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## An Icy Invasion: Russia's Seizure of the Norwegian Waters in the Arctic

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## COMMENT

# AN ICY INVASION: RUSSIA'S SEIZURE OF THE NORWEGIAN WATERS IN THE ARCTIC

MARGARET TURCHINSKI\*

*Russia is aiming to expand its power in the Arctic Circle by acquiring unrestricted access to hydrocarbon reserves off the coast of the Norwegian Archipelago of Svalbard. Two bodies of international law govern Svalbard. The Svalbard Treaty of 1920 ascertains Norway's sovereignty over the archipelago and permits the signatory nations, including Russia, to conduct commercial activities on the land and in the "territorial waters". The United Nations Convention on the Law of the Sea establishes maritime zones that allow coastal states to claim exclusive rights to their territorial seas and continental shelf. Norway holds that "territorial waters" in the Svalbard Treaty is the twelve-nautical mile territorial seas and limits Russia's access to hydrocarbon resources there. Russia contends that "territorial waters" includes the 200-nautical mile continental shelf beyond the territorial seas. After analyzing both interpretations of the Treaty under the Vienna Convention on Law of Treaties, the Russian interpretation of "territorial waters" falters in many respects. This comment argues Russia's aim for unrestricted access to Svalbard's resources is a violation of UNCLOS. The international community must forge a uniform interpretation: The Arctic Counsel or NATO should demonstrate regional support, Norway should bring a case against Russia before the ICJ for encroachment, and Norway should place additional economic sanctions on Russia.*

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## I. INTRODUCTION

On February 24, 2022, Russia sent almost 200,000 troops into Ukraine in continuation of its perpetrated violence tracing back to Russia’s invasion and occupation of Ukraine’s Crimea in 2014.<sup>1</sup> The war on Ukraine has profoundly impacted nations across the globe.<sup>2</sup>

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1. Paul Kirby, *Why Has Russia Invaded Ukraine and What Does Putin Want?*, BBC NEWS (May 9, 2022), <https://www.bbc.com/news/world-europe-56720589> (describing Russia’s actions as the largest invasion in Europe since World War II).

2. See *Ukraine War: What Are the Impacts on the World Today?*, RESCUE.ORG (Nov. 24, 2022), <https://www.rescue.org/article/ukraine-war-what-are-impacts->



strike offshore oil, and oil production moved to the Barents Sea in the years following.<sup>7</sup> Although the two nations are vastly different in terms of population, size, and military strength, Norway and Russia are well-matched competitors in the oil and gas industries.<sup>8</sup> The competition between the two nations to drill for hydrocarbon reserves has exacerbated over the last decade with the culmination of factors such as global warming<sup>9</sup> and amplified Russian military conflict.<sup>10</sup> Therefore, Russia's interest in expanding its power in the Arctic Circle and securing unrestricted access to the hydrocarbon resources in the continental shelf around Svalbard is mounting.<sup>11</sup>

This comment illustrates how Russia's recent diplomatic<sup>12</sup> and sovereign actions<sup>13</sup> are an attempt to expand its privileges under the

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7. Christopher R. Rossi, 'A Unique International Problem': *The Svalbard Treaty, Equal Enjoyment, and Terra Nullius: Lessons of Territorial Temptation from History*, 15 WASH. U. GLOB. STUDS. L. REV. 93, 100 (2016) (detailing the move of oil production from the North Sea to the Norwegian Sea and, most recently, to the High North reaches of the Barents Sea).

8. *Id.* (confirming both Norway and Russia are among the world's largest net exporters of oil and natural gas).

9. See Oded Cedar, *The Arctic Council: Gatekeeper or Doormat to the World's Next Major Resource Battle?*, 12 SUSTAINABLE DEV. L. & POL'Y 40, 40 (2011) (explaining how the Earth's irrefutable rising temperature in the atmosphere is melting the Arctic's permafrost and consequentially permitting access to oil and gas reserves for the first time).

10. See Magdalena A.K. Muir, *Hydrocarbon Development and Maritime Shipping for the Circumpolar Arctic in the Context of the Arctic Council and Climate Change*, 8 SUSTAINABLE DEV. L. & POL'Y 38, 38 (2008) (stating military tension has emerged in the Arctic Circle over which nation controls access to the main shipping route, the Northern Sea Route, connecting Scandinavia, Russia, and Asia).

11. See Rossi, *supra* note 7, at 95–96 (noting that Russia's deputy prime minister Dmitry Rogozin has referred to the Arctic as a "Russian Mecca," and that Russia is taking a closer look at development in the Arctic).

12. *E.g.*, Press Release, Russian Foreign Minister Sergey Lavrov, Press Release on Foreign Minister Sergey Lavrov's Message to Norwegian Foreign Minister Ine Eriksen Soreide on the Occasion of the 100th Anniversary of the Spitsbergen Treaty, The Ministry of Foreign Affairs of the Russian Federation (Feb. 4, 2020), <https://demaribus.files.wordpress.com/2020/02/russia-letter.pdf> [hereinafter Lavrov's Message to Norwegian Foreign Minister] (criticizing the Norwegian Foreign Ministry for violating the Svalbard Treaty).

13. *E.g.*, Russian Federation, *Foundations of the Russian Federation State Policy in the Arctic for the Period up to 2035*, 2020 RUSSIAN MAR. STUD. INST. ¶¶ 12–15 (translated by Anna Davis & Ryan Vest) [hereinafter *Russia's Arctic State Policy*] (announcing Russia's priority in the Arctic Circle is to protect Russian interests on the continental shelf around Svalbard).

Svalbard Treaty, which governs the political and economic activities around Svalbard. Therefore, this comment argues that Russia is violating Norway's rights of sovereignty over its continental shelf around Svalbard under Article 76 of the United Nations Convention on the Law of the Sea through its attempted expansion of power.

Part II of this comment provides background information pertaining to the Svalbard Treaty and the United Nations Convention on the Law of the Sea.<sup>14</sup> Additionally, Part II explains the Norwegian and Russian interpretation of the Svalbard Treaty and the extent of Russia's rights to access hydrocarbon resources around Svalbard under each interpretation.<sup>15</sup> Finally, Part II identifies how international tribunals have interpreted treaties with similar terminology under the Vienna Convention on the Law of Treaties.<sup>16</sup> Part III of this comment analyzes the language of the Svalbard Treaty under the Vienna Convention on the Law of Treaties to determine whether the interpretation of the Svalbard Treaty promulgated by Norway or Russia is correct under the precedents of international tribunals.<sup>17</sup> Furthermore, Part III argues the Norwegian interpretation is correct, and Russia is violating Norway's sovereign rights over Svalbard under the United Nations Convention on the Law of the Sea by seeking unrestricted access to Svalbard's hydrocarbon resources.<sup>18</sup> Part IV recommends the international community form a uniform interpretation of the Svalbard Treaty to inhibit further Russian encroachment around Svalbard.<sup>19</sup> Lastly, Part IV details how to accomplish a uniform interpretation if the Arctic Council or NATO demonstrate regional support, Norway brings a case for encroachment against Russia before the International Court of Justice, or the European Economic Area implements additional economic sanctions on Russia.<sup>20</sup>

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14. See discussion *infra* Part II.A–B.

15. See discussion *infra* Part II.C–E.

16. See discussion *infra* Part II.F.

17. See discussion *infra* Part III.A–C.

18. See discussion *infra* Part III.A–D.

19. See discussion *infra* Part IV.A.

20. See discussion *infra* Part IV.B–D.

## II. BACKGROUND

### A. THE SVALBARD TREATY

The Svalbard Treaty (the “Treaty”) recognizes Norway’s “full and absolute sovereignty” over the Arctic archipelago islands of Svalbard, formally known as Spitsbergen.<sup>21</sup> The Treaty was enacted on February 9, 1920 and entered into force on August 14, 1925. The Treaty is open to accession, and 47 countries, including Russia,<sup>22</sup> have acceded to the Treaty.<sup>23</sup>

The Svalbard Treaty is divided into ten Articles.<sup>24</sup> Article 1 establishes Norway’s unrestricted sovereignty and jurisdiction over Svalbard.<sup>25</sup> Article 2 places substantive limitations on Norway by granting the signatory parties to the Treaty nondiscriminatory rights to hunt and fish on the land and in the “territorial waters” around Svalbard.<sup>26</sup> Article 3 affirms the signatory parties’ rights to conduct “maritime, industrial, mining, and commercial operations on a footing of absolute equality” on the land of and in the “territorial waters” around Svalbard.<sup>27</sup> The most recent formal declaration of the Svalbard Policy was announced by the Norwegian Parliament in 2016 through

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21. Treaty Concerning the Archipelago of Spitsbergen art. 1, Feb. 9, 1920, 43 Stat. 1892, 2 L.N.T.S. 7 (entered into force Aug. 14, 1925) [hereinafter Svalbard Treaty] (recognizing the former title, “Treaty between Norway, the United States of America, Denmark, France, Italy, Japan, the Netherlands, Great Britain and Ireland and the British overseas possessions and Sweden concerning Spitsbergen”).

22. NORWEGIAN MINISTRY OF JUST. & PUB. SEC., MELD. ST. 32 (2015 – 2016) REPORT TO THE STORTING (WHITE PAPER): SVALBARD 19 (Norwegian Ministry of Justice and Public Security trans., 2016) [hereinafter SVALBARD REPORT] (clarifying Russia ratified the Treaty in 1935).

23. See Oktay Çetin & Y. Barbaros Büyüksağnak, *Turkey’s Interest in the Arctic Region: The Evaluation of Being a Party to the Svalbard Treaty*, 8(3) INT’L J. ENV’T & GEOINFORMATICS 350, 356 (2021) (clarifying Turkey is the most recent party to join the Svalbard Treaty in 2021).

24. See generally Svalbard Treaty, *supra* note 21 (referencing only Articles 1, 2, and 3 for purposes of this comment).

25. *Id.* art. 1.

26. *Id.* art. 2 (affirming nondiscriminatory rights in the sense of equal rights for the signatory parties, as compared to the rights of Norwegians to conduct the same activities).

27. *Id.* art. 3 (expanding the rights of signatory parties to conduct most economic and commercial activities but limiting the rights to certain areas around Svalbard).

the government's White Paper.<sup>28</sup> Here, Norway announced the government's explicit objectives including: (1) "consistent and firm enforcement of sovereignty"; (2) "proper observance of the Svalbard Treaty and control to ensure compliance"; (3) "maintenance of peace and stability in the area"; (4) "preservation of the area's distinctive natural wilderness"; and, (5) "maintenance of Norwegian communities in the archipelago".<sup>29</sup>

#### B. THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

The United Nations Convention on the Law of the Sea (UNCLOS) is the central international agreement governing the seas since entering into force in 1994 with Russia, Norway, and 167 other signatory nations.<sup>30</sup> This six-volume international treaty establishes a comprehensive framework of law governing use of the world's oceans, seas, and their resources.<sup>31</sup> UNCLOS defines maritime zones that generate from the land of coastal states and provide distinct rights and obligations to the coastal state for each zone.<sup>32</sup> First, Article 3

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28. See Øystein Jensen, *The Svalbard Treaty and Norwegian Sovereignty*, 11 ARCTIC REV. ON L. & POL. 82, 89 (2020) (noting the objectives laid out in the 2016 white papers are similar to the objectives formulated in the 1980s and renewed every ten years).

29. See SVALBARD REPORT, *supra* note 22, at 5 (describing the Norwegian Ministry of Foreign Affairs' public submission of a White Paper on Svalbard to the Norwegian Parliament stating Norway's policy plan every ten years. The practice first began in 1975, and the wording of the main objectives have changed little from 1980 until now).

30. See Michael Zimmerman, *High North and High Stakes: The Svalbard Archipelago Could be the Epicenter of Rising Tension in the Arctic*, 7 PRISM 106, 109–10 (Nov. 8, 2018) ("UNCLOS had the desired goal of codifying historic state practice regarding the sea rights of coastal states while preventing abuse of natural resources or territorial overreach so that freedom of navigation could be maintained"); U.N. Treaty Collection, Depository: Status of Treaties: United Nations Convention on the Law of the Sea, [https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XXI-6&chapter=21&Temp=mtdsg3&clang=\\_en](https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en) (last visited Mar. 28, 2023) (confirming both Norway and the Russian Federation are parties to the United Nations Convention on the Law of the Sea).

31. U.N. Convention on the Law of the Sea art. 3, *opened for signature* Dec. 10, 1982, 1833 U.N.T.S. 397 (entered into force Nov. 16, 1994) [hereinafter UNCLOS].

