

January 2024

## Under the Shadow of Absolute Sovereignty: Exploring Conditional Sovereignty in the Case of Svalbard Geopolitics

Eda Ayaydin

Follow this and additional works at: <https://digitalcommons.maine.maine.edu/oclj>



Part of the [Admiralty Commons](#), [Law of the Sea Commons](#), and the [Transnational Law Commons](#)

---

### Recommended Citation

Eda Ayaydin, *Under the Shadow of Absolute Sovereignty: Exploring Conditional Sovereignty in the Case of Svalbard Geopolitics*, 29 Ocean & Coastal L.J. 265 (2024).

Available at: <https://digitalcommons.maine.maine.edu/oclj/vol29/iss2/6>

This Article is brought to you for free and open access by the Journals at University of Maine School of Law Digital Commons. It has been accepted for inclusion in Ocean and Coastal Law Journal by an authorized editor of University of Maine School of Law Digital Commons. For more information, please contact [mdecrow@maine.edu](mailto:mdecrow@maine.edu).

# UNDER THE SHADOW OF ABSOLUTE SOVEREIGNTY: EXPLORING CONDITIONAL SOVEREIGNTY IN THE CASE OF SVALBARD GEOPOLITICS

*Eda Ayaydin*\*

ABSTRACT

INTRODUCTION

I. THEORETICAL APPROACH: ABSOLUTE SOVEREIGNTY VS.  
CONDITIONAL SOVEREIGNTY

II. HISTORY OF SVALBARD

III. LEGAL AND POLITICAL STATUS OF SVALBARD

IV. RUSSIA IN SVALBARD

V. SVALBARD AFTER FEBRUARY 2022

CONCLUSION

---

\* Teaching Fellow at the University of London Institute in Paris. Dr. Ayaydin can be contacted at [eda.ayaydin@ulip.lon.ac.uk](mailto:eda.ayaydin@ulip.lon.ac.uk).

## ABSTRACT

*This Article analyzes different sovereignty approaches in the context of Svalbard. Since the signing of the Svalbard Treaty, establishing Norway's absolute sovereignty over the archipelago, the geopolitics of the region have evolved, particularly given Svalbard's geographical position in the European Arctic. This Article concludes that Svalbard's sovereignty deviates from the classical concept of absolute sovereignty, instead operating under the framework of conditional sovereignty.*

## INTRODUCTION

Svalbard represents an important case in sovereignty discussions. According to Article 1 of the Svalbard Treaty (“the Treaty”), Norway holds absolute sovereignty over Spitsbergen archipelago. However, Article 2 of the Treaty introduces a caveat following this assertion of absolute sovereignty. The Treaty imposes certain conditions on Norway while exercising its sovereignty, including the sharing of resources, and granting the right to live on Svalbard to citizens of parties to the Treaty. In addition to analyzing the Treaty and its interpretation, this Article asks how to conceptualize and theorize the form of sovereignty that applies to Svalbard.

From a geopolitical perspective, Svalbard occupies a pivotal position, situated between Europe and Russia. Russia, with its established presence and population in Svalbard, assumes a prominent role in the evolving geopolitical landscape of the region. Consequently, this Article seeks to examine Norwegian sovereignty in Svalbard within the framework of conditional sovereignty, absolute sovereignty, and the growing influence of various actors in the changing geopolitics of the area.

However, at this point, it is important to emphasize specifically that this Article does not claim that Norway’s sovereignty over Svalbard archipelago is eroding. Instead, it examines the nature of different types of sovereignty, using Svalbard as an empirical case. To unravel this puzzle, the discussion will largely focus on how different sovereignty approaches in the literature interact with the provisions of the Svalbard Treaty, the Treaty’s perception in reality, and interpretation in geopolitics. Ultimately, the goal is to contribute to the sovereignty literature in international relations by introducing the concept of conditional sovereignty.

Methodologically, this Article employs an empirical case study approach focused on Svalbard. For primary sources, the Article draws upon interviews conducted by the author with Norwegian scholars and officials, including individuals from bureaucratic, diplomatic, and decision-making spheres, as well as information obtained from official government websites. Additionally, this Article utilizes secondary sources, including newspapers, academic articles, and books published in English, French, Norwegian, and Turkish.

# I. THEORETICAL APPROACH: ABSOLUTE SOVEREIGNTY VS. CONDITIONAL SOVEREIGNTY

Sovereignty has been a burning notion for the fields of international relations and international law. While a very general definition of

sovereignty is the supreme and exclusive authority within/on a territory, there are different aspects of sovereignty. Firstly, it is a matter of authority that is seen as absolute. Another ingredient of the concept is territoriality. Territoriality is a feature of authority and the entity that holds this authority is crucial: a dictator, monarch, or people through a constitution. Jean Bodin, in his books *Six livres de la République* (1576),<sup>1</sup> supports the idea of absolute sovereignty, but at the same time he mentions that monarchs cannot tax their subjects without their consent.<sup>2</sup> This thought is not very distinct from the “will of people” that forms the principal doctrines of John Locke<sup>3</sup> and Jean Jacques Rousseau.<sup>4</sup> Bodin uses the term as the ultimate power of the state based on citizens’ will.<sup>5</sup> According to him, sovereignty is not regulated by law and the sovereign determines the limits of his own power.<sup>6</sup> Not so far from Jean Bodin, Thomas Hobbes thought that the sovereign must be over the law. According to Hobbes’ social contract, the sovereign is the ultimate and only authority that holds the power for making laws and ruling the people.<sup>7</sup> Sovereign has the only indivisible power, independent from the external control.<sup>8</sup>

In *Leviathan*, fear is defined as the feeling that motivates obedience to law, non-breaking of law, and conservation of laws.<sup>9</sup> The power of law comes from the fear of the sovereign. Hence, law is the binder of sovereignty. And since there is no law without sovereignty, it must be said that sovereignty provokes fear. “Sovereignty creates fear, and fear makes the sovereign.”<sup>10</sup>

