

How much is the fish? When foreign policy meets fishing interests in the EU's Arctic endeavour

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Abstract

This article explores the interaction between European Union (EU) foreign policy and the external dimension of fisheries policy in a specific case: a dispute over snow crab fisheries around the Norwegian Arctic Archipelago of Svalbard. We do two things: first, we examine a specific case that concerns both EU foreign policy and fisheries policy in order to understand the workings of the EU regarding these two policy domains. Second, we connect the dots between the EU's external fisheries policy and the EU as a foreign policy actor in general, examining how intra-institutional dynamics matter when studying policy and its related developments in Brussels. This analysis of the snow-crab dispute between the EU and Norway illustrates how a relatively minor issue in fisheries policies is also relevant to the study of the foreign policy of the EU, and more generally for the links between foreign policy and fisheries as a nexus that is increasingly relevant in international politics.

Keywords

Arctic, European Union, fisheries policy, foreign policy, Spitsbergen treaty

Introduction

The European Union (EU) has traditionally been regarded as a global actor *sui generis*, subject to much controversy on its role in international relations (IR) over the last decades.¹ Moving away from such *unique*, rather simplifying and popular conceptualisation of the EU and its external actions, scholars have argued for a more nuanced understanding of what EU foreign policy is.² EU foreign policy is no longer perceived from and limited to the EU's Common Foreign and Security Policy (CFSP) and the Common

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Security and Defence Policy (CSDP) but is seen as extending to such policy areas as trade, development, enlargement or external environmental policy.³ Despite the persistent sensitivity of Member States in this field, the EU's supranational institutions have gained considerable influence and agenda-setting clout in broad EU foreign policy issues, ranging *inter alia* from international food standards to climate negotiations and, more recently, international sanctions.⁴

Studies over the last decade have proved the linkages between internal policy development and the EU as a foreign policy actor in domains such as trade, climate negotiations, and human rights.⁵ However, some policy areas are still poorly understood or even under-researched, involving various policy domains where EU competences differ, and diverging interests collide, change and develop over the course of time. One such domain is fisheries. Despite multiple studies that highlight the negative consequences of EU fisheries in external waters and the linkages to the concept of sustainability,⁶ there has been limited research on how the makings of EU fisheries policies directly affects EU external policies beyond the domain of fisheries.

In this article, we shed light on a distinct case of an *extended* EU foreign policy issue that cannot be neatly disentangled as either foreign or fisheries policy. We highlight how the latter does not only influence the former, but how the two are inherently intertwined in a re-constitutive relationship where actions in one domain (fisheries) limits the room for manoeuvre in the other realm (foreign policy).

Our case study is the Arctic: a region where the EU has expressed explicit foreign policy interests, while it is also heavily engaged in different forms of fisheries. The EU's most recent Arctic policy endeavour serves as an interesting case study as EU Arctic policy does not solely relate to foreign policy but is rather an unconventional mix of internal, cross-border and external policies brought together under a vaguely geographically defined umbrella.⁷ The enigma within this unique regional case is a specific dispute between two close economic and political partners, the EU and Norway; over licences to catch snow crab in the maritime zones around Svalbard. There is an interesting empirical puzzle to this specific case: why has the EU as an international actor chosen to pursue this limited and rather insignificant dispute (in terms of EU-wide consequences both in terms of political and economic goals), when the negative outcomes of it might outweigh the positive?

Answers to this question, however, are partly found in recent scholarly work that has looked at this dispute specifically unpacking its layers and storyline.⁸ The more interesting question – theoretically – therefore is what this dispute teaches us about the *links* between foreign and fisheries policy. The EU/Norway dispute over snow crab is matter of both. Decisions concerning this issue are not made within the 'traditional' realm of EU foreign policy (and mainly by the Member States), but within the realm of fisheries policy, a domain where the European Commission (hereafter 'Commission') has exclusive competence derived from the EU Member States.

We start from the premise that individuals and intra-institutional dynamics matter when studying policy and its related developments in Brussels.⁹ 'Policy documents do not emerge from a pre-given political mandate; they actually emerge from lengthy processes of drafting, consultation, and negotiation. The task is to examine not only policy implementation but also its conception'.¹⁰ For that reason, our analysis also goes a step

beyond a fully comprehensive study of the EU's Arctic policy¹¹ – while we add an understudied dimension to the empirical understanding of the EU's Arctic endeavour, namely that of linking it to its supranational fisheries policy.

Fisheries is a complicated matter, as the external dimension – fishing in non-EU waters – is closely related to and dependent on other EU policies such as trade, development and *foreign policy*.¹² It is one of the EU's common policies that has always had a strong external dimension.¹³ That foreign policy determines the choices available in external fisheries policies can be seen as relatively obvious. That fisheries policy can restrict foreign policy, on the other hand, is a different way to look at EU policymaking and its unique features. In turn, we show how a supranational portfolio can come to have unintended consequences for an intergovernmental portfolio, in essence pushing a foreign policy issue that Member States otherwise would not have wanted to pursue. This is thus a study of *spillover* – as a notion within studies of EU policy and decision making – in practice, and its consequences.

