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Snow Crab in the Barents Sea: An unexpected challenge to Norwegian harvesting regimes?

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Declaration

I, Bendik Skoglund, declare that this thesis is a result of my research investigations and findings. Sources of information other than my own have been acknowledged and a reference list has been appended. This work has not been previously submitted to any other university for award of any type of academic degree.

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All errors are mine alone.

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Abstract

In January 2017, the Latvian trawler *Senator* was arrested by the Norwegian Coast Guard for illegal harvest of snow crabs in the Svalbard Fisheries Protection Zone (SFPZ) and was found guilty by the Norwegian Supreme Court. The trawler had a license issued by the European Union, which, in the eyes of Norwegian authorities, does not have the legitimate right to issue licenses for snow crab harvest within the zone. The actions following the verdict may have implications on Norwegian sovereignty to regulate harvest in the SFPZ and on the continental shelf, where the Norwegian government expects among half of Norwegian oil and gas resources to be located. One of the main goals in the governments Arctic strategy is to continue dialogue with the European Union on important Arctic matters and to facilitate for further petroleum industry in the Barents Sea while creating a mutual understanding of international maritime law in the Arctic. The aftermaths of the trial in the Supreme Court could prove problematic should the oil and gas explorations be successful.

The thesis uses temporal status comparison theory and the concept of identity to analyze the progression of the Norwegian Arctic Self-identity, constructed by and manifested in traditions of resource extraction, efforts in establishing and ownership over contemporary the international maritime law regime, and outside of the European Union. The thesis argues that the snow crab dispute challenges the harvesting regimes in the Barents Sea and disrupt the Norwegian Arctic Self-identity through the potential loss of sovereignty over rights to regulate the maritime resources in the SFPZ and on the continental shelf. Emphasizing the importance of a state's Arctic Self-identity, and how it can assist in understanding the unwillingness to compromise.

Keywords: *International Relations, Temporal Status Comparison Theory, Arctic Identity, Svalbard Treaty, Svalbard Fisheries Protection Zone, Arctic Fisheries Management, Norway, the European Union, Snow Crab*.

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Abbreviations

EEA – European Economic Area

EEZ – Exclusive Economic Zone

EFTA – European Free Trade Association

EU – European Union

ICJ – International Court of Justice in the Hague

ITLOS - International Tribunal for the Law of the Sea

SFPZ – Svalbard Fisheries Protection Zone

ST – Svalbard Treaty

UNCLOS – United Nations Convention on Laws of the Sea

1. Introduction

The jurisdictional issue over the Svalbard Treaty (ST) and the Svalbard Fisheries Protection Zone (SFPZ) has brewed for decades following the Continental Shelf Convention in the United Nations Convention on Laws of the Sea (UNCLOS) (Tiller & Nyman, 2016 and Pedersen, 2006), where Norwegian authorities played an important role in establishing the Exclusive Economic Zone (EEZ) under the convention (Østreng, 2018). Norway later claimed an EEZ around the Svalbard Archipelago through national law, but later settled for a fisheries protection zone around Svalbard's territorial waters. Norwegian authorities have practiced a non-discrimination policy in the zone, which has softened the reactions from signatory states, with individual exceptions (Pedersen, 2006). However, the issue re-emerged into the public sphere when a Latvian trawler, *Senator*, was caught for what was ruled by the Norwegian Supreme Court as illegal harvest of snow crab with a European Union (EU)-issued license in the SFPZ. Norwegian authorities exercise full sovereignty in the SFPZ and implemented a harvest ban until a sustainable harvest regime for snow crab was established. *Snøkrabbeforskriften* is now changed and the harvest ban is lifted (Regjeringen, 2019), but *Senator*'s fishing in the SFPZ is still considered illegal without a Norwegian-issued license (HR-2019-282-S, 2019). The EU and Norway now find themselves on opposite sides of the struggle for access to resources in waters surrounding the Archipelago and on the continental shelf. Two different interpretations of the ST and actions following the verdict in the Norwegian Supreme Court will decide the future implications of the snow crab dispute

This research will explore the issue by applying temporal status comparisons theory and identity theory in International Relations to explain how the Norwegian identity as an Arctic state plays an important part in the development of the snow crab dispute. Norway's strong fisheries traditions and successful utilization of petroleum and gas resources are challenged by the EU's and signatory states to the ST's claim to access the snow crab and potentially other resources in the SFPZ and on the continental shelf. Actions following the Norwegian Supreme Court verdict could have implications for how the Arctic Self-identity is negatively compared to the former version of the Self. The research seeks to offer an alternative explanation of the issue drawing temporal status contemporary theory to contribute to the academic debate.

1.1 Problem Statement

In January 2017, the Latvian trawler *Senator* was arrested by the Norwegian Coast Guard for the illegal harvest of snow crabs on the continental shelf in the SFPZ. The trawler had a

license issued by the EU, which in the eyes of Norwegian authorities, does not have the legitimate right to issue licenses for snow crab harvest in the SFPZ. The EU's argument for legitimacy is that several of the union's member states are signatories to the ST, which grants signatories rights to access the natural resources in- and around the Archipelago. Norwegian authorities argue that the snow crab is a sedentary species belonging to the seabed and the Norwegian continental shelf, and therefore not regulated by the Treaty. This is disputed by EU, who argue that the Archipelago sits on a continental shelf of its own, independent from the Norwegian mainland's (Tiller & Nyman, 2016).

Norway has to a greater extent exercised its sovereignty in the Archipelago from the mid-1970s until today, while remaining more passive in the years prior (Ulfstein, 1995). The EU and several signatory states of the ST argue that the Treaty must be interpreted through contemporary maritime law, while Norway subscribes to a strictly literal reading of the Treaty. In short, it means that Norway has unilaterally declared that Svalbard does not have a continental shelf separate from the Norwegian mainland's shelf and claim the Treaty only have relevance within the Archipelago's areas specifically mentioned in Article 1. The EU disagrees and argues that the continental shelf and the SFPZ should be regulated by the ST's non-discrimination principle (Tiller and Nyman, 2016).

In a recent trial in Norwegian Supreme Court, the court discussed whether or not the snow crab is a sedentary species and if harvest of snow crab without a Norwegian-issued license is illegal within the SFPZ. The court ruled snow crab as sedentary and harvest in the SFPZ illegal without a license from Norwegian authorities (HR-2019-282-S, 2019). A possible appeal from the defense might provide further spark into the discussions about how to interpret the ST, and may have implications on Norwegian sovereignty in the SFPZ and on the continental shelf where the Norwegian government expects among half of Norwegian oil and gas resources are located (Regjeringen, 2017b). Norwegian authorities, through the partly state-owned energy company *Equinor*, have started a further exploration of oil- and gas resources on the continental shelf, in areas right next to the SFPZ (Equinor, 2019).

One of the main goals in the Norwegian government's Arctic strategy is to continue the dialogue with the EU on important arctic matters and to facilitate for further petroleum industry in the Arctic. Perhaps the most important of these is to create a mutual understanding of UNCLOS and the international maritime law regime in the region (Regjeringen, 2017b). The aftermaths of the recent trial could prove problematic, should the explorations be

successful. The trial could establish precedence for the EU and signatory states to pursue access to the resources on the continental shelf.

1.2 Research Objectives

This thesis' first objective is to explain how the snow crab dispute has developed and explain why the emergence of snow crab has ignited an older dispute concerning the Norwegian harvesting regimes in the Barents Sea outside of the Svalbard Archipelago. Followed by a review of the UNCLOS, the ST, and the SFPZ to explain the disagreements concerning access to maritime resources in the Barents Sea and on the continental shelf below. These two objectives materialize into the thesis' case study which establishes the empirical background prior to analysis. The third objective is to introduce temporal status comparison theory and the concept of identity and situate the theoretical framework within International Relations theory. Prior to establishing the concept of Norwegian Arctic Self-identity around the harvesting regimes in the Barents Sea. The final research objective is to use the Self-identity concept to analyze how the snow crab dispute is both a threat to the Norwegian Arctic Self-identity and a part of what constitutes the identity itself. Continuous oppositional understandings around international maritime law regime in the Barents Sea and challenging opinions from signatory states to the Treaty have been present since the creation of the UNCLOS.

1.3 Research Question

The thesis will approach the snow crab dispute by answering the following research question:

> 1. How does the snow crab dispute challenge the harvesting regimes in the Barents Sea and disrupt the Norwegian Arctic Self-identity?

This thesis claim that the snow crab dispute can challenge the harvesting regimes in the Barents Sea and disrupt the progression of the Norwegian Arctic Self-identity. Negotiations between Norway and the EU has stalled as the Union claim to have no quotas to trade for snow crab, later attempts to find a solution has been declined by the EU (Østhagen and Raspotnik, 2018a). The Latvian government is set to discuss further action after *North Star Ltd*, *Senator*'s shipowner, was found guilty of illegal fishing of snow crab by the Norwegian Supreme Court (LSM, 2019). A future appeal to international courts could potentially challenge Norwegian sovereignty over the natural resources in the waters outside of Svalbard and on the continental shelf. By drawing on temporal status comparison theory and the concept of identity within International Relations, this thesis will argue that the future actions

by Norway, Latvia, and the EU can potentially disrupt the self-conscious Norwegian Arctic identity established around the harvesting regimes in the Barents Sea outside of Svalbard, and use the concept of Arctic Self-identity to explain why the dispute has come to a standstill.

1.4 Outline

The thesis is organized into six chapters structuring the arguments to answer the research question. Chapter two present and explain the thesis' theoretical framework, elaborating on temporal status comparison theory and the Self-identity approach to the snow crab dispute and establishes an Arctic Self-identity concept around the Norwegian harvesting regimes in the Barents Sea. Chapter three presents the thesis' methodological approach and discusses the methodological choices made during the research, with the intention of providing justification and reflection around the research process. Chapter four is a case study of the snow crab dispute, including a concise review of international maritime law, the ST and Norwegian practice in the SFPZ and the continental shelf, and a review of the snow crab dispute's historical development.

The analysis is conducted in chapter five. First, the chapter will provide an introduction to the role of international courts, and discuss the likelihood of a compromise solution and the case being tried in international courts. Based on how former disputes concerning the legitimacy of the SFPZ and distribution of quota for fishing in the zone has been solved before the involvement of international courts. Secondly, the analysis will explore the practical and ideational implications of a compromise solution and a trial in international courts, on the Norwegian Arctic Self-identity. Finally, chapter five will argue that the challenges to the Norwegian harvesting regimes in the Barents Sea from signatory states to the ST and the EU have, since the creation of the SFPZ and UNCLOS, always been in opposition to the harvesting regimes, and therefore also holds a constitutive part to the Norwegian self-conscious Arctic identity around the harvesting regimes. Chapter six concludes the findings presented in the thesis and will reflect on the thesis' contribution to the field of International Relations.

2. Theoretical Framework

2.1 Status Theory

Status can be defined as a set of "collective beliefs about a given state's ranking on valued attributes" (Larson et.al, 2014 p. 8), which is embedded in two different ways of international politics. On the one hand as membership in a defined club of actors, and on the other hand as

the relative standing within such club. One of the more familiar clubs of international politics is often referred to as the *Great Power Club*, consisting of recognized powerhouses in international relations, such as the United States and China (Larson et. al, 2014). However, states can seek status through membership in other positional rankings based on other attributes than great power capabilities, which still may equip the higher-ranked states with status and primacy. Status itself is based on subjective collective beliefs that position the state relative to others in the social rankings (Larson et. al, 2014). Meaning that state *B* and *C* must recognize state *A*'s attributes as something of status before state *A*'s attributes will generate status and improve its relative position. Thus, status is dependent upon the individual and collective subjective perceptions of attributes. To the extent that state *A*'s estimate of individual status is based on the interpretation of how state *B* and *C* perceive those attributes.

These attributes are also social and relational, insofar that they are also based on subjective collective beliefs and perceptions. Hence, any attribute can accumulate status, if states recognize it as something of status. Traditional examples of this are a large naval fleet or lead role in conflict resolutions. These attributes are often known as *Status Markers*. Status markers are objects that are recognized as something of respect and deference (Larson et.al, 2014).

2.2 Temporal Status Comparison Theory

Temporal status comparison theory is based on features from social comparison theory and status theory (Freedman, 2016). As explained above, states accumulate self-esteem by measuring themselves relative to other states (Larson et.al, 2014). Meaning that negative or unfavorable experiences are often the basis for an asymmetrical status comparison vis-à-vis peers. This research will explore these status dynamics by utilizing temporal comparison theory from social psychology, which has gained more traction within the field of International Relations recently (Freedman, 2016). Emphasizing that individuals compare themselves to temporal versions to secure or maintain their embedded self-identity over time (Albert, 1977). Further, building on the notion above concerning relative status comparisons with peers, individuals have the need to out-compete former version of themselves, to progress while maintaining intrinsic parts of their identity (Peetz & Wilson, 2008). Hence, Freedman (2006) argue that negative comparison to the former version of the Self-identity can have as much of an impact as negative comparisons among peers (p. 802). I will use this theoretical approach to show that states, like individuals, engage in both social and temporal comparison when self-evaluating their relative position, and argue that the snow crab dispute

is both a challenge to the natural resources in the Barents Sea and to the Norwegian Arctic Self-identity established around the harvest regimes in the Barents Sea, and have a noticeable effects on how the dispute is approached by Norwegian authorities.

2.3 Situating the Theoretical Approach within International Relations

The application of this theoretical framework is based on the post-structuralist assumption about Foreign Policy being linked to representations of identity, conceptualized through discursive, political, relational and social interactions. Identity can be political and discursive to the extent that it situates foreign policy within a certain interpretative optic, which then affects the way foreign policy is exercised (Hansen, 2006). Furthermore, identity is relational in the way that it is always given in reference to something, a group which it is not. Hansen (2006) provides a generic example of *American* versus *European* as a way of explaining how identity is both relational and oppositional. Hansen summarizes the conceptualization of identity by emphasizing that through its foreign policy, a state articulates a *Self* and a series of *Others* in its practice of international politics.

Similarly, I argue, in the following section, that the Norwegian Arctic Self-identity is conceptualized through discursive, political, relational and social aspects. The Arctic Self-identity is then both conceptualized and constituted by these different aspects, making it both susceptible to progress and to negative change, as the Self-identity is dynamic. The snow crab dispute is then both a dispute over access to the natural resources in the Barents Sea and a potential disruption to the Norwegian Arctic Self-Identity, which have progressed as the international law regime in the Barents Sea have developed.

2.4 Norwegian Arctic Self-Identity

A pre-requisite for the analysis is to establish and identify the Norwegian Arctic Self-identity. As explained above, individuals often compare themselves to their former versions, as well as with peers. Meaning that the contemporary version draws self-esteem from the progress made through development while maintaining the intrinsic parts of its identity (Peetz & Wilson, 2008). Freedman (2006) takes this one step further in arguing that a negative temporal comparison of the Self, i.e negative individual progress, can have much of the same impact as a negative comparison to peers and thus generate negative change in self-esteem, which can implicate future interactions. This framework will be applied to Norway's Arctic engagement in the Barents Sea – a state in international politics consistently in interaction with other states and international actors. I argue that the ongoing snow crab dispute and the potential outcomes may have a negative effect on the Norwegian Arctic Self-identity. There is,

therefore, a need to establish the Norwegian Arctic Self-identity around the harvesting in the Barents Sea, prior to further analysis.

2.4.1 Arctic identity established vis-à-vis peers

The first step to establish the Norwegian Arctic Self-identity involves a relational aspect. As Hegel (1977) argued, a group's collective identity, in this case, a state's, is established in opposition to other collective identities, or other states. Further, emphasizing that collective identity formation has a relational aspect in which the Self recognizes themselves by recognizing others (p.112). The Norwegian Arctic Self-identity cannot exist without the relational other to whom it compares, referred to by Neumann (2006 p.8) as *the constitutive Other*.