Thus, fear leads men more to obey the laws than to break them. The contract established by the sovereign is based on fear—in two senses: (1) the subjects obey the law and recognize it as such only as long as it provides them with protection against what they fear, and (2) the law in

---

1. See JEAN BODIN, ON SOVEREIGNTY (Julian Franklin ed., Cambridge Univ. Press 1992).

2. *Id.*

3. See generally JOHN LOCKE, TWO TREATISES OF GOVERNMENT (Peter Laslett ed., Cambridge Univ. Press 1988) (1689).

4. See generally JEAN-JACQUES ROUSSEAU, THE SOCIAL CONTRACT OR PRINCIPLES OF POLITICAL RIGHT (Maurice Cranston trans., Penguin Classics 2003) (1762).

5. See generally BODIN, *supra* note 1.

6. *Id.*

7. See THOMAS HOBBS, LEVIATHAN (Harmondsworth trans., Penguin Books 1968) (1651).

8. *Id.*

9. *Id.*

10. JACQUES DERRIDA, THE BEAST AND THE SOVEREIGN, VOLUME I 40 (Geoffrey Bennington trans., Univ. Chi. Press 2009).

return is obeyed by the subjects only as long as they fear it. Thus, it is fear that founds the subjugation—the legitimacy of the sovereign.<sup>11</sup>

In the case of Norway, the acquisition of Svalbard sovereignty by Norway, through an international treaty, is interesting to discuss in the context of the ‘fear, law, and sovereign triangle’. In this example, it is not Norway who determined the international aspects of law of Svalbard. In other words, in Hobbesian and Derridean approach, it is not sovereign of Norway who established the contract, it is an international treaty which attains sovereignty to Norway. Therefore, according to this absolute sovereigntism, the same process of fear-law-sovereign triangle is not observed in Svalbard for Norway.

The Westphalian model of sovereignty tends to overlook both the hierarchical differentiation among states and the diverse sources of authority that extend beyond the nation-state paradigm.<sup>12</sup> From this perspective, the concept of state sovereignty can be comprehended as the absolute establishment of political authority within delimited territorial boundaries. Discussions about sovereignty often follow a binary perspective: a state is seen as having sovereignty or not, with differing views on whether this concept stems from the Peace of Westphalia in the seventeenth century or develops as social practices.<sup>13</sup> Divergence exists concerning the recognition of actors within the realm of international politics, particularly militarily weaker states, which might not wield full sovereignty. Yet, from prominent thinkers like Hobbes (1651)<sup>14</sup> and Locke (1690)<sup>15</sup> to Schmitt (1988)<sup>16</sup>, among others, the modern state and political authority are perceived as inherently intertwined entities. This viewpoint positions central state authority and sovereign power as closely interconnected, as noted by Foucault, whose perspective, despite a less state-centric stance, underscores the centrality of state apparatuses in the exercise of sovereign power over populations.<sup>17</sup>

---

11. *Id.*

12. John Agnew, *Sovereignty Regimes: Territoriality and State Authority in Contemporary World Politics*, 95 ANNALS ASS'N OF AM. GEOGRAPHERS 437, 437 (2004).

13. See generally KENNETH WALTZ, *MAN, THE STATE, AND WAR* (1959); Rick Ashley, *Foreign Policy as Political Performance*, 13 INT'L STUD. NOTES 51, 51-54 (1987); WALKER ROB, *INSIDE/OUTSIDE: INTERNATIONAL RELATIONS AS POLITICAL THEORY* (1992); STEPHEN D. KRASNER, *SOVEREIGNTY: ORGANIZED HYPOCRISY* 8 (Princeton Univ. Press 1999).

14. See generally HOBBS, *supra* note 7.

15. See generally LOCKE, *supra* note 3.

16. See generally CARL SCHMITT, *THÉOLOGIE POLITIQUE [POLITICAL THEOLOGY]* (Presses Univ. de France 1988) (1922).

17. See MICHEL FOUCAULT, *THE FOUCAULT EFFECT: STUDIES IN GOVERNMENTALITY* 93 (Graham Burchell et al. eds., Univ. of Chi. Press 1991).

Within the realm of sovereignty discourse, two distinct paradigms come to the fore: absolute sovereignty and relational sovereignty, each characterized by specific capacities. Against this backdrop, legal scholars are progressively differentiating between historical insular sovereignty, which underscores a prerogative to resist external influences, and the emergent relational sovereignty, defined by its capacity for active engagement.<sup>18</sup> This concept of disaggregated sovereignty delineates a notable departure from the traditional unitary perspective. It signifies states' willingness to collaborate and share authority in response to complex challenges, encompassing environmental, economic, and societal issues that transcend their individual capacities for autonomous management.<sup>19</sup>

Michael Byers states that Svalbard is an example of shared sovereignty or the limitation of sovereignty through the according of treaty rights to other states.<sup>20</sup> According to Krasner, shared sovereignty can be established through treaties or unilateral commitments with the objective of ensuring effective domestic governance within states experiencing governance failures, financial indebtedness, and occupation.<sup>21</sup>

---

18. Anne-Marie Slaughter, *Disaggregated Sovereignty: Towards the Public Accountability of Global Government Networks*, 39 *GOV'T & OPPOSITION* 159, 188 (2004).

19. Agnew, *supra* note 12, at 441.

20. MICHAEL BYERS, *INTERNATIONAL LAW AND THE ARCTIC* 22 (Cambridge Univ. Press 2013).

21. STEPHEN D. KRASNER, *SHARING SOVEREIGNTY: NEW INSTITUTIONS FOR COLLAPSED AND FAILING STATES*, 29 *INT'L SEC.* 85, 89 (2004).

