



BOTTEGA DI BELLA

EMPOWERING YOUR INTERNATIONAL RIGHTS

NOTICE OF INVESTMENT DISPUTE

UNDER ARTICLE 10 OF THE 1990 AGREEMENT ON THE PROMOTION AND

RECIPROCAL PROTECTION OF INVESTMENTS BETWEEN

THE RUSSIAN FEDERATION AND THE KINGDOM OF SPAIN

Dated 29 September 2023

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Alicante, September 29, 2023

SUBJECT: Notice of dispute and acceptance of the Kingdom of Spain's offer to arbitrate as well as start of the six-month consultations period to reach an amicable settlement under Article 10 of the Agreement on the Promotion and Reciprocal Protection of Investments between the Russian Federation and the Kingdom of Spain

H.E. the President-in-office of the Government of Spain, Hon. Pedro Sánchez Pérez-Castejón, H.E. the Minister-in-office of Foreign Affairs, European Union and Cooperation, Hon. José Manuel Albares Bueno, H.E. the Minister-in-office of Agriculture, Fisheries and Food, Hon. Luis Planas Puchades, and distinguished Attorney General's Office of the Kingdom of Spain, Hon. Consuelo Castro Rey:

1. My name is Danilo Ruggero Di Bella, principal at Bottega Di Bella, an international arbitration law firm. I represent the Russian citizen Mr. Igor Smirnov who is shareholder of *Mariscos Polar SL*, a company registered in Spain for the purpose of catching snow-crabs through the fishing vessel *Adexe Primero* flying the Spanish flag (kindly see my Power of Attorney granted by my Client's attorney enclosed hereto as **Doc. 1**, as well as the latter's power of attorney as **Doc. 2**, and the Russian citizen's passport as **Doc. 3**). Mr. Igor Smirnov owns 50% of *Mariscos Polar SL* (kindly see the deed of incorporation attached as **Doc. 4**).
2. This letter constitutes Mr. Igor Smirnov's notification of claims in relation to the dispute stemming from Spanish authorities' repeated suspensions and ultimate revocation of the snow-crab catching permits for the Svalbard and the NEAFC zones amounting to an expropriation of the Russian citizen's investments in Spain.
3. This notification is made under Article 10 of the *Agreement on the Promotion and Reciprocal Protection of Investments between the Russian Federation and the Kingdom of Spain* dated 26 October 1990 and entered into force on 28 November 1991 (hereinafter, the "Russia-Spain BIT", appended hereto as **Doc. 5**).
4. Hereby Mr. Igor Smirnov accepts Spain's offer to arbitrate this current dispute pursuant to Article 10 of the Russia-Spain BIT, in the event that no amicable settlement on this matter is reached within a period of six months as set forth in the second paragraph of the same Article. Upon notification of this letter, Mr. Igor Smirnov's consent to arbitrate this investment dispute with Spain is perfected and the six-month consultations period shall run.¹

¹ The crux of the matter is rather straightforward, concerning multiple violations under the applicable BIT. However, the matrix of the case might be quite complex, hence, to facilitate its understanding, I kindly invite the addressees to watch a video illustrating the background of the case which is available at the following link: <https://youtu.be/A2WB-gE2phU>.

5. Please be aware that in case the Spanish Government rejects my Client's requests, Spain would implicitly relinquish her international rights stemming from the 1920 Treaty of Paris, including all maritime, industrial, mining and commercial rights over the natural resources of the Svalbard archipelago. Needless to say, this would entail a colossal economic loss for the Spanish people.

A. Statements of Facts

I. The EU snow-crabs fleet

6. Since 2012, EU trawlers have begun harvesting snow-crabs, a relatively new species in Europe's waters. This novel activity is a highly profitable business (reportedly, each snow-crab trawler yields one million euro per month on average)² and, arguably, environmentally friendly. Indeed, snow-crabs are infesting Europe's waters, since they are a non-indigenous species migrating from the Russian coast where they were artificially introduced in the 1960s. Being an alien species prone to overbreeding, if snow-crabs are not regularly caught, they end up harming the ecosystem.
7. The EU Commission has been authorizing a few Member-States (specifically, Spain, Estonia, Lithuania, Latvia, and Poland) to issue permits to catch snow-crabs. The trawler flying the Spanish flag – the Adexe Primero – actually pioneered the catch of snow-crabs in Europe since 2012. The Spanish vessel focused her activities in the 'Loophole' area (a small portion of international waters between Norway and Russia in the Barents Sea) and in the waters surrounding the Svalbard archipelago. This vessel carried out her activities on the ground of the fishing permits issued by Spain, specifically, a NEAFC zone permit for the Loophole area and a Svalbard Zone permit for Svalbard waters.
8. Vessels of the Contracting Parties to North East Atlantic Fisheries Commission (or NEAFC) can indeed get a permit from their flag State to freely catch unregulated