The question then becomes who the constitutive others in Norwegian Arctic Self-identity formation are. I will rely on the relational aspect of status theory, where states accumulate status by comparing themselves relative to peers (Larson et. al, 2014 and Gilady, 2013) and Neumann's (2006) work on a constitutive *Other* in Norwegian identity formation. Both these two aspects are relational, in which the Norwegian state's Arctic Self-identity is constructed. As traditional status theory emphasizes, it is the relative comparison to our peers that matter for states (Larson et. al, 2014). This is also the case for relational identity formation. The Nordic states are naturally thought of when Norwegian Arctic Self-identity is established in opposition to and vis-à-vis peers (Neumann, 2006). There have been several cases where maritime disputes with Nordic states have resulted in, at the time, relatively positive outcomes for Norway, and contributed to the progress of the Arctic Self-identity. One of which involved Iceland's dissatisfaction with the quotas given in the SFPZ. The dispute ended with a compromise solution, shutting down to the possibility of the case to be tried in international courts. Although a compromise, Norway avoided a potential involvement of international courts, which could have questioned the interpretation of the ST (Pedersen, 2006). The compromise involved a solution where quotas were given to Iceland, but the alternative could potentially have been worse for Norway. Neutralizing a potential setback for the Norwegian Arctic Self-identity.

2.4.2 A Constitutive Other – Norway and the European Union

Neumann (2006) argue that too many Norwegians, the EU is an opposition to their Norwegian identity and that keeping a safe distance from EU membership constitutes parts of being Norwegian. Furthermore, Norway is one of very few European states to have held two referendums on EU-membership, both ending with a No-majority (Neumann, 2006).

Neumann's argument is the starting point for the following discussion; the EU as an alternative constitutive Other in Norwegian Arctic Self-identity formation and in Norway's Arctic fisheries policy.

Since fisheries are not part of the current European Economic Area (EEA) agreement (Regjeringen, 2016), the counter-party to Norwegian authorities when discussing fishing quotas in the Barents Sea is the European Commission. The European Commission is a body representing all EU-states dealing with the common fisheries policy of the Union as a whole (European Commission, 2019a). The EU's fisheries body is a valued partner for Norway and the two parties exchange fishing quotas bilaterally. In 2017 Norway exported seafood valued at 61 billion NOK to the EU (Seafood, 2018).

Following Neumann's (2006) argument, I argue that the European Commission fisheries body represent an opposition to Norwegian fisheries policy. The Commission represents in many ways what Norway voted against on two occasions in the last century, and most notably the issue about the transfer of sovereignty on specific issues to a supranational institutional body.

The Norwegian fisheries policy is established outside of the EEA-agreement and therefore exist outside of EU's common fisheries policy. Following in the lines of Hegel's (1977) theoretical argument; The European Commission fisheries body is the *out-group* to Norwegian fisheries policy. Which undoubtedly is an important part of what constitutes the Norwegian Arctic Self-identity.

However, it is important to point out that this does not establish precedence for a binary-opposition in Norway-EU fisheries policies and cooperation. Rather it is an attempt to emphasize the importance of differences between the actors that are now involved in the snow crab dispute. Furthermore, Norway and the EU enjoy good relations in fisheries cooperation, where the EU, as explained above, receives significant quotas in the Barents Sea in return for quotas in the waters of EU member-states (Regjeringen, 2016). Given today's political climate, it is unlikely that conflict in one area could spread and harm other areas of fisheries cooperation. This is evident in the continuous fishing quota-negotiations between the EU and Norwegian authorities. Nevertheless, it is clear that the EU plays an important role, both as a supranational body representing the fishery interests of its member states and collaborator to member states of the EEA and as a constitutive Other to Norwegian Arctic Self-identity.

By building on Neumann's theoretical argument, I will argue that a potentially new institutionalized interpretation of the ST, contesting the Norwegian strict literal interpretation

or even a compromise in re-distribution of licenses for snow crab harvest would challenge the Norwegian Arctic Self-identity, as it is a loss to a constitutive Other.

2.4.3 Traditions and expertise

The Norwegian statehood is historically referred to as a state of great maritime traditions, including explorations and scientific discoveries in the polar regions. Polar expeditions, the leading scientists and adventurers have always held an important place in Norwegian history and are regularly remembered for their heroic explorations and scientific findings. Many expeditions are well-known within Norwegian history, but I will only refer to two cases to illustrate its importance for the Norwegian Arctic Self-identity.

The polar expedition of perhaps most significance was led by Fridtjof Nansen between 1893 and 1896. Nansen attempted to reach the North Pole, but never managed to do so. Instead, Nansen's boat, *Fram*, became a floating research center for exploring the many dimension of the Polar Sea. Discovering, but not limited to, how the world oceans are connected and laid down the bedrock for modern climate research. The expedition sparked the interest in Norwegian Polar research by establishing Norway as a leading Polar nation, and the scientific discoveries were important for developing Norwegian expertise on oceanography. Secondly, Roald Amundsen's expedition with *Maud*, 1918 to 1925, became the first to sail around the entire Polar Sea. The expedition became famous for its unique scientific observations, led by Harald U. Sverdrup, setting a new standard for precision in polar research (Jaklin, 2012). These polar expeditions and scientific discoveries are a central aspect to the Arctic Self. By conquering the Polar regions, Norwegian scientists became world-leading in mastering the Arctic environment and Arctic research.

One thing is the rich history that is often told when referring to maritime matters, another, and perhaps even more relevant for this thesis, is how Norwegian authorities refer to their country's strong and proud maritime traditions in the Arctic areas of Svalbard and the Barents Sea. In the Government's strategy for ocean affairs, the strong traditions of small-scale fisheries along the coast, and its importance for the development of regional trade cities such as Trondheim and the Hanseatic city of Bergen are identified. In the 1800s, Norway grew to be one of the world's major shipping states before moving onto taking advantage of the country's vast petroleum resources, where a good portion are located in the Barents Sea. The further development of petroleum technology and exploration is still part of the government's strategy today, together with sustainable development and cleaning the oceans of the world. Furthermore, the government acknowledge the importance of capacity-building and

knowledge production and is actively facilitating for export of maritime knowledge and skill. Building on these traditions, the government have now identified the next overarching goal; Norway is to be leading ocean state of the world (Regjeringen, 2017a and 2017b). Hence, there is a particular temporal dimension to the Norwegian Arctic Self-identity, in which progression of knowledge and sustainable utilization of natural resources in the Arctic is central.

Furthermore, Gerhardt, Kristoffersen, and Stuvøy (In: Gad & Strandsbjerg, 2019) argue that Norway is a state that identifies with its history of resource extraction, ranging from timber to fish and petroleum resources. By looking at the Greenpeace boarding of an oil rig in the Barents Sea, located within the *Svalbard Box* (Appendix no. 1), Gerhardt, Kristoffersen, and Stuvøy argue that the leading role in offshore technology and the pursuit of oil and gas resources in the Barents Sea is a continuation of the identity of resource extraction and that Greenpeace's boarding was a disruptive event to that identity. Similarly, the newly established harvesting regime of snow crab is also a continuation of this historic resource extraction identity. The challenges made by the opposition states to the snow crab harvest regime may be a disruptive event to the Norwegian Arctic Self-Identity established around the harvesting regimes in the Barents Sea. This will be explored further in the analysis.

In sum, it becomes clear, through the Norwegian government's strategy on ocean affairs in the Arctic and identified traditions of resource extraction, that there is a strong sense of embeddedness and proudness over arctic maritime traditions around the Svalbard Archipelago and in the Barents Sea. Evident through progression and improvement, both economically and socially, while maintaining the intrinsic identity as a state with strong maritime traditions. In other words, maintaining the Arctic Self-identity while progressing and improving compared to the temporal-Self.

2.4.4 Geography and maritime resources

Norway possesses one of the world's longest coastlines and has maritime areas equal to approximately six times of its landmass (Regjeringen, 2017a). Only eleven countries have a larger EEZ, and these are countries of a considerable larger landmass measured in square kilometers (Østreng, 2018). Norway's geography provides great pre-conditions for extensive fisheries, and historically there have been whale hunting around the Svalbard Archipelago (Mathisen, 1951). In Norway's northern-most Arctic regions of Nordland, Troms and Finnmark, fisheries, ocean research, and seafood holds strong traditions, and are essential parts of the regions' economic activity. The petroleum industry and shipping are important

contributors to the development in the western regions of Møre og Romsdal, Hordaland, and Rogaland. In the southern- and eastern regions, several logistics, financial services and institutions have developed to facilitate and benefit from the growing maritime industry (Regjeringen, 2017a).

The evident geographical advantages in a significant coastline and vast maritime resources, together with its importance for the Norwegian economy, provide a clear basis for how Norway identifies with the maritime environment. Combined with traditions for utilizing maritime resources, I would argue that we now have the geographical foundation of the Norwegian Arctic Self-identity. The next to paragraph will explore the expertise in- and ownership to contemporary International Maritime Law, with a focus on the Norwegian delegation's work under the UNCLOS III (Østreng, 2018).

2.4.5 Norwegian expertise and relationship to the UNCLOS

UNCLOS III aimed at establishing a peaceful, just and clear-cut regulation over maritime areas. More specifically, which states have the rights to harvest maritime resources where and how to regulate travel and shipping by sea. Andresen (1987) refer to this as *nationalization* of sea areas, where coastal states obtained exclusive rights to resources in EEZ and territorial waters, together with establishing a practice for delimitation of continental shelves. The UNCLOS III is among the more ambitious attempts by the United Nations to establish a regulatory framework in International Law. Representatives from 160 states came together in a series of sessions in which they should at the end have a mutual agreement on laws of the sea. As ambitious as it was, the overall aim deemed unrealistic (Andersen, 1987).

Norway, a small state in international politics with a significant coastline and maritime history, had considerable interest in the establishment of a universal framework for International Maritime Law. Which would benefit the state's maritime resources and ensure a continuation of shipping routes. The importance of the UNCLOS III became even more evident when the Norwegian government established a separate ministerial post for maritime affairs, occupied by Jens Evensen, for the duration of Conference III and the important years to follow. Establishment and legitimacy of a new international maritime law also became one of the major objectives of the Norwegian government in the period 1978-81 (Andresen, 1987).

The Norwegian delegation, led by Jens Evensen, promoted the following recommendation in the UNCLOS III; Territorial waters up 12 nautical miles, right to safe transparent travel in

territorial waters of other states, a governing framework for passages through international straits, a 200 nautical mile EEZ, and free passage on the high seas (Andresen, 1987). When we take a look at the outcome of Conference III, it becomes clear that Norway gained a favorable position. As Østreng (2018) explains in more detail, Norway benefited in more ways than one. The acceptance and legitimization of the 200 nautical mile zone and extension of the continental shelf benefited Norway as coastal- and shelf state. The new management regimes on living resources played in the advantage for Norway as a fishing state. Acceptance for a progressive international maritime law regime benefited Norway both as small state in the international system and its role as mediator during the conference (Østreng, 2018).

UNCLOS III solved uncertainty surrounding the harvest of natural resources, rights to the resources on the continental shelf and shipping routes through nationalization of the continental shelf and sea areas, together with a regulatory framework for shipping routes and progressive international law. The Norwegian representatives played an important role in the relatively positive outcomes. Hence, the relatively favorable outcome also displays a progression of the Norwegian Arctic Self-identity. By playing an important political part in UNCLOS III and accumulating maritime sovereignty as a result of the conference's outcome, the Norwegian delegation managed to secure a position not common a small state. On the other hand, a negative outcome of the Conference and failed mediations led by the Norwegian delegation could have produced a negative change of the Norwegian Arctic Self-identity.

2.4.6 The construction of the Norwegian Arctic Self-identity

The Norwegian Arctic Self-identity is constituted by numerous factors, several of which may not be included in this research. I have chosen to focus on what the research considers to be the most crucial aspect for answering the research question and research objectives. The geographical advantages of a prominent coastline and vast maritime resources, combined with rich historical roots and traditions of Arctic maritime resource extraction and scientific discoveries through ambitious polar expeditions, provide a clear-cut starting point for the Norwegian Arctic Self-identity. The results achieved by the Norwegian delegation during UNCLOS III illustrate how progression is an important part of the dynamic Self-identity. As explained earlier, states, like people, accumulate self-esteem and status relative to the temporal version of the Self and to other states. The favorable outcome, despite asymmetrical power dynamics between participating states of UNCLOS III, contributed to a progression of the very Arctic Self-identity that is identified and explained in this theoretical section.

Norwegian authorities have met opposition from other signatory states through the management of the harvest regimes in the Barents Sea. By ending disputes over quota access in the SFPZ to avoid the involvement of international courts, Norway has managed to neutralize the challenges from peers in former disputes.

Finally, the EU represents a constitutive Other to which the Norwegian Arctic Self-identity is established outside of. Through close cooperation on maritime- and fisheries policy, the EU is a partner in fisheries cooperation but represents also a challenge to the Self-identity in the ongoing snow crab dispute. It is the out-group to the Self, a central aspect in what establishes the self-conscious Norwegian Arctic Self-identity around the harvest regime in the Barents Sea.

3. Methodology and Research Design

All methodological choices are based on theory. As Bryman (2012) explains quite well, "theories that social scientists employ to help to understand the social world have an influence on what is researched and how the findings of the research are interpreted" (p. 5). Therefore, as a starting point for this chapter's discussion, all methodological choices and interpretation of the collected data are made with the intent to explain how the snow crab dispute can be understood as a disruptive event that has implications beyond the exclusive sovereignty over maritime resources in the Barents Sea.

This chapter will clarify and elaborate on the thesis' methodological approach, reflect upon the choices made during data collection, discuss the thesis' research strategy and the case study with both a desk-based approach and semi-structured interviews. This is then followed by discussion and reflection upon data collection, validity, and reliability.

3.1 Methodology

3.1.1 Qualitative Research Design

This thesis has utilized a qualitative research design. A qualitative research design usually begins with the researcher formulating his or her preliminary research questions to identify how to approach the field of study, before exploring the topic and identifying which aspects that are of interest (Bryman, 2012).

Bryman (2012) identifies (3) data collection as a natural step three in qualitative research design, after (1) recognizing the field of study and (2) identifying a topic of interest. Followed by (4) the interpretation of data and (5) establishing a conceptual and theoretical framework.

This streamlined approach is often followed in qualitative research studies. However, this research, as research often does, moved back and forth in-between steps 3-5. The first stage of data collection followed closely after identifying the topic of interest. At this stage, the focus was to explore and establish a background for the case study before working on the conceptual and theoretical framework. Creating the theoretical framework was important before conducting the majority of data collection, as a theoretical framework can assist the researcher in identifying the data relevant for the study and enables the researcher to approach the data from a certain angle that is central to the overall research (Yin, 2003). Similarly, the established theoretical framework with temporal status comparison theory and identity formation assisted greatly in identifying relevant data and continuous reflection on the thesis' research question. The data collection and data interpretation will be discussed later in this chapter.

The final step of Bryman's (2012) qualitative research design is (6) summarizing the research's findings and concluding on the results. The aim is to convince the audience about the thesis' credibility and contribution to the debate within the academic field. This thesis has attempted to identify an alternative approach to analyze disputes over interpretation- and state practice of international maritime law. By looking at the snow crab dispute through the use of temporal status comparison theory and the concept of identity, I seek to explain how the potential loss of sovereignty over natural resources in the Barents Sea is also a case of negative progression for the Norwegian Arctic Self-identity. The findings will be discussed in the analysis and summarized in the thesis' concluding chapter.