**Table 1:** *Categories of Sovereignty.*

	<b>International Legal Sovereignty</b>	<b>Westphalian/Vattellican Sovereignty</b>	<b>Duration of Rule Violation</b>	<b>Presence of Trusteeship/ Protectorate/ External Actor in Governance</b>
<b>Absolute Sovereignty</b>	Yes	Full	Not applicable	No
<b>Shared Sovereignty</b>	Yes	Some	Long	Yes
<b>Conditional Sovereignty</b>	Yes	Some	Not applicable	No

The distinction between shared sovereignty and conditional sovereignty, as delineated in this Article, lies in the presence of an external actor and the resultant interference in the former, leading to instances of rule violation. In practical terms, the Westphalian/Vattellican principle, which advocates for non-interference in the internal affairs of other states, often results in a limited exercise of sovereignty. The term “droit d’ingérence,” or the “right to intervene,” denotes the capacity of actors to intervene in a state’s affairs, even without its consent, particularly in cases of significant human rights abuses.<sup>22</sup> This concept establishes a nexus between humanitarian assistance and the utilization of force, justified by a moral imperative. Notably, during the 1970s, the idea of the right to intervene was articulated by French intellectuals such as philosopher, Jean-François Revel; legal scholar, Mario Bettati; and Doctor Bernard Kouchner, who was the founder of the non-governmental organization (NGO) Médecins Sans Frontières (Doctors Without Borders).<sup>23</sup> Nevertheless, the theoretical framework surrounding the right to intervene

---

22. *Ingérence, Droit D’ingérence* [Interference, Right to Interference], GÉOCONFLUENCE, <https://geoconfluences.ens-lyon.fr/glossaire/ingerence-et-securite> (last visited Mar. 09, 2024) [<https://perma.cc/LK8U-W396>].

23. *Id.*



is grounded in universal humanitarian values, including the pursuit of improved health conditions; however, there are instances where actions that lack legitimacy are erroneously linked to the right to intervene. Notably, armed interventions deviate from the core essence of this concept. Consequently, it is not appropriate to characterize the interventions in Afghanistan and Iraq as legitimate applications of the right to intervene.<sup>24</sup> This is regrettable as these actions were on the verge of receiving validation under the right to intervene, which, as Krasner states, can be seen as an organized hypocrisy within the realm of sovereignty.<sup>25</sup>

Hence, shared sovereignty involves the active involvement of an external actor in domestic affairs, whereas conditional sovereignty pertains to a treaty or multilateral commitment that confers sovereignty upon a state, as exemplified by the Svalbard Treaty.<sup>26</sup> In the conceptualization of conditional sovereignty, there is a clear acknowledgment of international legal sovereignty without any external interference, trusteeship, or questioning. Additionally, domestic governance remains intact, free from any rule violations. However, it is important to note that a modified form of Westphalian sovereignty operates to a certain extent in this scenario, as the attainment of sovereignty is contingent upon a treaty, and specific conditions accompany this sovereignty. In the case of Svalbard, for instance, Norway is granted full sovereignty as articulated in the first Article of the Treaty.<sup>27</sup> Indeed, there are specific conditions associated with the exercise of sovereignty in the case of Svalbard. According to Article 2, Norway is obliged to allow equal participation of the treaty parties in fishing and hunting activities on the archipelago.<sup>28</sup> Article 3 guarantees the citizens of these states equal access to Svalbard for any purpose.<sup>29</sup> Additionally, Article 9 prohibits the construction of any naval bases in Svalbard.<sup>30</sup> These treaty provisions impose limitations on Norway, and it is important to note that these legal stipulations were not established by Norway itself.

---

24. Mario Bettati, *Du droit d'ingérence à la responsabilité de protéger* [From the Right to Interfere to the Responsibility to Protect], 20 OUTRE-TERRE [OVERLAND] 381, 382 (2007).

25. See KRASNER *supra* note 13, at 8-9.

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

27. *Id.*

28. *Id.* art. 2.

29. *Id.* art. 3.

30. *Id.* art. 4.

Consequently, the sovereignty of Svalbard, given these circumstances, can aptly be described as conditional sovereignty.

## II. HISTORY OF SVALBARD

Svalbard is an Arctic archipelago situated near the Barents Sea, encompassing prominent islands like Spitsbergen.<sup>31</sup> To the east of Svalbard lie Novaya Zemlya and Franz Josef Land, while to the west, Svalbard is positioned in proximity to Greenland. The allure of explorers and states towards the Svalbard archipelago dates back to its discovery by Dutch explorer William Barents in the sixteenth century.<sup>32</sup> The interest in the archipelago experienced a significant upswing in the early seventeenth century, primarily driven by the prospects of hunting marine mammals, including seals, walruses, and whales. The Muscovy Company, headquartered in England, played a pivotal role in the exploration, hunting, and trade activities within the region during this era.<sup>33</sup> As the Muscovy Company endeavored to establish a monopoly within the region, France, the Netherlands, and Spain resisted granting England exclusive control over hunting activities in the area.<sup>34</sup> In response to the Muscovy Company's efforts to enforce its monopoly by invoking the assistance of the English armed forces, the Netherlands invoked the principle of "Mare Liberum" (open sea).<sup>35</sup> Consequently, a compromise was reached wherein the Netherlands and England agreed to share hunting rights, allowing smaller-scale companies from other European countries to continue their involvement in hunting activities in the region.<sup>36</sup>

When Svalbard was discovered in the sixteenth century, there was no permanent population on the island. Sweden and Norway wanted to establish a colony on the island, but Russia vehemently opposed this

---

31. *GeoSvalbard*, NORWEGIAN POLAR INST., <https://geokart.npolar.no/geologi/GeoSvalbard/#6/77.983/18.090> (last visited Mar. 18, 2024) [<https://perma.cc/89MX-5DCS>].

