ROYAL NORWEGIAN
MINISTRY OF FOREIGN AFFAIRS

KOPI

The Royal Ministry of Foreign Affairs presents its compliments to the Embassy of the Republic of Latvia and has the honour to refer to verbal note No. 10-1521 of 18 January 2017 from the Ministry of Foreign Affairs of the Republic of Latvia to the Royal Norwegian Embassy in Riga, concerning harvesting of snow crab on the Norwegian continental shelf.

As notified by the verbal note of 17 January 2017 from the Ministry of Foreign Affairs of Norway to the Embassy of Latvia in Oslo, the Latvian vessel *Senator* was arrested by the Norwegian Coast Guard on suspicion of illegally fishing for snow crab on the Norwegian continental shelf on 16 January 2017. As the Ministry of Foreign Affairs of Latvia mentioned in its verbal note, the vessel was found to be carrying licence No. 2017D3426, issued by the State Environmental Service of Latvia on 1 January 2017 and apparently authorising the vessel to fish for snow crab in ICES fishing areas I and IIb.

The continental shelf below these fishing areas is a natural prolongation of the land territory of Norway, Russia and Greenland/Denmark. It is delimited by the agreement between Norway and Denmark together with Greenland dated 20 February 2006 and by the agreement between Norway and the Russian Federation dated 15 September 2010. Norway enjoys exclusive coastal State rights on its part of this continental shelf.

1. Legal framework – Law of the Sea

The Kingdom of Norway and the Republic of Latvia are parties to the 1982 United Nations Convention on the Law of the Sea ("the Convention"), which governs the rights and jurisdiction of the coastal State and the rights and freedoms of other states in maritime areas provided for and governed by the Convention, including on the continental shelf.

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Article 77, paragraph 1 of the Convention states: *"The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring and exploiting its natural resources."* Further, paragraph 2 states that *"[...] no one may undertake these activities [exploration and exploitation] without the express consent of the coastal State."*

Consequently, under international law, Norway is the sole State that has the power to license exploration and exploitation of natural resources on the Norwegian continental shelf, including sedentary species like snow crab.

Latvia has no right under international law to license any exploitation of snow crab or any other natural resources on the Norwegian continental shelf without the express consent of Norway as the coastal State. Furthermore, such licensing contravenes Norwegian regulations. This was also indicated in verbal note No. 58/15 dated 2 November 2015 from the Royal Norwegian Embassy in Riga to the Ministry of Foreign Affairs of the Republic of Latvia. No such consent has been granted to Latvia, nor to any vessel flying the flag of Latvia. In this situation, any licensing by Latvia for exploration or exploitation of natural resources on the Norwegian continental shelf is a violation of international law and infringes Norway's rights as a coastal State.

Norway expects Latvia to act in full compliance with its obligations under international law on the Norwegian continental shelf. Moreover, Norway expects Latvia to take the necessary steps to ensure compliance by vessels flying its flag with applicable laws and regulations enacted by Norway as a coastal State in accordance with international law.

Norway considers illegal licensing of exploration or exploitation of natural resources on the Norwegian continental shelf to be a very serious matter. Norway calls on Latvia to refrain from this, and to recall any such licences that it may have issued. Norway considers any licence issued without its consent to be without legal effect. The harvesting of snow crab based on such licences is illegal and will be prosecuted.

In this connection, the Ministry of Foreign Affairs would like to call attention to Article 77 of the Convention and the commentary of the International Law Commission on the draft provision now reflected in this Article. The Commission stated that the words setting out the rights of the coastal State in relation to the continental shelf:

> "[...] leave no doubt that the rights conferred upon the coastal state cover all rights necessary for and connected with the exploration and exploitation of the resources of the continental shelf. Such rights include jurisdiction in connexion with the prevention and punishment of violations of the law."

The case of the vessel *Senator* will be followed up by relevant Norwegian authorities in the same manner as other cases of suspected illegal fishing. Norway will continue to enforce applicable regulations in a consistent and predictable manner, in accordance with international law.

The Ministry of Foreign Affairs of Latvia refers in its verbal note to the licence granted by Latvia to *Senator* as being issued *"on the basis of a respective Regulation adopted by the Council of the European Union"*. The Ministry of Foreign Affairs would like to refer to the account above of a coastal State's exclusive jurisdiction over its continental shelf for the purpose of exploring it and exploiting its natural resources. Consequently, neither the EU nor any EU member state is entitled to grant any licence to explore or exploit natural resources, including sedentary species like snow crab, on the Norwegian continental shelf without Norway's express consent. This has also been communicated to the EU through diplomatic channels.

2. The 1920 Treaty

The Ministry of Foreign Affairs of Latvia refers in its verbal note to the Treaty concerning the Archipelago of Spitsbergen, signed at Paris on 9 February 1920 (2 LNTS 8 – hereafter referred to as "the Treaty" or "the 1920 treaty").

Latvia puts forward the position that *"fishing activities within the territorial sea, the continental shelf and the Fisheries Protection Zone around Svalbard"* are subject to the provisions of the 1920 treaty, and refers to

"conditions and limits placed upon Norway's entitlement within these maritime zones under the said Treaty." This contradicts the precise terms of the Treaty. The Ministry of Foreign Affairs would like to emphasise that the Treaty must be interpreted on the basis of established principles of treaty interpretation, also taking into account together with the context, other relevant rules of international law applicable in the relations between the parties.