3.1.2 Case Study

The thesis topic has been approached by utilizing a case study approach, chosen for its recognized ability in opening ways for discoveries while identifying the reach of the case, to point out the specific area of interests and its limitations. Hence, defining the case study approach plays an important role in identifying what data is relevant prior to data collection (Berg & Lune, 2012). I have chosen to conduct a case study similar to what Berg and Lune (2012 p.338) refer to as a *Descriptive Case Study,* insofar that a theoretical framework and preliminary research questions are established prior to most of the data collection. In this way, the researcher is able to analyze and measure the factors that are identified as most relevant, while collecting and analyzing the data.

Similarly, the case study approach is chosen to explore the different aspects of the snow crab dispute, ranging from contemporary Norway-EU fisheries policy to the development and

practice of international maritime law in the Barents Sea. By establishing preliminary research questions and working with the theoretical framework prior to most of the data collection, I identified the kind of data that could be beneficial for the thesis while at the same time reflecting upon my preliminary research questions and the theoretical choices made. Among the interesting things reflected upon during this process was that the theoretical framework had to be modified to better reflect Norway's Arctic engagement. Therefore, I found it necessary to establish an Arctic Self-identity concept with emphasis on traditions, the harvesting regimes and state practice of maritime law in the Barents Sea.

3.2 Methods of Data Collection

This thesis has used two main methods of data collection, a desk-based approach to documents and statements, and semi-structured interviews of, what I have identified as, an expert on the role of International Law in the snow crab dispute. In addition, I also attended a seminar discussing the trial in the Norwegian Supreme Court, late in the research process. I chose a purposive sampling strategy to identify relevant data, where the sampling criteria are fixed to the research question and objectives determined prior to data collection (Bryman 2016, p. 412-413). By doing the sampling and data collection in this way, I was able to identify the specific areas of interests prior to collecting the data. It was, therefore, easier to focus on the quality of the data and the efficiency of the data collection itself.

3.2.1 Desk-based approach

The sampling of documents focused on a certain number of criteria to help establish different sections within the thesis, ranging from background and case study to strengthening the theoretical arguments. The desk-based approach utilized is what Bryman (2016) refer to as a generic purposive sampling approach, where the criteria are concerned about what kind of data and cases are needed to answer this thesis' research question. By using this strategy, I identified three different types of document-based data that were needed to be collected in order to address my research question. (1) Academic literature, government strategies, historic documents, and news articles covering the development of the harvest regimes in the Barents Sea and the development of the snow crab dispute, (2) documents which cover the legal frameworks relevant for the dispute, and (3) academic literature, government strategies and news articles to establish a theoretical framework and conduct the analysis to answer the thesis' research question.

The documents collected through the desk-based approach are both primary and secondary sources. These are sources such as, but not limited to, government publications, academic

articles and media outlets. The complete list of references is available in chapter seven, *7. References*. Using secondary sources is in most cases unproblematic if the researcher can reflect on and evaluate their usage. This is done through evaluating the publisher, identifying whether an academic article is peer-reviewed or if a policy document is an official document from a recognized institution, and by using common sense. I have, throughout the research, aimed for using sources that are peer-reviewed and written by scholars well-known within the field of Norwegian involvement in Arctic fisheries management and the ST. Bryman (2016) has established four criteria used to assess the quality of secondary sources:

> "1. *Authenticity*. Is the evidence genuine and of unquestionable origin? 2. *Credibility*. Is the evidence free from error and distortion? 3. *Representativeness*. Is the evidence typical of its kind, and if not, is the extent of its untypicality known? 4. *Meaning*. Is the evidence clear and comprehensible?" (Bryman 2016, p.546).

I have, to the best of my abilities, kept these four criteria in mind when conducting the data collection and the following analysis. The background section, including introducing the case study and explaining the complexities of International Maritime Law in the Barents Sea, required an extensive review of historical sources, legal frameworks, media articles and the verdict from the Norwegian Supreme Court. I relied on peer-reviewed academic articles and identified several experts within the academic field, together with news outlets, to establish background for the case study. International Relations- and international law-experts, together with international conventions, treaties, and UNCLOS, were used to explain the different interpretations of international maritime law in the snow crab dispute. For the analysis, I relied on already collected data, explained above, government strategies and statements made in the media. Academic articles from scholars with knowledge of status theory, temporal status comparison theory, and identity theory in International Relations were used to establish the theoretical framework.

The news articles were mostly used as a supplement to other sources for establishing context and background. I did not rely solely on these articles for facts and historical background, as the sources used by news articles are often less reliable than those of peer-reviewed academic articles and government briefs. Further, academic articles sampled for the case study were identified through their engagement with the issues surrounding the Norwegian harvesting regimes in the Barents Sea and the presence of international maritime law. These articles were important, both for the case study and later use in the analysis, together with government strategies and the established overview of legal frameworks. Finally, the academic literature

used for the theoretical framework was sampled after identifying a possible gap in the research, where temporal social comparison theory has not been used to approach International Research-research concerned with harvest regimes in the Barents Sea, issues concerning International Maritime Law, and the ST.

3.2.2 Semi-structured interviews

The second method of data collection is semi-structured elite interviews. This method of data collection is chosen in order to go deeper into the issues identified when formulating the research question and objectives and during the process of working with the documents. Hence, the data gathered from semi-structured interviews are used to go in-depth on issues that were not covered by the desk-based approach. The qualitative interview is characterized as semi-structured including an interview guide with introductory questions and talking points (Appendix no. 2). This structure allows the interviewee to talk about their point of view and argue for their opinion on the issues of the snow crab dispute and allows the researcher to be flexible in asking follow-up questions (Bryman, 2012). The introductory questions and talking points were thus both a preliminary guide for the conversation with the interviewee and a framework to ensure that the interview did not get off track.

The experts were identified, with assistance from thesis supervisors, through a purposive sampling strategy to highlight different aspects of the snow crab dispute. The elite interviewee, an international law expert from the University of Oslo, is not chosen for representativity but rather to go deeper into issues identified throughout the research process. I also reached out to one researcher at the Fridtjof Nansen Institute in Oslo, and both the Norwegian Ministry of Foreign Affairs and the Ministry of Industry, Trade and Fisheries without success. The reasons for this could be as simple as scheduling time in a busy period of the year or rather, most notably for the Ministries, that the snow crab dispute is a sensitive contemporary issue with unknown outcomes at this point in time. Nevertheless, the thesis would have benefitted from views of the Fridtjof Nansen Institute, as a center for Arctic research, and the Ministries, representatives for the Norwegian authorities dealing with the snow crab dispute. Hence, I consider this to be a limitation to the data collection which the analysis would have benefitted from. All potential interviewees were contacted by e-mail when asked for their participation. Those emails included a brief one-page summary of the thesis topic and approach, an interview guide, and a short statement explaining why they were chosen to participate in the study. All potential interviewees were informed of their right to be anonymized.

The interview lasted for about 25 minutes and was mainly about the different legal issues and -processes. After the interview, I sat down and wrote a summary from memory before transcribing the interview data. I later sent the interviewee the paraphrasing used from the interview data for his consent, again asking if he wished to be anonymized. The aim of the interview was to gain a deeper understanding of how the process could look going forward and clarify some misunderstandings in the literature. Overall, the interview helped develop the understanding of international law and its proceedings, whilst strengthening the thesis review of the different legal frameworks involved in the snow crab dispute.

This research has relied on the expertise of Willy Østreng, the thesis' external supervisor, in navigating through and establishing the background for legal frameworks of international law, treaties, and conventions, which all must be understood prior to analysis of the snow crab dispute.

3.2.3 Seminar: «Høyesteretts dom i snøkrabbe-saken – hvor går veien videre». 24. April 2019

In addition to collecting data through the desk-based approach and a semi-structured interview, I also attended a seminar hosted by the Scandinavian Institute of Maritime Law at the University of Oslo, discussing the aftermaths of the trial in the Norwegian Supreme Court (Appendix no. 3). The seminar included talks from professor Geir Ulfstein and Hallvard Østgård, *SIA North Star Ltd*'s defense lawyer in the Supreme Court trial, followed by questions from the attendees. The audience included lawyers, law professors, and upper-higher education students. Since the seminar was attended late in the research process, it assisted greatly in confirming many of my arguments and how I have evaluated potential actions to follow the Supreme Court verdict. The seminar is cited a few times in the thesis when explicit arguments are used, but the overall discussion has been based on other academic scholars and judicial sources. Finally, the seminar discussed how the Norwegian Supreme Court handled the case and how it possibly affected the outcome. However, that discussion is beyond the scope of this thesis.

3.3 Validity and Reliability

There are two types of validity, internal and external. Internal validity is concerned with whether there is a coherent line of reasoning from the observations made during data collection and from the theoretical ideas that are developed from these observations (Bryman, 2016). LeCompte and Goetz (in Bryman, 2012 p.390) argue that internal validity is among the strengths of qualitative research as it ensures a high level of integrity between theoretical

concepts and observations. External validity is concerned with the ability to generalize the findings across social settings. This is an issue for qualitative research as there are often smaller specified case studies that are unique and distinct in one way or another (Bryman, 2012).

This qualitative study is focusing on a pre-defined case-specific study of the contemporary snow crab dispute. Involving both a trial in the Norwegian Supreme Court and disagreements between Norwegian authorities and the EU over the harvesting regimes in the Barents Sea and the interpretation of the ST. This research aims only for internal validity, where the thesis' conclusion follows logically from the arguments made and the evidence presented. External validity is hard to achieve since this is a case-specific study with a defined theoretical framework, which makes it difficult to generalize the findings across social settings. Reliability is concerned with consistently reproducing the same results and if the researchers of the study agree about the observations made. This is problematic to measure for this qualitative case study as it is difficult to reproduce the same social setting twice (Bryman, 2016). Reliability is, therefore, a measurement most often referred to in quantitative research.

3.4 Research Ethics

Diener and Crandall (1978, in Bryman, 2016) identify ethical concerns that are important to consider in social research. Firstly, there is to be no harm to the participants in the research, including both physical and emotional harm, and the importance of reflecting upon how the study can affect the participants. Interviews should be conducted without pressuring or breaking the anonymity of the interviewee. This also includes securing and managing data in a safe manner, to avoid external tampering. Secondly, all participants will be informed about the research prior to participation (p. 126-131). All sources used in this thesis are correctly cited in the text and properly listed in the thesis' reference list. Their trustworthiness and quality are reflected upon during the research process and summarized in the section above concerning desk-based approach to data collection. Finally, the interviewee was, upon recruitment and during the interview, informed about the thesis topic and purpose, and asked for consent, informing about what I expected from his contribution. I also informed about how the data will be stored in a password protected data folder in order to preserve privacy and anonymity. I do not believe that my presence during the interview did have much effect on the data collection. The interviewee in this research is an expert within the field of international law, familiar with interviewing in qualitative research and his role as an interviewee.

4. Case study: The Snow Crab Dispute

4.1 The International Maritime Law Regime in the Barents Sea

4.1.1 The United Nations Convention on Laws of the Sea (UNCLOS)

The UNCLOS article 57 give coastal states the right to claim an EEZ that "shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured" (Article 57, UNCLOS, 1982). If the continental shelf is ending prior to 200 nautical miles, the coastal state will have exclusive sovereignty over the deep seabed up to the 200 nautical mile EEZ mark. Under this convention, the seabed is part of the continental shelf and is, therefore, a continuation of the landmass where the Convention recognizes the coastal state's full sovereignty in natural resource exploration and exploitation. UNCLOS (1982) article 77 define these resources as:

> "mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or subsoil"

The snow crab is categorized as a sedentary species by the Norwegian authorities' interpretation of the UNCLOS article 77 (Havforskningsinstituttet, 2014b). Hence, belonging to the continental shelf and not to the waters above.

Andresen (1987) points out that UNCLOS is not a unified system for management of living maritime resources, but rather a drawn-up framework with too many general directives. Consequently, the interpretation of the convention varies by states and is contradicting the notion of UNCLOS being a stable global regime. There are different interpretations of the convention's reach and limitations. This weakness has become evident during the contemporary snow crab dispute, where Norway and the EU have contradicting views on the UNCLOS legislation and how to interpret the ST in light of the convention.

4.1.2 The Svalbard Treaty

The ST, formerly known as the *Spitsbergen Treaty*, was signed in 1920 at the peace conference in Versailles, France. The Treaty grants Norway with full and absolute sovereignty over Svalbard within the areas specified in article 1, only restricted by the limitations explicitly mentioned in the ST. Østreng (1977 p.14) identify the six fundamental principles that the Treaty is based on, all of which refer to articles in the ST. Firstly, (1) vessels and subjects of all contracting parties shall have equal rights fishing, catching, mining

and commercial activity in the areas specified in article 1. This limitation is provided through the Treaty's article 3. (2) Article 7 stipulates Norway's responsibility to treat all contracting parties with complete equality. This thesis refers to this as the Treaty's non-discrimination principle. (3) According to the ST's article 9, Svalbard shall be demilitarized and not be used for any warlike purposes. Norway has pledged herself to ensure that neither they nor any contracting parties do so. (4) Articles 8 states that taxes, revenues, and duties generated in Svalbard shall be spent on the Archipelago. This is to cater to the needs of Svalbard. (5) Previously established rights, prior to the signing in 1920, within the territory of article 1 shall be recognized. Finally, (6) Norway enjoys full and absolute sovereignty over the areas specified in the Treaty's article 1, only limited by what is explicitly mentioned in the ST. This entails that all contracting parties must abide by Norwegian legislation on the Archipelago and that Norway does not need to consult with any other states about how they manage the territory, as long as it is within the ST's stipulations (Svalbard Treaty, 1920, Ulfstein, 1995 & Østreng, 1977). The thesis will mainly refer to the principles 1, 2 and 6 when discussing the ST's role in the snow crab dispute.

When the ST was created, the UNCLOS articles on EEZ and continental shelf was not established and there was no International Law regime to regulate waters outside of the territorial sea and activity on the continental shelf. As a consequence, Norway and the EU interpret its applicability in the Barents Sea differently. Norway interprets the ST through a strictly literal reading, which restricts the limitations of Norway's full and absolute sovereignty to within the coordinates specified in the Treaty's article 1. The continental shelf is not mentioned in article 1 and falls under Norwegian sovereignty granted through UNCLOS. Nevertheless, Norway argues that Svalbard does not have a continental shelf of its own but is part of the Norwegian mainland's, which extends around and beyond the Archipelago. Svalbard is simply a vertical extension of the shelf, and since Svalbard is more than 200 nautical miles away for the mainland's EEZ, the Archipelago generates its own zone (Østreng, 1977 and Rossi, 2017) The EU, and most signatory states apply, what Ulfstein (1995) refer to as, an effective interpretation. An "effective interpretation places emphasis on the object and purpose of a treaty rather than on respecting the wording or preserving the sovereign freedom of states" (p.90). Hence, they argue that the ST must be interpreted through its initial purpose of securing an equitable regime to ensure sustainable development and utilization of Svalbard's resources. Furthermore, since the Treaty was created prior to the existence of EEZs and state sovereignty of the continental shelf, the Treaty should apply to

the SFPZ and to Svalbard's continental shelf, independent from the Norwegian mainland's (Anderson, 2009 & Tiller and Nyman, 2016).

4.1.3 Svalbard Fisheries Protection Zone

Article 4 in the ST recognize Norway's full and absolute sovereignty to govern harvest regimes on the Svalbard archipelago and in its territorial waters (Svalbard Treaty, 1920). Norway claims that UNCLOS gives the state the right to claim an EEZ around the Archipelago. This has been challenged by some signatory states to the Treaty and the EU, which are claiming that a possible EEZ is breaking the non-discrimination principle. Norway established, therefore, a fisheries protection zone in 1977, with the purpose of maintaining sustainable fisheries regime to prevent exhausting the fish stocks, based on historic fishing in the waters and a non-discrimination policy equal to the one in the ST. The non-discrimination policy in the SFPZ is a practice implemented to not antagonize the Treaty's signatory states further over the SFPZ's legitimacy (Rossi, 2017). Norwegian authorities claim that the SFPZ has legal legitimacy in both UNCLOS and the ST, and that management of harvest regimes under the SFPZ is based on a traditional quota system, with absolute sovereignty equal to an EEZ (Regjeringen, 2014a).

