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# **Snow Crabs To Be Claimed By the Whole World**

Despoina Lechouriti

## **Key points**

The recently shown up snow crab in the Svalbard Archipelago causes intense conflict between Norway and the EU for the first time after the signature of the 1920 treaty. Norway claims that the treaty is applied only in the Archipelago while the other side supports that it is applied in the continental shelf as well. Serious economic problems were the results of the confrontation, leading only Norway to have privileges in fishing, so it is essential to find a peaceful solution. In this article after discussing both sides, some proposing diplomatic suggestions will be presented, able to be used to the continuation of the negotiations:

- Review of the Svalbard Treaty (1920)
- Setting up a final EEZ by the side of Norway
- Coordinated fishing for the protection of the ecosystem
- Acceptance of the quotas exchange by the side of the EU

*Despoina Lechouriti is an undergraduate student of International and European Relations, University of Piraeus*



## Introduction

This Policy Brief is based on latest discussions between Norway and the EU regarding the fishing industry of snow crabs in the Barents Sea.

Back in 1920, a treaty was signed in Paris among 23 nations concerning the equal rights in fishing around the Svalbard archipelago, an island complex in the Arctic zone. In 2016 a conflict broke out between Norway and the Council of the EU since the last gave permission to five European countries (Latvia, Lithuania, Spain, Poland and Estonia<sup>7</sup>) to issue licenses for fishing activities in Svalbard. A Lithuanian vessel with a Latvian license was caught for several months by the Norwegian Coast Guard for fishing near Loophole, a small region of international waters between Norway and Russia, without the permission of Norway. This causes problems to the vessels' owners as they invest huge amounts of money in the snow crab fishing, facing bankruptcy and unemployment<sup>5</sup>.

The snow crab is a new species which firstly appeared in the Barents Sea in 1996<sup>1</sup> especially due to the climate change. Since 2012 it was considered rather lucrative as a commercial product, forming now a profitable business for vessels engaging in fishing<sup>5</sup>. This recommends the need for a global governance regime for the protection of the common goods something that Norway has not yet established though. As a result there is huge conflict in the region for fishing with experts researching the ways under which the Svalbard treaty will be used<sup>9</sup>.

In the following section opinions of Norway and the EU will be examined considering the sovereignty which the Svalbard treaty grants.

## Norway's Opinion

According to the 1920 treaty, the Svalbard Archipelago is embedded in Norway's sovereignty, which has exclusive rights in the region. At the same time though, the treaty granted to the contracting parties the right to enjoy and have equally free access to fishing, hunting and conducting other activities in the resources and the territorial waters of Svalbard. In 2009, the Norwegian continental shelf was extended, including the region of Loophole bringing the crab fishery under Norwegian jurisdiction. However, the EU was opposed<sup>7</sup>.

As indicated in the article 77 UNCLOS (United Nations Convention on the Law Of the Sea), the coastal state has sovereign rights on the continental shelf for the purpose of exploring and exploiting the natural resources. Even if the coastal state does not exploit this right, no other state can exploit it without the consent of the coastal state<sup>10</sup>. "The EU is unabashed to make this kind of a decision without consulting us" points out Per Sandberg, the Norwegian Fisheries Minister<sup>8</sup>. The 4th paragraph of the article mentions



the categories of natural resources for which the above rights are being applied: "mineral, other non-living resources of the seabed and subsoil and living organisms belonging to sedentary species 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 the subsoil". But is snow crab a sedentary species? An Australian delegate answers stating that we should grant to coastal states exclusive rights related to sedentary species as the snow crab<sup>10</sup>.

In 1977 Norway makes further progress on setting up a Fishery Protection Zone around Svalbard. Nevertheless, it avoided to establish a definitive Exclusive Economic Zone (EEZ) leaving itself against to other contracting parties<sup>7</sup>.

### **The side of the EU**

Although the EU and all contracting parties agree that the area of Svalbard belongs to the exclusive sovereignty of Norway, the treaty discusses the equal access for economic activities in the Archipelago<sup>7</sup>. Fishermen of the EU, in accordance with the North East Atlantic Fisheries Commission (NEAFC), directed to Loophole supporting that they have the right to carry out fishing activities in the region in order to exploit sustainably a fair distribution of snow crabs and other fishes. The fishing vessels must have license from the contracting parties so as to carry out such activities (NEAFC)<sup>6, 10</sup>.

Norway, on the contrary, claimed that the fishing of snow crabs falls within the rules of UNCLOS for sedentary species. Still, the EU supports that Norway cannot constitute discriminations against vessels from contracting parties, regardless of its potential to give licenses. The common solution to such problems is the quota exchanges, something that the Norwegian government proposed in November 2015. The EU rejected the offer since that would have more benefits for Norway, however, in 2016 approved the potential of up to 20 vessels to fish snow crabs around Svalbard. The Norwegian government was strongly against this decision and in early 2017 arrested a Lithuanian vessel called "Juros Vilkas" after carrying out fishing activities in Loophole without its permission. Norway's Supreme Court hearing the case ruled against the vessel forcing it to pay a 260.000 euro fine something that had huge impact on the economy of the whole EU<sup>2</sup>.

A European Commission spokesman, Enrico Brivio declared that "a practical arrangement with Norway would allow the continuation of fishing activities for snow crabs, without giving up the EU's interpretation of the 1920 treaty"<sup>8</sup>.

Nevertheless, some experts mentioned that the dispute is much bigger than the crab fishing<sup>4</sup>. In reality, the oil found under the area is at stake and not the snow crabs. The oil



reserves under Svalbard are estimated at about 17.7 billion barrels<sup>8</sup>. Norway pumps huge amounts of oil, condensate and natural gas liquids per day while the daily output of natural gas is also high<sup>4</sup>.

Experts warn that if anybody can fish crabs in the region, they could also have the right to extract oil, despite Norway's statement that the continental shelf is not open for oil drilling. Rachel Tiller, scientist at the SINTEF Ocean group said that the crab conflict is a test in order to find out how much pressure the Norwegian government can deal with concerning its shelf<sup>4</sup>.

### **Recommendations**

The preamble of the treaty aims at the creation of a status under national law which would allow the member states to develop and use Svalbard peacefully, so a possible settlement could be the review of some parameters of the treaty since the way with which is applied remains uncertain. It would be reasonable to call for discussion the rights and the obligations of all contracting parties and the rules to be interpreted in accordance with the international law applied today, and not as it was being applied in 1920.

Another parameter that is essential to be taken into consideration is the definition of a final EEZ from the side of Norway which defines the respective continental shelf. As the expansion of the shelf as its direct ownership has been declared as an inconsistent move it's evident that Norway is trying to prevent others to benefit from its own territories. On the other side, the coordinated opposition of the EU can aggravate the situation and lead to the isolation of Norway in the near future.

Anybody knows about the profitable business of crab fishing, but the concern about the possible changes of the ecosystems are also being examined. The "precautionary principle" was a way to avoid possible changes when the consequences remain unsure. Some vessels started the crab fishing knowing about the changes in the environment and realised that the reduction of crab population balance the situation on the seabed and can be a further argument for the crab fishing around Svalbard.

One small step to the opening of negotiations between Norway and the EU would be the acceptance of the fishing quotas exchange by the side of the EU as the benefit will be mutual. Furthermore, the opposing sides could discuss the possible quotas exchange so that all contracting parties benefit as long as Norway to seem more generous as a divisible sovereignty.



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