

International law in Arctic waters: Disputes over catching snow crab in Svalbard in the broader context of the exploration of natural resources

Kateřina Uhlířová

Department of International and European Law, Faculty of Law, Masaryk University Brno, 602 00, Czech Republic

Abstract

The importance of fisheries in the Arctic region is on the increase as climate change results in natural resources, both biological and non-biological, becoming more accessible. Catching snow crab, which is a non-native species in the Barents Sea, has contributed to an ongoing dispute between Norway, the European Union and some other states on the status of the waters surrounding the archipelago of Svalbard and fishing rights. Disagreements among the affected states over the management of the vast ocean areas surrounding Svalbard are mainly legally grounded in a dispute over the interpretation of the Svalbard Treaty (1920) and its interrelation with the United Nations Convention on the Law of the Sea (1982). A question at the heart of this dispute is the extent of the rights of states to manage natural resources, especially considering developments in the international law of the sea with innovative concepts such as exclusive economic zones and the continental shelves. This chapter examines how both international treaties apply to these complicated issues, which are at the same time impacting Arctic governance as such. The chapter links challenges identified within this legal framework with the deeper impact on the fragile Arctic environment, including the Barents Sea's benthic ecosystem. While the right to catch snow crab may be perceived as a relatively "minor issue", it well illustrates the complexity of the governance of the Arctic marine environment. Disputes over catching snow crab serve as a precursor of broader challenges relating to the exploration and exploitation of both living (fisheries) and non-living (oil, gas, rare earth metals) natural resources. There are wider practical consequences since the outcome of the "snow crab dispute" affects the equal access to other, arguably more profitable natural resources, including the reserves of hydrocarbons in the same waters.

Key words: international law of the sea, natural resources, Svalbard Treaty, UNCLOS, the fisheries law and policy of the EU

DOI: 10.5817/CPR2025-S-8

Received February 28, 2025, *accepted* November 15, 2025.

*Corresponding author: K. Uhlířová <katerina.uhlirova@law.muni.cz>

Acknowledgements: The article was written as a part of the project ARCTIC Centre for Human-to-Environment Oriented Studies: Impact of Climate Change and Human Activities in the Arctic, supported by the Masaryk University Grant Agency under MUNI/G/1540/2019.

1. Introduction: International Law in Arctic Waters

The importance of fisheries in the Arctic region is on the increase as climate change is making natural resources, both biological and non-biological, more accessible.¹ These natural resources include the snow crab (*Chionoecetes opilio*), a non-native species in the Barents Sea.² Snow crabs made “their way into the waters of the High Arctic”³ and settled in this region more than two decades ago.⁴ Soon after, these “marine invasions” began to be exploited as a highly profitable market commodity.⁵ Commercial fishing for this valuable resource began around 2013 and was rapidly “heralded as the new Arctic gold”, becoming potentially as financially lucrative as cod fisheries.⁶ In the following years, catching snow crab contributed to an ongoing dispute between Norway, the European Union (EU) and some other states (mainly Latvia and Poland)⁷ on the status of the waters surrounding the Svalbard archipelago and fishing rights.⁸

Worldwide, fishing is a multibillion-dollar industry, employing over 40 million people and making a significant contribution to the global economy.⁹ The EU plays an important role in the context of international fishing; its fishing industry is the fourth largest in the world.¹⁰ Moreover, the EU is “the world’s biggest market of seafood”¹¹ and

¹ MELCHIORRE, T. (2024): The European Union and the Arctic: The case of fishery. *The Yearbook of Polar Law XV*, 231–257: 231–232. Brill, Nijhoff.

² For a basic overview of the difference between non-native and invasive species, see e.g. National Park Service (2025): Invasive & Non-Native Species (Executive Order 13751). at: <https://www.nps.gov/subjects/invasive/learn.htm>

For a more thorough analysis see HAUBROCK, P. J., CUTHBERT, R. N., BALZANI, P. *et al.* (2024): Discrepancies between non-native and invasive species classifications. *Biological Invasions*, 26: 371–384, at 371: “Among these non-native species, a subset exhibits negative impacts and is commonly referred to as ‘invasive’[...]Classifications and definitions of invasive species also differ among countries potentially leading to an underrepresentation.”

³ ROSSI, C. R. (2017): Norway’s imperilled sovereignty claim over Svalbard’s adjacent waters. *German Law Journal*, 18(6): 1497–1530.

⁴ DEPOOTER, H. (2020): The snow crab dispute in Svalbard. *ASIL Insights*, 24(4). at: <https://www.asil.org/insights/volume/24/issue/4/snow-crab-dispute-svalbard>

⁵ KOURANTIDOU, M., KAISER, B. A. (2024): Rethinking user rights of profitable marine invasions: Lessons from the Norwegian Barents Snow Crab fishery. *Ocean and Coastal Management*, 259: 107430.

⁶ ØSTHAGEN, A., RASPOTNIK, A. (2018): Crab-tacular! Snow crabs on their march from Svalbard to Brussels. at: <https://www.thearcticinstitute.org/crab-tacular-snow-crabs-march-svalbard-brussels/>

⁷ The EU’s position on the Svalbard Treaty’s equal access and non-discrimination provisions is supported also by Germany, Spain, Portugal and France. See also CHURCHILL, R. (2022): The disputed scope of the Svalbard treaty offshore: A new approach to resolving the issue. *Nordic Journal of International Law*, 91(4): 544–567.

⁸ DEPOOTER, H. (2020) - *op.cit. fn.* 4.

⁹ The estimated market value in 2020 was \$276.5 billion. In: CRASE, L., RAI, K. (2024): IUU Fishing: The Dangers Behind Unsustainable Seafood Practices, *Santa Clara Business Law Chronicle*. Other authors claim that over 90 million people are actually “engaged in fishing worldwide”. See LINDER, J.: Fishing Industry Statistics, 29 April 2025. at: <https://gitnux.org/fishing-industry-statistics/>

¹⁰ MELCHIORRE, T. (2024) - *op.cit. fn.* 1, p. 231.

¹¹ BARNES, R., HARRISON, J. and VAN DER MAREL, E. (2020): Introduction: External aspects of the European Union common fisheries policy. *The International Journal of Marine and Coastal Law*, 35: 5–17. doi:10.1163/15718085-12341002. Quoted from MELCHIORRE, T. (2024) - *op.cit. fn.* 1, p. 232.

is considered to be “one of the major consumers of Arctic fish”¹². Fishing is one of the EU’s common policies.¹³ The EU represents one of the largest markets overall for consumption and trade as well.¹⁴

Fishing, however, may threaten “its own future if left unchecked”.¹⁵ The international community has been trying “to bring order to fishing” for decades,¹⁶ including through various international legal arrangements, such as international and regional treaties and customs. This chapter focuses on the role of the relevant international instruments in the unique context of Svalbard, where states have been trying, for more than a hundred years “to bring order to fishing” in the rich maritime area around Svalbard. In recent years, these attempts have led to disagreements arising from differing interpretations of the “old” Svalbard Treaty and the “new” international law of the sea, the United Nations Convention on the Law of the Sea (UNCLOS), which represents “a constitution for the oceans” and covers every aspect of the use and resources of the sea.¹⁷ Disagreements among the affected states (including some EU member states) over the management of the vast ocean areas surrounding the archipelago of Svalbard are mainly legally grounded in a dispute over the interpretation of the Svalbard Treaty (1920) and its interrelation with UNCLOS (1982).

Today, a particular challenge related to the relatively vague Svalbard Treaty is the question of its application to the continental shelf and the exclusive economic zone, as these maritime zones became codified “constructions” under the international law of the sea only a few decades after the conclusion of the Svalbard Treaty.¹⁸ Therefore, a question at the heart of this dispute is the extent to which states have the right to manage natural resources within and beyond Svalbard territorial waters. Not surprisingly, Norway contends that the Svalbard Treaty only applies to the 12 nautical mile limit from the baseline of the archipelago while some states (parties to the Svalbard Treaty) and the EU maintain that it applies to the 200 nautical mile limit of the exclusive economic zone and the continental shelf (where the snow crab is found).¹⁹ As some authors have pointed out, “[t]he ramifications are considerable: snow crab today, oil and gas tomorrow.”²⁰ Indeed, the most recent statement made in 2025 by the Norwegian Minister of Energy, Terje Aasland, proves the point: “Norway will be a long-term supplier of oil and gas to

¹² MELCHIORRE, T. (2024) - *op.cit. fn. 1*

¹³ RASPOJNIK, A., ØSTHAGEN, A. (2020): How much is the fish? When foreign policy meets fishing interests in the EU’s Arctic endeavour. *International Relations*, 35(2): 256-276. doi: 10.1177/0047117820920915

¹⁴ The EU fish market – 2024 edition, Publications Office of the European Union, 2024. at: <https://data.europa.eu/doi/10.2771/9420236>

¹⁵ BRAW, E. (2025): Russia’s newest victims may be fish, foreign policy. at: <https://foreignpolicy.com/2025/06/18/russia-fishing-spies-norway/>

¹⁶ *Ibid.*

¹⁷ KOH, T. B.: President of the Third United Nations Conference on the Law of the Sea, “A Constitution for the Oceans”. at: https://www.un.org/depts/los/convention_agreements/texts/koh_english.pdf

¹⁸ *Ibid.*

¹⁹ DI BELLA, D. R. (2020): How to circumvent EU’s procedural obstacles to secure EU’s fishing rights in Svalbard, EJIL: Talk! at: <https://www.ejiltalk.org/how-to-circumvent-eus-procedural-obstacles-to-secure-eus-fishing-rights-in-svalbard/>

²⁰ DODDS, K.: Professor of geopolitics at University of London for CNN, quoted from PADDISON, L. (2023): ‘A ginormous can of worms’: How a fight over snow crabs could lead to a win for oil drilling access. CNN World. at: <https://edition.cnn.com/2023/01/27/world/snow-crabs-oil-norway-svalbard-climate-intl>

Europe, while the Norwegian continental shelf will continue to create value and jobs for our country”.²¹

Given this broader background, this chapter examines how both international treaties apply to these complicated issues, which at the same time impact Arctic governance as such.²² The article then links challenges identified within the (international) legal framework with deeper impacts on the fragile Arctic environment, including the benthic ecosystem of the Barents Sea. By doing so, it further illustrates how the past, through international legal arrangements that are more than a hundred years old, still affects and contributes to the present changes in Svalbard. Apparently, the current situation could be interpreted as testing “the effectiveness of old regimes to respond to contemporary developments”.²³

The aim of this chapter is to highlight how changes in international law, that have taken place since the conclusion of the Svalbard Treaty in 1920, particularly the evolution of the international law of the sea, have brought challenging issues to the forefront with respect to the extent to which all states party to the Svalbard Treaty enjoy rights of equal access to natural resources, including commercial catching of snow crab.²⁴ It is important to note from the outset that Norway has benefited from developments in the international law of the sea with innovative concepts such as the exclusive economic zone²⁵ and the continental shelf,²⁶ which enabled the extension of coastal state jurisdiction over ocean areas that had been open sea in the past.²⁷ As indicated, the crucial question is whether the Svalbard Treaty is applicable beyond the 12 nautical mile territorial limit, to maritime zones that did not exist, in law, back in 1920. Admittedly, this is not a new question. However, the relatively recent arrival of snow crab has directed renewed attention towards the continental shelf. More so, as fish stocks shift northward due to ocean warming²⁸, the issue of the territorial application of the Svalbard Treaty may receive even greater attention in the future.²⁹

²¹ SOLSVIK, T. (2025): Norway prepares first major oil, gas licensing round in years. Reuters. at: <https://www.reuters.com/business/energy/norway-prepares-first-major-oil-gas-licensing-round-years-2025-08-08/>

²² This article, however, does not provide an exhaustive analysis of the respective treaties, nor does it address all (still unsettled) legal aspects of catching of snow crab in Svalbard. Such a detailed analysis would go beyond the scope and purpose of this paper.

²³ STEENKAMP, R. C. (2019): Svalbard’s ‘Snow Crab Row’ as a challenge to the common fisheries policy of the European Union. *The International Journal of Marine and Coastal Law*, 35(1): 1-27.

²⁴ JENSEN, Ø. (2020): The Svalbard Treaty and Norwegian Sovereignty. *Arctic Review on Law and Politics*, 11: 82-107.

²⁵ NANDAN, S. N.: The exclusive economic zone: A historical perspective. at: <https://www.fao.org/4/s5280t/s5280t0p.htm>

²⁶ HENRIKSEN, T. (2024): The Dispute over the Geographical Application of the Svalbard Treaty: Into a New Phase, An Essay in Honor of Ted L. McDorman. *Ocean Development & International Law*, 55: 4, p. 467. See also HENRIKSEN, T. (2023): Svalbard. In: TANAKA, Y., JOHNSTONE, R. and ULFBECK, V. (eds.): *The Routledge Handbook of Polar Law*, pp. 475-498.

