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## Conflict on the Right to Use Mineral Resources on Svalbard - An Outline

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Dariusz Rozmus\*

*The Arctic – the place of the future<sup>1</sup>*

## CONFLICT ON THE RIGHT TO USE MINERAL RESOURCES ON SVALBARD – AN OUTLINE

### INTRODUCTION

The subject of the article is a legal dispute between Norway and other states about the possibility of conducting mining operations on the continental shelf around the islands of Svalbard<sup>2</sup>. It is mainly about the possibility to extract liquid

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<sup>1</sup> A. and C. Centkiewiczowie, *Arktyka kraj przyszłości*, Warszawa 1954 (the above mentioned motto can be repeated constans).

<sup>2</sup> The Svalbard archipelago consists of a number of islands located in the Arctic. There is little over 1000 km to the North pole. Older literature used the name Spitsbergen for the above archipelago. The term is derived from one of the largest islands, i.e. West Spitsbergen - Vestspitsbergen. The archipelago consists of the following islands: West Spitsbergen (37,673 km<sup>2</sup>), Northwestern Land (Nordaustlandet, 14,443 km<sup>2</sup>), Edge's Island (Edgeøya, 5074 km<sup>2</sup>), Barents's Island (Barentsøya, 1250 km<sup>2</sup>), White Island (Kvitøya, 682 km<sup>2</sup>), Prince Charles Island (Prins Karl Forland, 615 km<sup>2</sup>), Royal Island (Kongsøya, 191 km<sup>2</sup>), Bjornøya, 178 km<sup>2</sup>, Swedish Island (Svenskøya, 137 km<sup>2</sup>), Wilhelmøya, (120 km<sup>2</sup>), Hopen

minerals, i.e. crude oil and natural gas. The Spitsbergen Treaty was signed in Paris on 9 February 1920. It entered into force on 14 August 1925. The Svalbard Treaty<sup>3</sup> less commonly called the Spitsbergen or Paris Treaty did not anticipate many new cases and situations that are now subject to global controversy.

Under the Treaty, Norway is the state exercising direct control over the archipelago<sup>4</sup>. Norway's dominion over Svalbard, generally after the treaty was signed, was never questioned<sup>5</sup>.

The general statements contained in the treaty are not enough to solve the problems of the contemporary world, both practical and legal. One of the most important areas of human activity is the protection of the environment. It was not included in the provisions of the Svalbard Treaty. At present about 65% of the archipelago is considered by the Norwegians as a protected nature reserve (national park and nature reserves).

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Island, Low Island (Lågøya), Great Island (Storøya), Abeløya and several hundred smaller islands. Royal Island, Swedish Island and Abeløya together form the Land of King Charles (Kongs Karl Land). Inclusion Jan Møyn Island lying west of Svalbard in the archipelago seems to be an exaggeration. In total, it is an area of land measuring approximately 61 022 km<sup>2</sup>. As for the overall surface the estimates are fluctuating. You can also find information on the area of 62,000 km<sup>2</sup>.

<sup>3</sup> Compare. [https://en.wikisource.org/wiki/Spitsbergen\\_Treaty](https://en.wikisource.org/wiki/Spitsbergen_Treaty) and <http://www.worldlii.org/int/other/treaties/LNTSer/1920/40.html> Compare available versions of the Treaty Por. [http://www.sys-selmannen.no/Documents/Sysselemanden\\_dok/English/Legacy/The\\_Svalbard\\_Treaty\\_9ssFy.pdf](http://www.sys-selmannen.no/Documents/Sysselemanden_dok/English/Legacy/The_Svalbard_Treaty_9ssFy.pdf). [access: 13.10.2017] Treaty concerning the Archipelago of Spitsbergen. Pdf. and <https://pl.wikipedia.org/wiki/Svalbard> compare also D. Rozmus, *Traktat Svalbardzki – wykorzystane szanse ?* Yearbooks of Administration and Law 2017-in printing.

<sup>4</sup> The governor of the island, who is a representative of the Norwegian government, is the direct authority of Svalbard. He guards Norwegian sovereignty. The governor has administrative and judicial power. He also deals with environmental issues. He also serves as chief of police and notary. The governor of Svalbard is appointed for a fixed term.

<sup>5</sup> S. Wolf, *Svalbard's Maritime Zone, their Status under International Law and Current and Future Disputes Scenarios*, Working Paper Research Division EU External Relations Stiftung Wissenschaft und Politik German Institute for International and Security Affairs, January 2013/ no. 02. p. 9.

Figure 1. Reindeer grazing on sparse meadows of Western Spitsbergen



Source: Photo by D. Rozmus taken in 2016.

Reserves were established by the Norwegian government on the basis of their own decisions. As noted by many commentators, the creation of large protected areas in Svalbard may jeopardize the economic interests (e.g. mining) of other parties to the Svalbard Treaty<sup>6</sup>.

Poland acceded to the Svalbard Treaty in the interwar period. In the journal we can read (*Journal of Laws of 5 November 1931*). 'It is hereby acknowledged that pursuant to the Law of the day 17 March 1931 (*Journal of Laws No. 38, item 294*). On 2 September 1931 Poland notified the accession of the Treaty concerning Spitsberg, signed in Paris on 9 February 1920, pursuant to Article 10 (7) of the abovementioned Treaty<sup>7</sup>.