32. *Willem Barentz*, BARENTSINFO.ORG, <https://www.barentsinfo.org/barents-region/History/Willem-Barentz> (last visited Apr. 12, 2024) [<https://perma.cc/SA2A-E5MH>].

33. Adam Grydehøj, *Svalbard: International Relations in an Exceptionally International Territory*, in *THE PALGRAVE HANDBOOK OF ARCTIC POL'Y AND POL.* 267, 269-70 (Ken S. Coates & Carin Holroyd eds., 2020).

34. *Id.*

35. *Id.*

36. *Id.*

idea.<sup>37</sup> In 1905, the union between Sweden and Norway came to an end,<sup>38</sup> and newly independent Norway aimed to resolve the issue of sovereignty over Svalbard. In the early 1900s, Norway, Russia, and Sweden proposed sovereignty solutions that were opposed by the United States and Germany, both having economic interests in the region.<sup>39</sup> According to the decision made at the conference in Paris, sovereignty over the Svalbard archipelago was granted to Norway, but the agreement granted equal fishing and economic activity rights to all signatory states.<sup>40</sup> According to Grydehoj, Norway was given sovereignty rights for three main reasons: (1) the country had been a valuable ally for the Allied Powers during World War I; (2) the United States' interest in Svalbard was diminishing; and (3) the Bolshevik government had not yet been officially recognized.<sup>41</sup> For the United States, Svalbard was also strategically important, so it supported the decision to grant sovereignty rights over Svalbard to its ally. On the other hand, Russia was the biggest opponent of this decision. Russia had conducted various economic activities in the archipelago, but the Treaty of Paris coincided with the Russian Revolution and the establishment of the new government while Russia was still struggling for international recognition.<sup>42</sup> By the twentieth century, Svalbard had become an attractive location for coal mining and scientific research. These activities also served as a rationale for states' interests in the region.

### III. LEGAL AND POLITICAL STATUS OF SVALBARD

The legal status of Svalbard was terra nullius until the 20th century.<sup>43</sup> Following World War I, the Paris Treaty of 1920 granted full sovereignty of Svalbard and the Spitsbergen archipelago to Norway:

The High Contracting Parties undertake to recognise, subject to the stipulations of the present Treaty, the full and absolute sovereignty of Norway over the Archipelago of Spitsbergen, comprising, with Bear Island or Beeren-Eiland, all the islands situated between 10° and 35° longitude East of Greenwich and

---

37. *Id.*

38. *Dissolution of the Union, 1905*, THE ROYAL HOUSE OF NOR., <https://www.royalcourt.no/seksjon.html?tid=28690> (last visited Mar. 18, 2024) [<https://perma.cc/D47G-A8ZH>].

39. Grydehoj, *supra* note 33, at 270.

40. Svalbard Treaty, *supra* note 26, art. 1-2.

41. Grydehoj, *supra* note 33, at 270.

42. TYRGVE MATHISEN, SVALBARD IN THE CHANGING ARCTIC 49 (1954).

43. GEIR ULFSTEIN, THE SVALBARD TREATY: FROM TERRA NULLIUS TO NORWEGIAN SOVEREIGNTY 18 (1995).

between 74° and 81° latitude North, especially West Spitsbergen, North-East Land, Barents Island, Edge Island, Wiche Islands, Hope Island or Hopen-Eiland, and Prince Charles Foreland, together with all islands great or small and rocks appertaining thereto.<sup>44</sup>

In accordance with the initial Article of the Treaty, it is stipulated that Norway possesses absolute sovereignty over the archipelago, while simultaneously granting all participating nations the rights to engage in mining activities and the exploitation of resources, such as fish.<sup>45</sup> An argument can be raised concerning whether this Article compromises Norway's assertion of absolute sovereignty when it is obliged to share its resources and territory with the contracting parties. Returning to the conceptualizations of sovereignty by "absolutists," it is emphasized that a sovereign entity must exercise exclusive rights over a territory, encompassing its resources and inhabitants. The question arises: if a state is obligated to share its sovereignty with signatory nations, how can Norway possess absolute sovereignty over Svalbard?

Jensen highlights the notion of Norway's absolute sovereignty,<sup>46</sup> and similarly, Østhagen et al. underscores Norway's absolute sovereignty misconceptions regarding Svalbard's status as a shared space.<sup>47</sup> While these aspects are integral to the acquisition and exercise of sovereignty, it is noteworthy that the population, as an important pillar of sovereignty, of Svalbard is not exclusively Norwegian. As of 2022, there were 391 individuals residing in Russian settlements within the Svalbard population, while Norwegian settlements housed 2,504 residents during the same year.<sup>48</sup>

On the other hand, in accordance with Article 9 of the Treaty, the militarization of the archipelago is expressly prohibited.<sup>49</sup> Consequently, neither Norway nor any other parties are permitted to maintain military vessels in the vicinity of the archipelago. Viewed from this perspective,

---

44. Svalbard Treaty, *supra* note 26, art. 1.

45. *Id.* art 2.

46. Øystein Jensen, *The Svalbard Treaty and Norwegian Sovereignty*, 11 ARCTIC REV. ON LAW AND POL. 81, 82-107 (2020).

47. Andreas Østhagen et al., *Arctic Geopolitics: The Svalbard Archipelago*, Center for Strategic and International Studies (CSIS) (Sept. 2023), [https://csis-website-prod.s3.amazonaws.com/s3fs-public/2023-09/230914\\_%C3%98sthagen\\_Arctic\\_Geopolitics\\_Svalbard.pdf](https://csis-website-prod.s3.amazonaws.com/s3fs-public/2023-09/230914_%C3%98sthagen_Arctic_Geopolitics_Svalbard.pdf) [<https://perma.cc/2S2B-NDY7>].

48. Alexandra Middleton, *Norwegian and Russian Settlements on Svalbard: An Analysis of Demographic and Socio-economic Trends*, 14 POLAR REC., 2023, at 1, 3.

