



ROYAL NORWEGIAN
MINISTRY OF FOREIGN AFFAIRS

The Royal Ministry of Foreign Affairs presents its compliments to the Delegation of the European Union and has the honour to refer to the Delegation's verbal note no. 23/16 of 1 November 2016 concerning Regulation no. 1833 of 22 December 2015 amending Regulation no. 1836 of 19 December 2014 prohibiting catches of snow crab.

It is noted that between the parties to the United Nations Convention on the Law of the Sea concluded at Montego Bay on 10 December 1982 (hereinafter referred to as the Convention), the Convention governs the rights and jurisdiction of the coastal State and the rights and freedoms of other States, including in maritime areas around Svalbard. The European Union and all its member States are parties to the Convention.

The Ministry of Foreign Affairs takes due notice of the commitment to the Law of the Sea, and in particular to the Convention, expressed by the European Union in the above-mentioned note. However, the note dated 1 November 2016 does not elaborate on the implications of the development of the modern Law of the Sea, and fails to recognise the legal consequences of the fact the Convention is in force and binding on Norway and the European Union, as well as all of its member States. The sovereign rights of the coastal State over its continental shelf, as they have been developed in the Law of the Sea, is a product of the coastal State's sovereignty over its land and sea territory. Norway's coastal State rights on the continental shelf and in the maritime zones generated by Svalbard are a consequence of Norway's full and absolute sovereignty over the archipelago.

In the note, reference is made to the fact that the archipelago generates maritime zones in accordance with the Convention. It may be observed that this is actually in conformity with the views expressed by the Norwegian Government *i.a.* in its bill to the Parliament (Storting) concerning ratification of the Convention, see St. prp. Nr. 37 (1995-96), including on page 140.

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This is accordingly also in conformity with the ensuing submission by Norway in 2006 to the Commission on the Limits of the Continental Shelf and the unanimous recommendations of 2009 pertaining to the establishment of the outer limits of the continental shelf of Norway. It is also consistent with bilateral delimitation agreements with the two neighbouring States, concluded respectively on 20 February 2006 with Denmark together with Greenland and on 15 September 2010 with the Russian Federation.

The continental shelf of Norway extends north from the Norwegian mainland and continues around and past Svalbard. The continental shelf areas off Svalbard are legally part of the Norwegian continental shelf, as defined, without any objections by other States, by Royal Decree of 21 June 1963 and subsequent continental shelf legislation of 21 June 1963, 22 March 1985 and 29 November 1996.

In accordance with article 77 of the Convention, Norway, as the coastal State, exercises sovereign rights over the continental shelf for the purpose of exploring it and exploiting its natural resources, including sedentary species. Snow crab is a sedentary species under the Convention. Harvesting snow crab on the Norwegian continental shelf cannot be carried out without the express consent of Norway as the coastal State, cf. paragraph 2, article 77 of the Convention.

As the Delegation's verbal note refers to the Treaty concerning the Archipelago of Spitsbergen, signed at Paris on 9 February 1920 (2 LNTS 8 – hereafter referred to as “the Treaty” or “the 1920 treaty”), the Ministry would like to remind that the European Union is not a party to it. While the European Union and all its member States are party to the Convention, the same does not apply to the Treaty. The Treaty does neither accord rights to nationals or legal persons of third States, to third States or to the European Union as such, nor has Norway assented thereto. Accordingly, Norway has never recognised that the Treaty creates any rights for the European Union.

In its note, the European Union takes the position that the maritime areas generated by Svalbard are subject to the provisions of the 1920 treaty. The Ministry of Foreign Affairs recalls that an interpretation of the Treaty must be based on established principles of treaty interpretation, also taking into account together with the context, other relevant rules of international law applicable in the relations between the parties.

The Ministry of Foreign Affairs would like to recall that in accordance with Article 1 of the 1920 Treaty, the parties to this Treaty have recognised the full and absolute sovereignty of Norway over the archipelago. This territorial sovereignty is not subject to any conditions. The sovereignty in question is an ordinary one under international law. Article 1 makes it clear that the precise conditions contained in the Treaty are linked to this *recognition* of sovereignty, and not to Norway's sovereignty as such. The wording reads "*undertake to recognise, subject to the stipulations of the present Treaty, the full and absolute sovereignty of Norway over the Archipelago*" / "*sont d'accord pour reconnaître, dans les conditions stipulées par le présent Traité, la pleine et entière souveraineté de la Norvège sur l'archipel*".

The precise formulation in Article 1 of the Treaty, "*the full and absolute sovereignty*" / "*la pleine et entière souveraineté*", has the consequence that Norway can exercise the full powers of any territorial sovereign, including the powers granted to coastal States under international law. At the same time, Norway must comply with any legal obligations stipulated in the Treaty. However, additional conditions not stipulated in the wording of the Treaty cannot be presumed. Presuming additional conditions would render the unmistakably clear term "*full and absolute sovereignty*" / "*la pleine et entière souveraineté*" in Article 1 meaningless.

The formulation "*the full and absolute sovereignty*" also sheds light on the parties' intention concerning the object and purpose of the 1920 Treaty. It makes it clear that the Treaty does not establish principles that qualify the territorial sovereignty contrary to ordinary principles of international law. There is, therefore, no basis, for example, to presume that Norway's obligations under this treaty must be interpreted expansively, or give rise to additional obligations to those set out in the Treaty.