<sup>6</sup> *The Svalbard Treaty's prohibition on discrimination does not prevent Norway from regulating or even prohibiting activities such as mining, tourism, and scientific research, provided that the rules apply equally to Norwegians. As Ulfstein explains: 'Norway's sovereignty implies the right to adopt laws and regulations on Svalbard, and their enforcement. Norway has no more duty to consult with other States on the government of Svalbard than any other State about the management of its territory.' These powers have been exercised extensively for the purposes of environmental protection, with parks and nature preserves now covering roughly 65 percent of the archipelago. The wide-reaching use of Norway's powers could conceivably create future tension, with Charles Emmerson warning that 'Norway's right to impose strong environmental regulations threatens to collide with signatory states' rights of equal access.'* M. Byers, J. Baker, *International Law and the Arctic*, Cambridge University Press, Michael Byers 2013, p. 18.

<sup>7</sup> <http://hornsund.igf.edu.pl/hornsund.old/traktat.html#oswiadczenie> [access: 13.10.2017]. Polish citizens have, among others the right to settle, to buy houses and stay without a visa indefinitely on the islands of Svalbard / Spitzbergen since 1931.

At present the signatories of the treaty are 42 states<sup>8</sup> including so exotic for this arctic area like the Saudi monarchy. Would the ruling family in Saudi Arabia and the other *sheikhs* have been so predictable that, by joining the treaty, they would assume expansion in the north? Oil and gas reserves on the Persian Gulf will either end or become more difficult to access. The signatory of the treaty is also Monaco. It is difficult to assume that the miniature principality of the Grimaldi family represented only their own and not primarily French interests. There are also big players in this group such as USA, China<sup>9</sup>, Russia, UK, Germany and others. Poles in Spitsbergen have been conducting scientific research since the 1930s. First they were polar expeditions immortalized among others by consolidation of the Polish geographical nomenclature in the area of Torell Land<sup>10</sup>. After World War II, the research base in Hornsund was opened<sup>11</sup>.

Figure 2. West Spitsbergen ice-free area



Source: Photo by D. Rozmus taken in August 2016.

<sup>8</sup> They are: Afganistan, Albania, Saudi Arabia, Argentina, Australia, Belgium, Bulgaria, Chile, China, Czech Republic, Denmark, Egypt, Estonia, Finland, Greece, Spain, , Iceland, India, Italy, Japan, France, Netherlands, Norway, Monaco, Poland, South Africa, South Korea, Portugal, Dominican Republic, Russia, Romania, United States of America, Sweden, Switzerland, Ukraine, United Kingdom, Venezuela, Hungary.

<sup>9</sup> After 2003 we can observe an increased interest in the Arctic from China. The construction of new icebreakers is to serve this purpose. They are to strengthen the fleet because so far China had one such ship - Snow Dragon. See: M.A. thesis A. Kopečna Význam Arktidy v mezinárodních vztazích, Univerzita Karlova v Praze, Praha 2011, p. 68.

<sup>10</sup> J. Szupryczyński, *Pierwsza polska wyprawa polarna na Spitzbergen* „Przegląd Geograficzny”, 2015, 87, p. 167-178.

<sup>11</sup> J. Machowski, *Scientific activities on Spitsbergen in the light of the international legal status of the archipelago*, „Polish Polar Research” 16/1995, 1-2, p. 13-35.

## HISTORICAL CONDITIONS

There is no consensus as to when the first people in prehistory appeared in this archipelago. The dispute is also about when the first Europeans did it in historical times.

Discovered early in the Middle Ages<sup>12</sup> or in modern times<sup>13</sup>, Svalbard attracted people primarily for economic reasons. Pomeranian settlers (non-homogeneous ethnically and religiously inhabitants from northern Russia)<sup>14</sup>, Norwegians, Dutchmen, etc. are also registered.

Interestingly, the Arctic has not offered just such raw materials as meat, fat, bone (fangs of narwhals and walruses) and skin (reindeer, foxes, seals and even bears) as well as since the 19th century it has offered minerals, mainly hard coal.

The wealth of the north was the cause of many conflicts. Thanks to historical reports and archaeological research, we know about the Norway / Swedish<sup>15</sup> armed clashes with the Russians in the Arctic for ore-bearing areas. They were fighting for lead ore deposits containing silver<sup>16</sup>.

Norway's current policy is aimed at limiting Russian influence on this archipelago. *The Arctic archipelago of Svalbard is a limited form of the Norwegian sovereignty and its settlements - among the northernmost in the world - are sites of a range of states, most notably Russia. Norway's Svalbard policy has historically focused on marginalising Russian influence*<sup>17</sup>. For the Russians the Arctic an area of economic

<sup>12</sup> In the 12th century documents of Iceland are noted records of Svalbard. Viking traces on this archipelago have not been found.