32. *Id.* arts. 3, 55, 76 (highlighting three maritime zones: Article 3 "Breadth of the Territorial Sea," Article 55 "Exclusive Economic Zone," and Article 76 "Continental Shelf," for the purposes of this comment).



“Breadth of the Territorial Sea” gives every coastal state the right to claim the territorial sea up to twelve-nautical miles from the baseline of the shore and exercise exclusive control over that area. Second, Article 76 “Continental Shelf” permits a country to establish a continental shelf off the coast of the land extending 200-nautical miles (and up to 350-nautical miles under special circumstances) in which the country exclusively controls the exploration and exploitation of living or non-living natural resources, such as hydrocarbons, in the water and on the seabed.<sup>33</sup> Similarly, Article 55 “Exclusive Economic Zone” allows a country to establish an Exclusive Economic Zone (EEZ), a 200-nautical mile zone in which the country exclusively controls the exploration and exploitation of living or non-living natural resources in the water, on the seabed, or in the ocean subsoil.

Under UNCLOS, the territorial sea and continental shelf of a coastal nation need not be claimed.<sup>34</sup> Article 4 of Annex II of UNCLOS only requires the geographic coordinates of the width of a coastal state’s territorial sea and continental shelf to be submitted to the United Nations Division for Ocean Affairs and the Law of the Sea, Commission on the Limits of the Continental Shelf (CLCS).<sup>35</sup> After approval from the CLCS, the outer limits of the continental shelf and territorial sea “on the basis” of the CLCS recommendations “shall be final and binding.”<sup>36</sup> Conversely, although all coastal nations are entitled to an EEZ, the nation MUST claim an EEZ with the CLCS.<sup>37</sup>

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33. *Id.*

34. See Robin Churchill & Geir Ulfstein, *The Disputed Maritime Zones Around Svalbard*, in *CHANGES IN THE ARCTIC ENVIRONMENT AND THE LAW OF THE SEA* 551, 558 (Myron Nordquist et al. eds., vol. 14, 2010) (noting under Article 121 of UNCLOS, islands automatically generate a continental shelf if they can support life and are not considered to be simply rocks).

35. *Id.* (specifying a coastal state’s rights over the continental shelf are exclusive, i.e., no other state can claim jurisdiction or sovereignty over them without express consent from the coastal state).

36. U.N. Div. for Ocean Affs. & the L. of the Sea, Commission on the Limits of the Continental Shelf (CLCS): Purpose, Functions and Sessions (2012), [https://www.un.org/depts/los/clcs\\_new/commission\\_purpose.htm](https://www.un.org/depts/los/clcs_new/commission_purpose.htm) (“... the Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.”).

37. Irina Ivanova, *Law of the Sea and the Svalbard Islands: An Analysis on the Legal Status of Maritime Zones Around Svalbard*, 1, 25 (Aug. 2018) (Master of

To affirm their commitment to UNCLOS, the five Arctic countries including Canada, Denmark, Norway, Russia, and the United States adopted the Ilulissat Declaration in 2008.<sup>38</sup> This declaration certified the Arctic region's approval of UNCLOS governing all activities in the Arctic Ocean.<sup>39</sup> Furthermore, this unified act reaffirmed the region's commitment to an organized and predictable legal framework and dispute settlement process if competing maritime claims were to arise.<sup>40</sup>

### C. NORWEGIAN INTERPRETATION

Norway's interpretation of the Svalbard Treaty is described as a restrictive view.<sup>41</sup> There are three major components to Norway's interpretation.<sup>42</sup> First, Norway holds the language of Article 2 and Article 3, when referencing "territorial waters", exclusively refers to twelve-nautical miles from the base of the shore.<sup>43</sup> When the Svalbard Treaty entered into force in 1925, the territorial waters only encompassed four-nautical miles.<sup>44</sup> However, in 2004, Norway

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Laws Thesis, Tilburg University Law School) ("an EEZ is a territory that must be claimed with the Commission on the Limits of the Continental Shelf (CLCS).").

38. The Ilulissat Declaration, Arctic Ocean Conference, May 27–28, 2008, <https://arcticportal.org/images/stories/pdf/Ilulissat-declaration.pdf>.

39. *Id.* (reasserting the role and responsibilities of the Arctic five to protect the environment, indigenous peoples, and natural resources in the Arctic region).

40. *Id.*

41. Anne-Kristen Jørgensen & Andreas Østhagen, *Norway's Protection of Sovereign Rights Around Svalbard: Russian Perceptions and Reactions*, 78 FRIDTJOF NANSEN'S INST. 167, 170 (2020) (explaining this "restrictive" interpretation limits the scope of the Svalbard Treaty to the areas expressly mentioned in the text).

42. See NORWEGIAN MINISTRIES, THE NORWEGIAN GOVERNMENT'S ARCTIC POLICY: PEOPLE, OPPORTUNITIES AND NORWEGIAN INTERESTS IN THE ARCTIC 12–13 (2021) [hereinafter NORWEGIAN GOVERNMENT'S ARCTIC POLICY] (setting forth the publicly available Norwegian Government's Arctic Policy and interpretation of the Treaty).

43. SVALBARD REPORT, *supra* note 22, at 20.

44. See Kgl. Res. 22 februar 1812 (Nor.), *translated in* U.N. Div. for Ocean Affs. & L. of the Sea, Royal Decree of 22 February 1812, [https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/NOR\\_1812\\_Decree.pdf](https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/NOR_1812_Decree.pdf) (limiting the territorial seas around mainland Norway to four-nautical miles); see also Kgl. Res. 1 juni 2001 (Nor.), *translated in* U.N. Div. for Ocean Affs. & L. of the Sea, Regulations Relating to the Limits of the Norwegian Territorial Sea Around Svalbard,

extended the territorial sea from four-nautical miles to twelve-nautical miles in accordance with Article 3 “Breadth of the Territorial Sea” of UNCLOS.<sup>45</sup> Consequently, the rights of signatory countries of the Treaty to conduct certain commercial activities in the “territorial waters” of Svalbard are limited to twelve-nautical miles from the shore.<sup>46</sup>

Second, Norway maintains the geographic continental shelf off the coast of mainland Norway extends north up and around Svalbard.<sup>47</sup> Thus, in terms of geography, the continental shelf around Svalbard is a continuous continental shelf extending from mainland Norway.<sup>48</sup> Therefore, the rights of signatory parties in the “territorial waters” around Svalbard set forth in the Treaty are not applicable to the continental shelf of Svalbard because the term “territorial waters” is strictly limited to twelve-nautical miles as defined by UNCLOS.<sup>49</sup> In addition, the continental shelf around Svalbard is one continuous extension from the continental shelf off the coast of mainland Norway and is, therefore, under the full sovereignty and exclusive control of Norway.<sup>50</sup>

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[https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/NOR\\_2001\\_DecreeTS.PDF](https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/NOR_2001_DecreeTS.PDF) (applying the limit of the territorial sea around Svalbard as four nautical miles in accordance with Royal Decree of 22 February 1812).

45. Lov om Norges territorialfarvann og tilsøtende sone, 27 juni 2003 nr. 57 (Nor.), translated in *Act of 27 June 2003 No. 57 Relating to Norway's Territorial Waters and Contiguous Zone*, in U.N. DIV. FOR OCEAN AFFS. & L. OF THE SEA, LAW OF THE SEA BULLETIN NO. 54 97–98 (2004) (revoking the Royal Proclamation of February 25, 1812 which limited the territorial waters to four-nautical miles).

46. See SVALBARD REPORT, *supra* note 22, at 20.

47. See U.N. Comm'n on the Limits of the Cont'l Shelf, Continental Shelf Submission of Norway in Respect of Areas in the Arctic Ocean, the Barents Sea and the Norwegian Sea: Executive Summary, at 9 (2006), [https://www.un.org/depts/los/clcs\\_new/submissions\\_files/nor06/nor\\_exec\\_sum.pdf](https://www.un.org/depts/los/clcs_new/submissions_files/nor06/nor_exec_sum.pdf) (“[The Eurasian Continental Margin] consists of the continental margin adjacent to Mainland Norway and the Svalbard Archipelago . . .”).

48. See Ministry of Foreign Affairs, *The Continental Shelf: Questions and Answers*, GOVERNMENT.NO (Mar. 11, 2020) [hereinafter *The Continental Shelf: Questions and Answers*], <https://www.regjeringen.no/en/topics/foreign-affairs/international-law/continental-shelf--questions-and-answers/id448309> (delineating the Norwegian interpretation).

49. See *id.* (“The 1920 Treaty of Paris confirms that Norway has full and absolute sovereignty over the Archipelago of Svalbard . . . Norway also has sovereign rights over continental shelf areas under international law.”).

50. See Churchill & Ulfstein, *supra* note 34, at 561 (noting the outer limit of the

To certify this view, Norway submitted documentation to the CLCS pertaining to the continental shelf around mainland Norway and Svalbard. The CLCS approved the submission, and Norway adopted the recommendations put forth by the agency that declared the Norwegian continental shelf in the Barents Sea extends 200-nautical miles around mainland Norway<sup>51</sup> and Svalbard.<sup>52</sup> Therefore, Norway has the exclusive right to research and exploit both the living and non-living resources on the continental shelf.<sup>53</sup>

Third, in 1976, Norway passed a Royal Decree and declared an EEZ around mainland Norway in accordance with Article 55 of UNCLOS.<sup>54</sup> The EEZ prohibits other nations from obtaining or using the natural resources in a 200-nautical mile zone off the coast of mainland Norway.<sup>55</sup> Therefore, the EEZ around mainland Norway, like the continental shelf, is not subject to the provisions in the Svalbard Treaty. One year later, Norway established a Fisheries Protection Zone (FPZ) of 200-nautical miles around Svalbard to regulate foreign fishing vessels, promote sustainable fishing, and protect the living marine resources<sup>56</sup> in accordance with Norway's sovereign rights to protect the environment of Svalbard under Article

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continental shelf to the North of Svalbard was determined when Norway accepted the Commission's recommendations, and the limits to the West and East were agreed in conjunction with Denmark, Greenland, and Russia).

51. See *The Continental Shelf: Questions and Answers*, *supra* note 48 (confirming the bounds of the recommendations adopted by the Commission on March 27, 2009).

52. See Zimmerman, *supra* note 30, at 109–10 (asserting Norway did not begin a comprehensive and “concerted effort to solidify and extend its jurisdictional reach over Svalbard” until the 1970’s).

53. *The Continental Shelf: Questions and Answers*, *supra* note 48 (confirming the rights of coastal states regarding their continental shelf).

54. Kgl. Res. 17 desember 1976 nr. 91 (Nor.), *translated in* U.N. Div. for Ocean Affs. & L. of the Sea, Act No. 91 of 17 December 1976 Relating to the Economic Zone of Norway, ¶¶ 1, 3, [https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/NOR\\_1976\\_Act.pdf](https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/NOR_1976_Act.pdf) [hereinafter Economic Zone Act] (establishing an economic zone in the seas adjacent to the coast of Norway and enacting provisions and limitations on who may engage in acts such as fishing and hunting in this zone).

55. UNCLOS, *supra* note 31, arts. 55–56.

56. See Rossi, *supra* note 7, at 106 (stating the FPZ in the Economic Zone Act was proclaimed “for the time being”).

2 of the Svalbard Treaty.<sup>57</sup> The FPZ around Svalbard is not a full EEZ and instead places certain responsibilities on Norway.<sup>58</sup> Under the FPZ, Norway must administer the distribution of fishing quotas to other countries based on “traditional fishing.”<sup>59</sup> This framework was intended to mirror the nondiscriminatory attitude of the Svalbard Treaty and ensure peace in the Arctic region.<sup>60</sup>

During the 100<sup>th</sup> Anniversary of the Svalbard Treaty in 2020, the Norwegian Ministry of Foreign Affairs reaffirmed Norway’s position on the issue of the Svalbard’s Treaty interpretation by proclaiming:

Certain states have challenged Norway’s interpretation of the Treaty’s provision on equal rights to engage in fishing and hunting. Under the Treaty, ships and nationals from states that are parties to the Treaty have equal rights to engage in fishing and hunting on land in Svalbard and in the territorial waters around the archipelago, i.e., up to 12-nautical miles from land.<sup>61</sup>

In furtherance of this statement, the former Foreign Minister Ine Ericksen Søreide continued:

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57. See Svalbard Treaty, *supra* note 21, art. 2 (“ . . . to maintain, take or decree suitable measures to ensure the preservation and, if necessary, the re-constitution of the fauna and flora of the said regions, and their territorial waters”).