49. Svalbard Treaty, *supra* note 26, art. 9.

the concept of absolute sovereignty is rendered inapplicable to the Svalbard model.

Thus, having meticulously analyzed the tenets laid out in the Treaty and examined the practical exercise of sovereignty, it is contended that the Norwegian sovereignty over Svalbard can be aptly characterized as conditional sovereignty.

Furthermore, Article 3 of the Treaty explicitly permits citizens of contracting parties to reside in Svalbard and engage in commercial activities.<sup>50</sup> Indeed, it should be noted that individuals residing in Svalbard are subject to taxation by Norway, as stipulated in the Treaty.<sup>51</sup> Additionally, Article 2 of the Treaty grants Norway the authority to implement appropriate measures to safeguard the natural environment in Svalbard, if such actions are deemed necessary.<sup>52</sup>

Shortly after the Second World War, Norway has increased its scientific activities in Svalbard as means of implementing its sovereignty over the archipelago.<sup>53</sup> Oslo has instated a kind of soft sovereignty in that it did not create a strong governing body or introduce rules that could put pressure on the other states included in the 1920 treaty.<sup>54</sup> The largest population flow in Spitsbergen—the only populated island of Svalbard archipelago—comes from industry, science, and tourism to Longyearbyen and Ny-Ålesund. People who come to work in Svalbard do not need to meet any visa requirements or obtain work permits, as is the case in Norway.<sup>55</sup> On the other hand, thanks to the Svalbard Treaty, Longyearbyen remains a low-tax zone (lower about 8% compared to mainland Norway) which increases its attractiveness for business.<sup>56</sup>

To sum, within the limitations of Treaty, Norway maintains its regulations in Svalbard in terms of environmental, societal, scientific and business through its national institutions and local authorities such as Longyearbyen Community Council, Store Norske, Norsk Polar Institute, Telenor, Svalbardposten.

---

50. *Id.* art. 3.

51. *Id.*

52. *Id.* art. 2.

53. MATHISEN, *supra* note 42 at 67.

54. *See generally* Svalbard Treaty, *supra* note 26.

55. *Id.*

56. Zdenka Sokolíčková, *The Trouble With Local Community in Longyearbyen, Svalbard: How Big Politics and Lack of Fellesskap Hinder a Not-Yet-Decided Future*, 58 POLAR REC., 2022, at 1, 2.

## IV. RUSSIA IN SVALBARD

Trygve highlights the place of the relations with Russia in Svalbard as “[i]t was highly important not to jeopardize the good relations which had always existed between Norway and Russia, and which the Norwegian Government had always been anxious to maintain, although the Russian demands were rather discouraging.”<sup>57</sup> Indeed, since the Soviets were unable to participate in the negotiations for the Svalbard Treaty, the Norwegian government declared its recognition of the interests of the Soviet Union in Svalbard, following the Soviets’ proposal of a Russo-Norwegian Condominium.<sup>58</sup> However, the Russian government did not persist in demanding such an arrangement.

*Le Monde*, a well-known French newspaper recently published a headline on Russia’s presence in Svalbard as “Russian colony in Barentsbourg.”<sup>59</sup> From this point onwards, indeed, the Russian settlement with Russian population displays an important symbolic example while analyzing the Svalbard sovereignty.

Russia has historically maintained a presence in Svalbard and has consistently held interests in the region. A Russian population has historically resided in Svalbard, predominantly engaged in coal mining activities, although this population has been declining in recent years.<sup>60</sup> Nonetheless, the significance of Svalbard’s geostrategic location underscores the importance of continued Russian presence on the island.

Divergent perspectives on Russia’s position in Svalbard have emerged from interviews conducted with Norwegian officials and scholars. In November 2021, prior to the outbreak of the conflict, a Norwegian diplomat expressed the view that “Russia will challenge us in Svalbard.”<sup>61</sup> Conversely, another interviewee asserted that Norway maintains absolute sovereignty over Svalbard, and Russia does not contest this sovereignty.<sup>62</sup> On the other hand, Moe and Jensen believe that the relationship with

---

57. MATHISEN, *supra* note 42, at 48.

58. *Id.* at 49-51.

59. Simon Roger, *Dans le Grand Nord, la Colonie Russe de Barentsburg Rattrapée par la Guerre en Ukraine* [In the Far North, the Russian Colony of Barentsburg Overtaken by the War in Ukraine], LE MONDE [THE WORLD] (Nov. 30, 2023 at 8:41 PM), [https://www.lemonde.fr/international/article/2023/11/29/dans-le-grand-nord-la-colonie-russe-de-barentsburg-rattrapee-par-la-guerre-en-ukraine\\_6202899\\_3210.html](https://www.lemonde.fr/international/article/2023/11/29/dans-le-grand-nord-la-colonie-russe-de-barentsburg-rattrapee-par-la-guerre-en-ukraine_6202899_3210.html) [https://perma.cc/E2QJ-ZWSF].

60. Grydehøj, *supra* note 33, at 276-91.

61. The names and current positions are anonymous upon the request of the interviewees (May 11, 2021).

62. The names and current positions are anonymous upon the request of the interviewees (Aug. 10, 2022).

Russia is and will be a challenge for Norway in Svalbard.<sup>63</sup> Consequently, there is no uniform consensus regarding Russia's role and presence in Svalbard.