<sup>13</sup> We can assume that the explorers of the Svalbard archipelago in modern times were the Dutch in 1596. On July 17, in search of the northern route from Europe to America W. Barents (Willem Barentsz) reached Svalbard. The explorers originally thought they had reached Greenland. On the map drawn by Barents you can see the outline of the Spitzbergen shores and the outline of the southern shores of the New Earth (Nieuve Land), see R. Norum, *Barentsburg and Beyond: Coal, Science, Tourism, and the Geopolitical Imaginaries of Svalbard's "New North"* [in:] *Postcolonial Perspectives on the European High North*, ed. G. Huggan, L. Jensen, Springer 2016, pp. 35-36, fig. 2.1.

<sup>14</sup> F. Kruse, S. Dresscher, M. Koeweiden, *Pomor archaeology on Edgeøya, Svalbard* (RiS ID 10194), August 19 – 28, Final Fieldwork Report e – version. pdf 2015. M.M. Dadykina, A.V. Kraikovski, J.A. Lajus, *Hunting Activities of Russian Pomors on Spitsbergen in the 18th century: new evidence in transnational perspective. Basic research program working papers. Moscow, National Research University – Higher School of Economics (HSE) Series Humanities WP BRP 117/Hum/ 2015*. See J. Chochorowski, *Wpływ zmian środowiska na stan zachowania archeologicznych zespołów zabytkowych Sørkapplandu* [in:] W. Ziąja, S. Skiba (ed.) *Struktura i funkcjonowanie środowiska przyrodniczego Sørkapplandu* (Spitsbergen, Svalbard, Kraków 2002, p. 88; D. Rozmus, *Traktat Swalbardzki*, op. cit.

<sup>15</sup> On several occasions, Norway and Sweden more or less voluntarily formed a union. In the Middle Ages it was called the Kalmar Union, which existed from the 14th to the 16th century. In the 17th century, there was an armed attempt to re-unite Scandinavia. Another Union was established in 1814. It survived almost the entire 19th century until 1891.

<sup>16</sup> L. Berg Nilsson, *Expedition Nasafjäll – A new project on Nasa Silver Mine Kenneth Awebro*, Stockholm, presentation on 21 September 2015, Stockholm.

<sup>17</sup> Quote after: A. Grydehøj, *Informal Diplomacy in Norway's Svalbard Policy: The Intersection of Local Community Development and Arctic International Relations*, *Global Peace, Change and Security*, 26(1). DOI: 10.1080/14781158.2014.856290.

and sadly, military expansion<sup>18</sup>. Foreign Minister of the Russian Federation Vitali Rogozin was even about to say that *the Arctic is Russian Mecca*<sup>19</sup>. This is a continuation of the Russians clearly signaling their interest in the north and especially in the archipelago. In the Soviet Union, the Tass news agency called one of the Svalbard archipelago islands, Bear Island, a Soviet one<sup>20</sup>.

The Arctic is estimated to have about 13 percent of still undiscovered oil reserves and 30% of natural gas deposits<sup>21</sup>. The Russian Federation has increased its military presence in the Arctic by creating among others special military units trained for severe arctic conditions. Is it possible to talk about a cold war in the Arctic, as some commentators of the international situation suggest? It may be too far in the judgment<sup>22</sup>.

Nevertheless, it has to be noted that in recent years Russia has expressed an interest in extending the Russian continental shelf for a considerable area that covers 1, 2 million km<sup>2</sup> in the Arctic Ocean.

In addition, the Russians have set up a new state body (flexible response group) responsible for coordinating the activities of ministries and departments, regional authorities and business in the Arctic. The national socio-economic development program of the Arctic zone of the Russian Federation was approved by 2020, complementing the existing basis of the RF policy in the Arctic for the period up to 2020 and in the longer term. The Russians undertook extensive modernization works on North-East Passage (PP-W), or sea route on the Arctic Ocean. The armed forces have also been reorganized in the Arctic. Also, what is to be considered as a valuable and necessary initiative is the Regional Environmental Center, which is responsible for ecological monitoring and monitoring of compliance with the law on the pro-

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<sup>18</sup> See abstract “This assessment of Russia as an Arctic power derives from an analysis of structural and ideological factors. It looks at the following indicators: Russia’s domestic political system, Russia’s foreign policy, and an assessment of Russian economic and military power, primarily in the context of Arctic circumpolar affairs. This assessment also rests on the assumption that Arctic security issues cannot be separated from the larger context of global security. As a result, Russia’s behavior in the Arctic over the next decade and beyond will be shaped by its great power aspirations, its relationship with other great powers both in the Arctic and outside of it and the resources available to the Russian state to support its Arctic ambitions”. M.L. Roi, *Russia: The Greatest Arctic Power?*, “The Journal of Slavic Military Studies”, Nov 2010, Pages 551-573 | Published online: 03 Dec 2010. The level of tension is varied. In 2017 we are seeing its rise again. See <http://niezalezna.pl/95644-szantaz-kremla-rosja-grozi-ze-nie-bedzie-ejz-spokoju-w-tym-rejonie-europa> [access: 13.10.2017].

<sup>19</sup> Ch.R. Rossi, *A Unique International Problem`s : The Svalbard Treaty, Equal Enjoyment, and Terra Nullius: Lessons of Territorial Temptation from History*, 15 Washington University Global Studies Law Review 93 (2016), p. 96.

