

Savoie Arbitration

Paris, 8 March 2019

BY E-MAIL AND COURIER

To:

H.E. Ms. Erna Solberg
Prime Minister of Norway
Glacisgata 1, 0150 Oslo
Norway
+47 22 24 90 90
smkinfo@smk.dep.no

Ms. Siv Jensen
Minister of Finance
Akersgata 40, Oslo
Norway
+47 22 24 44 11
kommunikasjonsenheden@fin.dep.no

Chief Justice Toril Marie Øie
Supreme Court of Norway
Høyesteretts plass 1
Oslo, Norway
+47 22 03 59 00
post@hoyesterett.no

Mr. Tor Mikkel Wara
Minister of Justice, Public Security
and Immigration
Varemottak
Akersgata 59
0180 Oslo
Norway
+47 22 24 90 90
postmottak@jd.dep.no

Mr. Harald T. Nesvik
Minister of Fisheries
Kongens gate 8, Oslo
Norway
+47 22 24 90 90
postmottak@nfd.dep.no

Mr. Kristian Ødegaard
Ambassador of Norway to Latvia
Kaļķu iela 15, LV 1050 Riga,
Latvia
+371 67 814 100
emb.riga@mfa.no

Mr. Torbjørn Røe Isaksen
Minister of Trade and Industry
Kongens gate 8, Oslo
Norway
+47 22 24 90 90
postmottak@nfd.dep.no

Ms. Ine Eriksen Søreide
Minister of Foreign Affairs
7. juniplassen 1 / Victoria Terrasse,
Oslo
Norway
+47 23 95 00 00
post@mfa.no / media@mfa.no

Subject : Notification of Dispute of SIA North Star (Latvia) and Mr. Peteris Pildegovics against the Kingdom of Norway under the Latvia-Norway BIT

Dear Prime Minister, Dear Chief Justice, Dear Ministers, Dear Ambassador,

We write on behalf of Mr. Peteris Pildegovics (**Mr. Pildegovics** or **Claimant**) and Latvian company SIA North Star (**North Star** or **Claimant**)¹ (together **Claimants**) to notify the existence of a dispute between Claimants and the Kingdom of Norway (**Norway**), pursuant to Article IX of the *Agreement between the Government of the Kingdom of Norway and the Government of the Republic of Latvia on the Mutual Promotion and Protection of Investments* signed in Riga on 16 June 1992 (**BIT**).²

We recall that on 27 February 2017, a prior notice of dispute was sent to the Kingdom of Norway regarding the same matter on behalf of North Star.³ The present notice informs Norway of the dispute with Mr. Pildegovics and supplements the previous notice of dispute in respect of several additional violations of the BIT by Norway.

This dispute stems from Norway's manifestly arbitrary and discriminatory acts, notably against investors from the European Union (**EU**), including Latvian investors, who hold or have held licenses to harvest snow crabs in the Loophole's international waters and licenses issued on the basis of the 1920 Svalbard Treaty.⁴

1) Mr. Pildegovics and North Star have investments in Norway

Mr. Pildegovics and North Star are protected Latvian investors. The first is covered as a Latvian national pursuant to Article I(3)(a) of the BIT and the second as a Latvian

¹ Latvian Company Register, SIA North Star LTD., 17 October 2018, **C-1**.

² Agreement between the Government of the Kingdom of Norway and the Government of the Republic of Latvia on the Mutual Promotion and Protection of Investments, 1 December 1992, **CL-1**.

³ Notice of Dispute from "Arctic Fishing" and SIA North Star to the Kingdom of Norway, 27 February 2017, **C-2**.

⁴ Treaty between Norway, The United States of America, Denmark, France, Italy, Japan, the Netherlands, Great Britain and Ireland and the British overseas Dominions and Sweden concerning Spitsbergen (**The Svalbard Treaty**), 9 February 1920, **CL-2**, Article 2; Council Regulation (EU) 2019/124 of 30 January 2019 fixing for 2019 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, 30 January 2019, **CL-3**; Council Regulation (EU), No. 2018/120, 23 January 2018, fixing for 2018 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, **CL-4**; Council Regulation (EU), No. 2017/127, 20 January 2017 fixing for 2017 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, **CL-5**; Council Regulation (EU), No. 2016/72, 22 January 2016, fixing for 2016 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, **CL-6**; Council Regulation (EU), No. 2015/104, 19 January 2015, fixing for 2015 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union vessels, in certain non-Union waters, **CL-7**; Council Regulation (EU), 43/2014, 20 January 2014, fixing for 2014 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, to Union vessels, in certain non-Union waters, **CL-8**.

company pursuant to Article I(3)(b) of the BIT. Mr. Pildegovics and North Star also have protected investments in the territory of Norway pursuant to Article I(1) of the BIT. Article I(4) of the BIT defines the territory of Norway, which includes both its continental shelf and territorial sea.

