plant, which the Norwegian government agreed to build.

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69 Watts.

70 Watts.

71 The global seed vault holds around 1 million seed varieties for preservation. (Watts)

72 Watts.

73 Watts.
f. Norway has national regulations that aim at conservation in place in Svalbard since June 2001. The regulations include:
   i. Provisions to mitigate or prevent pollution and waste
   ii. Procedures for harvesting flora and fauna
   iii. Protection of cultural heritage sites and structures, and historic objects
   iv. Precautionary principle that considers cumulative environmental effects
   v. User pays principle for clean-up costs

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7. International disputes
   a. Maritime territorial disputes
      i. Norway’s Svalbard policy is contested over the area outside territorial waters. While the Norwegian government maintains that it has exclusive rights over the ocean around the archipelago, signatory parties’ officials argue that the principle of non-discrimination from the Treaty also applies here, and that Svalbard has its own continental shelf.  

      ii. The Norwegian government interprets the Svalbard Treaty literally and thus argues that because the area outside of the original territorial waters is not mentioned, the Treaty does not apply there. 

      iii. Norway asserts that the Svalbard continental shelf is joined with Norway’s mainland’s continental shelf, declaring the Treaty of Svalbard is not applicable to the continental shelf- a disputed claim.

      iv. In 2015, Norway opened new blocks for oil and gas in the northern part of the Barents Sea, which met with protests from Russia claiming that some of these blocks are on the continental shelf of Svalbard, and that Norway violates the Treaty by opening these blocks without consulting the contracting parties.

      v. The Loophole: an area of 62,400 square km considered international waters. However, the Barents Sea is a continental shelf sea. Russia and Norway claim the sea floor as a sovereign resource. The map below shows where the Loophole is located with state claims.

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76 Groenning.


78 Groenning.

79 Hansen, 167.

80 Map Source: Claes Lykke Ragner/ FNI 2010
vi. The Snow Crab Issue

1. The Loophole dispute is linked to the Barents snow crab. The crab is the first major continental shelf resource to be exploited on the continental shelf surrounding Svalbard. Snow crab fishing started in 2013 in the Loophole with vessels from Norway and Spain. Since then, vessels from Latvia, Lithuania and Russia joined in the Barents Sea.\footnote{Hansen, 163-164.}

2. In 2015, Norway, Russia and the EU agreed to terming the crab a ‘sedentary species’ which implies that coastal states have the exclusive right to harvest snow crab on their shelves.\footnote{Hansen, 164.}

3. In 2016, vessels from Norway, Spain, Lithuania, Latvia and Russia caught 11,469 tons of snow crab in Norway, most from the Loophole with at least 3,085 tons registered from Norwegian vessels were from the Svalbard continental shelf. That same year, Norway started arresting EU vessels in the Loophole.\footnote{Hansen, 162.}

   a. In January 2017, Norway arrested a Latvian vessel in the Svalbard FPZ for fishing within the Svalbard continental shelf.\footnote{Hansen, 164.}

4. Pending establishment of a management regime, Russia closed its part of the continental shelf to all snow crab fishing. Norway has placed a ban on snow crab fishing in the area - except for several Norwegian vessels which EU vessels contest.\footnote{Hansen, 164.} Since major resources have not been harvested on Svalbard’s shelf previously, it has never been tried in court.\footnote{Hansen, 173.}

b. Fisheries

   i. UNCLOS was signed in 1982 giving sovereign rights of islands to internal waters, territorial sea and contiguous zone, an EEZ and a continental shelf. By Norwegian law, Svalbard has internal waters, a territorial sea and a FPZ as stated above.\footnote{Sobrido, “Treaty of Paris,” 78.} Not all Treaty signatory states agree to Norway’s national territorial claims, nor fishing regulations.

   ii. Furthermore in 1976, Norway established the Zone Act, stipulating that unless otherwise stated, the right to fish in the area is reserved for Norwegians.\footnote{Sobrido, “Treaty of Paris,” 79.}

   iii. In 2006, Norway submitted to the Commission on the Limits of the Continental Shelf (CLCS) applications for 3 enclaves in international waters bordering the waters of Svalbard. CLCS issued its recommendations in 2009.\footnote{Sobrido, “Treaty of Paris,” 81.}
8. Security Concerns

a. Increased activity

i. No other high Arctic location in the world has as many visitors as Svalbard, likely due to easy flight and sea access for much of the year. Since the terrain in Svalbard is fragile, organizing travel to avoid damaging the environment is a challenge.  

ii. Since 2008, the total population living in the settlements of Svalbard increased from 2,301 to 2,738 by 2018, with an overall decrease in Norwegians from the mainland and an increase in other nationals settling in Svalbard.

b. Search and Rescue

i. Increased activity and traffic in the Arctic region call for a strengthening of rescue service cooperation between countries with search and rescue responsibilities.

ii. In 2011, Norway concluded a treaty with Canada, Denmark, Finland, Iceland, Russia, Sweden and the United States to cooperate on search and rescue coverage in connection with air and sea traffic in the Arctic. The agreement was more binding and enhanced regional organization of search and rescue operations. The agreement was signed at the Arctic Council’s ministerial meeting in Nuuk, Greenland and is being followed up by the Emergency Prevention, Preparedness and Response Working Group (EPPR).

iii. Civil protection and emergency preparedness in Svalbard have been strengthened, including both the prevention and response aspects. By area, Svalbard is Norway’s largest police district, and the Governor has the same authority as a chief of police on the mainland.

