

23 January 1991

Press Statement of the Minister for Foreign Affairs

At its meeting today the Government of Iceland, took the following decisions, proposed by the Minister for Foreign Affairs, with regard to the situation in the Baltic states:

1. To instruct Iceland's Ambassador to the Soviet Union to deliver to the Soviet authorities a diplomatic note and request information and clarification of the actions of Soviet armed forces against the democratically elected governments and the citizens of the Baltic states. The request is based on the section of the Concluding Document of the CSCE Vienna Follow-up Meeting from 1986 dealing with the human dimension mechanism and paragraphs relating to that same topic in the Document of the Copenhagen Meeting on the human dimension of the CSCE from 1990. In these documents, the participating states undertake, among other things, to respond within four weeks to requests for information made to them by other participating states on questions relating to the human dimension of the CSCE.

In the diplomatic note, reference is made to the following incidents in Lithuania and Latvia:

- there are reports that the Soviet armed forces killed more than 12 Lithuanians in the course of the last two weeks and 4 people in Riga last week-end.

- in Lithuania 29 young people are reported missing following the armed intervention of the Soviet Government.

- Soviet armed forces wrecked and destroyed property of the freely elected Lithuanian government, including the headquarters of the Lithuanian national guard and the Lithuanian TV headquarters and seized the Latvian Ministry of Interior by force.

In the note, the Government of Iceland expresses its view that such acts must be regarded as serious violations of Principle VII of the Helsinki Final Act and the paragraphs of the Copenhagen Document dealing with the human dimension. To buttress this view, specific paragraphs of the Copenhagen document are cited.

2. To urge the Althing to consider sending a parliamentary delegation as soon as possible to the Baltic states and to work out mutual agreements between the Althing and the parliamentary assemblies of the Baltic states concerning an exchange of parliamentary representatives.

3. The Minister for Foreign Affairs will formally seek the co-operation of the Foreign Ministers of the Nordic countries regarding possible joint action within the framework of the United Nations, including the organization of a conference under United Nations auspices to discuss a political settlement of the dispute between the Baltic states and the Soviet authorities, on the basis of international law.

4. Should acts of violence against the Baltic states continue, Iceland will initiate contacts with a view to having the United Nations Security Council convened to discuss the situation.

5. The Minister for Foreign Affairs has instructed Iceland's Permanent Mission to the North Atlantic Treaty Organization to continue active participation in allied consultations concerning the situation in the Baltic states.

6. The possibility of establishing diplomatic relations with Lithuania was also discussed. The Althing, as well as the

Minister for Foreign Affairs on behalf of the Government, has on different occasions reiterated Iceland's policy regarding the independence of Lithuania, which was first formally recognized on 21 January 1922. Iceland has never recognized the annexation of the country by the Soviet Union. The status of Lithuania as an independent state was reaffirmed by the Supreme Soviet of the Soviet Union in December 1989, when it declared null and void the Molotov-Ribbentrop Pact on the annexation of the Baltic states.

In the government's understanding the official visit of Iceland's Foreign Minister to the Baltic states last week confirmed of the effective adoption of diplomatic relations between Iceland and Lithuania. A decision was made to initiate talks between the two states concerning the possibility of further strengthening their diplomatic relations.

7. A request is addressed to Iceland's representatives to the Parliamentary Assembly of the Council of Europe next week, to introduce a resolution in the Assembly on the situation in the Baltic states.

8. A request is addressed to the President of the Nordic Council to have the Council adopt a clear stance on the Baltic states' struggle for independence.

9. Preparations be initiated with a view to developing further bilateral co-operation with the Baltic states in the fields of culture and trade.

The Ministry for Foreign Affairs  
Reykjavik, 23 January 1991.

POSITION PAPER PRESENTED BY THE ICELANDIC FOREIGN MINISTER,  
MR. JON BALDVIN HANNIBALSSON, TO THE AMBASSADOR OF THE SOVIET  
UNION TO ICELAND ON 12 APRIL 1991.

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The Icelandic Government decided on 23 January 1991 to agree to the request by the Government of Lithuania to initiate talks concerning the possibility of strengthening their diplomatic relations. This decision was supported by the Althing in a resolution adopted on 11 February 1991. The resolution confirms that the recognition by the Government of Iceland in 1922 of the independence of the Republic of Lithuania is fully valid. It furthermore called upon the Government to formally establish diplomatic relations with Lithuania as soon as possible.