58. See Ragnhild Groenning, *The Norwegian Svalbard Policy—Respected or Contested?*, ARCTIC INSTITUTE (Nov. 22, 2017), <https://www.thearcticinstitute.org/norwegian-svalbard-policy-respected-contested> (stating the Norwegian government elected not to establish an EEZ around Svalbard despite the basis of its interpretation that would permit an EEZ to be claimed).

59. See Rossi, *supra* note 7, at 108 (explaining “traditional fishing” means a country must show an established record of fishing in the FPZ in the 10-year period prior to the decree in order for the individuals of that country to be allowed to fish in the waters of the FPZ).

60. See Torbjørn Pedersen, *International Law and Politics in U.S. Policymaking: The United States and the Svalbard Dispute*, 41 OCEAN DEV. & INT’L L. 120, 127 (Sept. 15, 2010) (arguing that under the Norwegian interpretation, Norway could have established a full EEZ around Svalbard instead of an FPZ, but it ultimately chose the FPZ to uphold the nondiscriminatory characteristics of the Svalbard Treaty).

61. Ivan Stupachenko, *Russia and Norway Clash over Status of Waters Around Svalbard*, SEAFOODSOURCE (Feb. 27, 2020), <https://www.seafoodsource.com/news/supply-trade/russia-and-norway-clash-over-status-of-waters-around-spitsbergen/svalbard> (reporting on the controversy surrounding Russia and Norway’s dispute over the Svalbard region).

The right to equal treatment is not the same as the right to resources. The Norwegian authorities can both regulate and prohibit activities, as long as there is no discrimination on the basis of nationality. This is particularly important when we take action to safeguard Svalbard's vulnerable environment or share limited resources.<sup>62</sup>

#### D. RUSSIAN INTERPRETATION

Russia has a conflicting interpretation of the application of the Svalbard Treaty, which is regarded as a dynamic interpretation.<sup>63</sup> Instead of viewing the continental shelf around Svalbard as an extension and continuation of the continental shelf around mainland Norway, Russia contends that Svalbard generates a continental shelf of its own.<sup>64</sup> Therefore, the term "territorial waters" in the Svalbard Treaty incorporates Svalbard's individual continental shelf, and all of the signatory parties to the Treaty have equal access to and use of the resources on the continental shelf in accordance with the provisions of the Treaty.<sup>65</sup> In addition, Russia maintains the establishment of any kind of economic zone around Svalbard violates Norway's obligations to the signatory nations under the Treaty,<sup>66</sup> including a hybrid EEZ such as the FPZ.<sup>67</sup>

A few days prior to the 100<sup>th</sup> Anniversary of the Svalbard Treaty on February 4, 2020, the Russian Foreign Minister publicly criticized the Norwegian Foreign Ministry and published a letter highlighting the

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62. *Id.*

63. See Jørgensen & Østhagen, *supra* note 41, at 170–72 (clarifying the term "dynamic" to mean "expanding").

64. *Id.* at 170–71 (discussing Russia, Spain, and Iceland have all contested Norway's right to establish maritime zones or exercise jurisdiction in the area).

65. See Thomas Nilsen, *Russia Lists Norway's Svalbard Policy as Potential Risk of War*, THE BARENTS OBSERVER (Oct. 4, 2017), <https://thebarentsobserver.com/en/security/2017/10/kommersant-russia-lists-norways-svalbard-policy-potential-risk-war> ("In the Svalbard Treaty Norway and 39 other countries have the same rights to operate in the archipelago, provided that they comply with Norwegian law.").

66. See Jørgensen & Østhagen, *supra* note 41, at 170–71 (claiming Norway has no authority to create a zone because it was not explicitly specified in the Svalbard Treaty from 1920).

67. See Groenning, *supra* note 58 (contrasting how Russia has respected the FPZ, for the most part, while formally maintaining Norway is violating the Svalbard Treaty by enforcing the FPZ).

points on which Russia believes Norway is violating the Treaty.<sup>68</sup> The letter articulated: “In particular, [Russia is] concerned about the restrictions on the use of the Russian helicopter, the deportation procedure adopted exclusively for Russian citizens on [Svalbard], the unlawfulness of Norway’s [FPZ, and] the unreasonable extension of nature protection zones where economic operations are limited . . . “<sup>69</sup>

The Russian Embassy in Norway further declared: “The legal regime established by the 1920 Svalbard Treaty fully applies to the continental shelf of the archipelago within the so-called Svalbard square, the geographical boundaries of which are defined in Article 1 of the treaty.”<sup>70</sup> Russian President Vladimir Putin has also issued several executive orders signifying Russia’s stance on the issue, and most recently he released the “Foundations of the Russian Federation State Policy in the Arctic for the Period up to 2035”.<sup>71</sup> Specifically, Order No. 164 states the following priorities concerning Russian’s presence on Svalbard include: “international legal registration of the external border of the [Russian] continental shelf [and] . . . protection of national interests and realization of the rights provided by international acts [to Russia] as a coastal state in the Arctic, including exploration and resource development of the continental shelf”.<sup>72</sup> The executive orders show an unwavering contention that Russia believes it has access to the minerals and hydrocarbon reserves on the continental shelf around Svalbard.

Furthermore, the policies demonstrate one of Putin’s main priorities in the Arctic Circle is to obtain access to the continental shelf and utilize the resources available therein.<sup>73</sup> By attempting to gain access to the hydrocarbon reserves in the continental shelf of Svalbard, Russia would be expanding its privileges under the Svalbard Treaty and inhibiting Norway’s rights of sovereignty and exclusive control

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68. Jensen, *supra* note 28, at 94.

69. Lavrov’s Message to Norwegian Foreign Minister, *supra* note 12.

70. Alexey Zakvasin & Elizaveta Komarova, “*Pretexts for Changing the Treaty*”: *What Are the Reasons for the Disagreement Between Russia and Norway on the Issue of Svalbard*, RT (Feb. 9, 2020), <https://russian.rt.com/world/article/716543-shpicbergen-posolstvo-norvegiya-mid-rf>.

71. *See Russia’s Arctic State Policy*, *supra* note 13 at 2 (signing the Decree on March 5, 2020).

72. *Id.* at 4–5

73. *Id.*

over the continental shelf as established by the Article 76 of UNCLOS.<sup>74</sup> Thus, Russia's attempt to gain unrestricted access to the hydrocarbon resources in the continental shelf around Svalbard is a violation of UNCLOS.

#### E. PETROLEUM ACTIVITIES IN THE ARCTIC CIRCLE

The Norwegian Petroleum Directorate is commissioned to map mineral deposits on the Norwegian continental shelf. In 2018 and 2019, the Directorate surveyed the water and discovered new vent fields with many active and inactive vent systems.<sup>75</sup> In fact, Norway has indicated the 200-nautical mile continental shelf around Svalbard holds the equivalent of several billion barrels of oil.<sup>76</sup> The Norwegian Parliament follows a general rule for petroleum related activities that licenses may be granted to foreign entities for the exploration and extraction of mineral and hydrocarbon resources in specific areas after the areas have been formally opened.<sup>77</sup>

Since 2015, Norway opened several new areas for exploration and extraction in the Barents Sea.<sup>78</sup> Three of these areas, known as oil blocks, are located on the Norwegian continental shelf 200-nautical miles off the coast of Svalbard.<sup>79</sup> Russia responded with an angry diplomatic note on March 3, 2015, claiming that Norway's control over the oil blocks on the continental shelf violate Russia's rights under the Svalbard Treaty.<sup>80</sup> Russia asserts this is a violation of the

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74. UNCLOS, *supra* note 31, art. 76.

75. NORWEGIAN MINISTRY OF CLIMATE & ENV'T, MELD. ST. 20 (2019–2020) REPORT TO THE STORTING (WHITE PAPER): NORWAY'S INTEGRATED OCEAN MANAGEMENT PLANS 1, 93 (2020) [hereinafter NORWAY'S INTEGRATED OCEAN MANAGEMENT PLANS].

76. Zimmerman, *supra* note 30, at 112 (verifying Norway's most recent disclosure of oil reserves within the Barents Sea and around Svalbard have doubled the estimates from the past).

77. See NORWAY'S INTEGRATED OCEAN MANAGEMENT PLANS, *supra* note 75, at 95 (clarifying in order for the Ministry to officially open an oil block for exploration, an environmental assessment and public consultation process must be conducted by the Norwegian Ministry of Petroleum and Energy).

78. Groenning, *supra* note 58.

79. *Id.*

80. See Jensen, *supra* note 28, at 96 (explaining Russia previously focused oil production on land but since the 1980's has found a renewed interest in oil drilling in the Barents Sea).



Svalbard Treaty because the resources within the blocks are regulated by the provisions of the Treaty; therefore, the signatory parties, such as Russia, must be consulted in the process of opening the oil blocks for exploration.<sup>81</sup> In response, Norway countered this allegation by asserting the oil blocks were in the Norwegian continental shelf, under Norwegian sovereignty and exclusive control, and thus not subject to consultations with other countries.<sup>82</sup>

#### F. INTERNATIONAL LEGAL FRAMEWORK

With a global influx in bilateral and multilateral written agreements, the need for uniform international legal standards is mounting.<sup>83</sup> The 1969 Vienna Convention on the Law of Treaties (“Vienna Convention” or “VCLT”) establishes an international structure to guide nations in interpreting international treaties, resolving disputes between nations, and maintaining peace and security among nations.<sup>84</sup> Two articles are frequently adhered to by international courts and tribunals to aid in the interpretation and application of treaties.<sup>85</sup> Article 31 “General Rule of Interpretation” of the Vienna Convention establishes three levels of evaluating the interpretation of a treaty based on the ordinary meaning, context, and object and purpose.<sup>86</sup> In addition, Article 30 “Application of Successive Treaties Relating to the Same Subject Matter” provides a method of application of two treaties concerning the same matter.<sup>87</sup>

The international courts and tribunals have resolved numerous cases to elucidate the framework of treaty interpretation and

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81. *Id.*

82. Groenning, *supra* note 58.

83. See ULF LINDERFALK, ON THE INTERPRETATION OF TREATIES, 1 (Francisco Laporta et al. eds., 83rd ed. 2007) (discussing the increasing need for precise and flexible international law to effectively avoid the difficulties inherent in customary international law).

84. Vienna Convention on the Law of Treaties art. 31, May 23, 1969, 1155 U.N.T.S. 331 [hereinafter VCLT].

85. See Arbitral Award of 31 July 1989 (Guinea-Bissau v. Sen.), Judgment, 1991 I.C.J. 53, ¶ 48 (Nov. 12) (“Articles 31 and 32 of the Vienna Convention on the Law of Treaties . . . may in many respects be considered as a codification of existing customary international law.”).

86. See LINDERFALK, *supra* note 83, at 2–3 (highlighting the importance of Articles 31(1) and 31(2)).

87. VCLT, *supra* note 84, art. 31.

application under the Vienna Convention. Regarding Article 31, the International Court of Justice (ICJ) evaluated the ordinary meaning of a disputed term in *Kasikili/Sedudu Island*.<sup>88</sup> Here, the court held the ordinary meaning of “center of the main channel” in a treaty should be interpreted reflecting factors such as (1) definitions of the term in prior delimitation treaties; (2) treaties or conventions which define the term; and, (3) use of the term when the treaty was made.<sup>89</sup> First, the definition of a disputed term in a delimitation boundary agreement is clarified in *Petroleum Development Ltd. v. Sheikh of Abu Dhabi*.<sup>90</sup> Here, the arbitrator defined the ordinary meaning of the term “territorial waters” in a delimitation agreement as three-nautical miles based on the fact the continental shelf was “a legal doctrine [that] did not then exist.”<sup>91</sup> Other arbitrators have interpreted delimitation agreements in the same way under similar circumstances.<sup>92</sup> Additionally, the “Treaty on Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean” (Barents Sea Treaty) established a delimitation boundary between Norway and Russia in the Barents Sea and defined “territorial sea” in accordance with the maritime zones established by UNCLOS, which is twelve-nautical-miles.<sup>93</sup>

The ICJ defined context under Article 31 of the Vienna Convention in its 1971 advisory opinion of *International Status of South-West Africa* and held “an international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of interpretation.”<sup>94</sup> Here, the ICJ defined the context of

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88. See *Kasikili/Sedudu Island (Bots. v. Namib.)*, Judgment, 1999 I.C.J. 1045, ¶ 20 (Dec. 13) (interpreting the provisions of the 1890 Treaty by applying the rules of interpretation set forth in the 1969 Vienna Convention).