Since at least 2014, Mr. Pildegovics and North Star have invested significant assets in the territory of Norway, which constitute investments under Article I(1) of the BIT, jointly and separately. Indeed the definition of an investment in the BIT is an open one, which refers to “*every kind of asset.*” The investment includes: a) a joint venture to establish an enterprise in Norway operating at all levels of snow crab harvesting and processing; b) a fleet of vessels; c) valid licenses to harvest snow crabs; d) a shareholding in a Norwegian company, Sea & Coast AS (*Sea & Coast*) acting as Norwegian agent for the vessels; and e) strategic contracts with Norwegian company Seagourmet Norway AS⁵ (*Seagourmet*). Together, these elements of the investment have contributed to the development of Norway, creating jobs in Baatsfjord where North Star’s snow crab harvest was being offloaded and transformed, on the basis of the strategic alliance with Seagourmet.

a) Joint venture to establish an enterprise operating at all levels of snow crab harvesting and processing

As of 2010, Mr. Pildegovics established with Mr. Kirill Levanidov (a US national) a joint venture in Norway with operations at all levels of the snow crab harvesting and transformation chain. Mr. Pildegovics and Mr. Levanidov are cousins and invested jointly in this venture. Their agreement was to act strategically together and coordinate their investments. Mr. Pildegovics (whether directly or through North Star) invested approximately EUR 12 million for the purchase of vessels and related investments, acquired a shareholding in a Norwegian company, Sea & Coast, to act as agent for the vessels in Norway (as well as for vessels of other companies) and obtained valid snow crab harvesting licenses. Mr. Levanidov became the majority shareholder of Seagourmet, a Norwegian company in Baatsfjord, which established in 2014 a snow crab processing plant. North Star and Seagourmet concluded long term sales contracts for the sale of crabs and North Star became the official supplier of Seagourmet. All strategic decisions for the joint venture were taken jointly by Mr. Pildegovics and Mr. Levanidov.

Mr. Pildegovics’ interest in the joint venture is clearly an “*asset*” invested in Norway, as required by Article 1(1) of the BIT and thus a protected investment. For example, it can be described as “*claims to any performance under contract having an economic value*”, one of the examples of a protected investment listed in Article 1(1)(III) of the BIT.

⁵ Norwegian Corporate Registry, Seagourmet Norway, 2019, C-3.

b) North Star's fleet is an investment in the territory of Norway

Between 2014 and 2016, the Claimants invested about EUR 12 million in a fleet of six vessels to harvest and deliver snow crabs in Norway. This fleet did harvest and deliver snow crabs in Norway over that period. This fleet, related repairs, and gear constitute assets invested in the territory of Norway on the basis of Article I(1)(I) of the BIT, which lists the following as assets within the definition of that article: “*movable ... property and any other property rights*”.

c) North Star's snow crab licenses are investments in the territory of Norway

Since 2014, North Star has held a number of licenses⁶ to harvest snow crabs in Norway. Between 2014 and 2016, these licenses were issued by the Republic of Latvia in respect of international waters in the NEAFC Convention areas. Specifically, these licenses allowed North Star to harvest snow crabs in the Loophole in the Barents Sea, an area overlapping with the Norwegian continental shelf and where Norway exercises its sovereignty. As of 2017, North Star's licenses have been in the Svalbard zone, off the Archipelago of Svalbard. These licenses were also issued by the Republic of Latvia, on the basis of an EU Regulation, which itself states that the rights therein granted derive from the 1920 Svalbard Treaty.⁷