"Nowhere do Norway and Russia meet as closely as in Svalbard," says Jørgensen in his article where he claims that Svalbard policy of Norway has to be conducted according to a fine-tuned art of balancing between the desire for control and the fear of provoking the large neighbor to the east.<sup>64</sup> The manner in which Russia interprets political shifts in and around the Norwegian archipelago of Svalbard remains heavily influenced by Norway's affiliation with NATO—a body with which Russia's relationship remains notably complex.<sup>65</sup> Particularly noteworthy is the evolving complexity of Arctic geopolitics since 2022, driven by the expansion of NATO within Arctic states. This dynamic has resulted in a divergence of Arctic geopolitical developments, including Russia's departure from the Barents Cooperation and the Russian initiative to establish a scientific base in Svalbard involving non-Arctic states.<sup>66</sup>

Since the Svalbard Treaty gave the sovereignty of Svalbard archipelago to Norway, Oslo has often been careful not to introduce Norwegian law in the Soviet mining towns in Svalbard.<sup>67</sup> By the de-escalation due to Gorbachev late 1980s, there were changes that made a more visible Norwegian presence possible, symbolized by Norwegian traffic signs and Norwegian post offices in Barentsburg and Pyramiden.<sup>68</sup> The Soviet Union, for its part, tried to develop its activities and to take initiatives for cooperation with Norwegian businesses.<sup>69</sup> The thought was that the more cooperation with Norway on Svalbard, the greater influence

---

63. Arild Moe & Øystein Jensen, *Svalbard og Havområdene-Nye Utenrikspolitiske Utfordringer for Norge?* [*Svalbard and the Sea Areas—New Foreign Policy Challenges for Norway?*], 78 *INTERNASJONAL POLITIKK* [INT'L POL.] 511, 514 (2020).

64. Jørgen Holten Jørgensen, *Hvor Normal Kan Svalbard Bli? Et Lite Stykke Russland I Møte Med Norsk Forvaltning* [*How Normal can Svalbard Become? A Small Piece of Russia Meeting the Norwegian Administration*], 27 *NORDISK ØSTFORUM* [NORDIC E. F.] 327, 327 (2013).

65. Kristian Atland & Torbjørn Pedersen, *The Svalbard Archipelago in Russian Security Policy: Overcoming the Legacy of Fear—or Reproducing It?*, 17 *EUR. SEC.* 227, 228 (2008).

66. Thomas Nilsen, *Lavrov Formally Withdraws Russia From Barents Cooperation*, *THE BARENTS OBSERVER*, (Sept. 18, 2023), <https://thebarentsobserver.com/en/life-and-public/2023/09/lavrov-formally-withdraw-russia-barents-cooperation> [<https://perma.cc/T5XA-D4K4>].

67. Jørgensen, *supra* note 64, at 335.

68. Adam Grydehøj et al., *The Globalization of the Arctic: Negotiating Sovereignty and Building Communities in Svalbard, Norway*, 1 *ISLAND STUD. J.* 99, 110 (2012).

69. See generally *id.*

Moscow would have over the management of the area. Most of the initiatives proposed by Moscow were rejected from the Norwegian side.<sup>70</sup> On the other hand, Svalbard has had an increasing number of visits by foreign companies in search of natural resources.<sup>71</sup> However, Article 3 of the Svalbard Treaty states, “they may carry on there without impediment all maritime, industrial, mining and commercial operations on a footing of absolute equality.”<sup>72</sup> For the creation of protected areas, it has been an effective instrument in limiting both Norwegian, Russian, and foreign actors’ activities.<sup>73</sup> Norway did not immediately exercise strong Norwegian rules since it would have caused Russia to react negatively. However, two big accidents—a Russian charter plane crash and a second big accident in mining in Barentsburg—paved the way for exercising Norwegian rules. Following these incidents, Norway used an environmental protection tool (Svalbard Environmental Protection Act 2001)<sup>74</sup> as an exercising sovereignty action by using Article 2 of the agreement:

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 . . . .<sup>75</sup>

Norway can use its sovereignty to take active measures to protect the environment of Svalbard.<sup>76</sup> Russia viewed the Environmental Act as Norway’s attempt to push Russia away from Svalbard<sup>77</sup> while some called the Environmental Act aggressive conservationism.<sup>78</sup> According to Jørgensen, while Russia perceives Svalbard through the lens of security policy, it faces challenges accepting that Norway’s policies are environmental rather than security-focused.<sup>79</sup> After the Act came into force, Russia exerted pressure on Norway. This issue received considerable attention in Russian newspapers as described in Åtland and

---

70. *Id.*

71. *Id.*

72. Svalbard Treaty, *supra* note 26, art. 3.

73. *See id.*

74. Jørgensen, *supra* note 64, at 330.

75. Svalbard Treaty, *supra* note 26, art. 3.

76. Jensen, *supra* note 46, at 88.

77. Jørgensen, *supra* note 64, at 330.

78. Åtland & Pedersen, *supra* note 65, at 239.

79. Jørgen Jørgensen, *Svalbard: Russiske Persepsjoner og Politikutforming* [Svalbard: Russian Perceptions and Policymaking], 62 INTERNASJONAL POLITIKK [INT’L POL.] 177, 188 (2004).



Pedersen's article where they analyzed Norwegian policies in Svalbard from a securitization perspective.<sup>80</sup> Securitization theory of Copenhagen School offers a window to analyze why and how issues become subject to security.<sup>81</sup> The Russian moves to securitize the Svalbard Environmental Protection Act have many similarities with Soviet efforts to counteract Norwegian conservation measures on Svalbard during the Cold War period. The Russian discourse turning the environment-related measures into security-related issues increased tensions; however, a conflict has not resulted. Instead, Russia is on alert for other changes in Norwegian Svalbard policies and actions such as Norway's claim on the exclusive rights over the continental shelf surrounding the Svalbard archipelago.<sup>82</sup> Indeed, one of the interviewees said that "Norway made a mistake because there is no ally protecting Norway in Svalbard fishing."<sup>83</sup>

Although the scale or nature of Norwegian presence on Svalbard does not hold formal significance for Norwegian sovereignty, the fact that Norway acquired this sovereignty through an international treaty with no expiration date unequivocally affirms to the global community that Svalbard is an integral part of Norway. The level of Norwegian policy implementation in Barentsburg, where a Russian population resides, has undergone fluctuations over time. Simultaneously, Russia acknowledges Norwegian sovereignty and refrains from undermining Norwegian governance to the extent that it challenges the integrity of the Treaty.<sup>84</sup> In fact, starting from the 2000s, Russia has accepted the broadening scope of Norwegian authority, also in Barentsburg and Pyramiden.<sup>85</sup>

## V. SVALBARD AFTER FEBRUARY 2022

The conflict between Russia and Ukraine had a cooling effect on Arctic cooperation, leading to a complete freeze in cooperation with Russia. Following the commencement of Russia's invasion of Ukraine, the Arctic Council suspended its activities on March 3, 2022.<sup>86</sup> It wasn't until

---

80. Åtland & Pedersen, *supra* note 65, at 239.