Furthermore, we add to the knowledge of *how* policies at this interplay are made in the hallways of Brussels, building on the body of literature concerned with EU-policy decision making both in fisheries and other sectors.¹⁴ We seek to add a small, yet crucial, piece to the understanding of the EU as a foreign policy actor. In addition, we add comprehensions concerning the EU vis-à-vis its 'most integrated outsider'¹⁵ – Norway – in a particular under-researched area, the Arctic region.

In addition to a wide range of scholarly literature on the EU, its policy domains, and the Arctic, our analysis draws on 11 semi-structured interviews conducted with all relevant branches of the EU system in Brussels between 15 and 20 February 2018. These interviews targeted EU officials in the Commission and the European External Action Service (EEAS), politicians and staffs in the European Parliament (EP), and EU Member State officials dealing with this specific dispute.

This article begins by outlining ways of conceiving the EU as a foreign policy *and* fisheries actor. Then we turn to the two pillars involved in the issue at hand: the EU's Arctic policy engagement and the specific, on-going dispute concerning snow crab from 2015. With pillar 1 we draw on academic works on the EU's Arctic endeavour. Regarding the second pillar, we apply the information on the dispute to better understand the EU as a foreign-policy decision-maker, and the nexus between foreign policy and fisheries policy.

When foreign policy meets fisheries

The EU as a foreign policy actor

Although European¹⁶ integration already rests on various dimensions of external relations, the actual concept of an EU foreign policy came with the Maastricht Treaty of 1992 and the introduction of the CFSP.¹⁷ In order to achieve better consistency and coordination, the Treaty of Lisbon not only expanded the responsibilities of the High Representative of the Union for Foreign Affairs and Security Policy (hereafter 'HR') but also introduced the EEAS.¹⁸ The EEAS is to assist the HR in putting the Union's foreign policy into effect, together with the Member States and their diplomatic services. The

Council of the European Union (hereafter 'Council') and the HR are to ensure the unity, consistency and effectiveness of EU foreign policy action (TEU, Art. 26).

Both the Treaty of Lisbon and the related upgrade/creation of the HR/EEAS have been heralded as solutions to the lack of coherent EU actorness in the world, able to close the capability-expectations gap of EU foreign policy performance.¹⁹ However, although the Treaty of Lisbon made a great supranational leap forward, the HR and the EEAS must be seen as a 'classic' European compromise between favouring further integration of foreign policy and rejecting a stronger supranational role in this policy field.²⁰ The HR and the EEAS are not supranational institutions, similar to the Commission or the EP, nor are they intergovernmental in nature like the Council.²¹

The EU's foreign policy is essentially determined by questions of competence and legitimacy as these elements clarify – at least legally – who is authorised to act externally.²² However, neither is there a 'single EU foreign policy in the sense of one that replaces national policies' nor does the 'EU' act as a coherent international actor with a single voice.²³ On matters of 'low politics', such as trade, environment or economic issues, Europe manages to defend its interests with a single voice in many cases. Yet on matters of high politics, such as traditional diplomacy or national sovereignty, the EU fails to speak as one – a gap between economic unity and political division that only endures because of the community method being more decisive than the – intergovernmental – CFSP system.²⁴

Mainstream IR has, so far, struggled to adequately capture the EU's nature as a foreign policy actor due to its rather rigid focus on statehood, which the EU has not, and rationality only, with the EU often lacking clearly defined, rational interests.²⁵ While some argue that foreign policy is mainly driven by the Member States, their interests and related bargaining (=the intergovernmental approach), others stress the importance of expanding institutional mechanisms on the content, scope and impact of EU foreign policy (=neo-institutionalism). However, several other conceptions aim to move beyond these approaches.

Instead of just serving the purpose for which they were created, institutions may be seen as actors with their own preferences, bargaining with other actors – in this case, mostly the Member States.²⁶ An institution like the Commission follows its own preferences and agenda, seeking to ensure its relevance and survival by expanding its competences and importance when creating policy.²⁷ That invalidates the rational idea that institutions act like secretariats: they constitute own agendas and can be proven to have developed policies that favour themselves more than what a neutral secretariat would have done.²⁸

One approach that takes this latter point into account applies multi-level governance to explain the interaction between the supranational and the state levels.²⁹ Although institutions are influential in the policy process and its implementation, Member States hold primacy in the field of foreign policy. However, domestic organisations and the regional level arguably have a stronger influence on foreign policy than normally theorised by intergovernmentalism.³⁰ Leaders balance international dispute negotiations with their respective domestic constituencies,³¹ especially in the case of the EU's external policies. Institutions play an active role in the policy-cycle, which in turn can be analysed at the various levels of governance without neglecting the Member States, the

regional level, or the institutions themselves. Policy should then be seen as an interplay between the EU institutions and the Member States, all with their own agendas, instead of – simplified – as an outcome of intergovernmental negotiations or solely as policy initiatives by a lead authority (EEAS).

