

THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ICSID CASE NO. ARB/20/

**PETERIS PILDEGOVICS and SIA NORTH STAR**

CLAIMANTS

**V.**

**THE KINGDOM OF NORWAY**

RESPONDENT

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**REQUEST FOR ARBITRATION**

**18 MARCH 2020**

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Pursuant to Article 36 of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (the *Convention*), Rules 1 and 2 of the Rules of Procedure for the Institution of Conciliation and Arbitration Proceedings (*Institution Rules*), and 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*)<sup>1</sup>, Mr. Peteris Pildegovics and SIA North Star (together, *Claimants* or separately a *Claimant*), hereby respectfully request that the Secretary-General of the International Centre for Settlement of Investment Disputes (the *Centre*) register this arbitration against Respondent the Kingdom of Norway (*Norway*) concerning the claims stated herein.

## I. INTRODUCTION

1. This matter concerns Norway's discriminatory and arbitrary actions which wiped out Claimants' integrated investment in a snow crab fishing, transformation and sales enterprise in Norway. Claimants were part of a successful joint venture conducting such businesses between 2013 and 2016, with the approval and encouragement of Norwegian authorities. However, beginning in July 2015, and more particularly since January 2017, Norway has adopted a series of discriminatory, arbitrary and illegal actions, in violation of both Norwegian law and international law. These culminated in the arrest, on 16 January 2017, of one of Claimants' ships and in a judgment from the Supreme Court on 14 February 2019 concerning the arrest. Not only does that judgment constitute a denial of justice, but Norway's actions prevented Claimants from operating in the new and lucrative snow crab industry in Norway.
2. On the heels of the arrival of snow crabs in the Barents Sea at the turn of the twenty-first century, a substantial fishing industry developed, which involved vessels from the European Union, Norway and the Russian Federation.
3. Claimants are Latvian investors who have made substantial investments in Norway to participate in this new industry and profit from new fishing opportunities, a rare occurrence in the world of fisheries, where quotas are in general already distributed, making market entry difficult. The Claimants entered the Norwegian market notably

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<sup>1</sup> 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, 16 June 1992, **CL-1**.

through the acquisition of fishing vessels, fishing licences as well as the acquisition of a Norwegian company. Claimants were granted and used their licences over three years to harvest snow crabs in an area of the high seas known as the “Loophole” over which Norway exercises jurisdiction, alongside the Russian Federation, as coastal states. Claimants also obtained licenses to harvest snow crabs in areas of Norwegian jurisdiction, within 200 nautical miles off the archipelago of Svalbard. However, Norway prevented the use of such licenses. Claimants’ investments were also made through a partnership, in Norway, with investors in a Norwegian crab transformation factory, Seagourmet Norway AS (*Seagourmet*), based in Baatsfjord, a small town of about 2,200 inhabitants in the province of Finnmark, at the very north of continental Norway.

4. Claimants acquired fishing rights through licences issued by the Republic of Latvia. These licences were issued under two international fisheries agreements to which Norway is a party. The first set of licences, for fishing in the Loophole, were issued under the North-East Atlantic Fisheries Convention (*NEAFC*) regime. The second set of licenses were issued under the 1920 Treaty concerning the Status of Spitsbergen (Svalbard) (*Svalbard Treaty*) for harvesting crabs in an area within 200 nautical miles off the coasts of the archipelago of Svalbard.
5. Claimants’ investments were initially welcomed and acknowledged as legitimate by Norway. Norwegian dignitaries attended certain events in Baatsfjord such as the launch of Seagourmet’s factory, which, through the joint venture with Claimants, allowed for the creation of over 50 jobs in Baatsfjord. Furthermore, between 2014 and 2016, Norway conducted a large number of inspections of Claimants’ vessels, both at sea and in the Norwegian port of Baatsfjord, where the offloading of snow crabs was duly authorized pursuant to the NEAFC Convention. Then, starting in July 2015, Norway took a series of manifestly arbitrary and discriminatory actions against vessels flying EU flags (but not against those flying a Russian flag: a fact confirmed by Norwegian court decisions) which effectively dispossessed Claimants of their fishing rights, significantly hampered the partnership between Claimants and Seagourmet and its investors, and forced Claimants to discontinue their operations relating to snow crabs. The discriminatory intent of such actions was confirmed in January 2017 by Norway’s Minister of Fisheries, who stated that Norway will not give “*a single crab*” to European fishermen. In addition, the judgment of the Norwegian Supreme Court of 14 February

2019 upheld certain fines and criminal penalties against SIA North Star and one of its captains for allegedly fishing snow crabs in the fisheries protection zone around the Svalbard Archipelago. The judgment constitutes a denial of justice. The Supreme Court, in a manifestly arbitrary and discriminatory manner, refused to adjudicate certain of the defendants' defences. The Supreme Court patently did so because a consideration of these defences would have forced it to disavow the Norwegian government's position as regards the Svalbard Treaty (which position is contrary to international law and to the position of the other parties to the treaty, as further detailed below). Such a disavowal would have confirmed the Claimants' position on the merits of the claim, *i.e.* that Claimants have the right to harvest snow crabs in waters over which Norway asserts jurisdiction. At the same time, the proper application of the Svalbard Treaty would also have very important economic consequences for Norway. This includes the recognition that the resources of and around the Svalbard Archipelago must be shared with other treaty parties. Norway has historically strongly resisted such an interpretation because these resources not only include snow crabs, but also potentially vast oil reserves.<sup>2</sup>

6. Claimants submit that these actions by Norway violated its obligations under the BIT, thereby causing Claimants to sustain significant economic injury for which Norway is liable to make full reparation.

## **II. THE PARTIES**

### **A. THE CLAIMANTS**

#### **Mr. Peteris Pildegovics**

7. Mr. Peteris Pildegovics (*Mr. Pildegovics*) is a national of the Republic of Latvia.<sup>3</sup> The Republic of Latvia is a Contracting State to the ICSID Convention since 7 September 1997.<sup>4</sup> Mr. Pildegovics is not, and never was, a national of Norway, the Contracting State party to this dispute, which is party to the Convention since 15 September 1967.<sup>5</sup>

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<sup>2</sup> K. Bolongaro, "Oil lurks beneath EU-Norway snow crab clash," Politico Europe, 28 June 2017, C-45; G. Fouche, "Norway Supreme Court hears snow crab case with implication for oil," Reuters, 15 January 2019, C-46.

<sup>3</sup> Passport of Mr. Peteris Pildegovics, 23 February 2016, C-47.

<sup>4</sup> List of Contracting States and Other Signatories of the ICSID Convention, 12 April 2019, C-48.

<sup>5</sup> *Ibid.*

8. Mr. Pildegovics is the owner and operator of a fishing enterprise. He is the sole shareholder of SIA North Star, a Latvian shipowner. He is also the sole shareholder of Sea & Coast AS, a Norwegian company based in the town of Baatsfjord (East Finnmark, Norway), which acts notably as agent for local crab fishing crews.
9. As further detailed below, Mr. Pildegovics is a partner in a joint venture (or partnership) pertaining to the establishment and operation of a snow crab harvesting and processing business in Norway, which is one of the investments at issue in this case.

### **SIA North Star**

10. SIA North Star (*North Star*) is a limited liability company organized under the laws of the Republic of Latvia.<sup>6</sup> Its principal place of business is:

Jāņa Dikmaņa iela 4 - 35,  
LV-1013 Rīga  
Latvia

11. North Star owned and operated, between 2014 and 2017, four fishing vessels flying the Latvian flag: Saldus, Senator, Solveiga and Solvita.<sup>7</sup> North Star was during that time a leading player in the Norwegian snow crab fishing industry, until Norway's actions effectively brought the company's operations to a halt.
12. North Star has taken all necessary internal actions to authorize this Request for Arbitration. North Star's board has considered the matter and issued a resolution authorizing consent to arbitration and execution of the instruments necessary to make this request.<sup>8</sup>
13. Pursuant to Rule 18 of the Rules of Procedure for Arbitration Proceedings (*Arbitration Rules*), Claimants have appointed the undersigned counsel to represent and assist them

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<sup>6</sup> Latvian Company Register, SIA North Star LTD., 17 October 2018, C-1.

<sup>7</sup> North Star still owns the Senator, the Saldus and the Solvita. North Star has sold the Solveiga.

<sup>8</sup> North Star Board Resolution Authorizing Claim, 3 February 2020, C-49.

as agents, counsel and advocates in this matter, and specifically authorized them to file this Request for Arbitration.<sup>9</sup> Claimants' counsel are:

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14. For purposes of these proceedings, Claimants' addresses of record shall be deemed to be those of its counsel of record and all communications shall be served on them through counsel.

**B. THE RESPONDENT**

15. Norway is a sovereign state which is a party to the BIT since its entry into force on 1 December 1992 and a Contracting State to the Convention since 15 September 1967.
16. The following have been principal agents of contact within the Government of Norway concerning this matter:

Helge Seland, Director General  
Margrethe R. Norum, Senior Advisor  
Norwegian Ministry of Foreign Affairs  
Legal Affairs Department  
Section for EEA and Trade Law  
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0032 Oslo  
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<sup>9</sup> North Star Board Resolution Authorizing Claim, 3 February 2020, C-49; Consent Executed by Mr. Peteris Pildegovics, 3 February 2020, C-50.

### III. CONSENT TO THE JURISDICTION OF THE CENTRE

#### A. CLAIMANTS' CONSENT

17. Claimants have consented to the submission of this dispute to the jurisdiction of the Centre by filing this Request for Arbitration.

#### B. RESPONDENT'S CONSENT

18. Norway's written consent to the submission of this dispute to the jurisdiction of the Centre is provided through Article IX of the BIT. Both Latvia and Norway are parties to the Convention since 7 September 1997 and 15 September 1967 respectively. Furthermore, the BIT entered into force on 1 September 1992 and remains in force between Latvia and Norway.
19. Article IX of the BIT provides that an investor shall be entitled to submit a case to the Centre having regard to the applicable provisions of the Convention where the dispute is (a) between an "*investor*" of a contracting party and the other contracting party; (b) in relation to an "*investment*" of the former; (c) in the "*territory*" of the latter; (d) if the dispute continues to exist after a period of three months from its notification.

#### **Claimants are Latvian "investors" under the definition of the BIT**

20. Article I(3) of the BIT defines the term "*investor*" with regards to each contracting party either as "*a natural person having status as a national of that contracting party in accordance with its laws*"<sup>10</sup> or "*any legal person such as any corporation, company, firm, enterprise, organization or association incorporated or constituted under the law in force in the territory of that contracting party*".<sup>11</sup>

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<sup>10</sup> 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, 16 June 1992, CL-1, Article I(3)(A).

<sup>11</sup> *Ibid.*, Article I(3)(B).

21. Mr. Pildegovics is a natural person having status as a Latvian national,<sup>12</sup> and thus a Latvian investor pursuant to Article I(3)(A) BIT.
22. North Star is a legal person, namely a limited liability company incorporated under the law in force in the territory of Latvia.<sup>13</sup> North Star is a Latvian investor pursuant to Article I(3)(B) BIT.
23. This dispute is therefore between “investors” of a contracting party (Latvia) and the other contracting party (Norway) within the terms of Article IX BIT.

### **The dispute relates to “investments” of Claimants**

24. The term “investment” is broadly defined under Article I(1) BIT as “*every kind of asset invested in the territory of one contracting party in accordance with its laws and regulations by an investor of the other contracting party*”.<sup>14</sup>
25. The same Article provides that the term “investment” “*shall mean in particular, though not exclusively: movable and immovable property and any other property rights...; shares, debentures or any other forms of participation in companies; ...claims to any performance under contract having an economic value*” and “*business concessions conferred by law or under contract including concessions to search for, cultivate, extract and exploit natural resources*”.<sup>15</sup>
26. This dispute relates to several “investments” made by Claimants within the above definition. Together, these investments have contributed to the development of Norway, creating jobs in the town of Baatsfjord where North Star’s snow crab catches were being offloaded and transformed by North Star’s Norwegian strategic partner, Seagourmet AS (*Seagourmet*).<sup>16</sup>

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<sup>12</sup> Passport of Mr. Peteris Pildegovics, 23 February 2016, C-47.

<sup>13</sup> Latvian Company Register, SIA North Star LTD., 17 October 2018, C-1.

<sup>14</sup> 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, 16 June 1992, CL-1, Article I(1); emphasis added.

<sup>15</sup> *Ibid.*, Article I(1), paras. (I), (II), (III) and (V).

<sup>16</sup> Norwegian Corporate Registry, Seagourmet Norway, 2019, C-3.

(i) *Mr. Pildegovics' interest in a joint venture to develop and operate a snow crab harvesting and processing enterprise*

27. In 2013, Mr. Pildegovics concluded a joint venture agreement with Mr. Kirill Levanidov, a national of the United States<sup>17</sup> (**Mr. Levanidov**) following several years of discussion. Mr. Pildegovics and Mr. Levanidov are cousins.
28. The goal of this joint venture agreement is to jointly set up and operate a business enterprise spanning the harvest, transformation and sale of snow crabs in Norway. To that end, Mr. Pildegovics and Mr. Levanidov agreed to cooperate with each other, to make coordinated strategic investments and to share economic risks and benefits flowing from their joint enterprise.
29. As part of this joint venture agreement, directly or indirectly through North Star, Mr. Pildegovics invested at least EUR 10 million for: the purchase, repair, equipment and maintenance of a fleet of vessels fitted to harvest snow crabs; the acquisition of shares in a Norwegian company, Sea & Coast AS<sup>18</sup> (**Sea & Coast**), to act as agent for North Star's vessels in Norway; and, the acquisition of valid licences authorizing North Star to harvest snow crab in the Barents Sea.
30. For his part, Mr. Levanidov, directly or indirectly through Seagourmet, a Norwegian company in which he acquired a majority shareholding, invested approximately EUR 12 million to build a state-of-the-art snow crab processing facility in the town of Baatsfjord. This facility was launched in April 2015 in the presence of Norwegian high officials.<sup>19</sup>
31. Mr. Pildegovics and Mr. Levanidov negotiated agreements regarding the supply of snow crabs by North Star to Seagourmet's Baatsfjord facility.<sup>20</sup> These agreements were designed to allow each party to the joint venture to derive economic benefits from the parties' coordinated investments. While Claimants would benefit from a consistent source of demand for their snow crab harvests through Seagourmet, Seagourmet would

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<sup>17</sup> Passport of Mr. Kirill Levanidov, 29 November 2012, **C-51**.

<sup>18</sup> Norwegian Commercial Registry, Sea & Coast AS, 11 November 2015, **C-35**.

<sup>19</sup> Seagourmet presentation, 2015, **C-52**.

<sup>20</sup> Contract between SIA North Star and Seagourmet for 2017, 29 December 2016, **C-53**; Contract between SIA North Star and Seagourmet for 2018, 27 December 2017, **C-54**.

secure access to a regular source of supply for its processing plant through North Star. The integration between the parties through the joint venture agreement offered a key competitive advantage to each of the parties.

32. The performance of both parties' coordinated investments was critical to each party's economic success. For this reason, all strategic decisions impacting the joint venture were (and continue to be) taken jointly by Mr. Pildegovics and Mr. Levanidov.
33. The joint venture agreement between Mr. Pildegovics and Mr. Levanidov is a contract under Norwegian law. This contract generates rights and obligations for both parties, including both a duty to cooperate and a duty of loyalty.
34. As a party to the joint venture, Mr. Pildegovics holds claims to performance by Mr. Levanidov, in essence to build and maintain capacity to process snow crabs at the port of Baatsfjord and thereby to provide a ready source of demand for North Star's harvests.
35. Mr. Pildegovics' claims to performance have economic value for Claimants since their economic success is entirely dependent upon their ability to find demand for their supplies of snow crabs. This demand is assured by the joint venture agreement with Mr. Levanidov.
36. Since Mr. Pildegovics' interest in the joint venture agreement with Mr. Levanidov includes "*claims to any performance under contract having an economic value*"<sup>21</sup>, this interest constitutes an "*investment*" pursuant to Article I(1) BIT.

(ii) *Mr. Pildegovics's shares in a Norwegian company, Sea & Coast AS*

37. Mr. Pildegovics acquired 100% of the shares of a Norwegian company, Sea & Coast, in November 2015. Sea & Coast is based in Baatsfjord.

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<sup>21</sup> 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, 16 June 1992, CL-1, Article I(1), para. (III).

38. Between 2014 and 2017, Sea & Coast acted as local ship agent and provided onshore assistance and services for local crab fishing crews. Services were provided to vessels of North Star as well as those of other fishing companies operating from Baatsfjord.
39. Mr. Pildegovics' shares in Sea & Coast are an "*investment*" pursuant to Article I(1) BIT, which defines the term as including "*shares, debentures or any other forms of participation in companies*".<sup>22</sup>

(iii) *North Star's fleet of fishing vessels*

40. Between April 2014 and 2016, Claimants made an investment of approximately EUR 10 million that went into the purchase, repair, equipment and maintenance of a fleet of six vessels for the purpose of harvesting snow crabs: Saldus<sup>23</sup>, Senator (formerly Otto)<sup>24</sup>, Solveiga<sup>25</sup>, Solvita (formerly Ivangorod)<sup>26</sup>, Sokol<sup>27</sup> and Solyaris<sup>28</sup>.
41. Four of these vessels (Saldus, Senator, Solveiga and Solvita) were delivered to and operated by North Star to harvest and deliver snow crabs in Norway. Between February 2015 and September 2016, nearly 5,000 tons of snow crabs were caught by these vessels. The vast majority of these catches were unloaded in Norway, primarily to Seagourmet at the port of Baatsfjord.
42. The remaining two vessels, Sokol and Solyaris, were purchased by North Star but were not delivered, as North Star was forced to cancel the related vessel purchase agreements in 2017<sup>29</sup> owing to Norway's actions (*infra*, para. 98).

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<sup>22</sup> *Ibid.*, Article I(1), para. (II); emphasis added.

<sup>23</sup> Vessel purchase and sale contract of Saldus, 20 November 2014, **C-55**; Certificate of ownership of Saldus, 5 December 2014, **C-56**.

<sup>24</sup> Vessel purchase and sale contract of Senator, 25 August 2014, **C-57**; Certificate of ownership of Senator, 12 September 2014, **C-58**.

<sup>25</sup> Vessel purchase and sale contract of Solveiga, 22 December 2014, **C-59**; Certificate of ownership of Solveiga, 5 January 2015, **C-60**.

<sup>26</sup> Vessel purchase and sale contract of Solvita, 15 April 2014, **C-61**; Certificate of ownership of Solvita, 4 June 2014, **C-62**.

<sup>27</sup> Confirmation of purchase of Sokol and Solyaris, 11 April 2016, **C-63**.

<sup>28</sup> *Ibid.*

<sup>29</sup> Fines imposed on SIA North Star, Invoice No. 85, 6 May 2017, **C-64**.

43. The four ships owned by North Star, including their equipment and fishing gear, are “*movable property*”<sup>30</sup> and therefore constitute investments under Article I(1) BIT.
44. North Star’s contracts for the purchase of Sokol and Solyaris included “*claims to any performance under contract having an economic value*”<sup>31</sup>, notably claims for the delivery of the two vessels to North Star. These contracts thus also fall within the definition of “*investment*” under Article I(1) BIT.

