
CONFLICT AND ORDER IN SVALBARD WATERS

Torbjørn Pedersen is a research fellow at the Department of Political Science, University of Tromsø. He has been a Fulbright fellow at the Paul H. Nitze School of Advanced International Studies, Johns Hopkins University in Washington, D.C., where he graduated as Master of Arts in international relations and international economics in 1997. Further, he has earned a Graduate Diploma in international studies from the SAIS Bologna Center, a *cand. mag.* degree in social sciences from the University of Tromsø and is a Business Candidate of the Norwegian School of Business Management. In 1995-96 he was awarded the C. Grove Haines Prize for excellence in international relations research. Pedersen has worked as world news reporter in Aftenposten, reporter and correspondent in Reuters, financial reporter in Norwegian Broadcasting Corporation, and editor of Svalbardposten.

Torbjørn Pedersen
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Department of Political Science
Faculty of Social Sciences
University of Tromsø
N-9037 Tromsø, Norway

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This research project was conceived on Svalbard. As the editor of the world's northernmost newspaper in the early 2000s, I observed with growing interest the international wrangles over resources off the shores of the archipelago. However, impaired with tight time constraints, I lacked the resources to immerse myself in this intriguing international conflict. Hence, my interest for Svalbard affairs brought me back to academia, where I could get absorbed in the matter. Just before the Norwegian government put the opportunities and challenges in the High North on top of its foreign policy agenda, Alf Håkon Hoel at the University of Tromsø embraced my research proposal and provided me with a research fellowship.

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ABSTRACT

This dissertation examines processes that induce conflict and order in the maritime areas adjacent to the Svalbard archipelago, where Norway's sovereign rights as coastal state are contested. The first process is the ambiguous causal interplay of international politics and international law: After decades of debate, the parties to it remain reluctant to involve disinterested international third parties to settle their legal differences. Despite the legal character of the dispute, it endures as a political wrangle, as envisaged in a world of *Realpolitik*. Still, international law is not merely epiphenomenal to politics. International legal rules are cementing Norway's right to establish and exercise jurisdiction in the zones, hence affecting international politics. The cementing effect of law on international relations goes beyond what was intended at the time of its adoption. The second process, the causal exchanges between the international system and a state's foreign policy, is paradoxical: Norway, by its assertive exercise of jurisdiction and diplomatic efforts to muster international support, nourishes systemic conditions it in turn is constrained by. In effect, the policies of Norway cause changes in the international system that affect the policies of Norway. Attracting attention to the Svalbard issue has not improved Norway's systemic conditions as aspired for, but rather spurred a more coordinated opposition against the claimed exclusive rights of Norway in the waters off of the former *terra nullius*.

Chapter 1

INTRODUCTION

1.1. Introduction

The riches of the seas are sources of international conflict. Even in the remote Arctic region conflicts simmer over rights to utilize its natural resources. The Arctic, a treasury of fish, oil and gas,¹ becomes increasingly attractive for exploiters as resources are depleted elsewhere: Fish stocks are exhausted worldwide as too many vessels chase too few fish,² and the petroleum production bounds farther off shore as the most accessible reserves are drained, commodity prices soar and technology is innovated. Global warming and the melting of polar sea ice, making both renewable and non-renewable resources more accessible, give a further boost to the race for the riches of the Arctic region.³

The right to exploit maritime resources such as fish stocks and hydrocarbons is regulated by international law, in custom or international agreement.⁴ Still, more often than not is the geographical extension of one state's claimed rights disputed by another. Of a total of more than four hundred actual and potential boundaries between opposite and adjacent maritime zones of coastal states, less than half are settled.⁵ In addition come numerous disputes over the legal status of territories

¹ Donald Gautier, personal communication (e-mail), 10 May 2005. Also see United States Geological Survey Petroleum Assessment 2000.

² Olav Schram Stokke, "Introduction," in *Governing High Seas Fisheries: The Interplay of Global and Regional Regimes*, ed. Olav Schram Stokke (Oxford: Oxford University Press, 2001), 3.

³ Scott G. Borgerson, "Arctic Meltdown: The Economic and Security Implications of Global Warming," *Foreign Affairs* (2008). Also see Arctic Climate Impact Assessment (Cambridge: Cambridge University Press, 2004), 13.

⁴ Robin Churchill and Alan Vaughan Lowe, *The Law of the Sea* (Manchester: Manchester University Press, 1999).

⁵ David Anderson, "Negotiating Maritime Boundary Agreements: A Personal View," in *Maritime Delimitation*, ed. Rainer Lagoni and Daniel Vignes, *Publications on Ocean Development* (Leiden: Martinus Nijhoff Publishers, 2006).

generating such zones. States have a duty to seek a solution to their disputes by peaceful means.⁶ But even when diplomacy does not result in settlements, and notwithstanding that the disputes concern explicit rights under international law, adjudication is seldom sought by the parties to resolve their issues. Delegating authority to third parties is generally viewed as too costly to states, not least because it encroaches on their sovereignty.⁷ Hence, maritime legal disputes most often endure as political wrangles between actors of different interests and power capabilities. In a political world, the actual role of international law is ambiguous, and the politics-law relationship has been a natural subject for international relations research.⁸

Sometimes rocking at the vital interests of states, conflicts over maritime claims may pose threats to peace and stability. Disputes over geographical claims have through history been a prelude for the use of military force and are, as one international lawyer observes, «akin to accidents waiting to happen».⁹ In the resourceful Arctic, some argue, armed conflict may already loom due to international debates about sovereign rights.¹⁰ Security concerns are thus likely to affect foreign policies toward contested waters. Since a state's policies may lead to international repercussions, it usually consults its surroundings – the international system – before asserting its claims. Foreign policies are

⁶ Charter of the United Nations, Article 33(1). Also see Part XV of the United Nations Convention on the Law of the Seas (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3.

⁷ Kenneth W. Abbott and Duncan Snidal, "Hard and Soft Law in International Governance," *International Organization* 54, no. 3 (2000).

⁸ See Chapter 2.

⁹ Anderson, "Negotiating Maritime Boundary Agreements: A Personal View," 121-22.

¹⁰ Caitlin Harrington, "Eyeing up the New Arctic: Competition in the Arctic Circle," *Jane's Defence Weekly*, 23 January 2008.

made and remade in a broader systemic context, where the international system and the policies of each state are mutually forged. This relationship between the international system and each component unit – between external conditions and foreign policy – is another core undertaking for international relations researchers.¹¹

In one far end of the world, in the Antarctica, the perils that come with numerous incompatible national claims are temporarily eased by the Antarctic Treaty system, freezing all claims¹² and placing a moratorium on commercial utility of minerals,¹³ although the depth of this cooperation has been brought in question.¹⁴ However this arrangement is an exception. In the other end of the world rage numerous disputes over delineation of maritime zones, but also over the status of polar territory. The Arctic features disputes between the United States and Canada over the legal status of the Northwest Passage and their boundary in the Beaufort Sea, between Canada and Denmark over Hans Island in the Nares Strait, between Norway and Russia over their maritime boundaries in the Barents Sea, as well as a boundary between Russia and the United States in the Bering Sea that still awaits Russian *Duma* ratification.¹⁵

¹¹ See Chapter 2.

¹² The Antarctic Treaty (opened for signature 1 December 1959, entered into force 23 June 1961) 402 UNTS 71, Article IV.

¹³ Protocol on Environmental Protection to the Antarctic Treaty (opened for signature 24 April 1991, entered into force 14 February 1998) 30 ILM 1455.

¹⁴ George W. Downs, David M. Rocke, and Peter N. Barsoom, "Is the Good News About Compliance Good News About Cooperation?" *International Organization* 50, no. 3 (1996): 389.

¹⁵ Harrington, "Eyeing up the New Arctic: Competition in the Arctic Circle."

Here lies also the archipelago of Svalbard, which status the international community sought to clarify by agreement in 1919-1920.¹⁶ Paradoxically, also the Svalbard Treaty (reproduced in Appendix I) has become a source of international debate over maritime rights in the Arctic.

The case of Svalbard

Norway obtained sovereignty over the former *terra nullius* in the Arctic region but was deprived of certain sovereign rights.¹⁷ The Svalbard Treaty forbid Norway to establish military bases and to use the Svalbard archipelago for «warlike purposes»,¹⁸ and it established that foreign nationals were to have the same commercial rights as Norwegians.¹⁹ Moreover, Norway could not profit economically from its sovereignty since all taxes and duties levied there should be devoted exclusively to the archipelago.²⁰

The geographical extent of treaty restrictions has emerged as a matter of international discord. Norway holds that treaty stipulations do not apply to areas beyond the territorial sea of Svalbard. Others question or dispute Norway's right to establish maritime zones adjacent to the archipelago, its right to exercise exclusive rights in such zones, and/or its right to

¹⁶ Treaty Concerning the Archipelago of Spitsbergen (adopted 9 February 1920, entered into force 14 August 1925) 2 LNTS 7 (hereinafter the Svalbard Treaty).

¹⁷ Geir Ulfstein, *The Svalbard Treaty: From Terra Nullius to Norwegian Sovereignty* (Oslo: Scandinavian University Press, 1995).

¹⁸ Svalbard Treaty, Article 9.

¹⁹ *Ibid.*, Articles 2 and 3.

²⁰ *Ibid.*, Article 8.

exercise legislative and enforcement jurisdiction there.²¹ The debates originate in the arguably vague references in the treaty to its applicable maritime areas («territorial waters»),²² made prior to the developments in the law of the sea that introduced legal concepts such as the continental shelf and the 200 nm Exclusive Economic Zone (EEZ).

Suggesting that the maritime reference in the Svalbard Treaty also must include the continental shelf, the United Kingdom, for one, holds that its nationals have rights equal to those of Norwegians to exploit petroleum resources beyond the territorial sea of Svalbard. For the same reason, London implies that Norway has a limited right to levy taxes on such offshore industry.²³ Others, most notably Russia, Spain and Iceland, have suggested that the explicit geographical reference to «territorial waters» restricts Norway's authority to within the territorial seas of the archipelago. In maritime areas beyond the territorial limits, they assert, jurisdiction rests with the flag state rather than with the coastal state.²⁴ Yet others, including the United States, France and Germany, have reserved any rights they may have under the Svalbard Treaty outside the archipelago, thus keeping the legal question under review.²⁵

The international controversy over the legal status of these maritime zones is a major concern to Norway, its parliament *Stortinget* identifying

²¹ Torbjørn Pedersen and Tore Henriksen, "Svalbard's Maritime Zones: The End of Legal Uncertainty?" submitted. (Chapter 5)

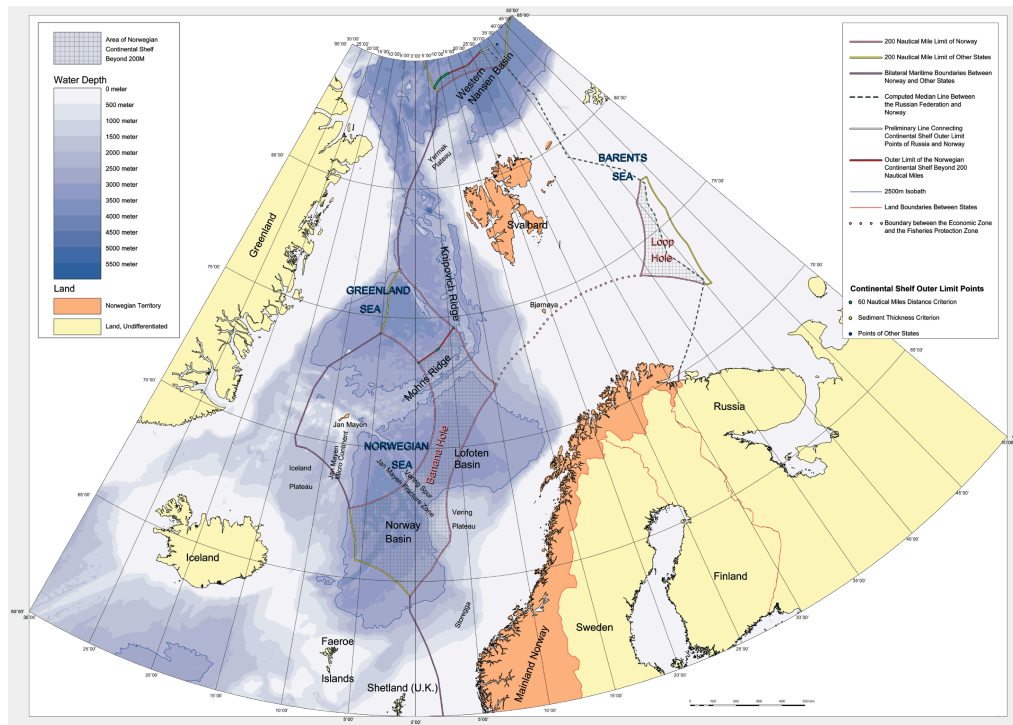
²² Svalbard Treaty, Articles 2 and 3.

²³ Positions are explored in Torbjørn Pedersen, "The Dynamics of Svalbard Diplomacy," *Diplomacy & Statecraft* 19, no. 2 (2008). (Chapter 7)

²⁴ Ibid.

²⁵ Ibid. Also see Clive Archer and David Scrivener, "Frozen Frontiers and Resource Wrangles: Conflict and Cooperation in Northern Waters," *International Affairs* 59, no. 1 (1982-83), Rolf Tamnes, *Oljealder 1965-1995*, vol. 6, *Norsk Utenrikspolitisk Historie* (Oslo: Universitetsforlaget, 1997).

it as a challenge to peace and stability in the region.²⁶ The disputes that surfaced around 1970 over jurisdiction and sovereign rights on the continental shelf around the archipelago remain unresolved, leaving it an enduring case of international tension.²⁷ The management regime for the offshore areas adjacent to Svalbard has developed into something different from the regimes for uncontested maritime zones, such as the 200 nm EEZ off of mainland Norway. But, amid international conflict, there is also order: Resources are arguably managed in a sustainable manner.²⁸



Map 1. Svalbard and adjacent maritime zones claimed by Norway.
 (Map courtesy of the Norwegian Petroleum Directorate)

²⁶ Recommendation No. 264 (2004-2005) to *Stortinget* from the Standing Committee on Foreign Affairs concerning opportunities and challenges in the High North.

²⁷ The first formal protest against Norway was a memorandum handed over by the Soviet Union on 27 August 1970. See Chapter 7.

²⁸ Geir Hønneland, *Barentsbrytninger. Norsk Nordområdepolitikk Etter Den kalde krigen* (Kristiansand S.: Høyskoleforlaget, 2005), Alf Håkon Hoel, "Det folkerettslige rammeverket for ressursforvaltningen i Barentshavet," *Ottar*, no. 260 (2006).

Purpose of Research

The overall purpose of this dissertation is to explore two processes that induce conflict and order in the areas offshore Svalbard. The first process is the causal interaction of *international politics* and *international law* (Figure 1.1). It will be argued that each of these two factors constrains the other, and that the exchange of political and legal constraints indeed induces conflict and order in the maritime areas around Svalbard. The second process is the causal exchanges between the *international system* and *foreign policy* (Figure 1.2). While the international system points to an analytical level that examines the interaction of multiple units, policy is referred to on a unit level of analysis. Again the dynamics between two factors – system and policy – will account for conflict and order outside Svalbard.

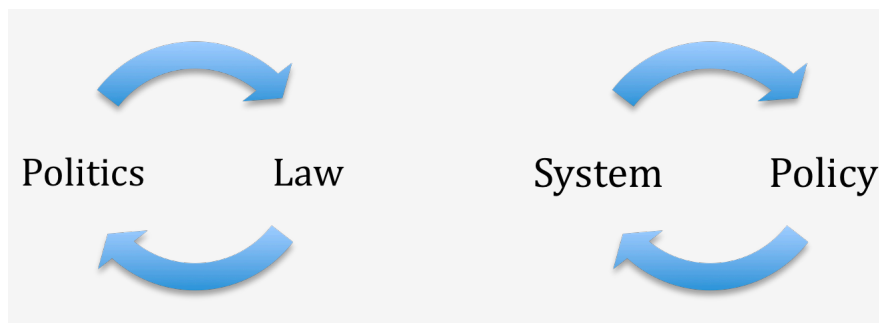


Figure 1. Causal links between (1) politics and international law, and (2) the international system and foreign policy.

Four case-specific questions are raised to explore the mechanisms of these processes. Two of these relate to the interaction of international politics and international law:

- *How (if at all) does politics in the Svalbard offshore areas affect the outlook for a legal settlement of disputes?*

- *How (if at all) do legal rules for determining continental shelf limits affect politics toward the Svalbard offshore areas?*

The other two questions address the relationship between the international system and foreign policy:

- *How (if at all) does the international system affect the policies of Norway toward the Svalbard offshore areas?*
- *How (if at all) do the policies of Norway toward the Svalbard offshore areas affect the international system?*

While the two processes (politics–law and system–policy) are explanatory, each of the four factors (politics, law, system and policy) may be both cause and effect. Conflict and order off of Svalbard is an outcome, the processes are considered independent variables, while the individual factors are both dependent and independent.

Summarized, the overall research purpose is to explore two processes (politics–law and system–policy) that affect the maritime areas outside Svalbard, while the research questions address relationships between factors, notably how politics affects law, how law affects politics, how system affects policy, and how policy affects system.

To limit the scope of the dissertation, the politics-law and system-policy processes are kept separate in the following analysis. An examination of the interaction *between* these two processes, drawing causal connections between all four factors, would involve multiple and complex causal relationships. Indeed, some alternative links have been pointed out or

explored by others, but a thorough examination of these would be a too grand undertaking for this dissertation: For instance, international politics, a component of the first process, have apparent links to the system-policy process. International politics, determined by interests and power, is essential to the systemic explanations of structural realists, to whom law plays a marginal or irrelevant role. Kenneth Waltz contrasts international politics to foreign policy rather than law, suggesting that the systemic level addresses politics and that the unit-level addresses policy.²⁹ Anne-Marie Slaughter asserts that international politics and international law, the two components of the first process, «comprise the rules and reality» of the international system,³⁰ a component of the second process. At the same time the other component – policy – is arguably determined by both politics and law. Furthermore, causes for compliance with international law may be found both at the system and policy levels of analysis. Beth Simmons finds compliance to be explained on the former level. She suggests that, to one state, «the behavior of other countries, especially in one's own region, has far more influence on commitment and compliance [with international law] than has generally been recognized».³¹ Others stress causes on the level of domestic structure rather than systemic level, for instance by highlighting the

²⁹ Kenneth N. Waltz, *Man, the State and War* (New York: Columbia University Press, 1959), ———, *Theory of International Politics* (New York: Random House, 1979), ———, "Reflections on Theory of International Politics: A Response to My Critics," in *Neorealism and Its Critics*, ed. Robert O. Keohane (New York: Columbia University Press, 1986), ———, "International Politics Is Not Foreign Policy," *Security Studies* 6, no. 1 (1996).

