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ØST-FINNMARK DISTRICT COURT

JUDGMENT

Rendered:	22/06/2017	
Case no.:	17-057396MED-OSFI and 17-057421MED-OSFI	
Presiding judge:	District Court Judge	Kåre Skognes
Lay assessors:		Per Kristian Hagen Inger Anna Langvatn

The Public Prosecuting Authority	Assistant Chief of Police Morten Daae
v.	
Rafael Uzakov	Advocate Hallvard Østgård
SIA North Star LTD	Advocate Hallvard Østgård

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JUDGMENT

Rafael Uzakov was born 08/05/1973, and he is a Russian national.

In a penalty notice, issued by the Police Chief of Finnmark on 20/01/2017, charges were brought against him before Øst-Finnmark District Court for violation of

I **Section 61 of the Marine Resources Act**

Wherein any person who wilfully or through negligence contravenes provisions laid down in or under Section 16, Subsection 2, is liable to fines, cf. Section 64, Subsection 3.

Cf. Section 4 Territorial extent
Wherein the act applies on board Norwegian vessels, within Norwegian land territory with the exception of Jan Mayen and Svalbard, in the Norwegian territorial sea and internal waters, on

the Norwegian continental shelf, and in areas established under Sections 1 and 5 of the Act of 17 December 1976 No. 91 relating to the Economic Zone of Norway.

Cf. Section 1, Act relating to scientific research and exploration for and exploitation of subsea natural resources other than petroleum resources
Wherein this act applies to scientific research of the seabed and its subsoil and exploration for and exploitation of subsea natural resources other than petroleum resources in Norwegian internal waters, in the Norwegian territorial sea and on the continental shelf. The continental shelf is to be understood as the seabed and subsoil of the marine areas extending beyond the Norwegian territorial sea, throughout the natural prolongation of the Norwegian land territory to the outer edge of the continental margin, but no less than 200 nautical miles from the base lines from which the breadth of the territorial sea is measured, however, not beyond the median line to another state, unless otherwise can be derived from the rules of international law for the continental shelf beyond 200 nautical miles from the base lines, or from an agreement with the relevant state.

Cf. Section 16, Subsection 2, litra c)
Wherein the Ministry may adopt regulations on the conduct of harvesting operations, including prohibitions on harvesting from certain areas, harvesting certain species or using certain tools

Cf. Section 5, cf. Section 1, of the Regulations prohibiting snow crab harvesting
Wherein it is prohibited for Norwegian and foreign vessels to harvest snow crab in Norwegian territorial waters and internal waters and on the Norwegian continental shelf.

Grounds:

On Sunday 15 January 2017, at 10:50 UTC, on the Central Bank of the Norwegian continental shelf, at 7433.1N–0354.4E, the fishing vessel Senator C/S YLAC, whose captain was Rafael Uzakov, started fishing for snow crab by launching sea crab pods, despite not having obtained dispensation from Norwegian authorities to harvest snow crab on the Norwegian continental shelf. A total of 13 lines with a total of 2,594 pots were launched, until KV-Svalbard inspected the vessel on Monday, 16 January 2017, at 08:20 UTC.

II **Section 36, Subsection 1, litra a), of the Coast Guard Act**
for having failed to comply with an order issued by the Coast Guard

Cf. Section 29, Subsection 2, of the Coast Guard Act
Wherein the Coast Guard may order the master of a vessel to cease fishing or harvesting

activities and retrieve trawl nets or other tools.

Grounds:
On Monday, 16 January 2017, at 10:20 UTC, on the Central Bank of the Norwegian continental shelf, at 7515.7N–03647.6E, he was, as the captain of the fishing vessel Senator C/S YLAC, ordered by the Coast Guard to pull up all pots that had been launched, cf. count 1, an order with which he did not comply.

SIA North Star LTD is a Latvian company (shipping company).

In a penalty notice, issued by the Police Chief of Finnmark on 20/01/2017, charges were brought against the company before Øst-Finnmark District Court for violation of

I **Section 61 of the Marine Resources Act, cf. Section 27 of the Penal Code of 2005**
Wherein any person who wilfully or through negligence contravenes provisions laid down in or under Section 16, Subsection 2, is liable to fines, cf. Section 64, Subsection 3.

Cf. Section 27 of the Penal Code Criminal liability of enterprises
When a penal provision has been violated by a person who has acted on behalf of an enterprise, the enterprise may be liable to penalty. This applies even if no individual person is found to be guilty of wrongdoing or fit to plead, cf. Section 20.1

The term enterprise refers to company, society, 2 society or other association, sole proprietorship, foundation, 3 estate or public agency.

The penalty shall be a fine. 4 The enterprise may also, by court order, lose the right to carry on its business or prohibited from carrying on in certain forms, cf. Section 56. The enterprise may also be subject to forfeiture, cf. Chapter 13.

Cf. Section 28 of the Penal Code. Considerations in the decision to impose a penalty on the enterprise.
In deciding whether a penalty should be imposed on an enterprise pursuant to Section 27, and in assessing the penalty vis-à-vis the enterprise, particular consideration shall be paid to

a) the preventive effect of the penalty;
b) the seriousness of the offence, and whether the person acting on behalf of the enterprise is guilty of wrongdoing;
c) whether the enterprise, by guidelines, instruction, training, control or other measures, could have prevented the offence;
d) whether the offence was committed to promote the interests of the enterprise;
e) whether the enterprise obtained, or could have obtained, any advantage by the offence;
f) the enterprise's financial capacity;
g) whether other sanctions are imposed on the enterprise, or a person acting on behalf of the enterprise, as a consequence of the offence, including whether a penalty is imposed on any individual person; and
h) whether any agreement with a foreign state requires a corporate penalty to be imposed.

Cf. Section 4, Territorial extent, of the Marine Resources Act
Wherein the act applies on board Norwegian vessels, within Norwegian land territory with the exception of Jan Mayen and Svalbard, in the Norwegian territorial sea and internal waters, on

the Norwegian continental shelf, and in areas established under Sections 1 and 5 of the Act of 17 December 1976 No. 91 relating to the Economic Zone of Norway.

Cf. Section 1 of the Act relating to scientific research and exploration for and exploitation of subsea natural resources other than petroleum resources
Wherein this act applies to scientific research of the seabed and its subsoil and exploration for and exploitation of subsea natural resources other than petroleum resources in Norwegian internal waters, in the Norwegian territorial sea and on the continental shelf. The continental shelf is to be understood as the seabed and subsoil of the marine areas extending beyond the Norwegian territorial sea, throughout the natural prolongation of the Norwegian land territory to the outer edge of the continental margin, but no less than 200 nautical miles from the base lines from which the breadth of the territorial sea is measured, however, not beyond the median line to another state, unless otherwise can be derived from the rules of international law for the continental shelf beyond 200 nautical miles from the base lines, or from an agreement with the relevant state.