⁶ Fishing Licence for Saldus, NEAFC, 1 January 2015, **C-4**; Fishing Licence for Saldus, NEAFC, 1 January 2016, **C-5**; Fishing Licence for Saldus, Svalbard, 1 November 2016, **C-6**; Fishing Licence for Saldus, NEAFC (Unregulated), 1 January 2017, **C-7**; Fishing Licence for Saldus, Svalbard, 1 January 2017, **C-8**; Fishing Licence for Saldus, Svalbard, 1 January 2018, **C-9**; Fishing Licence for Saldus, NEAFC (Unregulated), 1 January 2018, **C-10**; Fishing Licence for Senator, NEAFC, 1 January 2015, **C-11**; Fishing Licence for Senator, NEAFC, 1 January 2016, **C-12**; Fishing Licence for Senator, Svalbard, 1 November 2016, **C-13**; Fishing Licence for Senator, NEAFC (Unregulated), 1 January 2017, **C-14**; Fishing Licence for Senator, Svalbard, 1 January 2017, **C-15**; Fishing Licence for Senator, NEAFC (Unregulated), 1 January 2018, **C-16**; Fishing Licence for Senator, Svalbard, 1 January 2018, **C-17**; Fishing Licence for Solveiga, NEAFC, 20 January 2015, **C-18**; Fishing Licence for Solveiga, NEAFC, 1 January 2016, **C-19**; Fishing Licence for Solveiga, Svalbard, 1 November 2016, **C-20**; Fishing Licence for Solveiga, NEAFC (Unregulated), 1 January 2017, **C-21**; Fishing Licence for Solveiga, Svalbard, 1 January 2017, **C-22**; Fishing Licence for Solvita, NEAFC and NAFO, 1 July 2014, **C-23**; Fishing Licence for Solvita, NEAFC, 1 January 2015, **C-24**; Fishing Licence for Solvita, NEAFC, 1 January 2016, **C-25**; Fishing Licence for Solvita, Svalbard, 1 November 2016, **C-26**; Fishing Licence for Solvita, Svalbard, 1 January 2017, **C-27**; Fishing Licence for Solvita, NEAFC (Unregulated), 1 January 2017, **C-28**; Fishing Licence for Solvita, NEAFC (Unregulated), 1 January 2018, **C-29**; Fishing Licence for Solvita, Svalbard, 1 January 2018, **C-30**.

⁷ The Svalbard Treaty, 9 February 1920, **CL-2**, Article 2; Council Regulation (EU), No. 2018/120, 23 January 2018, fixing for 2018 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, **CL-4**, para. 37; Council Regulation (EU), No. 2017/127, 20 January 2017 fixing for 2017 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, **CL-5**, para. 35; Council Regulation (EU) 2019/124 of 30 January 2019 fixing for 2019 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, 30 January 2019, **CL-3**, para. 42.

After the First World War, the Svalbard Treaty gave Norway title over the Barents Sea archipelago, while at the same time giving to all other signatories of the treaty,⁸ which includes Latvia, non-discriminatory access to resources of the archipelago,⁹ including its marine resources (and mineral rights). Norwegian legislation regulating the issuance of snow crab licenses states that, in case of inconsistency between Norwegian law and Norway's international agreements or obligations, the latter shall prevail.¹⁰ The Svalbard Treaty's non-discriminatory obligations apply to the entire continental shelf, including the extended continental shelf as well as to the 200-mile Fisheries Protection Zone established by Norway around the Archipelago. Norway's obligations thus apply in respect of the entire continental shelf and its superjacent waters.

The licenses, which are clearly assets invested in the territory of Norway, are covered investments pursuant to Article I(1) of the BIT.

d) Ownership of Norwegian Company Sea & Coast

As part of the larger investment, Mr. Pildegovics became the 100% owner of a Norwegian company, Sea & Coast, in November 2015. Between 2014-2017, the company had an annual turnover of approximately EUR 1-2 million.¹¹ The company acted as local ship agent and provided onshore assistance and services for crabbers in Baatsfjord (East Finnmark, Norway), the same town where Seagourmet's factory is established. Services were provided to vessels of North Star as well as those of Arctic Fishing (a Lithuanian company) and to a group of Russian companies operating in the NEAFC fishing area. Mr. Pildegovics' shareholding in this company is a protected investment pursuant to Article 1(II) of the BIT, which includes "[s]hares, debentures or any other forms of participation in companies" within the definition.

⁸ Svalbard treaty's original signatories: Denmark, France, Italy, Japan, the Netherlands, Norway, the United States of America, the United Kingdom, including the dominions of Australia, Canada, India, New Zealand and Africa; Svalbard treaty's other parties: Afghanistan, Albania, Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Chile, China, Czech Republic, Dominican Republic, Egypt, Estonia, Finland, Germany, Greece, Hungary, Iceland, India, Ireland, Latvia, Lithuania, Monaco, New Zealand, North Korea, Poland, Portugal, Romania, Russian Federation, Saudi Arabia, Slovakia, South Africa, South Korea, Spain, Sweden, Switzerland, Venezuela.

⁹ The Svalbard Treaty, 9 February 1920, **CL-2**, Article 2 ("*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.*").

¹⁰ Act relating to management of wild living marine resources (*The Marine Living Resources Act*), 6 June 2008, **CL-9**, Section 6.