²⁷ Compare with UNCLOS, Articles 86-115. at: https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

²⁸ JANC, A. *et al.* (2024): Fish distribution shifts due to climate change in the Northeast Atlantic: Using a hierarchical filtering approach on marine-estuarine opportunist species. *Estuarine, Coastal and Shelf Science*, 310: 109013.

²⁹ MEREDITH, M. *et al.*: Polar regions. In: PÖRTNER, H.-O. *et al.* (eds.): IPCC Special Report on the Ocean and Cryosphere in a Changing Climate. The Intergovernmental Panel on Climate Change 2019, pp. 228-229 (quoted in HENRIKSEN, T. (2024) – *op.cit. fn.* 26).

While the right to catch snow crab may be perceived as a relatively “minor issue”, it is a good illustration of the complexity of the governance of the Arctic marine environment.³⁰ This complexity is further evidenced by developments in international environmental law that influence the international law of the sea and indicate that states now have a duty to protect the marine environment and conserve biodiversity.³¹

The dispute over catching of snow crab in Svalbard therefore serves as a precursor for the broader challenges relating to the exploration (and exploitation) of both living and non-living natural resources. The implications go far beyond the snow crab dispute and involve many international actors, including states and international organizations, like the EU which stressed “the risks of spill-over effects beyond fisheries”.³² These effects mainly refer to non-biological resources found in the soil and subsoil such as oil, gas and minerals. Indeed, there are wider practical consequences since the outcome of the “snow crab dispute” may affect equal access to other, arguably more profitable natural resources, including the hydrocarbon reserves located in the same waters. Let us now “immerse” in these cold Arctic waters.

2. The Arctic: The Dynamics of Its Physical and Legal Transition

The Arctic is an increasingly important region faced with major issues, that may challenge and define our world in the 21st century, facing a struggle for natural resources, energy security or climate change.³³ One of the direct effects of climate change is warming of the Arctic, which is happening more than twice as fast as the rest of the planet.³⁴ The Arctic is undoubtedly experiencing transformative change and the challenges posed by climate change affect environmental, economic, political, military and legal areas.³⁵ At the same time, climate change in the Arctic creates opportunities as well as new environmental risks connected with increased activity in the shipping, petroleum and mining industries and fishing.

The current developments in Sweden relating to the discovery of major mineral resources (exceeding one million tons of rare earth metals)³⁶ are a good illustration of the intersecting impact of mining exploitation, environmental challenges and climate change. In addition, there is also an important geopolitical dimension: “[t]he EU’s self-sufficiency and independence from Russia and China will begin in the mine”,³⁷ said the Swedish

³⁰ See HENRIKSEN, T. (2020): Snow crab in the Barents Sea: Managing a non-native species in disputed waters. *Arctic Review on Law and Politics*. at: <https://arcticreview.no/index.php/arctic/article/view/2545/4829>

³¹ *Ibid.*

³² Position of the European Commission concerning a call to act from the Republic of Latvia pursuant to Article 265 TFEU (12 March 2018), para. 16. at: https://icsid.worldbank.org/sites/default/files/parties_publications/C8394/Respondent%27s%20documents/R%20-%20Exhibits/R-0037-ENG%202018-03-12.pdf. See also DE POOTER, H. (2020) - *op.cit. fn. 4*.

³³ EMMERSON, CH. (2010): *The Future History of the Arctic*, PublicAffairs.

³⁴ Center for International Climate Research, 2017. at: <https://cicero.oslo.no/en/topics/arctic>

³⁵ YOUNG, O. (2011): A peaceful Arctic. *Nature*, 478: 180-181, at xxi.

³⁶ These rare earth metals are in the form of rare earth oxides. For more details, see LKAB Press Release (2023): Europe’s largest deposit of rare earth metals located in Kiruna area, 12 January 2023. at: <https://mb.cision.com/Main/11419/3696865/1777621.pdf>

³⁷ BEGO, K.: Russia and China are expanding in the Arctic: Europe needs a new plan for the region, 3 October 2025. at: <https://www.chathamhouse.org/2025/10/when-it-comes-arctic-security-europe-must-not-forget-about-economics>

Minister for Energy Ebba Busch in 2023,³⁸ when referring to the discovery of Europe's largest known deposit of rare earth metals located 20 miles from the Arctic circle, in the city of Kiruna. According to the Swedish mining company LKAB, "[t]his is good news" for the region, Europe and the climate since "it could become a significant building block for producing the critical raw materials that are absolutely crucial to enable the green transition."³⁹ Production in Europe's potentially most important mine for critical raw materials is planned to start in 2027, in cooperation with a Norwegian company.

The high significance of this issue for Europe lies in the fact that many critical raw materials are indispensable to allow the EU to achieve its ambitions, such as green and digital transitions. Moreover, demand is predicted to rise exponentially over the next few decades due to their use in defence and aerospace applications.⁴⁰ Nowadays, Europe largely relies on imports, frequently from a single third country, while "recent crises have underlined EU strategic dependencies".⁴¹ Heightened geopolitical tensions and resource competition significantly contribute to an increased risk of supply disruption.⁴² The Critical Raw Materials Act,⁴³ which is part of the Green Deal Industrial Plan, is supposed to be a comprehensive response to these challenges at the EU level and together with the EU Regulation, adopted in 2024,⁴⁴ establishes a framework to ensure a secure and sustainable supply of critical raw materials "in order to meet its 2030 climate objectives."⁴⁵ Moreover, Green Deal Industrial Plan aims to enhance Europe's competitiveness in net-zero industry exploiting clean technologies and accelerate the transition to climate neutrality.

As a probable result of climate change,⁴⁶ it is now also easier to catch crab, including cold water Arctic crab, which were not found in the Barents Sea in the past.⁴⁷ As a non-native species, they were allegedly first found by Russian scientists in 1996 and caught for the first time in the Norwegian part of the Barents Sea a few years later.⁴⁸ Commercial catching of this valuable resource began around 2013.⁴⁹ In the context of the duty of states to protect the marine environment and conserve biodiversity,⁵⁰ the snow crab as an

³⁸ HILDE-GUNN, B. (2023): Europe's largest deposit of rare Earth metals found in Northern Sweden, 13 January 2023. at: <https://www.highnorthnews.com/en/europes-largest-deposit-rare-earth-metals-found-northern-sweden>

³⁹ HILDE-GUNN, B. (2023) - *op.cit. fn. 38*.

⁴⁰ EUR-Lex, Regulation (EU) 2024/1252 of the European Parliament and of the Council of 11 April 2024 establishing a framework for ensuring a secure and sustainable supply of critical raw materials. at: <https://eur-lex.europa.eu/eli/reg/2024/1252/oj/eng>

⁴¹ European Commission, Critical Raw Materials Act. at: https://single-market-economy.ec.europa.eu/sectors/raw-materials/areas-specific-interest/critical-raw-materials/critical-raw-materials-act_en

⁴² Regulation (EU) 2024/1252 - *op.cit. fn. 40*.

⁴³ European Commission, Critical Raw Materials Act - *op.cit. fn. 41*.

⁴⁴ Regulation (EU) 2024/1252 - *op.cit. fn. 40*.

⁴⁵ See also: The European Green Deal. at: https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/story-von-der-leyen-commission/european-green-deal_en

⁴⁶ HENRIKSEN, T. (2020) - *op.cit. fn. 30*.

⁴⁷ KAISER, B. (2018): Snow crab saga: A story that demonstrates the complexities of climate change. at: <https://theconversation.com/snow-crab-saga-a-story-that-demonstrates-the-complexities-of-climate-change-93092>

⁴⁸ SIA North Star Ltd v. The Public Prosecution Authority, Supreme Court, Judgment 14 February 2019, Hr-2019-282-S (case no. 18-064307Str-Hret). English translation. at: <https://www.domstol.no/en/supremecourt/rulings/2019/supreme-court-criminal-cases/hr-2019-282-s>

⁴⁹ DE POOTER, H. (2020) - *op.cit. fn. 4*.

⁵⁰ See, for example, the South China Sea Arbitration.

invasive species raises serious concerns that it may have detrimental effects on the fauna of the sea floor.⁵¹ According to the marine scientist Jan H. Sundet, “Arctic marine systems are simpler than the ecosystems further south”, meaning they are more vulnerable to external influences such as “the introduction of alien, invasive species”.⁵² Indeed, the tale of the snow crab is perceived by some environmental scientists as “a harbinger of climate change complexities on the horizon, and much more”.⁵³

The Arctic is defined by changes that go beyond physical transitions. Dynamism and evolution are reflected in the way we approach the Arctic through the law and politics.⁵⁴ The legal regime of the Arctic is based on fragmented public international law and domestic law.⁵⁵ These legal systems and specific rules intersect and interact, making Arctic governance very complex, multi-faceted and at times challenging.⁵⁶

For example, the ice melt increasingly has an impact on various territorial disputes in the Arctic, such as the sovereign claims of Canada, Denmark, Norway, the United States and the Russian Federation over the delimitation of maritime spaces under UNCLOS, especially regarding their respective continental shelves. This is clearly manifested in the context of Svalbard, where Norway claims it has exclusive rights over the continental shelf surrounding this Arctic Archipelago based on UNCLOS, while some other states argue that Norway’s regulation of waters beyond their territorial seas should be subject to the restrictions established within the Svalbard Treaty.⁵⁷ In short, the disputes between Norway, certain other states and the EU revolve around the territorial scope of the Svalbard Treaty; its scope of application is being subjected to increasing scrutiny as climate change renders living and non-living resources in the Svalbard archipelago more accessible.⁵⁸

3. Svalbard: The Road from *Terra Nullius* to the “Full and Absolute Sovereignty” of Norway over the Archipelago

The Svalbard archipelago is defined geographically as all the islands situated between 10° and 35° longitude East of Greenwich and between 74° and 81° latitude North. Svalbard was *terra nullius*, land unoccupied or uninhabited for legal purposes⁵⁹, until 1920,

⁵¹ The appearance of the king crab (*paralithodes camtschaticus*) sparked similar concerns as early as the 1990s. In HENRIKSEN, T. (2020) - *op.cit. fn.* 30.

⁵² SUNDET, J. H.: The snow crab – A new and important player in the Barents Sea ecosystem, at: https://icsid.worldbank.org/sites/default/files/parties_publications/C8394/Respondent%27s%20documents/R%20-%20Exhibits/R-0010-ENG%202021-09-30.pdf

⁵³ KAISER, B. (2018) - *op.cit. fn.* 47.

⁵⁴ KUERSTEN, A. (2016): The Arctic Five versus the Arctic Council. *Arctic Yearbook*, pp. 389–395.

⁵⁵ DRUMBL, M. A., UHLÍŘOVÁ, K. (2021): Actors and law-making in international environmental law. In: FITZMAURICE, M., BRUS, M., MERKOURIS, P. (eds.): *Research Handbook on International Environmental Law*. Cheltenham: Edward Elgar.

⁵⁶ SCHÖNFELDT, K. (2017): The Arctic in international law and policy. Oxford: Hart Publishing.

⁵⁷ JENSEN, Ø. (2020) - *op.cit. fn.* 24.

⁵⁸ MELCHIORRE, T. (2024) - *op.cit. fn.* 1.

⁵⁹ In comparison with the legal regime of Antarctica, which is a real continent (in fact “the only continent on Earth without an indigenous human population”), see MUCCI, F., FIAMMETTA, B. (2014): The legal regime of the Antarctic. In: ATTARD, D. J., FITZMAURICE, M. AND MARTÍNEZ GUTIÉRREZ, N. A. (eds.): *The IMLI Manual on International Maritime Law: Volume I: The Law of the Sea*, Oxford University Press. See also KŘEPELKA, F.: Antarktida: Představení a promýšlení práva konce světa, *Právník* 1/2020, pp. 23–25, 31 and 33. (In Czech).

when the High Contracting Parties to the Svalbard Treaty recognized the “full and absolute sovereignty of Norway over the Archipelago of Spitsbergen” (Article 1, Svalbard Treaty). At the same time, the Svalbard Treaty granted the 46 State Parties non-discriminatory access to the resources of the archipelago and the surrounding waters: “ships and nationals of all the state Parties shall enjoy equally the rights of fishing and hunting in the specified territories and in their territorial waters” (Article 2, Svalbard Treaty).

Nowadays, this non-discriminatory access includes the 23 member states of the EU. A particular challenge of the Svalbard Treaty is its vagueness, especially regarding the ocean surrounding the archipelago,⁶⁰ which creates ambiguity over whether the “non-discrimination” and “equal enjoyment” provisions of the Svalbard Treaty that apply to the archipelago and its territorial waters, also extend to the continental shelf and beyond.