81. BARRY BUZAN ET AL., *SECURITY: A NEW FRAMEWORK FOR ANALYSIS* 23, 26 (1998).

82. *See generally* Tørbjørn Pedersen, *The Svalbard Continental Shelf Controversy: Legal Disputes and Political Rivalries*, 37 OCEAN DEV. & INT'L L. 339-54 (2006); Åtland & Pedersen, *supra* note 65.

83. Telephone Interview with Researcher (Nov. 22, 2022) (on file with author).

84. Moe & Jensen, *supra* note 63, at 515.

85. Jørgensen, *supra* note 64, at 342.

86. Hilde-Gunn Bye, *Joint Declaration from Arctic States: Pausing Arctic Counsel Meetings*, HIGH N. NEWS (Mar. 4, 2022), <https://www.highnorthnews.com/en/joint-declaration-arctic-states-pausing-arctic-council-meetings> [https://perma.cc/66V7-F9N3].

June 2022 that the Arctic 7 countries<sup>87</sup> resumed their work within the Arctic Council, excluding any collaborative projects involving Russia.<sup>88</sup> Subsequently, sanctions were imposed. This heightened tension had repercussions on the geopolitics of Svalbard, where Russia has historically played a significant role.

After the start of Russian's invasion of Ukraine, the news occurred in newspapers on the logistics problem of Russian supplies in Svalbard.<sup>89</sup> An official from High North Department of Norway stated that there was no problem with Russia in Svalbard and what happened in June was not a conflict and it was resolved calmly.<sup>90</sup> After this logistics crisis, with Russian accusing Norway of blocking food deliveries destined for Russian-populated settlements on the Svalbard archipelago, State Duma Speaker, Vyacheslav Volodin asked the head of the chamber's international affairs committee to look into "denouncing" the 2010 treaty that established the maritime boundary with Norway.<sup>91</sup> A Norwegian high-level bureaucrat stated during our interview that they are used to hearing complaints about this maritime agreement.<sup>92</sup>

Conversely, in the evolving geopolitical landscape of today, Russian activities persist in Barentsbourg and Pyramiden, extending beyond commercial endeavors. In August 2023, Russian Bishop Iyakov of Naryan-Mar and Mezen erected and consecrated an Orthodox cross in Pyramiden, marking a symbolic and religious presence in the region.<sup>93</sup> The 7-meter-tall cross is adorned with the bicolored black and orange ribbon

---

87. Canada, Denmark, Finland, Iceland, Norway, Sweden, USA. *See id.*

88. Eilis Quinn, *Arctic Council Charting way Forward to Resume Work Says Norwegian SAO*, ARCTIC BUS. J. (Sep. 7, 2023), <https://www.arctictoday.com/arctic-council-charting-way-forward-to-resume-work-says-norwegian-sao/> [<https://perma.cc/4248-ACLV>].

89. *Russian Threatens Retaliation Against Norway Over Access to Arctic Islands*, REUTERS, <https://www.reuters.com/world/europe/russia-threatens-retaliation-against-norway-over-access-arctic-islands-2022-06-29/> (last visited Mar. 17, 2024) [<https://perma.cc/ZS2Q-QXJL>].

90. Online Interview with High Bureaucrat, Norwegian Ministry of Foreign Affs. (Sep. 21, 2022) (on file with author).

91. *Russia's Speaker Asks Parliament to Look at Scrapping Norway Sea Treaty*, REUTERS (July 5, 2022), <https://www.reuters.com/world/europe/russias-speaker-asks-parliament-look-scrapping-norway-sea-treaty-2022-07-05/> [<https://perma.cc/FEE6-3TBU>].

92. Online Interview with High Bureaucrat, *supra* note 90.

93. Thomas Nilsen, *Bishop Iyakov, who Backs Putin's War, Raised Giant Cross at Svalbard Without Norway's Knowledge*, THE BARENTS OBSERVER (Aug. 12, 2023), <https://thebarentsobserver.com/en/arctic/2023/08/russia-worlds-arctic-power-said-war-blessing-bishop-who-week-raised-giant-patriotic> [<https://perma.cc/5PZ7-94XW>].

of Saint George, a Russian symbol associated with military strength and nationalism.<sup>94</sup>

This action can be interpreted as an image-building effort, suggesting that Barentsbourg and Pyramiden are perceived as Russian territory and inherently belong to Russia. The Russian Orthodox Church's website indicates that the First Hierarch of the Church has accorded Patriarchal status to the Russian Arctic project.<sup>95</sup> The act of raising the cross is documented on the same website, alongside reactions from Norwegian media.<sup>96</sup> Towards the conclusion of the news article, it asserts, "There is nowhere to retreat - Moscow is behind us! This is invariably true in the highest latitudes of the Arctic!"<sup>97</sup> Through this symbolic image construction, Moscow emphasizes how Svalbard is regarded as sacred Russian territory, underscoring the significance of its presence in Svalbard. This symbolic sovereignty act is not new; Russia has previously employed religious elements in its approach to economic development in the Russian Arctic. In 2022, initiatives such as a dialogue on Church, society, and the state were organized, alongside the Orthodox Initiative Competition aimed at fostering the growth of activities in the Arctic region.<sup>98</sup>

Conversely, the Governor of Svalbard was not informed about the installation of this cross.<sup>99</sup> Given that territoriality is a fundamental aspect of sovereignty, the control and activities within a territory carry significant weight. However, the Governor's lack of awareness of this symbolic act highlights how the Svalbard Treaty imposes limitations on Norway's exercise of sovereignty in the region.

