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Crab! How a dispute over snow crab became a diplomatic headache between Norway and the EU

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ABSTRACT

Norway and the European Union (EU) are closely interlinked. However, one issue has arisen where interests have clashed: snow crab. A newcomer to Norwegian Arctic waters, this resource has attracted attention as projections of future profit have soared. Why is the EU pursuing a relatively minor issue over the right to catch snow crab in the Barents Sea? This issue has also brought to the fore the underlying disagreement between Norway and the EU over the status of the maritime zone and related continental shelf around the archipelago of Svalbard, stemming from the 1920 Spitsbergen Treaty. Is the EU using the snow-crab issue to challenge Norway's Svalbard regime? How are EUropean interests in this resource best understood? At stake are also the prospects of oil and gas, as well as Arctic governance and environmental protection. The EU is a multi-faceted creature, where special interests can hijack the machinery and bring issues to the table, depending on the circumstances. This article outlines these circumstances, as well as the process concerning the dispute over snow crab and the background, which relates to economic interests, but also international politics as well as law. Further, it examines the EU's interests, drawing on scholarly work on the EU's position on Svalbard and interviews with Brussels-based decision-makers, officials and politicians.

1. Introduction

In 2017, the European Union (hereafter 'EU') decided to award licenses to catch snow crab in the Fisheries Protection Zone around the Arctic Archipelago of Svalbard – despite not having jurisdiction to manage snow crab licenses in these waters. The snow crab is a relatively new species in the Barents Sea, first discovered in 1996 as it moved westwards from Russian waters. Despite limited Norwegian fisheries of this resource, conflict ensued, as the Norwegian Minister of Fisheries Per Sandberg vowed that Norway would not 'give away one crab!'.[1] A Member of the European Parliament (hereafter 'MEP') followed up, characterising the Norwegians as 'pirates' of the Arctic.[2]

There are more dimensions to this dispute than just catching *Chionoecetes opilio*, as 'Oil lurks beneath EU-Norway snow crab clash' [3]. It is particularly the applicability of the Spitsbergen Treaty from 1920 in the maritime zones beyond the territorial waters of the archipelago, where Norway and the EU hold differing views, that spark such statements [4,5]. Further, general Norway-EU relations come to play. This article aims to explore the interests of the 'EU' in the present case, as well as the complexities of this specific case that involves legal, political and economic considerations; all spurred by the introduction of a new species in Norwegian Arctic waters.

Why is the EU pursuing a relatively minor issue over the right to catch snow crab in the Barents Sea? Is the EU using snow crabs to challenge Norway's Svalbard-regime [6]? If so, what are the interests of related EUropean actors driving this challenge? Or is this purely an economic concern, with a few commercial actors that stand to benefit from upholding their rights? If so, why would the EU allow a relatively minor issue to complicate its overall positive relationship with Norway? A common fallacy in academic literature on Arctic politics, as well as in popular media is to simplify the EU down to one single interest [7]. Recognising that the 'EU' is not simply the 'EU', a final question concerns the matter of EU-coherence: does one coherent interest exist within the EU-system that explains the Union's 'actions' concerning snow crab?

Any dispute has at least two sides. This article focuses specifically on the EU's interests and policy-process, searching beneath over-simplified headlines. The Norwegian viewpoint and why this diverges from that of the EU is outlined; however, it is up others to attempt to explain why Norway has remained unrelenting on this issue. The aim of this article is to add a first, but crucial, building-block to the understanding of the EU's interests concerning snow crab specifically, and the EU as a

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fisheries actor more generally. Furthermore, this article will unpack a case of high complexity that involves a legal and political dispute in place since 1977. There have been few attempts at describing and understanding exactly *what* motivates this ongoing dispute [8,9].

The analysis draws on a previous scholarly work concerned with Svalbard and the disputes surrounding the Archipelago, diplomatic notes and statements by Norwegian and EU officials, as well as a series of interviews conducted with the relevant branches of the EU system in Brussels: officials in the European Commission (hereafter 'Commission') and the European External Action Service (EEAS), politicians and staffers in the European Parliament (EP), and EU Member-State officials dealing with the issue under study here.[1]

This article begins by outlining the standpoint of EU and its Member States regarding the Spitsbergen Treaty, and then unpacking the complexities of the 'snow-crab dispute'. It then applies the information regarding the dispute to explain the EU's interests concerning snow crab.

2. The EU and Svalbard: what position?

To understand the Norway/EU dispute over snow crab, one must understand the related dispute over the maritime zones around the Svalbard archipelago. Located approximately 650 kilometres north of the Norwegian mainland and a mere 1000 kilometres from the North Pole,[10] Svalbard has a resident population of only 2700 [11]. Initially named 'Spitsbergen' by the Dutch explorer Willem Barentsz in the late 16th century, Spitsbergen is today the name of the largest island in the archipelago; the whole archipelago bears the Norwegian name 'Svalbard'.