89. *Id.* ¶¶ 24–25.

90. *Petroleum Development Ltd. v. Sheikh of Abu Dhabi*, 18 Int’l L. Rep. 144, 144, 160 (1951).

91. *Id.* at 160.

92. See *Petroleum Development (Qatar) Ltd. v. Ruler of Qatar*, 18 Int’l L. Rep. 161, 163 (1950) (holding the term “sea waters” found in an oil drilling agreement did not include the continental shelf, without providing a reasoning for the decision).

93. Treaty Concerning Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean, Nor.-Russ., art. 3 ¶ 1, Sept. 15, 2010 (entered into force July 7, 2011) [hereinafter *Barents Sea Treaty*]; UNCLOS, *supra* note 31, art. 15.

94. Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276,

interpretation by applying the treaty in the contemporary legal framework reflecting all recent developments of the law.<sup>95</sup>

Lastly, under Article 31, the ICJ proposed an object and purpose test in its advisory opinion of *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*.<sup>96</sup> Here, the ICJ stated the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) “would be universal in scope. Its purpose is purely humanitarian and civilizing . . . [And] the object and purpose of the Convention imply that it was the intention of the General Assembly and of the States which adopted it, that as many States as possible should participate.”<sup>97</sup> More broadly, the ICJ created an object and purpose test that allowed nations to raise ideological differences to a treaty or convention, while remaining a party, to the extent that the concerns raised did not sacrifice the “very object of the Convention in favor of a vague desire to secure as many participants as possible.”<sup>98</sup>

Turning to Article 30, the Permanent Court of Arbitration (PCA) concluded in *South China Sea Arbitration*, any historic rights to resources in the waters of the South China Sea that China at one point possessed, were “extinguished to the extent they were incompatible with [UNCLOS’] system of maritime zones.”<sup>99</sup> Furthermore, the PCA examined the history of the provisions establishing maritime zones of UNCLOS and concluded UNCLOS “was intended to comprehensively allocate the rights of States to maritime areas.”<sup>100</sup>

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Advisory Opinion, 1971 I.C.J. Rep. 16, ¶ 53 (June 21) [hereinafter *South West Africa*, Advisory Opinion].

95. *See id.* (“ . . . the Court must take into consideration the changes which have occurred in the supervening half-century, and its interpretation cannot remain unaffected by the subsequent development of law, through the Charter of the United Nations and by way of customary law”).

96. *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, 1951 I.C.J. Rep. 15, 23–24 (May 28) [hereinafter *Genocide Convention Reservations*].

97. *Id.* at 23–24.

98. *Id.* at 24.

99. *South China Sea Arbitration (Phil. v. China)*, PCA Case No. 2013-19, ¶ 261 (Perm. Ct. Arb. 2016).

100. Press Release, *South China Sea Arbitration (Phil. v. China)*, 2013-19 PCA Case Repository, 1, 8 (Perm. Ct. Arb. 2016) [hereinafter *South China Sea*, Press Release], <https://pcacases.com/web/sendAttach/1801>.

### III. ANALYSIS

#### A. VIENNA CONVENTION ON THE LAW OF TREATIES, 1969

This analysis focuses on two articles under the 1969 Vienna Convention on the Law of Treaties. First, the validity of Norway's interpretation of the Svalbard Treaty is assessed in light of the provisions set forth in the Vienna Convention, Article 31 "General Rule of Interpretation." Second, the application of the Treaty with respect to UNCLOS is examined under the Vienna Convention, Article 30 "Application of Successive Treaties Relating to the Same Subject Matter." While the Vienna Convention is principally responsible for codifying customary international law, these two articles are particularly significant in terms of providing a framework for nations to uniformly interpret and apply international treaties.<sup>101</sup> This comment analyzes whether Norway's or Russia's interpretation and application of the term "territorial waters" in the Svalbard Treaty is correct under the Vienna Convention. Furthermore, this comment argues the interpretation of Norway is correct, and therefore, Russia is violating Norway's rights of sovereignty over the continental shelf of Svalbard under UNCLOS.

#### B. ARTICLE 31 "GENERAL RULE OF INTERPRETATION," VIENNA CONVENTION

The first noteworthy article of the Vienna Convention is Part III Article 31, titled "General Rule of Interpretation." Article 31(1) states: "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."<sup>102</sup> This comment further divides Article 31 into three levels including the ordinary meaning, context, and object and purpose of the term "territorial waters" in the Svalbard Treaty.

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101. See LINDERFALK, *supra* note 83, at 3 (explaining the VCLT establishes "norms laid down in international law that . . . are not merely guidelines . . . the norms *shall* be applied; they establish obligations"); see also *Arbitral Award of 31 July 1989 (Guinea-Bissau v. Sen.)*, Judgment, 1991 I.C.J. 53, ¶ 48 (Nov. 12) (recognizing the VCLT's codification of international law).

102. VCLT, *supra* note 84, art. 31.

Adding clarity to the term “context”, Article 31(2) states:

the context for the purpose of the interpretation of a treaty shall comprise, in addition to the text: [of] . . . (a) any agreement relating to the treaty which was made between all the parties in [connection] with the conclusion of the treaty; (b) any instrument which was made by one or more parties in [connection] with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.<sup>103</sup>

Norway is not a signatory to the Vienna Convention.<sup>104</sup> However, the Government of Norway has explicitly stated that regardless of its ratification or accession status, “the rule of interpretation expresses customary law by which all states are bound. The principles of international law for treaty interpretation provide a methodical approach based on the wording of the treaty, whereby provisions are read in context and are supported in other objective sources for the parties’ intentions.”<sup>105</sup> Therefore, with respect to customary international law, Norway will abide by and uphold the rules established by the Vienna Convention.<sup>106</sup> On the other hand, Russia is a party to the Vienna Convention through its accession on April 29, 1986.<sup>107</sup> Thus, Russia is legally bound by the provisions set forth under the Vienna Convention.<sup>108</sup>

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103. *Id.*

104. SVALBARD REPORT, *supra* note 22, at 19.

105. *Id.*

106. *Id.* (citing the Norwegian Government’s proclamation that Norway, like all other states, is involuntarily bound by the principles of interpretation as established by the VCLT).

107. U.N. Treaty Collection, Depository: Status of Treaties: Vienna Convention on the Law of Treaties, [https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=\\_en](https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=_en) (last visited Mar. 28, 2023) (confirming Russia’s accession to the VCLT).

108. Eur. Comm’n for Democracy Through L., *Final Opinion on the Amendments to the Federal Constitutional Law of the Constitutional Court*, 107th Sess., Opinion No. 832/2015, CDL-AD(2016(016), 15, n.16 (June 13, 2016) (summarizing the holding in the Eur. Comm’n for Democracy Through L., *Judgment No. 21-P/2015 of 14 July 2015 of the Constitutional Court of the Russian Federation*, Opinion No. 832/2015, CDL-REF(2016)019 (Feb. 23, 2016), which found Russia observes “obligations which were voluntarily taken up, including those following from the [VCLT] . . . [and] an international treaty is binding for its participants in the meaning which can be elucidated with the help of the adduced rule of interpretation [under the VCLT]”).

The competing interpretations from Norway and Russia are based upon a fundamental disagreement pertaining to the meaning and application of the term “territorial waters” in Article 2 of the Svalbard Treaty and referenced throughout the Treaty.<sup>109</sup> Article 2 states that “ships and nationals of all the [signatories] shall enjoy equally the rights of fishing and hunting [on the land territories of Svalbard] and in their territorial waters.”<sup>110</sup> Subsequently, Article 3 permits the same equal treatment for signatories regarding “maritime, industrial, mining or commercial enterprises both on land and in the territorial waters”.<sup>111</sup>

### 1. Ordinary Meaning, Article 31

The first level of analysis under Article 31 of the Vienna Convention is the ordinary meaning of the term “territorial waters” in the Svalbard Treaty. In *Kasikili/Sedudu Island*, the ICJ was asked to delimit the maritime boundary in a river separating Botswana and Namibia by interpreting the term “center of the main channel” in an 1890 treaty between the former colonial powers Germany and the United Kingdom.<sup>112</sup> The court determined the ordinary meaning of the term may be articulated by factors including (1) “various definitions of the term . . . found in treaties delimiting boundaries”; (2) “treaties or conventions which define boundaries in watercourses”; and, (3) “[use of the term] at the time of the conclusion of the 1890 Treaty”.<sup>113</sup> Like the disputed term in *Kasikili/Sedudu Island*, the ordinary meaning of the disputed term “territorial waters” between Norway and Russia may also be articulated by (1) definitions of the term in boundary delimitation treaties; (2) treaties or conventions defining maritime zones; and, (3) use of the term at the time of the conclusion of the treaty.<sup>114</sup>

First, definitions of the term “territorial waters” have been articulated by international forums in several boundary delimitation

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109. See Svalbard Treaty, *supra* note 21, art. 2. (citing Article 2 and Article 3 with direct reference to “territorial waters” in the language of the Treaty).

110. *Id.*

111. Svalbard Treaty, *supra* note 21, art. 3.

112. *Kasikili/Sedudu Island* (Bots. v. Namib.), Judgment, 1999 I.C.J. 1045, (Dec. 13).

113. *Id.* ¶¶ 24–25.

114. *Id.*

agreements.<sup>115</sup> In *Petroleum Development Ltd. v. Sheikh of Abu Dhabi*, the Sheikh of Abu Dhabi granted the exclusive right to drill for oil to a company in “the lands which belong to the rule of the Ruler of Abu Dhabi . . . and the sea waters which belong to the area.”<sup>116</sup> The company urged the term “sea waters” granted the right to drill for oil in the “territorial waters” and the continental shelf outside of the territorial waters.<sup>117</sup> The arbitrator ruled that “territorial waters” was explicitly defined as a three-mile belt around the Persian Gulf as a part of the concession; whereas, the continental shelf was “a legal doctrine [that] did not then exist” and would not be included considering the agreement was executed in 1938.<sup>118</sup> In conclusion, the arbitrator stated, “it would be a most artificial refinement to read back into the contract the implications of a doctrine not mooted until seven years later”.<sup>119</sup> Additional cases on similar subject-matter have been ruled in the same way through different international arbitral tribunals.<sup>120</sup>

When analyzing the ordinary meaning of “territorial waters” in the Svalbard Treaty in boundary delimitation agreements, *Petroleum Development Ltd. v. Sheikh of Abu Dhabi* offers an important comparison.<sup>121</sup> Like *Petroleum Development* where the parties argued over whether the term “sea waters” incorporated the continental shelf, the disagreement between Norway and Russia centers around whether the term “territorial waters” incorporates the continental shelf. In both cases, the international agreement provoking the dispute was created in the early twentieth century before the establishment of the CLCS or any international declaration pertaining to the concept of the

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115. See *Petroleum Development Ltd. v. Sheikh of Abu Dhabi*, 18 Int'l L. Rep. 144, 146, (1951) (addressing the overarching issue of whether the Sheikh was entitled to mineral oil from the subsoil of the sea-bed subjacent to the territorial waters of Abu Dhabi); see also *Petroleum Development (Qatar) Ltd. v. Ruler of Qatar*, 18 Int'l L. Rep. 161, 163 (1950) (holding the term “sea waters” found in an oil drilling agreement did not include the continental shelf).

116. *Petroleum Development Ltd. v. Sheikh of Abu Dhabi*, 18 Int'l L. Rep. at 147.

117. *Id.* at 151–52

118. *Id.* at 152.

119. *Id.*

120. See *Petroleum Development (Qatar) Ltd. v. Ruler of Qatar*, 18 Int'l L. Rep. at 161.

121. See *Petroleum Development Ltd. v. Sheikh of Abu Dhabi*, 18 Int'l L. Rep. 144.

continental shelf.<sup>122</sup> In *Petroleum Development*, the arbitrator stated that the continental shelf was not considered a concept during the time the initial agreement was signed in 1938.<sup>123</sup> Therefore, the authors' knowledge of the terms contained in the agreement, such as "sea waters", was directly limited by the authors' lack of knowledge about the existence of the continental shelf concept.<sup>124</sup> The authors of the agreement could not have intended to include the concept of the continental shelf within the term "sea waters" if they were not aware of the continental shelf's existence.