(iv) *North Star’s snow crab harvesting rights*

45. Since 2014, North Star has legally acquired licences granting it the right to harvest snow crabs in Norway or in territories over which Norway exercises its jurisdiction.
46. As of 2014, these licences were issued by the Republic of Latvia in respect of waters regulated under NEAFC (*infra*, paras. 181-208).<sup>32</sup> The licences specifically authorized North Star to harvest snow crabs in the Loophole area of the Barents Sea, an area of high seas superjacent to the extended continental shelf of Norway.
47. Since 2017, North Star has also acquired licences authorizing it to harvest snow crabs in waters off the Svalbard archipelago, a territory that is under Norwegian sovereignty but subject to important stipulations of the Svalbard Treaty, which include rights of equal access by nationals of contracting parties to the Treaty (*infra*, paras. 207-236).<sup>33</sup>

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<sup>30</sup> 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, 16 June 1992, **CL-1**, Article I(1), para. (I).

<sup>31</sup> *Ibid.*, Article I(1), para. (III).

<sup>32</sup> Fishing Licence for Saldus, NEAFC, 1 January 2015, **C-4**; Fishing Licence for Saldus, NEAFC, 1 January 2016, **C-5**; Fishing Licence for Saldus, NEAFC (Unregulated), 1 January 2017, **C-7**; 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, NEAFC (Unregulated), 1 January 2017, **C-14**; Fishing Licence for Senator, NEAFC (Unregulated), 1 January 2018, **C-16**; Fishing Licence for Solveiga, NEAFC, 20 January 2015, **C-18**; Fishing Licence for Solveiga, NEAFC, 1 January 2016, **C-19**; Fishing Licence for Solveiga, NEAFC (Unregulated), 1 January 2017, **C-21**; 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, NEAFC (Unregulated), 1 January 2017, **C-28**; Fishing Licence for Solvita, NEAFC (Unregulated), 1 January 2018, **C-29**.

<sup>33</sup> Fishing Licence for Saldus, Svalbard, 1 November 2016, **C-6**; Fishing Licence for Saldus, Svalbard, 1 January 2017, **C-8**; Fishing Licence for Saldus, Svalbard, 1 January 2018, **C-9**; Fishing Licence for Senator, Svalbard, 1 November 2016, **C-13**; Fishing Licence for Senator, Svalbard, 1 January 2017, **C-14**; Fishing Licence for Senator, Svalbard, 1 January 2018, **C-17**; Fishing Licence for Solveiga, Svalbard, 1 November 2016, **C-20**; Fishing Licence for Solveiga, Svalbard, 1 January 2017, **C-22**; Fishing Licence

These licences were also issued by the Republic of Latvia, a party to the Svalbard Treaty, based on its allocation of fishing opportunities determined by European Council Regulations adopted with reference to the rights of the parties to the Svalbard Treaty.<sup>34</sup>

48. North Star’s licences are assets in the nature of “*business concessions conferred by law*”<sup>35</sup> and/or claims to performance having economic value, namely licences to harvest a natural resource (snow crabs) issued under enabling provisions of European law, Latvian law, NEAFC and the Svalbard Treaty, and which Norwegian authorities have an obligation to respect. As such, North Star’s licences are “*investments*” pursuant to Article I(1) BIT.

(v) *North Star’s supply agreements*

49. From 2014 onward, North Star and Seagourmet maintained supply agreements between them for the sale and delivery of snow crabs by North Star at Seagourmet’s factory at the port of Baatsfjord. In 2016 and 2017, North Star and Seagourmet concluded written agreements for this purpose, both of which were concluded at Baatsfjord.<sup>36</sup>
50. North Star acquired, through these supply agreements, claims to performance by Seagourmet having economic value, namely claims for payment against delivery of snow crabs at Baatsfjord. North Star’s supply agreements with Seagourmet (and with

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for Solvita, Svalbard, 1 November 2016, **C-20**; Fishing Licence for Solvita, Svalbard, 1 January 2017, **C-27**; Fishing Licence for Solvita, Svalbard, 1 January 2018, **C-30**.

<sup>34</sup> Council Regulation (EU) 2017/127 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, 20 January 2017, **CL-5**, para. 35; Council Regulation (EU) 2018/120, 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, and amending Regulation (EU) 2017/127, 23 January 2018, **CL-4**, para. 37; 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.

<sup>35</sup> 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, 16 June 1992, **CL-1**, Article I(1), para. (V).

<sup>36</sup> Contracts between SIA North Star and Seagourmet for 2017, 29 December 2016, **C-53**; Contract between SIA North Star and Seagourmet for 2018, 27 December 2017, **C-54**. North Star also concluded similar agreements, in Baatsfjord once again, with two other companies, Link Maritime Consulting Inc., a company also controlled by Mr. Levanidov, [REDACTED]. See, Contract between SIA North Star Ltd. and Link Maritime Consulting Inc. for 2016-2017, 29 December 2017, **C-65**; Contract between SIA North Star Ltd. [REDACTED], 29 December 2016, **C-66**; Contract between SIA North Star Ltd. [REDACTED] 27 December 2017, **C-67**.

Link Maritime Consulting Inc. [REDACTED])<sup>37</sup> are therefore also “investments” pursuant to Article I(1) BIT.

### **Claimants’ investments are in the “territory” of Norway**

51. Article I(4) BIT defines the term “territory” as meaning “*the territory of the Kingdom of Norway... including the territorial sea, as well as the continental shelf over which the state concerned exercises, in accordance with international law, sovereign rights for the purpose of exploration and exploitation of the natural resources of such areas*”.<sup>38</sup>
52. Claimants’ investments, whether taken separately or viewed as a whole, are investments in the “territory” of Norway.
53. Under Norwegian law, the joint venture agreement between Mr. Pildegovics and Mr. Levanidov is a contract pertaining to the development and operation of a snow crab harvesting and processing enterprise in Norway. The business enterprise contemplated by this agreement is located within Norway – from the harvesting of snow crabs in areas under Norwegian jurisdiction or control, to the delivery of crabs to Seagourmet, a Norwegian company operating in the Norwegian port of Baatsfjord. Mr. Pildegovics’ claims to performance under this agreement are therefore investments in the “territory” of Norway pursuant to Article I(4) BIT.
54. Mr. Pildegovics’ shares in Sea & Coast, a company incorporated under the laws of Norway, having a sole place of business in Baatsfjord and operating exclusively in Norway, constitute a further investment in the territory of Norway.
55. North Star’s fishing vessels also constitute investments by the Claimants in the territory of Norway. While these vessels fly the Latvian flag, this fact does not determine the location of these investments pursuant to the BIT. By their nature, vessels (as well as any other “*movable property*”, which is a category of protected investments under Article I(1) BIT) may move across territories. To determine whether movable property

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<sup>37</sup> *Ibid.*

<sup>38</sup> 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, 16 June 1992, CL-1, Article I(4).

is an investment in a given territory, the purposes and uses to which the property was put by its operator must be considered in the context of the overall investment at issue.

56. The facts of this case amply demonstrate that North Star's vessels were purchased as part of a joint venture to harvest, deliver and process snow crabs in Norway. During the entire period in which this joint venture was allowed to operate, the vessels were harvesting crabs in waters where Norway exercises its jurisdiction, and they docked and delivered snow crabs in Norwegian ports. The ships were, both at sea and at port, subject to routine inspections by Norwegian authorities.
57. The vessels unloaded the vast majority of their snow crab catches in Norway, primarily at Seagourmet's Baatsfjord facility. The vessels were supported by a Norwegian agent, Sea & Coast, a Norwegian company also based in Baatsfjord. The written contracts of supply of snow crabs with Seagourmet, Link Maritime Consulting Inc. [REDACTED] [REDACTED] were furthermore all signed in Baatsfjord. Moreover, the Senator has been arrested in Baatsfjord since January 2017 and the Saldus is also currently anchored in the port of Baatsfjord as it is equipped for snow crab fishing, an activity which it cannot carry out at this time due to Norway's actions (as further described below).
58. Considering both their purpose and actual use as part of Claimants' enterprise, North Star's vessels are, under the definition of Article I(5) BIT, investments in the "territory" of Norway.
59. North Star's vessel purchase agreements pertaining to Sokol and Solyaris, while cancelled by North Star, were also investments in the "territory" of Norway. In common with North Star's four other vessels, Sokol and Solyaris were purchased as part of the joint venture with a view to harvest, deliver and process snow crabs in Norway. There is no doubt that, had these vessels been delivered as planned (which is what would have occurred but for Norway's actions), these vessels would have been operated much in the same way as the four other ships.
60. North Star's licences granted it the legal right to harvest snow crabs in waters where Norway exercises its jurisdiction, including on "*the continental shelf over which the state concerned exercises, in accordance with international law, sovereign rights for*

*the purpose of exploration and exploitation of the natural resources of such areas*<sup>39</sup> (as Norway now takes the position that snow crabs are resources of the continental shelf). These licences are therefore investments in the “*territory*” of Norway pursuant to Article I(5) BIT.

61. Licences issued to North Star between 2014 and 2016 provided it with legal authorization to harvest snow crabs in the NEAFC zone. The NEAFC zone comprises the Loophole, a portion of the high seas superjacent to the Norwegian extended continental shelf. With full knowledge and without objection from Norway, North Star relied, between 2014 and 2016, on its NEAFC licences to harvest snow crabs in the Loophole.
62. Licences issued to North Star from 2017 onward authorized the harvesting of snow crab in waters off the Svalbard archipelago. Norway exercises its sovereignty over Svalbard, which sovereignty (subject to the important stipulations of the Treaty) is referred to in Article 1 of the Svalbard Treaty.<sup>40</sup> While North Star was never able to avail itself of the rights granted to it under the Svalbard licences, owing to Norway’s actions described below, there can be no doubt that these licences pertained to the harvesting of snow crab in waters around Svalbard, a territory under Norwegian sovereign jurisdiction.
63. Finally, North Star’s supply agreements with Seagourmet are also investments in the “*territory*” of Norway. These contracts pertain to the sale and delivery of snow crabs to Seagourmet’s factory premises at the port of Baatsfjord. The economic transaction contemplated by these contracts was to take place entirely within the territory of Norway.
64. Thus, taken separately, each of Claimants’ investments to which this dispute relates is an investment in the “*territory*” of Norway within the meaning of Article I(4) BIT. Viewed as a whole, Claimants’ investments formed part of a joint economic enterprise located within the territory of Norway, from the harvesting of snow crabs in areas under

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<sup>39</sup> *Ibid.*

<sup>40</sup> 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 1.

Norwegian sovereignty to their delivery and processing at the Norwegian port of Baatsfjord.

### **The dispute continues to exist after a period of three months**

65. Counsel for Claimants provided notification of the existence of this dispute through a letter addressed to high officials of the Government of Norway dated 8 March 2019.<sup>41</sup> The dispute remains unresolved as of the filing of this Request for Arbitration.
66. There thus exists a dispute between investors of a contracting party under the BIT (Latvia) and the other contracting party (Norway). The dispute arises directly out of investments made by Latvian investors in the territory of Norway and it continues to exist more than three months after its notification by Claimants to Norway. Norway has, consequently, provided its written consent to the Centre's jurisdiction over this dispute under Article IX of the BIT.

## **IV. THE ISSUES IN DISPUTE**

### **A. FACTUAL BACKGROUND**

#### **Snow crabs in the Barents Sea**

67. Snow crabs (*chionoecetes opilio*, also known as queen crabs) are a relatively new species in the Barents Sea. They were first identified there in 1996 and then first harvested by Norwegian fishermen in 2003.<sup>42</sup>
68. Snow crabs were previously found primarily in Eastern Canada, Alaska and in Russia's Far East, in the Sea of Okhotsk.<sup>43</sup> It is unclear how snow crabs migrated to the Barents Sea.<sup>44</sup>

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<sup>41</sup> Letter of notification of dispute from Claimants to the Government of Norway, 8 March 2019, **C-68**.

<sup>42</sup> Harald S. B. Hansen, "Snow crab (*Chionoecetes opilio*) in the Barents Sea – Diet, Biology and management, Master thesis in International fisheries management," Norwegian College of Fishery Science, The Arctic University of Norway, May 2015, **C-67**, p. 7.

<sup>43</sup> *Ibid.*

<sup>44</sup> *Id.*, p. 71 ("One possibility is that snow crab was unintentionally introduced to the Barents Sea through human activities; it is, however the leading perception that snow crab has migrated to the Barents Sea on its own, perhaps because of changed environmental conditions.").

69. Snow crabs are an invasive species and in 2012 were included by Norway on a black list of invasive species.<sup>45</sup>
70. Under both Norwegian law and international law, Norway has certain obligations to ensure that invasive species are contained and do not disrupt the biodiversity of marine environments.<sup>46</sup> Norway does not appear to have adopted any plan regarding data collection and management of the snow crab species on its territory.<sup>47</sup> Its measures concerning snow crabs (as further detailed below) do not appear to be based on any scientific studies.<sup>48</sup>
71. It is estimated that the population of snow crabs in the Barents Sea is considerable and capable of accommodating large-scale fisheries. A Russian institute of marine fisheries and oceanography in 2013 estimated the commercial stock at 370 million individuals, for a total biomass of 188,260 tons.<sup>49</sup>
72. European Union vessels in 2012 commenced fishing snow crabs in international waters of the Barents Sea. Between 2013 and 2016, EU vessels from Spain, Latvia, and Lithuania made catches of snow crabs. These catches were made in the Loophole, in the Barents Sea (see Figure at paragraph 73 below).<sup>50</sup>

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<sup>45</sup> *Id.*, p. 8; B. A. Kaiser, M. Kourantidou, L. Fernandez, “*A case for the commons: The Snow Crab in the Barents*,” *Journal of Environmental Management*, 3 January 2018, **C-70**, p. 5.

<sup>46</sup> The Norwegian Nature Diversity Act, 19 June 2009, **CL-11**; Act relating to the management of wild living marine resources (*The Marine Resources Act*), 6 June 2008, **CL-12**; The United Nations Convention on the Law of the Sea, 1982, **CL-13**, Articles 194, 196; The Convention on Biological Diversity, 1992, **CL-14**, Article 8(h).

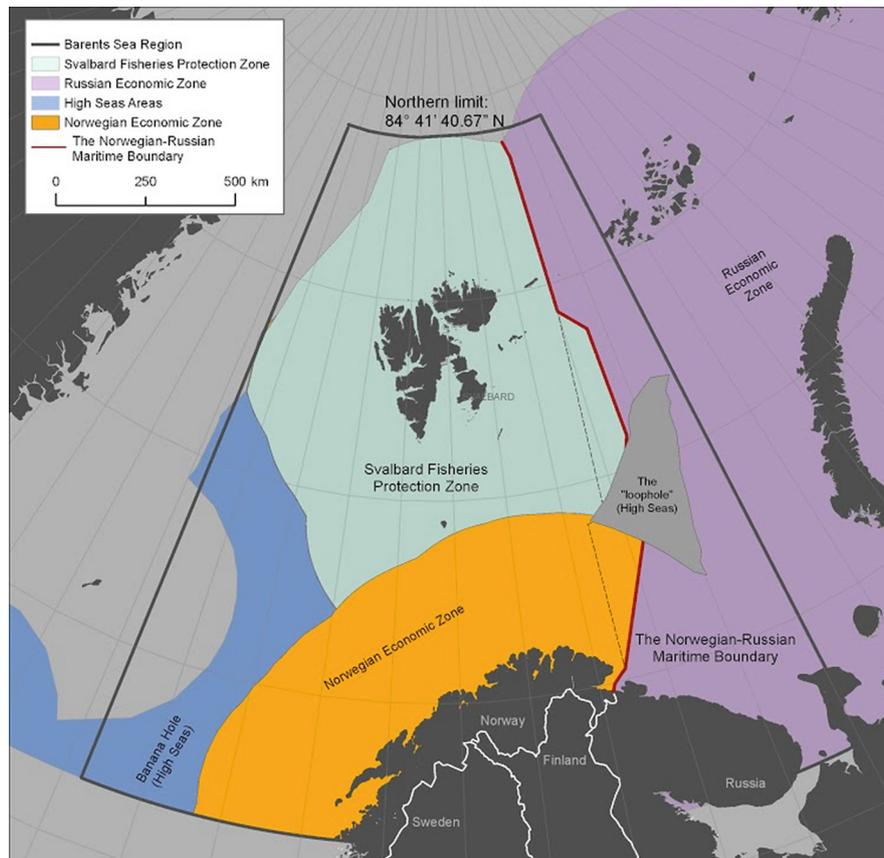
<sup>47</sup> See H. S. B. Hansen, “*Snow crab (Chionoecetes opilio) in the Barents Sea – Diet, Biology and management, Master thesis in International fisheries management*,” Norwegian College of Fishery Science, The Arctic University of Norway, May 2015, **C-69**, p. 11; B. A. Kaiser, M. Kourantidou, L. Fernandez, “*A case for the commons: The Snow Crab in the Barents*,” *Journal of Environmental Management*, 3 January 2018, **C-70**, p. 8 (“*Norway’s position on the frontier of the invasion makes its investments in enforcement and management less certain, particularly if climate shifts move the continuing invasion more to the north than to the west.*”).

<sup>48</sup> Note Verbale of the European Union to Norway, 1 November 2016, **C-71** (the European Union is “*not aware of any scientific study in support of the prohibition or limitation of the catch of snow crab or justifying a differential treatment within or outside territorial waters*”).

<sup>49</sup> *Id.*, p. 13.

<sup>50</sup> The Barents Sea is adjoined to the northeastern part of the Atlantic Ocean, and is defined by the Scandinavian and Russian landmasses to the South, the Svalbard and Franz Josef’s Land archipelagos to the North, Novaya Zemlya to the East, and the Atlantic Ocean to the West. The Barents Sea is, to a large extent, covered by Norway’s and Russia’s 200 nautical miles EEZs, but also encompasses areas not covered by national jurisdiction as well as disputed areas. In 2010, Russia and Norway concluded a delimitation agreement (see para. 76 below).

73. The water column of the Loophole is high seas: the area is situated beyond a 200-mile distance over which a coastal state can claim either an exclusive economic zone (**EEZ**) or fisheries protection zone (**FPZ**) pursuant to the United Nations Convention on the Law of the Sea (**UNCLOS**).



Map 1: Svalbard Fisheries Protection Zone, and Exclusive Economic Zones of Norway and Russia. Source: A. N. Vylegzhanin, O. R. Young & P. A. Berkman, “*Governing the Barents Sea Region: Current Status, Emerging Issues, and Future Options*,” *Ocean Development and International Law*, 2018, p. 54.

74. The seabed under the water column in the Loophole consists of the extended continental shelves of Norway and the Russian Federation.
75. The Commission on the Limits of the Continental Shelf (**CLCS**) established under UNCLOS has confirmed that both Norway and the Russian Federation could claim the seabed under the Loophole as part of their extended continental shelf.<sup>51</sup> Both states have

<sup>51</sup> Commission on the Limits of the Continental Shelf, “*Summary of the Recommendations of the Commission on the Limits of the Continental Shelf in regard to the Submission made by Norway in respect of Areas in the Arctic Ocean, the Barents Sea and the Norwegian Sea on 27 November 2006*,” 27 March 2009, C-72.

submitted such claims to the CLCS. Norway was granted its request in 2009 while the Russian Federation's request is still pending.<sup>52</sup>

76. Norway and Russia in 2010 agreed on the delimitation of their respective maritime areas, including areas of the Loophole's extended continental shelf, after 50 years of negotiation between the two states.<sup>53</sup>
77. While Norway does not have sovereign rights over the water column in the Loophole, it does over parts of the continental shelf on its side of the delimitation line with Russia. Even if the water column of the Loophole is high seas, Norway claims to exercise jurisdiction over the maritime zones of the Loophole located above its continental shelf.<sup>54</sup> Norway's sovereignty is exercised notably through the Norwegian-Russian Fisheries Commission and bilateral agreements between the two coastal states, which purport to regulate the high seas in the Loophole.<sup>55</sup>

#### **Claimants' investments and operations**

78. In 2010, Mr. Pildegovics and his cousin Mr. Levanidov initiated discussions regarding the possibility of investing in Norway with a view to seizing the economic opportunities created by the arrival of snow crabs in the Barents Sea.
79. These discussions resulted in the conclusion of a joint venture agreement between them in order jointly to set up and operate an enterprise for the harvesting and transformation of snow crabs in Norway.