Obviously, the legitimacy of the SFPZ under the UNCLOS and the ST are understood differently by the conflicting parties. A member of the EU fleet, the two Spanish vessels *Olaberri* and *Olazar*, were arrested for illegal fishing in the SFPZ in 2004 (NRK, 2005). The owners sued the Norwegian state for discrimination based on nationality arguing for the relevance of article 4 in the Treaty, which reads:

> "… 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" (Article 3. Svalbard Treaty, 1920).

Norwegian Supreme Court ruled in favor of the Norwegian state, emphasizing that the SFPZ is not regulated by the ST and that fishing quotas in the SFPZ are determined by historic fishing (Tiller & Nyman, 2016). Spain later reached out to Russia and Iceland, exploring the opportunities for a case in the ICJ (NRK, 2005). These talks never materialized into a case in the ICJ, as the SFPZ has yet to be challenged in the Court (HR-2019-282-S, 2019).

Conflicting interpretations over the legitimacy of the SFPZ can be briefly summarized in the following manner. (1) Norway interprets the ST through a strictly literal reading. The Treaty is then restricted and only applicable to the areas specified in the ST. Norway claims exclusive rights under International Maritime Law to the maritime areas outside of the Svalbard territorial sea. The argument is made on the basis that neither a continental shelf nor fisheries protection zones are specified in the ST. Therefore, Norway has exclusive sovereignty to establish and govern an EEZ around the Archipelago. Instead of establishing an EEZ, Norway establishes the SFPZ with a non-discrimination policy, through the rights provided by the Treaty and UNCLOS. (2) Secondly, Russia and Iceland have argued that any creation of maritime zones around the Archipelago should be done through a multilateral process recognizing the ST and its signatory states. This interpretation of the ST argues that Norway does not have the exclusive right to claim jurisdiction over 200 nautical mile fisheries zone around Svalbard or on the continental shelf, as Norway's sovereignty is restricted to the areas specified in the Treaty. At the time of the ST's creation, the areas outside of the territorial sea were regarded as high seas. Finally, (3) the third interpretation recognizes Norway's full and absolute sovereignty over Svalbard and the maritime areas around the Archipelago while arguing for the application of the Treaty to the SFPZ and the continental shelf. In short, this interpretation allows signatory states of the ST to enjoy the equal rights provided by the Treaty in both the SFPZ and on the continental shelf (Yerkes, 2016 & Østreng, 1977).

In sum, this dispute has become more evident now that a trawler from Latvia, a signatory state, has been arrested for illegal fishing of snow crab in the SFPZ, whilst Norwegian trawlers are allowed access to harvest snow crab (Rossi, 2017). The species is defined by Norway's interpretation of the UNCLOS as sedentary and is therefore not regulated by the non-discrimination policy of the SFPZ nor under the jurisdiction of the ST, but rather by the UNCLOS, as argued by Norwegian authorities (FNI, 2017).

4.2 Historical Development of Snow Crab Fisheries

The snow crab was first discovered in the Barents Sea in 1996 but was not harvested on a larger scale before in 2013. Shortly after, the species were named "the new gold of the Arctic", with economic potential similar to cod (Østhagen & Raspotnik, 2018b). This triggered interests in Russia, Norway, and a number of states within the EU for potential harvest in Norwegian and Russian waters (Østhagen & Raspotnik, 2018b). Norway and Russia have a tradition for managing the fish stocks in the Barents Sea through annual

meetings in the Norwegian-Russian Fisheries Commission, setting quotas for all states fishing in the area (Regjeringen, 2014b). However, the relationship between Russia and the West took a turn for the worse following the annexation of Crimea. After the annexation, European states were banned from fishing snow crab in Russian waters, forcing these trawlers towards the *Loophole* (Østhagen & Raspotnik, 2018b).

In 2015, Norway banned snow crab fishing on its continental shelf, whilst handing out licenses to domestic trawlers. One year later, the Lithuanian trawler *Juras Vilkas* was arrested for illegal fishing with an EU-issued license for snow crab harvest in the *Loophole*. The EU immediately called out Norway for breaking the non-discrimination principle of the ST and the negotiations of the North-East Atlantic Fisheries Commission. Norwegian authorities, on the other hand, claim that snow crabs are a sedentary species belonging to the continental shelf, which means that exploitation is regulated by the sovereign state, with the rights provided through International Maritime Law (Rossi, 2017 and Regjeringen, 2018). The Norwegian government will from July 1st, 2019 lift the harvest ban, and the requirements for approved participation in snow crab fisheries will then be equal to the requirements for the trawlers who received licenses during the harvest ban (Nærings- og fiskeridepartmentet, 2019b). The most important change is that *everyone* can apply and those that meet the requirements are likely to receive a license (Regjeringen, 2019b). However, Norway argues that because the snow crab is a sedentary species it, therefore, falls under the coastal state's exclusive sovereignty (Regjeringen, 2018). Hence, the change in *Snøkrabbeforskriften* will mostly affect Norwegian trawlers' access to crab. Meaning that the policy will be changed, but the practice and access for international trawlers will most likely remain the same. However, this is how I interpret these changes based on the material collected during the research process. Attempts to get in touch with the Ministry of Industry, Trade and Fisheries and the Ministry of Foreign Affairs have not been answered. Hence, how the changes will affect the practice of access to snow crab fisheries are unconfirmed.

4.2.1 The Svalbard Archipelago

It is recognized that the Archipelago was first discovered by the Dutch explorer Willem Barents in 1596, in search for a seaway from the Atlantic to the Pacific. Barents, at the time, named the archipelago *Spitsbergen*. The area later proved to be attractive grounds for whale hunting. Not long after, English and Dutch whale hunters clashed in the pursuit for the profitable mammal. The Dutch declared the Archipelago as an international territory and open to everyone, while the Englishmen sought to establish sovereignty over the area, and later

declared its sovereignty over Svalbard. The Danish-Norwegian Union sent warships to claim the Archipelago as part of the kingdom, but the claim was rejected by the Englishmen. The conflict later faded away due to overexploitation of maritime resources, and the Archipelago became *terra nullius*, nobody's land (Mathisen, 1951, Pedersen, 2006 & Ulfstein, 1995).

After its independence in 1905, Norway became more ambitious in its approach to Svalbard in search for the exploitation of minerals located in the Archipelago, mostly concerned with coal. The issues of jurisdiction lead to three trilateral conferences attended by Norway, Sweden, and Russia, where it was suggested that Svalbard should be governed together by the three states. The conferences were later dissolved due to the outbreak of World War I. The issue was later settled at the Paris Peace Conference where the Spitsbergen Commission was established, which in 1920 led to the adoption of the ST (Mathisen, 1951 & Pedersen, 2006). The Archipelago's importance lies within the fields of natural resources and strategic geographical location (Ulfstein, 1995). Warmer temperatures in the Arctic allows for expansion of utilization of marine resources. This thesis will focus on the issues of access to natural resources, by looking at the snow crab dispute and the Norwegian Arctic Self-identity.

4.2.2 Challenges to the harvest regimes in the Barents Sea

Interestingly, prior to the arrest of the Latvian trawler *Senator*, the Lithuanian trawler *Juras Vilkas* was in November 2017 found guilty of illegal harvest of snow crab in the *Loophole* by the Norwegian Supreme Court. The Court overruled the decision by *Øst-Finnmark Tingrett*, which initially ruled the activity as legal. Arguing that the North-East Atlantic Fisheries Commission hold jurisdiction overfishing in the *Loophole* (NRK, 2017a & NRK, 2017b). The Supreme Court ruled in favor of Norwegian authorities, arguing that parts of the seabed underneath the *Loophole* belong the Norwegian continental shelf, although the waters above are international waters (NRK, 2017a). Meaning that Norway has absolute sovereignty over resources belonging to the seabed through the UNCLOS but not resources in the international water above. Being the case for snow crabs, as they are categorized as a sedentary species belonging to the seabed, through Norwegian authorities' interpretation of UNCLOS. Hence, the harvest is not regulated by the North-East Atlantic Fisheries Commission, but rather by the UNCLOS.

In the incident with *Senator*, the had EU issued a license for snow crab harvest, not recognizing the Norwegian ban. Around the same time as the ban was implemented, Norway issued licenses to domestic trawlers. The EU responded by accusing Norwegian authorities of breaking the non-discrimination principle in the ST, which allows all signatories equal rights

to resource extraction in the Archipelago and the surrounding waters. However, the SFPZ are not part of Svalbard's territorial waters but established through Norwegian sovereignty over the Archipelago, which is established in article no. 1 in the Treaty. Norwegian authorities still exercise a non-discrimination policy for open water fishing in the zone to not antagonize signatories further, as there is a dispute concerning the SFPZ's legitimacy (Rossi, 2017). The ban of snow crab fishing will be lifted July 1st, 2019 (Nærings- og fiskeridepartementet, 2019b), but the practice towards foreign trawlers is unlikely to change, as Norway still argue for their exclusive right to resources on the continental shelf (Regjeringen, 2018).

Despite Norway exercising a non-discrimination policy, the creation of the SFPZ met a lot of criticism from other signatory-states to the ST, such. Iceland, as an example, does acknowledge fisheries protection zones in general, but not the Norwegian practice of the SFPZ. The main difference between an EEZ and the SFPZ is that the coastal state has exclusive sovereignty over maritime resources on the continental shelf and the waters above, within a 200-nautical mile radius (Pedersen, 2006). The SFPZ, on the other hand, is a softer maritime harvest regime which regulates fishing in a 200-nautical mile radius around the Archipelago. Quotas are issued to prevent exhausting the fish stocks, based on a non-discrimination policy but are not part of the Treaty (Regjeringen, 2014a). Norway still exercises exclusive rights to sedentary resources within the zone through their claim to the shelf beneath the SFPZ as part of the Norwegian mainland's, and thus not regulated by the non-discrimination policy of the SFPZ but the UNCLOS (Rossi, 2017).

4.2.3 The case of SIA North Star Ltd vs Norwegian authorities in Norwegian Supreme Court

The case of *SIA North Star Ltd vs the Norwegian state* in the Norwegian Supreme Court was finished on the 15th of February 2019. The Latvian shipowner tried to appeal the verdict from the previous trial, where they were found guilty of illegal fishing of snow crab on the Norwegian continental shelf in the SFPZ without a valid license issued from Norwegian authorities. The Supreme Court looked at the case as of principle importance that could potentially establish precedence in international maritime law. The trial was therefore postponed and opened for *Storkammer*, meaning more judges would be involved. (HR-2019-282-S, 2019). Amplifying the fact that the verdict could, potentially, establish precedence in international law for further access to resources in the Barents Sea. This trial is the first higher Court to address article 77 in the UNCLOS, which deals with the state's sovereign rights to resource extraction on its continental shelf.

SIA North Star Ltd, *Senator's* ship owner, argued for their right to harvest snow crab in the SFPZ based on the following; (1) The snow crab is not a sedentary species, according to the definition in UNCLOS article 77. The interpretation must be based on the principles of the Vienna Convention on the Law of Treaties, in which the principles of wording, context, purpose, and pre-text to the UNCLOS support the argument of snow crab being a non-sedentary species. (2) The regulatory framework for snow crab harvest, *Snøkrabbeforskriften*, is limited to the Norwegian continental shelf. It was argued that since snow crab is not a sedentary species, the regulatory framework does not implicate *Senator*'s activities in the SFPZ. (3) Finally, the regulatory framework for snow crab harvest is a breach of the non-discriminatory policy of the Treaty. This is based on the fact that only Norwegian trawlers had received the necessary licenses for its harvest (HR-2019-282-S, 2019).

The Norwegian state responded to the arguments made by the defendant in the following manner; (1) Snow crab is a sedentary species based on the definition of UNCLOS article 77 and the principles of the Vienna Convention on the Law of Treaties. (2) However, in this case, it does not matter if it is a sedentary species or not, as Norway has the exclusive right to regulate harvest in the SFPZ and on the continental shelf. (3) Finally, due to Norway's exclusive right to regulate snow crab harvest, trawlers need permission prior to harvest on the continental shelf and in the SFPZ, which *Senator* did not have. Furthermore, it follows from the legal practice of the Court that a trial does not question whether *Senator* should have received a license prior to illegal harvest. The defendant can, therefore, be found guilty regardless of whether the non-discriminatory policy of the ST applies or not (HR-2019-282-S, 2019). Hence, it is clear that Norway claim and exercise full sovereignty in the SFPZ and on the continental shelf legitimized through their interpretation of international maritime law. Regardless of whether the snow crab is sedentary species or not.

The Supreme Court focused on two questions in *North Star Ltd* appeal. (1) Whether snow crab is sedentary- or non-sedentary species based on the definition in UNCLOS and (2) is the harvest of snow crab punishable regardless if the regulatory framework for harvest, *Snøkrabbeforskriften*, is in breach of International Law. In the verdict, the Supreme Court concluded that snow crab is a sedentary species based on the definition in UNCLOS article 77, due to its constant contact with the seabed. The snow crab is then under Norwegian sovereignty as the species belongs to the continental shelf. Secondly, the court ruled that Norway does not breach international law or the ST through its regulatory practice in the SFPZ. Illegal harvest of snow crab would be punished even if the captain and ship owners

were Norwegian nationals. Meaning that if the ST's non-discrimination principle applies in the SFPZ, the arrest and prosecution of *Senator* are not discriminatory as Norwegian nationals also would have faced prosecution (HR-2019-282-S, 2019).

A potential future trial in international courts could have implications for Norwegian sovereignty over maritime resources on the continental shelf outside of the territorial waters. Latvia, on behalf of *SIA North Star Ltd*, has the opportunity to appeal the ruling in the ICJ in the Hague or the International Tribunal for the Laws of the Sea. Their ruling may not be equal to the one of the Norwegian Supreme Court, as there are a number of contested issues in this dispute. However, *SIA North Star Ltd* must exhaust the option of a civil suit before Latvia can appeal their case to international courts. This option will not be discussed further due to the likelihood of a similar verdict in civil courts, to the one of the Supreme Court (HR-2019-282-S, 2019 & G. Ulfstein, personal communication, April 19, 2019).

4.2.4 The European Union – representative of the individual stakeholders

The EU is not a signatory party of the ST, but rather a representative of the signatory EU-states. The union assumes its competence in negotiations over fishery quotas. Maritime harvest and development are not a part of the current European Economic Community arrangement. The quotas issued in the Norwegian EEZ are based on a bilateral agreement, where quotas in the Barents Sea are traded for similar quotas in EU-states' territorial waters (Regjeringen, 2016).

When Norway banned the harvest of snow crabs for all foreign trawlers, the EU claimed the practice is a breach of the ST's non-discrimination principle. Arguing that the practice in SFPZ is not legitimate because the waters are under the jurisdiction of the Treaty. Norway disagrees and claims the Treaty is only valid on the Svalbard archipelago and in waters up to 12 nautical miles, restricted to the area specified in the ST's article 1. The SFPZ is under Norwegian jurisdiction, and the objective is to establish sustainable maritime harvest regimes. Norway decides who should get a license and there is no non-discrimination principle in the SFPZ, but rather a policy Norwegian authorities choose to operate with (Regjeringen, 2014a).