Cf. Section 16, Subsection 2, litra c)
Wherein the Ministry may adopt regulations on the conduct of harvesting operations, including prohibitions on harvesting from certain areas, harvesting certain species or using certain tools

Cf. Section 5, cf. Section 1, of the Regulations prohibiting snow crab harvesting
Wherein it is prohibited for Norwegian and foreign vessels to harvest snow crab in Norwegian territorial waters and internal waters and on the Norwegian continental shelf.

When a penal provision has been violated by a person who has acted on behalf of an enterprise, the enterprise may be liable to penalty.

Grounds:
On Sunday 15 January 2017, at 10:50 UTC, on the Central Bank of the Norwegian continental shelf, at 7433.1N–03541.4E, the fishing vessel Senator C/S YLAC, whose captain was Rafael Uzakov, started fishing for snow crab by launching sea crab pods, despite not having obtained dispensation from Norwegian authorities to harvest snow crab on the Norwegian continental shelf. A total of 13 lines with a total of 2,594 pots were launched, until KV-Svalbard inspected the vessel on Monday, 16 January 2017, at 08:20 UTC.

Main proceedings were held on the court's premises on 04 May 2017. The defendant Rafael Uzakov was also present as a representative of the company SIA North Star LTD. He pleaded not guilty to all of the counts of the indictment on behalf of both himself and the company.

The court heard the statement of two witnesses, and other evidence was presented as described in the court records.

The prosecution demanded that the defendant Rafael Uzakov be ordered, in accordance with the penalty notice, to pay a fine in the amount of NOK 50,000 and costs of action in the amount of NOK 10,000, and that the company SIA North Star LTD be ordered, in accordance with the penalty notice, to pay a fine of NOK 150,000. The prosecution furthermore demanded that SIA North Star LTD be ordered to suffer forfeiture of NOK 1,000,000, and be ordered to pay costs of action in the amount of NOK 200,000.

Counsel for the defence demanded that the defendants be acquitted, alternatively for the court to extend the greatest possible degree of leniency.

Facts of the case not in dispute
On Sunday, 15 January 2017, a Latvian crab fishing vessel called the Senator, left port at Båtsfjord for the crab fishing zone on the Central Bank. The Central Bank is located on the Norwegian continental shelf, north-east of the so-called Loophole, inside the 200-mile economic zone and inside what is known as the fishery protection zone around Svalbard.

The Coast Guard was watching the Senator, and a Coast Guard vessel shortly thereafter followed the Senator. The next day, 16 January, the Coast Guard boarded the Senator for inspection. It turned out that the vessel had launched a total of 13 lines with a total of 2,594 pots to harvest snow crabs. The pots were launched on the "Central Bank", at the position 7433.1N–03541.4E, as described in the penalty notices.

The captain presented the Coast Guard with a permit to harvest snow crabs in the area, issued by the EU through Latvian authorities.

The Coast Guard found that this permit was void, in that they believed only Norwegian authorities could issue such a permit. The Coast Guard ordered an end to the harvest, and ordered the captain to retrieve all pots from the sea. A discussion between Coast Guard crew and the captain followed, and after a time, without the pots having being retrieved, the Coast Guard ordered the vessel to port in Norway. Initially, the vessel was ordered to port in Båtsfjord, but while en route, the order was changed, and the vessel was ordered to port in Kirkenes. Once at port, the vessel was seized by the police.

After the incident, the Police Chief of Finnmark issued penalty notices against the shipping company that owned the Senator, SIA North Star LTD (sometimes also referred to as the shipping company), and against the captain on board, Rafael Uzakov (also sometimes referred to as the captain), as initially described. The penalty notices were not accepted, and thus take the place of an indictment, cf. Section 268 of the Criminal Procedure Act.

The view of the parties on the charges against the shipping company and Count I of the charges against the captain

The prosecution argued primarily that snow crab is a so-called sedentary species (a species reliant on the seabed to move). Harvesting rights for this type of crab are therefore subject to continental shelf regulations, and Norway has full sovereignty to regulate any and all harvesting on the Norwegian continental shelf. Furthermore, the prosecution argued that Svalbard does not have its own continental shelf, in that the archipelago is located on the Norwegian mainland continental shelf. In the event Svalbard is found to have its own continental shelf, the Svalbard Treaty does not apply to such a shelf in any event. Norway therefore has the authority to issue snow crab harvesting permits at its discretion, without regard for the provisions of the Svalbard Treaty concerning equal treatment. No harvesting permit had been issued to the Senator by Norwegian authorities, and the defendants must therefore be convicted.

On the other hand, counsel for the defence demanded that the defendants be acquitted on several grounds. First, it has not been sufficiently substantiated that crabs are a sedentary species, and it is therefore not subject to Part VI of the United Nations Convention on the Law of the Sea (UNCLOS) concerning harvesting rights on the continental shelf, and the Norwegian Act of 21 June 1963 no. 12 relating to scientific research and exploration for and exploitation of subsea natural resources other than petroleum resources.

Furthermore, counsel for the defence argued that if the crab is found to be a sedentary species, the relevant regulation does not derive its statutory authority from the above-specified act, but from the Marine Resources Act.
The regulation consequently does not have statutory authority from the appropriate act, and is therefore void.

Furthermore, counsel for the defence argued that if snow crab harvesting rights are subject to continental shelf regulations, Svalbard must be deemed to have its own continental shelf, and the Svalbard Treaty consequently applies to this shelf. The harvesting took place on the Svalbard continental shelf, and the administrative practice of Norwegian authorities in regards to this regulation, wherein harvesting permits are only issued to Norwegian shipping companies, is a violation of the

provisions concerning equal treatment in the Svalbard Treaty. This constitutes grounds for acquittal, cf. Section 2 of the Penal Code.

Finally, counsel for the defence submitted that the defendants must be acquitted on grounds of ignorance of the law.

The court's assessment:
In its assessment below, the court takes into account the principle of guilt having to be substantiated beyond any reasonable doubt in order for penalties to be imposed. The burden of evidence is on the prosecuting authority, in terms of both *actus reus* and *mens rea*. The assessment of evidence is often based on a consideration of several aspects that may carry different weight. It is not required that each individual aspect is substantiated beyond any reasonable doubt, provided that there, upon collective assessment of all the evidence in the case, remains no reasonable doubt concerning the conclusion, cf. Rt. 2005, p. 1353.