³⁰ Anne-Marie Slaughter, "International Law in a World of Liberal States," *European Journal of International Law* 6 (1995).

³¹ Beth A. Simmons, "International Law and State Behavior: Commitment and Compliance in International Monetary Affairs," *American Political Science Review* 94, no. 4 (2000): 832.

influence of domestic courts.³² The so-called New Haven School couples international law with foreign policy decision-making, approaching what they have called a «policy-oriented jurisprudence»,³³ thus linking factors that are analyzed separate by this dissertation. A further investigation into these alternative causal connections would add more confusion than clarity to this dissertation. Hereinafter, politics is primarily related to law, and system is likewise primarily related to policy.

1.2. Definitions and structure

Definitions and case literature

As already indicated the concepts of international politics, international law, international system and foreign policy are, as most political activities and structures, notoriously difficult to define. When contrasted to law, *international politics* relates to the language of *Realpolitik*, or dimensions with low degree of legalization.³⁴ Primary determinants for political behavior are widely considered to be interest and power. Accordingly, international politics takes on a narrower meaning when contrasted with law than when making general references to international relations.

³² Kal Raustiala and Anne-Marie Slaughter, "International Law, International Relations and Compliance," in *Handbook of International Relations*, ed. Walter Carlsnaes, Thomas Risse, and Beth A. Simmons (London-Thousand Oaks-New Dehli: Sage, 2005; reprint, 2005).

³³ Robert J. Beck, Anthony Clark Arend, and Robert D. Vander Lugt, eds., *International Rules: Approaches from International Law and International Relations* (Oxford: Oxford University Press, 1996), 110.

³⁴ Kenneth W. Abbott et al., "The Concept of Legalization," *International Organization* 53, no. 3 (2000).

International law, on the other hand, is the body of legal rules, norms and standards that apply between states and other entities that are legally recognized as international actors,³⁵ i.e., dimensions with high degree of legalization.³⁶ The former is often associated with Hobbesian utilitarian relations among states, while the latter may suggest an orderly world as advertised for by liberals such as Immanuel Kant.³⁷ Notwithstanding, as has been noted by others, «politics continues (albeit in different forms) even where there is law».³⁸

Among the scholars who have examined the dispute over rights in the maritime areas adjacent to Svalbard, many have stressed the impact of political factors.³⁹ Commonly, they emphasize great power interests in the area due to its geographical proximity to the preponderance of Russia's military-strategic capabilities in northwestern Russia. Indeed, the waters around Svalbard separate the naval bases of the Russian Northern Fleet from its most important areas of operation. Also, the shortest air route between the Russian and American territories is across the Arctic basin. While Russian strategists worry as Svalbard chokes

³⁵ International law is here defined as a body of rules instead of a process of authoritative decision-making, as has consistently been done by for instance the New Haven School. See e.g. Harold Hongju Koh, "Why Do Nations Obey International Law?" *The Yale Law Journal* 106 (1997).

³⁶ Abbott et al., "The Concept of Legalization."

³⁷ Koh, "Why Do Nations Obey International Law?"

³⁸ Abbott et al., "The Concept of Legalization," 404.

³⁹ Willy Østreng, *Det politiske Svalbard* (Oslo: Gyldendal Norsk Forlag, 1975), ———, *Økonomi Og politisk suverenitet: Interessespillet om Svalbards politiske status* (Oslo: Universitetsforlaget, 1974). Kristian Åtland, "Barentshavet som sikkerhetspolitisk arena: Fra frontsoner til fredssone?," *Ottar*, no. 260 (2006), Jørgen Holten Jørgensen, "Svalbard og fiskevernsonen: Russiske persepsjoner etter Den kalde krigen," in *FNI Report* (The Fridtjof Nansen Institute, 2003), Kristian Åtland, "Svalbard og russisk sikkerhetstekning," *FFI-fokus*, no. 1 (2004).

Russia's outlets to its deployments areas,⁴⁰ others find for the same reason the Barents Sea to be ideal for strategic defensive purposes. Several states' vital interests are thus at stake in the area.⁴¹

Other scholars again have dealt with research questions almost exclusively within the realm of international law, including Robin Churchill, Geir Ulfstein, Carl August Fleischer, A. N. Vylegzhanin and V. K. Zilanov.⁴² The relationship between politics and law in general will be discussed in the next chapter, while the impact of these factors on the maritime areas around Svalbard is discussed in later chapters.

Analytical *levels* are conceptualized differently. Still, while David Singer suggests two levels of analysis (state and system),⁴³ Kenneth Waltz three (individual, state-unit and system),⁴⁴ K. J. Holsti four (individual, state,

⁴⁰ The geographical importance of the Svalbard «strait» has been stressed by Russia. See for instance, Trygve Lie, *Hjemover* (Oslo: Tiden Norsk Forlag, 1958).

⁴¹ See for instance Kjetil Skogrand and Rolf Tamnes, *Fryktens likevekt: Atombomben, Norge og verden* (Oslo: Tiden Norsk Forlag, 2001), Jacob Børresen, "USA-marinens operasjoner i Nord-Atlanteren og Norskehavet," in *NUPI-rapport* (NUPI, 1985), Rolf Tamnes, *The United States and the Cold War in the High North* (Oslo: Ad Notam, 1991), William Burrows, *Deep Black: Space Espionage and National Security* (New York: Random House, 1986), Archer and Scrivener, "Frozen Frontiers and Resource Wrangles: Conflict and Cooperation in Northern Waters.", Olav Riste and Arnfinn Moland, «*Strengt hemmelig*»: *Norsk etterretningstjeneste 1945-1970* (Oslo: Universitetsforlaget, 1997).

⁴² Robin Churchill and Geir Ulfstein, *Marine Management in Disputed Areas. The Case of the Barents Sea* (London: Routledge, 1992), Ulfstein, *The Svalbard Treaty: From Terra Nullius to Norwegian Sovereignty*, Carl August Fleischer, "Svalbardtraktaten: En utredning hvor også nye styreformer på Svalbard vurderes," (1997), ———, "Svalbards folkerettslige stilling," in *Norges havretts- Og ressurspolitikk*, ed. Arne Treholt, et al. (Oslo: Tiden Norsk Forlag, 1976), A. N. Vylegzhanin and V. K. Zilanov, *Spitsbergen: Legal Regime of Adjacent Maritime Areas*, trans. William E. Butler (Eleven International Publishing, 2007), Carl August Fleischer, *Petroleumsrett* (Oslo: Universitetsforlaget, 1983), ———, *Folkerett* (Oslo: Universitetsforlaget, 1988).

⁴³ J. David Singer, "The Level-of-Analysis Problem in International Relations," *World Politics* 14, no. 1 (1961).

⁴⁴ Waltz, *Theory of International Politics*, ———, *Man, the State and War*.

system and global),⁴⁵ and Greg Cashman five (individual, small-group, nation-state, interaction and international),⁴⁶ most scholars distinguish between the level that addresses the policy of one unit and the macro level or levels that address the interaction of multiple units.

The international system is generally approached in two ways. The first emphasizes its structure, determined by the distribution of power capabilities among its units.⁴⁷ However, this is a challenging approach. The vague concept of power is appropriately described as «one of the most troublesome in the field of international relations».⁴⁸ While some scholars emphasize military might,⁴⁹ or primarily naval power,⁵⁰ others underline economic capabilities reflected in the Gross Domestic Product,⁵¹ or demography.⁵² Yet others highlight geography as a power factor.⁵³ Bueno de Mesquita's «expected utility» is a composite measurement of capabilities adjusted for distance, alliance relationships

⁴⁵ Holsti, *International Politics. A Framework for Analysis*, 6.

⁴⁶ Greg Cashman, *What Causes War? An Introduction to Theories of International Conflict* (New York: Lexington Books, 1993), 13.

⁴⁷ Some refers to the international system when really addressing its structure. Kenneth Waltz, whose focus is on structure, does not refer to systemic interaction as a level of analysis but as international politics. See Waltz, *Theory of International Politics*, ———, *Man, the State and War*, ———, "International Politics Is Not Foreign Policy."

⁴⁸ Robert G. Gilpin, *War and Change in World Politics* (New York: Cambridge University Press, 1981), 13.

⁴⁹ See e.g. John J. Mearsheimer, "The False Promise of International Institutions," *International Security* 19, no. 3 (1994-1995).

⁵⁰ George Modelski, "The Long Cycle of Global Politics and the Nation-State," *Comparative Studies in Society and History* 20, no. 2 (1978).

⁵¹ See e.g. A. F. K. Organski, *World Politics* (New York: Alfred A. Knopf, 1958), 358.

⁵² David A. Baldwin, "Power and International Relations," in *Handbook of International Relations*, ed. Walter Carlsnaes, Thomas Risse, and Beth A. Simmons (London: SAGE Publications, 2005 [2002]; reprint, 2005), 181.

⁵³ See e.g. Hans J. Morgenthau, *Politics among Nations: The Struggle for Power and Peace*, 7 ed. (New York: McGraw Hill, 2006), 122-24.

and uncertainty.⁵⁴ Kenneth Waltz notes that «an agent is powerful to the extent that he affects others more than they affect him».⁵⁵ Arguably, by most definitions, actually measuring power is a difficult if not impossible undertaking.

A second approach therefore considers the international system to be the interaction of multiple units. Even power structures are reducible to the properties of units.⁵⁶ The system may thus be analyzed as the component units interact, for instance in terms of diplomatic communication, trade, rivalries and warfare.⁵⁷

Foreign policy is «the sum of official external relations conducted by an independent actor (usually a state) in international relations»,⁵⁸ that is, on a unit-level of analysis. In the foreign policy analyses relating to the Svalbard offshore areas, Norway for natural reasons is a primary – but not the only – target for analysis. The regime for the disputed maritime areas adjacent to the archipelago is established and managed by Norway.

The analyses of the Svalbard disputes by Willy Østreng, Ynge Næss Kristiansen and Kristian Åtland are predominantly made on an interaction level.⁵⁹ Studies by Kristin Ven Bruusgaard and Tor Håkon Inderberg may

⁵⁴ Bruce Bueno de Mesquita, *The War Trap* (New Haven: Yale University Press, 1981), 151.

⁵⁵ Waltz, *Theory of International Politics*, 192.

⁵⁶ Alexander Wendt, "The Agent-Structure Problem in International Relations Theory," *International Organization* 41, no. 3 (1987).

⁵⁷ K. J. Holsti, *International Politics. A Framework for Analysis*, 6 ed. (Englewood Cliffs, NJ: Prentice-Hall International, 1992), 16-17.

⁵⁸ Christopher Hill, *The Changing Politics of Foreign Policy* (New York: Palgrave Macmillan, 2003).

⁵⁹ Åtland, "Barentshavet som sikkerhetspolitisk arena: Fra frontsoner til fredssoner?", ———, "Svalbard og russisk sikkerhetstekning.", Østreng, *Det politiske Svalbard*, —

serve as examples on foreign policy analyses related to the Svalbard case.⁶⁰ Some explicitly looks at both levels of analysis. In his study of the policies of the territory of Svalbard, Arild Moe notes that Norway's policies toward the area are constrained by external conditions, but he suggests simultaneously that Norway also may influence its foreign policy conditions.⁶¹

Svalbard waters and *the Svalbard offshore areas* refer to maritime zones beyond the territorial sea of the archipelago, i.e., the continental shelf as well as the 200 nm zone as defined by the law of the sea (see maps in Appendix III and IV).⁶² Historically, Norway has indicated that the shelf and the 200 nm zone outside Svalbard are generated by different territories,⁶³ in effect denoting that if the Svalbard Treaty were applicable to one zone (the 200 nm zone generated by the archipelago) it would not necessarily be applicable to the other (the shelf generated by the Norwegian mainland). However, this position seems currently to be downplayed or abandoned.⁶⁴ While the continental shelf and the 200 nm zone are different legal concepts, and parts of this dissertation focuses

——, *Økonomi og politisk suverenitet: Interessespillet om Svalbards politiske status*, Yngve Næss Kristensen, "Torsk, "pirater" og kalde granater: Striden mellom Norge og Island om fiskevernsonen ved Svalbard 1993," in *IFS Info* (Institutt for forsvarsstudier, 2005). Also see Jørgen Holten Jørgensen, "Svalbard: Russiske persepsjoner og politikktutforming," *Internasjonal Politikk* 62, no. 2 (2004).

⁶⁰ Kristin Ven Bruusgaard, "Fiskerikonflikter i Barentshavet - Potensial for eskalering? En komparativ studie av russiske reaksjonsmønstre under oppbringelsen av "Tsjernigov" (2001) og "Elektron" (2005)," (Norwegian Defence Research Establishment, 2006), Tor Håkon Inderberg, "Den utenrikspolitiske håndteringen av Elektronsaken: Kompetent realpolitikk eller kompetansestrid?" *FNI Rapport* 3 (2007).

⁶¹ Arild Moe, "Utenrikspolitiske rammebetingelser og norsk Svalbard-politikk," in *Studie* (Lysaker: Fridtjof Nansen-stiftelsen på Polhøgda, 1983).

⁶² Notably, the United Nations Convention on the Law of the Sea (adopted 10 December 1982, entered into force 16 November 1994) 1833 UNTS 3.

⁶³ Chapter 5.

⁶⁴ See discussion in *ibid.*

primarily on the continental shelf, they are closely interrelated: The zones have the same legal foundation, and contentions over sovereign rights in one zone would apply equally, *mutatis mutandis*, to the other. As noted by the United Kingdom, an acceptance of Norway's claims to exclusive fishing rights in the 200 nm Fisheries Protection Zone (FPZ) around Svalbard may prevent it from maintaining its legal position over the continental shelf. «The shelf and waters cannot therefore be considered totally separate,» concludes the Foreign & Commonwealth Office in a diplomatic non-paper.⁶⁵ Thus, for most practical purposes, the maritime zones beyond the territorial seas of Svalbard, and the controversies over rights on the shelf and in the 200 nm zone, may be viewed as inseparable.

International law distinguishes between *situation* and *dispute*. A situation «might lead to international friction or give rise to a dispute».⁶⁶ The definition of dispute has been developed through case law as «a disagreement over a point of law or fact, a conflict of legal views or of interest between two persons».⁶⁷ All states have a duty to seek a solution to any dispute by peaceful means, since its continuance, as noted by the United Nations Charter, «is likely to endanger the maintenance of international peace and security».⁶⁸

⁶⁵ United Kingdom, Non-Paper on Svalbard to Norway, 5 January 1993.

⁶⁶ Charter of the United Nations, Article 34.

⁶⁷ See for instance the *Nuclear Test Case (Australia, New Zealand v France)* [1974] ICJ Rep 253, and the *Mavrommatis Palestine Concessions (Jurisdiction)(Greece v United Kingdom)* case [1924] PCIJ Series A, No 2. Also see discussion in Malcolm N. Shaw, *International Law*, 3 ed. (New York: Cambridge University Press, 1991; reprint, 1995), 629.

⁶⁸ Charter of the United Nations, Article 33(1). Also see the United Nations Convention on the Law of the Seas, Part XV.

By addressing the politics-law and system-policy *processes* the dissertation implies that there are two-way dynamics between international politics and law on one hand, and between the international system and foreign policy on the other. Accordingly, all factors – politics, law, system and policy – are presumed to be simultaneously causes and effects. As will be discussed in Chapter 2, scholars have traditionally concentrated on one-directional causal links. Within the realist tradition of international relations theory it has been more conventional to point to the constraining impact of politics on law than the other way around, as it has been more customary to address the impact of the international system (as a constraint) on foreign policy than the reverse.

Structure of the dissertation

The remainder of Chapter 1 will identify the main actors of the maritime dispute around Svalbard. It finds sovereign states to be the primary subjects, as in international law in general. However other actors are also identified, including autonomous provinces, international institutions and corporations.

Chapter 2 discusses theoretical aspects of the two processes in question. First, it examines theories and thoughts on causal links between international politics and law. It examines the enduring literature depicting law as a mere effect of politics, with law reflecting order rather than creating it, and with compliance explained by coercion or self-interest. But it also explores the massive literature suggesting that law – or related concepts such as institutions, regimes and norms – has

considerable effect on outcome, either directly by guiding behavior or indirectly by shaping and forming political factors, as defined above. Second, it probes the links between the international system and the foreign policy of its units. A common notion is that the system constrains the behavior of each unit, primarily due to its structure. Foreign policies change with structural changes, as relative power is redistributed. However others point to the reverse causal link: Foreign policy sets off chain reactions that in turn make up the systemic conditions.

Chapter 3 presents the methods used for answering the research questions that have been raised by this dissertation. It discusses methods for obtaining primary evidence relating to the research questions and for piecing together evidence from different sources of evidence in a case-study analysis. The chapter discusses the validity and reliability of an analysis based on multiple sources of primary evidence, and points to some methodological challenges arising when addressing issues that are internationally sensitive and explains how these have been overcome. The primary sources of evidence probed are documents, archival records, interviews, observation and artifacts.⁶⁹

The results of the dissertation appear primarily in four studies, which are also published in, accepted by or submitted to peer-reviewed international journals.⁷⁰ All the studies are reproduced *in extenso* as Chapters 4-7. Each study explicitly relates to one causal link between the factors in question.

⁶⁹ Robert K. Yin, *Case Study Research. Design and Methods*, 3 ed. (Thousand Oaks: SAGE Publications, 2003).

⁷⁰ Torbjørn Pedersen, "The Svalbard Continental Shelf - Legal Disputes and Political Rivalries," *Ocean Development and International Law* 37, no. 3-4 (2006) (Chapter 4); Chapter 5; Torbjørn Pedersen, "The Constrained Politics of the Svalbard Offshore Area," *Marine Policy*, in press (2008) (Chapter 6); and Chapter 7.