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<sup>52</sup> Commission on the Limits of the Continental Shelf, "*Summary of the Recommendations of the Commission on the Limits of the Continental Shelf in regard to the Submission made by Norway in respect of Areas in the Arctic Ocean, the Barents Sea and the Norwegian Sea on 27 November 2006*," 27 March 2009, **C-72**; Norwegian Executive Authorities, "*Partial Revised Submission of the Russian Federation to the Commission on the Limits of the Continental Shelf in respect of the Continental Shelf of the Russian Federation in the Arctic Ocean*," 2015, **C-73**.

<sup>53</sup> Treaty between the Kingdom of Norway and the Russian Federation concerning Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean, 15 September 2010, **CL-15**; R. E. Fife, "*Le traité du 15 septembre 2010 entre la Norvège et la Russie relative à la délimitation et à la coopération maritime en mer de Barents et dans l'océan arctique*," *Annuaire français de droit international*, 2010, **CL-16**.

<sup>54</sup> A. N. Vylegzhanin, O. R. Young & P. A. Berkman, "*Governing the Barents Sea Region: Current Status, Emerging Issues, and Future Options*," *Ocean Development and International Law*, 2018, **CL-17**, p. 56 (referring to a 2006 note verbale of the United Kingdom).

<sup>55</sup> *Ibid.*

80. In March 2014, Mr. Pildegovics established North Star, a limited liability company registered under the laws of Latvia.<sup>56</sup> Mr. Pildegovics acquired 100% of North Star's shares on 27 June 2015.<sup>57</sup>
81. In April 2014, North Star acquired the fishing vessel Solvita (then called Ivangorod) for a price of USD 1 075 000.<sup>58</sup> North Star took delivery of Solvita at the port of Baatsfjord in June 2014. Solvita commenced harvesting snow crabs in the Loophole in August 2014.
82. In August 2014, North Star acquired the fishing vessel Senator (then called Otto) for a price of EUR 900 000.<sup>59</sup> North Star took delivery of the Senator at the port of Hafnarfjordur, Iceland, in September 2014. The Senator arrived at the port of Baatsfjord in May 2015 and commenced harvesting snow crabs in the Loophole in May 2015. In August, it was refitted in Gdansk, Poland, at a cost of EUR 1.6 million.
83. In November 2014, North Star acquired the fishing vessel Saldus for a price of USD 1 050 000.<sup>60</sup> North Star took delivery of Saldus at the port of Busan, South Korea, in December 2014. Saldus arrived at the port of Baatsfjord in March 2015 and commenced harvesting snow crabs in the Loophole in April 2015.
84. In December 2014, North Star acquired the fishing vessel Solveiga for a price of USD 1 150 000.<sup>61</sup> North Star took delivery of Solveiga at the port of Busan, South Korea, in January 2015. Solveiga arrived at the port of Baatsfjord in early 2015 and commenced harvesting snow crabs in the Loophole in April 2015.
85. In addition to the price paid for the acquisition of each vessel, North Star invested over EUR 5 million for their repair, upgrade, reflagging and initial class inspections; the purchase of

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<sup>56</sup> North Star Ltd. Reference, Latvia Register of Enterprises, 28 August 2015, **C-75**.

<sup>57</sup> Share purchase agreement, 27 June 2015, **C-76**; Decision of the Register of Enterprises of the Republic of Latvia, 27 June 2015, **C-77**.

<sup>58</sup> Vessel purchase agreement and sale contract of Solvita, 15 April 2014, **C-61**; Certificate of ownership of Solvita, 4 June 2014, **C-62**.

<sup>59</sup> Vessel purchase agreement and sale contract of Senator, 25 August 2014, **C-57**; Certificate of ownership of Senator, 12 September 2014, **C-58**.

<sup>60</sup> Vessel purchase agreement and sale contract of Saldus, 20 November 2014, **C-55**; Certificate of ownership of Saldus, 5 December 2014, **C-56**.

<sup>61</sup> Vessel purchase agreement and sale contract of Solveiga, 22 December 2014, **C-59**; Certificate of ownership of Solveiga, 5 January 2015, **C-60**.

fishing gears (*e.g.* crab pots, ropes, fittings); the transportation of vessels to fishing grounds; and vessel security.

86. North Star also obtained, for each vessel, fishing licences authorizing the harvesting of snow crabs (as of 2014) in the NEAFC zone and (since 2017) in the Svalbard zone.<sup>62</sup>
87. On 11 November 2015, Mr. Pildegovics acquired 100% of the shares of Sea & Coast, a company registered under Norwegian law.<sup>63</sup> The company acts as ship agent and provides onshore assistance and services for snow crab fishing crews in Baatsfjord. Services were provided to North Star vessels as well as those of a Lithuanian company and a group of Russian companies operating in the NEAFC fishing area.
88. North Star ships harvested over 2,383 tons of snow crab in 2015 and over 2,529 tons in 2016. Neither year represented a full year of fishing, notably since North Star ships commenced operations only as of early to mid-2015, while activities were progressively brought to a halt starting in September 2016.
89. North Star's snow crab harvests over the course of 2015 and 2016 are evidenced by numerous records, both public and private,. They includinge: NEAFC Port State Control Forms issued by both Latvian and Norwegian authorities; European Community Catch Certificates issued by the Latvian Ministry of Agriculture, Fisheries Department; European Community Certificates of Origins issued by the Latvian Chamber of Commerce and Industry; sales notes issued by Norges Råfisklag, a Norwegian organization with

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<sup>62</sup> Fishing Licence for Saldus, NEAFC, 1 January 2015, **C-4**; Fishing Licence for Saldus, NEAFC, 1 January 2016, **C-5**; Fishing Licence for Saldus, NEAFC (Unregulated), 1 January 2017, **C-7**; 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, NEAFC (Unregulated), 1 January 2017, **C-14**; Fishing Licence for Senator, NEAFC (Unregulated), 1 January 2018, **C-16**; Fishing Licence for Solveiga, NEAFC, 20 January 2015, **C-18**; Fishing Licence for Solveiga, NEAFC, 1 January 2016, **C-19**; Fishing Licence for Solveiga, NEAFC (Unregulated), 1 January 2017, **C-21**; 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, NEAFC (Unregulated), 1 January 2017, **C-28**; Fishing Licence for Solvita, NEAFC (Unregulated), 1 January 2018, **C-29**; Fishing Licence for Saldus, Svalbard, 1 November 2016, **C-6**; Fishing Licence for Saldus, Svalbard, 1 January 2017, **C-8**; Fishing Licence for Saldus, Svalbard, 1 January 2018, **C-9**; Fishing Licence for Senator, Svalbard, 1 November 2016, **C-13**; Fishing Licence for Senator, Svalbard, 1 January 2017, **C-15**; Fishing Licence for Senator, Svalbard, 1 January 2018, **C-17**; Fishing Licence for Solveiga, Svalbard, 1 November 2016, **C-20**; Fishing Licence for Solveiga, Svalbard, 1 January 2017, **C-22**; Fishing Licence for Solvita, Svalbard, 1 November 2016, **C-26**; Fishing Licence for Solvita, Svalbard, 1 January 2017, **C-27**; Fishing Licence for Solvita, Svalbard, 1 January 2018, **C-30**.

<sup>63</sup> Norwegian Commercial Registry, Sea & Coast AS, 11 November 2015, **C-35**.

responsibility for recording catches of seafood unloaded at Norwegian ports; invoices issued by North Star to its customers; and related documentation recording delivery to end customers.

90. The vast majority of North Star's harvests of snow crabs were delivered to Norwegian clients in Norway, in particular to Seagourmet, Claimants' Norwegian strategic partner, in which Mr. Levanidov invested as part of his joint venture agreement with Mr. Pildegovics.
91. Seagourmet's crab processing facility officially commenced operations at the port of Baatsfjord in June 2015 after a successful pilot had been launched in April 2015.<sup>64</sup> This facility soon became one of the biggest producers on the global seafood market: it reached an average daily production output of 8-10 tonnes of cooked frozen crab clusters.
92. The launch of Seagourmet was warmly welcomed by Norwegian authorities. The Mayor of Baatsfjord, Mr. Geir Knutsen, visited Seagourmet's factory for its opening on 10 June 2015. In September 2015, the then Minister of Fisheries of Norway, Ms. Elisabeth Aspaker also personally witnessed the offloading of snow crabs from North Star's ship Solveiga at Seagourmet's facility, and the processing of live crabs into frozen clusters by Seagourmet.<sup>65</sup> Both praised the project and gave it their blessing. Latvia's ambassador to Norway was also present at the 10 June 2015 ceremony.
93. Seagourmet marketed its operation as one of "*two seamless components: Seagourmet Norway AS – the producer, and SIA North Star – the supplier*", the latter company having been established "*to secure regular supply of live snow crabs to Seagourmet*".<sup>66</sup>
94. The interconnectedness between North Star and Seagourmet is further demonstrated by: the fact that Mr. Pildegovics was being publicly referred to as Seagourmet's marketing manager; Mr. Pildegovics' participation in the Brussels Seafood Expo at the Seagourmet

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<sup>64</sup> Seagourmet presentation, 2015, C-52, p. 3; Seagourmet website, home page, visited on 27 December 2019, C-79, p. 2; Norwegian Corporate Registry, Seagourmet Norway AS, 2019, C-3.

<sup>65</sup> Seagourmet presentation, 2015, C-52, p. 6; Excerpt of the program of Ms Elisabeth Aspaker, Minister of Fisheries of Norway's visit in Baatsfjord, 8 September 2015, C-80.

<sup>66</sup> Seagourmet presentation, 2015, C-52, p. 4.

stand in 2015 and 2016; as well as contemporaneous statements dating back to 2015 that North Star was considered Seagourmet's official supplier.<sup>67</sup>

95. While North Star deliveries to Seagourmet commenced in April 2015, North Star and Seagourmet entered into formal written supply agreements beginning in 2016.<sup>68</sup> These supply agreements provided for the delivery by North Star to Seagourmet of up to 100 tonnes of live snow crabs per week by North Star to Seagourmet. This pace of delivery represented a start-up phase for the joint enterprise: as Seagourmet was planning to develop further capacity.
96. Over 2015 and 2016, owing to snow crab supplies delivered by North Star, Seagourmet established itself as one of the largest employers in Baatsfjord, a town of about 2,200 inhabitants in the East Finnmark province. It hired 45 crab processing workers and 8 administrative employees, and spent over NOK 23 million in wages and related benefits.
97. Thanks to supplies of snow crabs obtained through its joint venture with Claimants, Seagourmet generated substantial economic activity in Norway: it spent over NOK 100 million with Norwegian suppliers and paid nearly NOK 8 million in taxes, duties and other levies in 2015 and 2016.<sup>69</sup>
98. On 5 January 2017, North Star purchased two additional vessels, Sokol and Solyaris, for EUR 1.5 million and EUR 1.7 million respectively.<sup>70</sup> On 6 May, after the cancellation of the contracts due to Norway's interference with the Claimants' investments, fines of EUR 300,000 and EUR 340,000 for each vessel were imposed on North Star by the seller.<sup>71</sup> The planning of these purchases dates back to 2015 and relevant authorisations had been obtained from the Latvian Ministry of Agriculture in 2016.<sup>72</sup>

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<sup>67</sup> A. Fenstad, "Norwegian king crab supplier steps onto global stage," IntraFish, 17 June 2015, **C-82**.

<sup>68</sup> Contract between SIA North Star and Seagourmet for 2017, 29 December 2016, **C-53**; Contract between SIA North Star and Seagourmet for 2018, 27 December 2017, **C-54**.

<sup>69</sup> Seagourmet presentation, 2015, **C-52**, p. 11.

<sup>70</sup> Fines imposed on SIA North Star, Invoice No. 85, 6 May 2017, **C-64**.

<sup>71</sup> *Ibid.*

<sup>72</sup> Letter from the Ministry of Agriculture approving purchase of Sokol vessel, 2 April 2015, **C-83**; Letter from Ministry of Agriculture approving purchase of Sokol vessel, 2016, **C-84**; Letter from Ministry of Agriculture approving purchase of Solyaris vessel, 6 August 2015, **C-85**; Letter from Ministry of Agriculture approving purchase of Solyaris vessel, 28 July 2016, **C-86**.

**Norway's acceptance of, and subsequent interference with, Claimants' investments**

99. Between 2014 and at least July 2016, Norway acquiesced to, and recognized the legality of, snow crab harvesting by EU vessels in the Loophole, including North Star's vessels operating under Latvian-issued NEAFC licences. Moreover, Norway issued licenses, on similar grounds in both 2013 and 2014 to at least one Norwegian vessel, the Havnefjell, allowing it to harvest snow crabs in the same area.<sup>73</sup>
100. Two letters of 18 July 2013 and 21 July 2014 from the Norwegian Directorate of Fisheries, addressed to the company operating Havnefjell, confirmed the issuance of licences for snow crabs in the NEAFC zone. These letters show that Norway considered fishing in the Loophole as being regulated by the NEAFC Scheme, the regulatory framework established under the NEAFC Convention, a treaty binding on both Norway and Latvia.<sup>74</sup> For example, the 18 July 2013 letter states:<sup>75</sup>

*The Directorate of Fisheries has received registration notification 05.07.2013 for the vessel "Havnefjell" F-79-BD LLTI for fishing in waters outside any state's fishing jurisdiction for 2013. We have registered the vessel for fishing for snow crab in international waters, the NEAFC area.*

*Registration is valid until 31 December 2013, with registration valid for one calendar year. We also want to note that registration is independent of any quota adjustments. This means that the vessel must comply with such regulations even if the vessel is registered for one calendar year.*

*Furthermore, we would like to remind that vessels that are going to fish in waters outside of any state's fishing jurisdiction, in accordance with reporting regulations implemented in Norwegian regulations, must send a report on fish start (COE), catch message (CAT), transshipment notification (TRA), report on port call (POR) and notification of termination of fishing (COX). This is stated in section 3 of the regulation of June 30, 1999 on registration and reporting of fishing in waters outside any state's fishing jurisdiction.*

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<sup>73</sup> Letter from Norwegian Directorate of Fisheries to company Havnefjell, 18 July 2013, **C-87**; Letter from Norwegian Directorate of Fisheries to company Havnefjell, 21 July 2014, **C-88**.

<sup>74</sup> Convention on Future Multilateral Cooperation in North-East Atlantic Fisheries, 18 November 1980, **CL-18**. NEAFC was signed in 1980 by Bulgaria, Cuba, Denmark (on behalf of the Faeroe Islands), the European Economic Community, Finland, the German Democratic Republic (East Germany), Iceland, Norway, Poland, Spain, Sweden and the USSR. NEAFC currently has five contract parties (Denmark in respect of the Faeroe Islands, the European Union, Iceland, Norway and the Russian Federation) and six cooperating non-contracting parties (Bahamas, Canada, Curaçao, Liberia, New Zealand and Panama).

<sup>75</sup> Letter from Norwegian Directorate of Fisheries to company Havnefjell, 18 July 2013, **C-87**.

*Furthermore, the vessel must comply with the regulations that apply specifically to fishing in the NEAFC area. See NEAFC's Web site <http://www.neafc.org>. - click on "Managing Fisheries", then on "NEAFC Scheme of Control and Enforcement" and "Current Management Measures".*

101. These licences authorized fishing not only in waters under Norwegian jurisdiction, but throughout the NEAFC area (*i.e.* including the area superjacent to the Russian continental shelf). The letters clearly establish that snow crab fishing would occur in international waters outside any state's fishing jurisdiction, and would be subject to regulations applicable to the NEAFC area. This demonstrates that Norway recognized that snow crabs could be caught in compatibility with the NEAFC regime without the consent of the Russian Federation.
102. On 19 August 2013 the Latvian Ministry of Agriculture wrote to the European Union to ask about the possibility for Latvian fishermen to fish snow crabs in NEAFC waters.<sup>76</sup> The European Union confirmed on 30 September 2013 that snow crab fishing could be started immediately following the appropriate notification to NEAFC, writing:<sup>77</sup>
- Snow crab/Opilio is un-regulated as far as NEAFC is concerned and you can start fishing as soon as your vessel is notified.*
103. An example of such notification is that made by the Latvian Ministry of Agriculture to the European Union on 2 December 2014 for the year 2015, which included reference both to the Solvita and the Senator and specifically identified them as fishing snow crabs only,<sup>78</sup> and subsequent emails of 11 December 2014 and 20 January 2015 providing notifications regarding the Saldus and the Solveiga.<sup>79</sup>
104. North Star ships were, while harvesting snow crab in the Loophole area in the period 2014-2016, inspected at least 6 times by the Norwegian and Russian coast guard, both acting as

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<sup>76</sup> Email of Latvian Ministry of Agriculture (Janis Laguns) to the European Union/DG MARE (Michele Surace), 19 August 2013, **C-89**.

<sup>77</sup> Email of European Union/DG MARE (Pernille Skov-Jensen) to Latvian Ministry of Agriculture (Janis Laguns), 30 September 2013, **C-90**.

<sup>78</sup> Email of Latvian Ministry of Agriculture (Janis Laguns) to the European Union/DG MARE (Pernille Skov-Jensen), 2 December 2014, **C-91**.

<sup>79</sup> Email of Latvian Ministry of Agriculture (Janis Laguns) to the European Union/DG MARE (Pernille Skov-Jensen), 11 December 2014, **C-92**; Emails between the Latvian Ministry of Agriculture (Janis Laguns) and the European Union/DG MARE (Pernille Skov-Jensen), January 2015, **C-93**.

NEAFC inspectors. Each inspection report recorded the amount of snow crab on board and confirmed that the ship held a valid licence to harvest snow crabs in the NEAFC area.<sup>80</sup> North Star's vessels and crew were found in full compliance, including with regard to licences, target species and the catches of snow crab onboard. The inspection reports cover all four boats fishing at the time and all reports found "CRQ" (*i.e.* snow crabs)<sup>81</sup> on board,<sup>82</sup> except for the August 2014 report for the Solvita.<sup>83</sup> The various inspections at sea conducted under the NEAFC regime were the following:

- **25 August 2014:** Solvita inspection by **Russian** authorities;
- **1 May 2015:** Solveiga inspection by **Norwegian** authorities;
- **13 July 2015:** Solvita inspection by **Russian** authorities;
- **18 September 2015:** Saldus inspection by **Russian** authorities;
- **15 January 2016:** Saldus inspection by **Norwegian** authorities;
- **13 July 2016:** Senator inspection by **Russian** authorities.

105. It is also important to note that between 2014 and 2016 no "*serious infringement*" was ever reported by Norway (or by Russia) to NEAFC in relation to any North Star (or Latvian, or indeed European) vessel fishing in the Loophole without a valid licence. This is important since NEAFC inspectors must promptly inform the NEAFC Secretariat of such infringements, which include fishing without valid licenses.<sup>84</sup>
106. Between 2014 and 2016, North Star ships also unloaded 5,476 tons (live weight) of snow crabs in Norwegian ports. Every unloading of snow crabs was recorded by Norwegian authorities through the Norges Råfisklag system, with the last shipment recorded on 5

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<sup>80</sup> NEAFC inspection report for Saldus, 15 January 2016, **C-94**; NEAFC inspection report for Saldus, 18 September 2015, **C-95**; NEAFC inspection report for Senator, 13 July 2016, **C-96**; NEAFC inspection report for Solvita, 25 August 2014, **C-97**; NEAFC inspection report for Solvita, 13 July 2015, **C-98**; NEAFC inspection report for Solveiga, 1 May 2015, **C-99**.