In the context of environmental protection, Article 2 of the Svalbard Treaty makes clear that: “Norway shall be free to maintain, take or decree suitable measures to ensure the preservation and, if necessary, the reconstitution of the fauna and flora of the said regions, and their territorial waters”. This provision reflects a need to preserve and protect a distinctive natural wilderness on the archipelago of Svalbard, which is considered unparalleled and unique in Europe. It follows that Norway is, on the one hand, obliged to treat citizens and companies from the states party to the Svalbard treaty equally in certain fields of commercial activity. On the other hand, it can also “regulate and prohibit activity that can harm the vulnerable Arctic environment”.⁶¹ Based on Article 2 of the Svalbard Treaty, the key term for our purpose is the equal enjoyment of “the rights of fishing” in “territorial waters”. Are there any shifts in their meaning considering the legal and physical changes which have occurred in the Arctic, and not only the Arctic, over time?

4. The Equal Enjoyment of Rights of Fishing in the Specified Territorial Waters

In the context of “the rights of fishing”, it needs to be addressed whether harvesting snow crab falls within “fishing” or whether snow crab is to be qualified as a sedentary species, meaning it is linked to the seabed and thus a natural resource of the continental shelf rather than a mobile resource in the water. In terms of UNCLOS, is snow crab “in constant physical contact with the seabed or the subsoil”? This qualification has, in turn, important consequences for the governing legal regime.

Generally, such a qualification is primarily biological item. Yet, it can trigger legal ramifications: if the biological characteristics of the snow crab indeed leads to a legal status as a sedentary species, it is arguably subject to the exclusive rights of Norway to exploit it (together with other natural resources like oil) under the international law of the sea (*i.e.*, UNCLOS applies). Otherwise, the freedom of fishing also for other states applies (*i.e.*, non-discriminatory access as stipulated by the Svalbard treaty applies).⁶² For these reasons, the legal impact of the biological characteristics of the snow crab is

⁶⁰ GROENNING, R. (2017): The Norwegian Svalbard Policy - Respected or Contested? The Arctic Institute, 22 November 2017. ^{at} <https://www.thearcticinstitute.org/norwegian-svalbard-policy-respected-contested/>

⁶¹ STAALESEN, A. (2020): Amid jubilant celebration at Svalbard, Norway sends strong signal it will not accept encroachment on sovereignty. ^{at} <https://thebarentsobserver.com/en/arctic/2020/02/amid-jubilant-celebration-svalbard-norway-sends-strong-signal-it-will-not-accept>

⁶² HENRIKSEN, T. (2020) - *op.cit. fn. 30*.

more closely examined below: (i) under UNCLOS, (ii) through the positions of states and the EU and (iii) based on the 2019 judgement of the Supreme Court of Norway in the *Snow Crab I* case.

As for “territorial waters”, the crucial issue to be determined is whether the Svalbard Treaty is indeed applicable to maritime zones that did not legally exist back in 1920. Put differently, the main question is whether the territorial scope of the application of the Svalbard Treaty also extends to the exclusive economic zone and the continental shelf. This examination is based on: (i) the positions of states and the EU, (ii) views of legal experts and (iii) existing domestic and international case-law, including the 2023 judgement of the Supreme Court of Norway in the *Snow Crab II* case and the award made in the first international litigation involving the Svalbard Treaty, namely the arbitration proceedings against Norway under the Convention on the Settlement of Investment Disputes between States and Nationals of other States for the alleged breach of a bilateral investment treaty between Norway and Latvia.⁶³

4.1. Natural Resources in Terms of UNCLOS: Does Snow Crab Qualify as a Sedentary Species?

While Norway allows individuals and companies from several states to fish, based on the equal treatment provision set forth in the Svalbard Treaty, it is not willing to treat all individuals and companies of states party to the Svalbard Treaty equally if they are operating on the continental shelf around the Svalbard archipelago.⁶⁴ In recent years, the situation has escalated, specifically as regards catching snow crab on the seabed.⁶⁵

Norway claims that snow crab is a sedentary species of the continental shelf. This qualification has, important consequences for the governing legal regime. In terms of UNCLOS, a coastal state exercises sovereign rights over the continental shelf for the purpose of exploration and the exploitation of its natural resources.⁶⁶ These sovereign rights are exclusive in the sense that if the coastal state does not explore the continental shelf or exploit its natural resources, no one else may undertake these activities without the express consent of the coastal State.⁶⁷

Understandably, Norway thus has a clear interest that snow crab be considered as a sedentary species over which it has exclusive rights. Even more so as it follows from the wording of Article 77 of UNCLOS that sedentary species are considered to be on a par with oil and gas. Article 77(4) of UNCLOS explicitly states that sedentary species are included in natural resources, which are made up of “the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the

⁶³ Norway and Latvia decided to terminate the BIT, including its ten-year sunset clause. See The International Centre for Settlement of Investment Disputes, ICSID Case No. ARB/20/11 (Annulment Proceedings). ^{at}: https://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C8394/DS20389_En.pdf

⁶⁴ JENSEN, Ø. (2020) - *op.cit. fn.* 24.

⁶⁵ DE POOTER, H. (2020) - *op.cit. fn.* 4.

⁶⁶ UNCLOS, Article 77(1).

⁶⁷ UNCLOS, Article 77(2). See European Commission, Director-General for Maritime Affairs and Fisheries Atlantic, Outermost regions and Arctic, Snow Crab Fisheries in the NEAFC Regulatory Area, 5 August 2015. ^{at}: <https://www.politico.eu/wp-content/uploads/2017/06/SPOLITICO-17061514340.pdf>

seabed or the subsoil”. Yet, it has been argued by some critics that “this definition is not adequately reflective of biological taxonomy, which may lead to disputes over which species qualify.”⁶⁸ The criticism involves numerous issues related to genetic resources definition, biological diversity, and international protection of natural bioresources.⁶⁹

4.2. *The Positions of States and the EU*

Indeed, while there is generally no doubt that the concept of “constant physical contact with the seabed” includes oysters, clams and mussels, there has been considerable controversy among the states as to whether crustaceans such as (snow) crab and lobsters are also included.⁷⁰ Various states have different approaches, for example, the UK considers crab to be a sedentary species, but not lobsters,⁷¹ while Brazil accepts lobsters are sedentary species.⁷² Canada considers snow crab to qualify as a sedentary species, as does the EU.⁷³

In terms of the snow crab fisheries in the North East Atlantic Fisheries Commission regulatory area,⁷⁴ the European Commission has clearly stated that snow crab fall within the UNCLOS definition of “sedentary species”.⁷⁵ It was also noted by the European Commission that whenever there was an international dispute over the qualification of a crab species as sedentary (for example between Canada and the USA over snow crab or between the USA and Japan over Alaskan king crab), in the end, the relevant coastal state always prevailed.⁷⁶ Moreover, the European Commission stressed that the EU, as a contracting party to UNCLOS, has an obligation to respect Article 77 (2) of UNCLOS, that is the exclusive rights of the coastal state over natural resources.⁷⁷

⁶⁸ HENRIKSEN, T. (2020) - *op.cit. fn. 30*.

⁶⁹ Convention on Biological Diversity, UN, 1760 UNTS 79.

⁷⁰ UN Atlas of the Oceans. Compare with: “Among States the status of the snow crab as a sedentary species seems uncontroversial”. In: HENRIKSEN, T. (2020) - *op.cit. fn. 30*.

⁷¹ HANSEN, H. S. B. (2016): Three major challenges in managing non-native sedentary Barents Sea snow crab (*Chionoecetes opilio*). *Marine Policy*, 71: 38-43.

⁷² TILLER, R. G. (2016): The clear and present danger to the Norwegian sovereignty of the Svalbard Fisheries Protection Zone: Enter the snow crab. *Ocean & Coastal Management*, 137: 24-33.

⁷³ European Commission, Director-General for Maritime Affairs and Fisheries Atlantic - *op.cit. fn. 67*. See also: The EU considers snow crab a sedentary species “both on the continental shelf of the Barents Sea as well as on the Canadian continental shelf of the Northwest Atlantic” in HENRIKSEN, T. (2020) - *op.cit. fn. 30*.

⁷⁴ The North East Atlantic Fisheries Commission (NEAFC) is the Regional Fisheries Management Organisation for the North East Atlantic, one of the most abundant fishing areas in the world. The area covered by the NEAFC Convention (*i.e.*, Convention on Future Multilateral Cooperation in North-East Atlantic Fisheries) stretches from the southern tip of Greenland, east to the Barents Sea, and south to Portugal, for more see <https://www.neafc.org/about>

⁷⁵ European Commission, Director-General for Maritime Affairs and Fisheries Atlantic - *op.cit. fn. 67*.

⁷⁶ *Ibid.*

⁷⁷ “UNCLOS forms part of the legal order of the Union pursuant to the provisions of the Article 216 of the Treaty on the Functioning of the European Union, such that also the member states are bound to respect it.”. In: European Commission, Director-General for Maritime Affairs and Fisheries Atlantic - *op.cit. fn. 67*.

4.3. Norwegian Domestic Proceedings: The Snow Crab I Case

In order to appreciate the full complexity of the situation, it is useful to give context to this case with a more comprehensive background before turning to the factual and legal aspects of the *Snow Crab I* case. In the past, fishing vessels that primarily flew the flags of EU member states used their fishing rights to harvest snow crab in the Barents Sea Loophole,⁷⁸ which is a high seas enclave located between the exclusive economic zones of Norway and Russia.⁷⁹ In 2009, the UNCLOS Commission on the Limits of the Continental Shelf made recommendations in favour of Norway's claim to extend its continental shelf, which effectively included most of the Barents Sea Loophole.⁸⁰

Following the illegal annexation of Crimea by Russia in 2014, relations with many (EU member) states deteriorated after this serious breach of international law.⁸¹ Russia then decided to ban foreign crab fishing on its continental shelf which led to EU crab fishermen to focus more intensively on the continental shelf surrounding the Svalbard archipelago and the Loophole.⁸² In 2015, Russia and Norway confirmed that they classified snow crab as a sedentary species and based on its "new" status, the right to explore and exploit this previously "common" resource changed from free access to an exclusive right of the coastal state on whose continental shelf it occurs.⁸³ Norway then granted a restricted number of licenses to its own fishermen and at the same time prohibited foreign snow crab catching in the area while waiting for "more research on this new species and the creation of a management plan for the Barents Sea".⁸⁴

The EU, opposed to Norway, did not consider catching snow crab as a shelf activity, but as fishing⁸⁵ and thus continued to issue licenses for "fishing" for snow crab around Svalbard.⁸⁶ In contrast, Norwegian legislation established a general prohibition to catch snow crab unless the vessels operating in that area held a Norwegian license.⁸⁷ The problem, especially for foreigners, lies in the fact that such a license can only be issued to: (i) Norwegian citizens or (ii) foreigners if they reside in Norway and join with other Norwegian citizens who hold the majority ownership interests,⁸⁸ and (iii) vessels where half of the on board crew and the captain reside in Norwegian coastal municipalities⁸⁹. Without a Norwegian license, such activities constitute illegal fishing, which is punish-

⁷⁸ For more details on the Loophole, see CHURCHILL, R. (1999): The Barents Sea Loophole Agreement: A "Coastal State" Solution to a Straddling Stock Problem. *The International Journal of Marine and Coastal Law*, 14(4): 467-490.

⁷⁹ *Ibid.* See also STOKKE, O. S. (ed.) (2001): *Governing High Seas Fisheries: The Interplay of Global and Regional Regimes*. Oxford University Press, 2001, pp. 273–301.

⁸⁰ For more details, see UNCLOS, Commission on the Limits of the Continental Shelf.

^{at:} https://www.un.org/depts/los/clcs_new/submissions_files/nor06/nor_rec_summ.pdf

⁸¹ VLČEK, T., CHOVAČÍK, M., UHLÍŘOVÁ, K. and JIRUŠEK, M. (2024): Strained relations in the High North: Steps-to-War analysis of conflict potential in the Arctic. *Europe-Asia Studies*, 76(3): 289-313.

⁸² ØSTHAGEN, A., RASPOTNIK, A. (2018) - *op.cit. fn.* 6.

⁸³ See Article 77 of UNCLOS. See HENRIKSEN, T. (2020): *op.cit. fn.* 30.

⁸⁴ *Ibid.*

⁸⁵ STEENKAMP, R. C. (2019): Svalbard's 'Snow Crab Row' as a Challenge to the Common Fisheries Policy of the European Union. *The International Journal of Marine and Coastal Law*, 35(1): 1-27.