Chapters 4 and 5 address the interplay of the factors in the first process (international politics and law). Chapter 4 attends to how international politics in the Svalbard offshore area affects the outlook for a dispute settlement as advised by international law. Chapter 5 examines how legal rules for determining the outer limits of the continental shelf affect international politics in the area. The other two chapters, 6 and 7, relate to the second process (international system and foreign policy). Chapter 6 asks how the international system affects the policies of Norway toward the maritime areas adjacent to Svalbard, while Chapter 7 inquires how the policies of Norway toward the area affect the international system.

Chapter 8 addresses the overall research purpose and the four research questions that have been asked. The results from Chapters 4-7 are interpreted, analyzed and discussed in context of the research questions and the causal relations examined in Chapter 2. Each of the studies from Chapters 4-7 will be linked to one research question as well as one of the processes that are the subjects of this dissertation. The discussion will examine the interdependence between politics–law on one hand and between system–policy on the other, and point to some ambiguity and paradoxes embedded in the processes. In its concluding remarks, the chapter provides bearings on conflict and order developments based on the processes that are examined.

1.3. Primary actors

The Svalbard offshore controversy that is addressed by this dissertation constitutes an international dispute, in the sense that it is «a disagreement

over a point of law or fact, a conflict of legal views or of interests» between two or more states. It is a contention over rights that are held by states, such as sovereign rights to resources and the entitlement to claim zones and exercise coastal state jurisdiction.⁷¹ As in international law in general, the primary subjects of the Svalbard offshore controversy are accordingly sovereign states. Although foreign nationals hold extensive rights under the Svalbard Treaty, only sovereign states may be contracting parties to it (see list in Appendix II). Evidently states are the most dominant actors in the Svalbard offshore dispute.⁷² Some states, including the United States,⁷³ France⁷⁴ and (West) Germany⁷⁵, have reserved the rights they may have under the Svalbard Treaty in maritime areas around Svalbard. Others, notably the United Kingdom⁷⁶ and the Netherlands⁷⁷, explicitly argue that the Treaty is applicable to maritime zones generated by the archipelago while recognizing Norway's jurisdictional rights as coastal state in these zones. Others again, notably the Soviet Union/Russia⁷⁸, Spain⁷⁹, Iceland⁸⁰, Hungary⁸¹, Poland⁸² and Czechoslovakia⁸³, have historically challenged Norway's right to exercise national jurisdiction in maritime areas outside Svalbard. Finland⁸⁴ and

⁷¹ Chapter 5.

⁷² For an extended overview, see Chapter 7.

⁷³ USA, Note No. 20 to Norway, 20 November 1976.

⁷⁴ France, Note to Norway, 2 August 1977.

⁷⁵ Rolf Tamnes, *Oljealder 1965-1995*.

⁷⁶ For instance, United Kingdom, *aide memoire* to Norway, 14 October 1986.

⁷⁷ Netherlands, Note No. 2238 to Norway, 3 August 1977.

⁷⁸ For instance, Russia, Note 3695/2ED to Norway, 23 April 2001.

⁷⁹ For instance, Spain, Note *Núm.* 56/18 to Norway, 30 July 1986.

⁸⁰ For instance, Iceland, Note (*tilvísun* UTN 00030094/47.F.002) to Norway 22 September 2000.

⁸¹ Hungary, Note No. J-198/1/1977 to Norway, 3 August 1977.

⁸² Poland, Note to Norway, 6 July 1977.

⁸³ Czechoslovakia, Note No. 99.249/77 to Norway, 28 July 1978.

⁸⁴ Tamnes, *Oljealder 1965-1995*. The endorsement was withdrawn in 2005, see Chapter 7.

Canada⁸⁵, on the other hand, have earlier expressed support for the Norwegian view.

While states are the most dominant actors, autonomous provinces Greenland and the Faeroe Islands are also identified as independent actors in the Svalbard offshore controversy. Although the Danish government is responsible for the foreign and security interests of these provinces,⁸⁶ their respective Home Rule governments have expressed *de facto* foreign policies toward the Svalbard offshore areas either via the Ministry of Foreign Affairs of Denmark,⁸⁷ or in bilateral fisheries negotiations with Norway.⁸⁸ Also the European Union, notably the Commission, has been identified as an independent actor (although marginal) in the controversy without being a contracting party to the Svalbard Treaty.⁸⁹

While the Arctic has seen a proliferation in regional cooperation over the last 15 years, with the emergence of at least eight international forums including the Arctic Council, the Barents Euro-Arctic Council and Northern Forum as well as at least 13 different environmental

⁸⁵ Agreement between the Government of the Kingdom of Norway and the Government of Canada on Fisheries conservation and enforcement, preamble. In Proposition No. 3 (1995-96) to the Odelsting, 11. The agreement has not entered into force.

⁸⁶ The Foreign Ministry of Denmark, Greenland and the Faroe Islands, 4 May 2006 <<http://www.um.dk/en/menu/ForeignPolicy/GreenlandAndTheFaroelands/>> accessed 2 December 2007.

⁸⁷ E.g. Denmark, diplomatic note No. 63.D.3 handed to Norway on behalf of the Greenlandic Home Rule on 8 August 1986.

⁸⁸ For instance, 'Protokoll fra drøftelser mellom færøyske og norske myndigheter i Oslo 9-10. desember 1997 om gjensidige fiskerettigheter I 1998', Appendix 3. Also 'Protokoll fra drøftelser mellom færøyske og norske myndigheter I Tórshavn 7.-8. desember 1996 om gjensidige fiskerettigheter I 2007', Appendix 3.

⁸⁹ For instance, the European Commission, *note verbale* to Norway, 20 July 2004.

cooperation processes,⁹⁰ these new structures have little relevance for disputes over rights in maritime zones, including the areas off of Svalbard. Indeed scholars and others did anticipate a new order for the Arctic region, governed by strong international regimes after the Cold War,⁹¹ partly on the back of General Secretary Mikhail Gorbachev's famed Arctic «zone of peace» speech in Murmansk in 1987.⁹² Most excitement related to the Arctic Council, which was to be molded after the Conference on Security and Cooperation in Europe (CSCE) and was to incorporate already existing agreements and treaties of the region.⁹³ However the Council will not be addressed as an independent or relevant actor: When established after two delays,⁹⁴ it appeared more as an arena for debate than an international institution.⁹⁵ Euphoria over a new Arctic order has faded, and the Council is a «normal», informal cooperation among states and is still viewed by the United States as a «forum».⁹⁶

Like the Arctic Council, the Barents Euro-Arctic Council does not address jurisdictional issues or other issues that are related to the subject

⁹⁰ NOU 2003:32 Report submitted to the Norwegian Ministry of Foreign Affairs 8 December 2003.

⁹¹ See for instance Oran R. Young, *Arctic Politics. Conflict and Cooperation in the Circumpolar North* (Hanover: University Press of New England, 1992).

⁹² Mikhail Gorbachev, speech at the Ceremonial Meeting on the Occasion of the Presentation of the Order of Lenin and the Gold Star to the City of Murmansk, Murmansk 1 October 1987

<http://barents.ulapland.fi/photos/archive/Gorbachev_speech.pdf> accessed 1 February 2008.

⁹³ Young, *Arctic Politics. Conflict and Cooperation in the Circumpolar North*.

⁹⁴ *Nezavisimaya Gazeta*, 25 September 1996.

⁹⁵ *Ibid.*

⁹⁶ United States Department of State <<http://www.state.gov/g/oes/ocns/arc/ac/>> accessed 28 November 2007. The information posted here is a reproduction of Evan T. Bloom, "Establishment of the Arctic Council," *The American Journal of International Law* 93, no. 3 (1999).

for this dissertation,⁹⁷ although one of its goals is to «secure a peaceful and stable development in the Region».⁹⁸ None of its working groups relate to security, legal or jurisdictional issues or in other ways to the research problem here.⁹⁹

The independent role of international institutions established by international law, that is, the International Court of Justice (ICJ) and the Commission on the Limits of the Continental Shelf (CLCS), is discussed in Chapters 4 and 5.

A small number of non-governmental actors have also been found to be involved in the international controversies off of Svalbard. Notably, Spanish ship-owners and trawler captains have contended the Norwegian management regime through the Norwegian judicial system all the way to the Supreme Court, and Russian joint-stock company Marine Arctic Geological Exploration (MAGE)¹⁰⁰ has implicitly challenged the Norwegian authority through apparent petroleum exploration on the continental shelf adjacent to Svalbard.¹⁰¹ The latter was however an act on behalf of the Russian state represented by the Ministry of Natural Resources.¹⁰² In general, foreign private actors comply with the

⁹⁷ The cooperation was to be a meeting-place rather than a closely defined program for cooperation. See Johan Jørgen Holst, "The Barents Cooperation: Institutions, Cooperation and Prospects," in *The Barents Region: Cooperation in Arctic Europe*, ed. Olav Schram Stokke and Ola Tunander (London: Sage Publications, 1994).

⁹⁸ Protocol Agreement from the Statutory Meeting of the Regional Council of the Barents Region (The Euro-Arctic Region), Article 3. Kirkenes, 11 January 1993.

⁹⁹ The Barents Euro-Arctic Council, Barents working groups and activities (undated), <<http://www.beac.st/default.asp?id=131>> accessed 28 November 2007.

¹⁰⁰ Marine Arctic Geological Exploration, homepage (undated).

<<http://www.mage.ru/fse.html>> accessed 31 January 2008.

¹⁰¹ Chapter 4.

¹⁰² Ibid.

Norwegian management regime,¹⁰³ unless encouraged by their respective governments to do otherwise.¹⁰⁴

In sum, the main actors identified are collective social entities, most notably states, rather than individuals, although strictly speaking only individuals act.¹⁰⁵ The politics–law process addressed by this dissertation relates to how some contrasted factors (politics and law) impact on these entities and their relations. The system–policy process on the other hand concerns the interplay between analytical levels: The international system is the interaction of the main actors, while foreign policy is the actions of one actor.

¹⁰³ Hønneland, *Barentsbrytninger: Norsk nordområdepolitikk etter Den kalde krigen*, 85-88, Hoel, "Det folkerettslige rammeverket for ressursforvaltningen i Barentshavet."

¹⁰⁴ During the stand-down between Norwegian Coast Guard and Spanish trawlers in the mid-1980s Spain's government had invited its fishers to proceed with their activity in the 200 nm zone around Svalbard despite Norwegian instructions to leave. Currently Russian trawlers fail to comply with Norwegian satellite tracking requirements in the fisheries protection zone due to Russian governmental policies.

¹⁰⁵ Robert G. Gilpin, "The Richness of the Tradition of Political Realism," in *Neorealism and Its Critics*, ed. Robert O. Keohane (New York: Columbia University Press, 1986).

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Chapter 2

THEORETICAL PERSPECTIVES

2.1. Introduction

The overall study will examine processes that induce conflict and order in the maritime areas adjacent to Svalbard. The four research questions raised in the introduction call for a study of causal links, notably between international politics and international law, and between the international system and one state's foreign policy. The purpose of this chapter is to present and contrast scholarly thoughts from the extensive literature addressing links and connections between politics and law, as well as between system and policy. Since some of these theories and thoughts also are consulted and contrasted in the four studies (Chapters 4-7), the reader is asked to show forbearance with later overlaps and repetitions.

The structure of the following overview will also provide the structure for later discussions and conclusions in which the four research questions are responded to. First this chapter examines the relationship between politics and law, hence touching on one of the longest-lasting debates within international relations theory that has generated endless literature. Second it looks into another grand debate, addressing the relationship between analytical levels, notably between the international system and foreign policy. For analytical clarity, but also reflecting much of the theoretical work that is cited, one stylized causal link between a pair of factors will be presented at the time. Accordingly, consistent with the research questions, it will discuss in general terms how politics affects law, how law affects politics, how the system affects policy, and how policy affects the system.

2.2. International politics and International law

Political constraints on international law

«[N]o one can today affirm that such a thing as international law exists,» once wrote United States Undersecretary of State Sumner Welles.¹ A common notion is that international law reflects nothing more than the fundamental explanatory factors of interests and power. The influence of law itself on state behavior is thus marginal or irrelevant. Actors pursue their self-interests while forged in a structure of power that provides incentives for action. The world system is anarchic, in the sense that there is no executive or governing body over sovereign states. The absence of a legal order, represented with a legislature, judiciary and executive,² makes any conception of international law distinct from domestic law. The resolutions of the General Assembly of the United Nations are not binding to the member states. The International Court of Justice may only decide cases when both sides recognize the jurisdiction of the Court, and if they do the Court still cannot ensure compliance with its decisions. The Security Council of the United Nations is constrained by the veto power of the five permanent members, the USA, Russia, China, France and the United Kingdom.³

¹ Welles to President Franklin D. Roosevelt, 6 October 1937. Cited in Ernst B. Haas and Allen S. Whiting, *Dynamics of International Relations* (New York: McGraw-Hill Book Company, Inc., 1956), 385.

² Malcolm N. Shaw, *International Law*, 3 ed. (New York: Cambridge University Press, 1991; reprint, 1995), 3. Also see E. H. Carr, *The Twenty Years' Crisis, 1919-1939: An Introduction to the Study of International Relations* (New York: Palgrave, 2001), 159-61.

³ Shaw, *International Law*, 2-4.

«The absence of an executive power means that each state remains free, subject to the use of force [...], to take such action as it thinks fit to enforce its own rights,» James Leslie Brierly once wrote.⁴ Hans Morgenthau points to decentralization as the essence of international law itself, an inevitable feature due to the principle of sovereignty of states.⁵ While most international rules are mere expressions for or codification of identical or complementary interests of states and thus easily complied with, as Morgenthau writes, cases that affect the relative power of states are more problematic. «In those cases [...] considerations of power rather than law determine compliance and enforcement,» he argues.⁶ Similarly, Stanley Hoffmann finds law to be of little relevance when clashing with strategic interests.⁷

Law does not express any intentions or motives that cannot be reduced to basic causal factors that created it in the first place, scholars note. It is thus epiphenomenal, with no significant effect on actors' behavior. Law does not create international order, but reflects it. Brierly writes: «When the circumstances are propitious, law is the sequel, but it is never the instrument, of the establishment of order».⁸ International law is a law *of* behavior, not as much *for* behavior.⁹ If all aspects of international

⁴ James Leslie Brierly, *The Law of Nations: An Introduction to the International Law of Peace*, 4 ed. (Oxford: Clarendon Press, 1949), 92-93.

⁵ Hans J. Morgenthau, *Politics among Nations: The Struggle for Power and Peace*, 7 ed. (New York: McGraw Hill, 2006), 316.

⁶ *Ibid.*, 302.

⁷ Stanley Hoffmann, "International Law and the Control of Force," in *The Relevance of International Law*, ed. Karl W. Deutsch and Stanley Hoffmann (Cambridge, MA: Schenkman Publishing, 1968).

⁸ James Leslie Brierly, *The Outlook for International Law* (Scientia Verlag Aalen 1945; reprint, 1977), 74.

⁹ Karl W. Deutsch, "The Probability of International Law," in *The Relevance of International Law*, ed. Karl W. Deutsch and Stanley Hoffmann (Cambridge, MA: Schenkman Publishing, 1968).

relations – including law – detract from some basic causal political factors, one may as Morgenthau does define politics as «the concept of interest defined in terms of power».¹⁰ Institutions then essentially become «arenas for acting out power relationships».¹¹ Hence international order is provided by the balance of power rather than legal commitments, a notion that has also been repeated by statesmen such as Henry Kissinger, who asserted that «there can be no peace without equilibrium and no justice without restraint»,¹² and Dean Acheson, who noted that law has no place when issues concern ultimate power, thus concluding that legal principles «do not decide concrete cases».¹³ Likewise, George Kennan warned against any legalistic approaches to international problems, observing that «our own national interest is all that we are really capable of knowing and understanding».¹⁴

Governments apply international law and characterize situations in legal terms that are most advantageous to their interests and objectives, notes Holsti,¹⁵ referring to case studies demonstrating that law is used to further

¹⁰ Morgenthau, *Politics among Nations: The Struggle for Power and Peace*, 5.

¹¹ Tony Evans and Peter Wilson, "Regime Theory and the English School of International Relations: A Comparison," *Millennium: Journal of International Studies* 21, no. 3 (1992). Quoted in John J. Mearsheimer, "The False Promise of International Institutions," *International Security* 19, no. 3 (1994-1995).

¹² Henry A. Kissinger, *The White House Years* (London: Weidenfeld and Nicolson, 1979). Quoted in Andrew Hurrell, "Order and Justice in International Relations: What Is at Stake?," in *Order and Justice in International Relations*, ed. Rosemary Foot, John Lewis Gaddis, and Andrew Hurrell (Oxford: Oxford University Press, 2003).

¹³ Dean Acheson, "Remarks," in *International Rules: Approaches from International Law and International Relations*, ed. Robert J. Beck, Anthony Clark Arend, and Robert D. Vander Lugt (Oxford: Oxford University Press, 1996).

¹⁴ George F. Kennan, "Diplomacy in the Modern World," in *International Rules: Approaches from International Law and International Relations*, ed. Robert J. Beck, Anthony Clark Arend, and Robert D. Vander Lugt (Oxford: Oxford University Press, 1996).

¹⁵ K. J. Holsti, *International Politics. A Framework for Analysis*, 6 ed. (Englewood Cliffs, NJ: Prentice-Hall International, 1992), 320.

state objectives. International pursuits with reference to justice tend to coincide suspiciously with national interest.¹⁶ Self-interest, or self-advantage, is also the most cited reason for compliance with international law.¹⁷ Indeed, regime theorists have argued that compliance with international commitments is rationally «possible, even likely».¹⁸ Failure of governments to comply endangers the institution of reciprocity, a principle that is often in their interest to maintain.¹⁹ Compliance with international law is thus explained in strict utilitarian terms, i.e., by coercion or self-interest.

Prominent modern scholars have echoed this interpretation of a one-way causal link between international politics and law, which is characterized by Robert Keohane as an «instrumentalist optic».²⁰ Robert Gilpin asserts that «[a]narchy is the rule; order, justice, and morality are the exceptions».²¹ In fact, states rarely engage in deep cooperation, note George Downs and David Rocke and Peter Barsoom. They find that

¹⁶ John Lewis Gaddis, "Order Versus Justice: An American Foreign Policy Dilemma," in *Order and Justice in International Relations*, ed. Rosemary Foot, John Lewis Gaddis, and Andrew Hurrell (Oxford: Oxford University Press, 2003).

¹⁷ For an overview, see Harold Hongju Koh, "Why Do Nations Obey International Law?," *The Yale Law Journal* 106 (1997): 2632.