Charges against the shipping company and Count I of the charges against the captain
As described above, the pots were launched in an area that is located on the continental shelf of mainland Norway. Whether Svalbard has its own continental shelf, or whether the archipelago of Svalbard is located on the continental shelf of mainland Norway is a contested issue among legal scholars. Legal scholars furthermore disagree on the geographical scope of application for the Svalbard Treaty: on whether the provisions of this treaty apply to the Svalbard continental shelf, if such a shelf is found to exist.

The Svalbard Treaty includes provisions on equal treatment of the contracting parties to the treaty. If the Svalbard Treaty is found to apply to a continental shelf outside Svalbard, the issue to consider is whether the pots were launched on this shelf, and whether the regulations in pursuance of which the penalty notices were issued is in violation of the Svalbard Treaty's provisions concerning equal treatment.

The court first considers the regulations prohibiting snow crab harvesting (Reg. 19. 12 2014, no. 1836), which reads:

Section 1
It is prohibited for Norwegian and foreign vessels to harvest snow crab in Norwegian territorial waters and internal waters and on the Norwegian continental shelf. For Norwegian vessels, the prohibition extends to the continental shelf of other countries.

Section 2
Dispensation from the prohibition against snow crab harvesting can be issued to vessels holding a harvesting permit issued in accordance with the Participation Act for harvesting outside territorial waters...

It follows from the regulation that its legal authority derives from Section 16 of the Act of 06 June 2008 no. 37, the Marine Resources Act; Section 4 of the Act of 17 July 1925 no. 11, the Svalbard Act; and Section 20 of the Act of 26 March 1999 no. 15 relating to the right to participate in fishery and hunting of marine animals (Participation Act).

The court finds it substantiated that the snow crab, as a species, is reliant on the seabed to move; it is therefore considered a sedentary species as described in Part VI, Article 77, of the UNCLOS, in that it is "...unable to move except in constant physical contact with the seabed or the subsoil".

Documentation has been presented to the court wherein Norwegian and Russian authorities in July 2015 agreed to define snow crab as a sedentary species.

The sedentary nature of snow crab is further supported by the statement of the captain on board the

Senator, the defendant Rafael Uzakov, who stated that he had many years' experience of harvesting snow crab in other waters. He knew that the snow crab lives and moves on the seabed. The fact that Uzakov also stated that the crabs may rest and move in layers on top of each other on the seabed, does not change the fact that it needs constant contact with the seabed in order to move.

Consequently, rights to the crab are regulated by provisions of the law of the sea concerning rights to subsea natural resources. Precedent and the UNCLOS establishes that the rights of a coastal state over the seabed extends to the outer limits of its continental shelf. The continental shelf is considered an extension of a state's land territory into the sea.

In domestic law, the rights to subsea natural resources on the seabed to the outer limits of the continental shelf of mainland Norway are regulated by the Act of 21 June 1963 no. 12 relating to scientific research and exploration for and exploitation of subsea natural resources other than petroleum resources, cf. its Section 1, and it follows from Section 2, Subsection 1, of the act that the rights to these resources are "vested in the State".

The Marine Resources Act applies to "all harvesting and other utilization of wild living marine resources...", cf. Section 3, Subsection 1, of the act, and the act (also) applies to the Norwegian continental shelf, cf. Section 4, Subsection 1, of the act.

Section 16 of the act authorizes the Ministry to adopt regulations on the harvesting of species subject to the act.

Consequently, rights to snow crab on the Norwegian continental shelf are vested in the State, and the State may adopt regulations on the harvesting of all wild marine resources, including snow crab. The court therefore does not find that the regulation lacks proper legal authority, as submitted by counsel for the defence.

In so far as Svalbard is found to have its own continental shelf, one might argue that the regulation, which is also anchored in Section 4 of the Svalbard Act, has sufficient statutory authority, in that Svalbard is part of the Kingdom of Norway, cf. Section 1 of the act, and it is presumed that Section 4 of the act also extends to the right of the State to adopt regulations concerning snow crab harvesting on Svalbard's continental shelf.

On this basis, the court finds that the regulation has sufficient statutory authority, cf. Article 96 of the Constitution.

<u>The Svalbard Treaty, its scope of application and provisions concerning equal treatment:</u>
The Svalbard Treaty was ratified and took effect in 1925 between Norway, the United States, Great Britain, Denmark, France, Italy, Japan, the Netherlands, and Sweden as the contracting parties. The treaty freely allows for other states to succeed to the treaty. A number of states have, including Latvia, where the shipping company SIA North Star Ltd. is registered, and Russia, where Rafael Uzakov is a national.

It follows from Article 1, in light of Articles 2 and 3, of the Svalbard Treaty, that the contracting parties recognize Norway's sovereignty over the archipelago, while it is established that nationals from all contracting states shall have equal rights to access and entry, hunting and fishing and otherwise exploiting the natural resources of the archipelago.

The central provisions concerning non-discrimination in the Svalbard Treaty are the first and second paragraphs to Article 2, which read as follows:

"Ships and nationals of all the High Contracting Parties shall enjoy equally the rights of fishing and hunting in the territories specified in Article 1 and in their territorial waters.

Norway shall be free to maintain, take or decree suitable measures to ensure the preservation and, if necessary, the re-constitution of the fauna and flora of the said regions, and their territorial waters; it being clearly understood that these measures shall always be applicable equally to the nationals of all the High Contracting Parties without any exemption, privilege or favour whatsoever, direct or indirect to the advantage of any one of them."

and Article 3, paragraph 1, which reads as follows:

"The nationals of all the High Contracting Parties shall have equal liberty of access and entry for any reason or object whatever to the waters, fjords and ports of the territories specified in Article 1; subject to the observance of local laws and regulations, they may carry on there without impediment all maritime, industrial, mining and commercial operations on a footing of absolute equality."

Counsel for the defence presented a list from the Directorate of Fisheries, which is the administrative authority for the regulation on snow crab harvesting, of which vessels that have been issued a permit for snow crab harvesting pursuant to Section 2 of the regulation. This list shows 56 vessels, all Norwegian, have been issued such a permit.

Furthermore, an e-mail from a clerk in the Directorate of Fisheries, dated 27 April 2017, was presented, which states: "we have not issued any permits to foreign vessels for snow crab harvesting in the fishery protection zone around Svalbard. This corresponds to the statement of Lieutenant Andreas Soløy, who works for the Coast Guard, and who took part in the boarding and inspection of the Senator. He stated that snow crab harvesting permits had been issued to Norwegian vessels only.

While the wording of the regulation does not limit snow crab harvesting permits exclusively to Norwegian vessels, the court finds it has been substantiated that the regulation in practice is applied to establish exclusivity for Norwegian vessels.

The court finds that this practice conflicts with the principle of non-discrimination established by the Svalbard Treaty, provided the treaty is applicable in this case, as argued by counsel for the defence.