² EU Parliamentary question for written answer E-002532-17 to the Commission (5.4.2017), available here: https://www.europarl.europa.eu/doceo/document/E-8-2017-002532_EN.html.

stocks – such as snow-crabs – in international waters (like in the Loophole area). Similarly, vessels of the Signatories to the 1920 Treaty of Paris can get a permit from their respective flag States to fish around Svalbard on the same footing as Norwegians. Please find the 1920 Treaty of Paris attached as **Doc. 6**.

9. Both Adexe Primero's fishing grounds proved to be so profitable that other EU and Norwegian vessels followed suit.

II. Crimea sanctions and Russia's view on snow-crabs

10. Following EU sanctions on Russia for the 2014 Crimea annexation, Russia³ in retaliation began obstructing EU vessels fishing in the Barents Sea. For instance, on 16 July 2015, the Adexe Primero herself was arrested by a Russian patrol boat while fishing in international waters in the Barents Sea (as proved by the satellite-based vessel monitoring system onboard). The arrest was prompted by the detection of fishing pots with foreign signs in Russia's Exclusive Economic Zone (EEZ). The pots belonged to the Adexe Primero and to a Norwegian vessel (the Northeastern H-27-AV).⁴ It turned out that the pots had been drifted by the current of the sea into Russia's EEZ. The Spanish vessel was then released after posting a bail.
11. On 27 July 2015, Russia's retaliations built up to a declaration defining the snow-crabs – usually fished by EU vessels in the international waters of the Loophole – as a sedentary species living on the continental shelf. As such, according to Russia's declaration, the exploitation of this valuable resource should be up to the coastal states, i.e., Russia and Norway, who also joined this statement being in her best interest at the time.

³ Andreas Østhagen and Andreas Raspotnik, "Crabtacular! Snow Crabs on their March from Svalbard to Brussels," The Arctic Institute, April 24, 2018, available here: <https://www.thearcticinstitute.org/crabtacular-snow-crabs-march-svalbard-brussels/?cn-reloaded=1>.

⁴ Rusia vuelve a retener al pesquero gallego «Adexe Primero», La Voz de Galicia, Agost 4, 2015, available here: <https://www.lavozdegalicia.es/noticia/sociedad/2015/08/04/rusia-vuelve-retener-pesquero-gallego-adexe-primero/00031438683781090204640.htm>.

12. The international waters of the Loophole⁵ in the Barents Sea arise because Russia's and Norway's EEZ cannot extend further out to sea than 200 nautical miles (the Loophole is squeezed between the two EEZs). However, the continental shelf can extend up to 350 nautical miles, thus engulfing the seabed underneath the Loophole. Therefore, the continental shelf below the water column in the Loophole can be subject to Russia's and Norway's jurisdiction, despite the water column above lies in international waters. By defining the snow-crab as a resource of the continental shelf (instead of a high seas fishery resource), the coastal States (Russia and Norway) gain an otherwise non-existent jurisdiction over this precious resource and, accordingly, the right to exploit it exclusively, and simultaneously erode one of the freedoms of the high seas, the freedom of fishing.
13. Interestingly, the characterization of crabs as sedentary species is not univocal and is rather arbitrary, often driven by national economic interests. Japan (a traditionally distant-water fishing country) considers crabs as a high seas' fishery resource.⁶ Arguably, crabs' ability to migrate defies their sedentary feature. Other States – mostly, coastal States (such Canada)⁷ – hold that this crustacean is a sedentary species. It remains doubtful⁸ whether crabs – as other crustaceans – are sedentary or high seas species. For example, Brazil considers lobster sedentary, whereas the UK deems they are not.
14. Following Russia-Norway's joint-declaration, in August 2015, the EU recommended to its Member-States to suspend the permit to catch snow-crabs in the Loophole. Accordingly, Spain suspended Adexe Primero's permit to fish in the NEAFC zone. Other EU Member-States instead disregarded the EU's recommendation and let their trawlers keep fishing in the Loophole. Finally, in September 2015, Spain followed the

⁵ The Loophole and the Banana Hole, BarentsWatch, May 18, 2012, available here: <https://www.barentswatch.no/en/articles/The-Loophole-and-the-Banana-Hole/>.