In practice, the regulations in the SFPZ are designed so that they will not conflict with the ST, even if it applied in the SFPZ (Pedersen, 2006). Whether or not the EU and signatories of the Treaty acknowledge the SFPZ, does not matter for Norwegian authorities in regulating the harvest of snow crab because it is a sedentary species, which Norway has been granted sovereignty over in the UNCLOS. Norwegian authorities argue the SFPZ only apply to the

waters above the seabed (Rossi, 2017 & Regjeringen, 2019). The EU have also previously referred to the crab as a sedentary species back in 2015 (European Commission, referred to in Østhagen and Raspotnik, 2019).

The EU, represented by the European Commission in these matters, is constituted as a *Fishery Body* for the Union's member states. This is an institutional body in which member states have transferred competence in fishery matters which include striking agreements and exchange of fishing quota with external states (Nordmann, 1998). The Directorate-General for Maritime Affairs and Fisheries are responsible for these tasks under the leadership of the Commissioner Karmenu Vella (European Commission, 2019a).

Latvia has recently sued the European Commission for their lacking efforts in protecting the interests of a member state and failing attempts to protect Latvian fishermen caught for illegal fishing on an EU-issued license (LETA, 2018). As of May 2019, the complaint lies with the European Court of Justice. Regardless of the outcome, it is clear that Latvia is not impressed with how the European Commission is working to solve this issue and how they have represented the interests of Latvian fishermen (Republic of Latvia v European Commission, 2018).

Norwegian fish is not included in the EEA-agreement with the EU and therefore exempt from regulations of free trade, toll, competition and state subsidies with the EU market, to the same extent as agricultural products. Separate negotiations with the EU are held together with negotiations of the EEA-agreement (Regjeringen, 2017a). These negotiations, including the exchange of fishing quotas, are what is referred to as reciprocal; an exchange of quotas for fishing in the Norwegian- and the EU's member states' EEZs (Bretherton & Vogler, 2008).

4.2.5 Snow Crab and the Barents Sea

It is unclear how the species first came to the Barents Sea. There are several stocks of snow crabs found between the Barents Sea and the Bering Strait, suggesting that the species potentially have emigrated from the east. Research shows that the crab thrives in the cold-water temperatures of the High North (Havforskningsinstituttet, 2014a). There have been cases where snow crabs have been caught along the coast in north-eastern Norway, indicating that the species could spread northwest to occupy areas around the Svalbard archipelago (Havforskningsinstituttet, 2014b).

The Barents Sea is a shallow regional sea located on the Norwegian continental shelf, receiving warm-water streams from the Mexican Gulf through the Atlantic, creating a

nutritious environment for various species of fish and crabs. Sea areas with the same longitude on the other side of the planet are covered with ice throughout the year. In the last couple of years, the Barents Sea has experienced warmer waters than ever before, resulting in an increased production of plankton and great feeding grounds for over 200 different species of fish and northwards migration of some species. However, only some of these stocks have a commercial role, among these are the world's largest cod stock. The snow crab stock has in recent years developed into commercial activity (Nærings- og fiskeridepartmentet, 2019a p.55), and was until recently subject to a harvest ban before a sustainable harvest regime was established but is now open for approved applicants through the national laws for fisheries in Norwegian EEZ (Regjeringen, 2019b). The requirements for approved participation in snow crab fisheries is equal to the requirements for the trawlers who received snow crab quotas during the harvest ban. The most important change is that *everyone* can apply and those meet the requirements are likely to receive quotas (Regjeringen, 2019b).

The possible continued migration of snow crabs, the species economic potential and the continuous warming of the Barents Sea (Østhagen & Raspotnik, 2018a & 2018b), makes for an interesting case. If the ST's interpretation where to be discussed in the ICJ and the species migrate to occupy the seabed around Svalbard, the principle dimension of the dispute could force restrictions on the coastal state's exclusive sovereignty over natural resources around the Archipelago.

5. Discussion and Analysis

This thesis will look closer at how temporal status comparison theory can be applied to contemporary issues of international politics. More specifically, on how states tend to compare their identity with the former version of themselves, and whether they either look back in nostalgy or in spite of their temporal-Self and in its progression. History and tradition are central to what the state view as something of status and a point of departure in the progression of the temporal-Self. One such example is the shift in Russian discourse in the Vladimir Putin-era, where Putin referred to the dissolution of the USSR as a geopolitical catastrophe (Reuters, 2018). Meaning that contemporary Russia takes pride in the former version of itself, the temporal-Self. Similar, I hope to show how the snow crab dispute in the Barents Sea is also a case of Norwegian Self-identity, manifested in the development of both the temporal Self and the harvesting regimes in the Barents Sea. Where the Norwegian identity as an Arctic state, with strong fisheries traditions and successful utilization of petroleum and gas resources, is challenged by the signatories of the ST with claim to access

the resources in the SFPZ and on the shelf. The potential outcome could have implications for how contemporary Self-identity is negatively compared to the temporal.

The analysis will look closer at the possible implications following the verdict in the Norwegian Supreme Court, with the possibility of involving the ICJ in the Hague and a compromise solution between Norway and the EU. Hence, the analysis will not discuss how the trial in the Norwegian Supreme Court has been processed nor will the thesis engage in discussions about which party's view is more legitimate. Rather, the analysis will explore the potential implications of the dispute around the harvesting regimes in the Barents Sea and the Norwegian Arctic Self-identity. The dispute then becomes more than just access to snow crab harvest but is also an issue of Norwegian sovereignty of the continental shelf and a potential proxy for oil and gas resources.

5.1 The Role of International Courts and Fisheries Negotiations

It is no surprise that *SIA North Star Ltd* are unhappy with the verdict in the Norwegian Supreme Court. The head of *SIA North Star Ltd* is of the opinion that the verdict is "political and in the interest of the Norwegian state" (LSM, 2019), and he will do everything in his power to get the case tried in international courts. Edgars Rinkevics, the Latvian Minister of Foreign Affairs, made a short comment after the verdict was made public, emphasizing that the Latvian government would go through the reasoning of the Court before evaluating future options. It is not clear when the Latvian Government will provide a statement on the future of this case (LSM, 2019), but the issue has a high priority in the Latvian government (Østhagen and Raspotnik, 2019), and it, therefore, makes sense that the cabinet will take its time in identifying the right strategy in pursuing this case.

Following the verdict in Norwegian Supreme Court, the European Commission has in a letter to the Long Distance Advisory Council (2019) in Madrid, an advisory council on fisheries matters partly founded by the European Commission, recommended member states to warn their snow crab operators about the risks attached to activity in the Barents Sea. Furthermore, emphasizing that the Commission has done it utmost in finding a practical solution, but does not see progression of the issue in the near future (European Commission, 2019b). However, on a question from the Committee on Fisheries, in April of 2018, about how the Commission plan to safeguard the interest of EU member states parties to the ST and ensure fishing for EU vessels holding a snow crab license to fish in the waters around Svalbard, the Commission responded that it "remains confident that it will be possible to find satisfactory solutions to the issue" (European Parliament, 2018). An unidentified number of EU member states, whose

identity is not made public, did file a complaint with the European Free Trade Association (EFTA) Court over Norway's harvest ban in 2016 (Unidentified EU-states v. Norway, 2016), but the complaint was denied by the EFTA court as Svalbard is not included in the EEA-agreement between Norway and the EU (H. Østgård, at the seminar "Høyesteretts dom i snøkrabbe-saken – hvor går veien videre", 24. April 2019).

As for further action involving international courts, two options arise as most likely, the ICJ in the Hague and the International Tribunal for the Law of the Sea (ITLOS). Appealing the verdict to either of these two institutions has been done earlier in issues of maritime disputes. However, the ITLOS restricted jurisdiction makes the option of the ICJ the most likely out of the two. The ITLOS is dealing with issues concerning the UNCLOS and other Treaties which are created in reference to the UNCLOS. The ST (Svalbard Treaty, 1920) was established long before the UNCLOS and can therefore not be tried in the ITLOS, which most likely is limited to look at the categorization of the snow crab. The ICJ, on the other hand, has broader jurisdiction where both the categorization of the snow crab and the interpretation of the ST can be tried (G. Ulfstein, personal communication, April 10).

5.1.1 The International Court of Justice in the Hague

The ICJ is a judicial institution of the United Nations (UN) and resides in the Hague, Netherlands. The ICJ role is to "settle, in accordance with international law, legal disputes submitted to it by States and to give advisory opinions". As follows, the EU, as an institution, is not able to take the snow crab issues to the ICJ. Latvia, as a representative for *SIA North Star Ltd*, has to take that action (ICJ, 2019b) The source of laws applied by the court is international treaties and conventions, international customs, principles of law and former judicial decisions. The judgment of the ICJ is final, binding and without options to appeal by the two state parties involved in the case (ICJ, 2019a). Hence, it will be interesting to see how the Latvian Government will pursue this issue in the future since the EU cannot challenge the verdict or take the case to the ICJ by itself. There is support for further action among EU-member states, where several representatives have voiced concerns about how the Commission has failed to act (LETA, 2018). As of May 2019, Latvia has not ratified the ICJ's convention and can therefore not try the case. However, there have been talks within the Latvian government of looking into the issue (H. Østgård, at the seminar "Høyesteretts dom i snøkrabbe-saken – hvor går veien videre", 24. April 2019). The analysis will nonetheless discuss the ICJ as a possible solution to the dispute since the Latvian government is engaging

in talks and other EU-member states are a signatory to the ST and have ratified the ICJ conventions.

Taking the case to the ICJ is a risk for Norway, Latvia and the EU. A potential loss for Norway includes possible further questions about access to oil and gas resources on the continental shelf, a loss for Latvia and the EU entails that Norwegian sovereignty over the resources on the shelf and in the SFPZ is absolute and not limited by the ST's stipulations. Furthermore, the EU enjoys a rather fruitful fisheries cooperation with Norway (Regjeringen, 2016 and European Commission, 2019b) and may not necessarily favor a trial in international courts. Fearing the issue then may affect other areas of fisheries cooperation, which is not in the interest of the EU (G. Ulfstein, personal communication, 10 April 2019). The interest in snow crab is mainly limited to a few EU states who were evicted from the Russian continental shelf. These countries, among them Latvia, have actors who made significant investments in equipment and vessels. Other individual EU member states do not necessarily seem likely to advocate for further action, as this is a case-specific issue that none of the parties wish to extend to other areas of close cooperation and does not necessarily see the snow crab harvest as an activity with economic potential (Østhagen & Raspotnik, 2019). Latvia then has less to lose from an escalation of the dispute, since they do not have access to other quotas in the SFPZ, due to lack of historic fishing (H. Østgård, at the seminar "Høyesteretts dom i snøkrabbe-saken – hvor går veien videre", 24. April 2019). The EU then becomes a representative for a small number of interested parties, but due to the nature of the dispute, the Union cannot go back on their actions of issuing licenses in the SFPZ, as this would mean going back on their initial stance on the interpretation of ST.

5.1.2 The likelihood of a compromise solution and trial in international courts

Norway has previously been involved in cases of maritime disputes in the Barents Sea, which later were solved by compromises. In the dispute over delimitation of the continental shelf, Norway and Russia had argued since the 1970s without reaching an agreement. Both states had their own perception of how to interpret procedures for delimitation in International Maritime Law. The final solution ended up being a compromise, in which both states gave up major areas of their initial claim to shelf-areas (km^2) to finalize an agreement. In the same instance, several other agreements on cooperation in fisheries and petroleum were finalized. Hønneland and Jørgensen (2015) emphasize that the final agreement between the two was made possible by the good cooperation within the Norwegian-Russian Fisheries Commission

and the North-Atlantic Fisheries Commission, in what they refer to as a compromise culture in the Barents Sea.

The question then becomes whether the work by similar bilateral institutions or diplomatic missions, for example, the Norwegian delegation to the EU, are able to work out a compromise in the ongoing snow crab dispute. Negotiations between Norway and the EU did exist for quite a while. According to Østhagen and Raspotnik (2018a), Norway initiated informal talks over the exchange of snow crab quota with the European Commission. The premise was that Norway would receive quotas in the EEZs of EU-member states and in exchange, the EU would receive quotas for fishing snow crab. However, the talks stalled after the Commission argued they had no fishing quotas to trade. Later Norwegian attempts to find a solution has been declined by the EU (Østhagen & Raspotnik, 2019). As previously mentioned, the European Commission (2019b) has stated, in a letter to the Long Distance Advisory Council in Madrid, that they have done their utmost in finding a practical solution on the dispute but does not see progression towards a solution in the near future. Following this, it does not seem very likely that the snow crab dispute will be solved or softened in the immediate future through a compromise solution in which quotas are exchanged.

What is perhaps even more interesting about such a solution and the negotiation talks, is how it could be interpreted by opposition states. Giving the edge in negotiations would symbolize more than just the share of quotas exchanged. Hallvard Østgård, *SIA North Star Ltd*'s defense lawyer in the Supreme Court trial, emphasized that a compromise solution seems unlikely at this stage, due to the principle questions of the dispute (H. Østgård, at the seminar "Høyesteretts dom i snøkrabbe-saken – hvor går veien videre", 24. April 2019). For Norwegian authorities, accepting an exchange of quotas without receiving access to fishing in EU waters in return, would symbolize that the claim to exclusive sovereignty over snow crab may be ambiguous after all (Østhagen & Raspotnik, 2019). In the worst case, acceptance of the EU's no-quota offer would open up for questioning the literal interpretation of the ST. Insofar that Norway would accept an exchange without receiving its value in return (Østhagen & Raspotnik, 2018a). The former Norwegian Minister of Fisheries, Per Sandberg, put it clearly when he said that Norway will never initiate compromises when it comes to regulation and harvest of the resources located on the Norwegian continental shelf and that Norway will not give the EU a single crab without a fair exchange of quotas (Aftenposten, 2017). Furthermore, the government remains firm that they wish to cooperate with the EU on

fisheries in the Barents Sea, but also that the snow crab is a sedentary species in accordance with article 77 in the UNCLOS (Regjeringen, 2018).

A compromise solution similar to the one discussed above, have previously been used to solve disputes over fishing quotas in the SFPZ. One case where quotas in the SFPZ has been disputed and where the counter-party has argued for a breach of the non-discrimination principle in the ST is the dispute with Iceland over fishing quotas in the zone. In this case, Iceland was not awarded quotas in the SFPZ based on their lack of historic fishing in the waters. Historic fishing is the criteria used by Norwegian authorities when distributing quotas for fishing in the SFPZ. Iceland threatened to try the case to the ICJ in the Hague but later agreed to settle the issue in exchange for quotas in the SFPZ and the *Loophole*. The agreement excluded the possibility for Iceland to try the case at the ICJ (Pedersen, 2006 and Fløistad, 2008). In this way, Iceland forced through a compromise solution by threatening with the ICJ.

Iceland may have approached this dispute with purely material interests, not necessarily with the interpretation of the ST as the main goal. Iceland's main target in this dispute may have been to protect own material interests and access to fish stocks. The issue of treaty interpretation was a way for Iceland to make their argument for access to these fish stocks in the SFPZ. Nevertheless, through a compromise solution Norwegian authority avoided the possibility of this dispute evolving into an issue of principle interpretation of the ST and involvement of the ICJ.

However, it seems unlikely that the EU will succeed with a similar approach. This is first of all due to the fact that the Norwegian Supreme Court categorized snow crab as a sedentary, relying on UNCLOS' definition. In a similar case, a US trawler was caught for the illegal harvest of snow crab on the Canadian continental shelf. In that trial, the regional Canadian court ruled snow crab to be sedentary, ensuring Canadian sole sovereignty in regulating its harvest as it belongs to the Canadian shelf (Tiller & Nyman, 2016). In the dispute with Iceland, there was never a question of how to define the species, in that case, fish, only about how Norway chose to distribute the quotas to other states. The snow crab, a relatively new species with different characteristics, have brought about a new dimension into the dispute, which is also about the principle question of who has rights to the resources on the continental shelf (G. Ulfstein, personal communication, April 10, 2019). Norway has remained rock-solid in its stance on not giving up those resources and on its literal interpretation of the ST.