⁸⁶ JENSEN, Ø. (2020) - *op.cit. fn.* 24.

⁸⁷ The Act on the Right to Participate in Fishing and Catching of 26 March 1999 and the Regulation on Prohibition of Snow-Crab Catching of 19 December 2014.

⁸⁸ Section 5 of the Act on the Right to Participate in Fishing and Catching.

⁸⁹ JENSEN, Ø. (2020) - *op.cit. fn.* 24.

able by the confiscation of the vessel, a fine, or imprisonment for up to one year.⁹⁰

Disagreement over licenses culminated in 2016, with the arrest of the Latvian-licensed vessel *Juros Vilkas* by the Norwegian Coast Guard for operating in the Loophole without a Norwegian license.⁹¹ In 2017, the dispute further escalated with the arrest of the Latvian vessel *Senator* for catching snow crab on the Norwegian continental shelf in the Svalbard Fisheries Protection Zone (FPZ) without having applied for a permit from Norwegian authorities. This resulted in the legal proceedings, the *Snow Crab case I* (described below, 4.3.1.). As for the frequent Latvian shipping activities in the area, Latvia was in fact the EU member state “most extensively involved in the snow crab harvest” before Norway closed it to other states.⁹²

4.3.1. The ‘Journey’ of a Latvian vessel with a Russian Captain Operating on the Norwegian Continental Shelf Without a Norwegian Permit

The crucial issue in the *Snow Crab I* case was whether a Latvian vessel with a Russian captain operating on the Norwegian continental shelf violated the exclusive right of Norway to exploit the natural resources of the shelf, including sedentary species. The vessel was operating with a Latvian license issued on the basis of the EU Council Regulation that allocates Latvia fishing opportunities.⁹³ Since the vessel did not have a Norwegian permit, the activity was interrupted, and the vessel ordered ashore.

The operating company SIA North Star Ltd. received a fine that was challenged before a Norwegian District Court. The District Court held that the Norwegian legislation,⁹⁴ would violate the principle of equal rights under the Svalbard Treaty “if the Treaty [could] be invoked in the case”.⁹⁵ Since the District Court found that the Svalbard Treaty does not apply beyond Svalbard’s territorial waters (that is, 12 nautical miles from the baseline), it does not apply where the catching took place (that is, within 200 nautical miles of the Svalbard FPZ).

The Latvian company and captain both appealed to the Supreme Court. The appeals related to the following: “whether snow crab is a sedentary species” and “whether the Svalbard Treaty’s principle of equal rights has been violated”.⁹⁶ However, in terms of the Svalbard Treaty, the Supreme Court limited the hearing:

“The hearing by the Supreme Court will only focus on whether snow crab is a sedentary species giving Norway an exclusive right to exploit it under UNCLOS Article 77, and whether catching snow crab on the Norwegian continental shelf without the vessel having obtained valid exemption from the prohibition is punishable regardless of the application of the Svalbard Treaty in the relevant area[...] There will be no hearing of the issue regarding the geographic area of application of the Svalbard Treaty until such clarification is required”.⁹⁷

⁹⁰ Section 61 of the Marine Resources Act.

⁹¹ The Norwegian Supreme Court ruled in favour of Norway having complete sovereignty over resources on its continental shelf (based on UNCLOS).

⁹² HENRIKSEN, T. (2020) *op.cit. fn.* 30.

⁹³ Council Regulation (EU) 2016/72 of 22 January 2016, Council Regulation (EU) 2017/127 of 20 January 2017. For more details on EU issuing licences to harvest snow crab, see e.g. HENRIKSEN, T. (2020): *op.cit. fn.* 30.

⁹⁴ The Regulation on Prohibition of Snow-Crab Catching of 19 December 2014.

⁹⁵ Judgement of the Supreme Court of Norway, 2019 - *op.cit. fn.* 48, para. 10.

⁹⁶ Judgement of the Supreme Court of Norway, 2019 - *op.cit. fn.* 48, para. 15.

⁹⁷ *Ibid.*, para. 15.

Justice Berglund of the Supreme Court based her interpretation of Article 77 (4) of UNCLOS on the Vienna Convention on the Law of Treaties, according to which the treaty's definition of the words and expressions used in the text will form the basis for the interpretation of the wording of the treaty. In that respect, she referred to findings by a marine expert Jan H. Sundet, according to whom snow crab do not have the "physical or anatomic attributes that enable it to lift itself up from the seabed or swim. It has a negative buoyancy in the sea and cannot adjust pressure from within"⁹⁸. The exception is when it is still larva; then it floats, but it is not harvestable in terms of the definition in Article 77 (4).

It was further acknowledged in the judgement that scientists from Norway, the USA, Canada, Greenland and Russia generally agree that the snow crab, biologically, fits the definition in UNCLOS.⁹⁹ Similarly, Russia and Canada have held that the snow crab is a sedentary species within the meaning of UNCLOS. Justice Berglund noted that the semantic meaning of "sedentary" is close to "immobile" or "attached", but this word cannot be read in isolation. In the context of the meaning of a treaty's own definitions of words and expressions, she stated that UNCLOS gives a further explanation of what the term sedentary includes. According to the wording, it includes species that are either immobile or unable to move without being "in constant physical contact with the seabed or the subsoil" (Article 77 (4) of UNCLOS). As a result, she concluded that "the biological definition of sedentary or the general semantic meaning of the term is therefore of less interest".¹⁰⁰

It follows from Article 77 of UNCLOS that a coastal state has the sovereign and exclusive right to exploit the natural resources on the shelf, including sedentary species. If the snow crab is encompassed by this term, no one can catch snow crab on the continental shelf without the express permission of the coastal state, that is Norway.¹⁰¹ The defendants in the *Snow Crab I* case submitted, *inter alia*, that the snow crab is not a sedentary species under UNCLOS. They claimed that Article 77 (4) must be read in light of the Vienna Convention on the Law of Treaties and according to the defendants, the principles set out in the Vienna Convention, including the meaning of the wording, context and object, as well as the preparatory works for the UNCLOS and the Continental Shelf Convention of 1958, support their view that the snow crab is not a sedentary species.

Nonetheless, in 2019 the Supreme Court upheld the conviction of the Latvian shipping company and Russian captain. The Supreme Court noted that Norway enters into various agreements with other states and the EU, relating to the fisheries of the Barents Sea, and catch quotas are established and distributed for certain species. However, according to the Court's findings, during the time the Latvian vessel *Senator* was fishing, no agreement existed between Norway and the EU on catches of snow crab or on the distribution of quotas.¹⁰² It further stated that the Norwegian authorities find that the Svalbard Treaty does not apply in the relevant area, while admitting that the authorities of several other countries have a different opinion.¹⁰³

To summarize, the Supreme Court dismissed the defendants' appeal by concluding that: a) the snow crab is a sedentary species under Article 77 (4) of UNCLOS, "because

⁹⁸ *Ibid.*, para. 50.

⁹⁹ *Ibid.*, para. 50.

¹⁰⁰ *Ibid.*, para. 52.

¹⁰¹ *Ibid.*, para. 44.

¹⁰² *Ibid.*, para. 68.

¹⁰³ *Ibid.*, para. 73.

of its natural pattern of movement in constant physical contact with the seabed” and thus covered by the coastal state’s exclusive right to exploit natural resources on the continental shelf; b) Norway’s obligations under international law did not exempt the defendants from punishment. The Supreme Court noted that if the defendants had been Norwegian, they would still have been punished for having harvested without a valid exemption, hence, the principle of equal rights in the Svalbard Treaty had not been violated. Nonetheless, the Supreme Court avoided addressing the arguments that the conditions that need to be met under Norwegian legislation to obtain a license might be discriminatory.

To conclude, if snow crab is indeed to be qualified as a sedentary species under UNCLOS, read in conjunction with the principles of interpretation in the Vienna Convention on the Law of the Treaties, the continental shelf regime under UNCLOS would apply, instead of the “more foreigners friendly” fishing regime under the Svalbard Treaty. Yet, this interpretation and the Norwegian position is not shared by the EU and some EU member states, mainly Latvia and Poland, but also Germany, Spain, France and Portugal.¹⁰⁴ The presented (legal) dilemma, together with the outcome of the *Snow Crab I* case, contributed to a deterioration in the bilateral relations of the EU and Norway, as further illustrated in subchapter 6.

5. The Svalbard Treaty and Its Territorial Scope of Application

At an international level, the Svalbard Treaty was signed in Paris on 9th February 1920 and entered into force on 14th August 1925. At a domestic level, Norway adopted the Svalbard Act through which Svalbard became “an indivisible and inalienable part of the Kingdom of Norway”¹⁰⁵. Norwegian sovereignty over Svalbard applies not only to the land, but also to the territorial waters around the archipelago, which includes the internal waters and territorial sea extending out to 12 nautical miles along with the airspace above. Yet, the Svalbard Treaty also stipulates certain limitations that are imposed by international law on Norway’s right to exercise sovereign authority.

Norway maintains that the equal enjoyment of commercial rights guaranteed by the Svalbard Treaty is neither applicable to the 200-nautical mile Fishery Protection Zone (“FPZ”) established by Norway around the islands, nor to Svalbard’s continental shelf stretching through and (possibly) beyond the 200 nautical mile limit¹⁰⁶. In other words, while the Svalbard Treaty grants certain rights to other states, Norway insists that it does not apply beyond territorial waters: “The special rules stipulated in the Treaty do not apply to the continental shelf or in zones that were created in accordance with the provisions in the United Nations Convention on the Law of the Sea governing exclusive economic zones. This follows from the wording of the Treaty and is underpinned by the Treaty’s prehistory and its development and system”.¹⁰⁷

¹⁰⁴ These states support the EU’s position on the Svalbard Treaty’s equal access and non-discrimination provisions.

¹⁰⁵ The Act of 17th July 1925 No. 11.

¹⁰⁶ DI BELLA, R. (2020): Norway just like Turkey? ICSID Arbitration/s against Norway over Svalbard’s Natural Resources: A Wider Picture. Kluwer Arbitration Blog. at: <http://arbitrationblog.kluwerarbitration.com/2020/05/15/norway-just-like-turkey-icsid-arbitration-s-against-norway-over-svalbards-natural-resources-a-wider-picture/>

¹⁰⁷ White Paper on Svalbard, 2015–2016, p. 20. at: <https://www.regjeringen.no/en/documents/meld.-st.-32-20152016/id2499962/?ch=1>

5.1. *The Position of States and the EU*

On 9th February 2020, the 100 year anniversary of the Svalbard Treaty, the Norwegian Minister of Foreign Affairs published a statement in which it was made clear that Norway is not willing to “compromise on the interpretation of the treaty”.¹⁰⁸ The Minister of Foreign Affairs as well as the Minister of Justice underlined that: “States that claim that the Treaty’s reference to territorial waters also applies to the sea areas located outside the 12 nautical miles zone have chosen an interpretation that is in violation of international law”.¹⁰⁹

This stance, however, is not shared by a number of states including the United Kingdom, Iceland, the Netherlands, Russia and Spain.¹¹⁰ These states argue that regulations beyond the territorial waters by Norway should be subject to restrictions based on the Svalbard Treaty.¹¹¹ France, Germany and the USA have not yet provided any definite position, while Canada and Finland share the Norwegian position on the territorial scope of application of the Svalbard Treaty.¹¹²

The EU, along with some EU member states, adopted an evolutive interpretation of the Svalbard Treaty and claims that it indeed applies up to the 200 nautical mile limit around Svalbard, “in keeping with the concept of an exclusive economic zone” and the continental shelf, which did not exist at the time the Svalbard Treaty was drafted.¹¹³ The EU contends that the areas in which equal access rights apply in fact overlap with the established FPZ. On that basis, the EU has issued licences for fishing activities that cover the 200 nautical miles around the Svalbard archipelago. Norway maintains that within the 12 nautical mile limit or the 200 nautical mile limit, these activities are in any case illegal without a Norwegian permit.¹¹⁴

5.2. *The View of Legal Experts and Case-Law*

Differing views can also be found among legal experts. Some argue for the application of the Svalbard Treaty beyond territorial waters, and thus to the 200-nautical mile zone and the continental shelf, yet others do not support such an extension.¹¹⁵ Similarly, an interpretation of some “international” case-law¹¹⁶ would most likely not support the application of the Svalbard Treaty to the continental shelf, such as the findings in *Abu Dhabi Oil Arbitration* and *Qatar Arbitration*.¹¹⁷ At the same time, some other case-law

¹⁰⁸ STAALSEN, A. (2020): Norway’s celebration of Svalbard Treaty was followed by ardent and coordinated response from Moscow media, 2 July 2020. at: <https://thebarentsobserver.com/en/2020/07/norways-celebration-svalbard-treaty-was-followed-ardent-and-coordinated-response-moscow>

¹⁰⁹ STAALSEN, A. (9th February 2020) - *op.cit. fn.* 61.

