

EU-Norway legal dispute on snow crab fisheries in Svalbard and its impact on the Barents Sea's benthic ecosystem

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Svalbard was *terra nullius* until 1920, when the High Contracting Parties to the Svalbard Treaty recognized the ‘full and absolute sovereignty of Norway over the Archipelago of Spitsbergen’.¹ According to the Svalbard Treaty, ships and nationals of all the High Contracting Parties shall enjoy equally the rights of fishing and hunting in the specified territories and in their territorial waters. Norway shall be free to maintain, take or decree suitable measures to insure the preservation and, if necessary, the re-constitution of the fauna and flora of the said regions, and their territorial waters. Snow crabs settled in this region more than two decades ago. This valuable, and by now abundant, resource contributed to a dispute between Norway and some European Union (EU) member states on the status of waters surrounding the Archipelago of Spitsbergen and fishing rights.

Norway undertook to regulate the catch of snow crab in 2014 while allowing for exemptions for vessels owning a license under the Norwegian Participation Act, but the Act excludes non-residents and foreign companies from the possibility to obtain a license.² The EU and some member states have challenged the conformity of these regulations to the Svalbard Treaty (a Latvian ship was arrested by Norwegian police in 2017, while catching snow crabs). In short, Norway and other parties to the Svalbard Treaty disagree on the scope of the treaty. The European Commission has recognized that “there are risks of spill-over effects beyond fisheries” arising from the snow crab dispute.³ These effects refer to non-biological resources of the soil and subsoil, such as oil, gas and minerals. Like snow crabs, these resources normally fall within the scope of the United Nations Convention on the Law of the Sea (UNCLOS).

However, if the Svalbard Treaty applies to this area, Norway must allow for non-discriminatory access to all industrial, mining, or commercial enterprises from all the states parties. Clearly, the disagreement on snow crab is only an aspect of a dispute that has much broader, and practical implications relating, *inter alia*, to sustainability of resources. In addition to oil and gas, at stake is also the Arctic governance and environmental protection. According to scientific researchers, ‘the self-producing population of this invasive species is migrating from the eastern to western part of Barents Sea towards Svalbard. The biomass and density of the snow crab is increasing

¹ Article 1 of the Treaty concerning Spitsbergen, signed in Paris on February 9, 1920.

² DE POOTER, H. (2020): The Snow Crab Dispute in Svalbard. ASIL Insights 24(4), available at <https://www.asil.org/insights/volume/24/issue/4/snow-crab-dispute-svalbard>.

³ Position of the European Commission concerning a call to act from the Republic of Latvia pursuant to Article 265 TFEU, March 12, 2018, C(2018) 1418 final.

and is expected to reach a level close to the estimated carrying capacity of the Barents Sea. Snow crab is spreading and may threaten the Barents Sea's fragile benthic ecosystem'⁴. This paper would, first, examine how the Svalbard Treaty, UNCLOS and EU Regulation, apply to these issues. Second, it would link the outcome of these (non)biological resources regulations with the impact on the environment.

⁴ WALES, J. (2018): European Parliament Debates, January 18, 2018, available at: https://www.europarl.europa.eu/doceo/document/CRE-8-2018-01-18-INT-4-291-0000_EN.html.