Likewise, when the Svalbard Treaty was signed in 1920, the concept of the continental shelf did not exist.<sup>125</sup> Before the execution of UNCLOS in 1982, coastal nations "claimed only narrow territorial sea zones in which they could exercise full sovereignty over the seabed and subsoil, the water column, and the airspace", and the remaining ocean was recognized as the "high seas" which provided the freedom of all nations to use and exploit the waters.<sup>126</sup> In the dispute between Norway and Russia, the ordinary meaning of what constitutes "territorial waters" was limited by the beliefs and knowledge available to the authors at that moment in time. Considering the concept of the continental shelf did not exist in 1920, the authors of the Svalbard Treaty would have considered anything beyond the territorial seas to be the high seas. Therefore, the authors did not intend to extend the "territorial waters" to include the continental shelf because it did not exist.<sup>127</sup> The Norwegian interpretation of the Svalbard Treaty thus prevails as the ordinary meanings of the term "territorial waters" does not include the continental shelf. Conversely, the Russian

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122. *Id.* at 151 (showing the concept of the continental shelf was first introduced by the Truman Declaration of 1945, claiming the United States had "'jurisdiction' and 'control' over the resources of the American Continental Shelf").

123. *Id.* at 151–52.

124. *Id.*

125. UNCLOS, *supra* note 31, art. 76.

126. See Edward Collins, Jr. & Martin A. Rogoff, *The International Law of Maritime Boundary Delimitation*, 34 MAINE L. REV. 1, 1 (1982) (detailing how the development of technology for resource exploitation increased the necessity to codify the maritime zones in international law).

127. See *id.* (detailing prior to 1945, "states claimed only narrow territorial sea zones in which they could exercise full sovereignty over the seabed and subsoil, the water column, and the airspace").



interpretation in that the authors intended to include the concept of the continental shelf within the term “territorial waters” would disregard the authors’ understanding of international law of the sea in 1920.

Another significant articulation of the ordinary meaning of the term “territorial waters” in a boundary delimitation agreement is in the Barents Sea Treaty.<sup>128</sup> The Barents Sea Treaty was signed between Norway and Russia in 2010 to resolve the ongoing dispute concerning rights of sovereignty and exploitation of transboundary hydrocarbon resources in the Barents Sea (southeast of Svalbard).<sup>129</sup> The two countries agreed upon a delimitation line separating their claims in the Barents Sea and were granted sovereignty over the maritime zones established under UNCLOS on their respective side of the line.<sup>130</sup> In the Barents Sea Treaty, Article 1 states that the delimitation line connects the outer limit of the continental shelf of Norway and the outer limit of the continental shelf of Russia “as established in accordance with Article 76 and Annex II of [UNCLOS].”<sup>131</sup> Article 3 continues that “the maritime delimitation line . . . lies within 200 nautical miles of the baselines from which the breadth of the territorial sea of mainland Norway.”<sup>132</sup> Both Article 1 and Article 3 identify that the territorial sea and continental shelf are the maritime zones to be recognized in the treaty, and Article 1 clarifies that all maritime zones established in the treaty are in accordance with UNCLOS.<sup>133</sup> Therefore, the territorial sea and continental shelf as mentioned in the Barents Sea Treaty are defined as twelve-nautical miles and 200-nautical miles, respectively, in accordance with UNCLOS.<sup>134</sup> The Barents Sea Treaty clarifies the term “territorial sea” as strictly twelve-nautical miles and does not state nor indicate that the continental shelf

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128. See Barents Sea Treaty, *supra* note 93, art. 3.

129. NORWEGIAN GOVERNMENT’S ARCTIC POLICY, *supra* note 42, at 14 (concluding negotiations lasting more than forty years between Russia and Norway to forge the Barents Sea Treaty).

130. See Barents Sea Treaty, *supra* note 93, art. 1 (defining the maritime delineation line between the Parties as geodetic lines connecting points defined by coordinates)

131. *Id.*

132. *Id.* art. 3.

133. *Id.* arts. 1, 3.

134. See UNCLOS, *supra* note 31, arts. 3, 76.

is incorporated as well.<sup>135</sup> Therefore, the Barents Sea Treaty supports Norway's interpretation of the Svalbard Treaty.

The second factor in *Kasikili/Sedudu Island* to determine the ordinary meaning of the term "territorial waters" is treaties or conventions defining maritime terms.<sup>136</sup> The United Nations Convention on the Law of the Sea is the most comprehensive convention consolidating the international law of the sea and maritime definitions to date.<sup>137</sup> In 1976, UNCLOS defined "territorial seas" in Part II Article 3 "Territorial Sea and Contiguous Zone" as an area that extends up to twelve-nautical miles from the baseline or low-water line along the coast of a country.<sup>138</sup> Since the inception of Article 3 of UNCLOS defining "territorial sea", the ICJ has held that territorial waters are twelve-nautical miles from the base of the land in countless cases concerning maritime delimitation,<sup>139</sup> sovereignty disputes,<sup>140</sup> and general maritime zone and boundary requests.<sup>141</sup> Therefore, the ordinary meaning of "territorial waters" is given a clear and unequivocal definition under international law and in practice.

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135. Barents Sea Treaty, *supra* note 93, arts. 1, 3.

136. *See* *Kasikili/Sedudu Island* (Bots. v. Namib.), Judgment, 1999 I.C.J. 1045, ¶¶ 24–25 (Dec. 13).

137. *See* Zimmerman, *supra* note 30, at 109–10 ("Beginning in the mid-1970s, UNCLOS had the desired goal of codifying historic state practice regarding the sea rights of coastal states while preventing abuse of natural resources or territorial overreach so that freedom of navigation could be maintained.").

138. UNCLOS, *supra* note 31, art. 3.

139. *See, e.g.,* Maritime Delimitation in the Area Between Greenland and Jan Mayen (Den. v. Nor.), Judgment, 1993 I.C.J. 38, ¶ 48 (June 14) (defining the "continental shelf" around Jan Mayen as 200-nautical miles and the "territorial sea" as twelve-nautical miles from the base of the land in accordance with Article 76 and Article 3 of UNCLOS, respectively).

140. *See, e.g.,* Territorial and Maritime Dispute (Nicar. v. Colom.), Judgment, 2012 I.C.J. 624, ¶¶ 177–79 (Nov. 19) (considering the "territorial sea" of twelve-nautical miles proscribed in Article 3 of UNCLOS in the context of individual islands of coastal states); Maritime Delimitation in the Black Sea (Rom. v. Ukr.), Judgment, 2009, I.C.J. 61 ¶ 219 (Feb. 3) (holding that the sovereignty of the coastal state extends to the "continental shelf" of 200-nautical miles and the "territorial sea" of twelve-nautical miles from the base of the land in accordance with Article 76 and Article 3 of UNCLOS, respectively).

141. *See, e.g.,* Maritime Delimitation in the Indian Ocean (Som. v. Kenya), Judgment, 2021 I.C.J. 206, ¶ 214 (Oct. 12) (holding "territorial sea" is defined under Article 3 of UNCLOS as a twelve-nautical mile zone starting from the base of the land).

Furthermore, this definition directly reflects the Norwegian interpretation by upholding “territorial waters” to extend twelve-nautical miles from the coast of Svalbard. In contrast, the Russian interpretation of “territorial waters” to incorporate the 200-nautical mile continental shelf is contradictory to the definition of territorial sea under Article 3 of UNCLOS.<sup>142</sup>

The third factor in *Kasikili/Sedudu Island* to define the ordinary meaning of “territorial waters” is through the use of the term at the time of treaty execution.<sup>143</sup> Tracing back to the late sixteenth century, the Scandinavian countries claimed territorial jurisdiction over the four-nautical mile zone off the coast of their territorial land.<sup>144</sup> This historically recognized law and practice known as the ‘Canon-Shot Rule’ derived from the understanding that coastal states should exercise control over this zone because shore-based cannons had a range of three-nautical miles.<sup>145</sup> This rule protected neutral harbors during times of war by prohibiting warships of fighting countries from entering the waters within four-nautical miles of uninvolved countries.<sup>146</sup> In 1743, the Governor of Finmarken, the northernmost area of Norway, charged Russian fishermen a levy if they sought to enter the four-nautical mile zone off the shore of Norway.<sup>147</sup> Then in 1747, a Norwegian Royal Ordinance codified this practice.<sup>148</sup> Considering this practice had been in use for centuries prior to the creation of the Svalbard Treaty, there was a cohesive understanding, particularly between Norway and Russia, that the use of the term “territorial waters” entailed the four-nautical mile standard already in place prior to the birth of the Svalbard Treaty.

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142. See UNCLOS, *supra* note 31, art. 3.

143. See *Kasikili/Sedudu Island* (Bots. v. Namib.), Judgment, 1999 I.C.J. 1045, ¶¶ 24–25 (Dec. 13).

144. See H.S.K. Kent, *The Historical Origins of the Three-Mile Limit*, 48 AM. J. INT'L L., 537, 537 (1954) (clarifying the Scandinavian countries Denmark, Norway, and Sweden upheld the four-nautical mile rule).

145. See *id.* at 537–39 (highlighting the cannon-shot rule was first codified by the Kingdom of Denmark in 1589).

146. See *id.* at 537–38 (describing the cannon-shot rule was intended to discourage warlike actions within neutral harbors).

147. See *id.* at 544 (showing the levy was intended to maintain economic relations between Norway and Russia).

148. See Rescripter, *Resolutioner og Collegial-Breve for Kongeriget Norge i Tidsrumn 1660-1813*, Vol. I, 334, 335, Rescription of Feb. 10, 1747.

In 2003, the Kingdom of Norway declared by Royal Decree that Norway's "territorial waters" consisted of the "territorial sea and internal waters" and were expanded from four-nautical miles to twelve-nautical miles.<sup>149</sup> This Act granted foreign vessels "the right of innocent passage through the territorial sea" which is recognized for the purpose of traveling through the seas or reaching the internal waters of Norway.<sup>150</sup> Innocent passage also permits vessels the right to stop or anchor in the territorial sea under conditions of force majeure, distress, or assistance to others in danger or distress.<sup>151</sup>

## 2. Context, Article 31

The second level of analysis under Article 31 of the Vienna Convention is the context of the Svalbard Treaty.<sup>152</sup> In the 1971 advisory opinion of *International Status of South-West Africa*, while attempting to determine the status of the term "territory" in a mandate from 1920, the ICJ held:

[The] Court must consider the changes which have occurred in the supervening half-century, and its interpretation cannot remain unaffected by the subsequent development of law, through the Charter of the United Nations . . . . Moreover, an international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of interpretation.<sup>153</sup>

Here, the ICJ defined context as a reflection of the contemporary legal framework in response to recent developments.<sup>154</sup> Analogous to *International Status of South-West Africa*,<sup>155</sup> the disputed term "territorial waters" between Norway and Russia may also be interpreted in the context of present-day legal institutions such as the Charter of the United Nations. The context of the term "territorial waters" in the Svalbard Treaty is 1920 when ten countries assembled to negotiate the terms after the end of World War I ("WWI") and

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149. Act No. 57 of 2003, *supra* note 45.

150. *Id.*

151. *Id.*

152. See VCLT, *supra* note 84, art. 31.

153. *South West Africa*, Advisory Opinion, *supra* note 94, ¶ 53.

154. *Id.*

155. *Id.*

following the 1919 Paris Peace Conference.<sup>156</sup> During the Paris Peace Conference, the Treaty of Versailles was negotiated in hopes of uniting devastated regions, forging sustainable diplomatic cooperation, and promoting peace for nations across the globe.<sup>157</sup> According to Part 1 “The Covenant of the League of Nations” in the Treaty of Versailles, the chief undertaking was “to promote international co-operation and to achieve international peace and security” amongst all nations especially those shattered by WWI.<sup>158</sup> The international community’s goal of collective responsibility was effectuated through the implementation of the Locarno Treaties in 1920.<sup>159</sup> The Locarno Treaties created a pledge for the signatory parties to ensure peace by mutual respect for each state’s independence and territorial integrity.<sup>160</sup> The international diplomatic environment at the time of the Svalbard Treaty in 1920 was generally aimed at resolving disputes peacefully, upholding the sovereignty of large and small states alike, and prohibiting aggression.<sup>161</sup> In addition, since the Charter of the United Nations in 1945,<sup>162</sup> several attempts to codify the law of the sea were made. Ultimately, UNCLOS was signed in 1982 which effectively combined all prior international law of the sea into one comprehensive regulatory framework.<sup>163</sup>

The political environment, in the context of the Svalbard Treaty,

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156. Pedersen, *The U.S. and the Svalbard Dispute*, *supra* note 60, at 122–23 (describing the Svalbard Treaty recognized “full and absolute sovereignty” of Norway over Svalbard while also restricting Norway’s sovereign rights there).