As explained earlier, the ruling of the ICJ is final and binding. Meaning that if Norway were to win, a state could no longer challenge the interpretation of the ST. However, if a signatory state to the ST would win, it could open up for new questions regarding the oil and gas resources on the shelf around Svalbard. If the ICJ rules the snow crab a sedentary species and that signatory states have the right to harvest it on the continental shelf based on the non-discrimination principle of the Treaty, the implications for exclusive Norwegian sovereignty may be significant (Tiller and Nyman, 2016 & Østhagen and Raspotnik, 2019).

Therefore, a solution which is neither an acceptance of the Norwegian view or successful trial in the ICJ is, potentially, a disruption to the Arctic Self-identity. A loss which could include a new institutionalized interpretation of the ST and/or restricting the coastal state's exclusive sovereignty over resources on the continental shelf, depending on how the ICJ to rule on the different issues. Nevertheless, this is then also a loss for the Norwegian Arctic Self-Identity, insofar that this outcome will retract some of the achievements made by the Norwegian delegation during UNCLOS III. The consequence of a loss in this instance would include a negative comparison to the temporal-Self.

For the EU and its member states, a potential loss in the ICJ, with the possibility of institutionalized literal interpretation of the ST, would exclude the opportunity for future challenges to Norwegian practice in the SFPZ (Østhagen and Raspotnik, 2019). Hence, the fear of a potential loss in an ICJ-trial has, until now, been significant enough for EU-member states not to pursue that option. Whether or not they will continue to refrain from taking that step is hard to predict, since the EU does not want to sour other areas of fisheries cooperation with Norway (European Commission, 2019b). However, at this stage, a threat of taking the case to the ICJ seems a great a tool as a potential compromise for access to snow crab quotas, despite the implications of a potential loss. On the other hand, a new verdict in international courts could also open up for more competition from other signatory states to the ST. States that now do not have access to quotas in the SFPZ due to their lack of historic fishing in the region. In this case, pursuing the case to the ICJ could mean more competition over the resources in the SFPZ, in comparison to the contemporary harvest regime based on historic fishing (Østhagen and Raspotnik, 2019 & Pedersen, 2006).

The European Commission (2019b) has expressed its interest in not letting the snow crab dispute spill over into fisheries cooperation and the annual fisheries negotiations with Norway, as they argue contracting parties to the ST have right to fish in the zone. However, as already discussed, Norway argues that licenses for access to the SFPZ are based on historic

fishing and not regulated by the ST. Due to the perceived lack of willingness in finding a practical solution from both sides (Østhagen and Raspotnik, 2018a and European Commission 2019b), future actions are rather uncertain. Latvia, on the other hand, as an individual state has less to lose in regard to fisheries cooperation in the Barents Sea. The country has not been awarded any other quotas in the SFPZ and has, therefore, no quota to lose. A trial is placing Latvia in a situation that might have a significant positive outcome without losing access to SFPZ, which they did not have in the first place (H. Østgård, at the seminar "Høyesteretts dom i snøkrabbe-saken – hvor går veien videre", 24. April 2019). Nevertheless, Norway has more to lose in a potential trial, which very well could be enough for an EU-member state to take that action. As of May 2019, the Latvian government is scheduled to discuss that opportunity amongst themselves (LSM, 2019). Time will show what actions they take, if any, to claim their right to access in the SFPZ.

In summary, a solution is only possible, according to the Norwegian Government, if the EU can offer quotas that are valued equally to how Norwegian authorities value snow crab quotas (Regjeringen, 2018 and Aftenposten, 2017). By doing this, the EU would then, implicitly, recognize the Norwegian interpretation of the ST. If Norwegian authorities would take the same action, accepting the EU's counteroffer by not receiving the value of the crab in return, it could set precedence to take further steps in questioning the Norwegian interpretation of the Treaty. That would mean that Norway accepted access to a resource which they initially claimed exclusive sovereignty over. Yet again, this depends on how Norwegian authorities value EU's counteroffer in a potential quota exchange, but it is fair to assume that Norwegian authorities value snow crab higher than the what the EU might be willing to or are able to offer. Making a potential compromise solution an asymmetrical exchange of quotas.

Either way, a compromise solution means that one of the parties must recognize the other parties' position as legitimate. Which, in this case, is also recognizing that their own view is less legitimate. Hence, the threat of taking the case to the ICJ, realistically, might have more of an impact on EU-member states' access to snow crab quota than a potential trial can provide, since a trial is also a risk of losing the current access to quotas in the SFPZ. For Norway, it seems that a trial in the ICJ is a necessary evil to once and for all institutionalize the literal interpretation of the ST, since their view on snow crab as sedentary species and interpretation of the ST remains rock-solid (Aftenposten, 2017 and Regjeringen 2018).

5.2 How Does the Snow Crab Dispute Challenge the Harvesting Regimes and Disrupt Norwegian Arctic Self-Identity?

5.2.1 Compromise and its implications the Norwegian Arctic Self-Identity

A compromise solution with the EU would be a step back from the initial Norwegian argument for exclusive rights to the resources located on the continental shelf and in the SFPZ. The compromise drafted above is the premise for the following discussion and is based on the negotiations discussed in Østhagen and Raspotnik (2018a), where the EU claim to have no quotas to exchange with snow crab quotas. The negotiations, therefore, stalled as Norway was not going to give away quotas for free when they claim exclusive rights over the crab as the coastal state.

5.2.1.1 Practical implications

The practical implications of a scenario including the compromise solution presented above are quite clear. In this scenario, the sovereignty over oil and gas resources are probably not in question at first. The main issue is the value of the quota exchange. It is fair to assume that such a compromise does include accepting an exchange where the EU has no quotas to give in exchange for snow crab. As explained by Østhagen and Raspotnik (2018a), if the EU would offer quotas in exchange for snow crab quotas, they would also recognize the Norwegian claim to exclusive rights over the crab. Similarly, going back to the negotiations in the future would also mean going back to negotiating on an offer where the EU does not exchange quotas of sufficient value in return. This would implicitly acknowledge the EU's argument over who has access to harvest the snow crab.

A compromise could also open up for other signatory states to the ST, non-EU states, to take further action in challenging the interpretation of the Treaty and Norwegian practice in the SFPZ. Insofar that Norway also through a compromise, implicitly, admits that their initial claim to exclusive sovereignty in the disputed area can be questionable after all. That is, questionable to the extent that they do would not risk a potential trial in the ICJ.

5.2.1.2 Ideational implications

A compromise could have implications for the Norwegian Arctic Self-Identity. These are ideational as well as practical, since they may change the progression of the Arctic-Self. First of all, a compromise in which quotas for snow crab are exchanged in return for an unsatisfactory pack of quotas or even no quotas at all would challenge the Norwegian tradition for resource extraction in the Arctic and the ownership over the UNCLOS. Insofar

that Norway would then exchange quotas to access snow crab to ensure that the states on the receiving end would not challenge Norwegian sovereignty in the first place. The sovereignty that Norway has, until today, exercised with the fullest authority in governing and ensuring sustainable harvest regimes in the Barents Sea. Hence, a compromise solution is an exchange in order to protect the very sovereignty that provides Norway with the right to govern the quota system of snow crab harvest. In other words, giving up sovereignty to protect what they already claim to have sovereignty over, by giving up the exclusivity of that sovereignty in an asymmetrical quota-compromise.

Furthermore, such a potential asymmetrical quota-compromise would be made with a constitutive Other in Norwegian Arctic Self-identity. Following the argument in the paragraph above, an asymmetrical quota-compromise is also a loss to a constitutive Other. Exchanging quota with the EU in order to ensure that the Norwegian sovereignty over the resources is also a trade-off with what the Norwegian Arctic Self-identity, is in part constituted outside of. Therefore, also step backward in the progression of the temporal-Self.

In sum, such a compromise does have negative implications for the Norwegian Arctic Self-identity. Not only is it an unfavorable trade-off, but also a step backward in the progression of the temporal-Self. Which decades ago progressed through the discovery, utilization and sustainable harvest regimes of fish stocks and petroleum in the Arctic. Lastly, an asymmetrical trade-off is also an unfavorable exchange with a constitutive Other in Norwegian Arctic Self-identity. Nevertheless, the implications of a compromise is potentially far less than potential implications from a trial in the ICJ, where not only the definition of snow crab and whether the ST provides right to equal access in its harvest in the SFPZ, but also if the ST potentially provides signatory states with equal access to the oil and gas resources on the seabed.

5.2.2 Implications of a trial in international courts

If Latvia is to appeal the verdict in Norwegian Supreme Court to the ICJ, it is fair to assume that two main questions will be addressed, based on a trial in Norwegian Supreme Court. Firstly, the court will likely discuss the categorization of the snow crab, whether it is a sedentary species belonging to the seabed or a non-sedentary species similar to fish. Secondly, the questions of if the temporary harvest ban on snow crab harvest and the arrest of *Senator* is a breach of international maritime law, and potentially also the interpretation of the ST. How these questions are answered will have noticeable implications for the Norwegian Arctic Self-identity. The Norwegian Supreme Court chose not to discuss the relevance of the ST outside

of the Svalbard Archipelago, and the verdict stated at *Senator*'s activities where illegal regardless of the Treaty's relevance in the SFPZ (HR-2019-282-S, 2019).

It is not given how the ICJ will approach the issue, should Latvia, on behalf of *SIA North Star Ltd*, chose to appeal to the court. Professor Geir Ulfstein (personal communication, April 10, 2019) explains that the ICJ practice an economic judicial process, meaning that the court will only process what is presented by the two parties. Hence, it is not certain that one of the two scenarios is likely to happen should there be a trial at the ICJ. The two scenarios discussed later in the thesis are chosen based on the questions addressed by the Norwegian Supreme Court and their potential impact on the Norwegian Arctic Self-identity, and because the trial is the most recent event in this dispute, apart from the change in *Snøkrabbeforskriften*.

5.2.2.1 Categorization of snow crab

The first question that is likely to be addressed is whether or not the snow crab is a sedentary species which cannot move without being in constant contact with the seabed. The Norwegian Supreme Court, as explained earlier, ruled the snow crab to be a sedentary species. If the verdict in international courts come to the same conclusion, the question of whom has exclusive sovereignty to regulate the harvest of snow crab is clarified. If this is the case, Norway maintains this right (HR-2019-282-S, 2019). However, how to exercise this right may still be within the stipulations of the ST, depending on how the ICJ interpret the Treaty. Either way, the categorization of the snow crab is a relative win for Norwegian authorities, who have remained persistent on the categorization of the species as sedentary and maintained their right to the exclusive sovereignty over regulation of its harvest (Regjeringen, 2018). In sum, if the ICJ ruled the snow crab as sedentary, the further implication will be dependent on whether the court will address the interpretation and reach of the Treaty. Which it is fair to assume, as the Norwegian Supreme Court never addressed this issue, despite it being an important part of arguments made in the appeal to the Supreme Court.

However, if international courts would rule the snow crab as non-sedentary, several new questions arise. The categorization of snow crab as non-sedentary means that the interpretation of the ST will play a central role. The access to- and who has the right to regulate the harvest of snow crab becomes a question of interpretation of the Treaty. The EU has, until recently, remained relatively silent on the issue of the SFPZ as the quota system is seen as non-discriminatory. Norway has said that the harvest ban on snow crabs was to ensure a sustainable harvest regime (Regjeringen, 2018) and will probably use the same argument if this scenario becomes a reality. Nevertheless, a potential solution to avoid further conflict

regarding the interpretation of the ST is for Norwegian authorities to guarantee for the inclusion of snow crab into the contemporary regime of the SFPZ (Østhagen and Raspotnik, 2019). Once the harvest ban is lifted July 1st, 2019, the snow crab harvest is subject to the same national legislation as traditional fisheries (Regjeringen, 2014a & 2019). However, it is worth mentioning again that the Norwegian Supreme Court ruled that *Senator* would still be caught for illegal fishing in the SFPZ, even if the Treaty would apply, because Norway still has sovereignty over issuing the licenses, regardless of the ST's relevance (HR-2019-282-S, 2019).

Therefore, this would not change the fact that *Senator* did engage in illegal fishing in the SFPZ, which is illegal without a Norwegian issued license. The dispute is concerning who receives the license for snow crab harvest. The EU argues that giving license to only Norwegian trawlers is a breach of the non-discrimination principle. Norway argues that this is to establish a sustainable harvest regime and that the non-discrimination policy of the ST does not apply, but the practice in the SFPZ is non-discriminatory. The question then becomes whether the practice where licenses are only issued to Norwegian trawlers is discriminatory or not in light of the Treaty's non-discrimination principle. Hence, such a scenario would potentially change future practice, not necessarily acquit *Senator* for illegal fishing.

In sum, the potential implications are as follows. If the snow crab is categorized as sedentary, Norway would maintain its absolute sovereignty to regulating the harvest of the crab, but this could potentially be under the ST's stipulations, depending on how international courts interpret the Treaty. This could potentially open up for new regulatory regimes and access to resources on the Norwegian continental shelf for signatory states to the ST.

However, should the crab be categorized as a non-sedentary species, the question then becomes if Norway has the sovereign right to establish a fisheries protection zone outside of Svalbard. If so, is the practice in the SFPZ non-discriminatory when only Norwegian trawlers receive licenses for snow crab fishing? Whether the practice is non-discriminatory can be questioned in international courts, but Norway has sovereignty to issue the licenses. The fact that the EU took matters in their own hands when issuing licenses for snow crab fishing in the SFPZ despite acknowledging Norway's sovereignty to regulate license through non-discrimination, the ST's article 4, can, therefore, be seen as a demonstrative act (Tiller & Nyman, 2016).

5.2.2.2 Institutionalized interpretation of the Svalbard Treaty

The second likely question to be addressed in the ICJ is the interpretation of the ST. Although the Norwegian Supreme Court never addressed this question, the interpretation of the Treaty was a central argument made by the defendants in the appeal and is therefore likely to be brought up again. The EU and its member states who are signatories to the Treaty have, as explained earlier, a different interpretation than Norway.

In short, the EU, and most signatory states to the ST argue that it should be interpreted through its initial purpose, securing an equitable regime to ensure the development and utilization of resources on and around the Archipelago. Since the Treaty was created in 1920, before the existence of EEZs and state sovereignty of the continental shelf, the Treaty should apply to the SFPZ and potentially to Svalbard's shelf (Anderson, 2009 and Rossi, 2017). Norway, on the other hand, argues that the Treaty only limits full and absolute Norwegian sovereignty in the areas specified by article 1 (Ulfstein, 1995). Discarding the argument concerning the ST's stipulations outside of Svalbard, while continuing to exercise its exclusive sovereignty over the resources in the SFPZ and on the continental shelf.

5.2.2.3 Trial outcomes and the challenges to the Norwegian Arctic Self-Identity

The consequences to the Norwegian Arctic Self-identity are closely linked to the different outcomes of a potential trial in the ICJ. Should the categorization of the snow crab and interpretation of the ST be discussed in the ICJ, could the outcome potentially be a challenge to the Norwegian Arctic Self-identity. The ICJ have legally binding authority (ICJ, 2019b) and does not have a history of favoring literal interpretations of treaties over effective interpretations following the Vienna Convention on Law of Treaties (G. Ulfstein at the seminar "Høyesteretts dom i snøkrabbe-saken – hvor går veien videre", 24. April 2019), but that discussion is beyond the reach of this thesis.

Nevertheless, should the ICJ rule in favor of the Norwegian view, the case may be deemed closed. However, should the court rule in favor of the opposition, a number of questions surrounding Norwegian exclusive sovereignty over oil and gas resources come into play. Below, I have chosen to focus on those two scenarios that may have a profound negative impact on the Norwegian Arctic Self-identity. The possibilities of a positive outcome and its effect on the Arctic Self-identity will not be discussed in detail, as this thesis focuses on the possible disruptions to the Self-identity through the snow crab dispute.