Science is, on the other hand, instrumentalized as a soft power in Svalbard.<sup>100</sup> In its efforts to expand its presence in Svalbard, Russia has expressed an interest in establishing a scientific base in collaboration with

---

94. *Id.*

95. *Russkiy Grumant (Русский Груманти)* [*Russian Grumant*], RUSSIAN ORTHODOX CHURCH, [http://www.orthodox-arctica.ru/news/734/?sphrase\\_id=2828](http://www.orthodox-arctica.ru/news/734/?sphrase_id=2828) (last visited Mar. 17, 2024) [<https://perma.cc/59K3-KNGA>].

96. *Id.*

97. *Id.*

98. *Russkaya Pravoslavnaya Tserkov' (Русская Православная Церковь)* [The Russian Orthodox Church], *Paskhal'noye teleobrashcheniye Svyateyshego Patriarkha Moskovskogo i vseya Rusi Kirilla (Пасхальное телеобращение Святейшего Патриарха Московского и всея Руси Кирилла)* [Easter Televised Address by His Holiness Patriarch Kirill of Moscow and All Rus], <http://www.patriarchia.ru/db/text/6018950.html> (last visited Mar. 17, 2024) [<https://perma.cc/8TYS-ECKZ>].

99. Nilsen, *supra* note 93.

100. See Joseph S. Nye, *Soft Power*, 80 FOREIGN POL'Y 153, 153–71 (1990).

non-Arctic states such as China, India, and Turkey.<sup>101</sup> Among these nations, Turkey was the only one that was not yet a member of the Svalbard Treaty until its ratification by the Turkish Parliament in October 2023 and the only state that does not hold an observer status at the Arctic Council.<sup>102</sup> As a non-Arctic state, there has been some misinterpretation in Turkey concerning the Svalbard Treaty, with some viewing Svalbard as an economic opportunity or uninhabited region open to national posturing.<sup>103</sup>

Similarly, as another non-Arctic state but an observer at the Arctic Council, China has already established a scientific station in Svalbard and utilizes this presence as a means of soft power and image building.<sup>104</sup> This is exemplified by the adornment of the station's entrance with lion heads, reminiscent of governmental buildings in China.<sup>105</sup>

#### CONCLUSION

The nature of Svalbard's sovereignty diverges from that of mainland Norway, as it imposes specific conditions on Norway's exercise of power. Nevertheless, Norway retains the ability to enact environmental regulations, maintain its own legal framework, taxation, police force, and governance structure on the archipelago. It is worth noting that while science can function as a soft power tool, the Svalbard Treaty lacks explicit provisions allowing member states to establish scientific stations on Svalbard without Oslo's approval. Norway, as the sovereign of science, regulates the rental of scientific bases in Ny-Ålesund through the Norsk Polarinstitutt. However, the question of how Oslo would respond if Russia were to express interest in establishing a scientific base in Barentsburg arises.

---

101. Thomas Nilsen, *Isolated Russia Invites Faraway Countries to Upcoming Svalbard Science Center in Pyramiden*, THE BARENTS OBSERVER (Oct. 30, 2023), <https://thebarentsobserver.com/en/arctic/2023/10/ghost-town-pyramiden-will-be-home-russias-planned-international-svalbard-science> [https://perma.cc/7XLU-D945].

102. *Milletlerarası Andlaşmalar [International Agreements]*, T.C. Resmi Gazete [TURK. OFFICIAL NEWSPAPER] (Dec. 29, 2023), <https://www.resmigazete.gov.tr/eskiler/2023/12/20231229M2.pdf> [https://perma.cc/W7Q5-C9A6].

103. Eda Ayaydin, *Interpretation of the Svalbard Treaty in Turkey*, HIGH N. NEWS (Oct. 10, 2023), <https://www.highnorthnews.com/en/interpretation-svalbard-treaty-turkey> [https://perma.cc/RH3P-E9E7].

104. *Arctic Yellow River Station*, POLAR RSCH. INST. OF CHINA, <https://en.pric.org.cn/index.php?c=category&id=98> (last visited Mar. 18, 2024) [https://perma.cc/8NL8-CN26].

105. Torbjørn Pedersen, *The Politics of Research Presence in Svalbard*, 11 THE POLAR J., 413, 414 (2021).

To conclude, the Westphalian sovereignty emphasizes the importance of non-interference within a state's borders. However, the nature of the Svalbard Treaty does not align with this principle, as Westphalian sovereignty can only be exercised to a limited extent in Svalbard within certain treaty Articles. Consequently, this Article concludes that Svalbard's sovereignty deviates from the classical concept of absolute sovereignty, instead operating under the framework of conditional sovereignty. As Jan Borm depicts Svalbard as *Un Nord peut donc en cacher un autre, et un archipel peut en cacher un autre*,<sup>106</sup> (One North can therefore hide another, and one archipelago can hide another), this author might dare to add, one sovereignty can also hide another.

---

106. Jan Borm, *Vers le très Grand Nord: le Svalbard et la Terre François-Joseph vus par Sara Wheeler et Gavin Francis, Deux Regards Britanniques Contemporains* [Towards the Far North: Svalbard and Franz Josef Land Seen by Sara Wheeler and Gavin Francis, two Contemporary British Perspectives], *Frontières [BORDERS]*, 2017, at 51.