157. See Catherine Lu, *Justice and Moral Regeneration: Lessons from the Treaty of Versailles*, 4 INT’L STUDS. REV. 3, 6–7 (2002) (describing the Allied leaders viewed justice as the key to the future peace and reconciliation of Europe).

158. Treaty of Peace with Germany (Treaty of Versailles), part 1, Jun. 28, 1919 [hereinafter Treaty of Versailles].

159. See Oscar T. Crosby, *Locarno*, 88 ADVOCATE OF PEACE THROUGH JUSTICE, 4, 223 (1926) (“It is claimed that a highly desirable feature of these engagements is this, namely, that they are made not merely between nations counting normally upon the maintenance of friendly relations, but are rather made between nations whose present relations are deemed threatening to each other.”).

160. See *id.* at 224 (consisting of five main agreements signed by Belgium, France, Germany, Great Britain, and Italy).

161. See *id.* 223–24 (positing while the desire behind the Locarno treaties was “doubtless one of real desire to seek peace”, the institutions also envisaged the potential of future war).

162. U.N. Charter (entered into force Oct. 24, 1945).

163. See generally UNCLOS, *supra* note 31.

provides an important factor for its legislative intent. Although Norway was not directly involved in WWI, the Norwegian merchant fleets suffered major losses during the war, and, in repayment, Norway sought sovereignty over Svalbard in the aftermath of WWI.<sup>164</sup> During this nationalist era of sovereignty and security, the question of whether Norway ruled Svalbard was answered one year later with the conclusion of the Svalbard Treaty in 1920.<sup>165</sup> Article 1 of the Svalbard Treaty ascertains Norway's "full and absolute sovereignty" over Svalbard.<sup>166</sup> The term "sovereignty" refers to a state's exclusive right to exercise dominion and authority over its territory in conjunction with the right to adopt and enforce laws and regulations.<sup>167</sup> Moreover, in conjunction with Norway's right to enforce laws, the international community's obligation to respect those regulations also entered into force.<sup>168</sup>

The term "territorial waters" of the Svalbard Treaty in the context of 1920 reflects both the era of political uncertainty in which the Treaty was born and "the subsequent development of the law" as defined in *International Status of South-West Africa*.<sup>169</sup> International agreements, like the Treaty of Versailles and Locarno Treaties, forged in the aftermath of WWI and around the same time as the Svalbard Treaty, were created to protect national sovereignty, promote security, and prevent aggression.<sup>170</sup> In addition, "the subsequent development of the law"<sup>171</sup> following the Svalbard Treaty was the Charter of the

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164. See Pedersen, *supra* note 6, at 342 (discussing Norway's request for sovereignty over Spitsbergen in compensation for losses suffered during the war in addition to other factors).

165. See Churchill & Ulfstein, *supra* note 34, at 553 (noting based on the recommendations of the Allies, a conference was established under the name the Spitsbergen Commission on July 7, 1919, to negotiate the Svalbard Treaty and Norway's claims to sovereignty over Svalbard).

166. Svalbard Treaty, *supra* note 21, art. 1.

167. See SVALBARD REPORT, *supra* note 22, at 17.

168. *Id.*

169. *South-West Africa*, Advisory Opinion, *supra* note 94, ¶ 53.

170. See Lu, *supra* note 157, at 6–7 (describing the multifaceted purposes of justice under the Versailles negotiations as intended to deter aggression, rehabilitate the offending people, create respect for the rule of law, and provide for future reconciliation); Crosby, *supra* note 159, at 233 (contrasting the lofty intentions of the Locarno agreements with their practical limitations).

171. See *South-West Africa*, Advisory Opinion, *supra* note 94, ¶ 53.

United Nations and development of UNCLOS to establish maritime zones for coastal states and designate the respective rights and obligations in each zone. Each of these legal and cultural developments favor Norway's interpretation of "territorial waters" by protecting Norway's sovereign rights over the hydrocarbon resources in the continental shelf of Svalbard and limiting Russia's claim to access only the hydrocarbon resources in the twelve-nautical mile territorial sea zone. The legislative intent of the Treaty favors Norway's argument of exercising its full sovereignty over the continental shelf and denying aggressive and invasive Russian access.

### 3. *Object and Purpose, Article 31*

The third level of analysis under Article 31 of the Vienna Convention is the object and purpose of the Svalbard Treaty.<sup>172</sup> In 1951, the ICJ proposed an object and purpose test in its Advisory Opinion of *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*.<sup>173</sup> Here, the ICJ stated the Genocide Convention "would be universal in scope. Its purpose is purely humanitarian and civilizing . . . [And] the object and purpose of the Convention imply that it was the intention of the General Assembly and of the States which adopted it, that as many States as possible should participate."<sup>174</sup> Here, the ICJ determined parties would only be permitted to make reservations before ratifying if they did not completely undermine the function of the Genocide Convention.<sup>175</sup> In a broader sense, the ICJ created an object and purpose test that allowed nations to raise ideological differences to a treaty or convention, while remaining a party, to the extent the concerns raised did not sacrifice the "very object of the Convention in favor of a vague desire to secure as many participants as possible."<sup>176</sup> Incompatible differences threaten both the integrity of the treaty and the core of the treaty for all other signatory parties.<sup>177</sup>

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172. See VCLT, *supra* note 84, art. 31.

173. *Genocide Convention Reservations*, *supra* note 96, at 23–24.

174. *Id.*

175. *Id.* at 24.

176. *Id.*

177. See David S. Jonas & Thomas N. Saunders, *The Object and Purpose of a Treaty: Three Interpretive Methods*, 43 VANDERBILT L. REV. 565, 588–89 (2010)

When evaluating the object and purpose of the Svalbard Treaty under the test established in *Genocide Convention*, first the scope and intention of the legal doctrine must be considered.<sup>178</sup> The scope of the Svalbard Treaty was to touch each country that sought limited rights to conduct economic activities on land and in certain waters around Svalbard.<sup>179</sup> Prior to the Treaty negotiations, Svalbard was deemed a *terra nullius* area, or “no man’s land”<sup>180</sup> until the beginning of the twentieth century when coal mining emerged as a profitable industry in Svalbard.<sup>181</sup> As the land of Svalbard and the minerals within it became valuable, the need for administration and legislation grew and several proposals, including joint management by Norway, Sweden, and Russia, were discussed.<sup>182</sup> Eventually after WWI, Norway persuaded the Allies to consider Norwegian sovereignty over Svalbard during the peace negotiations in Paris.<sup>183</sup> Abstractly, the intention of the negotiations was to secure sovereignty over Svalbard.<sup>184</sup> Thus, the object and purpose of the Svalbard Treaty may be summarized as (1) establishing Norway’s sovereignty over Svalbard and (2) creating a limited obligation on Norway to provide the signatory parties equal treatment to conduct certain activities on Svalbard. By signing the Treaty, the signatory countries pursued the purpose of recognizing Norwegian sovereignty of the archipelago.

The object and purpose analysis from the decision in *Genocide Convention* has direct implications on the term “territorial waters” in the Svalbard Treaty.<sup>185</sup> The Svalbard Treaty was created to establish

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(clarifying the ICJ in the *Genocide Convention* explicitly rejected the unanimous consent rule to prevent reservations to treaties or conventions).

178. See *Genocide Convention Reservations*, *supra* note 96, at 23–24.

179. See Svalbard Treaty, *supra* note 21, art. 1.

180. Western Sahara, Advisory Opinion, 1975 I.C.J. 12, ¶ 163 (Oct. 16) (holding “terra nullius” is a legal term of art meaning “a territory belonging to no-one”).

181. See Pedersen, *supra* note 6, at 342 (noting Norway gained a renewed interest in Spitsbergen following its increased international mineral resource exploitation).

182. See *id.* (noting in trilateral conferences in 1910 and 1912, it was suggested that Spitsbergen be run as a “condominium” between Norway, Sweden, and Russia).

183. See Cetin & Büyüksağnak, *supra* note 23, at 353 (reviewing the events that led to Spitsbergen coming under Norwegian rule under the Svalbard Treaty).

184. See Pedersen, *supra* note 6, at 342 (noting because the draft treaty guaranteed international interests in Spitsbergen, Norwegian sovereignty became widely accepted).

185. See *Genocide Convention Reservations*, *supra* note 96, at 23–24.



Norway's sovereignty over Svalbard while balancing the economic and commercial interests of the signatories to use the land and "territorial waters".<sup>186</sup> Bearing in mind the essence of the Treaty is to strike a balance between sovereignty and cooperation, then the best "balanced" option to fully recognize the relevant and important purpose of the drafters and signatories is to uphold the Norwegian interpretation and define "territorial waters" as twelve-nautical miles excluding the continental shelf.<sup>187</sup> This interpretation allows Norway to secure its full sovereignty over the continental shelf while also permitting the signatory nations to conduct their economic and commercial activities within the twelve-nautical mile belt around the archipelago.

Altogether, Article 31 of the Vienna Convention contains three levels of analysis to interpret the term "territorial waters" in the Svalbard Treaty by considering the ordinary meaning, context, and object and purpose. First, the ordinary meaning of the term, under *Kasikili/Sedudu Island*, considers definitions in boundary delimitation treaties, conventions defining maritime zones, and use of the term during the conclusion of the treaty.<sup>188</sup> The Barents Sea Treaty, a border delimitation agreement,<sup>189</sup> and UNCLOS, a convention defining maritime zones,<sup>190</sup> codified territorial seas as twelve-nautical miles. Similarly, the Scandinavian Cannon-Shot Rule, exemplifying use of the term between Norway and Russia during the execution of the Svalbard Treaty<sup>191</sup>, held territorial seas to be four-nautical miles in practice. Second, the context, described in *International Status of South-West Africa*, focuses on interpreting a legal instrument within the entire legal framework, including recent developments of law.<sup>192</sup> The Svalbard Treaty was created in the context following WWI when the global community's main objectives were to secure national

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186. See Svalbard Treaty, *supra* note 21, arts. 1–3.

187. See SVALBARD REPORT, *supra* note 22, at 20.

188. See *Kasikili/Sedudu Island (Bots. v. Namib.)*, Judgment, 1999 I.C.J. 1045, ¶¶ 24–25 (Dec. 13).

189. Barents Sea Treaty, *supra* note 93, art. 3.

190. UNCLOS, *supra* note 31, art. 3.

191. See *Kent*, *supra* note 144, at 537–39 (detailing the history and purpose of the cannon-shot rule).

192. See *South-West Africa*, Advisory Opinion, *supra* note 94, ¶ 53.

sovereignty and prohibit transboundary aggression.<sup>193</sup> Third, the object and purpose, defined in *Genocide Convention*, looks at the scope and intent of the legal instrument.<sup>194</sup> The object and purpose of the Svalbard Treaty is to balance the sovereign interests of Norway and use of Svalbard's resources by signatory nations.<sup>195</sup> Conclusively, the interpretation in light of the ordinary meaning, context, and object and purpose favors the Norwegian interpretation by defining "territorial waters" as twelve-nautical miles, limiting Russia's access to the hydrocarbon reserves in the territorial waters only, and protecting Norway's exclusive right to sovereignty over the 200-nautical mile continental shelf past the territorial waters around Svalbard.

C. ARTICLE 30 "APPLICATION OF SUCCESSIVE TREATIES RELATING TO THE SAME SUBJECT MATTER," VIENNA CONVENTION

A second equally pertinent provision of the Vienna Convention is Part III Article 30 "Application of successive treaties relating to the same subject-matter".<sup>196</sup> This article provides guidance for nations regarding the rights and obligations of parties of successive treaties that govern the same subject-matter. Article 30(3) states: "When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation . . . the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty."<sup>197</sup> This provision permits treaties on the same matter to coexist under the conditions that the earlier treaty is only valid to the extent that it does not conflict with the later treaty.<sup>198</sup> In the *American Journal of International Law*, two negotiators of the Vienna Convention, Richard D. Kearney and Robert E. Dalton, provided further insight regarding Article 30 of the Vienna Convention stating: "[In situations which] parties to one treaty . . .

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193. See Lu, *supra* note 157, at 6–7 (noting the unexpectedly long and devastating effects of WWI on all European belligerents, which led to the desire for the future peace and reconciliation of Europe); Crosby, *supra* note 159, at 233.