¹¹ See AS Sea & Coast Annual Report, 2014, **C-31**, p.2 (approximately 10.0 million NK i.e. 1.0 million euros); AS Sea & Coast Annual Report, 2015, **C-32**, p. 2 (approximately 19.3 million NK i.e. 1.9 million euros); AS Sea & Coast Annual Report, 2016, **C-33**, p. 2 (approximately 18.5 million NK i.e. 1.9 million euros); AS Sea and Coast Annual Report, 2017, **C-34**, p. 2 (approximately 3.1 million NK i.e. 0.3 million euros). See also Norwegian Commercial Registry, Sea & Coast AS, 11 November 2015, **C-35** (showing Mr. Pildegovics as "chairman" of the company).

e) **North Star's contracts with Seagourmet are an investment in the territory of Norway**

Starting as early as 2010, the owners of North Star and Seagourmet, Mssrs Pildegovics and Levanidov, established a strategic alliance whereby North Star would bring its snow crab harvest to Seagourmet's transformation plant in Baatsfjord, Norway. This strategic alliance is demonstrated by several contracts and correspondence between the owners. North Star's contractual relationship with Seagourmet is therefore also a "*claim... to any performance under contract having an economic value*" (i.e. the right that Seagourmet buy its snow crab harvested in Norway and transform it there), which is one of the examples of an "*investment*" contained in Article I(1)(III) of the BIT.

2) **Norway has, in violation of international law, been conducting a harassment campaign against North Star and other EU investors**

The government of Norway has since at least July 2016, and possibly as early as July 2015, been acting arbitrarily and in a discriminatory fashion against EU investors (including Latvian investors) with valid snow crab harvesting licenses and other related investments in the territory of Norway, ultimately destroying the value of their investments.

Between at least 2014 and 2016, Norway recognized the validity of snow crab harvesting licenses issued by EU Member States with respect to the Loophole. For example, on 14 July 2016, the Lithuanian vessel "Juros vilkas" obtained permission from Norwegian state authorities to unload a snow crab harvest at the Norwegian port of Baatsfjord. The permission indicated that the snow crab had been caught legally in accordance with permit conditions.¹²

On 15 July 2016, however, the "Juros vilkas" was arrested by the Norwegian coast guard in Baatsfjord, despite its valid snow crab license issued by EU authorities which had been accepted the previous day by Norwegian authorities.¹³

In September 2016, North Star's vessel, "The Senator" was given a fine by the Norwegian coast guard despite its valid snow crab license.¹⁴

This arbitrary conduct, violating the legitimate expectations of North Star and Mr. Pildegovics that they could harvest snow crabs in the Loophole and process such crabs in Norway, is based on a diplomatic understanding between Norway and the Russian

¹² Notice of Dispute from "Arctic Fishing" and SIA North Star to the Kingdom of Norway, 27 February 2017, C-2, p. 3.

¹³ The Treaty of Svalbard, 9 February 1920, CL-2, Article 2 ("*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.*").

¹⁴ Notice of Dispute from "Arctic Fishing" and SIA North Star to the Kingdom of Norway, 27 February 2017, C-2.

Federation of 15 July 2015, which overturns decades of Norwegian practice, and was adopted in bad faith to exclude EU vessels from the Loophole.

On 16 January 2017, “The Senator” was again arrested by the Norwegian coast guard, despite its valid snow crab license, this time in respect of the Svalbard zone.

In January 2017, Norway’s Minister of Fisheries, Per Sandberg, declared, in respect of EU fishing vessels: “we will not give them a single crab.”¹⁵ This statement, in violation of Norway’s obligations under the Svalbard Treaty, also shows Norway’s discriminatory intent both against EU (and Latvian) investors and in favour of both Norwegian and Russian investors in the same area. Norway’s arbitrary behavior was further shown when a 500-ton quota of snow crabs was offered to EU vessels later that year,¹⁶ a quota so small that it could not be considered a serious offer. The quota was also proposed in exchange for other EU fishing quotas, in violation of Norway’s non-discriminatory obligations under the Svalbard Treaty.

North Star has been facing court proceedings in Norway since the arrest of “The Senator” in January 2017, which culminated in a verdict adverse to North Star rendered by the Supreme Court on 14 February 2019.¹⁷ In those proceedings, the captain of “The Senator” faced criminal prosecution, as did North Star, which also faced forfeiture of property. The judgments of the East Finnmark District Court of 22 June 2017, of the Court of Appeal of 7 February 2018, and of the Supreme Court of 14 February 2019, including the related proceedings, are arbitrary and discriminatory and also constitute a denial of justice, in violation of both customary international law and of the BIT.