The Foreign Ministry of the Soviet Union has in statements delivered to the Ambassador of Iceland in Moscow on 5 and 13 February requested explanations regarding the statement to the press by the Icelandic Minister for Foreign Affairs on 23 January 1991 and the Althing resolution of 11 February 1991.

The Icelandic Government regrets that the Ministry for Foreign Affairs of the Soviet Union views the decisions of the Government and the resolution of the Althing as unfriendly steps and had deemed it necessary to demonstrate this by instructing the Ambassador of the Soviet Union in Reykjavik to remain in Moscow for consultations. The Icelandic Government values the longstanding relationship with the Soviet Union and fully expects that their mutually beneficial relations will continue in the future.

The Ambassador of Iceland in Moscow has on instructions requested a meeting between the Minister for Foreign Affairs of Iceland and the appropriate authorities in the Soviet Union in order to explain its policy towards the Baltics and Lithuania in particular.

The position of the Icelandic Government towards Lithuania is to be viewed in the context of the profound changes in European relations which have taken place in recent years. In particular it should be viewed in the context of the democratic revolution that the European political landscape has undergone, a revolution rendered possible primarily by the policies of the Soviet Union. As the division of Europe has been overcome, hopes for stability in relations between all nations of the continent have been raised.

These changed circumstances were reflected inter alia in the Charter of Paris for a new Europe of 21 November 1990. In the Paris Charter we expressed our common conviction that "in order to strengthen peace and security among our States, the advancement of democracy, and respect for and effective exercise of human rights are indispensable." Furthermore, we agreed that "democratic government is based on the will of the people, expressed regularly through free and fair elections."

The freely elected Government of Lithuania has made a determined effort to reclaim the independent status of Lithuania. The informal referendum of 9 February 1991 also demonstrates that

it is the will of the vast majority of Lithuanians to restore effective independence.

To heed such legitimate aspirations as have been expressed by the democratically elected Government and the people of Lithuania is consistent with the spirit of the Charter of Paris, which foresees a new quality in our security relations based on common adherence to democratic values and to human rights and fundamental freedoms. The declared policies to support the Lithuania cause of independence should not be viewed as an attempt to violate the principle of the territorial integrity of States but rather as a means of fulfilling that future vision.

The view expressed by the Soviet Foreign Ministry that Icelandic policies towards the Baltics are not compatible with obligations under the Charter of the United Nations, the Helsinki Final Act and other basic documents of the Conference on Security and Co-operation in Europe and are regarded as interference in the internal affairs of the Soviet Union is of course of particular concern to the Government of Iceland. The Government of Iceland cannot, however, accept these contentions. In response to the request of the Soviet Foreign Ministry for information the Ministry for Foreign Affairs wishes to give the following background to the decisions of the Icelandic Government.

## II

Following the restoration of the independent State of Lithuania Iceland recognized the Republic of Lithuania de jure in 1922. Commercial relations were established between the two countries on the basis of trade agreements in 1923 and 1930.

In the view of the Icelandic authorities the occupation of Lithuania by the armed forces of the Soviet Union in 1940 and the subsequent incorporation of Lithuania into the Soviet Union did not affect the recognition by Iceland of the Republic of Lithuania.

The restoration of the independent state of Lithuania by the Supreme Council of the Republic of Lithuania on 11 March 1990 and the ratification of the Provisional Basic Law of the Republic of Lithuania on the same date revived the possibility of treating Lithuania as a full subject of international law.

The informal referendum in Lithuania on 9 February 1991 confirmed that these recent actions enjoy the support of the vast majority of Lithuanians.

## III

Over the past year the Icelandic authorities have consistently supported Lithuania in its quest for recognition of its independent status. The Government of Iceland has raised the question in multilateral fora, such as the Conference on Security

and Co-operation in Europe, the General Assembly of the United Nations and the Council of Europe, as well as in bilateral contacts with many European countries.

On 23 March 1990 Mr. Jón Baldvin Hannibalsson, Minister for Foreign Affairs, wrote Foreign Minister Shevardnadze urging the Soviet Union to initiate talks with the democratically elected representatives of Lithuania without prior conditions. Prime Minister Steingrímur Hermannsson wrote a letter to President Mikhail Gorbachev on 13 January 1991, urging the Soviet President to put an end to acts of violence committed by Soviet special forces in Lithuania. Reference was made to the Charter of Paris and the Helsinki Final Act. Furthermore, on 23 January 1991 the Ambassador of Iceland in Moscow presented the Soviet authorities with a Note requesting information on certain acts of violence committed by the Soviet military in Lithuania and Latvia. Reference was made in this connection to the Human Dimension of the Conference on Security and Co-operation in Europe. Thus the position of the Icelandic Government should come as no surprise to the Soviet authorities.