<sup>20</sup> Ch.R. Rossi, *A Unique International Problem`s*, ... op. cit., p. 132.

<sup>21</sup> <http://wiadomosci.onet.pl/swiat/ekspansja-rosji-w-rejonie-arktyki-sekretarz-obrony-usa-to-dzialania-agresywne/3f1zx2d> [access: 13.10.2017].

<sup>22</sup> *Russia’s last official Arctic strategy was released in 2008, so it is possible that Russia could release a new, more aggressive strategy for the region*. Quote after R. Parhad, *A New Cold War in the Arctic?* “Journal of Political Inquiry”, 12 May 2015 - accessed on November 10, 2014 <http://jpinyu.com/wp-content/uploads/2015/05/12-Cold-War-in-the-Artic.pdf> [access: 13.10.2017].

tection of nature, both in the fleet location and on land<sup>23</sup>. One should believe that this institution will actually deal with what it has been established for. Clean-ups of high-toxic waste dumps started and the plants for waste utilization were built<sup>24</sup>. As a matter of fact, these efforts were culminated by organizing an expedition to the North Pole to submit a proposal to the UN Commission on the Boundaries of the Continental Shelf to extend the boundaries of the Russian economic zone<sup>25</sup>.

## ESSENCE OF THE DISPUTE

All disputes related to the implementation of the provisions of the Svalbard treaty for decades are of a legal nature. Among other factors total demilitarization of the archipelago has certainly an impact here. Article 9 of the Treaty states: *'Subject to the rights and obligations which may arise for Norway from its accession to the League of Nations, Norway is obliged not to establish or to permit the establishment of any naval base in the areas referred to in art. 1 (this article specifies the geographical framework of the Svalbard / Spitsbergen archipelago), do not build any fortifications in those areas that can never be used for war purposes'*<sup>26</sup>.

The aforementioned circumstance relating to the demilitarization of Svalbard seems to be a factor in favor of a variety of legal solutions, unless it is forcing a peaceful dialogue between the parties concerned.

<sup>23</sup> An interesting initiative is the scientific project to establish in North American and Siberian coastlines so called Pleistocene Park, which is the area where the animals of cold climates such as musk oxen and also bison and other animals can live. The first areas will be (?) formed over the 'sinister' the Kolyma river. The project is led by father and son Nikita Zimov. Sergiej Zimow. „Here in the most remote corner of Siberia my father, Sergey Zimov, and I (Nikita Zimov – note by DR) are reviving the ice age “Mammoth Steppe” ecosystem. Re-wilding this vast area of the Arctic will not only create a northern Serengeti, but most importantly, today, is a vital tool to mitigate global climate change. As climate warms, permafrost here in the Arctic is starting to melt. It will soon unlock huge carbon stocks and trigger a catastrophic global warming feedback loop. Natura-1 grasslands, maintained by numerous grazing animals, have the capacity to both slow climate warming and prevent permafrost from melting”. See Pleistocene Park: An Ice Age Ecosystem to Save the World. In the future, perhaps, the extinct Pleistocene species will be brought to live again. The mammoths have the greatest chance. There is intense work on this extinct species. Japanese scientists say they are the closest to success and the mammoth - the subspecies (?) of the Indian elephant will return (sic!).

<sup>24</sup> Many countries including Poland monitors the Russian activity in the Arctic. See BBN note Analyses, Reports and BBN notes: The activity of Russia in the Arctic. <https://www.bbn.gov.pl/pl/prace-biura/publikacje/analizy-raporty-i-nota/6393,NOTATKA-BBN-Aktywnosc-Rosji-w-Arktyce.html> [access: 12.10.2017].

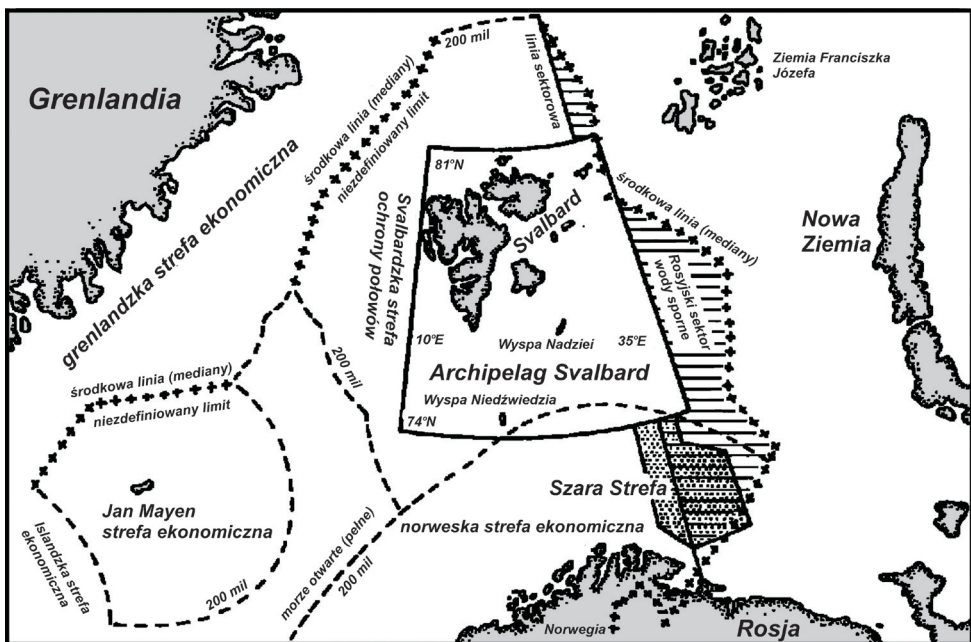
<sup>25</sup> Ibidem.