Central to this assumption is the question of ‘who is the EU?’ and what do we mean by ‘the EU’ when it comes to EU-policy-making. For the Arctic-case on hand we accept two propositions simultaneously: That internally any so-called ‘EU-policy’ is a patchwork of various institutional interests with sometimes diverging voices, specifically the Commission and its Directorate-General (DG) for Maritime Affairs and Fisheries (MARE), the EEAS, the EP, as well as certain Member States; but that externally, Arctic states perceived the EU’s policy output as coming from a singular cohesive actor only.

Accordingly, we aim to open the internal black-box of an externally perceived unitary actor and counteract a persistent simplification of the institutions of geopolitics, and specifically those of the EU.³² Thus, we follow Kuus’ assumption that the ‘union is both an institution and a process of continuous dialogue and negotiation among the member states’.³³ Moreover, also the institution ‘EU’ is further composed of different institutions, which themselves consists of numerous departments and individuals.

The EU as a fisheries actor

Starting in the early 1980, the European Community has established itself as a ‘significant actor within the politics of world fisheries’.³⁴ Today the EU’s Common Fisheries Policy (CFP) sets out the rules for the conservation of fish stocks and the development of the structure and economics of fishing fleets.³⁵ To manage a common resource sustainably, from environmental, economic and social perspectives, the CFP allows European fishing fleets equal access to all EU waters and fishing grounds.

To further enable Member States to continue fisheries in areas beyond European jurisdiction, the Community began negotiating on behalf of its Member States to either join Regional Management Fisheries Organisations (RFMOs) or establish bilaterally negotiated fisheries agreements with third countries. Thus, the external dimension of EU fisheries was born.³⁶ The Commission plays a central role in setting related policies due to the EU’s exclusive competences for ‘conservation of marine biological resources under the common fisheries policy’ (TFEU, Art. 3), which also cover the allocation of fishing quotas.³⁷

From a foreign policy perspective, the CFP clearly falls under the community system of foreign policy making, highlighting the external dimension of internal policies aspect. However, as policy implementation is left to the Member States, the result is a structure that has an intergovernmental element in addition to its supranational basis.³⁸ The Council’s Agriculture and Fisheries configuration (AGRIFISH), upon recommendation from the Commission, adopts measures on the determination and allocation of quotas – total allowable catch (TAC) (TFEU, Art. 43 (3)).³⁹ Each Member State then has exclusive competence to allocate its national quotas within its industry.⁴⁰

Today, the EU is a global player in the development of international fisheries law and multilateral fisheries governance, and a key actor in international fisheries management. The EU’s external fleet represents about a quarter of total EU fleet capacity, and provides

over a quarter of the EU's total catches. A member in 14 out of 18 RFMOs globally, it has also concluded various bilateral agreements with third countries, either of reciprocal or compensatory nature.⁴¹

The external dimension of EU fisheries is of fundamental importance to the CFP for several reasons. It is a major source of economic activity and jobs; it contributes to the supply of EU markets; it turns the EU into a legitimate actor in the multilateral governance of fishing worldwide; and – important for the case at hand – it overlaps with other policies of the EU, like foreign policy, as – ideally – the EU never imposes but negotiates its views with third countries.⁴²

However, the Union's global fisheries activities have at times contradicted the 'declared support for the norms of sustainable development'.⁴³ Especially the CFP's external dimensions have been criticised for deviating from the basic principles of sustainability and precaution.⁴⁴ Several cases have drawn attention to the negative and potentially disastrous effects of EU external fisheries to local ecosystems as well as the economies of third countries.⁴⁵ Bretherton and Vogler concluded that the external dimension of fisheries is inherently determined by the fundamental contradiction 'between the needs and demands of the EU-based fishing industry and its customers, and the sustainable development objectives of the Union'.⁴⁶ An inconsistency the CFP has not been able to solve yet as major parts of (EUropean) fish stocks remain to be overfished and the profit margins of EU fishermen continuously decline.⁴⁷

At the heart of this issue lies both overcapacity to fish in EU Member States due to subsidies of fishing industries,⁴⁸ as well as the complex nature of EU external fisheries policy-making in Brussels where a multitude of actors are engaged in pursuing their interests.⁴⁹ Moreover, *coherence* emerges for the relevant literature as a key concept in order to explain the deficiencies in the EU's fisheries policies. It lacks both *vertical coherence* (coherence between the EU-level and Member State policies) and *horizontal coherence* (coherence across policy domains that have relevance for fisheries).⁵⁰ Here, we place emphasis on the latter, namely the *links* across policy domains where the EU is engaged. Subsequently, how can we best amalgamate the notions of the EU as a foreign policy actor, and the EU as a fisheries actor?