In addition to the aforementioned resolution of 11 February 1991 the Althing had during this period passed three other resolutions relating to the Baltic States, on 13 March 1990, 18 December 1990 and 14 January 1991.

Following the outbreak of violence in the Baltic States in January 1990 Mr. Jón Baldvin Hannibalsson, Minister for Foreign Affairs, made an official visit to the capitals of the three Baltic countries.

Upon Foreign Minister Hannibalsson's return to Iceland the Government of Iceland took up the question of its relations with Lithuania, resulting in its decision of 23 January 1991 dealing with the question of diplomatic relations with Lithuania and also calling for renewed attention to the situation in Lithuania in multilateral fora.

#### IV

The Government of Iceland has carefully studied such rules as exist to determine whether, under international law, a given body is entitled to the status of a State. In this connection regard must be had to Iceland's recognition of Lithuania in 1922, the establishment of a legitimate constitutional authority in Lithuania in March 1990 and the clear demonstration in the informal referendum on 9 February 1991 of the will of the Lithuanian people. That Lithuania is restrained in its independence at the present time is a fact which cannot be denied; however, the circumstances which have led to that restriction dictate that they cannot be determinative of its international status. In support of this conclusion, reference can be made to a large body of international practice.

The question has been raised whether the actions

contemplated by the Government of Iceland can be seen as interference in the internal affairs of the Soviet Union. Iceland holds the view that it cannot be debarred from treating the Republic of Lithuania as a subject of international law. Original recognition of the Republic of Lithuania is regarded as still valid; the premises under which Lithuania was incorporated into the Soviet Union in 1940 cannot be accepted as altering that fact.

The position of the Icelandic Government is based on a careful evaluation of the sources of international law relating to statehood. While there would appear to be some common ground on the criteria which must exist in order for an entity to be regarded as a State, the application of the criteria to the facts of a situation is often difficult. In some aspects the question is one of fact, in others one of law and yet in others a matter of judgment of the State which is addressing the situation.

The Government of Iceland has studied the practice of States in this field which cannot always be easily reconciled with pure legal doctrine. Thus there are cases where an entity with all the earmarks of a State has been denied international recognition as such. There are other cases where an entity clearly lacking one or more of the acknowledged criteria for statehood is nonetheless recognized as a State.

In practice, there is no absolute characterization of a State; a given entity can be regarded as a State for certain purposes, for example in order to enjoy specified relations with another State, but not for other purposes such as admission to an international organization.

Thus the Government of Iceland would not generalize on the legal nature of statehood as such but has rather evaluated the question of whether Lithuania enjoys international legal personality for the purposes of the development of diplomatic relations.

The Government of Iceland attaches particular importance to the enactments of 11 March 1990, restoring the independence of Lithuania and laying down a Provisional Basic Law (Constitution). These pronouncements allow third States to regard the legal situation in Lithuania as one of continuity. Under this approach the enactments of 11 March 1990 and their subsequent implementation provide evidence of fulfilment of the classical criteria of territory and population and, on the face of it, an indication of effective Government.

The requirements of effective government and the capacity to conduct foreign relations are closely linked to the concept of independence, that is, the extent to which the entity exercises governmental authority and controls its external relations without dictation from another State.

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It is necessary therefore to consider the legal consequences of the restraint by the Soviet Union on Lithuania's effective exercise of governmental functions and its capacity to conduct relations with other States.

In this connection two aspects of the capacity to enter into relations with other States can be identified, first whether the entity is subject to international responsibility for its actions and secondly whether other States are prepared to take on obligations with respect to it.

Many of the anomalies in the practice of States in these questions can be explained by some element of belligerent or illegal occupation. This has, for instance, provided the theoretical basis for relations with governments-in-exile.

In other cases the illegal origin of the circumstances involved has rebutted presumptions which might otherwise be valid.

The situation in Lithuania corresponds to the distinction made in legal doctrine between "formal" independence and "effective" or "actual" independence. Thus while Lithuania is hampered in its exercise of independence it must be evaluated whether this can be accepted as affecting the formal independence previously recognized by Iceland.

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The legal effect to be given to the activities of the Government of the Soviet Union in 1940 is therefore crucial to a determination of the international status of Lithuania.

It is a well-recognized maxim of international law that no benefit shall be achieved through an illegal act. Refusal by the international community to recognize illegal occupation and annexation is based on the utter condemnation of the use of force in contravention of international law. Even recent history shows that the international community will not recognize claims that such questions following illegal annexation fall solely within the domestic jurisdiction of the annexing State.