<sup>26</sup> <http://hornsund.igf.edu.pl/hornsund.old/traktat.html> [access: 13.10.2017]. French and English versions of the treaty from 1920. Compare: *Treaty concerning the Archipelago of Spitsbergen*. Pdf. *'Subject to the rights and duties resulting from the admission of Norway to the League of Nations, Norway undertakes not to create nor to allow the establishment of any naval base in the territories specified in Article 1 and not to construct any fortification in the said territories, which may never be used for warlike purposes'*. [http://www.sysselmannen.no/Documents/Sysselmannen\\_dok/English/Legacy/The\\_Svalbard\\_Treaty\\_9ssFy.pdf](http://www.sysselmannen.no/Documents/Sysselmannen_dok/English/Legacy/The_Svalbard_Treaty_9ssFy.pdf) [access: 13.10.2017].



The North Atlantic region has been divided into numerous economic zones, both in terms of fisheries and off-shore mining (gas and oil). In the west, Greenland's economic zone (EEZ)<sup>27</sup> extends to 200 nautical miles, and Greenland's Exclusive Fishing Zone which also extends to 200 miles. A large area in the form of a circle with a slight indentation forms the economic zone (Exclusive Fishing Zone) from the west around the island of Jan Mayen (Fig. 3). On the east side there are the interests of Norway and Russia, which also create their economic stakes. The area of the treaty around Svalbard creates a kind of trapezoid cutting off the cold waters of the North Atlantic (Figure 3)<sup>28</sup>.

Figure 3. The North Atlantic Area – economic influence zones.



Source: Own drawing on the basis of J. Machowski, *Scientific activities on Spitsbergen ...* see Fig. 1, p. 14.

Apart from the Svalbard treaty, there are still other regulations of international law in this arctic area. The most important of these are contained in the United Nations Convention on the Law of the Sea, signed on 10 December 1982<sup>29</sup>. Further

<sup>27</sup> One can translate after M. Łuszczuk as the exclusive economic zone. M. Łuszczuk, *Polish Arctic Presence - General Characteristics*, [in:] M. Łuszczuk, P. Graczyk, A. Stepien, M. Śmieszek, *Objectives and Tools of Polish Arctic Policy*, Ministry of Foreign Affairs of Poland - Department of Foreign Policy, Warsaw 2013, p. 3.

<sup>28</sup> J. Machowski, *Scientific activities...*, op. cit., p. 14, Fig. 1.

<sup>29</sup> See the complete text of the Convention. United Nations Convention on the Law of the Sea pdf. See

regulations, which in the future may even be more significant than the present, are generally related to the broadly defined scope of environmental protection. In recent years there have also been claims of old residents of the Arctic who, through various associations, are trying to push the governments of North America and Europe. This trend is developing and it is worth looking at in the future. It is worth noting that there is lack of legitimate claims of this kind against Svalbard, which, unlike in Northern Canada, Alaska or Greenland, was not inhabited by the Inuit people and other northerners.

In the Svalbard area, as mentioned above, controversies in recent times have been raised by the issue of mineral extraction, primarily of liquid minerals - oil and gas. The area around the archipelago seems to be geologically very rich in oil deposits. You can not forget the rich (fertile) fisheries<sup>30</sup>. It is therefore worth quoting several paragraphs of the Svalbard Treaty

Article 3 of the Treaty states: 'Art. 3. The nationals of all the High Contracting Parties shall have equal liberty of access and entry for any reason or object whatever to the waters, fjords and ports of the territories specified in Article 1; subject to the observance of local laws and regulations, they may carry on there without impediment all maritime, industrial, mining and commercial operations on a footing of absolute equality. They shall be admitted under the same conditions of equality to the exercise and practice of all maritime, industrial, mining or commercial enterprises both on land and in the territorial waters, and no monopoly shall be established on any account or for any enterprise whatever. Notwithstanding any rules relating to coasting trade which may be in force in Norway, ships of the High Contracting Parties going to or coming from the territories specified in Article 1 shall have the right to put into Norwegian ports on their outward or homeward voyage for the purpose of taking on board or disembarking passengers or cargo going to or coming from the said territories, or for any other purpose. It is agreed that in every respect and especially with regard to exports, imports and transit traffic, the nationals of all the High Contracting Parties, their ships and goods shall not be subject to any charges or restrictions whatever which are not borne by the nationals, ships or goods which enjoy in Norway the treatment of the most favoured nation; Norwegian nationals, ships or goods being for this purpose assimilated to those of the other High Contracting Parties, and not rated more favourably in any respect. No charge or restriction shall be imposed on the exportation of any goods to the territories of any of the Contracting Powers other or more onerous than on the exportation of similar goods to the territory of any other Contracting Power (including Norway) or to any other destination<sup>31</sup>.