This interpretation is also applied by the Supreme Court in its judgment in Rt. 2014, p. 272, which concerned harvesting limitations in the 200-mile fishery protection zone around Svalbard. The Supreme Court addresses the construction of the Svalbard Treaty's provisions on equal treatment as follows in paragraph 49:

"When Article 2, second paragraph, of the Svalbard Treaty requires that all measures shall be applicable equally and "without any exemption, privilege or favour whatsoever, direct or indirect", this must be understood to mean that the treaty prohibits measures that effectively (the court's emphasis) discriminates on the basis of nationality."

How this conflict affects criminal proceedings that concern a violation of regulations whose practice is discriminatory has not been directly addressed; no precedents or legal theory exists. The issue was briefly mentioned in the Supreme Court judgment in Rt. 2006, p. 1498, paragraph 31, but the issue was not central to the case, and the Supreme Court did not discuss the issue further.

Section 2 of the Penal Code establishes that
"criminal legislation shall apply subject to such limitations as derived from any agreement with a foreign State or from international law in general."

Based on the wording of Section 2 of the Penal Code, in light of Article 2, second paragraph, of the Svalbard Treaty, the court finds that if provisions, for which, if violated, a penalty is imposed, are practised in conflict with the Svalbard Treaty, this would constitute a conflict with Norway's obligations under the Svalbard Treaty.

The appropriate course of action would then be that the party having committed the offence in violation of the provision is acquitted, as submitted by counsel for the defence. The court does not find it necessary to consider whether this outcome is based on the provision in question being deemed void, or whether it is based on a conclusion that no unlawful act has been committed.

Hålogaland Court of Appeal applied the interpretation that a conflict with Norway's obligations must result in acquittal in LH-2013-50194. The court will return to this judgment, which concerned a different type of violation of fisheries law than in the present case. The case did, however, address the same issue concerning the interpretation and construction of the geographical scope of application for the Svalbard Treaty. The court of appeal's assessment initially states that if the fisheries regulation in question conflicts with Norway's obligations under the Svalbard Treaty, "...the defendants should have been acquitted, cf. Section 1, Subsection 2, of the Penal Code".

This reference to Section 1 of the Penal Code cites the older, then-in-effect Penal Code of 1902, whose Section 1 was identical to Section 2 of the current Penal Code of 2005.

The central issues therefore become whether Svalbard has a separate continental shelf, and, if so, whether the pots were launched on this continental shelf, and (if so) whether the Svalbard Treaty applies to this area. All of these questions must be answered in the affirmative in order to constitute grounds for acquittal pursuant to Section 2 of the Penal Code.

The issue of whether Svalbard has a separate continental shelf is contested among legal scholars, and the court has not been able to identify cases where this issue has been addressed by national or international courts of law. The issue of how far out to sea the geographical scope of application of the Svalbard Treaty extends is also contested among legal scholars, but this issue has been addressed by the courts. The issue has also been heard by the Supreme Court—the court has identified three cases, which concerned violations of provisions that apply to the fishery protection zone Norway has established around Svalbard: Rt. 1996, p. 624; Rt. 2006, p. 1498; and Rt. 2014, p 272.
In all of these cases, the Supreme Court was able to adjudicate on the case without having to address the issue of how far out to sea the geographical scope of application of the Svalbard Treaty extends. In Rt. 2006, p. 1498, paragraph 77, the leading justice stated:

"It is, however, not necessary for me to consider whether the Norwegian fisheries management in the fishery protection zone at Svalbard complies with Articles 2 and 3 of the Svalbard Treaty in its entirety. I believe that under no circumstances has any discrimination on the basis of nationality taken place that would constitute grounds on which to acquit the appellants..."

In that the issue of how far out to sea the geographical scope of application of the Svalbard Treaty extends has been heard in both the district court and court of appeal before, the court finds that, given the precedents set by these decisions, cf. below, it is appropriate to address this issue first.

Article 2, first paragraph of the Svalbard Treaty establishes that *"[s]hips and nationals of all the High Contracting Parties shall enjoy equally the rights of fishing and hunting in the territories specified in Article 1 and in their territorial waters"*.

Article 1 lists land territories subject to the treaty, and the term "territorial waters" is at the very core of the conflict, in terms of deciding whether the treaty also applies beyond the outer limits of territorial waters. It follows from Article 2, et seq., of UNCLOS that a coastal state's territorial waters extend up to 12 nautical miles from land.

The court finds that the issue of whether the treaty's scope of application is equivalent to this construction or more liberal in the sense that it extends beyond territorial waters, must be interpreted in the same way for all exploitation of natural resources. Certainly in terms of exploitation in the form of fishing and harvesting of marine species at sea and on the seabed.

Regardless of whether different interpretations can be applied to the legal basis, scope and relevant provisions concerning the management of various zones outside Svalbard, the court finds that this has no bearing on the central issue, which is whether the provisions of the treaty can be applied beyond the common interpretation of the term "territorial waters", which is 12 nautical miles.

On this basis, the court finds that the central issue remains the same, both in terms of whether the Svalbard Treaty applies to Svalbard's 200-mile fishery protection zone and in terms of exploitation of subsea resources in the event Svalbard is found to have a separate continental shelf.

In the above-mentioned judgment delivered by Hålogaland Court of Appeal, LH2013-50184, the application of the Svalbard Treaty in the fishery protection zone around Svalbard was a central issue, and the court of appeal concluded, in line with Nord-Troms District Court, that the treaty could not be interpreted liberally to also apply beyond territorial waters inside the fishery protection zone.

After the court of appeal reviewed relevant guidelines for treaty interpretation, the court considered, in great detail, how the wording of the treaty should be interpreted and understood in light of prevailing legal theory for this area of law. The court of appeal unanimously found that the wording of Article 2 of the treaty must be interpreted literally, and that it therefore does not apply in the fishery protection zone around Svalbard.

This court concurs with the discussion and assessments by the court of appeal, and agrees and concurs with its conclusion. Furthermore, the court cannot see any recent theoretical breakthroughs that may constitute grounds on which to set aside the conclusions of the court of appeal.

Given the nature and scope of the issue, it is appropriate to reference the court of appeal's assessment and conclusion in this judgment:

"In the Svalbard Treaty, the contracting parties recognized Norway's "*full and absolute sovereignty*" ("*høihetsret*" in Norwegian, and "*la pleine et entiére souveraineté*" in French) over the Spitsbergen archipelago, subject to the stipulations of the treaty. The stipulations in question are outlined in the articles that follow. Central in this context are Articles 2 and 3, especially Article 2, which regulates fishing rights.

According to Article 2, first paragraph, *"[s]hips and nationals of all the High Contracting Parties shall enjoy equally the rights of fishing and hunting in the territories specified in Article 1 and in their territorial waters".*

This wording clearly indicates that the scope of application at sea is geographically limited to areas inside the outer limits of territorial waters.