Scenario 1: Snow crab as non-sedentary – literal vs effective interpretation of the Svalbard Treaty

The implications of a potential institutionalized interpretation are probably going to differ, depending on the categorization of snow crab. If the snow crab is categorized as a non-sedentary species, similar to cod and salmon, the threat to Norwegian oil and gas resources in the continental shelf remain, for now, peripheral. The main issue is then how to interpret the legitimacy of the SFPZ and the reach of the ST. A literal interpretation of the ST limits its geographical reach to the coordinates specified in the Treaty itself, and thus the Treaty will only regulate the resource extraction within the areas specified in article 1. Following this reasoning, Norwegian authorities view will be recognized and the issues over discrimination of the signatory states to the ST in the SFPZ will be closed. Since a literal interpretation of the ST does not restrict Norway's contemporary practice in the SFPZ and on the continental shelf.

On the other hand, should the ICJ recognize an effective interpretation of the ST, the implications could escalate to more than just non-discriminatory practice in the snow crab harvesting regime. Should the Treaty's geographical reach be discussed in international courts, it is fair to assume that it will discuss its relevance on the Norwegian continental shelf as well as the waters above. Insofar that Norway still holds sovereignty over the shelf but cannot deny signatory states to the ST access to extracting resources located on the shelf, on the premise that there is a sustainable harvesting regime in place. In this way, the snow crab still poses as an indirect, if defined non-sedentary, proxy to Norwegian oil and gas resources. However, this depends on how the ICJ would approach the case. The verdict from the Norwegian Supreme Court emphasizes that *Senator* engaged in the illegal harvest of snow crab, regardless of the ST's relevance outside of Svalbard's territorial waters (HR-2019-282-S, 2019). Meaning that if the ICJ rule snow crab as non-sedentary, the harvest done by *Senator* is still illegal as it is Norway's right to issue these licenses in the zone, even if the ST apply. Following this reasoning, the central question will then be if the harvest ban on snow crabs is a breach of the non-discrimination principle in the Treaty, by taking into account that Norway has the exclusive right to ensure sustainable harvest of resources in the Archipelago and in the surrounding waters. The ICJ might not even discuss whether the ST applies to the continental shelf, as the snow crab, in this scenario, is already defined as non-sedentary.

The question over the legitimacy of the SFPZ and its practice of a non-discrimination policy are also most likely to be discussed. As of today, Norway does practice a non-discrimination policy equal to the one the ST but based on historic fishing (Ulfstein, 1995 & Pedersen,

2006). Prior to the emergence of- and harvest ban on snow crab, the practice of quotas for signatory states to the Treaty has met some opposition, mainly dissatisfaction regarding the practice which has been expressed by both Iceland and Spain (Fløistad, 2008 & Tiller and Nyman, 2016). An effective interpretation of the ST, combined with the categorization of snow crab as non-sedentary, means that Norway's right to establish the SFPZ free from the Treaty's stipulations outside of Svalbard is questionable. The everyday practice of the harvesting regimes in these waters may not change much after all, despite the possible institutionalized effective interpretation of the Treaty and its recognized relevance in the SFPZ. The practice of quotas for the harvest of non-sedentary species are already non-discriminatory (Rossi, 2017 & Pedersen, 2006), but the criteria based on historic fishing may be abolished as the non-discrimination practice has to acknowledge the signatory states of the ST rights to access. Nevertheless, Norway would then lose the right to the exclusive harvest of the lucrative species and share the profitable crab with signatory states to the ST, including several of the EU's member states.

Should an effective interpretation of the ST be institutionalized, combined with the snow crab being categorized as non-sedentary, one challenge to the Norwegian Arctic Self-identity become evident. If the ST is to regulate the activity in the SFPZ, Norway would lose the possibility of trading quotas in the SFPZ for quotas in EU-waters (Rossi, 2017 & Pedersen, 2006). Norwegian authorities would also lose its sovereignty over snow crab harvest, which the government has argued lies exclusively with Norway (Regjeringen, 2018). Losing exclusive sovereignty over the SFPZ are likely to have more of a negative impact on the Norwegian Arctic Self-Identity than losing exclusive rights to snow crab harvest. The SFPZ is a result of the success from the UNCLOS III and the strong Norwegian traditions of resource extraction in the Arctic. Norway has remained firm in its exclusive right to regulate the harvest regime within the SFPZ and is confident about an outcome of a potential trial at the ICJ (Regjeringen, 2014a & Stavanger Aftenblad, 2005). If the courts first categorize the crab as non-sedentary, the questions regarding the ST's relevance on the continental shelf may not be addressed after all. Snow crab, although lucrative, is a relatively new species in these waters, and have therefore not been an important part of the progression of the Arctic Self-identity.

Scenario 2: Snow crab as sedentary – literal vs effective interpretation of the Svalbard Treaty

Categorizing the snow crab as a sedentary species could potentially open up questions regarding access to oil and gas resources on the Norwegian continental shelf around Svalbard.

If the ICJ ends up with a literal interpretation of the ST, the non-discrimination principle of the Treaty will be restricted to the areas specified in article 1, and the snow crab dispute, at least for now, will not necessarily evolve into further challenges to Norwegian sovereignty over resources on the shelf and in the SFPZ, due to the ICJ's legally binding authority (ICJ, 2019b).

An interpretation of the ST favoring Norway's opposition could potentially mean access to resources on the seabed for signatory states. In this way, snow crab becomes more than just a lucrative species but also a proxy for Norwegian oil and gas resources. By utilizing an effective interpretation, the geographical reach of the Treaty and its jurisdiction on the continental shelf will be discussed in international courts. A worst-case scenario for Norwegian authorities is that the ICJ will favor an effective interpretation of the Treaty and see it as applicable both on the continental shelf and in the SFPZ. Only a small fraction of the perceived oil and gas resources on the Norwegian shelf have been discovered, with unparallel oil and gas resources in unexplored areas around Svalbard (Regjeringen, 2017b & Equinor, 2019). The loss of exclusive sovereignty over access to these resources may cause a disruption to the Norwegian Arctic Self-identity. The fact is that these oil and gas resources, together with fish, are among the most important resources in what constitutes and progresses the Norwegian Arctic Self-Identity. Norway identifies with its history of resource extraction, by having a leading role in offshore technology and the historic pursuit of these resources in the Barents Sea (Gerhardt, Kristoffersen & Stuvøy, In: Gad & Strandsbjerg, 2019), and with the successful efforts made through the UNCLOS III where the rights to these resources was established through the Continental Shelf Convention (Østreng, 2018).

However, even if the ST would apply on the Norwegian continental shelf outside of Svalbard's territorial waters, it is Norway's responsibility to ensure sustainable harvest of the resources on the shelf (Svalbard Treaty, 1920). Norway is still sovereign to regulate the snow crab stock and petroleum resources on the continental shelf but cannot discriminate signatory states' access to these resources, as long as they meet the non-discriminatory requirements set by the Ministry of Trade, Industry and Fisheries. If the Treaty is to apply, a different quota system based on the ST's non-discrimination principle is likely to be implemented. Meaning that the practice would not necessarily change much from what is expected to be implemented when the harvest ban is lifted July 1st (Regjeringen, 2019). Nevertheless, the loss of sovereignty over both snow crab harvest and oil and gas resources is without a doubt categorized as a challenge and a potential disruption to the Arctic Self-identity.

5.2.3 Implications for the Norwegian Arctic Self-identity

As discussed above, either scenario has the potential to challenge the harvesting regimes in the Barents Sea and cause disruption to the Norwegian Arctic Self-identity. Loss of exclusive sovereignty over the maritime resources in the SFPZ and on the continental shelf will pose a direct challenge that may disrupt the Norwegian Arctic Self-identity. By losing the exclusive sovereignty over natural resources, acquired through strong traditions of resource management and extraction, and efforts made in the UNCLOS III, the progression of the Arctic-Self relative to its temporal-Self will be retracted and little status is accumulated relative to the former version of Norwegian Arctic Self-identity. Furthermore, this is also a loss to a constitutive Other, the EU, who also is the representative for Norwegian peers. Hence, the loss of exclusive sovereignty over the resources in the SFPZ and on the continental shelf is not just a negative progression relative to the former Arctic Self-identity, the temporal-Self, but also a loss to a constitutive Other. To whom Norwegian fisheries policy in the Barents Sea, as an intrinsic part of the Arctic Self, is, in part, established outside of.

The potential implications of a compromise solution, discussed in detail above, is less of a threat to the Norwegian Arctic Self-identity than the loss at a potential trial at the ICJ could pose. Nevertheless, a compromise solution has the potential to end the dispute, at least temporarily. On the other hand, by accepting a compromise offer from the EU without receiving quotas in return, Norway's actions could be interpreted as implicitly admitting that their initial claim to exclusive sovereignty in the SFPZ and on the continental shelf can be questioned after all. Hence, accepting an asymmetrical compromise offer symbolizes to the opposition that Norway may, after all, be uncertain about their legitimate claim to sovereignty over these harvest regimes and the shelf. The right to the resources on the continental shelf and the right to establish EEZs around state territory is central to the Norwegian Arctic Self-identity. The Norwegian delegation led by Jens Evensen played a significant role in these achievements during the UNCLOS III.

However, I would like to emphasize that a compromise solution with the exchange of quotas does not necessarily result in a negative effect for the Arctic Self-Identity. Norway has on several occasions solved individual issues in the SFPZ and over the ST by trading quotas with oppositional states (Yerkes, 2016 & Hønneland and Jørgensen, 2015). Rather this is an attempt to incorporate the pragmatic approach of solving disputes over the SFPZ and the Treaty through compromises, and to emphasize the role of identity in disputes over Arctic governance and its effect of the self-conscious Norwegian Arctic identity. Earlier disputes

concerning harvesting regimes in the Barents Sea have not yet seen productive results from negotiations from either side due to distinct principle dimensions.

At last, it is important to acknowledge that also a literal interpretation has potentially both positive and negative impacts on the Arctic Self-Identity. Institutionalization of a literal interpretation of the ST could prohibit other states of challenging the interpretation, legally binding through a verdict in the ICJ and could potentially also contribute to prolonging the dissatisfaction regarding the Norwegian harvest regimes in the Barents Sea even further.

5.3 Is the Norwegian Arctic Self Constituted by the Challenges to its Identity?

5.3.1 The ever-present challenges to the Norwegian harvest regimes in the Barents Sea

After reviewing the possible future actions and their potential implications for the Norwegian Arctic Self-identity, an interesting aspect of the Self-identity have revealed itself. Namely the constant opposition to the Norwegian harvest regimes in the Barents Sea. As Pedersen (2006) points out, "the role of international law in Norway's many maritime disputes is evident, both in defining the disputed areas and in the procedures employed for resolving them peacefully" (p. 340). It started with the jurisdictional issue over Svalbard in the late 19th century and early 20th century, which was later settled in 1920 with the creation of the ST (Mathisen, 1951). The disputes concerning the interpretation of the Treaty, discussed in detail above, later emerged and have established oppositional views to Norway's practice of harvest regimes in the Barents Sea. These oppositional views to the Norwegian interpretation and the practice that follows have materialized into several incidents providing the spark to the underlying issues surrounding the ST (Yerkes, 2016).

Among these is an incident in 1994 when the Icelandic trawler *Hagangur 2* fired gunshots towards to the Norwegian coast guard and resisting arrest for illegal fishing in the SFPZ. Two more Icelandic vessels were arrested later that year. However, the most intense event took place in 2001, when the Coast Guard seized the Russian trawler *Azurit* in the SFPZ. Russian authorities responded with a formal protest and questioned the bilateral cooperation in the Barents Sea. Furthermore, due to Russia's threats of sinking Coast Guard vessels if they intervened again, the Coast Guard was instructed to not intervene in the future. Lastly, when the Norwegian government announced their plans to conduct new oil and gas explorations in the southern limits of the *Svalbard Box* (Appendix no. 1), the international community committed to a strong counter-reaction, including vocal opposition from the Soviet Union and

the United Kingdom (Pedersen, 2006). The exploration has yet to be initiated, meaning that Norway has chosen to take the oppositional views into consideration (Regjeringen 2017a).

It is, therefore, as Pedersen (2006) argue, evident that there is a presence of international law and states in constant opposition, challenging the Norwegian interpretation of the ST and the practice in the harvesting regimes in the Barents Sea. It can be argued that this presence of opposition is also, in part, constituting the Norwegian Arctic Self-identity. What I mean by this is that the continuous challenges to the literal interpretation of the ST and practice in the harvesting regimes reproduce the Norwegian point of view whilst protecting the national interests and exclusive sovereignty over the natural resources. Continuous challenges to the Norwegian interpretation and practice in the Barents Sea both pose as a challenge to the self-conscious Norwegian Arctic Identity around the sustainable harvesting regimes and preserve the Arctic Self-identity. Norwegian authorities are forced, time and time again, to answer any criticism with the same argument that Norwegian practice in the Barents Sea is both legitimate under the stipulations of the ST and international maritime law. Hence, international maritime law and the challenges to Norway's practice of it in the Barents Sea is a constitutive part of the Norwegian Arctic Self-identity.

5.3.2 Snow crab – a disruption to the Norwegian Arctic Self-identity?

If the continuous challenges to the Arctic Self-identity are also constitutive, then perhaps the threats of taking the case to the ICJ is not necessarily the biggest disruption to the Norwegian Arctic Self-Identity. There have been several cases where this option have been used as a threat but never materialized, mainly due to the unknown implications for which states gain access to fishing in the SFPZ (Pedersen, 2006 & Yerkes, 2016). Taking the issue to international court could potentially lead to third-party states, not a signatory to the ST, gain access to the SFPZ and thus increasing the competition over natural resources. Hence, as neither Norwegian authorities nor Latvia can predict the outcome of a potential trial, the status quo where continuous challenges to the harvesting regimes remain consistent and reproducing the Norwegian Arctic Self-identity, are not causing a great enough disruption to negatively impact the progression of the Arctic-Self. Provided that the threats never materialize.

As discussed when establishing the Norwegian Arctic Self-Identity, Norway identifies with its history of resource extraction, its leading role in offshore technology, and pursuit of petroleum resources in the Barents Sea. Gerhadt, Kristoffersen, and Stuvøy (2019) argue that the Norwegian identity of historic resource extraction was disrupted when Greenpeace boarded an oil rig in the Barents Sea. By demanding environmental sustainability in the

Arctic, Greenpeace's activism challenged the self-conscious Norwegian history as "the oil fairytale (p. 159)", and brought about a second perception over the Norwegian petroleum industry in the Arctic. Similarly, the snow crab can be seen as a disruption to the Norwegian Arctic Self-identity around the harvesting regimes in the Barents Sea.

The constitutive role of the continuous challenges to the Norwegian harvesting regimes, in the Norwegian Arctic Self-identity, has already been identified and explained. Hence, these challenges cannot be what Gerhadt, Kistoffersen, and Stuvøy (2019) identify as a disruption. Rather, it is the snow crab itself that can be categorized as the major challenge that may cause the disruption. The dispute over Norwegian harvesting regimes in the Barents Sea has been constant over decades following the UNCLOS III, but these challenges by oppositional states have never been able to produce actions that could potentially disrupt the Arctic Self-identity. Ironically, a new species of crab from the east have now brought new life into the dispute by questioning the ST's interpretation and practice of the Norwegian harvesting regimes in the Barents Sea. Through threatening with the possibilities of a trial in the ICJ, Latvia has produced a potential future option where the principle questions concerning the coastal state's exclusive rights to resources in its EEZ's and on the continental shelf can be challenged (Tiller and Nyman, 2016). Due to the snow crab dispute's principle dimension, Norway has yet to end the dispute through a compromise (Østhagen and Raspotnik, 2018a), like they earlier have done when Iceland threatened with the ICJ, arguing Norway breached the non-discrimination policy in the SFPZ (Pedersen, 2006).