⁶ Exchange of notes constituting an agreement concerning king and tanner crab fisheries in the eastern Bering Sea between the United States of America and Japan of 24 December 1974, available here: <https://treaties.un.org/doc/Publication/UNTS/Volume%20992/volume-992-I-14514-English.pdf>.

⁷ Canada v. Perry, 2003 CanLII 52758 (NL PC), <http://canlii.ca/t/1n059>.

⁸ Tiller, Rachel & Nyman, Elizabeth. (2016). The clear and present danger to the Norwegian sovereignty of the Svalbard Fisheries Protection Zone: Enter the snow crab. Ocean & Coastal Management, available here: <https://www.researchgate.net/publication/312054026> The clear and present danger to the Norwegian sovereignty of the Svalbard Fisheries Protection Zone Enter the snow crab.

example of the other Member-States and lifted the suspension of Adexe Primero's permit for the NEAFC zone. Afterwards, Spain renewed Adexe Primero's permit for the 2016. However, in March 2016, Spain suspended the permit for the NEAFC zone once again and eventually stopped issuing it altogether, apparently, out of deference to Russia's stance.

III. Norway's international breaches

15. The 1920 Treaty of Paris governs the international status of the archipelago of Svalbard. Just a year earlier, in 1919, the geographer and explorer Robert Neal Rudmose-Brown describes the archipelago as a no man's land⁹ whose natural resources have been explored and exploited by a variety of States since its discovery. Indeed, in June 1914 all nations that had a competing claim to Svalbard came to terms with the fact that the archipelago was *terra nullius*.
16. In the aftermath of World War I, the twofold need for some sort of local authority administering the international community living on the archipelago, and for avoiding its militarization called for the negotiations of the Treaty of Paris.¹⁰
17. The Contracting Parties to this Treaty agreed to give Norway sovereignty over Svalbard to perpetuate the joint and peaceful exploitation of the archipelago's natural resources by a variety of nations. The Treaty accords to each Contracting State's nationals the right of economic activity on an entirely equal footing¹¹ with Norwegian nationals, thus preserving¹² the *terra nullius* status. This instrument formalizes the

⁹ R. N. Rudmose Brown. "Spitsbergen, Terra Nullius." *Geographical Review* 7, no. 5 (1919): 311–21. <https://doi.org/10.2307/207588>.

¹⁰ Vlasman, Savannah. 2019. *The Coldest War: Svalbard's Risk of Russian Annexation*. Master's thesis, Harvard Extension School, available here: <http://nrs.harvard.edu/urn-3:HUL.InstRepos:42004069>.

¹¹ Christopher R. Rossi, 'A Unique International Problem': The Svalbard Treaty, Equal Enjoyment, and Terra Nullius: Lessons of Territorial Temptation from History, 15 *WASH. U. GLOBAL STUD. L. REV.* 93 (2016), available here: https://openscholarship.wustl.edu/law_globalstudies/vol15/iss1/7

¹² Koivurova, Timo & Holiencin, Filip. (2017). Demilitarisation and neutralisation of Svalbard: how has the Svalbard regime been able to meet the changing security realities during almost 100 years of existence?. *Polar Record*, available here: https://www.researchgate.net/publication/312924109_Demilitarisation_and_neutralisation_of_Svalbard_how_has_the_Svalbard_regime_been_able_to_meet_the_changing_security_realities_during_almost_100_years_of_existence.

acquired rights of the international community. By virtue of this Treaty, Svalbard is indeed the only land state territory of common use¹³ in modern international law.

18. However, over time, Norway has discriminatorily restricted the commercial access of the other Signatories' citizens based on nationality requirements. While Norway has disavowed the Treaty of Paris by depriving its provisions of their original meaning (*viz.* constraining Norway's sovereignty over the archipelago in favour of the international community's acquired rights), Norway has also relied on the same Treaty to extend an unrestricted sovereignty on the waters surrounding Svalbard up to 200 nautical miles and, accordingly, to expand its maritime boundaries bordering with Greenland.