Going North: an Arctic dispute

The EU is no stranger to its 'northern neighbourhood' and holds multiple links to the Arctic, on geographical, legal, economic, environmental, research and regional development-related levels.⁵¹ However, in geographical and legal terms, the EU's externality as regards the majority of Arctic states represents a major constraint on the EU's 'Arcticness'.⁵² The EU has no coastline to the Arctic Ocean, and EU law applies directly only to the northernmost parts of Finland and Sweden. Hence, foreign policy plays an essential role in respect to EU Arctic activities. This includes, for instance, the EU's cooperative efforts with Russia in the European Arctic, and its engagement within the Arctic Council.⁵³

However, the region has only recently began to feature more prominently in EU foreign policy initiatives. Since 2008, EU institutions have issued 10 Arctic policy documents, most recently in March 2017: three (Joint) Communications by the Commission

(and the HR), three related Conclusions by the Council and four Resolutions by the EP.⁵⁴ Despite this institutional progress and a policy toolkit that rests on a broad and accountable foundation, no single Arctic strategy has been developed. A decade after the first – 2008 – Communication, the EU remains caught in an unconventional mix of internal, cross-border and external policies regarding the Arctic,⁵⁵ blurring the line between what are perceived as domestic or foreign, internal or external, soft or hard politics.

Over this last decade, the EU has been able to communicate the scope of its regional presence and has generally demonstrated an ‘Arctic-appropriate’ understanding of the region and its sensitivities. The regional relationship with Norway – the EU’s immediate northern neighbour – can also be characterised as ‘Arctic-appropriate’. Although Norwegian actors have sometimes been critical to Arctic debates and comments from Brussels, Norway has worked pro-actively to get the EU more involved in issues of Arctic governance⁵⁶ – the authority structures that subsume law, politics and administration of and in the Arctic region.⁵⁷

While it seems that general agreement exists between the EU and Norway on the basic principles of Arctic affairs, contested issues may emerge as a consequence of interaction at the issue-specific level, whether in energy relations, environmental regulations or fisheries.⁵⁸

An Arctic dispute

References to ‘Arctic fisheries’ from the EU have mainly concerned the relations and cooperative efforts with Greenland, Iceland and Norway, as well as discussions concerning the northward movement of fish stocks and potential fisheries in the high seas of the Arctic Ocean. EU countries take only a small percentage (about 4%) of all Arctic catches, predominantly Atlantic cod, redfish and herring.⁵⁹ However, the EU is an important actor as regards fish imports from Arctic states, especially from Iceland and Norway.⁶⁰ Although Norway’s fisheries policy is outside the European Economic Area (EEA) Agreement, the EU acts as key regulator, setting market requirements and standards for fish caught in Norwegian waters.

In its latest Arctic resolution from March 2017, the EP called on the EU ‘to be a leader in the prevention of unregulated fishing in the Arctic’, arguing that the EU has ‘every right to do so’ due to its involvement in all levels of Arctic governance.⁶¹ Also the Commission/HR took a similar stance in 2016.⁶² One particular issue where this has come to the foreground has been with regard to the Arctic Archipelago of Svalbard.

Located approximately 650 kilometres north of the Norwegian mainland, controversy surrounding Svalbard’s maritime zones stems from the Treaty concerning the status of Spitsbergen (‘the Spitsbergen Treaty’), signed in Paris in February 1920.⁶³ Norway was granted full sovereignty over the archipelago when the Treaty came into effect in 1925. However, the Treaty also stipulated that recognition of Norwegian sovereignty over the islands is subject to certain conditions (like restrictions on Norway’s rights to tax and use the islands for military purposes) by simultaneously assigning the right of access and non-discrimination for commercial operations to nationals of all the contracting parties.⁶⁴

Despite this early twentieth-century diplomatic compromise, diverging views on the geographical scope of the Treaty have persisted, also among legal experts.⁶⁵ In particular,

these concern the status of the maritime zones beyond Svalbard's territorial sea: some argue that the Treaty applies in these maritime areas, others hold that it does not.⁶⁶ Norway considers the 200-mile maritime zone, as well as the continental shelf around Svalbard, as being untouched by the Treaty.⁶⁷

Other countries, however, have claimed that the principles of the Treaty should apply to the 200-mile zone as well as the shelf, around Svalbard, although this was not explicitly stated when the Treaty was formalised in 1920.⁶⁸ This reading of the Treaty would grant all signatories equal rights to economic activity and limit Norway's ability to tax this activity in the water column and on the continental shelf around Svalbard, although Norway would still manage the area and decide what activity to allow for.⁶⁹

However, despite claiming the right to establish an Exclusive Economic Zone (EEZ) around Svalbard, Norway has not yet chosen to do so. In 1977, after having established its EEZ in the Barents Sea, Norway decided to establish 'merely' a Fisheries Protection Zone (FPZ) around Svalbard for the purpose of the conservation and management of living marine resources.⁷⁰ This avoided a potential direct challenge to the Norwegian claim, while making it possible to protect and manage this central nursery area for the Northeast Arctic cod stock.⁷¹ The continental shelf, however, has remained closed for economic activity: until the snow crab came lurking from the east.