Counsel for the defence submitted, with reference to, inter alia, Ulfstein, "The Svalbard Treaty", p. 425, that no uniform construction of the term territorial waters existed in 1920, which weakens the significance of the use of this term.

Available sources of law, however, show that a fairly uniform view of the legal definition of territorial waters existed at the time the treaty was developed, signed and ratified. Reference is made to Whiteman, "Territorial sea and contiguous zones" (Digest of International Law, volume 4), pp. 2–4, including citations from the Hague Codification Conference in 1930, the Air Navigation Convention in 1919, the International Civil Aviation Convention in 1944, the judgment delivered by the American Supreme Court in Cunard v. Mellom in 1923 and the Statement of Lord Curzon to the House of Lords concerning the judgment of the American Supreme Court. Furthermore, reference is made to comments "to the articles concerning the law of the sea", Yearbook of the International Law Commission, 1956, volume II, Report to the General Assembly, especially the comment to Article 1. Finally, reference is made to Article 7 of the English "Territorial Waters Jurisdiction Act" of 1878,

and Article 1 of the Cancelli-Promemoria of 25 February 1812.

The same interpretation can largely be derived from Churchill/Lowe "The Law of the Sea", 1999, p. 74, entire first paragraph.

The court of appeal finds that there are no indications suggesting that the contracting parties did not have a uniform view of the legal nature of territorial waters (*"territorialfarvannene"* in Norwegian, *"eaux territoriales"* in French).

The views of the contracting parties did, however, differ in terms of the extent of territorial waters, and this extent was therefore not specified further, cf. Fleischer, "The New International Law of the Sea and Svalbard", p. 8.

Furthermore, the court of appeal finds no support for the defence counsel's submission that the term "*waters*" in Article 3 of the Svalbard Treaty must be understood as applying to all waters inside what, in this context, is called the "Svalbard Box", i.e. all waters inside the geographical area defined by Article 1, and that the term "waters" in Article 3 therefore applies to sea areas outside territorial waters. This view seems to have little, if any, support among legal scholars, cf. e.g. Churchill/Ulfstein, "The Disputed Maritime Zones around Svalbard", p. 570, and D.H. Anderson, "The Status under International Law of the Maritime Areas around Svalbard", p. 5. As such, there are no linguistic inconsistencies in the use of terms to describe waters that are fit to generate uncertainties in the interpretation of the treaty.

In general, the court of appeal finds that legal scholars largely agree that the wording of the Svalbard Treaty is limited to land territories, internal waters and territorial waters. Views differ, however, on whether the treaty may or should be interpreted liberally to also apply to the fishery protection zone, or any economic zone that may be established.

In support of a liberal interpretation, legal scholars refer, inter alia, to the *object and purpose of the treaty*, dynamic principles of interpretation and international precedents, etc., cf., inter alia, Churchill/Ulfstein, "The Disputed Maritime Zones around Svalbard". They summarize their position as follows (p. 582):

According to a literal reading of the Treaty (which is favoured by the Norwegian government) the rights in Articles 2 and 3 do not apply beyond the territorial sea. Some support for this position can also be found in the travaux préparatoires of the Svalbard Treaty and the Abu Dhabi and Qatar cases. On the other hand, the opposite conclusion can be drawn from the object and purpose of the Treaty, an evolutionary interpretation, the anomalies that would be created if the Treaty did not extend beyond the territorial sea, and, to some degree, from the Aegean Sea and Oil Platforms cases. Thus, the various elements of treaty interpretation do not >[sic] *point to a clear cut and definite conclusion.*

No evidence has been presented indicating, in the court of appeal's view, that the provisions of the treaty concerning rights for national of other states, including Article 2, had another and broader purpose beyond preserving existing rights, as formulated by Churchill/Ulfstein, op. cit., p. 572:

"The second observation is that the object and purpose of the Treaty relating to the rights of parties other than Norway, it was suggested, concerns the preservation of preexisting rights. Fishing and mining beyond the territorial sea were not preexisting rights under Svalbard's terra nullius regime."

Carl August Fleischer's view of the intentions of the contracting parties, as formulated in "The New International Law of the Sea and Svalbard", p. 4, reads as follows: *"(t)he intention (was) that the sovereignty according to art. 1 should be absolute and in principle unlimited, with only those restrictions which were set out and agreed upon in the other articles of the Treaty..".*

In support of this view, Fleischer refers, inter alia, to a statement made by President Laroche of the

Spitsbergen Commission in response to a question from the Commission's Italian representative, whereby *«...toutes les dérogations à la souveraineté se trouvent dans le Traité en préparation; pour le surplus, il y a lieu d'appliquer la souveraineté de la Norvège. (Commission du Spitsberg, procès-verbal no. 10 at p. 60).»*

This statement by President Laroche clearly favours a restrictive interpretation of treaty provisions that limit Norwegian sovereignty.

Exclusive economic zones pursuant to Part V of the UNCLOS are areas located outside and adjacent to the territorial sea, subject to a specific legal regime, cf. Article 55 of the convention. This legal regime is the result of developments in international law that could not be foreseen at the time the Svalbard Treaty was signed and ratified.

This type of exclusive economic zones, and fishery protection zones, clearly fall outside the scope of "*the ordinary meaning*" of the term "*territorial waters*" as applied in Article 2 of the treaty, cf. Article 31, no. 1, of the Vienna Convention. It follows from the previous paragraph that the intention of the parties could not possibly be construed to constitute grounds on which to include economic zones/fishery protection zones in the term "*territorial waters*" in the interpretation of the treaty, cf. Article 31, no. 4, of the Vienna Convention.

In the context of the precedents cited by Churchill/Ulfstein, op. cit., p. 582, it is pointed out that neither the Aegean Sea Continental Shelf case (International Court of Justice, 1978) nor the Oil Platforms cases (International Court of Justice, 2003) can be said to lend much support to a liberal interpretation of Article 2 of the treaty. The court of appeal's view is more in line with that of Fleischer (op. cit., p. 12 et seq.), who argues that the ruling in the Aegean Sea Continental Shelf case further supports the view that Norway, through the provisions of the treaty, cannot be said to have granted rights in Svalbard to other states beyond the rights Norway actually held at the time (by virtue of its sovereignty). Reference is made to Fleischer's comments on the judgment and its significance in the interpretation of the Svalbard Treaty, with which the court of appeal largely concurs.