19. Thus, Norway inconsistently¹⁴ interprets the geographical scope of the Treaty: on one hand, Norway holds that the Treaty of Paris applies only up to 12 nautical miles off the archipelago; on the other hand, Norway stretches her maritime boundaries with Greenland up to 200 nautical miles off Svalbard thanks to the same Treaty which conferred sovereignty upon Norway over Svalbard, but which is limited – according to Norway – up to 12 nautical miles around the archipelago.

20. Russia¹⁵ and the EU¹⁶ object Norway's interpretation of the Treaty (as every other Contracting Party does), since if it wasn't for the Treaty of Paris, Norway could not set her border at 200 nautical miles off Svalbard. Hence, either the Treaty of Paris applies up to 200 nautical miles off Svalbard and Norway retains her current maritime border with Greenland, or the Treaty applies up to 12 nautical miles and Norway's maritime borders (as well as her territorial jurisdiction) are to be downsized, accordingly. Should the territorial scope of application of the Treaty be up to 12 nautical miles off Svalbard's baseline, the portion of water between its outer edge and

¹³ Dmytro Koshovyi, The status of Svalbard in relations between the Soviet Union and Norway during the Cold War, 2019, available here: <https://www.duo.uio.no/bitstream/handle/10852/73465/MT-Dmytro-Koshovyi.pdf?sequence=1&isAllowed=y>.

¹⁴ Danilo Ruggero Di Bella, Norway's Inconsistent Interpretation of the 1920 Treaty of Paris, *Opinio Juris*, June 16, 2020, available here: <http://opiniojuris.org/2020/06/16/norways-inconsistent-interpretation-of-the-1920-treaty-of-paris/>.

¹⁵ Norway Clarifies Svalbard Treaty After Russian Complaint, *The Maritime Executive*, February 17, 2020, available here: <https://www.maritime-executive.com/article/norway-clarifies-svalbard-treaty-after-russian-complaint>.

¹⁶ European Commission's position concerning a call to act from Latvia pursuant to Article 256 TFEU, March 12, 2018, available here: <https://www.politico.eu/wp-content/uploads/2018/06/SPOLITICO-18061416103-1.pdf>.

Greenland's EEZ would be considered high seas. Should Svalbard's continental shelf stretch further than 12 nautical miles into the high seas, the Treaty of Paris would apply to that zone anyway, since the continental shelf is a prolongation of Svalbard's land territory.

21. Therefore, regardless of the geographical scope of the Treaty of Paris (either up to 12 or 200 nautical miles), this instrument should apply to the activity of snow-crabs catching around Svalbard, because such activities occur on its continental shelf. Norway indeed considered snow-crabs as a resource of the continental shelf in her joint declaration with Russia of 2015. Accordingly, the nationals of all Contracting Parties to the Treaty of Paris should be allowed to catch snow-crabs on Svalbard's continental shelf just as Norwegians do.

22. Norway's 2015 joint declaration with Russia concerning the sedentary nature of snow-crabs might have seemed beneficial at the time to gain jurisdiction over this natural resource on the continental shelf underneath the Loophole. However, the same declaration backfires Norway's interests in Svalbard. Indeed, such declaration indirectly obliges Norway to accord equal commercial rights to foreign snow-crabs' trawlers on Svalbard's continental shelf which, being a prolongation of Svalbard's land territory, is covered by the application of the Treaty of Paris. In other words, EU trawlers can harness snow-crabs on Svalbard's continental shelf for the same reason they cannot catch them in the Loophole area.

23. Since June 2013, Adexe Primero began fishing in Svalbard waters thanks to a permit granted by Spain based on the Treaty of Paris. However, following Norway's arrest of a couple of EU trawlers, in January 2017, Spain suspended indefinitely such permit, despite the EU recommended to disregard Norway's prohibition to catch snow-crabs around Svalbard. Spain was indeed the only EU Member-State to adopt such suspension (unlike Estonia, Lithuania, Latvia, and Poland). Although Spain's suspension of the permit was meant to be only a provisional suspension, to this day such a suspension has not been lifted. Kindly find attached as **Doc. 7** the supposedly provisional suspension of the relevant permit decreed by the Directorate-General for Fisheries Management of the Spanish Ministry of Agriculture, Fisheries and Food

dated 11 January 2017. Please also find appended hereto as **Doc. 8** the EU Commission's instructions of 23 December 2016 addressed to Spanish fishing Authorities to expressly ignore Norway's prohibition to catch snow-crabs in the waters around Svalbard.