194. See *Genocide Convention Reservations*, *supra* note 96, at 23–24.

195. See SVALBARD REPORT, *supra* note 22, at 20.

196. VCLT, *supra* note 84, art. 30.

197. *Id.*

198. *Id.*

become parties to a second, the second governs on any point where it is incompatible with the first".<sup>199</sup> Article 30(3) essentially codifies the general legal principal, *lex posterior derogat priori*, which states that a treaty or body of law which is created after an earlier treaty or body of law on the same subject-matter prevails.<sup>200</sup> In *South China Sea Arbitration*, although the PCA did not directly refer to Article 30 of the Vienna Convention, the tribunal did implement the principles promulgated by Article 30 in order to determine the compatibility of two overlapping bodies of law.<sup>201</sup>

The PCA in *South China Sea Arbitration* ruled in favor of the Philippines on several maritime claims including China's claim to historic rights within the so-called 'nine-dash line' and whether certain Chinese activities in the South China Sea violated UNCLOS.<sup>202</sup> First, the PCA concluded that any historic rights to resources in the waters of the South China Sea beyond the territorial sea China possessed at one point were "extinguished by the adoption [of UNCLOS]."<sup>203</sup> This was because China made use of, but never "exercised exclusive control over the waters and their resources" within the EEZ and continental shelf under the sovereignty and jurisdiction of the Philippines.<sup>204</sup> The tribunal held during the negotiations on the creation of the continental shelf and EEZ maritime zones under UNCLOS, several States sought to preserve their historic rights of conducting commercial activities in the maritime zones beyond the territorial waters.<sup>205</sup> However, that position was ultimately rejected in favor of preserving national sovereignty over the continental shelf and EEZ and instead permitting foreign states a "limited right of access to

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199. See Christopher J. Borgen, *Resolving Treaty Conflicts*, 37 GEO. WASH. INT'L L. REV. 573, 577 (2005) (clarifying why the normative framework of Article 30 of the VCLT applies only in certain defined instances).

200. See Silvia Borelli, *The (Mis)-Use of General Principles of Law: Lex Specialis and the Relationship Between International Human Rights Law and the Laws of Armed Conflict*, in GENERAL PRINCIPLES OF LAW—THE ROLE OF THE JUDICIARY, 265, 268 (Laura Pineschi ed., 2015) ("lex posterior as a principle of coordination is given effect in Article 30(3) VCLT").

201. *South China Sea Arbitration* (Phil. v. China), PCA Case No. 2013-19, ¶¶ 235, 237, 238 (Perm. Ct. Arb. 2016).

202. *Id.* ¶¶ 234, 261, 262.

203. *Id.* ¶¶ 261, 262.

204. *South China Sea*, Press Release, *supra* note 100, at 9.

205. *Id.* at 8–9.

fishers in the EEZ and no rights to petroleum or mineral resources.”<sup>206</sup> Overall, the PCA determined “[UNCLOS] was intended to comprehensively allocate the rights of States to maritime areas.”<sup>207</sup>

Although *South China Sea Arbitration* does not directly involve conflicting treaties on the same-subject matter, the tribunal focused on resolving a legal dispute between UNCLOS and another conflicting source of law pertaining to the same-subject matter of rights within the maritime zones.<sup>208</sup> While the PCA in *South China Sea Arbitration* concluded the historic rights which China asserted regarding the ability to drill for mineral resources in the EEZ and continental shelf of the Philippines were “extinguished” and “incompatible with [UNCLOS]”, a parallel exists to the dispute between Norway and Russia.<sup>209</sup> Similar to the claims asserted by China in the Philippines’ continental shelf, Russia asserts under the Svalbard Treaty it possesses the historic rights to drill for mineral resources in the continental shelf around Svalbard under the sovereignty of Norway.<sup>210</sup> Furthermore, *South China Sea Arbitration* provides an analogous example of how the invasive actions of a large, power-hungry country, such as Russia’s encroachment into the Norwegian waters around Svalbard, mimic the aggressive actions of China’s encroachment into the Philippines’ continental shelf and subsequent violation of the Philippines’ rights under UNCLOS.<sup>211</sup>

When analyzing the extent of Russia’s historic rights under *South China Sea Arbitration* and in conjunction with Article 30 of the Vienna Convention, the dates of the treaties and bodies of law become relevant to determine compatibility.<sup>212</sup> First, the Svalbard Treaty, signed in 1920, permits signatory nations to access the “territorial

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206. *Id.*

207. *Id.* at 8.

208. *Phil. v. China*, PCA Case No. 2013-19, ¶¶ 235, 237, 238.

209. *Id.* ¶¶ 261, 262.

210. See Lavrov’s Message to Norwegian Foreign Minister, *supra* note 12.

211. E.g., Guy Faulconbridge, *Russian Sub Plants Flag Under North Pole*, REUTERS (Aug. 2, 2007) <https://www.reuters.com/article/idINIndia-28784420070802> (reporting that Russian President Vladimir Putin coordinated a Russia expedition to place the Russian flag on the floor of the Arctic Ocean to symbolize Russia’s claim to the hydrocarbon resources in the ocean).

212. See *Phil. v. China*, PCA Case No. 2013-19, ¶¶ 235, 237, 238; see also VCLT, *supra* note 84, art. 30.

waters” around the Norwegian archipelago, Svalbard.<sup>213</sup> Second, UNCLOS, signed in 1982, empowers any coastline nation to establish exclusive rights over maritime zones like the territorial sea, EEZ, and continental shelf to preserve and regulate their sovereignty over their sea territories.<sup>214</sup> Considering UNCLOS entered into force almost five decades after the Svalbard Treaty, under Article 30(3) of the Vienna Convention, the compatibility of the Svalbard Treaty only prevails to the extent that the terms of the Treaty do not contradict the terms of UNCLOS.<sup>215</sup> The Svalbard Treaty may remain compatible with the contemporary and prevailing body of law, UNCLOS, so long as the term “territorial waters” of the Svalbard Treaty matches the definition of “territorial sea” in Article 3 of UNCLOS articulated as a twelve-nautical mile belt around Svalbard.<sup>216</sup>

Norway’s interpretation holds that under the Svalbard Treaty, the term “territorial waters” extends twelve-nautical miles from the shore of Svalbard.<sup>217</sup> In addition, under Article 76 of UNCLOS, Norway established exclusive rights to the continental shelf adjacent to mainland Norway that includes the sea waters beyond the twelve-nautical mile “territorial waters” zone and within 200-nautical miles from the shore of Svalbard.<sup>218</sup> The CLCS, created by the United Nations to implement the provisions of UNCLOS, further approved Norway’s submission of the continental shelf around Svalbard.<sup>219</sup> Although UNCLOS did not exist as an international agreement when the Svalbard Treaty was executed in 1920, the application of the Svalbard Treaty with respect to the established concepts in UNCLOS is limited to the extent that it is compatible with UNCLOS.

By upholding the interpretation of “territorial waters” in the Svalbard Treaty in accordance with Article 3 of UNCLOS as twelve-nautical miles, Norway may protect its sovereignty over the EEZ and continental shelf while preventing the rights of foreign nations, such as Russia, from being “extinguished to the extent they were

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213. Svalbard Treaty, *supra* note 21, art. 1.

214. UNCLOS, *supra* note 31, arts. 3, 55, 76.

215. VCLT, *supra* note 84, art. 30.

216. UNCLOS, *supra* note 31, art. 3.

217. See SVALBARD REPORT, *supra* note 22, at 20.

218. UNCLOS, *supra* note 31, arts. 3, 76.

219. See *The Continental Shelf: Questions and Answers*, *supra* note 48, at 5.

incompatible with [UNCLOS's] system of maritime zones."<sup>220</sup> Furthermore, Russia made use of but never "exercised exclusive control"<sup>221</sup> over the oil blocks in the waters of the continental shelf around Svalbard.<sup>222</sup> Instead, the Norwegian Parliament grants foreign entities licenses to explore and extract mineral and hydrocarbon resources.<sup>223</sup> Like the negotiating states in *South China Sea Arbitration*, the nations tasked with negotiating the terms of UNCLOS ultimately decided to forfeit their historic rights in foreign maritime zones in order to protect the sovereignty of coastline states in their maritime territories.<sup>224</sup>

On the other hand, Russia challenges Norway's claim under Article 76 of UNCLOS that the continental shelf of Svalbard is continuous from the continental shelf of mainland Norway for violating the Treaty.<sup>225</sup> Instead, Russia contends the continental shelf around Svalbard is separate from the continental shelf around mainland Norway and is thus subject to the obligations under the Treaty.<sup>226</sup> In this case, Norway and Russia are signatories to both the Svalbard Treaty and UNCLOS. UNCLOS and the Treaty also govern the same-subject matter regarding use and access to the waters around Svalbard in the Barents Sea.<sup>227</sup> The Treaty states all signatory nations shall have equal access to and use of the "territorial waters" around Svalbard to conduct specified commercial activities, like petroleum extraction.<sup>228</sup> UNCLOS also permits a country to claim a continental shelf zone around the coastline that extends 200-nautical miles and up to 350-nautical miles beyond the baseline of the coast and maintain exclusive

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220. See *South China Sea Arbitration* (Phil. v. China), PCA Case No. 2013-19, ¶¶ 261 (Perm. Ct. Arb. 2016).

221. *South China Sea*, Press Release, *supra* note 100, at 9.

222. See NORWAY'S INTEGRATED OCEAN MANAGEMENT PLANS, *supra* note 75, at 95 (clarifying in order for the Ministry to officially open an oil block for exploration, an environmental assessment and public consultation process must be conducted by the Norwegian Ministry of Petroleum and Energy).

223. *Id.*

224. Pedersen, *supra* note 6, at 344 (outlining the outcome of Norway's negotiations with the Soviet Union over continental shelf delimitation in the Barents Sea).

225. See Nilsen, *supra* note 65.

226. *Id.*

227. See UNCLOS, *supra* note 31; Svalbard Treaty, *supra* note 21, art. 1.

228. Svalbard Treaty, *supra* note 21, art. 1.

control over that area.<sup>229</sup> UNCLOS was created after the Treaty and therefore determines the applicability of the Treaty to the extent it is compatible with UNCLOS.<sup>230</sup> If the term “territorial waters” in the Svalbard Treaty was determined to extend past the twelve-nautical mile territorial sea zone and incorporate the continental shelf around Svalbard, as proclaimed by Russia, then the terms of the Treaty would be incompatible with and violate the provisions establishing maritime zones in UNCLOS. Therefore, Norway’s interpretation is correct as it establishes a compromise between the two bodies of law that (1) permits Norway to uphold its obligations to the other signatories of the Treaty and (2) recognizes Norway’s exclusive control over the continental shelf around Svalbard under UNCLOS.

#### D. RUSSIAN COUNTERARGUMENT FAILS

The Russian interpretation is often portrayed as a “dynamic interpretation” by various legal scholars.<sup>231</sup> In support of Russia’s interpretation, the ICJ’s judgment in *Aegean Sea Continental Shelf* is frequently cited.<sup>232</sup> In *Aegean Sea Continental Shelf*, the ICJ was asked to declare the boundary separating the continental shelf between Greece and Turkey in the Aegean Sea by settling the proper interpretation of the term “territorial status of Greece.”<sup>233</sup> This boundary also determined the area in which Turkey was entitled to explore and exploit resources on Greece’s continental shelf. Here, the ICJ held the continental shelf around Greece is included in the term “territorial status of Greece” because the disputed term is a “generic term” that “follows the evolution of the law.”<sup>234</sup>

Russia favors this case to promote the “dynamic interpretation” of their rights in the “territorial waters” around Svalbard under the Svalbard Treaty. Russia claims UNCLOS, which established maritime zones such as the EEZ, continental shelf, and territorial sea, was an

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229. UNCLOS, *supra* note 31, art. 76.

230. See VCLT, *supra* note 84, art. 30.

231. See Jørgensen & Østhagen, *supra* note 41, at 170–71.

232. *Aegean Sea Continental Shelf (Greece v. Turk.)*, Judgment, 1978 I.C.J. 60, 3 (Dec. 19).

233. *Id.*

234. *Id.* ¶¶ 74–76.