¹¹⁰ JENSEN, Ø. (2020) - *op.cit. fn.* 24.

¹¹¹ *Ibid.*

¹¹² *Ibid.*

¹¹³ DI BELLA, R. (2020) - *op.cit. fn.* 106.

¹¹⁴ *Ibid.*

¹¹⁵ JENSEN, Ø. (2020) - *op.cit. fn.* 24.

¹¹⁶ Case law refers to “the law that has been established by following decisions made by judges in earlier cases - legal precedents”. This is typical for common law systems. For more, see also University of Exeter Library: <https://libguides.exeter.ac.uk/caselaw>

¹¹⁷ Arbitration between Petroleum Development (Trucial Coast) Ltd and Sheikh of Abu Dhabi (1953) 47 AJIL 156, Petroleum Development (Qatar) Ltd. v. Ruler of Qatar (1951) 18 I.L.R. 161. Quoted from JENSEN, Ø. (2020) - *op.cit. fn.* 24.

could be (indirectly) interpreted to favour such an interpretation. For example, Jensen refers to judgments by the International Court of Justice in the *Oil Platforms* case (Iran v. USA) or the *Aegean Sea Continental Shelf* case (Greece v. Turkey).¹¹⁸ Obviously, none of these cases directly deals with the issue under consideration. Overall, current international case-law seems to be rather contradictory and “no immediately comparable international jurisprudence exists”.¹¹⁹

Case-law that directly involves the Svalbard Treaty currently primarily consists of the domestic (Norwegian) judgement in the *Snow Crab II* case and award in the first international litigation concerning the Svalbard Treaty (international arbitration against Norway). Accordingly, these decisions are discussed below.

5.2.1. Domestic Case-Law: The *Snow Crab II* Case before the Supreme Court of Norway

In 2019, the Supreme Court of Norway in the *Snow Crab I* case made clear that “[t]here will be no hearing of the issue regarding the Svalbard Treaty’s geographic area of application until such clarification is required”.¹²⁰ The need for this legal clarification finally came in the *Snow Crab II* case.¹²¹ In 2023, the Supreme Court reached a landmark judgement in the decades-long dispute. As Jensen noted, the fact the Supreme Court decided the case in plenary “shows that it is of principle importance”, because it is very rare for the whole Court to hear a case.¹²² The Court had to address the territorial scope of the application of the Svalbard Treaty, which is not an easy task for the domestic court. International law is central to the interpretation of both the Svalbard Treaty and UNCLOS. It thus brings the necessity for a good command of international law rules on treaty interpretation. This proved quite challenging for all the actors involved; the trial lawyer acting for the Latvian company admitted as much during the proceedings by noting: “I’m not really an expert in international law”.¹²³

The *Snow Crab II* case was a civil lawsuit brought by the owner (Sia North Star Ltd.) of the Senator ship. It concerned the validity of the decision to deny this foreign shipping company a license to catch snow crab. The owner of the company argued, in short, that their right to equal treatment under Articles 2 and 3 of the Svalbard Treaty were violated as they were not allowed to harvest snow crab on the Norwegian continental shelf extending from Svalbard. As already noted, Article 2 provides that “ships and nationals of all the High Contracting Parties shall enjoy equally the rights of fishing and hunting in the territories specified in Article 1 and in their territorial waters”.

¹¹⁸ *Aegean Sea Continental Shelf* (Greece v Turkey) [1978] ICJ Rep 3. See JENSEN, Ø. (2020) - *op. cit. fn.* 24.

¹¹⁹ JENSEN, Ø. (2020) - *op. cit. fn.* 24.

¹²⁰ Judgement of the Supreme Court of Norway, 2019 - *op.cit. fn.* 48, para. 15.

¹²¹ However, the detailed discussion of the background of the case and all arguments of the parties goes beyond the scope of this paper. For all the details see *SIA North Star Ltd v. The State represented by the Ministry of Trade, Industry and Fisheries*, Supreme Court judgement, 20 March 2023, Hr-2023-491-p (case no. 22-134375Slv-Hret). For the English translation, see Supreme Court of Norway, “the Svalbard Treaty Does Not Give a Latvian Shipping Company the Right to Catch Snow Crab on the Continental Shelf Outside Svalbard”. at: <https://www.domstol.no/en/supremecourt/rulings/2023/supreme-court-civil-cases/Hr-2023-491-p>

¹²² JENSEN, Ø. (2023): Towards an Historic Svalbard Judgement in Norway’s Supreme Court. *Arctic Review on Law and Politics*, 14: 83-85.

¹²³ *Ibid.*

The main issue in the case was “the geographical scope of the right to equality – the extent in the sea areas”.¹²⁴ In other words, does the term “their territorial waters” also include the continental shelf extending from Svalbard?¹²⁵ The focus of the Court was therefore on an interpretation of the treaty. For the first time, the Supreme Court was required to consider whether the Svalbard Treaty is applicable beyond territorial waters that extend by a maximum distance of 12 nautical miles. According to the Supreme Court, this depends on the interpretation of the Svalbard Treaty based on the rules of interpretation laid down in the Vienna Convention on the Law of Treaties.¹²⁶ While Norway is not a party to the Vienna Convention, Articles 31 and 32 are generally considered to express customary international law, and are thus applicable to Norway.¹²⁷ The International Court of Justice (ICJ), in the case of *Costa Rica v. Nicaragua*, stated that these principles also apply to the interpretation of treaties older than the Vienna Convention,¹²⁸ consequently, this would also include the “older” Svalbard Treaty.¹²⁹

Based on the Vienna Convention, the Supreme Court emphasized that the “key interpretive factor” is the ordinary meaning given to the terms of the treaty in their context and in the light of its object and purpose.¹³⁰ Moreover, it was suggested that all the factors should be included in a single and combined interpretive process.¹³¹ The appellant contended for a dynamic interpretation of the term “territorial waters” that would encompass the continental shelf, although this concept did not exist at the time of the conclusion of the Svalbard Treaty. In this respect, the Court made clear that the interpretation of the treaty is based “on the meaning of the words at the time of the treaty’s conclusion, because that is what most naturally expresses the parties’ common understanding of the treaty’s content”.¹³²

After the examination of practice “from the period around 1920 (treaties, case law, reports from the 1930 Hague Codification Conference, and Norwegian practice),”¹³³ the Court found that the term “territorial waters” referred to the limited extent of the sea off the coastline, which had already, at that time, “acquired a core legal meaning”.¹³⁴ As a result, it cannot be regarded as a generic term and there is no basis for an evolutive interpretation to the effect that it would also apply to the continental shelf.¹³⁵ Quite the opposite, the current international law of the sea, as reflected in Article 2 of UNCLOS, also confirms the meaning of “territorial waters” as including internal and territorial wa-

¹²⁴ Supreme Court of Norway, Judgement, 20 March 2023 (English version), para. 95, at: <https://www.domstol.no/globalassets/upload/hret/translated-rulings/2023/hr-2023-491-p.pdf>

¹²⁵ Summary of the judgement, at: <https://www.domstol.no/en/supremecourt/rulings/2023/supremecourt-civil-cases/Hr-2023-491-p>

¹²⁶ Vienna Convention on the Law of Treaties, adopted 23rd May 1969, entered into force 27th January 1980, 1155 *UntS* 331.

¹²⁷ Supreme Court of Norway, Judgement, 20 March 2023 (English version), para. 100.

¹²⁸ Certain Activities Carried Out by Nicaragua in the Border Area (*Costa Rica v. Nicaragua*), see <https://www.icj-cij.org/case/150/judgments>, para. 47 (ICJ judgement).

¹²⁹ Supreme Court of Norway, Judgement, 20 March 2023 (English version), para. 100.

¹³⁰ *Ibid.*, para. 109.

¹³¹ *Ibid.*, paras. 109-110. See also the ICJ judgement, 2nd February 2017, *Somalia v. Kenya*, para. 64.

¹³² Supreme Court of Norway, Judgement, 20 March 2023 (English version), para. 116.

¹³³ HENRIKSEN, T. (2024) - *op.cit. fn.* 26, p. 471. See Supreme Court of Norway, Judgement, 20 March 2023, paras. 150-164.

¹³⁴ Supreme Court of Norway, Judgement, 20 March 2023, para. 168.

¹³⁵ Supreme Court of Norway, Judgement, 20 March 2023.

ters.¹³⁶ The Court concluded that neither Article 2 (the equal rights of the nationals of contracting parties to fish and hunt in the territorial waters off Svalbard) nor Article 3 of the Svalbard Treaty is applicable to the continental shelf. To sum up, the appeal was unanimously dismissed,¹³⁷ meaning that the shipping company has no right to catch snow crab on the continental shelf off Svalbard.

As Henriksen noted, the judgement attracted criticism, especially from some Norwegian legal scholars due to a strict focus on the textual interpretation; some authors argued that more weight should be given to the object and purpose of the Svalbard treaty “given that the treaty was adopted for an unlimited duration and without the foresight of subsequent legal development”.¹³⁸ In any case, Norway has a domestic victory in the case. Whether and to what extent this domestic legal victory will be accepted by other states party to the Svalbard Treaty remains to be seen. The act of aggression by Russia against Ukraine in 2022 may influence the willingness of other states party to the Svalbard Treaty to contest the *Snow Crab II* judgement, since “[i]t may not be the right time to question the extent of the Norwegian jurisdiction over these Arctic waters” during the current “tense geopolitical situation in the Arctic”.¹³⁹

5.2.2. *International Arbitration Against Norway*

At the same time that the civil proceedings before the Norwegian courts were taking place, the owner of the shipping company, and the SIA North Star company itself initiated arbitration proceedings¹⁴⁰ against Norway under the Convention on the Settlement of Investment Disputes between States and Nationals of other States¹⁴¹ for alleged breaches of the 1992 bilateral investment treaty between Norway and Latvia.¹⁴² In short, the claimants argued that Norway violated the Svalbard Treaty and consequently the bilateral investment treaty because of the (foreign) ban on catching snow crab.¹⁴³ The arbitral tribunal stated, *inter alia*, that “[i]t is not open to an international tribunal to determine that a country’s highest national court has misinterpreted and misapplied the law of that country.”¹⁴⁴

¹³⁶ See also HENRIKSEN, T. (2024) - *op.cit. fn.* 26, p. 471.

¹³⁷ Supreme Court of Norway, Judgement, 20 March 2023, paras. 231-244.

¹³⁸ HENRIKSEN, T. (2024) - *op.cit. fn.* 26, p. 476, quoting ULFSTEIN, G. (2024): Høyesteretts plenumsdom i snøkrabbesaken. 63 Lov og rett 437-438.

¹³⁹ HENRIKSEN, T. (2024) - *op.cit. fn.* 26, p. 476.

¹⁴⁰ It is not the aim of this paper to provide a thorough evaluation of the award. For more details see International Centre for Settlement of Investment Disputes (ICSID) in the Arbitration Proceedings between Peteris Pildegovics and SIA North Star Claimants and Kingdom of Norway Respondent, ICSID Case No. ARB/20/11, award of 22nd December 2023. ^{at}: https://icsidfiles.worldbank.org/icsid/lcSIDBIOBS/Onlineawards/c8394/DS19308_en.pdf

¹⁴¹ Convention on the Settlement of Investment Disputes between States and Nationals of Other States (adopted 18th March 1965, in force 14th October 1966), 575 UntS 159, Article 36.

¹⁴² Agreement between Norway and Latvia on the Mutual Promotion and Protection of Investments (adopted 16th June 1992, in force 1st December 1992, terminated by agreement 27 March 2023). English version ^{at}: <https://lovdata.no/dokument/traKtaten/traktat/1992-06-16-1>

¹⁴³ ICSID case, paras. 572-602.

¹⁴⁴ ICSID case, *fn.* 21, para. 592.