<sup>81</sup> Snow crabs are listed under Annex V of the NEAFC Scheme under FAO 3-Alpha Code "CRQ". See NEAFC Scheme of Control and Enforcement, 13 February 2019, **CL-19**, Annex V.

<sup>82</sup> NEAFC inspection report for Saldus, 15 January 2016, **C-94**, p. 4; NEAFC inspection report for Saldus, 18 September 2015, **C-95**; NEAFC inspection report for Senator, 13 July 2016, **C-96**, p. 4; NEAFC inspection report for Solvita, 25 August 2014, **C-97**, p. 4; NEAFC inspection report for Solvita, 13 July 2015, **C-98**, p. 4; NEAFC inspection report for Solveiga, 1 May 2015, **C-99**, p. 4.

<sup>83</sup> NEAFC inspection report for Solvita, 25 August 2014, **C-97**.

<sup>84</sup> NEAFC Scheme of Control and Enforcement, 13 February 2019, **CL-19**, Article 29(a).

September 2016. There are, between 14 July 2015 and 6 September 2016,<sup>85</sup> records of no fewer than 79 inspections where Norwegian coast guard authorized offloading in Norway of snow crabs caught in the NEAFC area. These controls were made on NEAFC standard inspection forms by the Norwegian port authorities and indicated both the species and their provenance. At no time did Norwegian NEAFC inspectors raise any problem with these offloads.

107. Thus, during a period of over two years, Claimants' rights to harvest snow crabs in the Loophole and to unload them in Norwegian ports were not only undisturbed, but formally accepted by Norway in light of all applicable rules, in particular those regulating fisheries in the NEAFC Convention area.
108. Then, in July 2016, Norway's attitude radically changed, as it began to take adverse action against crabbers flying EU flags.
109. These actions severely impaired the performance and essentially destroyed the value of Claimants' investments in Norway.

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<sup>85</sup> There are at least 79 such inspections (19 for the Saldus, 9 for the Senator, 26 for the Solveiga and 25 for the Solvita), between 14 July 2015 and 6 September 2016. *See* NEAFC Port State Control Forms – PSC 1 for Saldus, 2015-2016, **C-100** (issued on 14 July 2015, 3 August 2015, 24 August 2015, 10 September 2015, 29 September 2015, 20 October 2015, 4 November 2015, 24 November 2015, 9 December 2015, 4 January 2016, 23 January 2016, 8 February 2016, 1 July 2016, 14 July 2016, 28 July 2016, 10 August 2016, 19 August 2016, 23 August 2016, 3 September 2016); NEAFC Port State Control Forms – PSC 1 for Solveiga, 2015-2016, **C-101** (issued on 28 July 2015, 17 August 2015, 7 September 2015, 23 September 2015, 15 October 2015, 29 October 2015, 14 November 2015, 2 December 2015, 17 December 2015, 12 January 2016, 26 January 2016, 10 February 2016, 25 February 2016, 15 March 2016, 30 March 2016, 9 April 2016, 24 April 2016, 11 May 2016, 30 May 2016, 20 June 2016, 5 July 2016, 19 July 2016, 2 August 2016, 16 August 2016, 28 August 2016, 5 September 2016); NEAFC Port State Control Forms – PSC 1 for Solvita, 2015-2016, **C-102** (issued on 18 July 2015, 6 August 2015, 12 October 2015, 26 October 2015, 7 November 2015 at 05:00:00, 7 November 2015 at 07:00:00, 26 November 2015, 12 December 2015, 6 January 2016, 19 January 2016, 2 February 2016, 18 February 2016, 3 March 2016, 17 March 2016, 4 April 2016, 20 April 2016, 6 May 2016, 27 May 2016, 15 June 2016, 28 June 2016, 12 July 2016, 25 July 2016, 5 August 2016, 21 August 2016, 6 September 2016); NEAFC Port State Control Forms – PSC 1 for Senator, 2015-2016, **C-103** (issued on 21 September 2015, 22 October 2015, 23 November 2015, 28 December 2015, 3 February 2016, 15 March 2016, 11 April 2016, 12 May 2016, 6 September 2016).

(i) *Norway's change of position with respect to the biological designation of snow crabs and its subsequent ban of EU vessels from snow crab fisheries*

110. On 18 December 2014, Norway adopted regulations pursuant to its Marine Resources Act<sup>86</sup> purporting to prohibit Norwegian and foreign vessels from catching snow crabs “*in Norway's territorial waters, including the territorial waters at Svalbard*” and “*the economic zone and the fishery protection zone at Svalbard*” (**Regulations**).<sup>87</sup> The Regulations entered into effect on 1 January 2015.
111. The Regulations provided that exemptions could be granted from the ban on conditions laid down by the Directorate of Fisheries. Criteria for such exemptions were added to the Regulations through amendments adopted by the Ministry of Trade and Fisheries on 19 February 2015.<sup>88</sup> It appears that some exemptions were granted at least to “*five Russian vessels*” for the year 2016.<sup>89</sup> No exemption appears to have been granted to EU vessels.
112. At the time, Norway considered snow crabs as a non-sedentary species, namely a species outside the UNCLOS definition of “*sedentary species*” (“*organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil*”).<sup>90</sup> This had been Norway's position for several decades, going back to the 1958 drafting of the Geneva Convention on the Continental Shelf.
113. Since snow crabs were considered to be non-sedentary, they were considered a species belonging to the water column as opposed to the seabed. Consistent with this understanding, Norway's 2014 prohibition against snow crab harvesting was limited to its territorial sea and exclusive economic zone and omitted any reference to Norway's continental shelf.

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<sup>86</sup> Act relating to the management of wild living marine resources (The Marine Living Resources Act), 6 June 2008, **CL-12**.

<sup>87</sup> Regulations prohibiting the capture of snow crabs, J-280-2014, 18 December 2014, **C-104**, Section 1.

<sup>88</sup> Regulations prohibiting the capture of snow crabs, J-34-2015, 19 February 2015, **C-105**.

<sup>89</sup> *The Prosecuting Public Authority v. Rafael Uzakov and SIA North Star LTD v. The Prosecuting Public Authority*, Court of Appeal, Judgement, 7 February 2018, **C-40**, p.17.

<sup>90</sup> The United Nations Convention on the Law of the Sea, 1982, **CL-13**, Article 77(4).

114. Because snow crabs were considered non-sedentary and thus a species of the water column, the Regulations had no application in the Loophole, which is international waters and not within “*Norway’s territorial waters ... or exclusive economic zone*”.<sup>91</sup>
115. The Regulations as originally drafted therefore did not prohibit snow crab harvesting in the Loophole. This was confirmed by Norway’s practice, as Norway consistently recognized the legality of snow crab catches made in the Loophole by foreign vessels under the NEAFC regime after 1 January 2015.<sup>92</sup>
116. It was, in part, on the basis of this longstanding and consistent position taken by Norwegian authorities that the Claimants over a number of years made their investment in Norway: the Claimants put faith and reliance in the clear Norwegian position that they were allowed to catch snow crabs as specified above.
117. In July 2015, however, Norway drastically and arbitrarily changed its position regarding the biological designation of snow crabs. Overturning decades of consistent practice, Norway reached an agreement with Russia that declared that snow crabs would henceforth be designated as a sedentary species.<sup>93</sup>
118. The legal consequence of this new designation soon became clear: Norway would no longer consider snow crabs as a species of the water column (namely, as regards the Loophole, international waters) but as a species of the continental shelf under Norwegian jurisdiction.<sup>94</sup>
119. On 11 September 2015, the Latvian Minister of Agriculture made a protest regarding this re-characterization and specifically criticized Norway and the Russian Federation’s

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<sup>91</sup> Regulations prohibiting the capture of snow crabs, J-280-2014, 18 December 2014, **C-104**, Article 1.

<sup>92</sup> NEAFC inspection report for Saldus, 15 January 2016, **C94**; NEAFC inspection report for Saldus, 18 September 2015, **C-95**; NEAFC inspection report for Senator, 13 July 2016, **C-96**; NEAFC inspection report for Solvita, 25 August 2014, **C-97**; NEAFC inspection report for Solvita, 13 July 2015, **C-98**; NEAFC inspection report for Solveiga, 1 May 2015, **C-99**.

<sup>93</sup> Minutes of the Meeting between Ilya V. Shestakov, Deputy Minister of Agriculture of the Russian Federation – Head of the Federal Agency for Fisheries, and Elisabeth Aspaker, Minister of Fisheries of the Kingdom of Norway, 17 July 2015, **C-106**. *See also*, Note to Delegations No. 26/16 from the EU Commission, 1 February 2016, **C-107**, p. 6; *The Public Prosecuting Authority v. Rafael Usakov SIA North Star LTD*, District Court, Judgment, 22 June 2017, **C-39**, p. 6.

<sup>94</sup> *Ibid.*

avoidance of their previous recognition that snow crabs should be managed through NEAFC mechanisms:<sup>95</sup>

*Neither Norway, nor any other Party until July 2015 had questions [about] the fact that Norway and the Russian Federation have delegated these rights (on management of sedentary species in NEAFC waters) to NEAFC by supporting amendments of 2006 of NEAFC Convention that came into force in 2013 (long after UNCLOS came into force in 1994). Also the Note [of 15 July 2015] does not invalidate this as it only emphasizes the rights of the shelf countries.*

120. As such, and at the very least, Norway's change of position constituted a failure to act in good faith.
121. Norway's intent underlying this change of designation was plainly to bring snow crabs under Norway's exclusive jurisdiction over its continental shelf and thus to exclude EU vessels from participating in snow crab fisheries.
122. This intent notably transpires from a Note Verbale addressed to the European Union dated 30 October 2015, in which Norway concluded that "*the right to harvest sedentary species on the continental shelf of the Barents Sea in the NEAFC regulatory area is the exclusive right of the Coastal States*".<sup>96</sup>
123. On 22 December 2015, Norway's Ministry of Trade and Fisheries adopted amendments to the Regulations according to which the prohibition against snow crab harvesting would thereafter apply to the "*Norwegian territorial sea and inland waters, and on the Norwegian continental shelf*". References to the "*territorial waters at Svalbard*" were dropped from the provision.<sup>97</sup>
124. The amendments also introduced a rule providing that, with respect to Norwegian vessels, the ban would also apply to other states' continental shelves, and that exemptions allowing catches on another state's continental shelf would only be possible "*when there is explicit*

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<sup>95</sup> Letter of Latvian Minister of Agriculture (Janis Duklavs) to Mr. Karmenu Vella (European Commissioner on Environment, Maritime Affairs and Fisheries), 11 September 2015, **C-108** (referring to the 2006 amendments that came into force in 2013, and further protesting on the diplomatic note of Norway and the Russian Federation of 15 July 2015).

<sup>96</sup> Note verbale of Norway to the European Union, 30 October 2015, **C-109**.

<sup>97</sup> Regulations prohibiting the capture of snow crabs, J-298-2015, 22 December 2015, **C-110**, Section 1 (emphasis added).

*consent from that country*".<sup>98</sup> Lurking behind this change was the Norwegian position to the effect that its own consent would now be required before foreign vessels could harvest snow crabs from Norway's own continental shelf.

125. Meanwhile, on the ground, Norway continued to allow EU vessels to harvest snow crabs in the Loophole for months after the adoption of these amendments. This created substantial doubt as to whether the amendments were indeed intended to prohibit snow crab harvesting in the international waters of the Loophole.
126. For example, on 15 January 2016, the Norwegian coast guard conducted an inspection under NEAFC rules of North Star's vessel Saldus while it was harvesting snow crabs in the Loophole.<sup>99</sup> The inspection report recorded that Saldus had 9,415 kg of snow crabs on board.<sup>100</sup> The report confirmed that the vessel held a valid NEAFC licence to fish for such species in the Loophole and that the vessel was in compliance with all regulatory requirements.
127. On 27 January 2016, the Norwegian coast guard inspected North Star's vessel Solveiga with snow crabs on board while she was moored at the port of Baatsfjord: again, no concern was recorded by the coast guard.<sup>101</sup>
128. Between December 2015 and September 2016, North Star's vessels unloaded over 3,216 tons (live weight) of snow crabs at the following Norwegian companies: Seagourmet in Baatsfjord and Arctic Catch AS in Vardo. Each such unloading was recorded through Norwegian authorities, none of them without facing any difficulty.<sup>102</sup>

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<sup>98</sup> Regulations prohibiting the capture of snow crabs, J-298-2015, 22 December 2015, **C-110**, Section 2, para. 1.

<sup>99</sup> NEAFC inspection report for Saldus, 15 January 2016, **C-94**.

<sup>100</sup> *Ibid.*

<sup>101</sup> Norwegian coast guard inspection report for Solveiga, 27 January 2016, **C-111**.

<sup>102</sup> See NEAFC Port State Control Forms – PSC 1 for Saldus, 2015-2016, **C-100** (issued on 14 July 2015, 3 August 2015, 24 August 2015, 10 September 2015, 29 September 2015, 20 October 2015, 4 November 2015, 24 November 2015, 9 December 2015, 4 January 2016, 23 January 2016, 8 February 2016, 1 July 2016, 14 July 2016, 28 July 2016, 10 August 2016, 19 August 2016, 23 August 2016, 3 September 2016); NEAFC Port State Control Forms – PSC 1 for Solveiga, 2015-2016, **C-101** (issued on 28 July 2015, 17 August 2015, 7 September 2015, 23 September 2015, 15 October 2015, 29 October 2015, 14 November 2015, 2 December 2015, 17 December 2015, 12 January 2016, 26 January 2016, 10 February 2016, 25 February 2016, 15 March 2016, 30 March 2016, 9 April 2016, 24 April 2016, 11 May 2016, 30 May 2016, 20 June 2016, 5 July 2016, 19 July 2016, 2 August 2016, 16 August 2016, 28 August 2016, 5 September 2016); NEAFC Port State Control Forms – PSC 1 for Solvita, 2015-2016, **C-102** (issued on

129. In July 2016, Norway started enforcing its amended Regulations by issuing sanctions against EU crabbers which had been operating in the Loophole.
130. This change of attitude on the part of Norway occurred literally overnight. On 14 July 2016, Juros Vilkas (a Lithuanian thus EU flag vessel) obtained permission from the Norwegian authorities to unload its snow crab harvest at the port of Baatsfjord.<sup>103</sup> The permission indicated that the snow crabs had been caught in the Loophole in accordance with NEAFC licence conditions. The next day, on 15 July 2016, the Juros Vilkas was arrested by the Norwegian coast guard.<sup>104</sup>
131. North Star was nevertheless allowed to unload snow crabs at Baatsfjord until 6 September 2016.<sup>105</sup> Then, later the same month, North Star received a fine of NOK 80,000 from the Norwegian coast guard on account of Senator's harvesting of snow crabs in the Loophole.
132. North Star duly decided to redirect its vessels to the waters off the Svalbard archipelago, another fishing area for which it held valid snow crab harvesting licences issued by Latvia, in accordance with an EU Council Regulation,<sup>106</sup> and pursuant to rights existing under the Svalbard Treaty.

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18 July 2015, 6 August 2015, 12 October 2015, 26 October 2015, 7 November 2015 at 05:00:00, 7 November 2015 at 07:00:00, 26 November 2015, 12 December 2015, 6 January 2016, 19 January 2016, 2 February 2016, 18 February 2016, 3 March 2016, 17 March 2016, 4 April 2016, 20 April 2016, 6 May 2016, 27 May 2016, 15 June 2016, 28 June 2016, 12 July 2016, 25 July 2016, 5 August 2016, 21 August 2016, 6 September 2016); NEAFC Port State Control Forms – PSC 1 for Senator, 2015-2016, **C-103** (issued on 21 September 2015, 22 October 2015, 23 November 2015, 28 December 2015, 3 February 2016, 15 March 2016, 11 April 2016, 12 May 2016, 6 September 2016).

<sup>103</sup> Notice of Dispute from “Arctic Fishing” and SIA North Star to the Kingdom of Norway, 27 February 2017, **C-2**, p. 3.

<sup>104</sup> *Ibid.*, p. 2.

<sup>105</sup> NEAFC Port State Control Forms – PSC 1 for Saldus, 2015-2016, **C-100**; NEAFC Port state control forms – PSC 1 for Solveiga, 2015-2016, **C-101**; NEAFC Port state control forms – PSC 1 for Solvita, 2015-2016, **C-102**; NEAFC Port state control forms – PSC 1 for Senator, 2015-2016, **C-103**.

<sup>106</sup> Council Regulation (EU) 2017/127 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, 20 January 2017, **CL-5**; Council Regulation (EU) 2018/120 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, amending Regulation (EU) 2017/127, 23 January 2018, **CL-4**; Council Regulation (EU) 2019/124 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**.

133. In a Note Verbale to Norway dated 1 November 2016, the European Union presented its position regarding the interpretation of the Svalbard Treaty as follows:<sup>107</sup>

*The European Union considers that the Svalbard archipelago, including Bear Island, generates its own maritime zones, separate from those generated by other Norwegian territory, in accordance with the 1982 United Nations Convention on the Law of the Sea. It follows that there is a continental shelf and an exclusive economic zone, which pertain to Svalbard.*

*The European Union also considers that the maritime zones generated by Svalbard are subject to the provisions of the Treaty of Paris of 1920, which grants, by virtue of its Articles 2 and 3, an equal and non-discriminatory access to resources for all Parties to the Treaty, in particular with respect to fishing activities, including fishing for sedentary species on the continental shelf around Svalbard.*

134. Through the same Note, the EU notified Norway that EU acceptance of “fishery regulations proposed by Norway pertaining to the maritime zones around Svalbard has been conditional on the regulations being applied in a non-discriminatory manner; based on scientific advice; and respected by all interested Parties.”<sup>108</sup>
135. The EU considered that the Norwegian Regulations as amended on 22 December 2015 “disregard the specific provisions of the Treaty of Paris, and in particular those laid down in Articles 2 and 3, which grant equal and non-discriminatory access to fishing in the maritime zones in question”.<sup>109</sup>
136. To the extent that exemptions issued under the Regulations “are only granted to Norwegian vessels, this confers an unjustified privileged access to vessels flying the flag of Norway and is thus not consistent with the obligations of Norway under the Treaty of Paris”. The note added that the European Union was “not aware of any scientific study in support of the prohibition or limitation of the catch of snow crab or justifying a differential treatment within or outside territorial waters”.<sup>110</sup>

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<sup>107</sup> Note Verbale of the European Union to Norway, 1 November 2016, C-71 (emphasis added).

<sup>108</sup> *Ibid.*

<sup>109</sup> *Ibid.*

<sup>110</sup> *Ibid.*

137. Norway’s position in response was set out in a Note Verbale addressed to the European Union on 9 January 2017.<sup>111</sup> This position – which is shared by no other signatory of the Svalbard Treaty<sup>112</sup> – may be briefly summarized as follows. Svalbard does not generate its own continental shelf, since “*the continental shelf areas off Svalbard are legally part of the Norwegian mainland and continues around and past Svalbard*”. Norway, as the coastal state, exercises sovereign rights over the continental shelf for the purpose of exploiting its resources, including sedentary species. Snow crab is a sedentary species under UNCLOS. Thus, “*harvesting snow crab on the Norwegian continental shelf cannot be carried out without the express consent of Norway as the coastal state*”.<sup>113</sup>
138. On 14 January 2017, the Senator entered the Svalbard FPZ (*i.e.* within 200 nautical miles of the Svalbard archipelago). The next day, the Senator started putting out pots in the Svalbard FPZ waters. On 16 January 2017, the Senator was arrested by the Norwegian coast guard.<sup>114</sup>
139. The Senator’s arrest was reported in the Norwegian media as an example of Norway’s “*tough line*” policy against the EU in Svalbard waters. The Norwegian Minister of Fisheries at the time, Mr. Per Sandberg, was quoted as saying that any EU vessel entering the Svalbard area to harvest snow crabs would likewise be arrested, adding: “*we will not give them a single crab*”.<sup>115</sup> Since then, Norway has continued to maintain the same policy.<sup>116</sup>
140. On 5 July 2017, the Ministry of Trade and Fisheries adopted further amendments to the Regulations, this time limiting snow crab catches in waters under Norwegian sovereignty to a yearly quota of 4,000 tonnes.<sup>117</sup>

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<sup>111</sup> Note verbale from Norway to the European Union, 9 January 2017, **C-112**.