“evolution of the law.”<sup>235</sup> Therefore, Russia believes their rights under the Svalbard Treaty have expanded in accordance with the maritime zones created by UNCLOS, and consequently their rights to explore and exploit mineral resources under the Treaty extend to both the continental shelf and territorial water maritime zones around Svalbard.<sup>236</sup>

However, *Aegean Sea Continental Shelf* differs greatly from the dispute at hand between Norway and Russia.<sup>237</sup> In *Aegean Sea Continental Shelf*, the term “territorial status of Greece” was a “generic term” and could be likened to the concept of sovereignty.<sup>238</sup> Therefore, it was logical for the ICJ to conclude the term did include the continental shelf of Greece. Whereas in the Svalbard Treaty, the term “territorial waters” is not a “generic term” as the ICJ declared in the dispute between Greece and Turkey. In fact, the term “territorial waters” is explicitly defined in terms of size in UNCLOS under Article 3 “Territorial Sea” as twelve-nautical miles extending from the base of the shore.<sup>239</sup> Therefore, the “evolution of the law” since the execution of the Svalbard Treaty in 1920 only further defines the disputed term at hand and clarifies Russia’s rights in the “territorial waters” around Svalbard are limited to twelve-nautical miles explicitly excluding the separately defined continental shelf maritime zone.

Moreover, the ICJ in *Aegean Sea Continental Shelf* emphasized the importance of incorporating the development of law “so as to be capable of embracing rights over the continental shelf.”<sup>240</sup> The ICJ was looking to retain the value of both new and historic legal doctrines by taking a more “dynamic interpretation”. Under Russia’s interpretation, Russia would obtain access to and use of the continental shelf around Svalbard under the Svalbard Treaty. However, this interpretation would severely limit Norway’s rights of sovereignty over its continental shelf around Svalbard as established by Article 76 of UNCLOS.<sup>241</sup> The Russian interpretation therefore violates the

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235. Pedersen, *supra* note 6, at 345–46.

236. *Id.* at 345–46, 348.

237. Greece v. Turk., 1978 I.C.J. ¶¶ 74–76.

238. *Id.*

239. UNCLOS, *supra* note 31, art. 3.

240. Greece v. Turk., 1978 I.C.J. at 33, ¶ 78.

241. UNCLOS, *supra* note 31, art. 76.



overarching objective of the ICJ in *Aegean Sea Continental Shelf*.<sup>242</sup> Instead, Norway's interpretation aligns more cohesively with the principles established in the case because limiting Russia's access around Svalbard to twelve-nautical miles would provide signatory parties at least twelve-nautical miles to explore and exploit mineral resources AND protect Norway's sovereign power over the continental shelf.

## IV. RECOMMENDATIONS

### A. NEGOTIATE THE INTERPRETATION

The Charter of the United Nations Article 33(1) imposes a duty on all parties to a dispute to seek a resolution by negotiation, mediation, or another peaceful means of their choice.<sup>243</sup> Normally, negotiation is the first method of dispute settlement sought. Considering Norway and Russia were able to resolve their dispute regarding the maritime delineation border in 2010 through facilitated mediation,<sup>244</sup> a similar method may be taken to resolve the issue on the interpretation of the Svalbard Treaty and maritime zones around Svalbard. Open dialogue between the countries may result in a resolution that includes a hybrid form of an EEZ around Svalbard permitting Russia to conduct certain commercial activities subject to Norway's sovereignty and explicit limitations.

For example, in the FPZ around Svalbard, Norway has the authority to regulate which countries may fish in the waters and to what extent.<sup>245</sup> In addition, Norway and Russia have been continuously cooperating on joint management of the fish stocks in the Barents Sea since the formation of the Barents Sea Treaty.<sup>246</sup> Furthermore, Norway

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242. *Greece v. Turk.*, 1978 I.C.J. ¶¶ 74–76 (explaining the concept of territorial status includes “not only the particular legal regime but the territorial integrity and the boundaries of a State.”).

243. U.N. Charter art. 33, ¶ 1.

244. *See* NORWEGIAN GOVERNMENT'S ARCTIC POLICY, *supra* note 42, at 14.

245. *See* NORWAY'S INTEGRATED OCEAN MANAGEMENT PLANS, *supra* note 75, at 78.

246. *See id.* at 120 (exemplifying cooperation through the Joint Norwegian-Russian Fisheries Commission has led to benefits such as transformation of the FPZ into a system covering a broad range of sea waters and better resolution of dispute matters regarding the coast guard).

and Russia have proven to be cooperative in the past as evidenced through the negotiations to create the Barents Sea Treaty itself.<sup>247</sup> Although this agreement, unlike the Svalbard Treaty, deals directly with delimiting the sea territory between Norway and Russia, the Barents Sea Treaty demonstrates both Norway and Russia's strong gravitational pull towards reaching a satisfactory compromise on accessing hydrocarbon resources in the waters between them. Therefore, a Commercial Protection Zone may be implemented around Svalbard to solidify a compromise that allows Norway to regulate the extent of Russia's exploitation of hydrocarbon resources or limit Russia's presence in the area to specific times (e.g., only the summer months). However, the issue with this solution is the fact that Russia is currently engaged in a conflict with Ukraine<sup>248</sup>; therefore, Russia's capacity or initiative to meet with Norway to facilitate negotiations is unknown.

#### B. ILLUSTRATE REGIONAL SUPPORT

The Arctic Council is the leading intergovernmental forum to promote "cooperation, coordination and interaction among Arctic States" on geopolitical issues in the Arctic Circle.<sup>249</sup> Both Russia and Norway are members of the Arctic Council along with Canada, Denmark, Finland, Iceland, Sweden, and the United States.<sup>250</sup> The members of the Arctic Council are split regarding their view of the interpretation of the Treaty.<sup>251</sup> The breakdown is split as Denmark and Iceland openly oppose the Norwegian interpretation;<sup>252</sup> Canada, Finland, and Sweden uphold the Norwegian interpretation;<sup>253</sup> and, the United States does not have a public preference.<sup>254</sup> If the United States

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247. See Barents Sea Treaty, *supra* note 93.

248. See Kirby, *supra* note 1.

249. See *About the Arctic Council*, ARCTIC COUNCIL, (last visited Sept. 11, 2022), <https://arctic-council.org/about> (specifying issues include sustainable development and environmental protection. The Arctic Council intentionally remains uninvolved with issues of commercial or economic enterprise and national security).

250. *Id.*

251. *Id.*

252. See Lotta Numminen, *A History and Functioning of the Spitsbergen Treaty*, 1 Spitsbergen Booklet, 8 (2011).

253. *Id.*

254. See Pederson, *supra* note 60, at 127, 133 (describing the United States'

were to take a stance on the interpretation of international law, the recognition and support of Norway's interpretation may have the potential to sway other nations on the edge.<sup>255</sup> Regional support in the Arctic Circle in favor of one interpretation over another is significant because the countries in the Arctic Circle are those most impacted if suddenly the Svalbard Treaty applied to the continental shelf around Svalbard and over forty signatory countries then had open access to explore and exploit oil and gas in a 200-nautical mile zone as compared to a twelve-nautical mile zone.

Another important regional entity is the North Atlantic Treaty Organization (NATO).<sup>256</sup> While Russia is not a member of NATO, and Norway and the United States are, the implications of a direct position from NATO on the issue are profound. Article V of the North Atlantic Treaty, or commonly recognized as the collective defense clause, states that any attack on a member of NATO is viewed as an attack on the whole and thus retaliation from each member is expected.<sup>257</sup> If the United States established a clear position on Norway's rights in the continental shelf around Svalbard, Article V could prohibit Russia's military posturing from developing into military conflict.<sup>258</sup> Furthermore, Russia may be more inclined to begin negotiations with Norway.<sup>259</sup>

The final illustration of regional support is evidenced through the Ilulissat Declaration, where all five Arctic countries signed this agreement to publicly declare their commitment to UNCLOS governing all activities in the Arctic.<sup>260</sup> Upon signature, both Norway

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"policy of noninvolvement" regarding the Svalbard Treaty issue).

255. *Id.*

256. See *NATO Welcome*, NATO, <https://www.nato.int/nato-welcome/index.html> (last visited Sept. 11, 2022) (showing NATO was created by the North Atlantic Treaty in 1949 and designed to be a political and military alliance to promote "democratic values and [enable] members to consult and cooperate on defense and security-related issues to solve problems, build trust and, in the long run, prevent conflict).

257. North Atlantic Treaty art. 5, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243.

258. See Eugene Rumer et al., *Russia in the Arctic—A Critical Examination*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Mar. 19, 2021) (highlighting the issue that a show of regional support from NATO, or lack thereof, may also be received by Russia as a threat and thus prompt Russia to respond with violence).

259. *Id.*

260. The Ilulissat Declaration, *supra* note 38.

and Russia declared that each maritime boundary in the Arctic Ocean is subject to the provisions set forth in UNCLOS, and they hold the right to hold each accountable.<sup>261</sup> Considering Norway and Russia confirmed that the maritime zones around Svalbard are established by the UNCLOS, by signing the Ilulissat Declaration, Russia either inadvertently or ignorantly affirmed Norway's interpretation at the same time.

### C. FORMAL ENFORCEMENT PROCEDURES

The international courts and tribunals such as the ICJ may be permitted to hear and rule on the case. First, the Svalbard Treaty precedes the ICJ; therefore, there is no clause within the Treaty establishing the ICJ's jurisdiction over dispute matters. However, if Norway and Russia voluntarily agreed to take their dispute over the interpretation and application of the Treaty to the ICJ, then the court could hear the case through an AD HOC declaration. This formal alternative could permit the justice system to provide a uniform reading of the Treaty and affirm the validity of the continental shelf under Article 76 of UNCLOS. The main issue is that this solution could potentially take years to resolve and ultimately fail to end the dispute in a timely manner. For example, the dispute in *South China Sea Arbitration* between the Philippines and China was not resolved for almost four years.<sup>262</sup>

### D. INFORMAL ENFORCEMENT PROCEDURES

Since Russia's War on Ukraine, the European Union, Norway, the United States, and many additional countries have implemented various rounds of economic sanctions on Russian goods and entities.<sup>263</sup> Although Norway has strived to maintain open and cooperative relations with Russia due to their close proximity and

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261. *Id.*

262. *South China Sea Arbitration* (Phil. v. China), PCA Case No. 2013-19, ¶¶ 261 (Perm. Ct. Arb. 2016).

263. See U.S. Embassy Tbilisi, *International Sanctions are Working: Russia Feels Economic Pressure*, U.S. EMBASSY GA. (Aug. 16, 2022), <https://ge.usembassy.gov/international-sanctions-are-working-russia-feels-economic-pressure> (stating that over 30 countries implemented sanctions on Russia for goods such as semiconductors and electronic products).

intimate economic relations, an additional round of economic sanctions may be implemented to prohibit Russia from conducting further oil-seeking encroachment into the continental shelf of Svalbard. Norway continues to endorse sanctions against Russia to punish the Putin regime's aggressive actions in Ukraine.<sup>264</sup> Therefore, it would be logical for Norway to seek additional sanctions when Russia acts aggressively towards the hydrocarbon reserves around Svalbard.

## V. CONCLUSION

The fragile relations between Norway and Russia are strained as Norway yearns to protect its sovereignty over Svalbard against Russia's aggressive tactics to secure unrestricted access to Svalbard's hydrocarbon resources. Norway maintains the continental shelf around mainland Norway is continuous and connected to the continental shelf around Svalbard. Therefore, Norway exerts exclusive jurisdiction over the continental shelf, and the obligations of Norway to permit signatory parties to conduct commercial activities (e.g., exploit hydrocarbon resources) in the "territorial waters" under the Svalbard Treaty does not apply to the 200-nautical mile continental shelf. Instead, Norway holds the term "territorial waters" is explicitly defined under UNCLOS as twelve-nautical miles around Svalbard.

In contrast, Russia asserts Svalbard generates its own continental shelf and is thus included in the term "territorial waters" giving Russia the right to exploit hydrocarbon resources in the full 200-nautical mile continental shelf. After analyzing the Svalbard Treaty under the Vienna Convention and legal framework established by the ICJ and PCA, the Norwegian interpretation of "territorial waters" considering UNCLOS reigns supreme. The continental shelf between mainland Norway and Svalbard is a continuous geographic formation and legally recognized entity that is not subject to the provisions of the Svalbard Treaty. The Norwegian Parliament said it best with, "Misunderstandings and a lack of knowledge about the treaty's actual content can also contribute to certain actors having unrealistic

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264. See Andreas Østhagen, *Relations with Russia in the North Were Already Tense. Now it's Getting Worse*, ARCTIC INST. (Feb. 25, 2022) (outlining the Norwegian governmental response to Putin's government).

expectations and perceptions about the treaty's significance for their special interests."<sup>265</sup>

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265. See Stupachenko, *supra* note 61.