The tribunal further highlighted that it lacked jurisdiction over the majority of the alleged investments, including licenses and boats, as they were not considered investments under the bilateral investment treaty.¹⁴⁵ In terms of the Svalbard Treaty, the tribunal considered that it did not have the authority to decide “whether or not Article 2 [...] requires Norway to allow nationals of the other States parties access to hunting and fishing resources on the continental shelf around Svalbard.”¹⁴⁶ In 2023, the tribunal pronounced its award which dismissed the claims in their entirety.¹⁴⁷ As Henriksen noted, the first attempt to secure a binding decision on this issue from an international tribunal was not a success.¹⁴⁸

6. Arctic Natural Resources and the Ambivalent Role of the European Union

It needs to be stressed upfront that in general the EU and Norway agree on Arctic affairs.¹⁴⁹ The EU and Arctic states, particularly Norway, are significant trading partners in the fish sector. Fisheries also constitute a substantial component of the geopolitical strategy of the EU in relation to the Arctic region.¹⁵⁰ The relationship between the EU and Norway with respect to (not only) fisheries is obviously more complex than simply the matter of snow crab.¹⁵¹ Yet, the snow crab dispute reveals the EU’s “strong interests, not only in Arctic fisheries, but also in the Arctic natural resources more broadly”.¹⁵²

In any case, this relationship worsened when the European Council issued a Regulation that granted some EU Member States, including Latvia, permission to issue licenses.¹⁵³ As a result, the Norwegian Coast Guard arrested the EU-registered vessels the *Juros Vilkas* from Lithuania (licensed by Latvia) and the *Senator* from Latvia, as already described above.¹⁵⁴ As a consequence of these events, Latvia approached the European Commission, demanding that greater pressure should be put on Norway to secure EU fishing rights in the Svalbard area and thereby enable EU vessels, which have been given the opportunity, according to the legal framework of the EU, to fish for snow crab in this area.¹⁵⁵

¹⁴⁵ ICSID case, paras. 258-279.

¹⁴⁶ ICSID case, para. 295.

¹⁴⁷ ICSID case, fn. 21, at para. 626.

¹⁴⁸ HENRIKSEN, T. (2024) - *op.cit. fn.* 26, p. 475.

¹⁴⁹ MELCHIORRE, T. (2024) - *op.cit. fn.* 1. Compare with: “Both in- and outside Europe, the EU is often – purposely or not – misunderstood or simplified as being a ‘single actor with a single voice’” In: ØSTHAGEN, A., RASPOTRNIK, A. (2018) – *op.cit. fn.* 6.

¹⁵⁰ MELCHIORRE, T. (2024) - *op.cit. fn.* 1.

¹⁵¹ HENRIKSEN, T. (2020) - *op.cit. fn.* 30.

¹⁵² MELCHIORRE, T. (2024) - *op.cit. fn.* 1 (quoting fn. 154).

¹⁵³ MELCHIORRE, T. (2024) - *op.cit. fn.* 1 (quoting fn. 162 and 163): “These actions violated both Article 77 of UNCLOS and the Treaty of Svalbard because Norway has the right to manage any activity in the area.”

¹⁵⁴ MELCHIORRE, T. (2024) - *op.cit. fn.* 1.

¹⁵⁵ Compare with recent developments on cod: “Commission and Norway agree on EU quota of Svalbard cod for 2025 and beyond”.^{at} https://oceans-and-fisheries.ec.europa.eu/news/commission-and-norway-agree-eu-quota-svalbard-cod-2025-and-beyond-2024-11-11_en

See also: https://oceans-and-fisheries.ec.europa.eu/fisheries/international-agreements/fisheries-svalbard_en#european-union-and-svalbard

6.1. *The European Commission Declines to Take Any Specific Action Against Norway*

The European Commission responded and maintained that despite stalemate in the discussions with Norway, it will continue to look for solutions to this dispute with the Norwegian authorities, “based on dialogue and constructive approach, rather than confrontation”.¹⁵⁶ At the same time, it made it clear that considering recent Norwegian reactions, “it is at present unlikely that in the immediate future a solution will be found and precautions must be taken to avoid escalation of the disagreement to the expense of pressing strategic interests in the relationship with [the Kingdom of Norway], as well as in the Arctic region”.¹⁵⁷

With regard to another measure proposed by Latvia; namely the initiation of international legal proceedings against Norway, the European Commission stated that it could not act on that measure due to procedural obstacles. First, the Svalbard Treaty does not provide for a dispute-settlement mechanism. The dispute-settlement mechanisms provided for in UNCLOS are not applicable since the issues are not about the interpretation and application of UNCLOS, but rather about the interpretation and application of the Svalbard Treaty.¹⁵⁸ Second, international arbitration is subject to finding an agreement with Norway, which is currently highly unlikely in the prevailing circumstances.¹⁵⁹ Third, the default dispute-settlement mechanism that remains is the International Court of Justice (ICJ), but the EU has no legal standing before the ICJ.¹⁶⁰

In any event, the European Commission emphasized that the initiation of “international proceedings in a multilateral context could have significant implications”, since the Svalbard Treaty involves 46 state parties, “each with different interpretations of its provisions”.¹⁶¹ Finally, a general principle in international law of the peaceful settlement of disputes does not establish any obligation to bring judicial proceedings, since international law provides for different ways to settle disputes, and not all of them are of a judicial nature.¹⁶²

In sum, since the European Commission was not willing to risk affecting the EU’s bilateral relations with Norway that might potentially escalate beyond fisheries issues, it declined to take any specific action as requested by Latvia in 2018. Latvia finally brought an action against the European Commission before the Court of Justice of the European Union, which in 2020 declared the action inadmissible.¹⁶³

Meanwhile, another attempt to approach the European Commission was made on behalf of the European Parliament Committee on Fisheries. Alain Cadec, the chairman of the Committee at that time, raised a question for an oral response to the European Commission relating to equal and non-discriminatory access to resources for all parties to the Svalbard Treaty, through an insistence that this access includes “fishing for all comer-

¹⁵⁶ Position of the European Commission (12th March 2018) - *op.cit. fn.* 32, para. 53.

¹⁵⁷ *Ibid.*, para. 54.

¹⁵⁸ Position of the European Commission (12th March 2018) - *op.cit. fn.* 32, para. 56.

¹⁵⁹ *Ibid.*, para. 57.

¹⁶⁰ *Ibid.*, para. 58.

¹⁶¹ *Ibid.*, para. 59.

¹⁶² *Ibid.*, para. 60. See also SCHATZ, V. (2020): The snow crab dispute on the continental shelf of Svalbard: A case-study on options for the settlement of international fisheries access disputes. *International Community Law Review*, 22(3–4): 455–470.

¹⁶³ Order of the General Court, 30th January 2020.

cially exploited species, including snow crab, in the waters surrounding Svalbard”.¹⁶⁴ He stressed that the European Council has fixed the number of licenses and vessels that are authorised to carry out such fishing and, as a result, EU member states are “authorised to issue national licences for snow crab fishing in Svalbard”.¹⁶⁵ Since Norway does not recognise the EU licences, Cadec stressed that “EU trawlers fishing for snow crab under valid EU-licenses in Svalbard have been prevented from operating by the Norwegian authorities” and as an outcome, “the affected EU fishing fleet now faces bankruptcy and the loss of hundreds of jobs”.¹⁶⁶

6.2. EU Law: Fishing Rights of EU Member States

In general, European Council regulations continue to lay down the fishing opportunities for certain fish stocks, applicable in EU waters and, for EU fishing vessels, in certain non-EU waters.¹⁶⁷ In terms of Svalbard, it specified that the Svalbard Treaty grants equal and non-discriminatory access to resources for all parties to that Treaty, including with respect to fishing. As regards “fishing” for snow crab on the continental shelf around Svalbard, the view of the EU has been repeatedly set out in several *notes verbales* to Norway.¹⁶⁸ It recognizes that Norway enjoys “sovereignty and jurisdiction in the area within the limits of the said Treaty” and finds it appropriate “to fix the number of vessels that are authorised to conduct such fishery”.¹⁶⁹

However, these regulations seem to have “a protective purpose only”.¹⁷⁰ On this basis, the EU “periodically reaffirms its interpretation of the Svalbard Treaty and safeguards its legal position”,¹⁷¹ but in reality, there is no real possibility to catch snow crab, considering the risks commercial operators may face under Norwegian law. Therefore, there is no concrete and clear outcome that might resolve “the impasse in which European economic operators wishing to catch snow crab in the Svalbard area find themselves”.¹⁷² On one hand, the regulations (EU law) allow them “to fish” for snow crab. On the other, if they catch snow crab in the disputed area, they violate Norwegian law and sanctions may follow, as the *Snow Crab I* case showed. This is, in many respects, an extraordinary and unprecedented situation.

In February 2021, the EU addressed a *note verbale* to Norway, where it pointed out that Norway took discriminatory actions contrary to the Svalbard Treaty so that fish-

¹⁶⁴ CADEC, A. (2018): Question for oral answer to the Commission. Parliamentary questions. at: https://www.europarl.europa.eu/doceo/document/O-8-2018-000076_EN.html

¹⁶⁵ *Ibid.*

¹⁶⁶ *Ibid.*

¹⁶⁷ See e.g., Commission Services Non-Paper 12th December 2021 (which is, however, not to be regarded as the official position of the Commission). Updates to Commission Proposal for a Council Regulation fixing for 2022 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in Union waters and for Union fishing vessels in certain non-Union waters (COM (2021) 661). at: https://oceans-and-fisheries.ec.europa.eu/system/files/2021-12/2021-12-12-non-paper-updates-2022-fishing-opportunities-regulation-snowcrab_en.pdf

¹⁶⁸ See, for example, Council Regulation of 30th January 2019.

¹⁶⁹ Council Regulation of 30th January 2019, para. 42.

¹⁷⁰ DE POOTER, H. (2020) - *op.cit. fn.* 4.

¹⁷¹ *Ibid.*

¹⁷² *Ibid.*

ing vessels from the EU could not “fish” for snow crab in the waters around Svalbard.¹⁷³ The EU reiterated that by “failing to recognise fishing authorisations of EU vessels” and at the same time “granting authorisation to Norwegian vessels”, Norway has breached Article 2 of the Svalbard Treaty.¹⁷⁴ The EU in fact used a rather strong tone by stressing that a “systematic and intentional discriminatory approach” directed both against vessels and the EU as such “constitute a serious breach of obligations” under the Svalbard Treaty.¹⁷⁵ It further noted that arresting and prosecuting vessels from EU member states (when fishing in line with EU fishing opportunities) “would be unlawful and would be considered as an internationally wrongful act”.¹⁷⁶

In May 2021, Norway addressed a *note verbale* to the EU reaffirming its position that allocating third-state quotas in the maritime zones outside the territorial waters of Svalbard is a sovereign decision of a coastal state, not an obligation under the Svalbard Treaty.¹⁷⁷ According to Norway, the reasons behind the implementation of these quotas was to ensure that the fishing patterns of nationals of the contracting parties to the Svalbard Treaty remained uninterrupted, since they “habitually fished in the area prior to the establishment of the Zone”.¹⁷⁸ As Henriksen suggests, “the long-held policy of nondiscrimination seems to have been down-played”.¹⁷⁹ Importantly in our context, Norway excludes snow crab as “new species” from their consideration to allocate third-state quotas based on historic rights, since “continuation of habitual fishing is a criterion that cannot apply to the harvesting of new species. Therefore, Norway does not allocate country-specific quotas for snow crab.”¹⁸⁰ The rationale underlying this policy is that the continental shelf might contain additional natural resources such as oil and minerals. Maintaining a policy of non-discrimination could allow all contracting parties to the Svalbard Treaty access to the continental shelf and thus exploitation of its natural resources.¹⁸¹

The overall situation is understandably delicate, both legally and politically, as has been noted by several scholars: “Politically because the EU was dealing with its most important partner in fisheries and an important partner in other areas. Legally because of the difficulties for the EU to act as an official interlocutor on the Svalbard issue as it is not a Party to the Treaty. This is the reason why Norway does not accept it as a competent contact in relation to fisheries in the Svalbard archipelago and the EU member states have expressed their concerns about the EU’s management of the issue several times.”¹⁸²

¹⁷³ See also Note Verbale No. 02/21 of 26th February 2021, Delegation of the European Union to Norway. at: https://oceans-and-fisheries.ec.europa.eu/system/files/2021-07/2021-02-26-Note-verbale_en.pdf

¹⁷⁴ *Ibid.*

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ibid.*

¹⁷⁷ Royal Norwegian Ministry of Foreign Affairs, Note Verbal to the Delegation of the European Union, 4th May 2021, with Annex: Svalbard, the 200-mile Fisheries Protection Zone and Norway’s fisheries regulations. Quoted from HENRIKSEN, T. (2024) - *op.cit. fn.* 26, p. 469.

¹⁷⁸ *Ibid.*, Annex, section 4. Quoted from HENRIKSEN, T. (2024) - *op.cit. fn.* 26, p. 469.

¹⁷⁹ *Ibid.*

¹⁸⁰ Annex, section 7, quoted from HENRIKSEN, T. (2024) - *op.cit. fn.* 26, p. 469.

¹⁸¹ HENRIKSEN, T. (2024) - *op.cit. fn.* 26, p. 469. See also the deep-sea mining announced by Norway on the extended continental shelf and the superjacent international waters, Note Verbale, p. 3. at: <https://www.jus.uio.no/ior/personer/vit/geiru/blog/filer/svalbard/note-verbale-26-oct-2023-svalbard.pdf>

¹⁸² MELCHIORRE, T. (2024) - *op.cit. fn.* 1, p. 252 (quoting Conde and Sanchez).