The judgments are fundamentally flawed, and reflect an intention of finding against North Star in any way possible. The judgments conclude that the fishing licenses are illegal under Norwegian law, at times concluding this is because the Svalbard Treaty’s non-discrimination obligation would not apply beyond the territorial sea,¹⁸ and at times concluding that this issue is one for the civil courts.¹⁹ The Supreme Court also announced that it would separate the case so as to avoid hearing arguments concerning the Svalbard Treaty,²⁰ but then spent a significant part of its judgment explaining how the Svalbard Treaty did not apply to the case,²¹ meaning that the Supreme Court had pre-judged the issue and was intent on finding against North Star in any way possible.

¹⁵ A. Staalesen, “Norway take tough line against EU in Svalbard waters,” *The Barents Observer*, 25 January 2017, **C-36**, p.2.

¹⁶ N. Ramsden, “Norway unlikely to fulfill 4,000t snow crab quota,” *Undercurrent News*, 22 June 2017, **C-37**.

¹⁷ *Rafael Uzakov and SIA North Star LTD v. The Public Prosecuting Authority*, Supreme Court of Norway, Judgment, 14 February 2019, **C-38**.

¹⁸ *The Public Prosecuting Authority v. Rafael Uzakov and SIA North Star LTD*, East Finnmark District Court, Judgment, 22 June 2017, **C-39**, p. 12.

¹⁹ *Rafael Uzakov and SIA North Star LTD v. The Public Prosecuting Authority*, Supreme Court of Norway, Judgment, 14 February 2019, **C-38**, para. 80.

²⁰ *Rafael Uzakov and SIA North Star LTD v. The Public Prosecuting Authority*, Supreme Court of Norway, Order, 4 June 2018, **C-40**.

²¹ *Rafael Uzakov and SIA North Star LTD v. The Public Prosecuting Authority*, Supreme Court of Norway, Judgment, 14 February 2019, **C-38**, paras. 64-66.

The various judgments also show that Norwegian courts have a difficult time reconciling their intent to find against EU (and Latvian) investors in any case that involves the Svalbard Treaty, and the requirement that judgments not be arbitrary, discriminatory or constitute a denial of justice against foreigners. For example, it is recognized in the District Court judgement, that Norway's practice of allowing only a small number of catches of snow crabs, allegedly for conservation purposes, is discriminatory and favours in practice Norwegian fishermen. The judgment states:²²

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. The 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 Soloy, 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.

[emphasis added]

While the District Court later recognized that such a situation could put Norway in violation of its obligations under the Svalbard Treaty,²³ it ultimately concluded that it did not since it took the position the treaty's non-discrimination obligations do not apply beyond Norway's territorial sea.²⁴

The Court of Appeal, on the other hand, rendered a contradictory and arbitrary judgment, which reversed the District Court's finding of fact on the existence of discrimination in favour of Norwegian citizens. Instead, the Court of Appeal held there was no evidence of intentional discrimination in favour of Norwegian fishermen. Nevertheless, the Court of Appeal did recognize that Norway's application of the snow

²² *The Public Prosecuting Authority v. Rafael Uzakov and SIA North Star LTD*, East Finnmark District Court, Judgment, 22 June 2017, C-39, p. 8.

²³ *Ibid.*

²⁴ *Id.*, p. 10.

crab regulation was, in fact, discriminatory in favour of both Norwegian and Russian vessels.²⁵

*In connection with the case, the Ministry has stated that dispensations for snow crab catching at present **have only been granted to vessels owned by Norwegian citizens, with the exception of five Russian vessels** that caught snow crabs in 2016 pursuant to a bilateral agreement between Norway and Russia. The total catch has been set at a maximum of 4 000 tonnes for both 2017 and 2018. Reference is made to the Directorate of Fisheries's letter and the Ministry of Trade, Industry and Fisheries' email of 12 January 2018, both to the lawyer Mr Ostgard. **There is no evidence to support the assertion that the prohibition was introduced in order to favour Norwegian citizens by means of a dispensation scheme.***

[emphasis added]

It is unclear how the Court of Appeal could arrive at the conclusion that there is no evidence of intentional discrimination in favour of Norwegian fishermen when, as a matter of fact, it found that there actually is more favourable treatment of Norwegian (and Russian) fishermen in comparison to EU, including Latvian, fishermen and investors. This conclusion is also highly suspect in light of the January 2017 public declaration of Per Sandberg, Norway's Minister of Fisheries, stating that, in respect of EU fishing vessels, "we will not give them a single crab."²⁶

The Norwegian Supreme Court decision of 14 February 2019, and the proceedings leading thereto, also evidence an intent to refuse to apply the Svalbard Treaty's non-discrimination provisions in favour of EU (and Latvian) investors. The proceedings demonstrate manifest arbitrariness towards North Star and also constitute a denial of justice.