Counsel for the defence has, with reference to legal literature, submitted that it would constitute an anomaly for Norway to have a greater degree of sovereignty in the fishery protection zone and a potential economic zone around Svalbard than in its territorial and internal waters; normally the situation is reversed. This argument, which seems to be based on a conclusion of moving from more to less, has a certain relevance in considering the treaty's wording in light of its purpose, but plays a minor, if any, role as an independent aspect of interpretation. The fundamental anomaly from the norm, the extensive rights of the contracting parties in territorial and internal waters and on the land territory, follow directly from a literal interpretation of the wording of the treaty.

Given the above, the court of appeal finds that Article 2 of the Svalbard Treaty must be interpreted in accordance with its wording, and that it does not apply to the fishery protection zone around Svalbard. Article 2, in its literal interpretation, cannot be said to be "*incompatible with the spirit, purpose and context of the clause or instrument in which the words are contained*", cf. the reference to McNair above.

Consequently, there is no conflict between Section 4 of FOR-2011-12-21 no. 1478 Regulations relating to haddock fishing in the fishery protection zone around Svalbard of 2012 and Norway's obligations under the Svalbard Treaty, and therefore the district court made no errors in its application of the law."

In light of the above, the court finds that the treaty's scope of application does not extend beyond the 12-nautical-mile territorial limit. Consequently, the court does not find it necessary to consider whether Svalbard has a separate continental shelf, and, if so, where the border between Svalbard's and

Norway's continental shelves is, and, furthermore, on which continental shelf the pots had been launched.

Based on the evidence presented, the court finds that the shipping company determined when and where the Senator would harvest. Therefore, both the shipping company and the captain have objectively violated the regulation cited in the respective penalty notices.

The statutory requirement for guilt is intent or negligence, cf. Section 61 of the Marine Resources Act.

Based on the statement of Captain Rafael Uzakov, the court finds it has been substantiated beyond any reasonable doubt that the captain was aware of which area the Senator was in, and where the pots were launched. He therefore wilfully violated the regulation in question. He stated that he was given orders and a harvesting permit from the shipping company. The shipping company is therefore also found to have acted with intent.

The court now moves on to consider whether any of the defendants should be acquitted on grounds of ignorance of the law.

The court has been presented with the permit the shipping company and the captain believed authorized them to harvest snow crab in the area in question.

This permit was issued by the Fisheries Council of the European Union [sic] to Latvian fisheries authorities in an e-mail, dated 22/12/2016. This permit was issued to several vessels registered in Poland, Lithuania and Latvia, including the Senator. It is not in dispute that this permit formally covers the harvest of snow crab in the area where the Senator harvested.

Based on the statements of Captain Rafael Uzakov and Chairman of the Board for the shipping company SIA North Star LTD, Peteris Pildegovics, the court takes into account that this was the permit the captain of the Senator had been forwarded by the shipping company, and which the captain presented to the Coast Guard during their inspection. On this basis, both the captain and the shipping company claim they believed they had the permit required to harvest crab, and that they were not aware that there were Norwegian regulations in place prohibiting this type of harvest. The have submitted a demand for acquittal on grounds of ignorance of the law.

The court has furthermore been presented with an e-mail that a representative of the shipping company sent to the Ministry of Trade, Industry and Fisheries on 12 January 2017, which states that four of their vessels, the Senator among them, are ready to depart for the Svalbard zone to harvest snow crab. In the same e-mail, the representative requests feedback concerning any relevant restrictions, specifically:

"In order not to have any problems with the allowed area for catching we kindly ask you to inform us about the coordinates of conservancy areas where we can not the right to catch.

Also please inform us—do we have the right to catch the snow crab less than 12 nautical miles from Svalbard and Islands around Svalbard".

It follows from the transcript that the e-mail was sent at 15:22 on 12 January 2017. This was a Thursday. The e-mail did not get a response until Sunday 15 January 2017. In its response, the Ministry of Fisheries specifies that this type of harvest requires a permit from Norwegian authorities, and that the EU is not authorized to grant such rights.

The Senator left the Port of Båtsfjord and began harvesting on 15 January. Considering that any and all reasonable doubt shall benefit the defendants, the court takes into account that the response from the Ministry of Fisheries was received by the shipping company after the harvest had started.

Ignorance of the law is regulated by Section 26 of the Penal Code, which establishes that

"if a person was ignorant of the illegal nature of an act at the time of its commission, he may be subject to penalty if his ignorance is negligent."

This provision supersedes Section 57 of the Penal Code of 1902. Courts applied this provision stringently, and it took a lot for a person to be acquitted for ignorance of the law. This state of the law was maintained in Section 26 of the current Penal Code (2005), whose preparatory works, Proposition to the Odelsting no. 90 (2003–2004), pp. 235–237, states that "considerations of efficiency and equality indicate that acquittal on grounds of ignorance of the law should be reserved for exceptional circumstances". Reference is furthermore made to Matningsdal, annotated edition, pp. 219–220, which refers to the preparatory works to the act and legal precedents, stating that standards of diligence require "that one familiarizes oneself with the special rules that apply in the area or industry in which one seeks to operate".

In its judgment in Rt. 2009, p. 1229, the Supreme Court states, in paragraph 23:

"Any party who intends to engage in an activity must familiarize himself with the regulations that apply to said activity, cf., inter alia, Rt. 1991-385. On the significance of fisheries authorities in one's home country providing incorrect information, Rt. 1999-601, p. 605, states: "As the captain of "Q", S engaged in business activity in an area subject to detailed regulations established by Norwegian authorities. As a general principle in any assessment of diligence in the context of ignorance of the law, such a party has an obligation to familiarize himself with relevant regulations. I can see no grounds on which to waive this principle in the present case. If one were to be satisfied in concluding that the captain in question complied with the information about Norwegian regulations with which he claims to have been provided by his own country's fisheries authorities, it could undermine the means of control and enforcement of fisheries regulation in the zone in question by Norwegian fisheries authorities."

During Chairman Pildegovics' statement, the court got the clear impression that the shipping company was well aware of existing issues concerning fishing and harvesting rights in the area in question, as well as of the conflicting views of the EU and Norwegian authorities when it came to these rights. Given the circumstances, the court finds that the shipping company should have looked into the relevant regulations further and contacted Norwegian authorities, not only with a question about restrictions in the 12-mile zone, as referenced above, but about the area in general—and then waited for a response—before giving the orders to one of their vessels to begin harvesting. Consequently, the shipping company has not been as diligent as they should have been, and cannot claim ignorance of the law.

The court furthermore finds that the captain was not as diligent as he should have been. He stated that he had been operating as a crab fisherman for many years, just not in the area in question. He furthermore stated that he was not aware of any conflict between the EU and Norwegian authorities concerning rights, and that he was satisfied with the permit forwarded to him by the shipping company, which he knew had been issued by the EU.

Conflicts concerning fishing and harvesting rights in the sea outside of coastal states are a well-known issue for everyone involved in this industry. It is also generally well-known that this industry, and certainly off the coast of developed states, is subject to detailed regulation.