<sup>112</sup> T. Pedersen, “*The Svalbard Continental Shelf Controversy: Legal Disputes and Political Rivalries*,” *Ocean Development and International Law*, 15 June 2006, **CL-20**, p. 7.

<sup>113</sup> Note verbale from Norway to the European Union, 9 January 2017, **C-112**.

<sup>114</sup> *The Public Prosecuting Authority v. Rafael Uzakov and SIA North Star Ltd.*, District Court, Judgment, 22 June 2017, **C-39**; *Rafael Uzakov and SIA North Star Ltd. v. The Public Prosecuting Authority v. Rafael Uzakov and SIA North Star Ltd.*, Court of Appeal, Judgment, 7 February 2018, **C-40**.

<sup>115</sup> A. Staalesen, “*Norway takes tough line against EU in Svalbard waters*,” *The Barents Observer*, 25 January 2017, **C-36**.

<sup>116</sup> “*Ny “krabbekrig” mellom Norge og EU*” [New “war crab” between Norway and the EU], NRK, 30 October 2019, **C-113**.

<sup>117</sup> Regulations prohibiting the capture of snow crabs, J-110-2017, 5 July 2017, **C-114**, Section 3.

141. While no biological or environmental rationale appears to have been disclosed by Norway to support this quota, the 4,000-tonne figure happened to roughly correspond approximately to the catches targeted by Norwegian vessels in 2017.<sup>118</sup> In the event, Norwegian vessels came short of delivering this amount, and the quota therefore was of no practical effect.<sup>119</sup>
142. In an apparent effort to settle the dispute, Norway offered to the European Union a grant of 500 tonnes out of the 4,000 tonnes yearly quota<sup>120</sup> (*i.e.* a minutely small fraction of what EU vessels had been harvesting in prior years) in exchange for the reciprocal assignment to Norway of EU quotas over other species.
143. In view of the minimal quota offered by Norway and the fact that EU vessels already held the legal right to harvest snow crabs without requiring an exchange of quotas with Norway (see *infra*, para. 259), no agreement was reached.
144. The diplomatic row between Norway and the European Union remains unsettled to this day, with no solution in sight for Claimants and other EU vessel operators.<sup>121</sup>
145. Following the arrest of Senator and Norway's antagonistic attitude towards EU crabbers, the Claimants had no choice but to suspend their operations in Norway, for fear of incurring additional fines or arrests.
146. Norway's actions have thus effectively deprived the Claimants of their rights to harvest snow crabs in the NEAFC zone and in maritime areas around Svalbard. The economic impact of Norway's interference with the Claimants' investments was dramatic, causing among other financial losses an instant collapse in North Star's revenues and profits.
147. In May 2017, North Star cancelled its contracts for the purchase of two additional vessels, Sokol and Solyaris, incurring EUR 640,000 in fines.<sup>122</sup>

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<sup>118</sup> N. Ramsden, "*Norway unlikely to fulfill 4,000t snow crab quota*," Undercurrent News, 22 June 2017, **C-37**.

<sup>119</sup> *Ibid.*

<sup>120</sup> *Ibid.*

<sup>121</sup> Note Verbale of the European Union to Norway, 1 November 2016, **C-71**.

<sup>122</sup> Fines imposed on SIA North Star, Invoice No. 85, 6 May 2017, **C-64**.

148. Seagourmet, the Claimants’ Norwegian strategic partner, was also severely impacted because of the unavailability of replacements for North Star’s supplies of live snow crabs. As a direct consequence of Norway’s ban on EU snow crab harvesting vessels, Seagourmet was forced to let go over 50 employees as activities at its Baatsfjord plant were practically brought to a halt.<sup>123</sup>
149. In May 2018, in spite of the fact that it already held valid licences for this purpose, North Star enquired with the Norwegian Directorate of Fisheries as to the possibility of obtaining an exemption under the Regulations enabling it to resume snow crab fishing. North Star offered to fulfil every condition imposed by Norway for the issuance of such an exemption.<sup>124</sup>
150. Norway’s Directorate of Fisheries responded that the Regulations prohibited the harvesting of snow crab on the Norwegian continental shelf “*unless an exemption has been granted*”. According to the Directorate, while “*a limited number of Norwegian vessels*” had been granted such an exemption, none had been granted to foreign vessels.<sup>125</sup>
151. The same letter added that:<sup>126</sup>
- 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.*
152. In June 2018, North Star submitted another application for an exemption. The Directorate of Fisheries answered in a letter dated 9 October 2018 reiterating that the harvesting of snow crabs on the Norwegian continental shelf is prohibited “*unless an*

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<sup>123</sup> “Norway’s most modern crab plant closed as opilio quota launch,” Undercurrent News, 30 June 2017, **C-115**.

<sup>124</sup> Letter from North Star to the Norwegian Directorate of Fisheries, 17 May 2018, **C-42**.

<sup>125</sup> Letter from the Norwegian Directorate of Fisheries to North Star, 25 May 2018, **C-43**.

<sup>126</sup> *Ibid.*

*exemption has been granted. No such exemption has been granted to any foreign vessel*".<sup>127</sup>

153. The repeated statements by the Norwegian Fisheries Directorate that no foreign vessel had been issued an exemption was surprising, considering that Norway's own Court of Appeal had issued judgment a few months earlier in which it had found that "*five Russian vessels*" had been exempted from the prohibition.<sup>128</sup>
154. Nonetheless, Norway refused to grant North Star an exemption which would have enabled it to harvest snow crabs in areas where Norway exercises its control. EU snow crab harvesting vessels remain to this day banned from operating in these areas.
155. On 14 November 2019, the Directorate of Fisheries once again refused to grant North Star an exception.<sup>129</sup>

*(ii) Norway's prosecution of North Star*

156. North Star has faced court proceedings in Norway following the arrest of the Senator in January 2017. These criminal proceedings culminated in a verdict adverse to North Star, delivered by the Norwegian Supreme Court on 14 February 2019.<sup>130</sup>
157. In these proceedings, charges were brought against North Star and the Senator's captain, Mr. Rafael Uzakov (a Russian national) for violations of the Marine Resources Act (specifically provisions of the Regulations prohibiting the harvesting of snow crabs) on account of the vessel's operations on the Norwegian continental shelf without dispensation from the Norwegian authorities.<sup>131</sup>
158. North Star and Mr. Uzakov pleaded not guilty to all counts of the indictment. Counsel for the defendants argued *inter alia* that the prohibitions under which North Star and Mr.

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<sup>127</sup> Letter from the Norwegian Directorate of Fisheries to North Star, 9 October 2018, **C-44**.

<sup>128</sup> *The Prosecuting Public Authority v. Rafael Uzakov and SIA North Star LTD*, Court of Appeal, Judgment, 7 February 2018, **C-40**, p.17; "*Norway's most modern crab plant closed as opilio quota launched*," Undercurrent News, 30 June 2017, **C-115**.

<sup>129</sup> Letter from the Directorate of Fisheries to SIA North Star, 14 November 2019, **C-116**.

<sup>130</sup> *Rafael Uzakov and SIA North Star LTD v. The Public Prosecuting Authority*, Supreme Court of Norway, Judgment, 14 February 2019, **C-38**.

<sup>131</sup> *Rafael Uzakov and SIA North Star LTD v. The Public Prosecuting Authority*, District Court, Judgment, 22 June 2017, **C-39**.

Uzakov were being tried violated the Svalbard Treaty's provisions on equal access to the resources of the archipelago. This violation resulted from Norway's refusal to issue exemptions other than to Norwegian vessels, thus discriminating against foreign vessels. Norway's violation of its international obligations justified acquittal of the accused under Norwegian law.

159. The District Court accepted that, while the wording of the Regulations was not considered discriminatory on its face, the Fisheries Directorate's practice was to apply it "*to establish exclusivity for Norwegian vessels. The court finds that this practice conflicts with the principle of non-discrimination established by the Svalbard Treaty, provided the treaty is applicable in this case*".<sup>132</sup>
160. The District Court however found that the Svalbard Treaty did not apply. Following earlier precedents set by Norwegian courts (and effectively siding with the Norwegian government's isolated position on the matter; see *infra*, paras. 218 et seq.), the court ruled that the Svalbard Treaty had no application beyond Svalbard's territorial sea, which extends up to 12 nautical miles from the coasts. Hence, Norwegian authorities were within their right to prohibit foreign vessels from harvesting snow crabs from the Norwegian continental shelf.<sup>133</sup>
161. The District Court found North Star and Mr Uzakov guilty. Both were sentenced to fines and North Star was further ordered to suffer forfeiture of property in an amount of NOK 1,000,000.<sup>134</sup>
162. North Star and Mr Uzakov appealed the District Court's judgment. The Norwegian Court of Appeal considered the question of the Regulations' conformity with the Svalbard Treaty, that is, the requirement of equal treatment. Contrary to the District Court, the Court of Appeal found "*no evidence to support the assertion that the prohibition was introduced in order to favour Norwegian citizens by means of a dispensation scheme*". In reaching this conclusion, the Court held:<sup>135</sup>

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<sup>132</sup> *Ibid.*, p. 8 (emphasis added).

<sup>133</sup> *Ibid.*

<sup>134</sup> *Ibid.*

<sup>135</sup> *Rafael Uzakov and SIA North Star Ltd. v. The Public Prosecuting Authority*, Court of Appeal, Judgment, 7 February 2018, **C-40**, p. 17.

*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...*

163. Therefore, the Court was not convinced of the existence of a discriminatory practice (despite the dispensation to Russian vessels) and did not “*find it necessary to discuss the matter of the extent to which section 2 of the Regulations is contrary to the principle of equal treatment in the Svalbard Treaty, as the act in any circumstance is a criminal offence according to the general principles of criminal law*”.<sup>136</sup> The Court dismissed the appeal.

164. North Star and Mr. Uzakov appealed the judgment to the Norwegian Supreme Court. Their appeal was finally dismissed in a decision rendered on 14 February 2019.<sup>137</sup>

165. 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:<sup>138</sup>

*The discussions in the Supreme Court are limited 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 snow crabs fishing 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 the area in question, regardless of whether the regulations prohibiting snow crab fishing 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 the area in question, and regardless of whether Paragraph 2 of Regulations on snow crab fishing, 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.*

166. The procedural decision dividing the case of 4 June 2018 shows that the Supreme Court wished to avoid the issue of the interpretation and application of the Svalbard Treaty. 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 Treaty<sup>139</sup> (which,

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<sup>136</sup> *Ibid.*

<sup>137</sup> *Rafael Uzakov and SIA North Star LTD v. The Public Prosecuting Authority*, Supreme Court of Norway, Judgment, 14 February 2019, **C-38**.

<sup>138</sup> *Rafael Uzakov and SIA North Star LTD v. The Public Prosecuting Authority*, Supreme Court of Norway, Order, 4 June 2018, **C-117**.

<sup>139</sup> *Ibid.*, para. 73.

independently of the position under Norwegian law, raises serious questions as a matter of international law where even the most well-established rights can be abused). At the same time, while deciding in that procedural decision that it would not address the issue, the Supreme Court nevertheless did, in the end, partially examine the issue.

167. In its judgment, the Supreme Court was however 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").<sup>140</sup> In discussing these provisions, the Supreme Court held that the issue should have been adjudicated in the context of a civil claim brought by the defendants.<sup>141</sup>
168. On this rationale, the Court declined to rule on this issue, despite the fact that the defendants had pleaded it as a defense to criminal liability. The Court instead determined that the criminal offence was established on the sole basis that Norwegian law required an exemption to be issued by Norwegian authorities, thus declining to rule on whether the Regulations (or their application by Norwegian authorities) violated the principle of equal treatment under to the Svalbard Treaty. The requirement to hold an exemption applied whether the vessel was foreign or Norwegian; as such, the requirement was not discriminatory. North Star and Mr. Uzakov had fished without an exemption and were therefore guilty of an indictable offence. The fact that EU vessels in practice stood no chance whatsoever of obtaining an exemption was not seen by the Court as a relevant consideration. Moreover, the Court engaged in an arbitrary and inconsistent approach of the defendants' defence under the Svalbard Treaty, which constituted one ground on which the convictions could have been overturned. These contrivances by the Supreme Court in its approach to the case show that North Star never had any chance to a fair hearing with respect to their arguments arising under the Svalbard Treaty.

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<sup>140</sup> Act relating to management of wild living marine resources (*The Marine Living Resources Act*), 6 June 2008, **CL-12**, 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.

<sup>141</sup> *Rafael Uzakov and SIA North Star LTD v. The Public Prosecuting Authority*, Supreme Court of Norway, Judgment, 14 February 2019, **C-38**, para. 80.

169. In the course of the proceedings, the Supreme Court also allowed a government lawyer, Deputy Attorney General, Mr. Tolle Stabell (who, as he works in the Office of the Attorney General (Civil Affairs), reports to the Office of the Prime Minister), to act as deputy prosecutor, in order allegedly to assist the prosecutor on matters of international law. Such a deputation from the Office of the Attorney General (Civil Affairs) in a criminal case had never before occurred before the Supreme Court. The Supreme Court allowed this lawyer, Mr. Stabell, to act over North Star's objections to the effect the deputy prosecutor was not independent, per the requirements of Norwegian law.<sup>142</sup> One of the reasons given to support the Supreme Court's view that there was nothing to establish the lawyer's lack of independence was that the Norwegian government had no involvement in this matter in respect of its international law obligations.<sup>143</sup> This was incorrect as North Star had already filed a notice of dispute under the BIT on 27 February 2017.<sup>144</sup> Moreover, the Supreme Court's observation that there could not be a conflict because the attorney's involvement was "*limited purely to legal issues*"<sup>145</sup> is hardly reassuring considering the central issue before the Supreme Court (which it avoided and refused to decide through various contrivances) should have been the scope of application of the Svalbard Treaty, certainly a legal issue. In these circumstances, the Supreme Court's decision allowing the Deputy Attorney General, who throughout continued to have his physical office within the Office of the Attorney General (Civil Affairs), which as mentioned above reports to the Prime Minister's Office, 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.

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<sup>142</sup> *Rafael Uzakov and SIA North Star LTD v. The Public Prosecuting Authority*, Supreme Court of Norway, Order, 9 January 2019, **C-41**, para. 18 ("*The prosecutor's jurisdiction is regulated in more detail 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 biased 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 action for voidness is raised by a party."*").

<sup>143</sup> *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.*").

<sup>144</sup> Notice of Dispute from "Arctic Fishing" and SIA North Star to the Kingdom of Norway, 27 February 2017, **C-2**.

<sup>145</sup> *Rafael Uzakov and SIA North Star LTD v. The Public Prosecuting Authority*, Supreme Court of Norway, Order, 9 January 2019, **C-41**, para. 29.

## B. THE LEGAL FRAMEWORK

170. This section presents the legal framework applicable to the present dispute. The first and primary part of the legal framework is the Latvia-Norway BIT **(a)**. Other important parts of the legal framework include the applicable law of the sea and in particular NEAFC and UNCLOS **(b)**, the Svalbard Treaty **(c)**, the WTO's General Agreement on Trade in Services **(GATS)** **(d)** and the Agreement on the European Economic Area **(EEA)** **(e)**. These other rules of international law applicable to the relationship between the parties must be taken into account in the interpretation of the BIT.<sup>146</sup>

### The Latvia-Norway BIT

171. The BIT between Latvia and Norway was signed on 16 June 1992. It entered into force on 1 December 1992.<sup>147</sup>
172. The BIT applies to investments made after 1 January 1987 in the territory of a contracting party in accordance with its laws and regulations.<sup>148</sup>
173. Under Article III BIT, each contracting party is committed to “*promote and encourage in its territory investments of investors of the other contracting party*”, “*accept such investments in accordance with its laws and regulations*” and “*accord them equitable and reasonable treatment and protection*”. Investments shall be “*subject to the laws and regulations of the contracting party in the territory in which the investments are made*”.<sup>149</sup>

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<sup>146</sup> Articles 31-32 of the 1969 Vienna Convention on the Law of Treaties (**VCLT**) on treaty interpretation are part of customary international law and thus applicable to the interpretation of the BIT. In particular, VCLT article 31(3)(c) requires that in the process of interpretation of a treaty, “[i]here shall be taken into account ... [a]ny relevant rules of international law applicable in the relations between the parties.” NEAFC, UNCLOS, the Svalbard Treaty and the GATS all contain rules of international law relevant to the present dispute which also apply in the relations between Latvia and Norway. See, Vienna Convention on the Law of Treaties, 1969, **CL-21**.

<sup>147</sup> While Latvia is a party to the 1969 VCLT, Norway is not and it is therefore the customary international law principles of treaty interpretation that apply to the Latvia-Norway BIT.

<sup>148</sup> 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, 16 June 1992, **CL-1**, Article II.

<sup>149</sup> *Ibid.*, Article III.

174. Article IV BIT commits the contracting parties to accord most favoured nation treatment to investments by investors of the other contracting party. It provides that “*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*”.<sup>150</sup>
175. The effect of Article IV BIT is also to allow Latvian investors to benefit from the protection granted by Norway under the terms of other bilateral investment treaties it has concluded. Claimants thus benefit from provisions of such other treaties, as outlined below.
176. Article 3 of the *Agreement between the Government of the Kingdom of Norway and the Government of the Russian Federation on Promotion and Mutual Protection of Investments (Norway-Russia BIT)*<sup>151</sup>, which entered into force on 21 May 1998, provides a guarantee of national treatment to investments made by Russian investors in Norway:<sup>152</sup>

*Each Contracting Party will accord in its territory for the investments made by investors of the other Contracting Party fair and equitable treatment.*

*The treatment referred to in paragraph 1 of this Article shall as a minimum not be less favourable than that which is granted with regard to investments by investors of any third state.*

*Subject to paragraphs 1 and 2 of this Article 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 by its own investors.*

177. Article III(4) of the *Agreement between the Government of the Kingdom of Norway and the Government of Romania on the Mutual Promotion and Mutual Protection of Investments (Norway-Romania BIT)*,<sup>153</sup> which entered into force on 23 March 1992, provides for the observance of other obligations with regards to investors, their investments and profits:<sup>154</sup>

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<sup>150</sup> *Ibid.*, Article IV.

<sup>151</sup> Agreement between the Government of the Kingdom of Norway and the Government of the Russian Federation on Promotion and Mutual Protection of Investments, 4 October 1995, **CL-22**, Article 3.

<sup>152</sup> *Ibid.*; emphasis added.

<sup>153</sup> Agreement between the Government of the Kingdom of Norway and the Government of Romania, 11 June 1991, **CL-23**, Article III(4).

<sup>154</sup> *Ibid.*

*(4) Each Contracting Party shall observe all other obligations entered into with regard to investors of the other contracting party, their investments and profits.*

178. Article 12 of the *Agreement between the Government of Peru and the Government of the Kingdom of Norway on the Promotion and Reciprocal Protection of Investments (Norway-Peru BIT)*<sup>155</sup>, which entered into force on 9 May 1995, provides for the application of more favourable international agreements:<sup>156</sup>

*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.*

179. Article VI BIT concerns expropriation and compensation. It provides that “*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*” except when such expropriation “*shall be done for public interest and under domestic legal procedures*”, “*shall not be discriminatory*” and “*shall be done only against prompt, adequate and effective compensation*”.<sup>157</sup>
180. As more amply discussed below (*infra*, paras. 244-292), Norway’s actions interfering with the Claimants’ investments in the territory of Norway have violated Articles III, IV and VI BIT, giving rise to the Claimants’ requests for relief under this Request for Arbitration.