The EU accepts neither Norway's claims of unrestricted sovereign rights in the FPZ and on the shelf, nor conservation measures that amount to access restrictions for the Community. However, as long as these measures are applied in a non-discriminatory manner and are scientifically based, the EU will abide by them.⁷² Thus, the EU neither officially recognises nor rejects the Norwegian position in practice, preferring to keep the peace in lieu of limited potential gains to be had from upsetting the status quo. Furthermore, with its Arctic endeavour over the last decade, the EU (and its various institutions) has proven increasingly sensitive to the interests of the Arctic states and attempt to avoid causing unnecessary friction in order to promote its own role and agenda regarding the Arctic.⁷³ This consequently makes Svalbard a case of *realpolitik* in the field of the CFP in general and the EU's relationship with Norway more specifically, demonstrated by extraordinary resilience over time;⁷⁴ a dispute frozen with an eye towards larger foreign policy aspirations in Brussels and among the EU-27. A policy approach that has evolved to be based on practical and pragmatic rather than ideological or power considerations.⁷⁵

Chionoecetes opilio, snow crab, has, however, brought this to disagreement between the EU and Norway to the top of the bilateral agenda. In 2014, Norwegian vessels harvested 4000 tonnes, worth more than NOK 100 million (approx. €12 million), and this new industry began to attract greater international attention.⁷⁶ Then, on 1 January 2015, Norway imposed a total ban on the catching of snow crab on its continental shelf, which – in the Norwegian view – includes Svalbard.⁷⁷ The purpose of introducing regulation was the need for control of the activity, as well as the need for knowledge and data on the spread of the crab.⁷⁸

The Norwegian government, nevertheless, opened for licences to Norwegian fishermen only.⁷⁹ Albeit still of limited economic importance to EU Member States and Norwegian fishermen, the prospects of a new profitable resource in tandem with the disagreement over Svalbard's continental shelf attracted attention. In January 2017, the

Council adopted this proposal and granted five EU Member States – Estonia, Latvia, Lithuania, Poland and Spain – permission to issue 20 licences.⁸⁰ Such actions on the part of the EU are in violation of UNCLOS (Art. 77) and the Spitsbergen Treaty, because – regardless of the outcome of the dispute concerning the status of the maritime zones – Norway has the undisputed right to *manage* any economic activity in this area.⁸¹

Consequently, the Norwegian Coast Guard arrested the EU-registered vessels *Juros Vilkas* from Lithuania (with licence from Latvia) in the Loophole region between the EEZs of Norway and Russia in late 2016, and *Senator* from Latvia (with licence from Latvia) in the waters around Svalbard in January 2017.

It is the special treatment of Norwegian fishermen that is at the heart of the dispute between the EU and Norway, as it also brought the two diverging positions held by the EU (through some of its Member States) and Norway on Svalbard's maritime zones to the forefront of (fisheries) relations between the two actors.⁸² *If* the continental shelf around Svalbard is not subject to the Spitsbergen Treaty, Norway has exclusive rights to the resources and can thus award licences/quotas to whichever vessels it prefers. *If*, however, the Spitsbergen Treaty applies, Norway cannot discriminate against vessels from signatory states, even though it is in charge of managing the licencing itself.

The arrest of *Senator* rubbed EU actors the wrong way and put the issue of snow-crab fisheries on the agenda. In a parliamentary question to the Commission from 5 April 2017, three Members of European Parliament (MEPs) criticised the Norwegian refusal to 'recognise the legitimate right of EU vessels to sustainably and legally operate in these areas' (Barents Sea and Svalbard).⁸³

In 2018 and again in 2019, the Council upheld the licences for 20 vessels to catch snow crab in waters around Svalbard, divided among the same five Member States.⁸⁴ This was done to defend the EU's position on the dispute and Svalbard: the 20 licences for 2017 had never been used, as no vessel except the *Senator* had ventured north.⁸⁵ In response to this second round of EU licencing the Norwegian Minister of Fisheries announced that Norway would not be negotiating this issue further with the Commission, thereby ending official talks aimed at finding a solution.⁸⁶

Thus, although the dispute is of rather limited economic concern, the process surrounding it is both complex and multifaceted. In the end, it is not merely about a certain species and related quotas and licences to catch this species: it also concerns the complexity of international law and the power/interests of various actors. From the EU side, various actors and institutions were engaged, upholding differing opinions that were sometimes controversially communicated. That brings us to our attempt to understand 'the EU' as a foreign policy actor with regard to this dispute, and the intricacies of EU foreign policy-making more generally.

The curious case of EU foreign policymaking

Cui Bono? Hijacking the EU-machinery

There are many ways in which an issue can find its way onto the EU agenda. In the snow-crab case, all the core EU institutions are involved. However, our rounds of interviews with officials working in or with the EU on this issue indicated that the initial driver for

pursuing the matter were the interests of specific Member States. As one EU institution official put it, ‘This issue [snow crab] is clearly driven by continuous pressure by Member States who have entitlements’.⁸⁷ In this case, the Commission and its DG MARE operate on behalf of Member State interests. But where do these interests derive from?