¹⁸ Kal Raustiala and Anne-Marie Slaughter, "International Law, International Relations and Compliance," in *Handbook of International Relations*, ed. Walter Carlsnaes, Thomas Risse, and Beth A. Simmons (London-Thousand Oaks-New Delhi: Sage, 2005; reprint, 2005), 540. Also see Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton: Princeton University Press, 1984; reprint, 2005), 62-64.

¹⁹ See e.g. Andrew Hurrell, "International Society and the Study of Regimes: A Reflective Approach," in *Regime Theory and International Relations*, ed. Volker Rittberger and Peter Mayer (Oxford: Clarendon Press, 1993), 59.

²⁰ Robert O. Keohane, "International Relations and International Law: Two Optics," in *Power and Governance in a Partially Globalized World*, ed. Robert O. Keohane (London: Routledge, 2002).

²¹ Robert G. Gilpin, "The Richness of the Tradition of Political Realism," in *Neorealism and Its Critics*, ed. Robert O. Keohane (New York: Columbia University Press, 1986).

«most treaties [addressing dysfunctional behavior] require states to make only modest departures from what they would have done in the absence of an agreement».²² John Mearsheimer finds that institutions – defined as a set of rules that regulate the interaction of states (similar to international law) – are merely reflections of the distribution of power.²³ «What is most impressive about institutions, in fact,» writes Mearsheimer, «is how little independent effect they seem to have had on state behavior».²⁴ However, this assertion has been challenged by others.

Legal constraints on international politics

«[L]aw is a major force in international affairs;» writes Louis Henkin, «nations rely on it, invoke it, observe and are influenced by it in every aspect of their foreign relations».²⁵ International law structures the international «society» and, he argues, both formalize, regulate and determine the consequences of relationships among states.²⁶ While Henkin regrets international law to be widely depreciated among international relations scholars, he sees the «forces for law observance mentioned are general, intangible, imponderable; they are not the less significant, and they are often determinative».²⁷

²² George W. Downs, David M. Rocke, and Peter N. Barsoom, "Is the Good News About Compliance Good News About Cooperation?" *International Organization* 50, no. 3 (1996), 380.

²³ Mearsheimer, "The False Promise of International Institutions."

²⁴ *Ibid.*, 47.

²⁵ Louis Henkin, *How Nations Behave: Law and Foreign Policy* (New York: Frederick A. Praeger, 1968), 6.

²⁶ *Ibid.*, 14-15.

²⁷ *Ibid.*, 50.

If *determinative*, international law must have autonomous effects on behavior, either directly or by significantly shaping political factors. The effects must go beyond those caused by political determinants. Such interpretation has by Keohane been labeled a «normative optic».²⁸

Rather than epiphenomenal to interest and power, law resembles other non-utilitarian variables used to explain behavior. Noted in social sciences, for instance, social norms are arguably operated mechanically or unconsciously, being *ex ante* sources of action. According to Jon Elster social norms have a «grip on the mind», not necessarily rational nor outcome-oriented.²⁹ They guide behavior, but not by coercion or from self-interest. In international relations theory similar arguments have been made for the operations and effect of concepts relating to or converging with international law, such as values, norms, ideology, rules, institutions and regimes. (Attentively, international lawyers Abraham and Antonia Handler Chayes observe that political scientists «find it hard to say the ‘L-word’», even though concepts such as international regimes «are what international law is all about»³⁰).

According to Stephen Krasner, *regimes* – defined as «principles, norms, rules and decision-making procedures around which actor expectations converge»³¹ – could be seen as «autonomous variables independently

²⁸ Keohane, "International Relations and International Law: Two Optics."

²⁹ Jon Elster, *The Cement of Society: A Study of Social Order* (Cambridge: Cambridge University Press, 1989; reprint, 1994), 97-100.

³⁰ Abraham Chayes and Antonia Hadler Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (Cambridge: Harvard University Press, 1995), 303 footnote 3.

³¹ Stephen D. Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables," in *International Regimes*, ed. Stephen D. Krasner (Ithaca: Cornell University Press, 1983), 1.

affecting not only related behavior and outcomes, but also the basic causal variables that led to their creation in the first place».³² Their functioning can thus not be derogates of «basic» causal factors of interest and power. While their intent may have been rational and rooted in the self-interest of states at the time of adoption, international regimes could take on an autonomous role once created. Krasner writes:

Regimes may assume a life of their own, a life independent of the basic causal factors that led to their creation in the first place. There is not always congruity between underlying power capabilities, regimes, and related behavior and outcomes.³³

Once a regime is established it can alter the distribution of power in the system, that it might change states' assessment of interests (and indirectly change behavior), or have direct effects on international affairs. Hence, Krasner claims that regimes are major explanatory variables in international relations, and is echoed by scholars including Oran Young, who has specifically addressed the role of international regimes in the Arctic region in his research.³⁴

³² Ibid., 21.

³³ ———, "Regimes and the Limits of Realism: Regimes as Autonomous Variables," in *International Regimes*, ed. Stephen D. Krasner (Ithaca: Cornell University Press, 1983), 357.

³⁴ See for instance Oran R. Young, *Arctic Politics. Conflict and Cooperation in the Circumpolar North* (Hanover: University Press of New England, 1992), ———, *Creating Regimes: Arctic Accords and International Governance* (Ithaca, NY: Cornell University Press, 1998), Oran R. Young and Osherenko Gail, eds., *Polar Politics: Creating International Environmental Regimes* (Ithaca, NY: Cornell University Press, 1993).

International *institutions* are similarly approached as, not only the object of strategic choice, but «a constraint on actors' behavior».³⁵ According to Andrew Hurrell, even if created for instrumental purposes, institutions «act as platforms for ongoing normative debate, and for the mobilization of concern, and for debating and revising ideas about how international society should be organized». For that reason, international institutions «can shape, not merely reflect, communities of interest».³⁶ International law, remark a number of international lawyers, reshapes and alters national interests through a process of justificatory discourse, and will thus have causal effect on international politics.³⁷

The causal effects of rules and norms may be subscribed to their *legitimacy*, concludes Thomas Franck, since legitimacy exhibits «a powerful pull to compliance».³⁸ Legitimacy arises from the process through which international law was created or from its substance.³⁹ If legitimacy provides an internal reason for a state to comply, then observance of international law is not caused by coercion or self-interest.⁴⁰

An alternative causal mechanism has been suggested by Friedrich Kratochwil, who sees international rules as «a type of directive that

³⁵ Lisa L. Martin and Beth A. Simmons, "Theories and Empirical Studies of International Institutions," *International Organization* 52, no. 4 (1998): 729.

³⁶ Hurrell, "Order and Justice in International Relations: What Is at Stake?" 33.

³⁷ Thomas M. Franck, *Fairness in International Law and Institutions* (Oxford: Clarendon Press, 1995), 14, Chayes and Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements*, 26. Cited in Koh, "Why Do Nations Obey International Law?" 2602.

³⁸ Thomas M. Franck, "Legitimacy in the International System," *American Journal of International Law* 82 (1988), 759.

³⁹ Ian Hurd, "Legitimacy and Authority in International Politics," *International Organization* 53, no. 2 (1999), 381.

⁴⁰ *Ibid.*, 387.

simplify choice-situations by drawing attention to factors which an actor has to take into account».⁴¹ Judith Goldstein and Robert Keohane have made a parallel argument for ideas, which they find to be a significant independent variable in explaining behavior as they order the world in ways that could profoundly shape outcomes.⁴² «[I]deas serve as road maps,» they argue. «Once ideas become embedded in rules and norms – that is, once they become institutionalized – they constrain public policy».⁴³ Again concepts linked to international law are found to constrain behavior, directly or through reshaping interests.

The normative pull to comply with international law is often emphasized, also by realists. Stanley Hoffmann argues that the legal system by definition is a normative one.⁴⁴ E. H. Carr – who coined the dichotomy realism-utopianism – finds morality to be one of two cardinal factors in international relations (the other being power).⁴⁵ *Pacta sunt servanda* is a maxim of good faith that obliges states to observe international agreements. Statesmen operating on an international arena may feel loyalties and obligations beyond national borders. Georges Scelle points to the *dédoublement fonctionnel* of government officials, individuals who would be acting on behalf of the international community as well as

⁴¹ Friedrich V. Kratochwil, *Rules, Norms and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs* (Cambridge: Cambridge University Press, 1989; reprint, 1990).

⁴² Judith Goldstein and Robert O. Keohane, "Ideas and Foreign Policy: An Analytical Framework," in *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change*, ed. Judith Goldstein and Robert O. Keohane (Cornell University Press, 1993).

⁴³ *Ibid.*, 12.

⁴⁴ Stanley Hoffmann, "International Law and the Control of Force," in *The Relevance of International Law*, ed. Karl W. Deutsch and Stanley Hoffmann (Cambridge, MA: Schenkman, 1968), 21.

⁴⁵ Carr, *The Twenty Years' Crisis, 1919-1939: An Introduction to the Study of International Relations*, 95.

national interests.⁴⁶ Although the actors in international law are representatives for states, they may as well be realizing the values or interests of the international community in large. Also here international law is seen as a determinant of international relations autonomous from politics, defined in terms of national interest and power.

2.3. International system and foreign policy

Systemic constraints on foreign policy

«[T]he strong do what they have the power to, and the weak accept what they have to accept,» wrote Thucydides in his narrative on the war between Athens and Sparta in the fifth century B.C., paraphrasing Athenian representatives in the Melian Dialogue. The notion that state behavior reflects the distribution of power among international actors, i.e., the structure of the system, stands strong in international relations theory. If war is «merely the continuation of policy by other means», as argued by Carl von Clausewitz,⁴⁷ military power could strongly affect the policy of states. Hoffmann asserts that weak and powerful states respond differently to risks of aggression and violence. «Small powers are forced, by their resources, their location, and the system, to be satisfied with

⁴⁶ Georges Scelle, *Précis De Droit Des Gens; Principes Et Systématique*, Par Georges Scelle, vol. 1 (Paris: Librairie du Recueil Sirey (société anonyme), 1932-34). Presented and discussed in e.g. Hubert Thierry, "The European Tradition in International Law: Georges Scelle," *European Journal of International Law* 1, no. 1-2 (1990), Antonio Cassese, "Remarks on Scelle's Theory Of "Role Splitting" (Dédoublément Fonctionnel) in International Law," *European Journal of International Law* 1, no. 1-2 (1990).

⁴⁷ Carl von Clausewitz, *On War* (Princeton, NJ: Princeton University Press, 1989), 87.

establishing a hierarchy of risks and with attempting to minimize the risks they consider to be most serious,» he summarizes.⁴⁸

Analytically the politics among states is distinguished from the making of foreign policy. «International politics is not foreign policy,» underlines Kenneth Waltz,⁴⁹ who differentiates between the system (defined by its structure) and unit levels of analysis.⁵⁰ Structure is the «constraints that confine all states», and thus explanations of foreign policy, argues Waltz.⁵¹ Gilpin, labeled structural realist (or neorealist) along with Waltz and others, asserts that international structure «constrains and in fact powerfully influences behavior».⁵² Structural effect on state behavior is a presupposition made by all structural realists.⁵³ Policies of strong states differ from policies of weak ones.⁵⁴ Shifts in relative power lead to shifts in foreign policy, demonstrate Aaron Friedberg and Melvyn Leffler.⁵⁵

By stressing the impact of external forces on states' behavior, most notably in terms of relative power, structural realists challenge

⁴⁸ Stanley Hoffmann, *The State of War: Essays on the Theory and Practice of International Politics* (New York: Praeger, 1965), 138.

⁴⁹ Kenneth N. Waltz, "International Politics Is Not Foreign Policy," *Security Studies* 6, no. 1 (1996).

⁵⁰ ———, *Theory of International Politics* (New York: Random House, 1979), 121-23. In contrast to this dissertation, Waltz distinguishes between the systems level and the level of interacting units.

⁵¹ *Ibid.*, 122.

⁵² Gilpin, "The Richness of the Tradition of Political Realism," 318.

⁵³ For an overview, see Gideon Rose, "Neoclassical Realism and Theories of Foreign Policy," *World Politics* 51, no. 1 (1998).

⁵⁴ Michael Mandelbaum, *The Fates of Nations: The Search for National Security in the Nineteenth and Twentieth Centuries* (Cambridge: Cambridge University Press, 1988). Cited by Rose, "Neoclassical Realism and Theories of Foreign Policy."

⁵⁵ Aaron L. Friedberg, *The Weary Titan: Britain and the Experience of Relative Decline* (Princeton: Princeton University Press, 1988), Melvyn P. Leffler, *A Preponderance of Power: National Security, the Truman Administration, and the Cold War* (Stanford, CA: Stanford University Press, 1992). Both cited in Rose, "Neoclassical Realism and Theories of Foreign Policy."

explanations on behavior exclusively in terms of domestic factors, what is referred to as «inside-out explanations».⁵⁶ Indeed foreign policy is most commonly analyzed in the context of *Innenpolitik*.⁵⁷ The discipline referred to as foreign policy analysis, usually addressing foreign policy decision-making, has taken on a number of directions stressing different predominantly domestic causes.⁵⁸ Some find populism to be influential, arguing that «public opinion plays a significant, sometimes central role in U.S. foreign policy».⁵⁹ Allison and Zelikow point to the influence of organizational behavior and governmental politics in their foreign policy analysis.⁶⁰ Mearsheimer and Stephen Walt argue that domestic lobbyists may have profound impact on policymaking,⁶¹ like others before them have found interest groups to shape foreign policy.⁶² Foreign policy explanation that highlights *Innenpolitik* factors, summarizes Walter Carlsnaes, include approaches that stress cognitive and psychological

⁵⁶ Waltz, *Theory of International Politics*, 63.

⁵⁷ Rose, "Neoclassical Realism and Theories of Foreign Policy."

⁵⁸ Robert D. Putnam, "Diplomacy and Domestic Politics: The Logic of Two-Level Games," *International Organization* 42, no. 3 (1988).

⁵⁹ Summarized by David A. Deese, "Making American Foreign Policy in the 1990s," in *The New Politics of American Foreign Policy*, ed. David A. Deese (New York: St. Martin's Press, 1994). See Thomas Graham, "Public Opinion and U.S. Foreign Policy Decision Making," in *The New Politics of American Foreign Policy*, ed. David A. Deese (New York: St. Martin's Press, 1994), Robert Y. Shapiro and Benjamin I. Page, "Foreign Policy and Public Opinion," in *The New Politics of American Foreign Policy*, ed. David A. Deese (New York: St. Martin's Press, 1994).

⁶⁰ Graham Allison and Phillip Zelikow, *Essence of Decision. Explaining the Cuban Missile Crisis*, 2 ed. (New York: Longman, 1999).

⁶¹ John J. Mearsheimer and Stephen M. Walt, *The Israel Lobby and U.S. Foreign Policy* (New York: Farrar, Straus and Giroux, 2007).

⁶² V. M. Hudson, S. M. Sims, and J. C. Thomas, "The Domestic Political Context of Foreign Policy-Making: Explicating a Theoretical Construct," in *The Limits of State Autonomy*, ed. D. Skidmore and V. M. Hudson (Boulder, CO: Westview, 1993), Bruce W. Jentleson, *American Foreign Policy: The Dynamics of Choice in the Twenty-First Century* (New York: W. W. Norton, 2004), Cecil V. Crabb, Jr., Glenn J. Antizzo, and Leila E. Saredidine, *Congress and the Foreign Policy Process: Modes of Legislative Behavior* (Baton Rouge: Louisiana State University Press, 2000).

factors, bureaucratic and neoinstitutional politics, crisis behavior, policy implementation and group decision-making processes.⁶³

While realism in general suffers under indefinite concepts such as national interests, and power appropriately described as «one of the most troublesome [concepts] in the field of international relations»,⁶⁴ the structural approach forcefully points to the shortcomings of an *Innenpolitik* approach in foreign policy analysis.⁶⁵ It identifies the constraints of external factors on policy-making, calling on foreign policy analysts to view the behavior of one state unit in relation to others, i.e., relating policy to the international system.

Foreign policy influence on the system

Even if the structure of the international system were defined in terms of power distribution, the structure would still be reducible to the properties of its units.⁶⁶ Since the system is irrevocably linked to or defined as the interaction of units, it is evident that policy changes can bring about systems change. K. J. Holsti remarks that «governments, most of the time, respond to the actions and policies of other governments; that is, to those that take the initiatives that are perceived to have some impact on

⁶³ Walter Carlsnaes, "Foreign Policy," in *Handbook of International Relations*, ed. Walter Carlsnaes, Thomas Risse, and Beth A. Simmons (London: SAGE Publications, 2002; reprint, 2005). With references therein.

⁶⁴ Robert G. Gilpin, *War and Change in World Politics* (New York: Cambridge University Press, 1981), 13.

⁶⁵ Carlsnaes, "Foreign Policy."

⁶⁶ Alexander Wendt, "The Agent-Structure Problem in International Relations Theory," *International Organization* 41, no. 3 (1987).

one's own interests, principles, and preferences».⁶⁷ Effects of foreign policy on the system are self-evident when the system is defined in terms of interaction.

The influence of state behavior on the international system has been highlighted through the so-called agent-structure debate within international relations theory. While the debate has been highly abstract, with focus on ontological and epistemological issues,⁶⁸ it points to the problem of making system structures or actors into primitive units of analysis, since both may be regarded dependent variables. Scholars suggest the system and its units to be «co-determined» or «mutually constituted» entities.⁶⁹ However the interplay between state behavior and the structure of the system is familiar to Waltz. In a response to his critics, he stressed that, «[n]either structure nor units determine outcomes. Each affects the other.»⁷⁰

«[T]he state's policy not only probes the environment but can alter it,» writes Robert Jervis.⁷¹ But the effects of one state's foreign policy on others' are not necessarily functional. Describing the international ramifications of foreign policy, Jervis outlines the psychological dynamics of perceptions and misperceptions, where intentions of one

⁶⁷ Holsti, *International Politics. A Framework for Analysis*, 273.

⁶⁸ Christopher Hill, *The Changing Politics of Foreign Policy* (New York: Palgrave Macmillan, 2003), 26.

⁶⁹ Wendt, "The Agent-Structure Problem in International Relations Theory," 339. Also see Walter Carlsnaes, "The Agency-Structure Problem in Foreign Policy Analysis," *International Studies Quarterly* 36, no. 3 (1992).

⁷⁰ Kenneth N. Waltz, "Reflections on Theory of International Politics: A Response to My Critics," in *Neorealism and Its Critics*, ed. Robert O. Keohane (New York: Columbia University Press, 1986), 328.