Turning to the situation in Lithuania, it can first be noted that the view that the occupation of Lithuania in 1940 was illegal has been confirmed in a decision of the Congress of People's Deputies of the Soviet Union on 24 December 1989.

There is a well recognized presumption that acts of a regime constituted under belligerent occupation are not the acts of an independent entity. Beyond that, the legal effect turns on the assessment of the relevant facts. It is widely recognized that the annexation of Lithuania by the Soviet Union followed upon a great number of irregularities sponsored by the occupying



forces.' Iceland is not alone in characterizing this series of events as illegal use of force and illegal annexation. This view is shared by the vast majority of Western States. Thus any attempts to separate the conclusion that the Molotov-Ribbentrop Act was invalid from the legal situation following the occupation of Lithuania will not stand up to close analysis.

The question arises of how long the status of a person in international law can be protected against the effects of illegal occupation.

The effect of annexation following illegal occupation can be so pervasive, through suppression of the pre-existing society and its organs of authority, language and culture, that the political community no longer existed. Recent history has, however, shown in many parts of the world that despite longstanding deprivation societies have re-emerged in their near-original form.

Here again, the enactments of 11 March 1990 and the informal referendum of 9 February 1991 are relevant to show that the political community of Lithuania survived the passage of time and was preserved as a distinct legal personality.

One additional point can be made on the capacity to conduct relations which relates to the inherent nature of these relations. For such relations depend equally on the attitude of other States. Thus, in instances where other States are prepared

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A report of a Committee of the Parliamentary Assembly of the Council of Europe states that following the invasion of the Baltic States in June 1940 the Soviet Union gave them ultimata to form governments friendly to the Soviet Union. Following compliance with the ultimata the Soviet Union agreed to defend the national independence of the three republics. The Report states:

However the Soviet Union did not adhere to this undertaking. After the country had been occupied, the interim phase of "people's democracy" was quickly terminated. After sham elections, held on 14 and 15 July 1940 in breach of the constitutions that were still in force and of the electoral laws, a dictatorial communist regime was installed, sovietisation was speeded up with the use of totalitarian methods and the principle of the territoriality of language was flouted. As early as 21 and 22 July 1940, the parliaments of the three Baltic Republics which were duly elected in these sham elections adopted a declaration on the accession of the Baltic states to the Soviet Union. As early as August 1940, the three Baltic Soviet republics were incorporated into the Soviet Union.

The incorporation of the Baltic states into the Soviet Union, which took place according to Soviet law at the beginning of August 1940, did not represent a voluntary association on a federal basis but the seizure by force of foreign territory, i.e. an unlawful annexation under modern international law.

to conduct relations with a given entity, their position has a constitutive effect on its status.

States which agree to enter into relations with a State with restricted capacity can be expected to structure their relations to take into account the circumstances prevailing in order not arbitrarily to introduce the prospect of international responsibility. Indeed, they would be precluded from availing themselves of legal remedies in instances where restrictions on the ability to conduct relations are objectively evident. In this connection doctrine must not be overbearing and many situations will arise which need be addressed with flexibility and equity.

A corollary question is whether Lithuania can be denied the right to be treated as a State. In other words, can another State opt out of its obligations merely by refusing to characterize it as a State? In light of the foregoing functional analysis Iceland would not presume to impose its views on other States, leaving to them to compare their circumstances with those applying in Iceland. On the other hand it is submitted that the very core of the evaluation of the Government of Iceland, that is that the occupation and annexation of Lithuania in 1940 were illegal, debars the USSR from raising arguments which would otherwise be available to it.

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The Government of Iceland has also studied the provisions of the Helsinki Final Act of the Conference on Security and Cooperation in Europe. Although the Final Act is not worded in terms of legal commitment, it is susceptible of evaluation in much the same way as legal instruments.

In general, it should be pointed out that the well-known positions of many Western States that they had not recognized de jure the incorporation of the Baltic States into the Soviet Union were reiterated in the course of negotiations leading up to the signature of the Final Act. The Soviet Union should therefore have been forewarned that these States would not subsequently accept that the Final Act could be interpreted as settling once and for all the question of the legal status of the Baltic States and preventing any of them from raising their status as an international issue. The views of these Western States on de jure recognition of the situation have been re-affirmed in connection with the recent developments in the Baltic States.

For the purposes of the study of the legal status of Lithuania, the Final Act contains relevant provisions in three of its Principles Guiding Relations between Participating States,