### **The Relevant Law of the Sea: NEAFC and UNCLOS**

181. The *North-East Atlantic Fisheries Convention* or NEAFC is relevant to this dispute insofar as North Star was granted licences to harvest snow crabs pursuant to the regional fisheries management regime established by NEAFC.

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<sup>155</sup> Agreement between the Government of Peru and the Government of the Kingdom of Norway on the Promotion and Reciprocal Protection of Investments, 10 March 1995, **CL-24**.

<sup>156</sup> *Ibid.*, Article 12.

<sup>157</sup> 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, 16 June 1992, **CL-1**, Article VI.

182. North Star’s NEAFC licences, which enabled it to carry out its snow crab harvesting activities in the Loophole between 2014 and 2016, were part of its scheme of investments in the territory of Norway.
183. NEAFC was signed in 1980 by Bulgaria, Cuba, Denmark (on behalf of the Faeroe Islands), the European Economic Community, Finland, the German Democratic Republic (East Germany), Iceland, Norway, Poland, Portugal, Spain, Sweden and the USSR.<sup>158</sup> NEAFC currently has five contracting parties (Denmark in respect of the Faroe Islands, the European Union, Iceland, Norway and the Russian Federation) and six cooperating non-contracting parties (Bahamas, Canada, Curaçao, Liberia, New Zealand and Panama). NEAFC is thus applicable in the relations between Norway and Latvia since Norway and the European Union (acting on behalf of Latvia and the other Member States) are both parties to NEAFC.
184. The preamble to NEAFC states that the Convention was entered into “*Recognising the relevant provisions of the United Nations Convention on the Law of the Sea of 10 December 1982.*”<sup>159</sup> While UNCLOS is the general multilateral convention governing the law of the sea, NEAFC is a fisheries management regime establishing cooperation on a regional level.
185. Article 63(2) UNCLOS provides:<sup>160</sup>

*where the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and the States fishing for such stocks in the adjacent area shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary for the conservation of these stocks in the adjacent area.*

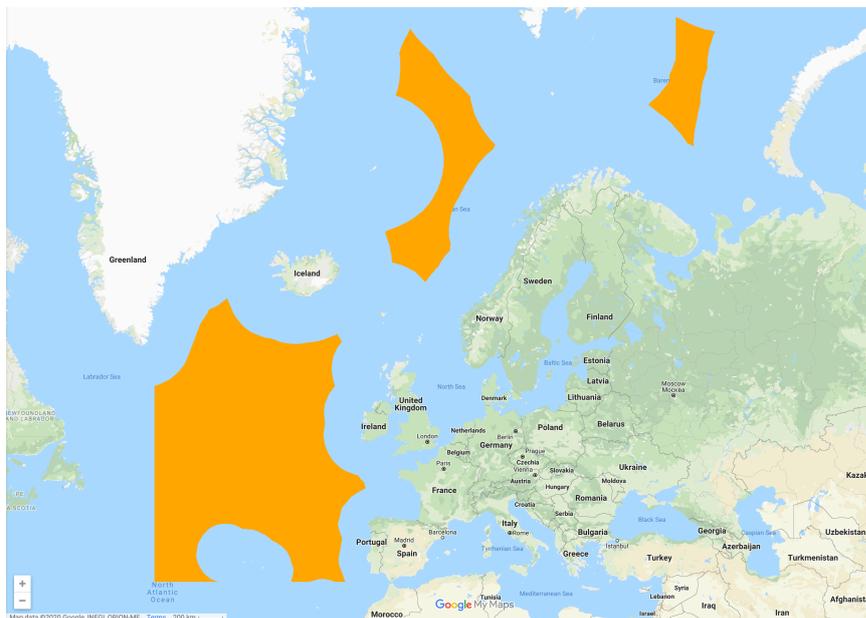
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<sup>158</sup> Convention on Future Multilateral Cooperation in North-East Atlantic Fisheries (signed version), 18 November 1980, **CL-25**.

<sup>159</sup> Convention on Future Multilateral Cooperation in North-East Atlantic Fisheries, 18 November 1980, **CL-18**, Preamble.

<sup>160</sup> The United Nations Convention on the Law of the Sea, 1982, **CL-13**, Article 63(2).

186. NEAFC creates such an organization with respect to the “*Convention Area*”, which covers the Barents Sea, including the Loophole.<sup>161</sup>



Map 2: Areas regulated by the NEAFC Convention – source: website neafc.org. The Loophole, one of three NEAFC areas, is the diamond-shaped space immediately above and west of the Russian Federation, north east of continental Norway and south east of Svalbard.

187. NEAFC’s objective is to “*ensure the long-term conservation and optimum utilization of the fishery resources in the Convention Area, providing sustainable economic, environmental and social benefits*”.<sup>162</sup> “[*F*]ishery resources” are defined as “*resources of fish, molluscs, crustaceans and including sedentary species...*”<sup>163</sup>
188. NEAFC established the North-East Atlantic Fisheries Commission (***Commission***), whose mandate is to fulfil the objectives of the Convention. NEAFC provides that the Commission shall “*make recommendations concerning fisheries conducted beyond the areas under jurisdiction of Contracting Parties*” and “*may make recommendations concerning fisheries conducted within an area under jurisdiction of a Contracting Party, provided that the Contracting Party in question so requests and the recommendation receives its affirmative vote*”.<sup>164</sup>

<sup>161</sup> Convention on Future Multilateral Cooperation in North-East Atlantic Fisheries, 18 November 1980, **CL-18**, Article 1(a).

<sup>162</sup> *Ibid.*, Article 2.

<sup>163</sup> *Ibid.*, Article 1(b).

<sup>164</sup> *Ibid.*, Article 5(1), 6(1).

189. In the exercise of its functions, the Commission may consider *inter alia* measures pertaining to “*the improvement and increase of fishery resources*”, “*the establishment of total allowable catches and their allocation to Contracting Parties*” and “*the regulation of the amount of fishing effort and its allocation to Contracting Parties*”.<sup>165</sup> The Commission’s recommendations may also include measures of conservation<sup>166</sup> and the collection of statistical information.<sup>167</sup>
190. Recommendations by the Commission are notified to all contracting parties and enter into force after the expiration of a period of objection. Recommendations do not become binding on contracting parties which have objected thereto.<sup>168</sup>
191. Contracting parties bear responsibility for monitoring the implementation of NEAFC. Article 15 NEAFC thus provides that “*the Contracting Parties shall take such action, including the imposition of adequate sanctions for infractions, as may be necessary to make effective the provisions of this Convention and to implement any recommendation which becomes binding...*” Annual statements of any such actions must be transmitted to the Commission.<sup>169</sup>
192. The NEAFC Scheme of Control and Enforcement (*Scheme*)<sup>170</sup> is the central recommendation in force pursuant to NEAFC. The Scheme establishes measures for the control, monitoring and inspection of fisheries conducted under NEAFC, as well as procedures concerning infringements and compliance.
193. Article 4 of the Scheme provides the conditions under which each contracting party may authorize fishing activities within the Convention Area by vessels flying its flag.<sup>171</sup> Article 5 provides for the annual notification to the NEAFC Secretary by each contracting party of “*all fishing vessels authorised to fish and notably whether the vessel is authorised to fish*

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<sup>165</sup> *Ibid.*, Article 7.

<sup>166</sup> *Ibid.*, Article 8.

<sup>167</sup> *Ibid.*, Article 9.

<sup>168</sup> *Ibid.*, Articles 11-13.

<sup>169</sup> *Ibid.*, Article 15.

<sup>170</sup> NEAFC Scheme of Control and Enforcement, 13 February 2019, **CL-19**.

<sup>171</sup> *Ibid.*, Article 4.

*one or more regulated resource*". The Secretary then makes available to all contracting parties the information so notified.<sup>172</sup>

194. Species classified as "*regulated resources*" under NEAFC are listed in Annex I of the Scheme. Such species are subject to conservation measures and more stringent reporting requirements.<sup>173</sup> Regulated resources do not include snow crabs, which are thus considered "*unregulated*" pursuant to NEAFC.
195. While snow crabs are not regulated under NEAFC (*e.g.* in terms of quotas), snow crab harvesting is nonetheless managed under the Scheme. Snow crabs are listed under Annex V of the Scheme under FAO 3-Alpha code "*CRQ*" along with their English common name (queen crab) and scientific name (*chionoecetes opilio*). While not subject to measures of conservation, snow crab fishing within NEAFC areas remains subject to the Scheme, notably with respect to recording of catches and other applicable fishing requirements.<sup>174</sup>
196. The Scheme provides for inspections at sea by inspectors of the fishery control service of the contracting parties. In particular, the Scheme provides that "*each Contracting Party shall ensure that NEAFC inspectors from another Contracting Party shall be allowed to carry out inspections on board those of its fishing vessels to which this Scheme applies*".<sup>175</sup> Masters of vessels fishing in NEAFC areas intending to call into a port shall notify the competent authorities in accordance with designated procedures.<sup>176</sup>
197. The Scheme also provides for inspections at port: "*Landing, transshipment operations or other use of port services, may only commence after authorisation has been given by the competent authorities of the port State*". Such activities "*shall not be authorised if the port State receives clear evidence that the catch on board was taken in contravention of applicable requirements of a Contracting Party in respect of areas under its national jurisdiction*".<sup>177</sup>

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<sup>172</sup> *Ibid.*, Article 5.

<sup>173</sup> *Ibid.*, Articles 10, 12.

<sup>174</sup> *Ibid.*, Article 9; Annex IV, section 2 (referring to Annex V FAO species codes).

<sup>175</sup> *Ibid.*, Article 15.

<sup>176</sup> *Ibid.*, Article 22.

<sup>177</sup> *Ibid.*, Article 23.

198. North Star’s NEAFC licences were issued by Latvia following notification by the European Commission to NEAFC Secretariat starting in late 2013.<sup>178</sup>
199. North Star’s licences were issued for “*unregulated species*”, which pursuant to NEAFC include snow crabs (FAO 3-Alpha code “*CRQ*”).<sup>179</sup> Snow crabs are a species which may be harvested under a NEAFC licence regardless of whether snow crabs are sedentary, since NEAFC defines the “*fishery resources*” as including sedentary species.<sup>180</sup>
200. The addition of snow crabs to the Annex V of the NEAFC Scheme entered into force in February 2016 following a recommendation adopted by the 34<sup>th</sup> NEAFC Annual Meeting in November 2015. No objection by Norway was recorded.<sup>181</sup> The addition of snow crabs to Annex V of the Scheme confirmed the common understanding among NEAFC parties, as well as their practice, that snow crab harvesting could be licensed under NEAFC by contracting parties in accordance with the Scheme.
201. The NEAFC licences issued to North Star included references to fishing gear used to harvest snow crabs, including “*FPO*”, which is the international code for bottom pots (traps) used to harvest crabs.<sup>182</sup> While applying to unregulated species generally, the licences were thus clearly issued to authorize snow crab harvesting.
202. Pursuant to NEAFC, vessels licensed by each contracting party (including Latvia through the EU) were notified to the NEAFC Secretary on an annual basis. These notifications included references to licences issued to North Star and indicating that North Star targeted

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<sup>178</sup> Email of Latvian Ministry of Agriculture (Janis Laguns) to the European Union/DG MARE (Michele Surace), 19 August 2013, **C-89**; Email of the European Union/DG MARE (Pernille Skov-Jensen) to Latvian Ministry of Agriculture (Janis Laguns), 30 September 2013, **C-90**; Email of Latvian Ministry of Agriculture (Janis Laguns) to the European Union/DG MARE (Pernille Skov-Jensen), 2 December 2014, **C-91**; Email of Latvian Ministry of Agriculture (Janis Laguns) to the European Union/DG MARE (Pernille Skov-Jensen), 11 December 2014, **C-92**; Emails between the Latvian Ministry of Agriculture (Janis Laguns) and the European Union/DG MARE (Pernille Skov-Jensen), January 2015, **C-93**.

<sup>179</sup> NEAFC Scheme of Control and Enforcement, 13 February 2019, **CL-19**, Annex V.

<sup>180</sup> Convention on Future Multilateral Cooperation in North-East Atlantic Fisheries, 18 November 1980, **CL-18**, Article 1(b).

<sup>181</sup> Report of the 34<sup>th</sup> Annual Meeting of the North-East Atlantic Fisheries Commission, 9-13 November 2015, **C-118**; Recommendation to Amend Annex V of the NEAFC Scheme of Control and Enforcement, December 2016, **C-119**.

<sup>182</sup> For codes for fishing gear, *see* European Commission, Fisheries and Aquaculture, list of Gear types, Undated, **C-120**. For confirmation that “*FPO*” is used for crabs, *see* Food and Agriculture Organization of the United Nations, Fishing Gear types, Undated, **C-121**.

snow crabs. These annual notifications were in turn communicated to all contracting parties, including Norway. While it was thus fully aware of Latvia's issuance of licences authorizing vessels flying its flag to harvest snow crabs in the Loophole between 2014 and 2016, Norway lodged no objection within NEAFC.

203. Also, despite having been inspected well over 80 times by Norwegian authorities acting under the NEAFC Scheme,<sup>183</sup> at no time was North Star ever found to have infringed the NEAFC Scheme. Had any infringement been found by Norwegian authorities, such an infringement should have been reported by Norway to NEAFC authorities pursuant to the NEAFC Scheme.
204. In particular, Article 29 of the Scheme lists various types of infringements deemed "*serious infringements*" of the NEAFC regime, the first one being "*fishing without a valid authorisation issued by the flag Contracting Party.*" A serious infringement is to be immediately reported to the NEAFC Secretariat under Article 30(1) of the NEAFC Scheme.<sup>184</sup> No infringement was ever reported to NEAFC with respect to North Star's vessels.
205. North Star's vessels were validly licensed to harvest snow crabs in the Loophole pursuant to licences issued by Latvia. Norway's consistent acquiescence to the validity of such licences demonstrates that Norway considered NEAFC as an appropriate international regime for the regional management of snow crab fisheries within the Loophole, consistent with Article 63 UNCLOS.
206. Importantly, Norway's acquiescence to the management of snow crab fisheries in the Loophole through NEAFC was in no way impeded by its July 2015 decision to requalify snow crabs as a sedentary species. As noted, sedentary species are covered by NEAFC, and licensing mechanisms under the NEAFC Scheme apply regardless of whether snow crabs are sedentary or non-sedentary.<sup>185</sup>

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<sup>183</sup> See above, paras. 104, 106.

<sup>184</sup> NEAFC Scheme of Control and Enforcement, 13 February 2019, **CL-19**, Article 29.

<sup>185</sup> Letter of Latvian Minister of Agriculture (Janis Duklavs) to Mr. Karmenu Vella (European Commissioner on Environment, Maritime Affairs and Fisheries), 11 September 2015, **C-108** (referring to the 2006 amendments that came into force in 2013, and further protesting on the diplomatic note of Norway and the Russian Federation of 15 July 2015) with reference to the Note Verbale by the Mission of Norway to the European Union dated 30 October 20.

207. Finally, since UNCLOS and NEAFC must be read together, with UNCLOS being the general legal framework and NEAFC being the specific framework for conservation of fisheries agreed between relevant states in respect of the Loophole, UNCLOS Article 119(3) is also relevant to the present dispute. It provides:

*States concerned shall ensure that conservation measures and their implementation do not discriminate in form or in fact against the fishermen of any State.*

208. Norway's actions, including the designation of snow crabs as a sedentary species, must therefore be evaluated against the requirement of non-discrimination found in UNCLOS.

### **The Svalbard Treaty**

209. The Svalbard Treaty is relevant to this dispute insofar as North Star held licenses issued by Latvia under European Council Regulations<sup>186</sup> adopted pursuant to the rights of EU member states deriving from the Svalbard Treaty.
210. These licences granted North Star the right to harvest snow crabs in waters off the Svalbard archipelago, including from Svalbard's continental shelf. North Star's Svalbard licences are part of its investments in the territory of Norway.
211. The Svalbard Treaty was signed in Paris on 9 February 1920 by Norway, the United States, Denmark, France, Italy, the Netherlands, Great Britain and Sweden. It entered into force following its ratification by all initial signatories, in 1925. The treaty currently has 46 parties, including Latvia, for which the ratification came into force in June 2016.
212. Until the early twentieth century, various states had tried to establish their sovereignty over Svalbard (also known as Spitsbergen). At times, the Svalbard archipelago was used as a base for fishing, whaling and mining. At other times, it was seen as having military or

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<sup>186</sup> Council Regulation (EU) 2017/127 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, 20 January 2017, **CL-5**; Council Regulation (EU) 2018/120 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, amending Regulation (EU) 2017/127, 23 January 2018, **CL-4**; Council Regulation (EU) 2019/124 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**.

strategic interest. Between the 1870s and the end of World War I, Svalbard was often presented as a *terra nullius* under international law.

213. After World War I, the signatories to the Svalbard Treaty agreed to recognize Norwegian sovereignty over Svalbard. In exchange for such recognition, all contracting parties would be granted non-discriminatory access to Svalbard's resources, and the treaty would remain open to ratification by any other state.
214. The preamble to the Svalbard Treaty embodies this fundamental *quid pro quo*, as it states that its signatories were:<sup>187</sup>

*Desirous, while recognising the sovereignty of Norway over the Archipelago of Spitsbergen, including Bear Island, of seeing these territories provided with an equitable regime, in order to assure their development and peaceful utilisation.*

215. Under Article 1, parties to the Svalbard Treaty “*undertake to recognise, subject to the stipulations of the present Treaty, the full and absolute sovereignty of Norway over the Archipelago of Spitsbergen*”, including its various islands “*great or small and rocks appertaining thereto*”.<sup>188</sup>
216. Article 2 establishes a right of equal access to “*ships and nationals of all the High Contracting Parties*” over fishing and hunting resources in the territories specified in Article 1 as well as their “*territorial waters*” on a non-discriminatory basis:<sup>189</sup>

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

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

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<sup>187</sup> 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, Preamble.

<sup>188</sup> *Ibid.*, Article 1.

<sup>189</sup> *Ibid.*, Article 2.

217. Article 3 establishes a right of equal access to Svalbard “waters, fjords and ports of the territories specified in Article 1” for the purpose of carrying out “maritime, industrial, mining and commercial operations on a footing of absolute equality”:<sup>190</sup>

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

*They shall be admitted under the same conditions of equality to the exercise and practice of all maritime, industrial, mining or commercial enterprises both on land and in the territorial waters, and no monopoly shall be established on any account or for any enterprise whatever.*

*Notwithstanding any rules relating to coasting trade which may be in force in Norway, ships of the High Contracting Parties going to or coming from the territories specified in Article 1 shall have the right to put into Norwegian ports on their outward or homeward voyage for the purpose of taking on board or disembarking passengers or cargo going to or coming from the said territories, or for any other purpose...*

218. Hence, according to Article 2 of the Svalbard Treaty, “ships and nationals of all the High Contracting Parties” (now including ships and nationals of Latvia) enjoy equal rights to fish in Svalbard’s territorial waters. According to Article 3, they may freely access Svalbard’s “waters” and “carry on there without impediment all maritime... operations on a footing of absolute equality”.
219. These provisions provide a clear legal basis in international law for North Star’s right to conduct fishing and maritime operations within the “territorial waters” (and “waters” more generally) of Svalbard’s archipelago.
220. In view of Norway’s current position that snow crabs are a sedentary species belonging to the continental shelf, a question may arise as to whether the Svalbard Treaty’s equal treatment provisions also extend to Svalbard’s continental shelf.