⁷¹ Robert Jervis, *Perception and Misperception in International Politics* (Princeton, NJ: Princeton University Press, 1976), 77.

state's policies are not clear to the other(s): The peaceful intentions of one state can be misinterpreted as aggressive by another. Due to perceptions and misperceptions, foreign policies have systemic effects that are not accounted for by «the Spiral Model», as Jervis labels structural realist theories,⁷² but can still set off the self-fulfilling prophecies embedded in these deterrence theories.

For states to react and respond to one specific foreign policy in a systemic interaction, they need to direct attention outward. Not all foreign policies spur interaction. The policy of one unit has to be observed, processed and responded to by others for systemic interaction to occur. But, as observed in behavioral theory, the necessary attention is not a given, and rationality is bounded.⁷³ With infinite potential issues to attend to, statesmen suffer under shortage of information processing capacity. Herbert Simon, addressing decision-making in administrative organizations, explains:

Attention is the chief bottleneck in organizational activity, and the bottleneck becomes narrower and narrower as we move to the tops of organizations, where parallel processing capacity becomes less easy to provide without damaging the coordination function that is a prime responsibility of these levels.⁷⁴

Policymaking preconditions a choice opportunity, asserts Johan Olsen,⁷⁵ or, as formulated by K. J. Holsti, a foreign policy «occasion».⁷⁶ New

⁷² Ibid., 62.

⁷³ Herbert A. Simon, *Administrative Behavior. A Study of Decision-Making Processes in Administrative Organization*, 3 ed. (New York: The Free Press, 1976).

⁷⁴ Ibid., 294.

⁷⁵ Johan P. Olsen, "Public Policy-Making and Theories of Organizational Choice," *Scandinavian Political Studies* 7 (1972).

⁷⁶ Holsti, *International Politics. A Framework for Analysis*, 273-74.

knowledge can shift attention to new issue-areas. Ernst Haas argues that «interests can be (but need not be) informed by available knowledge, and that power is normally used to translate knowledge-informed interests into policy and programs».⁷⁷

It is not evident that states proactively assess and pursue national interests beyond its borders. On the contrary, as demonstrated in earlier studies, it often takes events to make state officials aware of one issue rather than another.⁷⁸ Governments have «agendas thrust on them», some argue,⁷⁹ making foreign policy reactive rather than proactive. Dan Wood and Jeffrey Peake elaborate:

As new issues emerge, political actors are not free to choose attention levels. Rather, they must attend to issues of continuing importance until they are resolved or displaced in the economy of attention.⁸⁰

Changes in the international system, defined as the interaction of state units, may accordingly be chain reactions triggered by exogenous events as well as changes in the policies of a single unit. Hence, policy may change the system.

⁷⁷ Ernst B. Haas, *When Knowledge Is Power: Three Models of Change in International Organization* (Berkeley, CA: University of California Press, 1990).

⁷⁸ See for instance B. Dan Wood and Jeffrey S. Peake, "The Dynamics of Foreign Policy Agenda Setting," *The American Political Science Review* 92, no. 1 (1998). Jeffrey S. Peake, "Presidential Agenda Setting in Foreign Policy," *Political Research Quarterly* 54, no. 1 (2001). Lydia Andrade and Garry Young, "Presidential Agenda Setting: Influences on the Emphasis of Foreign Policy," *Political Research Quarterly* 49, no. 3 (1996).

⁷⁹ Wood and Peake, "The Dynamics of Foreign Policy Agenda Setting," 178.

⁸⁰ *Ibid.*

2.4. Theoretical framework

The four research questions raised by the introductory chapter address connections between politics and law on one hand, and between the system and policy on the other. In order for this dissertation to respond adequately to these research questions, this chapter examined previous work addressing the relevant causal links between the two pairs of factors. Rather than recounting theoretical approaches to the whole field on international relations, the chapter has explored postulations of causal linkages between the subjects for this dissertation, i.e., politics and law as well as system and policy. The focus of the chapter has thus been on causal mechanisms and connections between the relevant factors. As the discussions above have shown, the causal links may be ambiguous.

Politics and law

First, this chapter examined theories that regarded international law as epiphenomenal to politics, explained by the arguably cardinal factors of interest and power. In an anarchic world, international law reflects order or codifies patterns of behavior rather than creating them. Accordingly, law itself is an insignificant determinant of international relations.

Compliance with international law is explained in strict utilitarian terms, notably by coercion and or self-interest.

However, the idea that all aspects of international affairs are epiphenomenal to interest and power has been widely challenged. As the chapter has shown, scholars have pointed to the constraining influence of

regimes, institutions, rules, norms, values, *et cetera*, on behavior. These concepts, which may be related to or converge with the concept of international law (applicable legal rules, norms and standards that apply among states), are said to have autonomous effects on international relations. They even shape national interests and alter the distribution of power, and accordingly explain politics, even when strictly defined in terms of interest and power.

These contradicting causal connections between politics and law will be revisited in the concluding chapter, where the four research questions of this dissertation are addressed. The two first questions – asking how politics affect the outlook for a legal settlement, and how certain legal procedures affect politics in Svalbard waters – call for studies of links between these factors. As these questions are addressed, in the studies of Chapters 4 and 5 as well as in the concluding chapter, the problem of drawing causal connections becomes even more evident. This dissertation will on one hand find that states are reluctant to pursue a legal settlement, even in a dispute cast as a legal conflict over treaty interpretation. The contending parties accept uncertainty, and their relations feature a low degree of legalization. Adjudication is considered politically costly, not least because it would be a fundamental encroachment on state sovereignty.⁸¹ On the other hand, the dissertation will also find that legal rules for determining outer limits for the continental shelf have explanatory effects on politics in the Svalbard offshore area. Procedures established by international law guide states to abandon earlier positions

⁸¹ Kenneth W. Abbott and Duncan Snidal, "Hard and Soft Law in International Governance," *International Organization* 54, no. 3 (2000).

regarding their rights outside Svalbard, and these effects seem to go beyond what may be explained by self-interest or coercion.

System and policy

This chapter has also explored the relationship between the international system and foreign policy. Commonly the system is regarded a given, with explanatory effects on the policies of its units. Most notably structural realists, whose focus is often on the material and tangible structure of the system rather than the interaction of its units, see the structure of the system as the constraints that confine all states. To safeguard its own security each state consults its surroundings, and its policies are hence responsive to, and partly explained by, external factors.

As demonstrated, this causal connection between the system and policy has been debated in literature. Some point to an opposite causal direction between these factors, since one state's policy can alter the system, also through misperceptions. Thus, scholars argue that the system and its units are co-determined or mutually constituted entities, where policy changes may have systemic ramifications. States respond to the actions and policies of others, so that a new policy of one state may set off systemic chain reactions. In effect, policy change in one state produces a foreign policy occasion or choice opportunities for others.

The dynamics between the international system and foreign policy are subjects of the two latter research questions of the dissertation, asking how the system affects the policies of Norway in the Svalbard area, and

also how the policies of Norway affect the system. The theoretical postulations discussed here will therefore be related to the case of the Svalbard offshore areas. The links between system and policy in the Svalbard case are examined further in Chapters 6 and 7 as well as in the concluding chapter. The dissertation will show that Norway is widely constrained by external factors, its policies and their enforcement curbed in order to safeguard or promote peace and stability. But again the causal link between system and policy is ambiguous or even paradoxical: The dissertation will demonstrate that the system is highly responsive to Norway's policies and their enforcement.

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Chapter 3

METHODOLOGY

3.1. Introduction

The first chapter established that the purpose of the dissertation is to explore the politics–law and system–policy processes that induce conflict and order in the maritime zones around Svalbard, while the previous chapter examined links between each pair of factors as they have been explored in scholarly literature. This chapter explains the methods used for studying the two processes and their impact on the areas off the shores of Svalbard.

The dissertation focuses on a case featuring international controversy over sovereign rights. As noted in its introduction, four case-specific research questions specify how the politics–law and system–policy processes are to be explored. The first question inquires if political factors hinder a legal settlement for the Svalbard issue; the second asks if legal rules for continental shelf delineation influence politics; the third asks if systemic conditions affect Norway’s policies; while the fourth queries if the policies of Norway affect the international system. The two former questions relate to the relationship between politics and law, while the two latter address the interactions between the international system and foreign policy. Answers to the four research questions are provided in the concluding chapter based on the studies reproduced *in extenso* as Chapters 4-7.

The four studies in Chapters 4-7 address research problems that largely correspond to or cover the research questions asked by this dissertation. Their methodologies follow from the respective research questions that are asked. Such a research strategy, deriving from circumstances and

research problems rather than an ideological commitment or pre-determined ontology, follows a «logic of design».¹ Also noted by Robert Yin, in case study «the first and most important condition for differentiating among the various research strategies is to identify the type of research question being asked».² Accordingly, specific methodologies will be evident from the four studies.³ This chapter will address overarching methodological considerations and challenges common to the dissertation and the four studies. First it presents the research strategy of the dissertation, then it examines possible sources of evidence, and finally it assesses the quality of the methods used.

Research methods

The dissertation relates to the world as objective and knowable, separate from the observing individual. Its research problems and its studies address causality between variables, notably the interplay of certain factors that affect (or are assumed to affect) the maritime areas off of Svalbard. However, although such epistemology is dominantly

¹ Jennifer Platt, "'Case Study' In American Methodological Thought," *Current Sociology* 40, no. 1 (1992): 46.

² Robert K. Yin, *Case Study Research. Design and Methods*, 3 ed. (Thousand Oaks: SAGE Publications, 2003), 7.

³ See Torbjørn Pedersen, "The Svalbard Continental Shelf - Legal Disputes and Political Rivalries," *Ocean Development and International Law* 37, no. 3-4 (2006) (Chapter 4); Torbjørn Pedersen and Tore Henriksen, "Svalbard's Maritime Zones: The End of Legal Uncertainty?" submitted (Chapter 5); Torbjørn Pedersen, "The Constrained Politics of the Svalbard Offshore Area," *Marine Policy*, in press (2008) (Chapter 6); and Torbjørn Pedersen, "The Dynamics of Svalbard Diplomacy," *Diplomacy & Statecraft* 19, no. 2 (2008) (Chapter 7).

objective,⁴ the dissertation will not make an explicit commit to any one system of philosophy.⁵ Instead, it joins ranks with research traditions that make room for methodological diversity.⁶

This dissertation will not seek to produce a general «conceptual framework within which a whole discipline is cast».⁷ Rather, it is a case-specific analysis that ventures to find «the right angle, the method, the model, the concepts which should be the most fruitful for an analysis of data».⁸ Being primarily case-oriented rather than driven by theoretical or methodological ends, the methodology is diverse and eclectic. As is common also in foreign policy analysis, the dissertation probes multiple sources of evidence.⁹ A too stringent and narrow research strategy could strangle the study, particularly in cases where evidence seems scarce, while a more dynamic approach allows a wider variety of data to be collected and interrelated.

The process of combining different sources of evidence is the hallmark of case study research. As defined by John Creswell, case study is as a

⁴ Walter Carlsnaes, "Foreign Policy," in *Handbook of International Relations*, ed. Walter Carlsnaes, Thomas Risse, and Beth A. Simmons (London: SAGE Publications, 2002; reprint, 2005).

⁵ John W. Creswell, *Research Design. Qualitative, Quantitative and Mixed Methods Approaches* (Thousand Oaks, CA: Sage, 2003), 12.

⁶ Robert G. Gilpin, "The Richness of the Tradition of Political Realism," in *Neorealism and Its Critics*, ed. Robert O. Keohane (New York: Columbia University Press, 1986).

⁷ David Easton, *The Political System: An Inquiry into the State of Political Science* (New York: Alfred A. Knopf, 1953), 57.

⁸ Stanley Hoffmann, *Contemporary Theory in International Relations* (Englewood Cliffs, NJ: Prentice-Hall, 1960), 29.

⁹ Eric V. Larson, "Putting Theory to Work: Diagnosing Public Opinion on the U.S. Intervention in Bosnia," in *Being Useful: Policy Relevance and International Relations Theory*, ed. Miroslav Nincic and Joseph Leggold (The University of Michigan Press, 2000), 175.

strategy where «researchers collect detailed information using a variety of data collection procedures over a sustained period of time».¹⁰ Evidence from a wide range of secondary sources, including news reports and academic literature, is combined with primary evidence from multiple sources.

Yin points to the combination of evidence from different sources as the very strength of case study research. According to him, «any finding or conclusion in a case study is likely to be much more convincing and accurate if it is based on several different sources of information».¹¹

Triangulating, a naval expression for crossing two or more known bearings to determine an exact position, is a metaphor that illustrates how the combination of evidence from multiple sources increase scientific precision. In the analyses of this dissertation, evidence from several sources is cross-referenced and checked to enhance validity and reliability.

Since pluralism among sources of primary evidence adds validity and reliability to the analysis, this dissertation and its studies have probed the possible sources of evidence to answer their respective research questions. Yin's list of six different primary sources of case study evidence is the point of departure. Sources are documentation, archival records, interviews, direct observation, participant-observation and physical artifacts. Below, the limitations and challenges associated with each source of evidence are discussed, as is their contribution to this

¹⁰ Creswell, *Research Design. Qualitative, Quantitative and Mixed Methods Approaches*, 15.

¹¹ Yin, *Case Study Research. Design and Methods*, 98.

dissertation. The discussion will account for the choice of sources of evidence and their relevance, application, utility and limitations.

3.2. Sources of primary evidence

Documents and archival records

A case involving both national interests, security, foreign policy and diplomatic relations would normally generate large quantities of documents, producing everything from departmental memoranda and letters to strategy reports and diplomatic note exchanges. The research problem determines what parts of the correspondence would be relevant to obtain for analysis, as discussed above. In general, however, only a fraction of the pertinent documents is immediately accessible to the researcher, since much correspondence is restricted from public access, classified or for different reasons inaccessible or difficult to obtain. In the Svalbard offshore case a limited number of relevant public documents have been immediately accessible. Among those are White Papers, press releases and speech transcripts made available by the respective authorities.

Other documents have been disclosed on the request from the researcher. For this dissertation, several requests for documents have been made to actors involved in the Svalbard offshore controversies. The researcher have invoked the respective freedom of information acts (or equivalent) in search for specific documents, or requested access to archives. Most document evidence for this dissertation has been made available after

such requests, including correspondence between national ministries and/or public agencies,¹² between private actors and national authorities,¹³ between governments,¹⁴ as well as internal memoranda.¹⁵ In some instances disclosure has only been made after formal appeals to initial rejections.¹⁶

In some instances, documents have remained undisclosed. Restrictions on access are pursuant to exceptions in respective freedom of information acts and regulations, such as in United States Freedom of Information Act §552 (b), *inter alia* allowing documents to be kept «in the interest of national defense or foreign policy»,¹⁷ or EU Regulation no. 1049/2001 Article 4.5, giving a member state the authority to deny disclosure of its correspondence with the European Parliament, Council and Commission,¹⁸ or Norway's *Offentlighetsloven* §6 allowing public authorities to classify documents «containing information which, if it were to be disclosed, could be detrimental to the security of the realm,

¹² For example, letter from Norwegian Ministry of Foreign Affairs to the Norwegian Petroleum Directorate, offering advice on how to handle the Russian interest for the continental shelf around Svalbard, 4 March 2005.

¹³ For instance, notification of planned scientific research around Svalbard from Marine Arctic Geological Expedition (MAGE) to Norwegian authorities, 18 January 2005.

¹⁴ A number of foreign ministries have formally made most of their international correspondence available for this dissertation, including the United States, the United Kingdom and Norway.

¹⁵ For instance, Iceland's Tomas Heidar, "The Svalbard Issue," March 2006. Personal communication (e-mail), 29 November 2006, and Norway's L. T. Løddesøl, "NOTAT: Svalbard – Kontinentalsokkelen," 9 May 1964. Archival research at the Norwegian Ministry of Foreign Affairs, March 2007.

¹⁶ For instance, the Norwegian Ministry of Foreign Affairs denied access to diplomatic correspondence with the United Kingdom on 4 May 2006 but complied with the researcher's appeal on 13 June 2006. Personal communication (letters), 4 May and 13 June 2006.

¹⁷ The Freedom of Information Act, §552 (b)(1)(A)

¹⁸ For instance, Spain refused disclosure of the correspondence with the EU amid the seizure of Spanish vessels in the fisheries protection zone in 2004 and 2006. European Commission DG Fisheries, personal communication (e-mail), 20 March 2007.

national defense or relations with foreign states of international organizations».

This hinder has however partially been overcome by requesting documents from all relevant parties. As correspondence always includes at least two parties (a sender and a receiver), it has been possible to obtain documents classified by one party from the other. For instance, although Iceland denied the researcher access to its diplomatic note exchanges with Norway, the documents were retrieved from Norway. While Norway initially turned down the request for access to its correspondence with the United Kingdom, the diplomatic notes were made available by the Foreign & Commonwealth Office.¹⁹

Several archives have also been probed in search for documents relating to the Svalbard offshore controversy. Access to the archives of the Norwegian Ministry of Foreign Affairs conditioned prior security clearance, which was granted only after a background check in personal records. Processing a request may also be time-consuming, in some instances too time-consuming. The Reagan Library initially indicated a 73-month processing queue of the request and could thus not be accessed within the timeframe for this dissertation,²⁰ and the United States Department of Defense (Pentagon) spent almost a year on just registering the request.²¹ Archival records from the United States Department of

¹⁹ United Kingdom Foreign & Commonwealth Office, personal communication (e-mail), 14 July 2006.

²⁰ Ronald Reagan Library, personal communication (letter) F07-037, 26 February 2007.

²¹ U.S. Department of Defense, personal communication (letter) 08-F-0407, 18 December 2007.

State and from Denmark's national archives *Rigsarkivet* were obtained, but not in time to be incorporated into this research.²²

Archival research may also be subjected to conditions that seem incompatible with the principle of free and independent research. At one point the Norwegian Ministry of Foreign Affairs imposed full manuscript control on the researcher,²³ a condition that was not included in an initial research agreement,²⁴ since the documents were partially graded *restricted* and *classified*. Full manuscript control could however raise questions about the researcher's integrity and independence, and the order was thus opposed. The situation was resolved, and the Ministry was only submitted for control those parts of the manuscript that had been based on classified archival records. Citations in this dissertation from records obtained from the archives of the Norwegian Ministry of Foreign Affairs have thus been *de facto* declassified through these procedures.