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

The precise wording of Article 1 of the Treaty, *"the full and absolute sovereignty"/"la pleine et entière souveraineté",* means that Norway can exercise the full powers of any territorial sovereign, including the powers granted to coastal States under international law. At the same time, Norway must comply with any legal obligations set out in the Treaty. However, no additional conditions not specified by the wording of the Treaty may be presumed to apply. Presuming that additional conditions apply would render the unmistakably clear term *"full and absolute sovereignty"/"la pleine et entière souveraineté "* in Article 1 meaningless.

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

Nonetheless, the Ministry of Foreign Affairs of Latvia in its verbal note appears to invoke legal constraints and obligations that are supplementary to those set out in the 1920 Treaty and a geographical scope of application that is different from the one set forth in the Treaty. This is claimed without any basis in the ordinary meaning of the terms of the Treaty, nor evidence about the intention of the parties or any support in subsequent developments of international law. Such development confirms, on the contrary, the existence of exclusive sovereign rights of the coastal States in the maritime zones beyond and adjacent to territorial waters, subject only to the specific legal regime established by the United Nations Law of the Sea Convention.

3. The relationship between the 1920 Treaty, the continental shelf and exclusive economic zones

Some of the provisions of the 1920 Treaty grant specific rights to nationals of the high contracting parties in the territorial waters of the archipelago. In this context, it should be noted that the term *"territorial waters"/"eaux territoriales"* as used in the 1920 Treaty had a clarified legal content at the time of the negotiations. Historically as well as currently, the term includes the internal waters on the landward side of the baselines and the territorial sea outside the baselines. The breadth of the territorial sea was four nautical miles from the signing of the treaty in 1920 until 1 January 2004. In accordance with the Convention Article 3, and based on Act of 27 June 2003 relating to Norway's Territorial Waters and Contiguous Zone, the territorial waters around Svalbard was extended to 12 nautical miles with effect from 1 January 2004. At the same time, the territorial scope of application of those provisions of the treaty that apply in the territorial waters was expanded accordingly.

The legal regimes in the Exclusive Economic Zone, other 200-mile zones and on the continental shelf are specific legal regimes, established on the basis of the coastal State's sovereignty over its territory and made possible by the development of the modern law of the sea. They are legally and conceptually different from territorial waters and not a result of an expansion or conversion of the latter. This legal and conceptual difference between the territorial waters and the continental shelf is

clearly enshrined in the Convention, which contains detailed provisions on the two different legal regimes.

Consequently, none of the provisions of the 1920 Treaty granting rights to nationals of the contracting parties apply beyond the territorial waters of Svalbard.

4. The difference between the 1920 Treaty and certain modern European treaties

Unlike certain European treaties in particular, the 1920 Treaty is not an instrument establishing comprehensive integration or union rules. Nor does it establish full reciprocity with respect to rights and obligations, combined with dynamic, inter-state market integration, with the aim of ensuring the integration of the parties' overall economic activities and, perhaps, the ongoing development of new common rules, potentially governed by a separate legal system.

Nor is this treaty based on any other form of reciprocity in the form of any exchange of performance of the same nature between States, and subsequent reciprocal performance by other States, or the establishment of reciprocal rights and obligations for citizens of the States involved. On the other hand, it did provide final clarification of sovereignty in the context of a territorial question. This explains why it is open for rapid, simple accession by all States in the international community, without any requirement for reciprocal performance by them.

The 1920 Treaty must be interpreted in the light of the general rule of interpretation of treaties, based on the objective sources of law that are available.

5. Applicable legal framework for harvesting of snow crab and licensing of such harvesting on Norway's continental shelf

The exploration and exploitation of natural resources on the continental shelf of Norway is governed by the law of the sea and the Convention as outlined above.

Without prejudice as to whether harvesting a sedentary species like snow crab can be considered "*fishing and hunting*" under Article 2 of the 1920 Treaty, the claim that the Treaty's provisions regarding fisheries are applicable on the continental shelf and in the Fisheries Protection Zone around Svalbard is without legal justification.

Finally, it should be noted that Norway, as part of its undisputed sovereignty, also has the sole regulatory power in areas to which the Treaty applies. This means that under any circumstances, even given the position on the geographical scope of application of the Treaty expressed by Latvia in its verbal note No. 10-1521, it is a violation of Norway's sovereign rights for Latvia to issue licences to harvest snow crab on the Norwegian continental shelf.

6. Future opportunities for Latvian vessels to harvest snow crab

If Latvia wishes to make it possible for vessels flying its flag to take part in harvesting snow crab on the Norwegian continental shelf, this must be based on Norwegian consent in the form of a bilateral agreement as part of the regular system of exchange of quotas between the EU and Norway. Norway remains open for discussions with the EU on the question of an exchange of quotas so that vessels from EU member states can take part in legal and regulated harvesting of snow crab, taking into account Norway's obligation as a coastal State to ensure responsible harvesting of this resource. Norway has put forward an offer to the EU, which is currently still valid.

The Royal Ministry of Foreign Affairs avails itself of this opportunity to renew to the Embassy of the Republic of Latvia the assurance of its highest consideration.

Oslo, 8 February 2017