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<sup>190</sup> *Ibid.*, Article 3.

221. The correct view under international law (shared by virtually every contracting party to the Svalbard Treaty, with the notable exception of Norway) is that they do.<sup>191</sup> Since Svalbard generates a continental shelf independent from the shelf generated by Norway's mainland, the Svalbard Treaty must be interpreted as granting its signatories rights of equal access to the resources of Svalbard's continental shelf. Thus, North Star's right to harvest snow crabs in maritime areas around the Svalbard archipelago is protected by the Svalbard Treaty, whether snow crabs are sedentary or not.
222. In a Note Verbale to Norway dated 1 November 2016, the European Union presented its position regarding the interpretation of the Svalbard Treaty as follows:<sup>192</sup>

*The European Union considers that the Svalbard archipelago, including Bear Island, generates its own maritime zones, separate from those generated by other Norwegian territory, in accordance with the 1982 United Nations Convention on the Law of the Sea. It follows that there is a continental shelf and an exclusive economic zone, which pertain to Svalbard.*

*The European Union also considers that the maritime zones generated by Svalbard are subject to the provisions of the Treaty of Paris of 1920, which grants, by virtue of its Articles 2 and 3, an equal and non-discriminatory access to resources for all Parties to the Treaty, in particular with respect to fishing activities, including fishing for sedentary species on the continental shelf around Svalbard.*

223. Through the same Note, the EU notified Norway that EU acceptance of “fishery regulations proposed by Norway pertaining to the maritime zones around Svalbard has been conditional on the regulations being applied in a non-discriminatory manner; based on scientific advice; and respected by all interested Parties.”<sup>193</sup>
224. The EU considered that the Norwegian Regulations as amended on 22 December 2015 “disregard the specific provisions of the Treaty of Paris, and in particular those laid down

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<sup>191</sup> R. Churchill and G. Ulfstein, “*The Disputed Maritime Zones around Svalbard*,” in M. H. Nordquist, T. H. Heidar and J. N. Moore (eds), *CHANGES IN THE ARCTIC ENVIRONMENT AND THE LAW OF THE SEA*, Martinus Nijhoff, 2010, CL-26, p. 565.

<sup>192</sup> Note Verbale of the European Union to Norway, 1 November 2016, C-71 (emphasis added).

<sup>193</sup> *Ibid.*

*in Articles 2 and 3, which grant equal and non-discriminatory access to fishing in the maritime zones in question*".<sup>194</sup>

225. To the extent that exemptions issued under the Regulations “*are only granted to Norwegian vessels, this confers an unjustified privileged access to vessels flying the flag of Norway and is thus not consistent with the obligations of Norway under the Treaty of Paris*”. The note added that the European Union was “*not aware of any scientific study in support of the prohibition or limitation of the catch of snow crab or justifying a differential treatment within or outside territorial waters*”.<sup>195</sup>
226. Norway’s position was set out in a Note Verbale addressed to the European Union on 9 January 2017.<sup>196</sup> This position – which again is unique to Norway and shared by no other signatory of the Svalbard Treaty<sup>197</sup> – may be briefly summarized as follows. Svalbard does not generate its own continental shelf, since “*the continental shelf areas of Norway extends from the Norwegian mainland and continues around and past Svalbard*”. Norway, as the coastal state, exercises sovereign rights over the continental shelf for the purpose of exploiting its resources, including sedentary species. Snow crab is a sedentary species under UNCLOS. Thus, “*harvesting snow crab on the Norwegian continental shelf cannot be carried out without the express consent of Norway as the coastal state*”.<sup>198</sup>
227. Norway considers that Articles 2 and 3 of the Treaty are inapplicable to the harvesting of sedentary species on the continental shelf. According to Norway, “*there is no basis in the 1920 Treaty for a claim that any of its provisions granting rights to nationals of the contracting Parties apply on the continental shelf of the archipelago beyond its territorial waters*”.<sup>199</sup> Norway’s position is thus entirely dependent on its recent qualification of snow crabs as a sedentary species, and thus a species of the continental shelf.

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<sup>194</sup> *Ibid.*

<sup>195</sup> *Ibid.*

<sup>196</sup> Note verbale from Norway to the European Union, 9 January 2017, **C-112**.

<sup>197</sup> T. Pedersen, “*The Svalbard Continental Shelf Controversy: Legal Disputes and Political Rivalries*,” *Ocean Development and International Law*, 15 June 2006, **CL-20**, p. 7.

<sup>198</sup> Note verbale from Norway to the European Union, 9 January 2017, **C-112**.

<sup>199</sup> *Ibid.*

228. The Claimants respectfully submit that Norway’s interpretation of the scope of the Svalbard Treaty is incorrect and may therefore not be relied upon to deprive them of their rights stemming from the Svalbard Treaty.
229. If, as Norway believed until July 2015, snow crabs are in fact a non-sedentary species,<sup>200</sup> there is no question that the Svalbard Treaty grants nationals of its contracting parties equal rights to fish for snow crabs and conduct maritime operations related thereto within the archipelago’s “*territorial waters*” (and “*waters*” more generally).<sup>201</sup>
230. Even assuming this new qualification to be correct (which Claimants do not concede), it still fails to exclude the application of the Svalbard Treaty to snow crab harvesting from the continental shelf.
231. Under international law, a state’s territory automatically generates a continental shelf. It is not necessary for a state expressly to claim a continental shelf. With respect to Svalbard, Norway has indeed made submissions to the CLCS in respect of the continental shelf extending beyond 200 miles off the coast of the archipelago,<sup>202</sup> and Svalbard’s baselines were considered relevant for the determination of the outer limits of Norway’s continental shelf. Norway has further entered into an agreement with Denmark on 20 February 2006 delimiting the continental shelf boundary between Svalbard and Greenland<sup>203</sup>, and has entered into negotiations with Russia towards delimiting the continental shelves of Svalbard and the Russian islands of Novaja Zemlja and Franz Josef Land in the Barents Sea.<sup>204</sup>

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<sup>200</sup> Minutes of the Meeting between Ilya V. Shertakov, Deputy Minister of Agriculture of the Russian Federation – Head of the Federal Agency for Fisheries, and Elisabeth Aspaker, Minister of Fisheries of the Kingdom of Norway, 17 July 2015, **C-106**.

<sup>201</sup> 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**, Articles 2, 3.

<sup>202</sup> Continental Shelf Submission of Norway in respect of areas in the Arctic Ocean, the Barents Sea and the Norwegian Sea, Executive Summary, 2006, **C-122**.

<sup>203</sup> Agreement between the Government of the Kingdom of Norway on the one hand, and the Government of the Kingdom of Denmark together with the Home Rule Government of Greenland on the other, concerning the Delimitation of the Continental Shelf and the Fisheries Zones in the Area between Greenland and Svalbard, 20 February 2006, **CL-7**, Article 1.

<sup>204</sup> R. Churchill and G. Ulfstein, “*The Disputed Maritime Zones around Svalbard*,” in M. H. Nordquist, T. H. Heidar and J. N. Moore (eds), *CHANGES IN THE ARCTIC ENVIRONMENT AND THE LAW OF THE SEA*, Martinus Nijhoff, 2010, **CL-26**, p. 561-562.

Norway's claim that Svalbard does not generate a continental shelf is therefore contradicted by its own practice.

232. The fact that the Svalbard Treaty includes no reference to the archipelago's continental shelf is readily explained by the fact that the concept of a continental shelf was not known to international law in 1920 when the Treaty was signed. However, the object and purpose of the Treaty, as well as the requirement to take into consideration the evolution of international law, support an interpretation of the rights provided in Articles 2 and 3 as extending to the 200-mile zone and continental shelf around Svalbard. To the extent that subsequent developments of international law have enabled Norway to derive from its sovereignty over Svalbard maritime rights to the 200-mile zone and continental shelf, the geographical scope and the equal rights of the other parties to the Treaty must likewise be extended.<sup>205</sup> Moreover, Norway did extend, even on its own view, the geographical scope of the Treaty due to evolutions in the law of the sea (though on a pick and choose basis). While Svalbard's territorial sea (as well as the territorial sea around all of Norway) was traditionally of 3 nautical miles, on 1 January 2004 amendments to Norwegian legislation came into force bringing it to 12-miles (with respect to continental Norway, Svalbard and the Island of Jan Mayen), in line with both customary international law and UNCLOS.
233. The Treaty's limitations on Norwegian sovereignty applicable to the territory itself and its "*territorial waters*", which take the form of rights to equal and non-discriminatory access to the archipelago's resources by nationals of all contracting parties, *a fortiori* must also apply to the maritime zones generated by the Svalbard archipelago beyond the territorial sea.
234. Norway's prohibition of snow crab harvesting by nationals of contracting parties to the Svalbard Treaty is a violation of Norway's international obligations to grant such nationals equal access to the resources of the archipelago.
235. Norway's practice of systematic discrimination against foreign nationals in favour of its own nationals in the attribution of snow crab harvesting permits covering Svalbard is a further violation of its Treaty obligations. Under these obligations, Norwegian management

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<sup>205</sup> See for e.g., Note Verbale from Spain to the Secretary General of the United Nations, 2 March 2007, C-78.

measures pertaining to the archipelago “*shall always be applicable equally to the nationals of all the High Contracting Parties without any exemption, privilege or favour*”<sup>206</sup>, and all such nationals may carry out maritime and other operations in the archipelago’s waters “*on a footing of absolute equality*”.<sup>207</sup>

236. In view of the rights granted to the contracting parties to the Svalbard Treaty, and considering their systematic violation by Norway, the European Council adopted regulations allocating snow crab fishing opportunities around Svalbard among EU member states. Latvia’s issuance of fishing licences to North Star was consistent with the allocation accorded to Latvia as established by the relevant EC regulations.
237. Norway’s Marine Resources Act, pursuant to which the Regulations prohibiting snow crab harvesting were adopted, further provides that “*the Act applies subject to any restrictions deriving from international agreements and international law otherwise*”.<sup>208</sup>
238. Norway’s obligations under the Svalbard Treaty to provide equal access to marine resources of the Svalbard archipelago are “*restrictions deriving from*” an international agreement. It follows that Regulations adopted pursuant to the Marine Resources Act cannot be interpreted or applied to deprive the nationals of any other contracting party to the Svalbard Treaty of their right of equal and non-discriminatory access to Svalbard’s resources.

### **The WTO’s General Agreement on Trade in Services (GATS)**

239. Both Norway and Latvia are members of the WTO, since 1 January 1995 and 10 February 1999 respectively. As members of the WTO, both Norway and Latvia are bound by the General Agreement on Trade in Services (**GATS**).<sup>209</sup>

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<sup>206</sup> 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.

<sup>207</sup> *Ibid.*, Article 3.

<sup>208</sup> Act relating to the management of wild living marine resources (The Marine Resources Act), 6 June 2008, **CL-12**, Chapter 1, Section 6.

<sup>209</sup> General Agreement on Trade in Services, 1994, **CL-8**.

240. GATS' Article 1(1) defines the scope of its application in the following manner:

*This Agreement applies to measures by Members affecting trade in services.*

241. Further, Article 1(2) defines the modes of supply of service covered by the GATS:

*For the purposes of this Agreement, trade in services is defined as the supply of a service:*

*(a) from the territory of one Member into the territory of any other Member;*

*(b) in the territory of one Member to the service consumer of any other Member;*

*(c) by a service supplier of one Member, through commercial presence in the territory of any other Member;*

*(d) by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member.*

242. While the GATS' disciplines on national treatment and market access are established only on the basis of specific commitments made in a WTO Member's schedule of specific commitments, the most favoured nation treatment obligation applies to all measures within the scope of the agreement. Article II (MFN) provides:

*1. With respect to any measure covered by this Agreement, each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country.*

*2. A Member may maintain a measure inconsistent with paragraph 1 provided that such a measure is listed in, and meets the conditions of, the Annex on Article II Exemptions.*

*3. The provisions of this Agreement shall not be so construed as to prevent any Member from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.*

243. The GATS also contains certain general exceptions, notably paragraph (b) of Article XIV:

*Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures: ...*

*(b) necessary to protect human, animal or plant life or health;*

244. Subject to certain specific and narrowly-tailored exceptions, a WTO Member like Norway must grant services and service providers of another WTO Member, like Latvia, treatment no less favourable than it accords to any like service or service supplier of any other country (such as the Russian Federation).
245. To the extent Norway would have provided more favourable treatment to like service suppliers or like services of the Russian Federation, for example regarding fishing services provided in Norway, then Norway would be in breach of GATS Article II.

**(e) The Agreement on the European Economic Area (EEA)**

246. Both Norway and Latvia are members of the Agreement on the European Economic Area concluded between the European Union (including Latvia) and the States members of the European Free Trade Association (Norway, Iceland and Liechtenstein). The EEA initially came into force on 1 January 1994 and both Norway and Latvia have been party to it since Latvia's accession to the EU on 1 May 2004.<sup>210</sup>
247. The EEA applies to the territory of the parties to that agreement which, in the case of Norway includes not only continental Norway and the Svalbard archipelago, but also the continental shelf and all relevant fishing zones.
248. Within the scope of application of the EEA, States parties to it, including Norway, have a general non-discrimination obligation. Article 4 provides:

*Within the scope of application of this Agreement, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.*

249. The EEA also has a number of obligations relating to trade in goods and trade in services.
250. With respect to trade in goods, Article 11 and Article 12 of the EEA prohibit the application of quantitative restrictions on imports and exports as well as on all measures having an equivalent effect. While Article 13 provides for certain exceptions to this prohibition, those exceptions "*shall not ... constitute a means of arbitrary discrimination or a disguised*

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<sup>210</sup> Agreement on the European Economic Area, 1994, CL-10.

*restriction on trade between the Contracting Parties.”* Article 1(2) of Protocol 9 to the EEA (with respect to fish and marine products) contains similar obligations.

251. With respect to trade in services, Article 36 provides a general prohibition on any restriction to trade in services between the parties to the EEA. Article 36 provides:

*Within the framework of the provisions of this Agreement, there shall be no restrictions on freedom to provide services within the territory of the Contracting Parties in respect of nationals of EC Member States and EFTA States who are established in an EC Member State or an EFTA State other than that of the person for whom the services are intended.*

252. The EEA therefore provides a general framework for trade in goods and services which applies in the context of the BIT.

### **C. NORWAY’S VIOLATIONS OF THE BIT**

253. Norway’s actions interfering with the Claimants’ investments in Norway constitute multiple breaches of the BIT, for which the Claimants are entitled to full reparation.

254. There are at least eleven twelve categories of violations of the BIT which are further discussed below in three sections covering Article III (promotion and protection of investments), Article IV (most favoured nation treatment) and Article VI (compensation in the case of expropriation):

- **Violations of Article III of the BIT (promotion and protection of investments)**
  - First, Norway’s arbitrary, contradictory, discriminatory and unreasonable actions between July 2015 and today, taken individually and together, ultimately preventing Claimants from harvesting snow crabs either in the Loophole or in the Svalbard waters, are in violation of the obligation to provide Claimants “*equitable and reasonable*” treatment under Article III of the BIT.
  - Second, Norway breached the Claimants’ legitimate expectations that their investments could thrive in Norway, another breach of Norway’s obligation to provide equitable and reasonable treatment under Article III of the BIT.

- Third, Norway failed to accept Claimants' investments in Norway, in particular Claimants' licences issued lawfully under EU Regulations 2017/127, 2018/120 and 2019/124, in breach of Article III of the BIT.
- Fourth, the legal proceedings and in particular the Norwegian Supreme Court's judgment of 14 February 2019 are themselves a violation of the obligation to provide equitable and reasonable treatment, and a denial of justice, in violation of Article III of the BIT.
- **Violations of Article IV of the BIT (most favoured nation treatment)**
  - Fifth, the legal proceedings and in particular the Norwegian Supreme Court proceedings and judgment of 14 February 2019 are in violation of the right to effective access to courts and related rights to a fair and independent trial found in other international conventions binding on Norway and Latvia, in breach of Article IV of the BIT. This provision of the BIT imports the right to effective access to courts found in Article II(5) of the Norway-Romania BIT and the right to any more favourable treatment found in other international treaties binding on Latvia and Norway on the basis of Article 12 of the Norway-Peru BIT.
  - Sixth, Norway's refusal to grant the Claimants an exemption to harvest snow crabs, combined with the granting of such exceptions to at least five Russian vessels is a breach of Article IV of the BIT which requires Norway to grant Claimants most favourable treatment.
  - Seventh, by treating Norwegian vessels and investors more favourably than the Claimants and their investments, Norway breached its obligation to provide Claimants national treatment. This is a breach of Article IV of the BIT (most favoured nation treatment) which imports the national treatment obligation from the Norway-Russian Federation BIT.
  - Eighth, Norway's conduct in breach of the Svalbard Treaty, including the regulations prohibiting snow crab catches, breaches Article IV of the BIT (most favoured nation treatment). This is because the latter provision imports Article

12 of the Norway-Peru BIT which grants the Claimants any treatment more favourable than that found in the BIT that would exist in any international agreement to which both Norway and Latvia are parties.

- Ninth, Norway's conduct in breach of UNCLOS and NEAFC breaches Article IV of the BIT (most favoured nation treatment). This is because the latter provision imports Article 12 of the Norway-Peru BIT which grants Claimants any treatment more favourable than found in the BIT that would exist in any international agreement to which both Norway and Latvia are parties.
- Tenth, Norway's conduct in breach of the GATS breaches Article IV of the BIT (most favoured nation treatment). This is because the latter provision imports Article 12 of the Norway-Peru BIT which grants Claimants any treatment more favourable than found in the BIT that would exist in any international agreement to which both Norway and Latvia are parties.
- Eleventh, Norway's conduct in breach of the EEA breaches Article IV of the BIT (most favoured nation treatment). This is because the latter provision imports Article 12 of the Norway-Peru BIT which grants Claimants any treatment more favourable than found in the BIT that would exist in any international agreement to which both Norway and Latvia are parties.
- **Violations of Article VI of the BIT (compensation in the case of expropriation)**
  - EleventhTwelveth, Norway's conduct has wiped out the value of Claimants' investments, amounting to an illegal expropriation in violation of Article VI of the BIT.

**Norway's conduct breached Article III of the BIT (promotion and protection of investments)**

255. Article III BIT is entitled "*promotion and protection of investments*". It provides:<sup>211</sup>

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<sup>211</sup> 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, 16 June 1992, CL-1, Article III.

*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.*

256. Norway has committed multiple violations of Article III with respect to Claimants' investments.
257. This obligation to accord "*equitable and reasonable treatment and protection*" to investments of Latvian investors in Norway requires that Norway not act in manners that are arbitrary, contradictory, discriminatory or unreasonable. There will furthermore be a breach of this obligation where Norway, having given rise to legitimate expectations on the part of the Claimants that they will be able to conduct their investments in a *bona fide* manner, proceeds to breach those legitimate expectations. A long list of arbitrary and even shocking acts, which began in July 2015, taken individually and together, fundamentally changed the legal framework in which the Claimants had invested: it entirely prevented them from operating their joint venture investment in Norway in respect of the harvesting, offloading, transformation and sale of snow crabs.
258. When the Claimants launched their snow crab fishing enterprise in Norway in June 2014, nothing in Norwegian law prevented them from harvesting snow crabs in the Loophole. Even Norway's Regulations prohibiting snow crab catches adopted in December 2014 were limited to "*Norway's territorial waters, including the territorial waters at Svalbard*" and "*the economic zone and the fishery protection zone at Svalbard*". The Regulations did not apply to snow crab harvesting in the Loophole. Moreover, as early as June 2013, Norway had granted licenses under the NEAFC regime to its own vessels to harvest crabs in the Loophole. The European Commission had also confirmed in 2013 that snow crabs could be harvested in the Loophole. Therefore, both Norwegian law and the applicable international law regime of NEAFC allowed the Claimants to harvest snow crabs in the Loophole. It is on that basis that significant investments were made.
259. Norway initially not only tolerated, but encouraged the Claimants' investments in Norway. Norway was aware of the Claimants' joint venture with Seagourmet, a Norwegian company. High officials of Norway provided their blessings to investments made by

Seagourmet at Baatsfjord and personally witnessed the offloading of snow crabs from North Star's vessel Solveiga at Seagourmet's facility on 10 June 2015. The attendance of the Latvian ambassador in Norway at Seagourmet's opening ceremony in Baatsfjord (where Mr. Pildegovics was present, in his capacity of joint venture partner and owner of North Star, the official provider of Seagourmet), further confirmed that this venture was an international investment in Norway with Latvian investors amongst the main participants.