Interviews

Through interviews the individuals involved in one subject matter may account for their decisions (including non-decisions) and actions. Interviews are invaluable as sources of evidence when the research problem concern motives or in other ways relates to variables assumed to

²² Denmark's *Udenrigsministeriet*, personal communication (e-mail), 16 November 2007.

²³ The Norwegian Ministry of Foreign Affairs (Nedgraderingsutvalget), personal communication (e-mails and telephone), 31 May, 24 May and 21 May 2007.

²⁴ Torbjørn Pedersen, Self-Declaration Form of 19 March 2007 regarding access to the archives of the Norwegian Ministry of Foreign Affairs.

influence behavior. Hence interviews are effective for tracing causal links as well as for fact-finding.

The challenge is again access. As already noted, although a number of governments are involved in the Svalbard offshore controversy, the individuals of the decision-making processes are relatively few. Issues of state security, foreign relations and international disputes are generally dealt with on a high governmental level, often involving heads of states, their respective ministers and selected officials. High-ranking decision-makers, belonging to the group labeled *elites* in social science literature, are thus relatively few compared with the number of actors involved in issues that are more publicly debated and decided on. To the researcher, these circumstances narrow down the number of relevant respondents and the range of interview methods available, ruling out survey interviewing for one.

Interviewing statesmen possessing in-depth knowledge and expert insight on the research topic is referred to as intensive, elite or specialized interviewing. This is regarded an effective research technique for obtaining information on contemporary decision-making processes.²⁵ But as with documents, obtaining access to elites is a challenge. Peter Burnham, Karin Gillam, Wyn Grant and Zig Layton-Henry recognize access as «the biggest problem» in elite interviewing.²⁶

Phone, mail and e-mail enquiries for interviews to heads of foreign affairs or their representatives are often ineffective. Generally, high-level

²⁵ Peter Burnham et al., *Research Methods in Politics* (New York: Palgrave Macmillan, 2004), 205.

²⁶ *Ibid.*, 208.

decision-makers are less accessible than low-level decision-makers, but do become more accessible outside their offices.²⁷ To access relevant respondents for this dissertation, appointments have sometimes been made amid seminars, conferences or other public events. The downside is that the interviews in such settings, with no set time frame, are unpredictable and may become a mixture of *semi-structured interview* and *informal conversation*, labeling it according to the categories drawn up by David Gray.²⁸

Conditions for elite interviews have thus not always been ideal. In literature the interview is often depicted as a cozy and lengthy affair. Hillary Arksey and Peter Knight suggest that the interview takes place «in comfortable and familiar surroundings», and that the researcher goes through an eight-point checklist before questions are asked, e.g. indicating «the significance of the study», referring «in positive terms to other interviews» and confirming «your commitment to research ethics».²⁹ In practice, the settings have rarely allowed for extensive efforts for «fostering a climate of trust», as Arksey and Knight put it. Elite interviews have occasionally taken place in noisy environments under obvious time constraints, where the respondents at times have been interrupted.

Obtaining verifiable interview data may be problematic. Officials at times talk less freely about sensitive issues when on-record than off. But the use

²⁷ For instance, foreign ministers Jan Petersen (15 April 2005) and Jonas Gahr Støre (1 December 2006), deputy minister Kim Traavik (15 April 2005) and former UK legal counsellor David Anderson (25 January 2007) have been interviewed outside their offices.

²⁸ David E. Gray, *Doing Research in the Real World* (London: Sage, 2004), 215-18.

²⁹ Hillary Arksey and Peter Knight, *Interviewing for Social Scientists* (London: Sage, 1999), 101-02.

of anonymous sources poses a problem to the researcher. It makes data more difficult to verify, hence undermining its scientific value. Accordingly off-record elite interviews, although valuable for background probing, could be difficult to transform into verifiable research evidence. If evidence is obtained on condition of anonymity, the data may seem less reliable and valid. Notwithstanding, interview evidence cited by this dissertation is predominantly on-record data from named sources, and these have been taped for accuracy.

The small number of relevant respondents, their limited accessibility, and restraints on interview situations, make elite interviewing a challenging undertaking. Partly due to these circumstances, Burnham et al. warn against basing research entirely on elite interviewing.³⁰

Observation and artifacts

Observation requires a field visit to the case study site. In participant-observation, the researcher takes actively part in the phenomenon studied, while direct observation is a passive study of the social activity undergoing research. In the Svalbard offshore case, arenas for decision-making are numerous, and include rooms and offices in the buildings of all governments that are parties to the controversy.

Common to these arenas are their inaccessibility to the outsider. Sensitive topics are treated as such, usually in confidence and without audience. Only rarely does evidence such as the tape recordings of the White House

³⁰ Burnham et al., *Research Methods in Politics*, 206.

deliberations during the 1962 Cuban missile crisis become available.³¹ Keeping in mind the difficulties of making appointments for interviews with individual high-ranking decision-makers, gaining invitation to such forums is often unrealistic.

Only some arenas of limited relevance to the Svalbard offshore case have been open to the observer. For this dissertation actors have been observed in public settings such as parliamentary debates³² and in press conferences.³³ The two-day Supreme Court Case 2006/871 between the Norwegian prosecution and Spanish ship-owners and captains was also audited in connection with this research, and data was collected from the public procedures.³⁴ The researcher has also requested admission to Norwegian coast guard vessels patrolling the 200 nm fisheries protection zone adjacent to Svalbard, but the opportunity has to date not arisen.

Based on the research questions, physical artifacts (beyond written sources and maps) are not found to be sources of evidence.

³¹ Graham Allison and Phillip Zelikow, *Essence of Decision. Explaining the Cuban Missile Crisis*, 2 ed. (New York: Longman, 1999), 313.

³² For instance, Norwegian parliament *Stortinget*, Meeting 15 June 2005, Case No. 5. For transcript see <<http://www.stortinget.no/stid/2004/s050615-05.html>> (accessed 3 January 2008).

³³ For instance, Kjell Magne Bondevik, press conference in Tromsø, 15 April 2005.

³⁴ Supreme Court case 2006/871, *Manuel Aldao Gago, Angel Lecertua Lizaraburv og Pesquera Laurak Bat S.A. v. Den offentlige påtalemyndighet*, 23-24 October 2006.

3.3. Methodological framework

Research on sensitive topics, including international disputes over sovereign rights, often suffers under the shortage of primary evidence. As noted above, documents are often classified, respondents are usually inaccessible, and decision-making arenas are generally closed to the researcher. Indeed many studies addressing the controversies over rights outside Svalbard fall victims for methodological constraints. They become heavily reliant on secondary sources, most notably news reports, which challenges the validity and reliability of their findings. One common methodological solution has been to lower the scientific ambition and address media sources as primary, for instance by studying the public discourse over a given policy issue rather than the making of that policy. Indeed, amid the methodological challenges discussed above, constructivist approaches and discourse analyses have become relatively popular, also in addressing the case of the Svalbard offshore area.

Another popular approach, similarly convenient if empirical evidence seems scarce, simply assumes actors to be rational. As noted by economist Thomas Schelling, «you can sit in your armchair and try to predict how people will behave by asking how you would behave if you had your wits about you. You get, free of charge, a lot of vicarious, empirical behavior.»³⁵ Outcome is simply projected through Game Theory.

³⁵ Thomas Schelling, quoted in Kathleen Archibald, ed., *Strategic Interaction and Conflict: Original Papers and Discussion* (Berkeley: Institute of International Studies of the University of California, 1966), 150.

In contrast, the empirical approach adopted by this dissertation pursues primary sources of evidence, despite the obvious challenges of access. To maintain standards for validity and reliability, multiple sources of evidence have been probed and combined. By the methods explained above, data has been collected from numerous actors, notably those most involved in the international row over rights outside Svalbard. As primary data from multiple sources and numerous actors has been gathered, the empirical evidence has in fact proved to be rich, extensive and sufficient:

For instance, this dissertation has accessed a comprehensive diplomatic communication regarding the maritime areas adjacent to Svalbard. While not fully exhaustive, it has consulted most if not all relevant diplomatic notes handed to Norway by other states. By probing numerous governments, evidence has been crosschecked, supplemented and expanded. In fact, the bulk of the diplomatic communication, hitherto undisclosed, has been declassified in the course of this research. Governments have also made other relevant documents available, including memoranda and domestic correspondence, thus producing much of the empirical material called for by the research questions of this dissertation and its four studies.

Documents and archival records are supplemented with interview data. Again challenges of access to sources have been overcome by the methods discussed above. While not conducted in perfect settings, all interviews planned for this dissertation have been carried out. Among targeted interviewees are top decision-makers, including two foreign ministers and a number of high-ranking officials, not only in Norway but also in other involved governments. By accessing these primary interview

targets evidence has not been distorted, as they would have been if collected from others than the involved decision-makers.

In sum, despite the challenges that have been discussed above, this dissertation has had a unique access to evidence, or in other ways yielded new and extensive evidence, relating to the Svalbard offshore case. Thus, although not its explicit purpose, this dissertation makes a significant empirical contribution to the study of international affairs in the Euro-Arctic region. By probing multiple sources of evidence and obtaining data from different states involved in the controversy, the quality of the data are enhanced. As in navigation, triangulation has increased precision.

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Chapter 4

STUDY I

Torbjørn Pedersen, 'The Svalbard continental shelf controversy: Legal disputes and political rivalries', *Ocean Development & International Law* 37, no. 3-4 (2006).

Chapter 5

STUDY II

Torbjørn Pedersen and Tore Henriksen, 'Svalbard's maritime zones: The end of legal uncertainty?' *The International Journal of Marine and Coastal Law*, submitted.

Chapter 6

STUDY III

Torbjørn Pedersen, 'The constrained politics of the Svalbard offshore area', *Marine Policy* (2008), in press.

Chapter 7

STUDY IV

Torbjørn Pedersen, 'The dynamics of Svalbard diplomacy',
Diplomacy & Statecraft 19, no. 2 (2008).

Chapter 8

DISCUSSION AND CONCLUSIONS

8.1. Introduction

The previous four chapters demonstrated how international politics obstruct a legal resolution of the dispute over rights outside Svalbard even after states have flagged their intention of seeking adjudication;¹ how legal rules for deciding continental shelf limits indeed constrain international politics toward the Svalbard offshore area;² how the foreign policies of Norway in the area are curbed amid fears of international repercussions;³ and how Norway's diplomatic efforts and exercise of jurisdiction have had unintended systemic ramifications.⁴

The objective of this chapter is to relate these findings to the overall research purpose of this dissertation and answer the four specific research questions that were raised in its introduction. To recapitulate from Chapter 1, the purpose is to explore processes that affect the Svalbard offshore areas, that is, the dynamics of international politics and international law on one hand, and the exchanges between the international system and foreign policy on the other. The four questions were:

- *How (if at all) does politics in the Svalbard offshore areas affect the outlook for a legal settlement of disputes?*

¹ Torbjørn Pedersen, "The Svalbard Continental Shelf - Legal Disputes and Political Rivalries," *Ocean Development and International Law* 37, no. 3-4 (2006). (Chapter 4)

² Torbjørn Pedersen and Tore Henriksen, "Svalbard's Maritime Zones: The End of Legal Uncertainty?" submitted. (Chapter 5)

³ Torbjørn Pedersen, "The Constrained Politics of the Svalbard Offshore Area," *Marine Policy* in press (2008). (Chapter 6)

⁴ ———, "The Dynamics of Svalbard Diplomacy," *Diplomacy & Statecraft* 19, no. 2 (2008). (Chapter 7)

- *How (if at all) do legal rules for determining continental shelf limits affect politics toward the Svalbard offshore areas?*
- *How (if at all) does the international system affect the policies of Norway toward the Svalbard offshore areas?*
- *How (if at all) do the policies of Norway toward the Svalbard offshore areas affect the international system?*

The two former questions concern the relationship between international politics and international law, while the two latter concern the relationship between the international system and foreign policy. As will be recalled from Chapter 2, many scholars have explored the causal links between politics and law, as well as between system and policy, but their understandings differ.

Elaborated on below, Chapters 4-7 reveal ambiguous and paradoxical causal connections between politics and law and between the system and policy. In effect, the studies also disclose a politics-law *process* as well as a system-policy *process*, and expose some mechanisms through which these processes induce conflict and order in the Svalbard offshore areas.

The studies reproduced as Chapters 4 and 5 relate to the first two research questions that were raised and address the interplay of politics and law. States with conflicting interests and different power capabilities are expressing incompatible legal positions, while steering clear of adjudication and other steps that would produce a definite settlement. Law seemingly bows to politics. Still, legal rules for delineating the continental shelf are reshaping the positions of states, and accordingly law influences international politics in a reverse causal relationship.

Findings presented in Chapters 6 and 7 point to the relationship between two analytical levels, addressed as the international system and foreign policy, and how this affects the Svalbard offshore areas. The results relate to the two latter research questions of the dissertation. Paradoxically, while one study finds that the policies of Norway are constrained by systemic conditions, the other explains how systemic conditions are influenced by the policies of Norway. The findings identify mechanisms through which the system-unit process affects the maritime areas outside Svalbard.

8.2. International politics and international law

Bowing to politics

The study rendered as Chapter 4 established the dominance of politics over international law even in a controversy that is essentially cast in legal terms. Although conflicting views and positions in the Svalbard offshore area relate to legal interpretations of the Svalbard Treaty, the Law of the Sea Convention and general international law – hence a matter of legal theory – the courses of action seem guided by non-legal determinants, including the interests and power of the contending parties. States have indeed expressed military-strategic, energy-strategic and/or economic interests in these contested ocean areas. Conflicting interests, more than differences in theoretical principles of treaty interpretation, also underline the graveness of the dispute and the fears it causes in Norway.⁵ The general notion of law bowing to politics, as suggested by

⁵ Chapter 6.

realist scholars within international relations research, has been strengthened by the study of conflict resolution processes for the controverted maritime zones adjacent to Svalbard:

Addressing a topic that encompasses the first of the four research questions of this dissertation, Chapter 4 searched for processes aimed at settling the disputes relating to the maritime zones around Svalbard. As has been noted by Abbott et al., states may «pursue their claims diplomatically or through any formal dispute procedure they have accepted».⁶ The first has a low degree of legalization, the latter a high degree.⁷ First assuming the controversies over rights in the maritime areas to be legal, it searched for conflict resolution activities advised by international law, in other words procedures with a high degree of legalization. The Svalbard Treaty itself does not provide any dispute settlement mechanisms, but states are imposed to seek a resolution by peaceful means by Article 33(1) of the Charter of the United Nations.⁸ Dispute settlement should be reached, if not through diplomatic methods, through adjudication by a disinterested third-party.⁹ Notwithstanding its legal character, the Svalbard area dispute is not sought settled through any of these mechanisms. The study found that Norway refuses to negotiate over its rights in the maritime areas adjacent to Svalbard with the other contending parties, and it also rules out a revision of the Svalbard Treaty by voluntary methods involving good offices and mediation, inquiry, conciliation and arbitration. With a negotiated

⁶ Kenneth W. Abbott et al., "The Concept of Legalization," *International Organization* 53, no. 3 (2000), 409.

⁷ *Ibid.*, 404.

⁸ Also see the United Nations Convention on the Law of the Sea, Article 279.

⁹ See Malcolm N. Shaw, *International Law*, 3 ed. (New York: Cambridge University Press, 1991; reprint, 1995), 629.

settlement thus precluded, contending states would be expected to refer their legal case to the International Court of Justice for adjudication. Norway recognizes the compulsory jurisdiction of the Court and assures that it is ready to argue its case if it is referred to The Hague. Both Iceland and Spain have signaled their intention of referring the case to the International Court of Justice, and United Kingdom has hinted that the dispute could be resolved through adjudication.¹⁰ However, presently, 22 years after Spain as the first contending state flagged its intention to seek adjudication, and 14 years after Iceland did the same, no state has referred the case to the court. Despite its legal character, there are no moves to settle the dispute by means advised by international law. This finding suggests that states indeed are political actors in an international anarchy, where legal steps toward a settlement either is in their disinterest or could be regarded as an encroachment on their sovereignty.¹¹

Moreover, the current diplomatic efforts by Norway primarily seek to ease political constraints and potential threats to peace and stability in the area rather than bringing about a negotiated settlement. These are efforts with a low degree of legalization.¹² Even after decades of conflict, rather than seeking dispute settlement, Norway has initiated dialogues with partners and allies to gain some leverage in its exercise of jurisdiction in the disputed area. The government has sought «understanding» and

¹⁰ Spain and the United Kingdom are not named in the Chapter 4. Diplomatic correspondence obtained on a later date show that Spain informed that it would refer the case to "competent international courts." Spain, diplomatic note Núm 56/18 to Norway 30 July 1986. The United Kingdom informed that its position had strong support in international law if the issue "were ever referred to the International Court of Justice." United Kingdom, diplomatic note to Norway 17 March 2006.

¹¹ Kenneth W. Abbott and Duncan Snidal, "Hard and Soft Law in International Governance," *International Organization* 54, no. 3 (2000).

¹² Abbott et al., "The Concept of Legalization."

reassurances more than acknowledgement or accept from foreign powers for its policies in the Svalbard area. In these dialogues Norway has appealed to others' interests, for instance linking its management of the resources off Svalbard to their respective needs for energy security, rather than persuading with legal arguments.

These results demonstrate the shortcomings of traditional legal approaches to the Svalbard offshore issue. International law does not produce a settlement. It may mediate a settlement only if invoked by the states and consented to by the disputing parties. Arguably, despite the legal nature of the controversy, political factors appears as cardinal in the dynamics of dispute settlement, as has been suggested by realist scholars. As a result, the issue may endure as a political wrangle.

Bowing to law

The study reproduced as Chapter 5 demonstrated how international law could set new premises for international politics and how it constrains state behavior even beyond what was intended at the time of its creation. The study examined whether the process of determining outer limits for continental shelves beyond 200 nm could influence politics in the Svalbard offshore area, thus addressing the second research question of the dissertation. For decades foreign powers have disagreed over Norway's right under the Law of the Sea Convention to establish maritime zones adjacent to the territorial sea of Svalbard, the rights of contracting parties to the Svalbard Treaty to exploit resources on equal footing as Norwegians in areas beyond the territorial sea, and Norway's

entitlement to exercise coastal state jurisdiction in maritime areas outside Svalbard. Since some of these contentions have been poorly substantiated and may seem unwarranted by international law, Norway has been challenged even beyond what may be subscribed to differences in legal views and interpretation.¹³

The study concluded that the delineation process, as established by the Convention and involving the Commission on the Limits of the Continental Shelf (CLCS), indeed alters the premises for politics toward the areas around Svalbard. The Commission is not a dispute settlement body, but the process calls upon all parties disputing the Norwegian claim to inform of any cases of «unresolved land and maritime disputes». In effect, the process is a call that urges parties to assert their objections before the Secretary-General of the United Nations if they have any. Failure to do so could equal to estoppel, and states would thereby be precluded from asserting objections at a later stage.