Nonetheless, when the European Union in the Delegation's verbal note of 1 November 2016 takes the position that the specific provisions of the Treaty, in particular those laid down in Articles 2 and 3, apply to the continental shelf around Svalbard, it appears to invoke supplementary legal constraints and obligations to those stipulated in the 1920 Treaty and a geographical scope of application different from the one set forth in the Treaty. This is claimed without any basis in the ordinary meaning of the terms of the Treaty, nor evidence about the intention of the parties or any support in subsequent developments of international law.

As opposed notably to certain European treaties, the 1920 Treaty is not an instrument establishing a comprehensive integration or union rules.

Neither does it establish full reciprocity with respect to rights and obligations, combined with dynamic, inter-state market integration, with the aim to ensure the integration of the parties' overall economic activities and, perhaps, the ongoing development of new common rules, potentially governed by a separate legal system.

Nor is this treaty based on any other form of reciprocity in the form of any exchange of performance of the same nature between States, and subsequent reciprocal performance by other States, or the establishment of reciprocal rights and obligations for citizens of the parties in the affected States. On the other hand, it did provide final clarification of sovereignty in the context of a territorial question. This explains why it is open for rapid, simple accession by all States in the international community, without any requirement for reciprocal performance by them. The 1920 Treaty must be interpreted in the light of the general rule of interpretation of treaties, based on the objective sources of law that are available.

Without prejudice as to whether harvesting a sedentary species like snow crab can be considered "*fishing and hunting*" under Article 2, the claim that Articles 2 and 3 are applicable on the continental shelf is without any legal justification.

There is no basis in the 1920 Treaty for a claim that any of its provisions granting rights to nationals of the contracting Parties apply on the continental shelf of the archipelago beyond its territorial waters. Such application would go against the clear wording of the Treaty and contradict generally recognised principles of treaty interpretation. Neither is there any support for such application to be found in the evidence about the intentions of the Parties, as expressed in the negotiations that led up to the conclusion of the Treaty, nor in subsequent developments of international law.

It should in this connection be noted that the term "*territorial waters*"/"*eaux territoriales*" as used in the 1920 Treaty had a clarified legal content at the time of the negotiations. Historically as well as currently the term includes the internal waters on the landward side of the baselines as well as the territorial sea outside of the baselines. The breadth of the territorial sea was four nautical miles from the signing of the treaty in 1920 until 1 January 2004. In accordance with the Convention article 3, and based on Act on Norway's Territorial Sea and Contiguous Zone of 27 June 2003, the territorial sea around Svalbard was extended to 12 nautical miles with effect from 1 January 2004. At the

same time, the territorial scope of application of those provisions of the treaty that apply in the territorial waters was expanded accordingly.

The later development in international law has clearly confirmed that “*territorial waters*”/“*eaux territoriales*” is legally and conceptually different from the continental shelf, which is not mentioned in the 1920 Treaty. This legal and conceptual difference between the territorial waters and the continental shelf is, on the other hand, clearly enshrined in the Convention, which contains detailed provisions on the two different legal regimes.

Consequently, the provisions of the 1920 Treaty granting rights to nationals of the contracting parties do not apply to the continental shelf around Svalbard. Moreover, even if these provisions had been applicable to the continental shelf, they would have applied only to the extent they would have been compatible with the Convention pursuant to its Article 311, Paragraph 2.

As the coastal State, Norway has the exclusive right under the Convention to regulate and exercise jurisdiction over catches of snow crab on its entire continental shelf, including around Svalbard. Such jurisdiction includes any necessary enforcement action in conformity with the Convention.

Norway has also previously, for example in note verbal 96/15 of 30 October 2015 from the Mission of Norway to the European Union, informed that the right to harvest sedentary species on the continental shelf requires the express consent by the coastal State concerned, cf. Article 77 paragraph 2 of the Convention. Norway expects that all the member States of the European Union will act in full compliance with their obligations under international law on the Norwegian continental shelf. Moreover, Norway expects that member States of the European Union take the necessary steps to ensure compliance by their vessels with the conservation measures and other terms and conditions established in the laws and regulations enacted by Norway as a coastal State in accordance with international law.

Through proper conservation and management measures Norway, in accordance with its obligations as a coastal State under the Convention, is committed to ensure, based on the best scientific evidence available, that the maintenance of the living resources is not endangered by over-exploitation.

Regulation no. 1836 of 19 December 2014, as amended by Regulation no. 1833 of 22 December 2015, prohibiting catches of snow crab is fully consistent with Norway's rights, jurisdiction and obligations as a coastal State under international law.

Norway appreciates the very good cooperation with the EU on fisheries related issues. Harvesting of snow crab on the Norwegian continental shelf is in an early phase, and is strictly regulated. Norwegian authorities are monitoring the harvesting and the snow crab population as well as effects on other fisheries closely. Should the EU re-consider its previous view on the question of an exchange of quotas in order to facilitate snow crab harvesting by EU vessels, Norwegian authorities would actively look into the matter with due regard to the conservation of the snow crab population, as well as to the opportunity of long term, sustainable harvesting of snow crab.

The Royal Ministry of Foreign Affairs avails itself of this opportunity to renew to the Delegation of the European Union the assurance of its highest consideration.

Oslo, 09 January 2017