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94 Norwegian Ministry of Justice and Public Security, Svalbard, 103.
iv. The Governor of Svalbard acts in the capacities of both chief of police and county governor, and is the principal authority with regard to both planning and crisis management in the area of civil protection and emergency preparedness. As chief of police, the Governor of Svalbard also heads the rescue management team in the local rescue center in Svalbard.

v. A dedicated emergency preparedness council consists of representatives from large research institutions and companies in Svalbard, the Longyearbyen Red Cross, Svalbard Church, and Longyearbyen Hospital. The council discusses relevant civil protection and emergency preparedness issues. The council contributes to a joint risk and vulnerability assessment and a common platform for planning civil protection and emergency preparedness in Svalbard.

vi. Norway cooperates with Russia on border security, search and rescue and incidents at sea. Coast guard cooperation was exempted from the restrictions put in place in 2014. There is also a hotline between the Joint Operational Headquarters at Bodø and the Northern Fleet.

vii. The Norwegian Meteorological Institute has stations at Hopen and Bjørnøya. In addition, meteorological measurements are conducted for other Norwegian scientific institutions in both locations. The stations are an important preparedness resource for search and rescue operations, and make logistics available to public institutions.

viii. When an incident occurs, managing it depends on the efforts of volunteers and the provision of resources from the mainland. The local rescue coordination centre in Svalbard coordinates an annual average of 71 rescue missions over the past five years.

ix. The state pilotage service was launched in 2012. The first season with compulsory pilotage in the archipelago was launched in 2015. Extensive work has been done on charting the waters surrounding Svalbard. The international Polar Code also covers the waters surrounding Svalbard since 2017.

96 Norwegian Ministry of Justice and Public Security, Svalbard, 103.
97 Norwegian Ministry of Justice and Public Security, Svalbard, 103.
100 Norwegian Ministry of Justice and Public Security, Svalbard, 103.
x. Svalbard’s rescue resources include: two large rescue helicopters, air ambulance service, service vessel Polarsyssel, and Coast Guard vessel KV Svalbard.¹⁰² The map below shows zones of international search and rescue responsibility.¹⁰³

![Map of Arctic zones of search and rescue responsibility](image)

[Image: Map showing zones of international search and rescue responsibility]

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c. **Militarization**
   
i. The Norwegian interpretation of Article 9 of the Svalbard Treaty prohibits all foreign military activity. Yet it does not prevent access or future presence of the Norwegian armed forces to exercise sovereignty, defense, and to protect the environment.¹⁰⁴

   ii. Since 2014, most military cooperation was suspended and Russia and NATO currently exchange less information about exercises and deployments.¹⁰⁵ Since 2017, both Russian and Norwegian militaries increased activity near Svalbard.¹⁰⁶

   iii. Russia’s longstanding complaints include the integration of the islands into NATO’s command structure and visits by Norwegian warships and military cargo aircraft. Russia claims NATO’s presence on Svalbard undermines what it regards as the archipelago’s demilitarized status.¹⁰⁷

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¹⁰⁵ Wither, 33.


¹⁰⁷ Wither, 31.
iv. The situation will likely intensify with the change in policy by the US Administration. The statements made by Secretary of State Mike Pompeo in May 2019 clearly warned the Arctic Council of ‘subversion’ by Russia and China.108 The Department of Defense Arctic Strategy published in June 2019 expounds on great power competition in the Arctic and the need for greater US presence.109 Such proclamations and now investments, are perceived as provocation to Russia, and will likely lead to an escalation of militarization in the Arctic as US capabilities grow.

v. A disagreement between Russia and Norway occurred in 2015 when Russian Deputy Prime Minister Dmitry Rogozin made an unannounced visit to Svalbard despite being sanctioned by Norway for his part in the Ukraine conflict.110

vi. In 2016, Russian commercial helicopter operations and the transit of Russian military personnel through Svalbard during an exercise have concerned Norway because Norway requires any foreign military and civilian government vessels wishing to enter the territorial waters around Svalbard to apply in advance for diplomatic clearance.111

vii. In October 2017, a Russian maritime threat assessment cited Norway’s ‘absolute national jurisdiction’ over the archipelago as a potential cause of war.112

viii. Russia has been building up its military capabilities in the region, to include the Northern Fleet, two new Arctic infantry brigades, new and rebuilt military infrastructure and more frequent exercises.113

ix. The High North is important as a staging area for Russia’s nuclear deterrence, and where strategic submarines and missiles are located. The Arctic is where the Russian Northern Fleet operates, which potentially threatens the Sea Lanes of Communications (SLOCs) across the Atlantic.114