In sum, due to its continuous presence in the Norwegian Artic-Self identity, the challenging opposition to the Norwegian harvesting regimes in the Barents Sea and interpretation of the ST are not major enough challenges to cause a disruption to the Norwegian Arctic Self-identity by itself. The status quo in the dispute over the legitimacy and practice of the Norwegian harvesting regimes would only reproduce the Arctic Self-identity if it were not for the snow crab's emergence. The introduction of snow crabs in the Barents Sea has changed the dynamics in the dispute. By acting as a proxy for oil and gas resources, through its categorization as a sedentary species, the snow crab's emergence has re-ignited the principle questions over whether the ST regulate Norway's right, as a coastal state, to establish the SFPZ, and how the access to resources on the Norwegian continental shelf and in the SFPZ shall be regulated. Should the dispute force an unfavorable compromise solution with the EU, a constitutive Other, or a trial at the ICJ with an unfavorable outcome vis-à-vis a signatory ST-states, the outcome can produce a severe disruption in the Norwegian Arctic Self-identity

established around the harvesting regimes in the Barents Sea. Constituted by the state's maritime traditions, historic resource extraction, and ownership to the international maritime law regime in the Barents Sea.

5.4 Contribution to Academia

5.4.1 Contribution to the field of International Relations

The final question to be addressed in this thesis is, naturally, why does this approach matter to the study of Arctic governance and disputes in international maritime law? The thesis has argued that the possible future challenges by Latvia and the EU in the snow crab dispute can cause a disruption to the Norwegian Arctic Self-identity. An identity that, I argue, is constituted by traditions, history, and practice of international diplomacy, but also by the very challenges it has faced throughout the existence of the SFPZ and the Norwegian practice in the Barents Sea's harvesting regimes. The constant oppositional challenges are reproducing the Norwegian interpretation of the ST and practice in the Barents Sea. And hence, also reproducing the Norwegian Arctic Self-identity established around these harvesting regimes. In sum, this means that the actions by Norway is not necessarily only about economic and political interests, but also about identity. Any loss of sovereignty is both practical and ideational. Sovereignty over resources can be materialized and exchanged, but the national emotions, traditions, and self-consciousness accumulated through time cannot be traded away. These aspects are part of the Norwegian Arctic Self-identity, progressed through time.

How far can this preservation of the Self-identity go? For as long as the constant challenges to the Norwegian practice continue without materializing into a compromise or a matter for international courts, the reproduction of the Self will continue. This preservation of the Self could possibly continue without any disruption if it was not for the crab crawling into the Barents Sea. It now seems that the snow crab's emergence may be a big enough disruption to the Arctic Self-identity. Insofar, that its emergence and the actions by Latvia, the EU and Norway that followed, have forced the issues over the harvesting regimes in the Barents Sea onto the international stage once more. Due to the fact that snow crab has fundamentally different characteristics than fish, the dispute possesses a more principle dimension than in earlier cases. It is not just about access to quotas in the SFPZ, as the case with Iceland, but also about institutionalizing an interpretation of the ST and defining its geographical reach over the shelf and waters above.

5.4.2 Limitations

There are certain limitations to approaching the snow crab dispute with an alternative theoretical framework and lens of analysis. This study has attempted to provide a supplement to already well-established and acknowledged analytical frameworks of analysis, ranging from law perspectives, governance theory, economic and security-related theories of International Relations. My attempt is to incorporate the concepts of identity and temporal status comparison theory in a dispute of Arctic governance and state sovereignty over maritime resources. To argue for the relevance of understanding a state's behavior through a progression of its Self-identity and provide an alternative approach to incorporate in the already well-established analytical frameworks.

The approach taken to address the snow crab dispute does focus on certain theoretical concepts which naturally shifts the focus of the analysis onto factors that are most relevant for the theoretical approach. The consequence of taking an alternative approach is that important aspects, which have a central role in other researchers' approach to the issue, has not been prioritized to the same extent. These factors are not neglected but rather incorporated to a lesser extent because of the theoretical approach utilizing temporal status comparison theory and focusing on alternative aspects with the aim providing a new contribution to the academic field.

6. Conclusion

This thesis has explored the challenges to the harvesting regimes in the Barents Sea and possible disruptions to the Norwegian Arctic Self-identity through analyzing the contemporary snow crab dispute. The issue is approached by answering the following research question:

1. How does the snow crab dispute challenge the harvesting regimes in the Barents Sea and disrupt the Norwegian Arctic Self-identity?

The research has found that the Norwegian Arctic Self-identity is constituted by traditions of exploration and polar expeditions, research, resource extraction, expertise and ownership to UNCLOS III, together with the practices of Norwegian fisheries policy in the Barents Sea. The upcoming implementation of the snow crab harvesting regime is a continuation of Norway's historic resource extraction identity. It builds on- and compliments the already long traditions of sustainable harvesting regimes, and the efforts in securing Norway's exclusive sovereignty, as a coastal state. The incumbent government's goal of Norway is to be one of

the world leading ocean states (Regjeringen, 2017a) and is thereby a manifestation of its Arctic Self-identity.

The dispute has now been concretized through the verdict of Norwegian Supreme Court, where the Court categorized snow crab as sedentary species and found that any harvest of the crab in the SFPZ without a license from Norwegian authorities is illegal, regardless of the ST's relevance in the zone. Looking forward, two likely scenarios present themselves. Each with its own implications for the harvesting regimes in the Barents Sea and for the Norwegian Arctic Self-identity.

A compromise solution to end the dispute is likely to challenge Norway's Arctic Self-identity. Due to failing negotiations, it seems likely that a future compromise with the EU will include an unfavorable trade of quotas in exchange for the EU recognizing Norway's exclusive sovereignty and not challenging the practice of the harvesting regimes in the Barents Sea. The likelihood of such a compromise is hard to predict. Norway has previously engaged in similar compromises to solve disputes in the SFPZ, but the snow crab dispute has a principle dimension where both parties are on completely opposite sides. Nevertheless, a compromise in exchange for legitimacy is problematic. By giving up quotas in an unfavorable trade-off with a constitutive Other, Norway would implicitly *de facto* admit to the EU's claim to access resources in the SFPZ is legitimate. This may create a possible disruption to the Self-identity, progressed through the discovery, utilization, and practice of sustainable resource extraction in the Barents Sea.

A trial in the ICJ is the second future possibility discussed in this thesis, with emphasis on how the international court will deal with the categorization of snow crab and interpretation of the ST. The ICJ has binding authority and the outcome can, therefore, have severe implications for exclusive Norwegian sovereignty over the natural resources in the Barents Sea and for the Arctic Self-identity. A loss of exclusive sovereignty over the harvest of natural resources in the SFPZ and, possibly, on the continental shelf is a potential disruption to the Arctic Self-identity through being a negative progression relative to the temporal Arctic Self. But also, a loss of exclusive sovereignty to a constitutive Other in the Norwegian Arctic Self-identity formation, the EU.

What does this mean for the Norwegian Arctic Self-identity? Throughout the research process and writing up the analysis, it has become clear that the challenges to Norwegian practice in the SFPZ and to the literal interpretation of the ST are not a disruption to the Self-identity.

Rather, these challenges are constitutive. The constant challenges to Norwegian practice and interpretation are reproducing and preserving the Arctic Self-identity. Hence, these challenges are constitutive, not disruptive. Instead, the research has identified the snow crab as the likely disruption to the Arctic Self. The crab has the characteristics and raises principle questions of international maritime law in the Barents Sea, which may be enough of a disruption to the Norwegian Arctic Self-identity. Insofar that it has provided a spark into the constant challenges, which could evolve into a forced asymmetrical compromise or a trial in the ICJ. Both with potential outcomes that will have implications for the progression of the Arctic Self-identity.

In essence, this research argues that the snow crab dispute has gone too far for Norway and the EU to not take a step back. Insofar that the principle dimension of International Maritime Law and firm positions on the interpretation of the ST have caused the negotiations to fail, transforming this into a challenge over who can outlast the other. Neither party wishes for a trial in the ICJ, but neither can enter into a compromise where they would give up their initial claim through negotiations. As this would include recognizing, implicitly, the opposition's claim as legitimate. This is not to argue that the dispute will definitely not be solved through negotiations, but due to its Arctic Self-identity, Norway seems unlikely to engage in a negotiation with the EU if they will be on the losing end. The stand-still and unwillingness to find a diplomatic solution to the dispute is manifested in the Norwegian Arctic Self-identity, as well as in political and economic incentives. A diplomatic solution where compromises are required is not only a contradiction to the Norwegian interpretation and practice in the Barents Sea but also a compromise of the Arctic Self-identity. For now, the principle question is of enough importance so that Norwegian authorities will rather wait and see if Latvia are serious about exploring the possibility of a trial in the ICJ, before doing anything more than firmly repeating its sovereignty claim and practice in the SFPZ and on the continental shelf.

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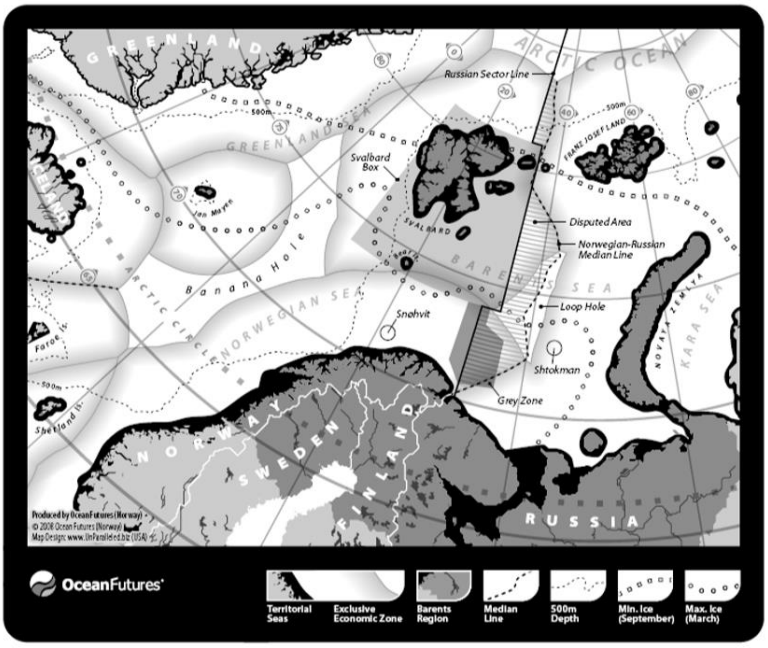
8. Appendix

8.1 Appendix no. 1 – The Svalbard Box

The *Svalbard Box* refers to the Archipelago and the adherent islands situated between 74- and 81 degrees latitude North and 10- and 35 degrees longitude East of Greenwich, together with small rocks and reefs (Svalbard Treaty, 1920).



Source: Fløistad, B. (2008). Svalbard-traktaten – ulike oppfatninger om traktatens anvendelsesområder. Stortingets utredningsseksjon. 05/08, pp. 1-42.

8.2 Appendix no. 2 – Interview Guide, Professor Geir Ulfstein

1.1. Den internasjonale domstolen i Haag (International Court of Justice) er nevnt som en fremtidig ankemulighet.

Du bør gjøre det klarere hva som er dine spørsmål og hva som er Ulfsteins svar

- Havrettstribunalet i Hamburg er ikke nevnt i noen særlig grad av norske og internasjonale medier, til tross for at Havrettstribunalet håndterer uenigheter knytte til havretten under Folkeretten. Hva kan være bakgrunnen for dette?

- Min forståelse av dette er at Svalbardtrakten er fra 1920 og det er dermed knyttet uvisshet om Havrettstribunalet har mandat til å komme med en rettslig dom rundt traktatens anvendelsesområder.

1.2. Forsvarsadvokaten under rettsaken i høyesterett har ved flere anledninger vist til Wien konvensjonen artikkel 31 om traktats lov når Svalbardtraktatens anvendelsesområder er blitt diskutert.

- Kun et fåtall stater støtter den norske fortolkningen av Svalbardtraktaten. Det virker dermed sannsynlig at er internasjonal domstol vil foretrekke en dynamisk/utvidet fortolkning av traktaten.

- Norge har verken ratifisert eller signert denne konvensjonen. Hvilken juridisk slagkraft vil konvensjonen ha i en eventuell internasjonal rettsak hvor en dynamisk/utvidet fortolkning av Svalbardtraktaten er foretrukket?

- Hvorfor er norsk fortolkning av Svalbardtraktaten omstridt og svært lite anerkjent internasjonalt?

1.3. Sannsynligheten for en rettsak i en internasjonal domstol virker å være større enn ved tidligere anledninger, eksempelvis når Island kom med tilsvarende trussel – løst ved tildeling av kvoter for fiske i Fiskevernsonen.

- Omstendigheten har ikke endret se markant de siste årene. Norsk suverenitet over havressursene i Fiskevernsonen har alltid vært omstridt, men praktiseringen av ikke-diskrimineringsprinsippet har gjort at motstanden er blitt nøytralisert. Er snøkrabben den katalysatoren som gjør at konflikten nå trer frem igjen, fra å ligge å koke under overflaten over lang tid?

- For utenforstående/eksterne aktører kan det norske fortolkning av traktaten og standpunkt i den pågående snøkrabbesaken virke noe arrogant. Hvordan vil du vurdere norske myndigheters standpunkt i snøkrabbesaken ved en internasjonal rettsak?

- Konsekvensene av en eventuell internasjonal rettsak kan variere da dette avhenger av hvordan domstolen stiller seg til anken fra Senator/North Star Ltd. Skulle domstolen kategorisere snøkrabben som en ikke-sedentær art, vil ikke nødvendigvis traktatens anvendelse på kontinentalsokkelen bli diskutert.

- I en artikkel publisert 27.02 i Juridika skriver du at «det er tvilsomt om denne saken [snøkrabbesaken] er velegnet for et slikt saksanlegg [Svalbardtraktatens anvendelse i havområdene]»., og viser til Island-saken for en del år tilbake. Kan du utdype hva du mener her?

- Eller er saken av så stor prinsipiell betydning at traktaten anvendelsesområde vil bli diskutert i sin helhet, og ikke bare med utgangspunkt i hvordan ankesaken behandles?

8.3 Appendix no. 3 – Postseminar: Høyesteretts dom i snøkrabbe-saken – hvor går veien videre?

Title	Organizer	Date	Where	Talkers and roles	Audience
Postseminar: Høyesteretts dom I snøkrabbe-saken – hvor går veien videre?	Scandinavian Institute of Maritime Law, at the University of Oslo	24 April, 2019.	Domus Media, Viggo Hagstrøms sal. Oslo.	Geir Ulfstein – professor in International Law and expert on maritime affairs in the Barents Sea. Hallvard Østgård – *SIA North Star Ltd*'s defense attorney during the trial in Norwegian Supreme Court.	Law professors, lawyers, upper-higher education students.

Postseminar: Høyesteretts dom i snøkrabbe-saken – hvor går veien videre?

Innledere:

Professor Geir Ulfstein og advokat Hallvard Østgård

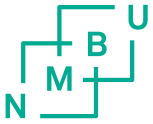
Tid og sted: 24. apr. 2019 17:15 - 19:00, Viggo Hagstrøms sal ("Kjerka"), Domus Media, 2. etasje

Legg til i kalender

Relatert

Dommen: HR-2019-282-S

Høyesterett avsa i storkammer 14. februar 2019 dom i sak om fangst av snøkrabbe på norsk kontinentalsokkel i fiskevernsonen ved Svalbard.



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