First, on 4 June 2018, the Supreme Court rendered a procedural decision that the case would not be based on issues related to the Svalbard Treaty, holding:²⁷

The discussions in the Supreme Court are delimited to the questions about the snow crab being a sedentary species so that Norway has an exclusive right to exploit it (cf. Article 77 of the Convention on the Law of the Sea) and on whether the capture of snow crabs on the Norwegian continental shelf without the vessel holding a valid exemption from the prohibition, is punishable irrespective or whether the Svalbard Treaty applies in the area in question, regardless of whether the regulations prohibiting catch of snow crab on the Norwegian continental shelf without the vessel holding a valid exemption from the prohibition is punishable irrespective of whether the Svalbard Treaty applies in

²⁵ *Rafael Uzakov and SIA North Star LTD v. The Public Prosecuting Authority*, East Finnmark Court of Appeal, Judgement, 7 February 2018, C-41, p. 17.

²⁶ A. Staalesen, "Norway take tough line against EU in Svalbard waters," *The Barents Observer*, 25 January 2017, C-36, p.2.

²⁷ *Rafael Uzakov and SIA North Star LTD v. The Public Prosecuting Authority*, Supreme Court of Norway, Order, 4 June 2018, C-40.

the area in question, and regardless of whether the regulations prohibiting the catch of snow crab, para. 2, or its practice, is contrary to the principle of equal treatment. The resolution of the issue of the Svalbard Treaty's geographical scope stays pending until there is a need to decide on it.

Nevertheless, in its judgment, the Supreme Court was confronted with provisions of Norwegian law that provide that Norway's international law obligations (such as the Svalbard Treaty) override inconsistent provisions of Norwegian law (such as the provisions on which were based the fines against North Star and the captain of "The Senator").²⁸ In discussing these provisions, the Supreme Court held that the better way to adjudicate such an issue was to bring it in a civil claim.²⁹ This is a manifest refusal to judge an issue before it and as such, in and of itself, constitutes a denial of justice. Another form of denial of justice stems from the manifest arbitrariness of the decision based on a pre-judgment against North Star and in favour of the prosecution. The procedural decision dividing the case of 4 June 2018 shows that the Supreme Court wished to avoid the issue of the Svalbard Treaty. At the same time, while ordering it would not address the issue, the Supreme Court nevertheless did so to North Star's detriment by finding against it without fully examining its merits. One of the justifications for avoiding the issue was that Norway cannot abuse its rights by taking an incorrect position on the interpretation of the Svalbard Treaty³⁰ (which, independently of the position under Norwegian law, is certainly incorrect as a matter of international law where even the most well-established rights can be abused). These contrivances by the Supreme Court in its approach to the case show that North Star never had any chance to a fair hearing on the issue of the Svalbard Treaty.

In the course of the proceedings, the Supreme Court also allowed a government lawyer, from the Prime Minister's office, to act as deputy prosecutor, in order to assist the prosecutor on matters of international law. The Supreme Court allowed this lawyer to act over North Star's objections to the effect the deputy prosecutor was not independent, as required by Norwegian law.³¹ One of the reasons given in the Supreme Court's decision holding there was nothing establishing the lawyer's lack of independence was that the Norwegian government had no involvement in this matter in respect of its

²⁸ Act relating to management of wild living marine resources (*The Marine Living Resources Act*), 6 June 2008, **CL-9**, Section 6; *Rafael Uzakov and SIA North Star LTD v. The Public Prosecuting Authority*, Supreme Court of Norway, Judgment, 14 February 2019, **C-38**, paras. 77 ff.

²⁹ *Rafael Uzakov and SIA North Star LTD v. The Public Prosecuting Authority*, Supreme Court of Norway, Judgment, 14 February 2019, **C-38**, para. 80.

³⁰ *Ibid.*, para. 73.