260. In the course of over 80 inspections at sea and at port in 2014, 2015 and 2016, Norway further confirmed the legality of North Star's snow crab harvesting activities in the Loophole. Not once did Norway notify NEAFC of any infringement by North Star of the NEAFC Scheme.
261. The Claimants therefore held legitimate expectations that their investments and operations in Norway were fully consistent with both Norwegian law and the applicable international legal framework and that it was entirely proper to continue expanding their operations, for example through the purchase of the Sokol and Solyaris vessels.
262. From July 2015 onward however, Norway took a series of bad faith actions with the clear intent of excluding EU vessels from snow crab fisheries in the Barents Sea, including in breach of the Claimants' legitimate expectations. Norway's bad faith is perhaps best exemplified by the statement of its former Minister of Fisheries, Mr. Sandberg, who put Norway's policy in simple but evocative terms: "*we will not give them a single crab*,"<sup>212</sup> in reference to EU fishermen. Norway's various arbitrary and inconsistent acts were clearly motivated by this blatantly discriminatory purpose, which had the effect of destroying the value of the Claimants' investments in the process.
263. In July 2015, only a few weeks after the opening ceremony of the Seagourmet factory in Baatsfjord, and prior to Minister of Fisheries Elizabeth Aspaker's visit and blessings of the project, Norway decided to change its designation of snow crabs from a non-sedentary to a sedentary species. While no conclusive biological evidence supported this change, Norway adopted this measure in an attempt to seize exclusive control over snow crab fisheries in the Loophole.

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<sup>212</sup> A. Staalesen, "*Norway takes tough line against EU in Svalbard waters*", The Barents Observer, 25 January 2017, C-36.

264. In December 2015, Norway changed the geographical scope of application of its Regulations, which now prohibited the harvesting of snow crabs across Norway's continental shelf, including parts of the Loophole area. The mention of Svalbard (which, according to Norway's official position, does not have a continental shelf) suddenly disappeared from the language of the Regulations.<sup>213</sup>
265. The Loophole area had been fished by foreign vessels targeting crabs for at least four years under the NEAFC regime, not only with Norway's full knowledge and consent, but with the participation of its own vessels. Instead of raising the question of snow crab fisheries in the Loophole through NEAFC, a management regime in which it had committed to participate, Norway acted suddenly and unilaterally.
266. These radical changes in Norway's position as regards snow crab fisheries were not immediately reflected in Norway's practice, which had the effect of sowing further confusion as to Norway's position. Hence, for months after the December 2015 amendments, Norway continued to confirm the legality of snow crab catches in the Loophole through multiple inspections, notably under the NEAFC Scheme.
267. Then, in July 2016, Norway changed its practice overnight as it began to issue sanctions against vessels flying EU flags. The Claimants were effectively banned from exercising their valid NEAFC licence rights to harvest snow crabs from the Loophole on the basis of a theory recently adopted by Norway that the species was sedentary and therefore exclusive to Norway.
268. In July 2017, Norway adopted a 4,000 tonne quota for snow crab harvesting, representing a small fraction of the catches that had been made by EU vessels in prior years, but a rough approximation of the yields generated by Norwegian vessels alone. Considering the fact that snow crabs are known as an invasive species (which would suggest that there is a need to adopt measures to *reduce* their numbers, not *increase* them)<sup>214</sup> this quota was (and remains) without credible scientific foundation. This was indeed pointed out by the EU in its diplomatic protests to Norway.<sup>215</sup> In this light, the quota could only have been adopted

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<sup>213</sup> See e.g. Regulations prohibiting the capture of snow crabs, J-298-2015, 22 December 2015, C-110, Section 1.

<sup>214</sup> "How the saga of Barents Sea snow crab illustrates the complexity of climate change," ArcticToday, 2 April 2018, C-81.

<sup>215</sup> Note Verbale of the European Union to Norway, 1 November 2016, C-71.

as a further barrier aimed at preventing EU vessels from participating in snow crab fisheries in the Loophole and at Svalbard.

269. Through a series of unilateral, arbitrary, and unexpected actions, Norway thus radically changed its legal framework pertaining to the Claimants' fishing activities in the Loophole. The purpose and effect of these changes was to force the Claimants and other EU fishermen to discontinue their operations.
270. The Claimants' efforts to redirect their fishing activities to another fishing zone for which they held valid licences, Svalbard, were likewise frustrated by Norway, as North Star's ship Senator was arrested as it entered on entering the Svalbard zone.
271. Claimants were thus illegally deprived by Norway of their fishing rights pertaining to the Loophole, as established under the NEAFC regime, and of their rights to equal access to the marine resources of the Svalbard archipelago, as guaranteed under the Svalbard Treaty.
272. As regards both the Loophole and Svalbard, Norway's position that it held exclusive rights over snow crabs as a resource of the continental shelf is ill founded and incorrect as a matter of international law. Even if Norway's biologically dubious claim with respect to the sedentariness of snow crabs were to stand, the NEAFC regime and the Svalbard Treaty support Claimants' rights to harvest snow crabs, whether the species is sedentary or not.
273. North Star was prosecuted by Norway and condemned for nothing more than exercising the valid fishing rights granted to it by Latvia under the Svalbard Treaty. Throughout the judicial process, Norwegian courts either neglected or outright ignored North Star's claim that Norway's Marine Resources Act had to be interpreted and applied in accordance with Norway's international obligations under the Svalbard Treaty,<sup>216</sup> which precludes discrimination against nationals of contracting states in the award of permits granting access to the marine resources of Svalbard.
274. While such discrimination should have been evident from the systematic refusal of the Directorate of Fisheries to grant North Star exemptions allowing it to resume its harvesting

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<sup>216</sup> Act relating to the management of wild living marine resources (The Marine Resources Act), 6 June 2008, **CL-12**, Chapter 1, Section 6 ("*This Act applies subject to any restrictions deriving from international agreements and international law otherwise.*"). The Penal Code also requires international law and treaties of Norway to prevail over inconsistent provisions of Norwegian law. *See*, Norwegian Penal Code, 1 January 2017, **C-74**, Section 2 ("*The criminal legislation applies subject to the limitations that follow from agreements with foreign states or otherwise by international law.*").

activities, only the District Court was prepared to recognize it. The Court of Appeal overturned the finding that North Star had been discriminated against (on account of a purported grant of exemptions to five Russian vessels) while the Supreme Court determined that the Regulations were not discriminatory since all vessels must seek an exemption, whether Norwegian or foreign, thus turning a blind eye to the manner in which these Regulations had been applied in practice.

275. The Supreme Court's explicit refusal to consider the scope of application of the Svalbard Treaty is particularly illustrative of the Norwegian judiciary's reluctance to upset the position of the Norwegian government regarding Svalbard. This reluctance ultimately led the Supreme Court to avoid entirely the question of the Marine Resources Act's compatibility with Norway's international obligations under the Svalbard Treaty.<sup>217</sup> Since this was the central tenet of North Star's defence, the Supreme Court's refusal to rule on this question constitutes a denial of justice.<sup>218</sup>
276. Finally, the Claimants were subjected to clear discriminatory treatment by the Directorate of Fisheries, which thrice rejected their demands for exemptions on the basis that no exemption had purportedly been granted to any foreign vessel. Yet, these statements by the Directorate were in direct contradiction with the finding of Norway's own Court of Appeal that "*five Russian vessels*" had been exempted from the prohibition.<sup>219</sup> The Directorate could not have ignored this plain fact. This inexorably leads to the conclusion that it intentionally issued false statements in an apparent attempt to hide the fact that Norway was failing to uphold its obligations under both Norwegian and international law.
277. The Claimants therefore submit that Norway has violated its obligations to "*promote and encourage in its territory*" investments of Claimants, to "*accept such investments*" in accordance with its laws (including international law applicable to Norway which,

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<sup>217</sup> *Rafael Uzakov and SIA North Star LTD v. The Public Prosecuting Authority*, Supreme Court of Norway, Judgment, 14 February 2019, **C-38**, para. 58.

<sup>218</sup> *Ibid.*, paras. 21-25, 58.

<sup>219</sup> *Rafael Uzakov and SIA North Star LTD v. The Public Prosecuting Authority*, Court of Appeal, Judgment, 7 February 2018, **C-40**, p. 17.

according to section 6 of the Marine Resources Act<sup>220</sup> and section 2 of the Penal Code<sup>221</sup>, was incorporated into domestic law) and to “*accord them equitable and reasonable treatment and protection*”. Consequently, Norway has violated Article III BIT.

### **Violation of Article IV(1): Most Favoured Nation Treatment**

278. Article IV BIT is entitled “*most favoured nation treatment*”. Its first paragraph provides:<sup>222</sup>

*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.*

279. This obligation requires Norway to provide the same or better treatment than that accorded to investments of investors of third states. This obligation extends to both treatment in practice (such as the actual granting of fishing licenses to vessels of third states) as well as to treatment as a matter of law (such as provisions found in BITs with third states).

280. Norway’s Court of Appeal found, in its judgment of February 2018 that the Norwegian Directorate of Fisheries had granted exemptions to “*five Russian vessels that caught snow crabs in 2016*”.<sup>223</sup>

281. It is at the same time indisputable that the Norwegian Directorate of Fisheries has systematically refused to grant the same exemptions to the Claimants. The Claimants have thus been treated by Norway less favourably than the Russian vessels, in clear violation of Article IV of the BIT.

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<sup>220</sup> Act relating to the management of wild living marine resources (The Marine Resources Act), 6 June 2008, **CL-12**, Chapter 1, Section 6 (“*This Act applies subject to any restrictions deriving from international agreements and international law otherwise.*”).

<sup>221</sup> Norwegian Penal Code, 1 January 2017, **C-74**, Section 2 (“*The criminal legislation applies subject to the limitations that follow from agreements with foreign states or otherwise by international law.*”).

<sup>222</sup> 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, 16 June 1992, **CL-1**, Article IV(1).

<sup>223</sup> *Rafael Uzakov and SIA North Star LTD v. The Public Prosecuting Authority*, Court of Appeal, Judgment, 7 February 2018, **C-40**, p. 17.

282. While the BIT does not explicitly include a provision guaranteeing national treatment to the investors of each contracting party, Latvian investors benefit through the most favourable nation clause from the protection granted by Norway under the terms of other bilateral investment treaties it has concluded.
283. Article 3 of the Norway-Russia BIT provides that Russian investors are to be accorded in Norway “*treatment no less favourable than that which [Norway] accords to investments by its own investors*”<sup>224</sup>. Claimants are thereby entitled to receive treatment no less favourable than the treatment accorded by Norway to Norwegian investors.
284. Again, letters from the Directorate of Fisheries<sup>225</sup> as well as consistent holdings by the Norwegian Courts leave no doubt that Norwegian vessels are exempted from the prohibitions against snow crab harvesting while Claimants were not. This constitutes another violation of Article IV BIT through the national treatment obligation provided under Article 3 of the Norway-Russia BIT.
285. The Claimants are further entitled to benefit from the rights Norway has granted investors under Article III(4) of the Norway-Romania BIT, which provides that “*each contracting party shall observe all other obligations entered into with regard to investors of the other contracting party, their investments and profits*”.<sup>226</sup>
286. Norway is, through the operation of this provision, obliged to observe its obligations entered into with regard to the Claimants and their investments pursuant to the Svalbard Treaty. Norway’s violations of this Treaty, through its refusal to grant North Star access to the maritime resources of Svalbard (including its continental shelf) and its discriminatory treatment of the Claimants’ requests for exemptions from the prohibition against snow crab harvesting, therefore also constitute violations of Article IV BIT through the umbrella clause provided under Article III(4) of the Norway-Romania BIT.

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<sup>224</sup> Agreement between the Kingdom of Norway and the Government of the Russian Federation Promotion and Mutual Protection of Investments, 4 October 1995, **CL-22**, Article 3.

<sup>225</sup> Letter from the Norwegian Directorate of Fisheries to North Star, 25 May 2018, **C-43**; Letter from the Norwegian Directorate of Fisheries to North Star, 9 October 2018, **C-44**.

<sup>226</sup> Agreement between the Kingdom of Norway and the Government of Romania on the Mutual Promotion and Protection of Investments, 11 June 1991, **CL-23**, Article III(4).

This enables the Claimants to seek reparation from Norway on account of Norway's violations of the Svalbard Treaty.

287. Norway has committed yet another violation of Article IV BIT by failing to accord Claimants the benefit of more favourable treatment, which Norway is obliged to do through Article 12 of the Norway-Peru BIT, which provides:<sup>227</sup>

*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.*

288. On this basis, the Claimants are entitled to benefit from any international agreement binding on both Norway and Latvia which may provide more favourable treatment than the Latvia-Norway BIT. In addition to the violations of the Svalbard Treaty committed by Norway, this also includes violations of NEAFC and UNCLOS, notably the obligation under UNCLOS Article 113(2) not to adopt discriminatory conservation measures and under Article 56(2)<sup>228</sup> to give due regard to the rights and obligations of other States when regulating an exclusive economic zone. Norway has breached Article 113(2) because there is no scientific basis for Norway's quotas and because of the discriminatory exemptions given to Russian vessels. It has also breached Article 56(2) by failing to give due regard to the rights of third States under the Svalbard Treaty. Moreover, this also includes Norway's violation of GATS Article II, again because of its discriminatory grant of exemptions to Russian vessels. Finally, it also includes relevant provisions of the EEA, including articles 4, 11, 12 and 36, as well as Article 1(2) of Protocol 9, because Norway's discriminatory and arbitrary measures also constitute in effect quantitative restrictions on the import and/or export of snow crabs, as well as an obvious restriction on the freedom of Mr. Pildegovics and North Star to provide relevant services in Norway.

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<sup>227</sup> Agreement between the Government of the Republic of Peru and the Government of the Kingdom of Norway on Promotion and Reciprocal Protection of Investments, 10 March 1995, **CL-24**, Article 12.

<sup>228</sup> The United Nations Convention on the Law of the Sea, 1982, **CL-13**, Article 56(2) (“*In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.*”).

289. Claimants are further entitled to benefit from the rights Norway has granted investors under Article II(5) of the Norway-Romania BIT on effective access to court, which provides:

*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.*

290. Similarly to this right to effective access to court, Claimants benefit, through Article 12 of the Norway-Peru BIT, of any international convention binding between Latvia and Norway which may guarantee the right to a fair trial by an independent tribunal, in particular in criminal matters. The appointment of a non-independent deputy prosecutor as well as the contrivances of the Norwegian Supreme Court leading to a refusal to judge certain defenses put forth by North Star and Mr. Uzakov are in breach of such provisions.

### **Violation of Article VI: Expropriation and Compensation**

291. Article VI BIT is entitled “*expropriation and compensation*”. Its first paragraph provides:

*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 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.*

292. Norway has through its actions expropriated the Claimants’ snow crab fishing rights in the Loophole and in the maritime zones of the Svalbard archipelago, or subjected such rights to measures having similar effects (such measures also being considered “*expropriation*” under Article VI BIT).

293. Norway's expropriations were done in violation of Article VI(1) BIT since none of the conditions for their legality were met.
294. The expropriations were not done for public interest. Nothing justified the exclusion of vessels flying EU flags from harvesting snow crabs in the Loophole and the waters off Svalbard, other than Norway's desire to acquire exclusivity over snow crabs and to "*not give a single crab*" to EU fishermen. Indeed, since snow crabs are viewed as an invasive species, Norway's actions may have negatively impacted biodiversity in the Barents Sea by severely limiting the amount of crabs taken out of the habitat and thereby favouring their continued expansion.
295. The expropriations were not done under domestic procedures. No procedure for the expropriation of the Claimants' rights was ever initiated by Norway. Instead of resulting from formal legal processes, the expropriations resulted from Norway's bad faith actions, which were ultimately aimed at dispossessing the Claimants of their rights.
296. The expropriations were discriminatory. While allowing Norwegian and Russian investors to retain the right to harvest snow crabs in areas of the Barents Sea superjacent to its continental shelf, Norway has deprived the Claimants of the same right.
297. Finally, the Claimants were not compensated by Norway for the expropriation of their snow crab harvesting rights.
298. Since Norway's expropriation of the Claimants' fishing rights was conducted illegally, paragraph 2 of Article VI of the BIT concerning the assessment of the value of expropriated investments does not apply, and the Claimants are entitled to claim full reparation on account of Norway's illegal expropriation.
299. Norway's expropriation of the Claimants' fishing rights effectively halted Claimants' entire business operation in Norway. The Claimants, deprived of their right to harvest snow crabs, lost by far their most important source of revenue. Mr Pildegovics thus became unable to fulfil his part of the joint venture with Mr Levanidov, which was to ensure a consistent supply of snow crabs to Seagourmet's factory at Baatsfjord. Seagourmet and Mr Levanidov suffered accordingly.

300. While Norway did not expropriate the Claimants' vessels, the economic performance and value of such vessels was dramatically impaired by the loss of North Star's fishing rights.
301. Full reparation for Norway's expropriations of the Claimants' fishing rights is therefore owed not merely with regard to the value of such rights, but on account of the full economic impact of such expropriations on the performance and value of Claimants' overall enterprise.

#### **D. CLAIMANTS' DAMAGES**

302. Norway's violations of the BIT have caused the Claimants to sustain significant economic damages. The Claimants are entitled to full reparation for such damages caused by Norway's internationally wrongful acts.
303. An award of full reparation must restore Claimants to the financial position they would have enjoyed absent Norway's breaches of the BIT: it must wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if the acts had not been committed
304. Until Norway's interference with their investments, the Claimants operated a successful snow crab harvesting enterprise. This enterprise was prevented to operate by Norway's actions in breach of the BIT. Norway is thus liable to pay reparation for the lost profits Claimants would have been able to earn but for Norway's actions.
305. As of the date of this Request for Arbitration, the question whether Norway is willing to effect restitution of Claimants' fishing rights through appropriate actions and policy changes remains open. In the absence of any indication by Norway that it is prepared to recognize the right of vessels flying EU flags to resume snow crab harvesting in either the Loophole or waters off Svalbard, Claimants must assume that the total economic value of their snow crab harvesting operation is lost over the life of the operation.

#### **V. REQUEST FOR RELIEF**

306. As a result of the actions and breaches of Norway described above, the Claimants respectfully request an award in their favour:

- a. Finding that Norway has breached its obligations under the BIT;
- b. Directing Norway to pay damages in an amount to be proved at the hearing but which the Claimants at present estimate to be in excess of [REDACTED] over the life of their operation;
- c. Directing Norway to pay the Claimants pre- and post-award interests on all sums awarded;
- d. Directing Norway to pay the Claimants' costs associated with these proceedings, including professional fees and disbursements;
- e. Ordering such other and further relief as the Tribunal deems available and appropriate in the circumstances.

18 March 2020

Respectfully submitted



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