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also: [https://pl.wikipedia.org/wiki/Konwencja\\_Narodów\\_Zjednoczonych\\_o\\_prawie\\_morza](https://pl.wikipedia.org/wiki/Konwencja_Narodów_Zjednoczonych_o_prawie_morza) [access: 13.10.2017].

<sup>30</sup> A. Kopečna, *Význam Arktidy v mezinárodních vztazích ...*, op. cit., p. 66.

<sup>31</sup> <http://hornsund.igf.edu.pl/hornsund.old/traktat.html> [access: 13.10.2017]. and the\_svalbard\_treaty\_9ssfypdf

It is also important to consider the seventh Article of the Treaty of Svalbard 'Art. 7. With regard to methods of acquisition, enjoyment and exercise of the right of ownership of property, including mineral rights, in the territories specified in Article 1, Norway undertakes to grant to all nationals of the High Contracting Parties treatment based on complete equality and in conformity with the stipulations of the present Treaty. Expropriation may be resorted to only on grounds of public utility and on payment of proper compensation<sup>32</sup>.

In the area of the Svalbard archipelago there is a Norwegian economic zone known as the Exclusive Economic Zone (EEZ). EEZ zones are areas where individual states have special fishing rights and even rights for electricity production through tidal or wind energy<sup>33</sup>.

At present, the Norwegian economic zone is approximately 819 620 km<sup>2</sup> around the coast of Norway. The country also has a fishing zone covering 1,878,953 km<sup>2</sup> also the region around Svalbard and Jan Mayen<sup>34</sup>. Norway already in 1977 has declared its right to fish in the 200 nautical mile zone around the archipelago. There were even arrests of Russian fishing boats that entered the waters of the area. This caused a lot of international tension<sup>35</sup>.

At the time of signing the Svalbard Treaty, the coastal zone around the archipelago was 4 nautical miles. The Norwegian authorities have repeatedly modified the coastal zone in 1970 and then in 2001 and 2003. The zone of coastal waters around the archipelago is currently 12 nautical miles. This is the area of the territorial sea and there is a zone adjacent to it, which is 24 nautical miles<sup>36</sup>. In addition, since 1977 there still exists Fisheries Protection Zone<sup>37</sup>.

The Norwegians dispute the right to economic activity of the signatories of the Treaty outside the aforementioned zone of coastal waters<sup>38</sup>. In addition, in 1974 the Norwegians said that Svalbard / Spitsbergen is located on the Norwegian continental shelf<sup>39</sup>. Consequently, the area extending over the continental shelf of the ocean floor is not subject to the (non-discriminatory for the parties) rights of the Svalbard Treaty<sup>40</sup>.

<sup>32</sup> <http://hornsund.igf.edu.pl/hornsund.old/traktat.html> [access: 13.10.2017]. and the [svalbard\\_treaty\\_9ssf.pdf](#).

<sup>33</sup> The Polish EEZ is about 30 533 nautical miles.

<sup>34</sup> [https://en.wikipedia.org/wiki/Exclusive\\_economic\\_zone\\_Norway](https://en.wikipedia.org/wiki/Exclusive_economic_zone_Norway) [access: 13.10.2017].

<sup>35</sup> [https://en.wikipedia.org/wiki/Exclusive\\_economic\\_zone\\_Norway](https://en.wikipedia.org/wiki/Exclusive_economic_zone_Norway) [access: 13.10.2017].

<sup>36</sup> M. Łuszczuk, *Polska obecność w Arktyce – ogólna charakterystyka ...*, op. cit., p. 33.

<sup>37</sup> Ibidem, op. cit., p. 33.

<sup>38</sup> "In 1970, the Norwegian government drew straight baselines around the archipelago; in 2001, it modified those baselines; and in 2003, it adopted a twelve-nautical-mile territorial sea. However, Norway has also explicitly accepted that the non-discriminatory rights in the Svalbard Treaty apply within – though not beyond – that expanded coastal zone". M. Byers, J. Baker, *International Law...*, op. cit., p. 20

<sup>39</sup> "It (Norway) argues that the continental shelf around Svalbard is in fact an extension of the continental shelf of the mainland Norwegian coast and, for this reason, no subject to the non – discriminatory right of Svalbard Treaty". M. Byers, J. Baker, *International Law...*, op. cit., p. 20.

<sup>40</sup> The range of the area of the continental shelf submitted to Norway can be traced See: *Continental*

As we know the regulations of the Treaty are general and what is worth reiterating non-discriminatory for the signatories. So does everything related to the waters around the archipelago lie in the hands of the Norwegians? There is no agreement among the signatories of the Svalbard Treaty.

The position represented by the Norwegians aroused strong reactions from the Russian side. The controversy has broader implications not only for the area around the archipelago, but also for the entire Arctic. For example, the Barents Sea is practically entirely on the continental shelf (the average depth of this aquifer does not exceed 300m), which extends along the long coast of Norway.