³¹ *Rafael Uzakov and SIA North Star LTD v. The Public Prosecuting Authority*, Supreme Court of Norway, Order, 9 January 2019, **C-42**, para. 18 ("The prosecutor's jurisdiction is more closely regulated in the Criminal Procedure Act, g 60. The first paragraph reads as follows: "An official belonging to the prosecuting authority or acting on behalf of it is incompetent when he has relations with the case as denied in the Court Act, para. 106, no. 1-5. He is also incompetent when other special circumstances exist that are likely to weaken confidence in his impartiality. In particular, this applies when the incompetence claim is raised by a party."").

international law obligations.³² This is incorrect as North Star had already filed a notice of dispute under the BIT on 27 February 2017.³³ Moreover, the Supreme Court's observation that there cannot be any conflict because the attorney's involvement "is limited purely to legal issues"³⁴ is hardly reassuring considering the central issue before the Supreme Court (which it refused to decide and avoided through various contrivances) should have been the scope of application of the Svalbard Treaty. This is certainly a legal issue. In these circumstances, the Supreme Court's decision allowing a government attorney to assist the prosecution on international law issues even though North Star had already issued a notice of dispute under the BIT can only be considered a breach of Latvian investors' right of effective access to Norwegian courts, as further explained below.

The only conclusion from the above is that Norwegian courts, as well as the Norwegian administration and government, will always find a way to frustrate the rights of foreign investors, notably of EU (including Latvian) investors, over the Svalbard continental shelf, despite the obligations found in the Svalbard Treaty and in international law generally.

This is further reflected by correspondence between North Star and the Norwegian Directorate of Fisheries of May 2018. In its letter of 17 May 2018, North Star inquires about the possibility of obtaining a license directly from the government of Norway, despite North Star's existing licenses.³⁵ The letter also mentions North Star's willingness to respect relevant requirements, that is, to report catches to Norway's Institute of Marine Research and to receive observers from the Institute on any vessel. The Directorate of Fisheries' response of 25 May 2018 shows Norway's contradictory and bad faith posture:³⁶

Reference is made to your letter of 17 May 2018 regarding harvesting snow crab on the Norwegian continental shelf.

According to the regulations of 19 December 2014 relating to a prohibition against harvesting snow crabs, it is prohibited to harvest snow crab on the Norwegian continental shelf unless an exemption has been granted to foreign vessels.

*Notwithstanding the prohibition, a limited number of Norwegian vessels have been granted permission to harvest snow crab in accordance with section 2 of the regulations. **No such exemption has been granted to foreign vessels.***

³² *Ibid.*, para. 25 ("according to the information, the Attorney General does not have any civil law assignments related to the case to be dealt with by the Supreme Court in Grand Chamber, nor has the office.").

³³ Notice of Dispute from "Arctic Fishing" and SIA North Star to the Kingdom of Norway, 27 February 2017, C-2.

³⁴ *Rafael Uzakov and SIA North Star LTD v. The Public Prosecuting Authority*, Supreme Court of Norway, Order, 9 January 2019, C-42, para. 29.

³⁵ Letter from North Star to the Norwegian Directorate of Fisheries, 17 May 2018, C-43.

³⁶ Letter from the Norwegian Directorate of Fisheries to North Star, 25 May 2018, C-44.

If vessels from EU member states shall be allowed to harvest snow crab on the Norwegian continental shelf, this must be based on a bilateral agreement between Norway and the EU. Since no such agreement is in place, vessels flying the flag of EU member state cannot be granted permission to harvest snow crab on the Norwegian continental shelf.

[emphasis added]

It is unclear how Norway's Directorate of Fisheries can state that no foreign fishing vessels have been granted the right to harvest snow crabs while the Norwegian Court of Appeal confirms that five Russian fishing vessels have received such an authorization. The Norwegian Directorate of Fisheries is persisting in its stance, as demonstrated by its latest statement to North Star, that: "*Harvesting of snow crab on the Norwegian continental shelf is prohibited unless an exemption has been granted. No such exemption has been granted to any foreign vessels.*"³⁷

3) Norway is in breach of several provisions of the BIT

Since at least 2016, Norway has acted arbitrarily and in a discriminatory fashion, in breach of the BIT, negatively affecting the investments of Claimants in the territory of Norway and effectively destroying these investments.

These acts have violated at least the following provisions of the BIT, the Claimants reserving their right to add additional violations of the BIT (including on the basis of more favourable treatment granted to investors of third states):

Article III

Promotion and Protection of Investments

Each Contracting Party shall promote and encourage in its territory investments of investors of the other Contracting Party and accept such investments in accordance with its laws and regulations and accord them equitable and reasonable treatment and protection. Such investments shall be subject to the laws and regulations of the Contracting Party in the territory of which the investments are made.

Article IV

Most Favoured Nation Treatment

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall be accorded treatment no less favourable than that accorded to investments made by investors of any third state.

Article VI

³⁷

Letter from the Norwegian Directorate of Fisheries to North Star, 9 October 2018, C-45.