24. Norway's discriminatory actions have already led to three investment arbitrations¹⁷ concerning the catching of snow-crabs¹⁸ in Svalbard waters (kindly see ICSID Cases No. ARB/20/11, No. ARB/22/31, and No. ARB/23/7). In the wake of these arbitrations, Norway hastily proceeded to terminate the BITs precisely entered with the Contracting States whose nationals had filed those arbitrations,¹⁹ clearly for damage control purposes. Unfortunately, Norway's flawed interpretation of the Treaty of Paris may result into similar repercussions for Spain, *i.e.*, multiple investment arbitrations against Spain, specifically because of the way Spain wrongfully reacted.

B. Points of Law

25. Russia's erosion of the freedom of fishing in the high seas (by defining snow-crabs as a resource of the continental shelf) and Norway's violation of the Treaty of Paris have led Spain to breach in turn her international obligations towards her foreign investors.

26. The EU Member-States who were granted snow-crabs catching permits by the EU reacted in different ways to Russia and Norway. On one hand, Estonia, Lithuania, Latvia, and Poland stood firm on their position and kept on allowing their vessels to

¹⁷ Danilo Ruggero Di Bella, Norway just like Turkey? ICSID Arbitration/s against Norway over Svalbard's Natural Resources: A Wider Picture, Kluwer Arbitration Blog, May 15, 2020, available here: <https://arbitrationblog.kluwerarbitration.com/2020/05/15/norway-just-like-turkey-icsid-arbitration-s-against-norway-over-svalbards-natural-resources-a-wider-picture/>.

¹⁸ European Parliament, Question for oral answer O-000076/2018 to the Commission, EU-Norway dispute over snow crab fishing in Svalbard, 27.6.2018, available here: https://www.europarl.europa.eu/doceo/document/O-8-2018-000076_EN.html.

¹⁹ Toby Fisher, Norway and Latvia move to terminate BIT, GAR, 10 November 2022, available here: <https://globalarbitrationreview.com/article/norway-and-latvia-move-terminate-bit>; *see also*, Norway terminates its IIAs with European Economic Area members, Investment Treaty News, July 1, 2023, available here: <https://www.iisd.org/itn/en/2023/07/01/norway-terminates-its-iias-with-european-economic-area-members/>.

catch snow-crabs in the Loophole and around Svalbard, in line with the EU Commission's directions in order to defend the EU's position. On the other hand, Spain had repeatedly suspended Adexe Primero's permits and, eventually, stopped issuing them altogether out of fear of Russia and Norway.

27. Spain's repeated suspensions of the snow-crab catching permits and their ultimate revocation have disrupted the activity of the Adexe Primero and her shipowner, Mariscos Polar SL, a company registered in Spain for the purpose of fishing snow-crabs in arctic waters and whose Russian shareholder, Mr. Igor Smirnov, owns half of the company.

28. Hereby Mr. Igor Smirnov invokes the Russia-Spain BIT to put forward an expropriation claim against Spain. Spain directly expropriated the snow-crab catching permits and indirectly expropriated the Russian investor's company operating thanks to those permits. The cumulative effects of the continual suspensions of the permits – culminated with their revocation – amounts to a creeping expropriation. Spain's consequential expropriation of Mariscos Polar is worsened by the fact that the actions leading to this taking were not proportional. Firstly, there was a lack of proportionality since Spain did not provide for alternative fishing grounds to avoid the total disruption of Mariscos Polar's business. Secondly, the absence of proportionality is highlighted by the fact that Spain was the only EU Member-State in adopting such a harsh measure in contrast with the EU Commission's stance. Hence, even if Spain's drastic actions may have been taken because of Russia and Norway, their lack of proportionality and compensation do not exempt Spain from her international obligations towards her foreign investors. Importantly, Article 6 of the Russia-Spain BIT covers not only direct expropriations, but also "any other measures with similar effects". Hence, the applicable BIT allows for indirect and creeping expropriation claims.

29. Being fishery part of the EU Common Policies, the treatment Spain accorded to Mariscos Polar should be contrasted with the treatment that other EU Member-States in the same position as Spain accorded to enterprises operating in the same sector as Mariscos Polar. If such treatment is more favourable than the one accorded by

Spain, then Spain failed to accord Mariscos Polar the most favourable treatment she could have possibly accorded. Since the other EU Member-States did not suspend their snow-crabs permits, Spain is also in breach of the most-favoured-nation clause at Article 5(2) of the Russia-Spain BIT.