In 1920, when the Svalbard Treaty was signed in Paris, the concept of the continental shelf and the EEZ - the Exclusive Economic Zone (which did not exist at all) were not regulated by international law. This situation has changed drastically after several decades. At present, there are already UN agencies that deal with issues of economic zones extending across continental shelves. Such is the UN Commission on the Limits of the Continental Shelf (CLCS)<sup>41</sup> existing for 20 years.

In opposition to the Norwegian position, two attitudes have emerged on the legal ground of the dispute.

The first position was represented by Iceland and Russia. It comes down to a hard position representing the view that the Norwegian laws of sovereignty over Svalbard are geographically limited by the Treaty. Accordingly, Norway has no right to extend its rights beyond the territorial waters (12 nautical miles) around the archipelago. Treating Svalbard as a group of islands stretching on the Norwegian continental shelf and in the Norwegian Economic Zone (EEZ), according to the opponents, is not justified<sup>42</sup>.

Another approach is represented by Great Britain. The United Kingdom Government argues that the Svalbard Treaty should be treated in the spirit of the Vienna Convention on the Law of Treaties signed 23 May 1969<sup>43</sup>. Accordingly, the extension of the freedoms guaranteed by the Treaty must be related to the extension of the scope of Norwegian sovereignty. Consequently, if Norway extends its EEZ economic zone and its continental shelf coverage to new areas, Svalbard's non-discriminatory business laws, The Svalbard Treaty will also become a stakeholder involvement. It seems that such a legal and pragmatic position would also be beneficial to other mandate holders of the treaty, including the Polish side. The United Kingdom argues that the establishment of a country-specific continental shelf and

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*Shelf Submission of Norway in respect of areas in the Arctic Ocean, the Barents Sea and the Norwegian Sea Executive Summary* [http://www.un.org/depts/los/clcs\\_new/submissions\\_files/nor06/nor\\_exec\\_sum.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/nor06/nor_exec_sum.pdf) [access: 13.10.2017].

<sup>41</sup> [http://www.un.org/depts/los/clcs\\_new/clcs\\_home.htm](http://www.un.org/depts/los/clcs_new/clcs_home.htm) [access: 13.10.2017].

<sup>42</sup> M. Byers, J. Baker, *International Law...*, op. cit., p. 20.

<sup>43</sup> Poland signed this convention 27 April 1990. Compare [http://www.grocjusz.edu.pl/Materials/mw\\_kpt.pdf](http://www.grocjusz.edu.pl/Materials/mw_kpt.pdf) [access: 13.10.2017].

margin zone is a natural extension of the legislation that is related to the country's expansion. Any other solution would cause a strange situation in which Norway would have more rights out of the twelve-mile territorial waters (and the 24 miles adjacent area) around Svalbard than in the territorial waters (generally coastal to 24 nautical miles) where the provisions of the Svalbard Treaty apply<sup>44</sup>. As a result, the extension of the legal (mainly economic) prerogatives of the Norwegians around the archipelago should lead to a similar extension to other treaty signatories.

The dispute on the 'Norwegian-Russian front' has been eased (at least for now) in 2010 by signing the Norwegian-Russian treaty removing the disputed barriers for oil and gas extraction<sup>45</sup>.

Can Poland, apart from scientific activity (Polish Hornsund station), become more active in exploring the Arctic? Probably yes. It is planned to extract molybdenum in Greenland - the Malmbjerg deposit<sup>46</sup>. The PCC Group is planning to build a modern system for the production of ferroalloys (an ingredient in aluminum alloys used in the chemical industry for the production of siloxanes<sup>47</sup> and silicones) in Iceland. The installation of the capacity of 32 thousand per year was to start operating in 2016<sup>48</sup> but will most likely be completed in 2018<sup>49</sup>. Business activity is one of the aspects of economic presence in this region of the world. It is also important to involve the state to help with the Arctic investments. In this case, investments on the Norwegian shelf realized by PGNiG are very important. The estimated invest-

<sup>44</sup> M. Byers, J. Baker, *International Law...*, op. cit., p. 2.

<sup>45</sup> "The Treaty between the Kingdom of Norway and Russian Federation concerning Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean, which Russia and Norway signed on September 15, 2010, is regarded by the officialdom as a great diplomatic success. It is believed that the side removed all the obstacles to the exploration of hydrocarbon wealth of the Arctic oceanic shelf as they attained a compromise solution." A. Oreshenkov, *Arctic Square of Opportunities, North Pole and "Shelf" of Svalbard Can not Be Norwegian*. [http://library.arcticportal.org/707/1/Microsoft\\_Word\\_Arctic\\_Square\\_of\\_Opportunities.doc.pdf](http://library.arcticportal.org/707/1/Microsoft_Word_Arctic_Square_of_Opportunities.doc.pdf) [access: 13.10.2017].

<sup>46</sup> It should be noted, however, that as the business press reported, due to the scale of molybdenum production, KGHM intends to delay the Malmbjerg project in Greenland. Mining will probably start here after the planned reduction in molybdenum production in Sierra Gorda. See [https://biznes.newseria.pl/news/po\\_uruchomieniu\\_sierra,p2137577922](https://biznes.newseria.pl/news/po_uruchomieniu_sierra,p2137577922) [access: 13.10.2017]. And here the problem starts. As reported by "Gazeta Wyborcza" (19.03.2017) the National Security Agency is interested in KGHM due to heavy losses of KGHM investments. See <http://info.wyborcza.pl/temat/wyborcza/z%C5%82o%C5%BCa+molibdenu>. Not all investments are adequate!