111 Norwegian Ministry of Justice and Public Security, Svalbard, 22

112 Wither, 32.

113 Wither, 34.

114 Nyhama, 10.
x. During the last two years, when Norwegian forces conducted an exercise the Russian military became active in the region provoking Norway to respond militarily as well. During and particularly after exercises, there was a sharp increase in incidents of the Norwegian Air Force intercepting Russian planes flying towards Norwegian airspace.\textsuperscript{115}

xi. Russia fears NATO is trying to contain Russia’s activities in the Arctic. Russia has responded with official accusations that Norway has violated the Svalbard Treaty by hosting NATO events in Longyearbyen. Russia also protests against Norway’s Coast Guard activity and military visits.\textsuperscript{116}

xii. The Russian 61st Naval Infantry Brigade frequently stages a landing exercise close to the Norwegian border. The exercise is never announced and usually starts out heading for Norwegian territory, and then breaking off to the Russian side of the border at the last minute.\textsuperscript{117}

xiii. Russia’s latest operation ‘Ocean Shield’ in August 2019 in the Baltic Sea, is the cited reason for Norway’s increased military budget and the ‘deteriorated security situation’.\textsuperscript{118}

xiv. Military activity is increasing in the region. Russia’s Nagurskoye fighter aircraft base in Franz Josefs will be operational 2020, it is 260 kms/160 miles east of Svalbard. The base started in 2017 and will accommodate transport, bomber and antisubmarine aircraft.\textsuperscript{119}

xv. Most troubling, no institution currently exists to arbitrate on disagreements over alleged illegal military activities on or around the archipelago.\textsuperscript{120}

xvi. However, despite the threats and fears, Russia observes international agreements on maritime safety and is an active participant in the Arctic Council and other non-military cooperative bodies on the Arctic.

xvii. Additionally, the public discourse and Russian national documents on the Arctic highlight a desire to preserve peace and international cooperation in the Arctic.\textsuperscript{121}

\textsuperscript{115} Nyhama, 17.

\textsuperscript{116} Vasilyev.

\textsuperscript{117} Nyhama, 17.


\textsuperscript{119} Intelligence Risk Assessment 2019, Danish Defence Intelligence Service, 20 November 2019, Copenhagen, accessed at https://feddis.dk/SiteCollectionDocuments/FE/EfterretningsmaessigeRisikovurderinger/Intelligence%20Risk%20Assessment%202019.pdf

\textsuperscript{120} Wither, 33.

9. Reflections and Future Implications

a. The necessity of legal clarification
   i. Norway’s protection of its territory beyond the areas clearly delineated in the Svalbard Treaty is cause for confrontation between signatory parties since the Zone Act in 1976.

   ii. Several Treaty parties have threatened to try Norway in international court over fishing rights to waters surrounding Svalbard. That may be the act necessary for the Svalbard Treaty to be relooked and clarified. Without such clarification, the issue will continue to perpetuate frustration in a perceived ‘grey zone’.

   iii. Additionally, for commercial fishing enterprises that rely on fishing or snow crab harvesting, Norway’s quotas and vessel interceptions are costly. For snow crab specifically, EU vessels estimate losses sustained to amount to as much as 205,000 EUR each month.122

   iv. The Svalbard Treaty has reached its one hundredth anniversary, which would be a timely opportunity to bring concerned parties together to update or specify the maritime and military limitations, or if necessary, renegotiate to avoid further arrests and diplomatic consternation. Russia has requested a revision of the Svalbard Treaty.123

b. Military provocation
   i. The majority of the literature available that addresses security implications for Svalbard tends to frame the arguments in a resurgent Cold War narrative. While from some perspectives that may be the case, the lack of a multilateral body to discuss security concerns in the Arctic can only heighten mistrust and perpetuate a ‘security dilemma’ with its epicenter in Svalbard.

   ii. Russia’s military buildup in the Arctic can be viewed as a legitimate concern for Norway and the other Nordic states. The new Nagurskoye aircraft base is close to Svalbard with many new defensive and offensive capabilities. However, recurring NATO exercises near ‘demilitarized’ Svalbard and active radar stations are also a legitimate concern to Russia.

   iii. If the Arctic is to remain a peaceful region avoiding the spillover effects of great power competition, lines of communication on regional security between all Arctic actors should be open and stay open.

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122 Hansen, 169.

123 Vasilyev.