Indeed, none of the states that have historically challenged Norway over the right to establish maritime zones and exercise coastal state jurisdiction outside the territorial sea of Svalbard seemed able to uphold their objections within the framework of the ongoing legal and technical process of determining the outer limits of the continental shelf.¹⁴ Their acquiescence to the Norwegian claim to zones around Svalbard could prevent them from pursuing their former positions at a later stage, both theoretically and practically. Hence, as the process affirms that Svalbard

¹³ Chapter 7.

¹⁴ An overview at the Commission on the Limits of the Continental Shelf <http://www.un.org/Depts/los/clcs_new/submissions_files/submission_nor.htm> accessed 10 April 2008.

generates zones under the Convention and general international law, it also consolidates Norwegian jurisdiction over the area. Accordingly, the legal and technical process of determining shelf limits may constrain politics, setting a new standard for warranted claims in the maritime areas around Svalbard.

This result is not merely a legal-technical argument, but has political consequences. Legal rules bring about political repositioning, even while national interests are constant. Amid the delineation process objectors to the Norwegian management of the maritime zones of Svalbard have not substantiated their earlier contentions in the legal terms of the Convention and general international law. Notably fisheries nations, with strong interests in maintaining access to maritime areas adjacent to Svalbard,¹⁵ seem to have bowed to the dynamics of international law. Iceland, a persistent objector to the Norwegian views, ceased its repeated claim that areas beyond the territorial sea were outside the jurisdiction of any state. It acknowledged that Svalbard, as any other territory, could generate both an Exclusive Economic Zone as well as a continental shelf under the Law of the Sea.¹⁶ Spain abandoned its long-held position that the zones of Svalbard featured a regime equivalent to the high seas. A new position, conveyed in a reaction to the Norwegian submission to the CLCS, is arguably a reservation of rights of its nationals under the Svalbard Treaty rather than an objection to Norway's right to zones and coastal state

¹⁵ Notably, Iceland regards access to fishing grounds a "vital interest" to the nation. See Ministry of Foreign Affairs of Iceland, letter to the International Court of Justice, 29 May 1972 in the *Fisheries Jurisdiction case (UK v Iceland)* [1972] Quoted from <<http://www.icj-cij.org/docket/files/55/5749.pdf>> accessed 28 March 2008.

¹⁶ Iceland, Note to Norway, 11 July 2006. Also see Thomas Heidar, "The Svalbard issue." Memorandum, the Icelandic Ministry of Foreign Affairs, March 2006.

jurisdiction.¹⁷ Even Russia in its reaction to Norway's submission seemed to abandon earlier views, including assertions that the outer shelf limits were determined by coordinates named in Article 1 of the Svalbard Treaty rather than through the procedures of the Convention.¹⁸ Thus, the legal-technical process of determining limits seems to have contributed to reducing a complex international dispute, with plural positions reflecting diverging national interests, into a dispute with a clearer legal character. Accordingly, due to its increasingly legal-technical character, the issue is partly de-politicized. This finding correspond with the assertion made by Friedrich Kratochwil, who describes international rules as «a type of directive that simplify choice-situations by drawing attention to factors which an actor has to take into account».¹⁹

The politics-law process

The first process, addressing the interaction of politics and law, shows how legal dispute settlement procedures seem to carry little or no independent weight if not concurring with the national interests of the disputing actors, notwithstanding the highly legal character of the dispute. The study suggests that clashing political interests preclude a legal settlement. There is no evident normative «pull» toward a negotiated settlement or adjudication, even though it could end their long-standing differences in the legal interpretation of the Svalbard Treaty. Diplomatic

¹⁷ Spain, Note Verbale to the Secretary-General of the United Nations, 3 March 2007. Also see Spain, Note Verbale to Norway, 2 March 2007.

¹⁸ Russia, Note no. 82 to the Secretary-General of the United Nations, 21 February 2007.

¹⁹ Friedrich V. Kratochwil, *Rules, Norms and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs* (Cambridge: Cambridge University Press, 1989; reprint, 1990).

consultations, with an inferior degree of legalization, are preferred although they have no legal bindings. Viewed in isolation, this result suggests that international law interferes marginally with international politics.²⁰

However, the inference that international law therefore is a variable entirely dependent on political factors is not warranted. This dissertation also shows that international law does not fall into a one-way causal relation to international politics. Norway's consolidation of hitherto contested right to, as well as coastal jurisdiction over, maritime areas around Svalbard cannot be derogated to political factors alone. It is also a product of law, where legal instruments become autonomous factors in the shaping of politics and thus the regime for the zones of Svalbard. International law has indeed effects that were not intended by its adaptors: The Commission on the Limits of the Continental Shelf, as well as detailed procedures for determining outer limits for the continental shelf, were established to prevent states from making excessive claims.²¹ Hence, there is a discrepancy in the Svalbard case between the intended effect and the real effects of the procedures that cannot be accounted for by political variables alone. They have independent impacts on

²⁰ Chapter 2, with references to e.g. Hans J. Morgenthau, *Politics among Nations: The Struggle for Power and Peace*, 7 ed. (New York: McGraw Hill, 2006). James Leslie Brierly, *The Outlook for International Law*, vol. Scientia Verlag Aalen (1977; reprint, 1945), Henry A. Kissinger, *The White House Years* (London: Weidenfeld and Nicolson, 1979), John J. Mearsheimer, "The False Promise of International Institutions," *International Security* 19, no. 3 (1994-1995), Robert G. Gilpin, "The Richness of the Tradition of Political Realism," in *Neorealism and Its Critics*, ed. Robert O. Keohane (New York: Columbia University Press, 1986), George W. Downs, David M. Rocke, and Peter N. Barsoom, "Is the Good News About Compliance Good News About Cooperation?," *International Organization* 50, no. 3 (1996).

²¹ Ted L. McDorman, "The Role of the Commission on the Limits of the Continental Shelf: A Technical Body in a Political World," *International Journal of Marine and Coastal Law* 17, no. 3 (2002).

international relations. The influence of legal rules in the disputed offshore areas outside Svalbard is at least partially autonomous, in the sense that international law is a political determinant.²²

In sum, the politics-law process has been addressed as an explanatory variable spurring conflict and providing order in the maritime areas adjacent to Svalbard. At the same time the process is suggested to be composed by two factors that are interdependent. While legal dispute settlement mechanisms are displaced in the political wrangle over rights, international law also shape state behavior. It is evident that, as Abbott et al. put it, «legal and political considerations combine to influence behavior».²³ International law is, as Lisa Martin and Beth Simmons argue for institutions, «both object of strategic choice and a constraint on actors' behavior».²⁴ Law is simultaneously cause and effect.²⁵ It is on one hand «deeply embedded in politics: affected by political interests [and] power», as asserted by Judith Goldstein and Robert Keohane, but at the same time, «law and legalization affect political processes and political outcomes. The relationship between law and politics is reciprocal».²⁶ This

²² Argument for international law thus runs parallel to those for regimes, as argued by e.g. Stephen D. Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables," in *International Regimes*, ed. Stephen D. Krasner (Ithaca: Cornell University Press, 1983); for institutions, as argued by e.g. Lisa L. Martin and Beth A. Simmons, "Theories and Empirical Studies of International Institutions," *International Organization* 52, no. 4 (1998); values, as depicted by e.g. Judith Goldstein and Robert O. Keohane, "Ideas and Foreign Policy: An Analytical Framework," in *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change*, ed. Judith Goldstein and Robert O. Keohane (Cornell University Press, 1993); and social norms, as argued by e.g. Jon Elster, *The Cement of Society: A Study of Social Order* (Cambridge: Cambridge University Press, 1989; reprint, 1994).

²³ Abbott et al., "The Concept of Legalization," 419.

²⁴ Martin and Simmons, "Theories and Empirical Studies of International Institutions," 729.

²⁵ *Ibid.*, 743.

²⁶ Judith Goldstein et al., "Introduction: Legalization and World Politics," *International Organization* 54, no. 3 (2000), 387.

dissertation has provided empirical evidence for this theoretical assertion and disclosed some mechanisms through which this reciprocity works.

8.3. International system and foreign policy

Shaped by the system

The study reproduced as Chapter 6 demonstrated that Norway in the maritime areas adjacent to Svalbard is constrained by the international system, featuring the international controversy over its sovereign entitlements. Addressing the third research question of the dissertation, the study set out testing an hypothesis that the exercise of Norwegian authority – expressed through policy statements, legislation, law enforcement and prosecution – is insensitive to the contending policies of foreign powers toward the area. It rejected the hypothesis and found that external factors indeed constrain behavior in multiple ways, causing modifications in the behavior of both political and non-political domestic actors, in different phases of the exercise of national authority, from legislation to enforcement and prosecution.

First it found the non-legislative policies of Norwegian authorities to be constrained by the international system. The Norwegian government and parliament see the debate over Norway's jurisdiction around Svalbard as one of their main foreign policy challenges, prescribing diligent diplomatic efforts to ease the constraints. Norway views the interests and power capabilities of other states as indicating or defining its own

«maneuvering room», a metaphor adopted by Foreign Minister Jonas Gahr Støre.²⁷

Also national legislation reflects that Norway's rights in the maritime zones adjacent to Svalbard are contended. For instance, Norway chose to establish a non-discriminatory 200 nm Fisheries Protection Zone (FPZ) around Svalbard rather than a full Exclusive Economic Zone (EEZ), primarily done to avoid confrontations with foreign powers.²⁸ Its self-imposed moratorium on petroleum activity in the northern Barents Sea is also partly due to the international controversy over rights offshore Svalbard.²⁹

Moving beyond governmental policies, the paper also found non-political actors to be constrained by external factors. Law enforcement by the Norwegian Coast Guard in the 200 nm zone is exercised leniently as a response to the international controversy. In operation guidelines the Coast Guard has explicated that actions of law enforcement are taken at a higher thresholds in the FPZ around Svalbard than in the uncontested EEZ outside its mainland. Legal charges and arrests are more common reactions to violations in the uncontested zone than in the Svalbard zone.

The Norwegian public prosecution also admits that it has been cautious in incidents that have involved foreign vessels operating in contested Svalbard waters. The Director of Public Prosecution confirmed a «culture

²⁷ Jonas Gahr Støre, "Et hav av muligheter – En ansvarlig politikk for nordområdene," Tromsø 10 November 2005.

²⁸ See for instance, Knut Frydenlund, *Lille land – hva nå? Refleksjoner om Norges utenrikspoliske situasjon* (Oslo: Universitetsforlaget, 1982)

²⁹ Jan Petersen and Jonas Gahr Støre, personal communication (interviews), 15 April 2005 and 1 December 2006, respectively.

of caution» after one episode in the 200 nm zone involving a Russian trawler that escaped arrest in 2005, and stated that decisions should not be made in a political vacuum. Foreign policy considerations «may weigh heavily», he confirmed, which is also reflected in historical decisions. For instance, the public prosecutors issued in 1998 a *nolle prosequi* and discontinued prosecutions against a Russian vessel that was being apprehended from the fisheries protection zone, an episode that had set off hectic diplomatic activity.

The Norwegian sensitivity to external factors in its management of the Svalbard offshore area reflects that Norway is a small state with limited capabilities to handle clashes with foreign powers, not least by military means. The finding corresponds with the realist notion of states relating to each other in an anarchic system, where the system and its structure pose constraints on policy behavior.³⁰

Shaping the system

The study reproduced as Chapter 7 explored the causes for policy change in the maritime areas adjacent to Svalbard. It demonstrated how the policies of Norway affected its own «maneuvering room», and in doing so, the study relates directly to the fourth and last research question of the dissertation. The study found that the acts of Norway to a large extent provided the occasions or opportunities for others not only to express but also to shape and develop their foreign policies. In effect, small-state

³⁰ Chapter 2.

Norway, intended or not, influences the international system – the system it in turn is constrained by.

Assessing the diplomatic history of the Svalbard offshore dispute, the paper found that foreign policies toward the area have been shaped and conveyed in bursts and epochs. Examining these epochs, the study found that foreign policies conflicting with Norwegian policies often have been shaped on the back of actions by Norway. Repeatedly, changes in Norwegian legislation and enforcement practices occasioned other states to assess and reassess their interests in the maritime areas adjacent to Svalbard. For instance, contending positions were shaped after Norway passed new legislation applicable to the zones amid developments in the law of the sea in the 1970s and informed foreign powers of this in diplomatic communication. This occasioned new policies toward the area of states such as Hungary, Czechoslovakia and Poland. Also, as the Norwegian Coast Guard adopted new enforcement measures in the fisheries protection zone in 1986 and 1994, new policies were assumed by states such as Spain and Iceland.

Most strikingly, perhaps, diplomatic initiatives by Norway to win endorsement have prompted foreign powers to consider their interests in the area, paradoxically often resulting in the opposite of support, i.e., reservations and objections. The first wave of reservations followed the diplomatic consultations in which Norway drew attention to the Svalbard area. This in turn led to a National Security Decision Memorandum by the United States National Security Council in 1976, as well as to the reservations of the USA, the United Kingdom, West Germany and France. Likewise, in the mid-1980s Norway approached the United

Kingdom to discuss any differences in legal views on Svalbard. The diplomatic efforts gave the British «a chance to explore the issue» anew, as a British official puts it.³¹ A revised and more confrontational British policy followed the Norwegian initiative. Furthermore, a series of diplomatic consultations labeled *nordområdedialogene*, initiated by Norway and commenced in 2005, have had a similar unintended effect. It provided an occasion for other treaty parties to see political opportunities in the maritime areas outside Svalbard. The flaws of the Norwegian diplomatic initiative culminated in a multinational session on the Svalbard issue in London in 2006, a session to which Norway was not invited.³²

Norway's influence on its systemic conditions is evident. The positions of foreign powers challenging the Norwegian view are not proactive expressions of *ad infinitum* interests, but are often shaped in the interaction of states, i.e., in the international system. As noted in Chapter 2, several scholars have indeed pointed to the reactive nature of foreign policymaking.³³ Attention is recognized as a bottleneck in organizational behavior,³⁴ but also a precondition for policy change. Attention, provided by both diplomatic efforts and new jurisdictional acts in the Svalbard

³¹ David Anderson, personal communication (interview), 25 January 2007.

³² UK Foreign & Commonwealth Office, personal communication (letter 0124-07), 6 March 2006.

³³ K. J. Holsti, *International Politics. A Framework for Analysis*, 6 ed. (Englewood Cliffs, NJ: Prentice-Hall International, 1992), Jeffrey S. Peake, "Presidential Agenda Setting in Foreign Policy," *Political Research Quarterly* 54, no. 1 (2001), Lydia Andrade and Garry Young, "Presidential Agenda Setting: Influences on the Emphasis of Foreign Policy," *Political Research Quarterly* 49, no. 3 (1996), B. Dan Wood and Jeffrey S. Peake, "The Dynamics of Foreign Policy Agenda Setting," *The American Political Science Review* 92, no. 1 (1998).

³⁴ *Mutatis mutandis*, Herbert A. Simon, *Administrative Behavior. A Study of Decision-Making Processes in Administrative Organization*, 3 ed. (New York: The Free Press, 1976), 294.

offshore case, repeatedly created what Johan Olsen describes as a «choice opportunity»,³⁵ and K. J. Holsti depicts as a foreign policy «occasion».³⁶ Such opportunities and occasions have in turn resulted in new policies toward the Svalbard area.

The system-policy process

The actions of a state and the interaction of states may be troublesome to keep separate, as demonstrated by these studies. Only for analytical purposes should system or policy be regarded a primitive unit. The international system is not independent of foreign policy, just as foreign policy is not independent of the international system. As Wendt points out, the system and its entities are co-determined or mutually constituted entities.³⁷ When the system was regarded the independent variable of the analysis, as implied by the third research question, it became evident that the policies of Norway were constrained by it. In line with the fundamental structural realist notion of state behavior, the system (and its structure) powerfully influences behavior.³⁸ The finding dismissed any foreign policy analysis based exclusively on domestic factors, since the study implies that heeds of international peace and stability weigh

³⁵ Johan P. Olsen, "Public Policy-Making and Theories of Organizational Choice," *Scandinavian Political Studies* 7 (1972).

³⁶ Holsti, *International Politics. A Framework for Analysis*, 273-74.

³⁷ For instance, Alexander Wendt, "The Agent-Structure Problem in International Relations Theory," *International Organization* 41, no. 3 (1987): 339. Also see ———, "Anarchy Is What States Make of It: The Social Construction of Power Politics," *International Organization* 46, no. 2 (1992); ———, "Constructing International Politics," *International Security* 20, no. 1 (1995); Walter Carlsnaes, "The Agency-Structure Problem in Foreign Policy Analysis," *International Studies Quarterly* 36, no. 3 (1992).

³⁸ Gilpin, "The Richness of the Tradition of Political Realism," 318. Also see Kenneth N. Waltz, *Theory of International Politics* (New York: Random House, 1979), 122.

heavily, not only in policymaking, but in the whole exercise of contested Norwegian rights in the maritime areas adjacent to Svalbard.

As the research question was turned around, addressing the policies of Norway as the independent variable, it became evident that the international system was altered by actions of Norway. Even while the structure of the system has been relatively stable, the behavior of small-state Norway has altered the policies of others. Relatively modest changes in Norway's legislation or enforcement practices in the areas outside Svalbard could cause substantial shifts in the views and positions of other states. Also Norwegian diplomatic efforts, intended to ease policy differences, could have undesirable systemic effects. This finding reflects the notion that governments often are reactive rather than proactive,³⁹ and supports earlier studies suggesting policy agendas to be largely determined by external events.⁴⁰

In combination, the two causal links make up a system–policy process that is paradoxical: Norway has by its exercise of rights and diplomatic efforts nourished systemic conditions it in turn is constrained by. On one hand, even while the structure of the system has been relatively stable, small-state Norway has repeatedly spurred major shifts in the policies of others toward Svalbard. By occasioning for and causing other states to revise their policies toward the Svalbard offshore area, Norway by its actions has altered its case-specific systemic conditions. On the other hand, the system has causal effects on the policies of Norway by defining

³⁹ Holsti, *International Politics. A Framework for Analysis*, 273.