<sup>47</sup> Siloxanes - chemical compounds in which the silicon atoms are linked by covalent bonds to oxygen atoms. They have been used in the cosmetic industry (for the production of deodorants, lipsticks, creams, soaps), foodstuffs (as preservatives), for the protection of automotive windshields. See <https://pl.wikipedia.org/wiki/Siloxanes>.

<sup>48</sup> In Greenland, the Polish company KGHM Polska Miedź, See MG zachęca do inwestycji na Arktyce MG is encouraging investment in the Arctic. March 28, 2015 <http://www.terenyinwestycyjne.info/index.php/news/item/8839-mg-zacheca-do-inwestycji-na-arktyce>. *Polskie firmy ruszają na podbój Arktyki. To atrakcyjny kierunek m.in. dla firm wydobywczych i transportowych*, Monday, 10 November 2014 (05:43) <https://wp.tv/i,polskie-firmy-ruszaja-na-podboj-target-to-attractive-market-min-for-firms-and-transport,mid,1831135,cid,8051,clip.html?ticaid=618d1b> [access: 13.10.2017].

<sup>49</sup> *Budowa supernowoczesnego zakładu produkcji krzemometalu w Islandii*, por. <http://www.pcc.eu/projekt-islandia/?lang=pl> [access: 13.10.2017].

ment generated over PLN 5.5 billion of revenues. 18 concessions were granted and preparations are being made to extract 2.5 billion m<sup>3</sup> of gas per year<sup>50</sup>.

We must clearly define our political and economic goals in such a wide-ranging area of action as the Arctic<sup>51</sup>. We are geographically relatively far from this area, but we have a bridgehead created by wise decisions of politicians of the Second Polish Republic taken in the days when Marshal Jozef Pilsudski was still alive. I will repeat once more in my next article, which deals with the issues of Svalbard<sup>52</sup> wise words, in my opinion, from the report of the Polish Ministry of Foreign Affairs, which sounded ... *You have to be in it, to win it*<sup>53</sup>.

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<sup>50</sup> <http://www.energetyka24.com/670639.pgnig-podsumowuje-10-lat-dzialalnosci-na-norweskim-szelfie-kontynentalnym> [access: 16.11.2017].

<sup>51</sup> The Go Arctic program presented by the *Polish Information and Foreign Investment Agency is to encourage investment in the Arctic*. "PAliIZ recalls that the Arctic has been attracting Polish attention for many years. In 1996, the Arctic Council was established, with members from Iceland, the United States, Russia, Sweden, Canada, Finland, Norway and Denmark, together with their autonomous territories - Greenland and the Faroe Islands. Poland has permanent observer status" Compare <http://www.polskieradio.pl/42/1699/Artykul/1554230,Go-Arctic-PAliIZ-roz poczyna-program-zachecajacy-do-inwestycji-w-krajach-polnocnych>.

<sup>52</sup> D. Rozmus, *Traktat Svalbardzki – wykorzystane szanse?*, Yearbooks of Administration and Law 2017- in printing.

<sup>53</sup> M. Łuszczuk, P. Graczyk, A. Stępień, M. Śmieszek, *Cele i narzędzia polskiej polityki arktycznej*. The Ministry of Foreign Affairs of the Republic of Poland. The Department of Foreign Affairs. Warsaw 2013, p. 228.

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**Summary:** The subject of the article is a legal conflict between Norway and other countries on the possibility of running extractions of oil and gas on waters around Svalbard. The essence of the conflict is reduced to the discrepancies between the non-discriminating signatories of the Spitsbergen Treaty provisions of this Treaty (called also the Svalbard Treaty) of 1920 and new legal regulations connected with the development of exclusive economic zones EEZ and the extension of the range of continental shelves treated as areas adjacent to the main land.

**Keywords:** the Svalbard Treaty, exclusive economic zones EEZ, conflict over energy resources of the Arctic

## SPÓR O PRAWO KORZYSTANIA Z ZASOBÓW MINERALNYCH WOKÓŁ ARCHIPELAGU SWALBARD – ZARYS PROBLEMATYKI

**Streszczenie:** Przedmiotem artykułu jest spór prawny pomiędzy Norwegią a innymi państwami o możliwość prowadzenia wydobywania ropy i gazu na wodach wokół wysp archipelagu Svalbardzkiego. Istota sporu sprowadza się do rozbieżności pomiędzy niedyskryminującymi sygnatariuszy traktatu spitzbergeńskiego ustaleniami tegoż traktatu (nazwanego również swalbardzkim) z 1920 r. a nowymi regulacjami prawnymi związanymi z rozwojem morskich stref ekonomicznych EEZ oraz rozszerzaniem zasięgu szelfów kontynentalnych traktowanych jako przyległe do głównego lądu obszary.

**Słowa kluczowe:** traktat swalbardzki, morskie strefy ekonomiczne, spór o zasoby energetyczne Arktyki