Given the stringent standards of diligence applied to claims ignorance of the law in Norwegian law, and the fact that the captain was experienced, the court finds that he, in the interest of due diligence, ought to have looked into the Norwegian regulations that applied to the area in question, or contacted Norwegian authorities about the regulations, or made sure that the shipping company had cleared the harvesting with Norwegian authorities. The court finds that the captain took a chance, assuming he was within the law, and this does not meet the standards of diligence required in this type of cases.

Based on the above, both defendants are found guilty of these counts.

Count II of the charges against Rafael Uzakov
This charge concerns a violation of Section 29, Subsection 2, of the Coast Guard Act, which establishes that the Coast Guard may order the master of a vessel to cease fishing or harvesting activities and retrieve trawl nets or other tools.

First, the court points out that the wording of Section 29, Subsection 2, of the Coast Guard Act must be interpreted as such that the master of the vessel is obligated to comply with orders from the Coast Guard regardless of whether the Coast Guard's intervention has basis in law. If it later turns out that a vessel actually held a valid harvesting permit, and the Coast Guard's order was based on the assumption that the vessel did not hold any such permit, this would, under normal circumstances, not have any bearing on the obligation of the master of the vessel to comply with the Coast Guard's order. This would also apply in this case, where no valid harvesting permit existed, but the master of the vessel believed he held such a permit.

The defendant stated that they had launched 2,595 pots when the Coast Guard boarded the vessel, but that they had many more pots to launch in the area. The goal was to launch 4,000 pots. He furthermore stated that Coast Guard inspectors spent some time trying to determine whether the permit he held was valid. When the Coast Guard ordered the pots retrieved, he put his crew to work to clear the deck to make room for the pots. He estimated that it would take approx. 2–3 hours to prepare the deck to retrieve the pots, and a further 24 hours to retrieve the pots. His crew had been working almost continuously for 24 hours, and he asked the inspectors to take into account that his crew needed rest.

While the deck was being cleared, there was a discussion between him and the Coast Guard inspectors concerning whether or not their harvest was illegal, and he had asked that all orders be made in writing. The court has been presented with a transcript of an order, given in English, to retrieve the pots, issued at 13:00 on 16/01/2017.

The defendant furthermore stated that the inspectors at one point changed the order, refused to give them the chance to pull the pots, and instead ordered the vessel to port in Båtsfjord. The crew had immediately abandoned the work to clear the deck and set course for Båtsfjord, followed by the Coast Guard. The order was later changed, and the vessel was ordered to port in Kirkenes, with which they complied. The captain maintained that they were always prepared to comply with the order to retrieve the pots, but that this work could not begin until the deck was cleared, and that the Coast Guard inspectors changed the order before this could be completed.

The court has been presented with a copy of a written order, in English, to go to port in Båtsfjord, issued at 13:45 on 16/01/2017.

Inspector Andreas Soløy with the Coast Guard took part in the inspection on board the Senator. He stated that the team who boarded the vessel consisted of four people. They were in contact with the captain, chief mate and chief engineer. There were considerable language problems, but the chief engineer spoke some English, and communication was OK.

When the captain presented them with the permit forwarded by Latvian authorities, they scanned and sent this to the Coast Guard vessel Nordkapp, which the court understands was nearby. When the response came in that the licence was void, the Coast Guard ordered the pots that had been launched retrieved. He furthermore stated that it initially appeared that the captain would comply with the order, in that the crew began clearing the deck of pots prepared for launch to make room for the pots to be retrieved.

While this was going on, there was a discussion between the captain and the inspectors about the right to harvest crab, and he got the impression that the captain now refused to comply with the order to pull in the pots, and he therefore ordered the vessel to port. The captain complied with this order.

The court has been presented with Soløy's report from the case, where he wrote that the captain "was given a choice" to either retrieve the pots or go to port immediately. During the main proceedings, Soløy was asked if he could provide more information about this wording in his report and more details about the circumstances when the order to pull the pots was issued.

Based on the evidence presented, the court finds that the circumstances remain somewhat unclear, and that the remaining doubt constitutes grounds for acquittal.

The court emphasizes that it has been substantiated that the crew on board the Senator started to comply with the order to retrieve the pots, in that they began clearing the deck, and that Coast Guard inspectors observed these activities.

The court does not find that the fact that a discussion ensued between the captain and the inspectors concerning the lawfulness of their harvest while these activities were going on, constitutes sufficient grounds on which to conclude that the captain at any time intended to disregard the order.

The court finds it undetermined when the order to retrieve the pots was first given. There is a written declaration, issued at 10:20 on 16/01/2017, wherein the Coast Guard informs the captain that their harvest is unlawful. There are strong indications that the order was given around this time, and it was given no later than 13:00, when the order to retrieve the pots was given in writing.

Forty-five minutes later, at 13:45, a written order for the vessel to go to port was issued. Given the evidence, the court cannot rule out that the crew were still working to clear and prepare the deck to retrieve the pots, as the captain claimed. If this is the case, the captain did not resist the order, but carried out practical preparations necessary to comply with the order. This course of events also corresponds to Soløy's report, wherein he wrote that he gave the defendant a choice to either continue the work to retrieve the pots or go to port.

The court points out that inclement weather was approaching, which both Soløy and Uzakov stated they encountered as they made their way to port.

Based on the above, the court finds there is reasonable doubt concerning whether the defendant objectively violated Section 29, Subsection 2, of the Coast Guard Act, and he is consequently acquitted of this count of the charges.

Sentencing:
The sentencing framework for violation of regulations pursuant to the Marine Resources Act is fines or imprisonment for a period of up to one year, cf. Section 61 of the act. The only penal sanction that can be imposed on the shipping company is fines, cf. Section 27, Subsection 3, of the Penal Code of 2005, and corporate penalties are optional, cf. Section 27, Subsection 1, of the Penal Code of 2005, where discretionary considerations are established in Section 28 of the Penal Code.

Taking into account that penal sanctions for violations of fishing and harvesting regulations serve distinctly preventive purposes, and given the considerable potential for profit from unlawful harvesting, the court finds it appropriate to impose penal sanctions on the shipping company. The court refers to Rt. 1996, p. 624.

The prosecuting authority submitted that Rafael Uzakov be ordered to pay a fine of NOK 50,000, and that a fine of NOK 150,000 be imposed on the shipping company.

The court finds that the penalty for violations of this nature should be relatively strict. There is a considerable potential for profit in the unlawful harvesting of crab, as in this case, where more than 2,000 pots had been launched, and they had planned to launch another 2,000. Unlawful harvesting outside the control of authorities also has the potential to do serious harm to marine resources, in that resource management and harvesting quotas are based on incorrect data. Patrolling vast waters is

extremely resource-demanding. It is therefore important that the penal sanction imposed, in addition to acting as an individual deterrent, also acts as a general deterrent.