⁴⁰ Wood and Peake, "The Dynamics of Foreign Policy Agenda Setting.", Peake, "Presidential Agenda Setting in Foreign Policy.", Andrade and Young, "Presidential Agenda Setting: Influences on the Emphasis of Foreign Policy."

the «maneuvering room» of Norway.⁴¹ Foreign policies contending Norway's claimed rights represent a latent threat to Norwegian interests as well as peace and stability in the area, since actions by Norway may lead to international repercussions. Norwegian authorities are thus restrained in the exercise of Norway's contested rights in the areas outside Svalbard. Ironically Norwegian diplomatic efforts to ease its systemic conditions may indirectly constrain Norway's opportunity to exercise its claimed sovereign rights in the zones adjacent to the archipelago.

In sum, while most previous studies of the system-policy processes – notably the agent-structure debate – have been highly abstract, attending to meta-ontological and epistemological issues,⁴² this dissertation has made an empirical contribution to the field. It has substantiated the assertion that the international system and foreign policy are co-determined entities. Moreover, it has explored some case-specific mechanisms through which the system and policy are mutually determinants.

8.4. Concluding remarks

This dissertation has made an empirical contribution to the general understanding of causal connections between international politics and law, as well as between the international system and each state's foreign

⁴¹ Term consolidated in Jonas Gahr Støre, "Et hav av muligheter: En ansvarlig politikk for nordområdene," Tromsø 10 November 2005.

⁴² Christopher Hill, *The Changing Politics of Foreign Policy* (New York: Palgrave Macmillan, 2003), 26.

policies. It has also made a case-specific contribution to the understanding of how order and conflict are induced to the maritime areas adjacent to the Svalbard archipelago. As for the latter, two observations will be elaborated on in these concluding remarks. These are observations that are reinforced by both the politics-law and the system-policy processes. The first observation points to the *attention cost*, referring to how attention to the Svalbard issue may preclude a further consolidation of Norwegian offshore rights. The second is *the binary pull*, i.e., the draw toward a more lucid dispute over rights in these maritime areas, where only two alternative legal positions seem to endure.

Attention cost

By «attention cost» this dissertation refers to the negative implications that international attention has to an orderly and peaceful regime in the maritime areas adjacent to Svalbard. From a Norwegian perspective, attention cost appears in both the politics-law and the system-policy processes. As for the former process, a general lack of attention to conflicting interests in the Svalbard offshore area has enabled small-state Norway to provide for a national and arguably orderly regime,⁴³ despite objections from powerful states, even from those with overwhelming nuclear capabilities. Arguably, more attention would have been coupled with more conflict. The orderly influence that legal rules for shelf delineation have on Svalbard politics has also been explained in terms of attention: As noted by Kratochwil, rules simplify choice-situations by

⁴³ Geir Hønneland, *Barentsbrytninger: Norsk Nordområdepolitikk etter Den kalde krigen* (Kristiansand S.: Høyskoleforlaget, 2005), Alf Håkon Hoel, "Det folkerettslige rammeverket for ressursforvaltningen i Barentshavet," *Ottar*, no. 260 (2006).

directing attention to certain factors rather than others. Law affects political processes partly by channeling attention. Demonstrated in this dissertation, the legal procedures for determining the outer limits for the continental shelf is directing international attention away from disputes over Norway's right to establish maritime zones around Svalbard, since the delineation process underway for the continental shelf preconditions that Norway has such right. Amid the determination of the northern limits for the Norwegian shelf, states including Russia, Spain and Iceland seem to have discontinued their explicit objections to Norway's right to establish maritime zones beyond the territorial sea of Svalbard. Arguably, the objections have faded due to the economy of attention. In any event, order in the maritime zones adjacent to Svalbard – based on Norwegian jurisdiction – has been most effectively maintained and promoted in the shadow of international attention.

As has been demonstrated, attention is not merely a function of some permanent national interests. Lack of attention does not necessarily imply a lack of potential interest. Interests can also be sequels to attention. The dissertation has proved that states are as much reactive as they are proactive, and that national interests are identified and assessed following attention, sparked by events. When attention is attracted to one issue, interests in it may arise.

Norwegian claimed rights in the Svalbard area are most effectively consolidated when little international attention is paid to the issue. Since other states' policies toward the maritime areas adjacent to Svalbard are reassessed and sharpened during periods of increased level of awareness, as explained by the system-policy process, it is rarely in the interest of

Norway to attract unnecessary attention. While a firmer exercise of national jurisdiction in the areas outside Svalbard may be required to fortify Norway's claimed sovereign rights, diplomatic efforts are not. Norway's latest strategy of putting the High North on the international agenda, also by initiating the bilateral consultations known as *nordområdedialogene*, has thus proven to be ineffective, at worst counterproductive. Parallel, over the Svalbard territory Norway has cemented its sovereignty through incremental policies since the 1970s and is today virtually uncontested.⁴⁴

The binary pull

The last observation regards the pull toward an increasingly bipolar conflict over rights in the maritime zones adjacent to Svalbard. While the international debates hitherto have involved multiple actors expressing a myriad of views concerning the right to establish maritime zones, the right to exercise jurisdiction in Svalbard waters and the application of the Svalbard Treaty to the offshore areas, the complexity is coming to an end. Legal views are becoming more refined and are approaching two distinct camps: In practice, the Norwegian and the British. Both the politics-law and the system-policy processes pull toward a more clear-cut split in positions.

Firstly, as the politics-law process suggests, legal rules for determining the outer limits for the continental shelf are causing repositioning among

⁴⁴ Chapter 7.

those states contending Norway's claim to zones around Svalbard.⁴⁵ While dodging adjudication on the issue, they are directed away from positions suggesting that Norway is not entitled to zones by the procedures established by the United Nations Convention on the Law of the Sea. It becomes impossible to uphold former positions since the process of determining limits in fact preconditions that Norway may establish maritime zones beyond the territorial sea of Svalbard. Moreover, by acquiescence to the delineation process, they acknowledge Norwegian jurisdiction over these zones. The remaining question is whether the rights and obligations provided by the Svalbard Treaty are applicable to the zones. Hence their positions are likely to be guided toward the British position, which suggests that the Svalbard Treaty indeed applies to the 200 nm zone as well as the continental shelf adjacent to the archipelago. If legal rules indeed have the effects as have been suggested by this dissertation, international differences will in the future be regarding the application of the Svalbard Treaty to the maritime zones beyond the territorial sea, and not revoke Norway's right and obligation to exercise jurisdiction in the areas.

Secondly, this binary pull is reinforced by the system–policy process. As noted, Norway has sought to increase the international attention to the Svalbard offshore issue through the *nordområdedialogene*. An increased attention level has in turn spurred more coordination among the states that oppose Norway's views. As a response to the Norwegian diplomatic endeavors, states have increasingly exchanged and discussed their legal

⁴⁵ Among those are positions expressed by Russia (the Soviet Union), Spain, Iceland and the European Commission DG Fisheries. Historically, also Poland, Hungary and Czechoslovakia have questioned Norway's entitlement to establish zones. See Chapter 7.

views. As already noted, the United Kingdom gathered a number of contracting parties to the Svalbard Treaty in London in 2006 to discuss their positions. With a more coordinated opposition, Norway may face a more uniform contention. Again the coordinated position seems to address the application of the Svalbard Treaty provisions to offshore areas rather than challenging Norway's right as coastal state to exercise jurisdiction in these zones.

The causes of conflict and order in the maritime areas adjacent to Svalbard are complex. This dissertation has explored some determinative processes that affect the area, notably the interplay of international politics and law, and the exchanges between the international system and foreign policy. It has sought to add new empirical as well as theoretical insight to the issue: At stake is not only a sustainable management of natural resources in a sensitive and delicate Arctic ecosystem, but also the safety and wellbeing of the peoples of the High North. As the race for natural resources in the region picks up, understanding the causes for conflict and order has never been more important.

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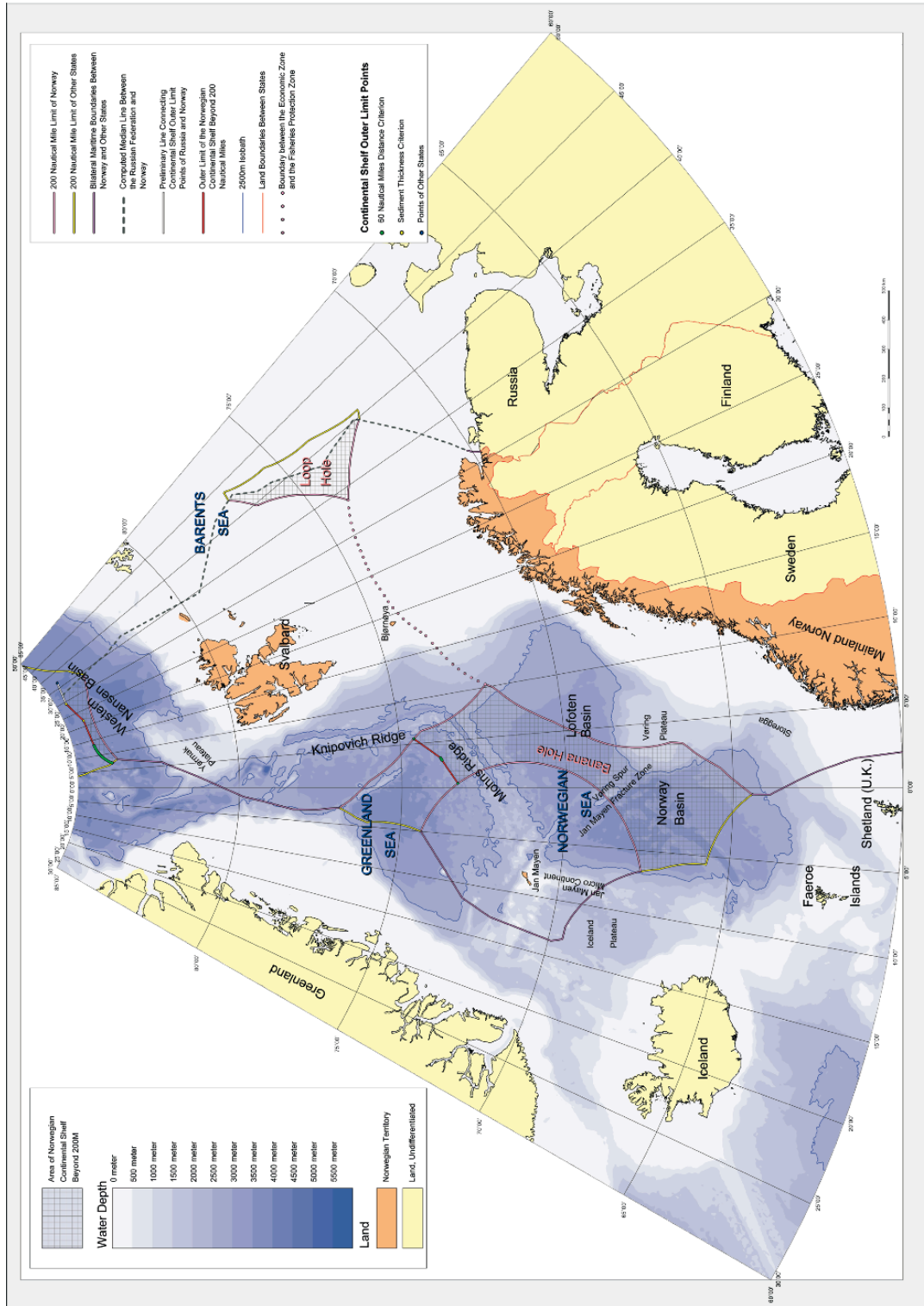
APPENDIX

APPENDIX II. PARTIES TO THE SVALBARD TREATY²

Party	Into force
Afghanistan	23.11.1925
Albania	29.04.1930
Argentina	06.05.1927
Australia	14.08.1925
Austria	12.03.1930
Belgia	14.08.1925
Bulgaria	20.10.1925
Canada	14.08.1925
Chile	17.12.1928
China	14.08.1925
Czech Republic	01.01.1993
Denmark	14.08.1925
Domenican Republic	03.02.1927
Egypt	13.09.1925
Estonia	07.04.1930
Finland	14.08.1925
France	14.08.1925
Germany	16.11.1925
Greece	21.10.1925
Hungary	29.10.1927
Iceland	31.05.1994
India	14.08.1925
Italy	14.08.1925
Japan	14.08.1925
Monaco	14.08.1925
New Zealand	14.08.1925
Netherlands	14.08.1925
Norway	14.08.1925
Poland	02.09.1931
Portugal	24.10.1927
Romania	14.08.1925
Russia	07.05.1935
Saudi Arabia	14.08.1925
South Africa	14.08.1925
Spain	12.11.1925
Switzerland	14.08.1925
Sweden	14.08.1925
United Kingdom	14.08.1925
USA	14.08.1925
Venezuela	08.02.1928

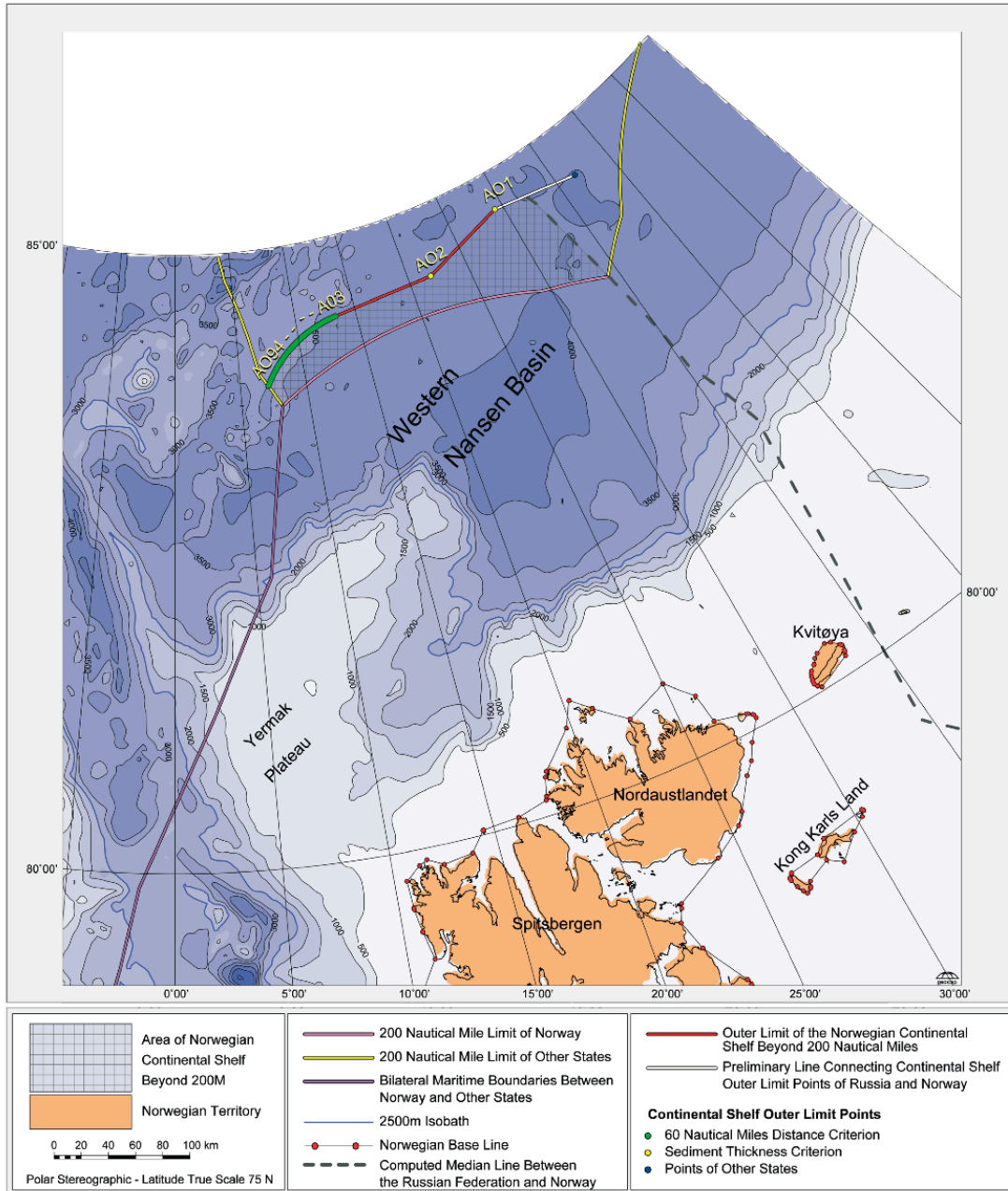
² Norwegian Ministry of Foreign Affairs, *Traktatsregisteret*
<<http://www.lovdato.no/traktater/>> accessed 18 February 2008.

APPENDIX III. NORWEGIAN CONTINENTAL SHELF BEYOND 200 NM³



³ Map is part of Continental Shelf Submission of Norway in respect of areas in the Arctic Ocean, the Barents Sea and the Norwegian Sea: Executive Summary, 2006. Image courtesy of the Norwegian Petroleum Directorate.

APPENDIX IV. SHELF BEYOND 200 NM IN WESTERN NANSEN BASIN⁴



⁴ Map is part of Continental Shelf Submission of Norway in respect of areas in the Arctic Ocean, the Barents Sea and the Norwegian Sea: Executive Summary, 2006. Image courtesy of the Norwegian Petroleum Directorate.

APPENDIX V. ABBREVIATIONS

ASW	Antisubmarine Warfare
CLCS	Commission on the Limits of the Continental Shelf
CSCE	Conference on Security and Cooperation in Europe
DG	Directorate-General (of the European Commission)
EC	European Commission
EEZ	Exclusive Economic Zone
EU	European Union
FPZ	Fisheries Protection Zone
ICJ	International Court of Justice
ILM	International Legal Materials
LNTS	League of Nations Treaty Series
LOS	Law of the Sea
LOSC	Law of the Sea Convention
MAGE	Marine Arctic Geological Expedition
mil.	nautical mile
NATO	North Atlantic Treaty Organization
nm	nautical mile
PCIJ	Permanent Court of International Justice
UN	United Nations
UNCLOS	United Nations Conference on the Law of the Sea
UNTS	United Nations Treaty Series
USGS	United States Geological Survey