30. Further, the Russian investor can rely on such clause to broaden the scope of the dispute resolution clause. This way, he can bring in a fair and equitable treatment claim (FET claim) and, by extension, also a full protection and security claim (FPS claim). For example, my Russian Client can import the more favourable treatment accorded by virtue of the Lebanon-Spain BIT, whose dispute resolution clause extend also to breaches of the FET and whose FET clause also encompasses the FPS standard. Kindly find appended hereto as **Doc. 9** the Lebanon-Spain BIT of 1996 which entered into force on 29 April 1997.

31. Spain breached the FET standard – as set in Article 5(1) and (2) of the Russia-Spain BIT – towards the Russian investor insofar as Spain failed to protect his legitimate expectations with respect to his investment by generating an uncertain legal framework for catching snow-crabs. Notably, Russian investor's legitimate expectations²⁰ were also backed up by the EU's instructions to ignore Norway's prohibition of fishing in Svalbard. It is noteworthy to remind that Spain suspended indefinitely the snow-crabs permit less than a month after the EU Commission's directions to disregard Norway's prohibition to catch snow-crabs in the waters around Svalbard, thus expressly contravening the EU Commission' direct instructions.

32. Moreover, Spain failed to accord an adequate legal protection against Norway's subsequent claims to the fishing rights that Spain had previously granted to her foreign investor in the first place. Spain could have protected such rights by resorting to an international arbitration²¹ against Norway based on the 1929 *Spain-Norway*

²⁰ Damien Charlotin, Analysis: Tribunal majority in *Eurus v. Spain* gives weight to EU law in assessing the claimant's legitimate expectations, IAREporter, Mar 29, 2021, available here: <https://www.iareporter.com/articles/analysis-tribunal-majority-in-eurus-v-spain-gives-weight-to-eu-law-in-assessing-the-claimants-legitimate-expectations/>.

²¹ Danilo Ruggero Di Bella, How to circumvent EU's procedural obstacles to secure EU's fishing rights in Svalbard, EJIL: Talk! Blog of the European Journal of International Law, July 31, 2020, available here: <https://www.ejiltalk.org/how-to-circumvent-eus-procedural-obstacles-to-secure-eus-fishing-rights-in-svalbard/>.

Treaty on Conciliation, Judicial Settlement and Arbitration. Please find enclosed hereto as **Doc. 10** this international bilateral instrument.

33. Hence, Spain failed to accord full protection and security to her Russian investor to ensure the normal ability of his business to function, in accordance with Article 5(2) of the Russia-Spain BIT in conjunction with Article of 3 the Lebanon-Spain BIT. Not only did Spain fail to accord an appropriate legal protection to her foreign investor to ensure the normal ability of his business to function, but she also deprived the investor of the title (viz. the fishing permit) to advance a possible investment claim against Norway by invoking the Russia-Norway BIT (instead of having to file an investment arbitration against Spain).

34. Incidentally, from Spain's perspective, the question is not just about the snow-crab (which is *per se* a highly valuable resource). By virtue of the Treaty of Paris, if Norway exploits any given natural resource of the Svalbard archipelago, Norway is under the obligation to allow the nationals of the other Contracting States to exploit the same natural resource on an equal footing with Norwegians.

35. Relatively recently, Norway has started issuing licences for exploring Svalbard for oil and rare metals.²² This means that Spain – a Contracting State to the Treaty of Paris – may do the same and proceed to issue licences for the Svalbard region for the same precious resources.

36. However, by neglecting her right on a snow-crabs quota, Spain is simultaneously forfeiting her rights with respect to the other natural resources of the Svalbard region as well. This is especially true for the natural resources of the continental shelf. Indeed, being snow-crabs classified as natural resources of the continental shelf,

²² Tone Sutterud and Elisabeth Ulven, Norway plans to drill for oil in untouched Arctic areas, 26 Aug 2020, The Guardian, available here: <https://www.theguardian.com/environment/2020/aug/26/norway-plans-to-drill-for-oil-in-untouched-arctic-areas-svalbard>; see also Atle Staalesen, Moscow protests Norwegian exploration in Svalbard waters, March 15, 2021, The Barents Observer, available here: <https://thebarentsobserver.com/en/industry-and-energy/2021/03/moscow-protests-norwegian-exploration-svalbard-waters>; Sam Meredith, Norway faces backlash from campaigners for 'reckless' pursuit of Arctic oil and gas, May 22 2023, CNBC, available here: <https://www.cnbc.com/2023/05/22/norway-urges-energy-giants-to-ramp-up-search-for-arctic-oil-and-gas.html>; Nerijus Adomaitis, Insight: Norway eyes sea change in deep dive for metals instead of oil, January 12, 2021, Reuters, available here: <https://www.reuters.com/business/environment/norway-eyes-sea-change-deep-dive-metals-instead-oil-2021-01-12/>.