As one EU official explained, ‘We initially became engaged in this issue because of industry interests that contacted us’.⁸⁸ Thus, what some Norwegian journalists may have seen as a Brussels-based initiative,⁸⁹ was in fact initially driven by very specific interest groups in a few countries – Latvia in particular.⁹⁰ These interests were concerned about being evicted from the Russian continental shelf and the growing snow-crab catching industry, with investments in equipment and vessels.⁹¹ It seems clear that these interests managed to find some key actors to speak on their behalf.

As the snow-crab dispute with Norway rose on the EU agenda in late 2015 and early 2016, specific Member States actively worked towards the Commission to ensure that their interests were represented. According to multiple sources, Latvia was an essential driver in pursuing licences to catch snow crab.⁹² Despite having only two companies interested in this activity, it became a key issue for the government in Riga.⁹³ In 2016, Latvia became the 44th party to the Spitsbergen Treaty, solidifying its claims to equal access around Svalbard. However, the Latvian representatives stressed that their country’s interests concerned *only* fisheries, and not oil and gas.⁹⁴

By late 2017, the issue had arguably become ‘stuck’. As theories about path dependence make clear, ‘the set of decisions one faces for any given circumstance is limited by the decisions one has made in the past, even though past circumstances may no longer be relevant’.⁹⁵ From a *legal* point of view, it was argued that the Commission had to uphold the licences for the following year (2018) so as not to concede its overall position on Svalbard.⁹⁶

From an *economic* point of view, the 2017 licences were never used, except the vessel *Senator*, which was arrested. From a *political* point of view, EU Member States and MEPs had become deeply engaged in the issue and raised it on the agenda, and had invested both resources and reputation, making it difficult to abandon.⁹⁷ The end-result was that the Council adopted the continuation of the 20 licences, which led to Norway walking away from the negotiations.

In the case of snow-crab licencing, Latvia, Poland and Lithuania in particular had vested (economic) interests in the issue and were thus able to ‘hijack’ the larger EU machinery. That is not to say that fisheries decisions made in Brussels never have considerable impacts otherwise. Fisheries may encompass everything from local and national livelihoods to environmental issues and – as in this case – legal and governance concerns.

The EP and some MEPs were central in ensuring that the issue stayed on the agenda in Brussels and in EU/Norway bilateral negotiations. In contrast to how EU Arctic policy developed, the Commission seems to have taken a backseat. The separation between DG MARE and EEAS concerning fisheries and external policy issues also played a role.

The EU has multiple interests and voices – even within a policy domain like fisheries, where the Member States have ceded competence and authority to the supranational level. But, as this case study has highlighted, these voices can be hijacked by special interests if there are few counter-positions and an issue seen as being of limited importance.

The related case shows the extent to which the various institutions can play a role in external fisheries issues, if these issues are only minor in the larger EU hierarchy of issues. With more pressing concerns arising daily in the Council or the European Council writ large, the limited external effects of allocation of licences and quotas do not have enough impact to warrant attention from all Member States, except when special interests come to fore. This point – ignored in much contemporary studies of the foreign-policy nexus in Brussels – helps explain not only the case at hand, but could also help make sense of several other instances of foreign policy-outcomes that do not immediately seem beneficial to the EU, or its Member States objectives.

The artificial divide between fisheries and foreign policies

Returning to the concept of ‘multi-level governance’, we can indeed separate foreign policy from fisheries policy – at least on paper. Regional relations in the Arctic involve a different governance level than bilateral EU/Norway relations, with much more than just the Arctic portfolio. Moreover, fisheries are a distinct component in this bilateral relationship, but not an overarching domain that dominates Arctic policy or EU/Norway relations in general.

However, when the Council approved licencing in early 2016 under the radar of most, the Commission became tasked with upholding and defending this joint EU decision, and the issue had taken on a more-than-fisheries-importance. Commissioner Karmenu Vella met with the Norwegian Minister of Fisheries in early 2017, while officials in DG MARE kept trying to find a solution. The EEAS attempted to stay away from this issue and has not considered it relevant for the EU’s Arctic policy endeavour.⁹⁸ Albeit understandable, this distinction is somewhat naïve. As underscored in statements made by some MEPs, in both the interviews for this article and in the general EP debate in Strasbourg in early 2018,⁹⁹ multiple other actors had already connected the dots between these two policy domains. Consequently, the EU’s foreign policy and the EU’s fisheries policy intertwined.