6.3. *A Political Understanding of Sustainable Fisheries but No “Understanding” Over Snow Crab*

Some authors¹⁸³ pointed out that there was certainly progress in the otherwise fragile relationship between the EU and Norway, as they reached a political understanding on fisheries in the Northeast Arctic in 2022, including the waters around the Svalbard archipelago and the international waters of the Barents Sea.¹⁸⁴ Still, what has this political understanding really achieved? The understanding, *inter alia*, ensures sustainable fishing in the Northeast Arctic and provides “certainty for EU fleets fishing in that area”, as it allows EU vessels “fishing for cod in the waters around the archipelago of Svalbard to continue their fishing activities in accordance with their historic fishing rights”.¹⁸⁵ Yet, there is no “understanding” about snow crab. The EU and Norway also reiterated their commitment to “the continued sustainable management of marine living resources in the Northeast Arctic, in accordance with international law”.¹⁸⁶ However, that is not saying much, since both actors interpret international law “their own way”, including a conflicting interpretation of the Svalbard Treaty, which brings us back full circle.

Indeed, this became evident only a year later, when the EU in a *note verbale* to Norway from October 2023 protested and “strongly disagrees with the incoherent interpretation” of the Svalbard treaty by the Supreme Court of Norway in the *Snow Crab II* case.¹⁸⁷ The judgement of the Supreme Court is “according to a well-established rule of international law”¹⁸⁸ regarded as an act and conduct of Norway,¹⁸⁹ and cannot be considered as “a correct interpretation of the 1920 Treaty of Paris at the international level.”¹⁹⁰ The EU even went so far as to describe the Supreme Court judgement as “an internationally wrongful act attributable to Norway.”¹⁹¹

All developments and legal attempts have evidently failed to bring any final and effective solution thus far. Moreover, the EU clearly has no interest to “be involved in any international legal proceedings against Norway where the Svalbard issue is at stake”.¹⁹² Given the conflicting interpretations of the Svalbard Treaty among its state parties, the ambivalent role of the EU and, until now, no international proceedings that have resulted in a binding and enforceable decision, it is likely that Norway and the EU will have to continue negotiations to eventually settle this dispute, whether through political or legal means.¹⁹³

¹⁸³ *Ibid.*

¹⁸⁴ European Commission (2022b): Fisheries: EU and Norway strengthen cooperation for sustainable fishing in the Northeast Arctic. ^{at}: https://ec.europa.eu/commission/presscorner/detail/en/IP_22_2722

¹⁸⁵ *Ibid.*

¹⁸⁶ *Ibid.* See also OBRIDO, M. (2017): The position of the European Union on the Svalbard Waters. In: CONDE, E., SANCHEZ, S. (eds.): *Global Challenges in the Arctic Region*, pp. 75–106.

¹⁸⁷ Council of the European Union, Note Verbale to Norway (no. 21/23, 26th October 2023), available ^{at}: <https://www.jus.uio.no/ior/personer/vit/geiru/blog/filer/svalbard/note-verbale-26-oct-2023-svalbard.pdf>

¹⁸⁸ Council of the European Union, Note Verbale to Norway (no. 21/23, 26th October 2023).

¹⁸⁹ On the attribution and international responsibility of states, see also MALENOVSKÝ, J. (2020): *Mezinárodní právo veřejné, obecná část, a poměr k jiným právním systémům*, MU Brno. In *Czech*.

¹⁹⁰ Council of the European Union, Note Verbale to Norway (no. 21/23, 26th October 2023).

¹⁹¹ *Ibid.*

¹⁹² Order of the General Court (Fourth Chamber) of 30th January 2020.

¹⁹³ DE POOTER, H. (2020) - *op.cit. fn. 4*. See also Council of the European Union, Note Verbale to Norway (no. 21/23, 26th October 2023).

7. “Risks of Spill-Over Effects Beyond Fisheries” and the Protection of the Arctic Environment

As noted in the introduction, climate change has led to changes in the Arctic landscape and will continue to uncover new resources. Perhaps more important than snow crab, at least for some states in the future, is the right to manage what is on and underneath the seabed. Indeed, the European Commission referred to “risks of spill-over effects beyond fisheries.”¹⁹⁴

There can be growing tension and disagreements about areas of sea abundant with non-biological resources found in the soil and subsoil, such as oil, gas and minerals. These non-biological resources fall within the scope of UNCLOS. Yet, if the Svalbard Treaty instead of UNCLOS applies, Norway must allow for equal and non-discriminatory access to all industrial, mining, or commercial enterprises from all the states parties to the Svalbard Treaty. In other words, the snow crab controversy is part of a dispute which has broad and practical implications that also relate to the sustainability of resources.¹⁹⁵

Moreover – in addition to snow crab, oil and gas, what is at stake, in general, is the governance and environmental protection of the Arctic.¹⁹⁶ The EU has an important role to play here, since it has an exclusive competence regarding the conservation of marine biological resources. On this note, a previous Polish member of the European Parliament and the Vice-Chair of the Committee on Fisheries, Jaroslav Walesa, stated: “I cannot resist the impression that all the parties [...] are focusing on the legal side and their own interests only, and are forgetting the environmental aspect of this matter”, meanwhile, “the self-producing population of this invasive species is migrating from the eastern to western part of Barents Sea towards Svalbard”.¹⁹⁷ Scientific researchers have emphasized that “the biomass and density of snow crab is increasing and is expected to reach a level close to the estimated carrying capacity of the Barents Sea. Snow crab is spreading and may threaten the Barents Sea’s fragile benthic ecosystem”.¹⁹⁸

As these non-native species continue to colonize the Barents Sea continental shelf and potentially threaten the biodiversity of the Barents Sea, it can be argued that Norway should make sure that no harm is done to the unique ecosystem.¹⁹⁹ Yet, there are a number of unresolved issues when it comes to international obligations to control species which were not introduced by people. Based on Article 77 of UNCLOS, Norway as a coastal state has the absolute right to explore the continental shelf and exploit its natural resources, including sedentary species. But UNCLOS does not explicitly consider “conservation” on the continental shelf and the general rules that govern fishing in the exclusive economic zone do not apply to sedentary species (Article 68).

¹⁹⁴ Position of the European Commission, 2018, para. 16.

¹⁹⁵ DE POOTER, H. (2020) - *op.cit. fn.* 4.

¹⁹⁶ KAVAN, J., PADRTOVÁ, B. (2021): The rise and fall of Pyramiden: The story of a town in a wider geopolitical and environmental context. *Polar Record*, 58: e10.

¹⁹⁷ WALESA, J. (2018): EU-Norway dispute on snow crab fisheries in Svalbard. at: https://www.europarl.europa.eu/doceo/document/CRE-8-2018-01-18-INT-4-291-0000_EN.html

Compare with JENSEN, Ø. (2020) - *op.cit. fn.* 24. arguing that “very specific interest groups” mainly in Poland and Latvia found “key actors to speak on their behalf”, including Walesa, as regards the push to award licenses.

¹⁹⁸ WALESA, J. (2018) - *op.cit. fn.* 197.

¹⁹⁹ For more on the duty of states, see HENRIKSEN, T. (2020) - *op.cit. fn.* 30.

To put it differently, a coastal state is under no express obligation under UNCLOS to implement any management or conservation measures in regard to sedentary species. Nevertheless, it has been argued that the objectives set forth in the preamble to UNCLOS, such as, “the desirability of establishing a legal order for the seas and oceans which will facilitate [...] the conservation of their living resources, and the study, protection and preservation of the marine environment”, together with those conservation measures that are required for all other marine zones, should lead Norway, as a coastal state, to take conservation measures with regard to these species. This view can be further supported by the 1958 Convention on the Continental Shelf, which provides that the exploration of the continental shelf and exploitation of its natural resources must not result in any unjustifiable interference with the conservation of the living resources of the sea.²⁰⁰ Finally, there is the Svalbard Treaty, which in Article 2 merely states that Norway “shall be free to take suitable measures to ensure the preservation and, if necessary, re-constitution of the fauna and flora of the said regions, and their territorial waters”. This provision is not particularly detailed or strict in terms of any conservation obligations.

8. Conclusion

8.1. *Quest for Interdisciplinarity*

Svalbard remains an area where resource rights are highly disputed. Given the legal, geopolitical, biological and environmental interconnections, it would clearly be inadequate to only take a purely political or business-driven approach to the present and future commercial exploitation of snow crab or any other natural resources.²⁰¹ Ideally, any measures taken should be based on scientific and catch data. Yet, it has been argued that the discovery of marine resources, like snow crab, has in fact been given little attention in social science research and “the same regimes management” has received little consideration from scientists and modelers who study the biodiversity and migratory patterns of the Arctic.²⁰² Thus, it is highly desirable that common ground for cooperation and an interdisciplinary approach be sought to extend the current knowledge of the snow crab population in order to protect the unique ecosystem of the Barents Sea.²⁰³ After all, the EU Member States and Norway are, as contracting parties to UNCLOS, obliged to cooperate in the management of the exploitation of marine living resources.

8.2. *Biological Classification of Snow Crab and Its Legal Ramifications*

The Norwegian designation of the snow crab as a sedentary species meant that the right to explore and exploit this previously “common” marine resource has shifted from states’ freedom to fish to the exclusive right of the coastal state on whose continental shelf it occurs.²⁰⁴ Consequently, Norway applies the continental shelf regime under

²⁰⁰ Convention on the Continental Shelf, Article 5.

²⁰¹ WALES, J. (2018) - *op.cit. fn.* 197.

²⁰² TILLER, R., NYMAN, E. (2017): The clear and present danger to the Norwegian sovereignty of the Svalbard Fisheries Protection Zone: Enter the snow crab. *Ocean & Coastal Management*, 137: 24-33.

²⁰³ WALES, J. (2018) - *op.cit. fn.* 197.

²⁰⁴ HENRIKSEN, T. (2020) - *op.cit. fn.* 30.

UNCLOS instead of the “more foreigner friendly” fishing regime under the Svalbard Treaty. An implementation of this exclusionary policy basically limited foreign access and generated conflict based on the Svalbard Treaty.²⁰⁵ The Norwegian Supreme Court in the *Snow Crab I* case upheld the classification of snow crab based on Article 77(4) of UNCLOS.

8.3. Implications for the Exploration and Exploitation of Other Seabed Resources

As highlighted in the introduction, the implications of “the snow crab dispute” are much broader and may pave a way for challenges relating to the management of other seabed resources located in this area. Indeed, the following events well illustrate the point.²⁰⁶ As early as 2018, the Norwegian Ministry of Energy granted “new oil licenses that extend in the contentious area of Svalbard.”²⁰⁷ In 2024, the Ministry of Energy awarded production licenses, also within the Barents Sea, that granted the exclusive right to explore, drill, and extract petroleum within the specified geographical area.²⁰⁸ Most recently, in September 2025, awards in predefined areas are being expanded within the Barents Sea “as geological knowledge in areas on the Norwegian shelf increases.”²⁰⁹

The stakes are therefore high, if foreigners or foreign companies are allowed to catch snow crab based on the principle of non-discrimination entrenched in the Svalbard Treaty, it could be argued that they might also enjoy equal exploration, mining and other rights on the continental shelf in the Svalbard area.²¹⁰ However, as this chapter has demonstrated, Norway has taken a longstanding position and reserves the right of exploration and exploitation of new resources on the continental shelf of Svalbard for Norwegian citizens and companies: “[i]f we are to deliver on our commitment, we must find more, and in order to find we must explore.”²¹¹

8.4. The (Still Unsettled) Territorial Scope of the Svalbard Treaty

The Norwegian position that limits the territorial scope of the Svalbard Treaty, accompanied by legal steps such as a general prohibition to catch snow crab without a Norwegian license, has provoked responses from various actors. Several states, as well as the EU, are diverging from the Norwegian standpoint on this issue. As illustrated throughout this chapter, the unilateral actions undertaken by Norway have resulted in domestic (both criminal and civil) and international legal proceedings, financial penalties

²⁰⁵ KOURANTIDOU, M., KAISER, B. A. (2024) - *op.cit. fn. 5*.

²⁰⁶ See also arguments that issuing licences for the Barents Sea breached the Norwegian Constitution and the European Convention on Human Rights. Application 34068/21, Greenpeace Nordic and Others v. Norway, ^{at}: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-214943%22%5D%7D>

²⁰⁷ DI BELLA, D. R. (2020) - *op.cit. fn. 106*.