what applies to snow-crabs will apply to other resources of Svalbard's continental shelf, including oil or rare metals.²³ Hence, if Spain does not proactively protect her international rights by acknowledging my Client's international rights *vis-a-vis* Norway, Spain will be deemed to have renounced to any rights to the natural resources of the oil-rich Svalbard region that Spain could be entitled to on the basis of the 1920 Treaty of Paris. Accordingly, snow-crabs aside, much more is at stake for Spain.

37. Naturally, the actions and omissions of the Spanish Ministry of Agriculture, Fisheries and Food are directly attributable to Spain under Article 4 of the *Articles on Responsibility of States for Internationally Wrongful Acts*, thus engaging Spain's international responsibility pursuant to the same instrument with respect to the abovementioned breaches of the obligations contained in the Russia-Spain BIT.²⁴

C. Relief sought

38. With an average turnover of EUR 1 million per month and a catching season of 9 months a year, the damage and loss of profit of an EU operator like Mariscos Polar SL amount to over EUR 63 million so far. Half of this amount can be claimed by my Client, since he holds 50% interest in Mariscos Polar SL. Therefore, Mr. Igor Smirnov claims from Spain compensation for the damage and loss suffered in the amount of at least 31.5 million euros (thirty-one million five hundred thousand euros), the *restitutio in integrum* of the revoked permits, and their adequate legal protection through an international legal proceeding between Spain and Norway.

39. This party reserves the right to advance further arguments and produce such further evidence (whether factual or legal) as may be necessary to complete or supplement

²³ See on this point, Norwegian court to rule on snow crabs, with hints for Arctic oil, February 14, 2019, Reuters, available here: <https://www.reuters.com/article/norway-eu-snowcrab-idUSL5N2086C0>.

²⁴ Danilo Ruggero Di Bella, A Debate About the Not So Straightforward Applicability of the Articles on State Responsibility to Investor-State Arbitrations, Kluwer Arbitration Blog, October 10, 2018, available here: <https://arbitrationblog.kluwerarbitration.com/2018/10/10/a-debate-about-the-not-so-straightforward-applicability-of-the-articles-on-state-responsibility-to-investor-state-arbitrations/>

the presentation of the claims or to respond to any arguments or allegations put forward by Spain in the course of a future arbitration. This party also reserves the right to produce further documentary evidence and to produce witness evidence in order to supplement and support its claims.

40. In accordance with Article 10 of the Russia-Spain, this party remains available for a period of six months as of the receipt of this Notice to carry out consultations in good faith in order to reach a mutually beneficial solution to the current investment dispute.

41. Kindly be aware that, should Spain ignore my Client's claims, Spain would be deemed to have waived her international rights stemming from the 1920 Treaty of Paris – namely, all maritime, industrial, mining and commercial rights over the natural resources of the Svalbard archipelago – potentially causing a massive economic loss for Spain.

Yours sincerely,
Mr. Danilo Ruggero Di Bella
Attorney-at-law ICAM, n. 127330
Bottega DI BELLA

ATTACHMENTS:

- **Document N. 1:** POA of the attorney-at-law.
- **Document N. 2:** POA of my Client's attorney.
- **Document N. 3:** My Client's Russian passport.
- **Document N. 4:** *Mariscos Polar SL's* deed of incorporation.
- **Document N. 5:** Russia-Spain BIT.
- **Document N. 6:** 1920 Treaty of Paris.
- **Document N. 7:** the supposedly provisional suspension of the fishing permit of 11 January 2017.
- **Document N. 8:** EU Commission's letter of 23 December 2016 directing Spanish fishing authorities to expressly ignore Norway's prohibition to catch snow-crabs in the waters around Svalbard.
- **Document N. 9** Lebanon-Spain BIT
- **Document N. 10:** 1929 Spain-Norway Treaty on Conciliation, Judicial Settlement and Arbitration.