At the same time, *within* the EU-system in Brussels, the various DGs and EEAS were working to keep the issues separate. This ‘limited dispute’ has been kept separate, as an issue pertaining to fisheries – by DG MARE and the EEAS, the EU Member States, and Norway. From 2007/2008 onwards, the EU has engaged in Arctic affairs, and Svalbard and/or larger governance questions have occasionally arisen, especially in the EP.¹⁰⁰ It is predominantly the EP or some of its MEPs, who would (still) like to see a larger debate on Arctic governance. As put by MEP Wałęsa: ‘Discussions about Arctic governance are long overdue. The EU should talk about the Arctic’s future’.¹⁰¹ Similarly, as MEP Pietikäinen put it, ‘We need to work to preserve the Arctic. In the longer run I think we should work for a regime in the Arctic like what we have for the Antarctic’.¹⁰²

Thus, we see a slight distinction between the fisheries issue regarding snow-crab quotas, and Arctic governance as per the latter statements, which is unequally foreign policy. Although some actors in Brussels obviously saw it beneficial to combine the two, the EU-bureaucracy (DG Mare and EEAS) actively worked to keep the issues separated. What does this tell us about linking these two policy domains?

Policy – even within this realm – must then be seen as an interplay between the EU institutions and the Member States, as well as the external environment in which the EU exists. The legal component of the dispute over snow-crab access links the issue to a larger and more sensitive matter of relevance to both the Arctic policy of the EU *and* its general stance as a foreign-policy actor. The disagreement with Norway over the geographical applicability of the Spitsbergen Treaty brings together foreign policy and fisheries policy.

It seems clear that the EU's heavy involvement in external fisheries created the functional need for an equivalent foreign policy as EU engagement in the Arctic region is related to all these issues.¹⁰³ In turn, the EU's efforts are an unconventional Arctic policy mix of internal, cross-border and external policies. The distinction between foreign and fisheries policies becomes blurred because the use of foreign policy tools is essential to develop successful policies for trade and the environment.¹⁰⁴

This creates a technical spill-over since the expertise regarding these topics is developed and located in the supranational institutions. The argument that the Commission functions as a mere secretariat for the Member States' interests does not hold up in the intersection between foreign and fisheries policy. The external policy dimensions of the CFP enable the Commission and – to some extent – the EP to exert considerable influence, with impact on the outcomes of decisions made in Brussels that have a clear foreign-policy dimension.

Explaining inconsistencies and paradoxes in the EU's foreign policy

In terms of theorising the EU's multiple roles and policies, we can now attempt to draw some lines. Naturally, many different voices make no single approach. Eventually, EU foreign policy is only as good as the quality of consensus among its Member States, and effectiveness and success, respectively, is relative as it still remains unclear on how to be measured. While 'the EU' is undoubtedly a global power in some policy areas, as for instance in trade but also fisheries, it does not have the same kind of self-assertion in other domains.¹⁰⁵ From a fisheries perspective, the picture is similarly complex as the dialogue of Commission, Council and EP needs to agree on policy prioritisation and the definition of objectives.¹⁰⁶

Thus, as Vaquer i Fanés shows us in a study of the EU's external fisheries negotiations with Morocco, a multi-level approach to fisheries is not only useful, it is essential in capturing the different interests at a domestic, national (Member State) and supranational (EU) level.¹⁰⁷ In turn, opening up the 'black box' of Brussels and combining it with a multi-level governance approach – as we have done here with the Arctic snow crab-case – shows exactly *how* fisheries and foreign policies are connected, and what this in turn entails for policy outcomes at the EU-level.

These notions help explain the apparent paradoxes that emerge in EU-foreign policy making. This concerns the snow-crab case *and* fisheries more generally. One particularly relevant issue that comes to fore in the foreign policy–fisheries policy nexus is that of *sustainable development*, an area the EU has shown considerable ambitions over the last decade(s) to assert influence in.¹⁰⁸ A core component of EU Arctic policy,¹⁰⁹ as well as its larger climate and growth initiative,¹¹⁰ the Union's external fisheries policies have directly contradicted this goal at times.¹¹¹

In the case of the snow crab, the most cautious approach – from an environmental perspective – would arguably be to await the creation of a management plan in the Barents Sea based on deeper understanding of the effects of the westward expansion of this new species, as well as its harvesting. If the EU aims to promote sustainable development in both its Arctic policies and the CFP, why do its related actions concerning Svalbard and the issue of snow crab prove otherwise? Similarly, the historic case of the ‘Turbot War’ in the 1990s exemplifies this, as Canada’s efforts to protect its own fisheries were partly motivated by unsustainable overfishing by EU-vessels of the stocks off the coast of Newfoundland.¹¹²

On the one hand, Member States and their fishers are eager to exploit economic opportunities, no matter how relatively minor in comparison with fisheries elsewhere or other economic activities in the north. On the other hand, the Commission/EEAS actively promote the principles of sustainable management and precaution when it comes to marine living resources in the north, *especially* those that are new to the Arctic region due to ecological changes occurring. In consequence, the two positions that ‘the EU’ holds in this case – one specific and one general – both contradict each other and highlight the EU’s multi-headed nature on issues such as these.