Controversy surrounding Svalbard's maritime zones stems from the Treaty concerning the status of Spitsbergen, signed in Paris in February 1920, as part of the settlements after World War I [12]. Norway was granted full sovereignty over the archipelago in 1920, and the Treaty came into force in 1925. According to Art. 3 of the Treaty, Norwegian exercise of its sovereignty is subject to certain conditions (concerning taxation and use of the islands for military purposes), as well granting equal access to specified economic activities to nationals from the signatory countries:

> may carryon there without impediment all maritime, industrial, mining and commercial operations on a footing of absolute equality. They shall be admitted under the same conditions of equality to the exercise and practice of all maritime, industrial, mining or commercial enterprises both on land and in the territorial waters, and no monopoly shall be established on any account or for any enterprise whatever [12].

Despite this early 20th-century diplomatic compromise [13], diverging views on the geographical scope of the Treaty have persisted, also among legal experts, concerning the status of the maritime zones beyond Svalbard's territorial sea. While some argue that the Treaty applies in these maritime areas, others say it does not [4,5,14,15]. Norway considers the 200-mile maritime zone including the continental shelf around Svalbard as being exempt from the Treaty [16]. Other countries, however, have claimed that the principles of the Treaty apply to the 200-mile zone and shelf as well, although this was not explicitly stated when the Treaty was formalised in 1920 [16]. The latter reading of the Treaty would grant all signatories equal rights to economic activity in the water column and on the continental shelf around Svalbard, albeit still governed by Norway [4].

This article will not attempt to ascertain which position is more valid. The presentation here builds on the conclusion reached by Churchill and Ulfstein: '[i]t is … not possible to reach a clear-cut and unequivocal conclusion as to the geographical scope of the non-discriminatory right of all parties to the Spitsbergen Treaty to fish and mine in the waters around Svalbard.'[14] Diverging legal positions, however, are one thing. Political actions are something different.

Although claiming to have a right to establish an Exclusive Economic Zone (EEZ) around Svalbard, Norway has not yet done so. In 1977, as Norway had established its full EEZ along its coast, it decided to 'only' establish a Fisheries Protection Zone (FPZ) around Svalbard for the purpose of the conservation and management of living marine resources [5]. Under the argument that this was needed to protect and manage what is the central nursery area for the Northeast Arctic cod stock, this avoided a potential outright challenge to the Norwegian claim.[16]

The other Treaty signatories have accepted this, although Iceland and Russia have been outspokenly critical of Norwegian efforts to manage related fisheries [5,17,18]. According to the Soviet Union, later Russia, Norway has no right to take the measure of establishing the FPZ unilaterally. However, for all practical purposes, Russia has accepted the Norwegian regulatory and enforcement regime in the FPZ, as it has been in its own interest to manage fish stocks sustainably and get a considerable share of the quota [19,20].

Further, Norway claims that the Treaty does not apply to the continental shelf around the Archipelago [16]. In 2006, Norway submitted its claim to an extended continental shelf in accordance with the United Nations Convention on the Law of the Sea (UNCLOS); the Commission on the Limits of the Continental Shelf (CLCS) gave its final recommendations in 2009 [16]. The CLCS found that the continental shelf around Svalbard indeed was contiguous to that of the Norwegian mainland, but – per its mandate – did not discuss whether or not the Treaty is applicable to the continental shelf areas around Svalbard explicitly.

The EU's position concerning the Treaty and the Archipelago's maritime zone has been somewhat unclear. The EU is not party to the Spitsbergen Treaty, but 21 of its Member States are parties.[2] In recent decades, several Member States have had diplomatic encounters of varying degree with Norway over the maritime zones around Svalbard [17]. All these incidents were related to specific actions of Norway in the FPZ, either fisheries enforcement measures or general issues concerning oil and gas exploration. The Member States have also held varying positions with regards to the zones around Svalbard, ranging from considering it international waters to arguing that the Spitsbergen Treaty applies. In 2006, the UK arranged a meeting concerning Svalbard and its maritime zones in London.[3] This meeting, Molenaar further believes, 'may have led several of these states to align their positions on the Spitsbergen Treaty closer to that of the United Kingdom' [5].

The current position of the Commission is confined to the domain of fisheries, stressing the acceptance of the Norwegian fisheries regulations concerning the maritime areas of Svalbard (and its FPZ) as long as they are applied in a non-discriminatory manner and are respected by all parties to the Treaty [5]. Accordingly, the EU neither accepts Norway's claim to unrestricted sovereign rights in the FPZ, nor does it accept conservation measures that amount to access restrictions for the EU. However, as long as these measures are applied in a non-discriminatory manner and are scientifically based, the EU will abide by

[1] In total 12 semi-structured interviews were conducted in February 2018 in Brussels and Oslo. As every interviewee was given the right to remain anonymous, the full name of the interviewee and his/her respective position within his/her workplace stays with the authors. All interviews usually lasted between 45 and 80 min with 'semi-structured' referring to the method of having a set of open questions as the basis of the conversation.

[2] These are: Austria, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, the Netherlands, Poland, Portugal, Romania, Sweden, Spain, the United Kingdom. It is assumed that the EU could become a signatory if an invitation of accession is backed by all contracting parties, see [5].

[3] Attended by representatives from Canada, Denmark, France, Germany, Iceland, the Netherlands, Russia, Spain and the United States.