Expropriation and Compensation

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party cannot be expropriated, nationalized or subjected to other measures having a similar effect (all such measures hereinafter referred to as “expropriation”) except when the following conditions are fulfilled:

- (I) The expropriation shall be done for the public interest and under domestic legal procedures;*
- (II) It shall not be discriminatory;*
- (III) It shall be done only against prompt, adequate and effective compensation.*

2. Such compensation shall amount to the market value of the investment immediately before the date of expropriation and shall be paid without delay. The compensation shall include interest, computed from the first day following the date of expropriation until the date of payment, at a rate based on LIBOR for the appropriate currency and corresponding period of time. The payment of such compensation shall be effectively realizable and freely transferable.

Fundamentally, Norway’s actions are contradictory, arbitrary, and discriminatory, and manifestly so: they furthermore fail to respect Norway’s own domestic law. All branches of the government are acting in a manner that prevents Latvian and EU investors, such as North Star and Mr. Pildegovics, from harvesting snow crabs on the continental shelf of Norway, delivering snow crabs in Norway, and operating an investment at all levels of the snow crab harvesting and processing chain, even though Norwegian law requires Norway to allow such harvesting. Indeed, Norway allowed such activities between at least between 2013 and 2016. Then, Norway decided to grant Russian vessels more favourable treatment, while continuing its harassment campaign against North Star and other EU companies (such as the Lithuanian owners of the “Juris vilkas” vessel). The Norwegian judiciary is furthermore rendering inconsistent and manifestly arbitrary judicial decisions that amount to a denial of justice. Finally, the Directorate of Fisheries is giving EU investors, such as North Star, misleading responses regarding to whom snow crab licenses have been granted, in an apparent attempt to hide the fact that Norway is failing to uphold its obligations under both Norwegian law and international law (in particular under the Svalbard Treaty).

Article IV of the BIT also allows Latvian investors to benefit from the protection granted by Norway under the terms of other bilateral investment treaties it has concluded. Relevant provisions include:

Article 3 of the Norway-Russian Federation BIT (National Treatment):

Subject to paragraphs 1 and 2 of this Article [containing fair and equitable treatment and MFN obligations] each Contracting Party shall, unless other treatment is required by its legislation, accord in its territory to investments made by investors of the other Contracting

Party treatment no less favourable than that which it accords to investments of its own investors.

Article III(4) of the Norway-Romania BIT (umbrella clause):

Each contracting party shall observe all other obligations entered into with regard to investors of the other contracting party, their investments and profits.

Article 12 of the Peru-Norway BIT (more favourable agreements):

If, on the basis of the legislation of a Contracting Party or on the basis of an international agreement binding upon both Contracting Parties, investments of an investor of the other Contracting Party, is accorded treatment more favourable than that which is provided for in this Agreement, the more favourable treatment shall apply.

Article II(5) of the Romania-Norway BIT (effective access to court):

Each contracting party undertakes to provide effective means of asserting claims and enforcing rights with respect to investment agreements, investment authorizations and properties. Neither of the contracting parties shall impair the right of the investors of the other contracting party to have access to its courts of justice, administrative tribunals and agencies and all other bodies exercising adjudicatory authority.

Norway has breached the above-noted national treatment obligation by treating more favourably Norwegian investors than Mr. Pildegovics and North Star. Norway has breached the umbrella clause by failing to respect the obligations it entered into in the Svalbard Treaty for the benefit of Latvian nationals and companies. Norway has breached the more favourable agreements clause by failing to provide the benefit of the Svalbard Treaty and of the proper application of provisions of other relevant international agreements related to the harvesting of snow crabs by investors having an investment in Norway. Finally, the appointment of a deputy prosecutor who lacks independence in North Star's Supreme Court proceedings was a violation of Norway's obligation to provide Latvian investors an effective access to its courts.

4) North Star has suffered substantial damages

Norway's breaches of its obligations under the BIT have caused Claimants very substantial damages, including through lost profits for the years 2016, 2017, 2018 and 2019 and other impairments to the value of their investments. While Mr. Pildegovics and North Star will further quantify their damages, they currently evaluate that, for the period 2016-2021, such damages amount to at least EUR 388 million.

We are at your disposal to meet at your earliest convenience in order to discuss potential means to amicably settle this dispute in favour of Mr. Pildegovics and North Star.

Respectfully submitted,



Pierre-Olivier Savoie

Savoie Arbitration

63 rue Pierre Charron

75008 Paris

France

T : +33 1 84 25 79 85

M: +33 6 14 37 23 19

F : +33 1 84 08 08 93