In sum, fisheries entail a large external component in form of quota agreements, RFMOs, and general collaboration across maritime boundaries managing shared fish stocks. However, these external dimensions of this policy domain tend to be kept separate from larger foreign policy concerns and objectives. For ‘regular’ actors on the international stage (states), that might make more sense, as foreign policy often is streamlined by a coordinating Ministry (of Foreign Affairs) in order to balance various interests and goals.

However, the EU is a different animal altogether. As put by Kuus, politics in the instance of the EU is more concerned with practices at different locations (physical as well as competence-related) than necessarily a set of universal principles and traditional anchored power politics.¹¹³ The EU’s northern approach has in many ways been marked as that of a ‘geopolitical’ actor – pursuing certain policy-interests in a geographically defined space of growing relevance.¹¹⁴ However, the EU’s *sui generis* policy-making system has in many ways produced an intra-institutional Arctic policy perhaps coined more for internal than external purposes.

Because of the particular set-up where some policy-domains are under supranational control – like fisheries – whereas others – like foreign policy – are intergovernmental, complex and somewhat curious policy-outcomes are produced. The practices vis-à-vis the Arctic region has been a contradictory mix of intra-institutional interests and agendas (ranging from climate concerns to regional development and foreign policy objectives), as well as reacting to external events in the Arctic. In contrast to traditional state-structures, the EU’s multi-voice-, multi-actor-approach towards a geographic region where both supranational and intergovernmental competencies are in play has led to the fragmented Arctic approach, as described. This becomes particular obvious when also opening the black box of institutional expertise and regional awareness/knowledge.¹¹⁵ However, in some ways this is the exact *nature* of the beast.

In this instance, Member States became trapped in a foreign policy conundrum not of their own making. Put differently: a policy initiative originating in the field of fisheries

aimed at safeguarding the economic interests of a few EU-fishers, ended up hijacking the EU external policy system and could – if not kept compartmentalised and separated – have severe consequences for the EU's larger foreign policy ambitions in the Arctic.

What may appear to be a limited fisheries dispute between the EU and Norway, in reality concerns EU foreign relations, and the broader governance framework of the Arctic. For over a decade, the EU has engaged with its 'northern neighbourhood', with varying degrees of success. A staple of its Arctic policy has been the EU's self-perception of being a 'responsible' actor, favouring a sustainable – and sometimes even restrictive – approach to marine resource development in northern waters.¹¹⁶ In the snow-crab case, however, the EU has taken a contrary position, meshing foreign and fisheries policies. Fisheries *in* the Arctic have generally been treated *outside* the realms of the EU's Arctic policy endeavour, something which might be about to change as displayed through this case.

Thus, this is not only a case study of relevance to the EU's northern endeavour, it is also a theoretical example of the spill-over effect between policy-domains in a complex EU-system, that EU bureaucrats themselves either work for or against, depending on the interests of their respective institution.

Conclusion

This analysis of the snow-crab dispute between the EU and Norway illustrates how a relatively minor issue in fisheries policies is also relevant to the study of the foreign policy of the EU. Limited (economic) interests may manage to hijack broader political and strategic interests. This shows how individual voices are able to drive an agenda, also within a domain that concerns EU foreign policy. This can serve as an example of how narrowly defined issues with clear and comprehensible interests often gain priority over long-term strategies and considerations. For the EU as a foreign policy and fisheries actor, some lessons stand out.

First, and as generally stressed by Keukeleire and Delreux, EU foreign policy is indeed *multifaceted* (as it also comprises the external dimensions of internal policies such as fisheries), *multi-method* (combining various policy-making methods) and *multi-level* (involving both the national and European levels).¹¹⁷

Second, with the EU's Arctic efforts remaining salient in the EU's global strategy and internal considerations, it will be relevant to observe whether niche policy domains/regions are more easily hijacked by actors not directly involved – as the EP did with regard to the external dimension of the CFP, a domain under the competence of the Commission and to some extent the Council. The case at hand proves this hijacking possibility, but it might not be a one-off instance.

Finally, this issue has highlighted how the artificial distinctions between foreign policy and other domains – in this case fisheries – often employed in scholarly conceptions of EU policy studies are inherently flawed. We have seen how the interaction with third parties (here: Norway) alter the policy dynamics – simply equating internal with external EU policies is inadequate.

This case study has made clear the multifaceted process in which policies from the EU with an external dimension – whether identified as 'foreign policy' or not – come


about. The description of EU foreign policy as something separate from other EU policy domains naturally does not hold up under scrutiny. Fisheries and foreign policy are not two distinct policy areas. On the other hand, the fact that one domain is defined as a community competence, whereas the other is mainly intergovernmental, does not automatically lead to a ‘spill-over’ effect with the Commission and the EP gradually expanding their influence on behalf of Member States. Instead, as this case has shown, the various EU institutions have their independent interests, which are developed in the institutional and political context in which they are placed. The effect of each institution and to what extent certain actors are able to utilise it to their advantage will depend on the multi-level governance *structure* of the issue at hand.

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