²⁰⁸ Ministry of Energy, Press Release (14 January 2025): APA 2024: 53 new production licenses awarded. ^{at}: <https://www.regjeringen.no/en/aktuelt/tfo-2024-53-nye-utvinningstillatelser/id3083489/>

²⁰⁹ See also the Norwegian governmental webpages for the press release (4 September 2025): Strong interest in new exploration areas. ^{at}: <https://www.regjeringen.no/en/aktuelt/strong-interest-in-new-exploration-acreage/id3117926/>

²¹⁰ DI BELLA, D. R. (2020) - *op.cit. fn. 106*.

²¹¹ *Ibid.* Quoting Norwegian Minister of Energy, Aasland. See also the Norwegian governmental webpages for the press release (14 January 2025): APA 2024: 53 new production licenses awarded. ^{at}: <https://www.regjeringen.no/en/aktuelt/tfo-2024-53-nye-utvinningstillatelser/id3083489/>

for foreign companies, a deterioration in bilateral relations with the EU and considerable diplomatic tension with other states.²¹²

As regards domestic proceedings, the Norwegian Supreme Court, in the *Snow Crab II* case, concluded that the Svalbard Treaty is not applicable to the continental shelf, thereby confirming the previous Norwegian position. The current international law of the sea, the Court held, supports the meaning of “territorial waters” as only including internal waters and territorial waters. The strict textual interpretation of the Svalbard Treaty by the Norwegian Supreme Court met with criticism from several scholars, who argued that the object and purpose of the Svalbard Treaty might indicate that the sea and seabed beyond territorial waters are indeed subject to its provisions.²¹³ In any case, whether this Norwegian “domestic” legal victory will be accepted by other states party to the Svalbard Treaty remains to be seen. It certainly was not accepted by the EU, which strongly disagreed with the judgement in the *Snow Crab II* case, regarding it as an incorrect interpretation of the Svalbard Treaty “at the international level”.²¹⁴

A decision on the Svalbard Treaty from an international court would certainly carry more weight than the judgement of a domestic court.²¹⁵ However, in the first international proceedings in the form of arbitration against Norway, the international arbitral tribunal dismissed all claims. The first attempt to secure a binding and enforceable decision “at an international level” was not successful. In sum, until now, there have not been any proceedings before an international court or tribunal that might result in a final decision, which would authoritatively determine the breadth of the territorial scope of the Svalbard Treaty, including non-discriminatory access to other potentially valuable resource.²¹⁶ While the world’s eyes are increasingly “on the petroleum resources of the Arctic”, there is no clarification over the legal status of the Svalbard’s continental shelf on the horizon.²¹⁷

On one hand, several states contest “the Norwegian Svalbard policy”.²¹⁸ On the other, the ongoing international armed conflict, initiated by the act of aggression by Russia against Ukraine in 2022, could influence the willingness of states party to the Svalbard Treaty to challenge it any further. Given the present rapidly evolving²¹⁹ and increasingly tense geopolitical situation in the Arctic,²²⁰ “[i]t may not be the best time to question the extent of the Norwegian jurisdiction over these Arctic waters”.²²¹

²¹² KOURANTIDOU, M., KAISER, B. A. (2024) - *op.cit. fn.* 5.

²¹³ JENSEN, Ø. (2020) - *op.cit. fn.* 24, p. 103.

²¹⁴ Note Verbale to Norway (No 21/23, 26 October 2023). at: <https://www.jus.uio.no/ior/personer/vit/geiru/blog/filer/svalbard/note-verbale-26-oct-2023-svalbard.pdf>

²¹⁵ HENRIKSEN, T. (2024) - *op.cit. fn.* 26.

²¹⁶ DI BELLA, D. R. (2020) - *op.cit. fn.* 106.

²¹⁷ PEDERSEN, T. (2006): The Svalbard Continental Shelf Controversy: Legal Disputes and Political Rivalries. *Ocean Development & International Law*, 37: 339-358.

²¹⁸ <https://www.thearcticinstitute.org/norwegian-svalbard-policy-respected-contested/>

²¹⁹ See, for example: James Rothwell, Russia massing nuclear fleet in Arctic Circle ‘for war with NATO’, 24th October 2025, at: <https://www.telegraph.co.uk/world-news/2025/10/24/russia-massing-nuclear-fleet-in-arctic-circle-war-with-nato/>. See also NILSEN, T.: Angle grinder used to cut telecommunications cable to NATO’s northernmost QRA base. The Barents Observer, 13th February 2025, <https://www.thebarentsobserver.com/security/angle-grinder-used-to-cut-telecommunications-cable-to-natos-northernmost-qra-base/424730>

²²⁰ BEGO, K.: Russia and China are expanding in the Arctic: Europe needs a new plan for the region, 3rd October 2025, at: <https://www.chathamhouse.org/2025/10/when-it-comes-arctic-security-europe-must-not-forget-about-economics>

²²¹ HENRIKSEN, T. (2024) - *op.cit. fn.* 26.

8.5. Climate Change and Shared Resources

The importance of this topic also extends far beyond the Svalbard. Because climate change is in general making it more common for species “to move in and out of legal jurisdictions”, it will require “new ways of negotiating shared resources amongst interested local and global parties. And these decisions will then impact the ecological changes brought by the species, as well as who profits.”²²² This means that the discussion and solution favourable to both humans and the environment clearly resists separation into air-tight, separate compartments. It is crucial to foster legally sound, economically viable, but also environmentally responsible resource exploration and the exploitation of both living (e.g., fisheries) and non-living (e.g., oil, gas, rare earth metals) natural resources.²²³ The problems of ocean spaces are closely interrelated, so they should be considered as a whole.²²⁴ Meanwhile, Svalbard will undoubtedly continue to change owing to environmental, geopolitical and legal circumstances.

References

- BARNES, R., HARRISON, J. and VAN DER MAREL, E. (2020): Introduction: External aspects of the European Union common fisheries policy. *The International Journal of Marine and Coastal Law*, 35: 5-17. doi:10.1163/15718085-12341002
- BRAW, E. (2025): Russia’s newest victims may be fish, foreign policy. <https://foreignpolicy.com/2025/06/18/russia-fishing-spies-norway/>
- CADEC, A. (2018): Question for oral answer O-000076/2018 to the Commission. *Parliamentary questions*. https://www.europarl.europa.eu/doceo/document/O-8-2018-000076_EN.html
- CONDE, E., SANCHEZ, S. (eds.): *Global Challenges in the Arctic Region*.
- DE POOTER, H. (2020): The snow crab dispute in Svalbard. *ASIL Insights*, 24(4). <https://www.asil.org/insights/volume/24/issue/4/snow-crab-dispute-svalbard>
- DI BELLA, D. R. (2020): Norway just like Turkey? ICSID Arbitration/s against Norway over Svalbard’s Natural Resources: A Wider Picture. *Kluwer Arbitration Blog*. <http://arbitrationblog.kluwerarbitration.com/2020/05/15/norway-just-like-turkey-icsid-arbitration-s-against-norway-over-svalbards-natural-resources-a-wider-picture/>
- DRUMBL, M. A., UHLÍŘOVÁ, K. (2021): Actors and law-making in international environmental law. In: M. Fitzmaurice, M. Brus, P. Merkouris (eds.): *Research Handbook on International Environmental Law*. Cheltenham: Edward Elgar.
- EMMERSON, CH. (2010): *The Future History of the Arctic*, PublicAffairs. 448 p.
- FARMER, T.: Sedentary Species. *UN Atlas of the Oceans*. <http://www.oceansatlas.org/subtopic/en/c/20/>
- HANSEN, H. S. B. (2016): Three major challenges in managing non-native sedentary Barents Sea snow crab (*Chionoecetes opilio*). *Marine Policy*, 71: 38-43.
- HENRIKSEN, T. (2020): Snow crab in the Barents Sea: Managing a non-native species in disputed waters. *Arctic Review on Law and Politics*. <https://arcticreview.no/index.php/arctic/article/view/2545/4829>
- HENRIKSEN, T. (2024): The Dispute over the Geographical Application of the Svalbard Treaty: Into a New Phase, An Essay in Honor of Ted L. McDorman. *Ocean Development & International Law*, 55: 4

²²² KAISER, B. (2018) - *op.cit. fn.* 47.

²²³ KOURANTIDOU, M., KAISER, B. A. (2024) - *op.cit. fn.* 5.

²²⁴ UNCLOS Preamble.

- JENSEN, Ø. (2020): The Svalbard Treaty and Norwegian Sovereignty. *Arctic Review on Law and Politics*, 11: 82-107.
- JENSEN, Ø. (2023): Towards an Historic Svalbard Judgement in Norway's Supreme Court. *Arctic Review on Law and Politics*, 14: 83-85.
- KAISER, B. (2018). Snow crab saga: A story that demonstrates the complexities of climate change. <https://theconversation.com/snow-crab-saga-a-story-that-demonstrates-the-complexities-of-climate-change-93092>
- KAVAN, J., PADRTOVÁ, B. (2021): The rise and fall of Pyramiden: The story of a town in a wider geopolitical and environmental context. *Polar Record*, 58: e10. doi: 10.1017/S0032247422000018
- KOURANTIDOU, M., KAISER, B. A. (2024): Rethinking user rights of profitable marine invasions: Lessons from the Norwegian Barents Snow Crab fishery. *Ocean and Coastal Management*, 259: 107430.
- KŘEPELKA, F.: Antarktida: představení a promýšlení práva konce světa. *Právník* 1/2020. (In Czech).
- KUERSTEN, A. (2016): The Arctic Five versus the Arctic Council. *Arctic Yearbook*, 389-395.
- MALENOVSKÝ, J. (2020): Mezinárodní právo veřejné, obecná část, a poměr k jiným právním systémům. MU Brno. (In Czech).
- MELCHIORRE, T. (2024): The European Union and the Arctic: The case of fishery. *The Yearbook of Polar Law XV*, 231–257: 231-232. Brill, Nijhoff.
- PEDERSEN, T. (2006): The Svalbard continental shelf controversy: Legal disputes and political rivalries. *Ocean Development & International Law*, 37: 339-358.
- ØSTHAGEN, A., RASPOTNIK, A. (2018): Crabtacular! Snow crabs on their march from Svalbard to Brussels. <https://www.thearcticinstitute.org/crabtacular-snow-crabs-march-svalbard-brussels/>
- RASPOTNIK, A., ØSTHAGEN, A. (2020): How much is the fish? When foreign policy meets fishing interests in the EU's Arctic endeavour. *International Relations*, 35(2): 256-276. doi: 10.1177/0047117820920915
- ROSSI, C. R. (2017): Norway's imperilled sovereignty claim over Svalbard's adjacent waters. *German Law Journal*, 18(6): 1497-1530.
- SCHÖNFELDT, K. (2017): *The Arctic in International Law and Policy*. Oxford: Hart Publishing. 1 680 p.
- STAALSEN, A. (2020): Amid jubilant celebration at Svalbard, Norway sends strong signal it will not accept encroachment on sovereignty. <https://thebarentsobserver.com/en/arctic/2020/02/amid-jubilant-celebration-svalbard-norway-sends-strong-signal-it-will-not-accept>
- STAALSEN, A. (2020): Norway's celebration of Svalbard Treaty was followed by ardent and coordinated response from Moscow media. <https://thebarentsobserver.com/en/2020/07/norways-celebration-svalbard-treaty-was-followed-ardent-and-coordinated-response-moscow>
- STEENKAMP, R. C. (2019): Svalbard's 'Snow Crab Row' as a challenge to the common fisheries policy of the European Union. *The International Journal of Marine and Coastal Law*, 35(1): 1-27.
- STOKKE, O. S. (ed.) (2001): *Governing High Seas Fisheries: The Interplay of Global and Regional Regimes*. Oxford University Press, 2001, pp. 273–301.
- TILLER, R. G. (2016): The clear and present danger to the Norwegian sovereignty of the Svalbard Fisheries Protection Zone: Enter the snow crab. *Ocean & Coastal Management*, 137: 24-33.
- TILLER, R., NYMAN, E. (2017): The clear and present danger to the Norwegian sovereignty of the Svalbard Fisheries Protection Zone: Enter the snow crab. *Ocean & Coastal Management*, 137: 24-33.
- VLČEK, T., CHOVAŇČÍK, M., UHLÍŘOVÁ, K. and JIRUŠEK, M. (2024): Strained Relations in the High North: Steps-to-War Analysis of Conflict Potential in the Arctic. *Europe-Asia Studies*, 76(3): 289-313.
- WALESA, J. (2018): EU-Norway dispute on snow crab fisheries in Svalbard. https://www.europarl.europa.eu/doceo/document/CRE-8-2018-01-18-INT-4-291-0000_EN.html
- YOUNG, O. (2011): A peaceful Arctic. *Nature*, 478: 180-181.