For both defendants, the court finds aggravating circumstances exist, in that fines were imposed on both of them as recently as 2016 for violation of king crab harvesting regulations in Norwegian waters. Rafael Uzakov accepted a penalty notice imposing a fine in the amount of NOK 20,000, and the shipping company accepted a penalty notice imposing forfeiture in the amount of NOK 61,000.

It follows from the penalty notices that the violation took place on 12 June 2016. When the same defendants after just six months reoffend, again violating Norwegian crab harvesting regulations, it is indication that the previous penal sanctions did not have the desired effect as an individual deterrent, and that the defendants have a lack of respect for Norwegian regulations in this area. This must be reflected in the sentencing in this case.

Taking into consideration that the court found Uzakov not guilty of Count II of the penalty notice, the prosecuting authority's sentencing recommendations are somewhat high, and the court finds it appropriate to impose a fine of NOK 40,000. From what the court has been able to determine, legal precedents, supported by preparatory works, do not permit the imposition of a period of imprisonment as an alternative when fines are imposed on foreign nationals for violation of fishery regulations beyond territorial waters, cf. Rt. 1996, p. 624. There are no other alternative penal sanctions available pursuant to the provisions of the Marine Resources Act and the relevant regulations. The prosecuting authority has not demanded that imprisonment be imposed as an alternative penal sanction, and no such sanction is imposed.

Section 28 of the Penal Code of 2005 establishes several considerations that, "among others" shall be taken into account in deciding whether to impose a penalty on an enterprise.

Chairman Pildegovics stated that the shipping company is in a difficult financial situation, in that it had been expensive to outfit four vessels for snow crab harvesting in the area in question, and the vessels had been left inactive since this case arose.

The court finds that the shipping company took a calculated risk in outfitting the vessels for snow crab harvesting in an area they knew was contested in terms of harvesting rights. The court therefore finds that the difficult financial situation of the company is of little relevance in the sentencing.

The court finds that, under the circumstances, the recommendation of the prosecuting authority to impose a fine of NOK 150,000 is appropriate.

Forfeiture:
The prosecuting authority demanded that the shipping company be ordered to suffer forfeitures in the amount of NOK 1,000,000, cf. Section 65 of the Marine Resources Act. This provision establishes that the court may order the defendant to forfeit tools and vessels (and catches) used in the offence. Instead of forfeiting any object, its value may be forfeited, cf. Section 65, Subsection 1, third sentence.

From what the court has been able to determine, forfeiture orders are generally imposed for fishery regulation violations, in addition to corporate penalties. Reference is made to Rt. 1996, p. 624, which concerned violations of fishery regulations in the protection zone around Svalbard. On page 18 of the judgment, the Supreme Court states:

"I have no doubts that a forfeiture order is appropriate under the circumstances. The potential for profit in unlawful fishing is considerable, and this type of fishing affects a limited resource, whose exploitation we must manage carefully.
One might question the purpose of imposing corporate penalties in addition to forfeiture. Generally, many of the same considerations must be taken into account for both types of penal sanction, and the overall burden of the sanctions must be considered in the sentencing. Corporate penalties, however,

better emphasize aspects of criminal justice and deterrence vis-à-vis the shipping companies, and I have concluded, in line with the municipal court, that the imposition of a corporate penalty is appropriate."

The court finds that the same considerations are central to considerations of forfeiture in connection with violations involving other types of exploitation of marine resources, including crab harvesting.

During the main proceedings, no estimation or other evidence was given to determine the value of the snow crab harvest from 2,594 pots. The court takes into account that the figure is considerable. The vessel and the pots are also found to be of considerable value. Taking into consideration the large number of pots used in the unlawful harvest and the values implied, and furthermore taking into account that the court has imposed a fine of NOK 150,000, the court finds that the prosecution's forfeiture recommendation of NOK 1,000,000 is appropriate.

Costs of action:
The defendants have been convicted and should, in accordance with the norm, be ordered to pay compensation for costs of action, cf. Section 436 of the Criminal Procedure Act. The State can claim compensation for "the necessary costs of the case", and it follows from the preparatory works to the act that an exemption from paying compensation for costs of action should only be granted under exceptional circumstances, cf. Proposition to the Odelsting no. 45 (1993–194), p. 5.

In court practice, costs of action generally cover investigative costs, as well as the cost of preparing for the main proceedings and the main proceedings themselves. The prosecution has recommended that the shipping company be ordered to pay costs of action in the amount of NOK 200,000.

The prosecutor argued that the State had incurred considerable costs in connection with tugboat and port charges in the seizure of the Senator, and that these costs alone total approx. NOK 100,000. This figure has not been contested.

Given the above, the court finds that the prosecution's recommendations for costs of action are appropriate, and orders the shipping company SIA North Star LTD to pay compensation for costs of action in the amount of NOK 200,000.

Following a comprehensive assessment, the court decided not to order Rafael Uzakov to pay costs of action. It has been taken into account that he was acquitted of one count of the charges against him, and his financial resources are limited.

The judgment is unanimous.

CONCLUSION OF JUDGMENT

I
Rafael Uzakov, born 08/05/1973, is acquitted of violating Section 36, Subsection 1, litra a), cf. Section 29, Subsection 2, of the Coast Guard Act, Count II of the charges against him.

II
Rafael Uzakov, born 08/05/1973, is ordered to pay a fine in the amount of NOK 40,000—forty thousand kroner—for violation of Section 61, cf. Section 16, of the Marine Resources Act, cf. Section 5, cf. Section 1, of the Regulations prohibiting snow crab harvesting (FOR-2014-12-19-1836).

III
The company SIA North Star LTD is ordered to pay a fine in the amount of NOK 150,000—one hundred and fifty thousand kroner—for violation of Section 61, cf. Section 16, of the Marine Resources Act, cf. Section 5, cf. Section 1, of the Regulations prohibiting snow crab harvesting (FOR-2014-12-195), cf. Section 27 of the Penal Code of 2005.

IV
The company SIA North Star LTD is ordered to suffer forfeiture to the State of Norway NOK 1,000,000—one million kroner—cf. Section 65 of the Marine Resources Act.

V
The company SIA North Star LTD is ordered to pay compensation for the costs of action in the amount of NOK 200,000—two hundred thousand kroner.

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Court is adjourned.

[signature: Kåre Skognes]
Kåre Skognes

[signature: Per Kristian Hagen]
Per Kristian Hagen

[signature: Inger Anna Langvatn]
Inger Anna Langvatn

[circular stamp: Øst Finnmark District Court]