

EXPERT REPORT - ICSID CASE NO. ARB/20/11

From: Dr. Anders Ryssdal

Date: 10 March 2021

1 INTRODUCTION

1. I have been asked by the claimants to give my opinion on questions of Norwegian contractual law and Norwegian international private law in ICSID CASE NO. ARB/20/11 before the International Centre for the Settlement of Investment Disputes. The claimants, Mr. Peteris Pildegovics and SIA North Star, are bringing a claim against the defendant, the Kingdom of Norway, pursuant to 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 (Norway-Latvia BIT)*.

2. I am a Norwegian attorney and trial lawyer since 1984 with an LLM from Harvard Law School and a PhD from the University of Oslo. I have specialized in litigation involving company law, corporate law, contract law, competition law and public and international law, among other areas. I also have wide experience as counsel in arbitration and sit as arbitrator on a regular basis, most often as chairman of the panel.

3. I have been presented with the following questions:

- A) Does Norwegian law recognize the business relationship between Mr. Pildegovics and Mr. Levanidov as giving rise to a contract?
- B) If so, how would this contract be characterized under Norwegian law?
- C) Provided the existence of a contract recognized by Norwegian law, under Norwegian rules of private international law would, (i) Norwegian law be applicable to the contract and (ii) Norwegian courts hold jurisdiction over disputes arising under it?
- D) If the business relationship between Mr. Pildegovics and Mr. Levanidov is recognized as giving rise to a contract, would Mr Pildegovics and/or North Star hold either “shares... or other forms of participation” or “claims to any performance... having an economic value” under the contract?

4. I will seek to answer these questions in sections 2-5 below. In each section, I will first present the general principles that follow from the relevant sources of law. I will then apply these general legal principles to the facts to answer the questions posed to me. This opinion is based on the witness statements of Mr. Pildegovics and Mr. Levanidov, the Request for Arbitration, and the relevant factual exhibits referenced in the RFA.

5. All references made to the facts of the case are hence based on the information in the witness statements of Mr. Peteris Pildegovics and Mr. Kirill Levanidov, the Request for

Arbitration (and the relevant factual exhibits referenced therein), provided to me. I have made no separate evidentiary assessment of these facts.

2 DOES NORWEGIAN LAW RECOGNIZE THE BUSINESS RELATIONSHIP BETWEEN MR. PILDEGOVICS AND MR. LEVANIDOV AS GIVING RISE TO A CONTRACT?

2.1 Overview

6. This section regards the legal recognition of the business relationship between Mr. Pildegovics and Mr. Levanidov, and whether it gives rise to a contract as defined in Norwegian contract law (question A).

2.2 General principles

7. In addition to the Norwegian “Act relating to conclusion of agreements” of 1918, Norwegian contract law is based on established practice and general legal principles. There is no Norwegian “Code civil”. Non-statutory law is still very much of importance.¹ There are several legal principles guiding the question of whether a contract has been entered into.

8. One such principle is the freedom of contract – the freedom to enter into agreements, to choose one’s counterparty and to decide the nature and contents of the contract. This freedom stems from the fundamental principle of the private autonomy of the individual. The principle is not directly codified in the Norwegian legislation, but its existence is provided already in NL-5-1-2 from 1687.² In today’s society and modern economy, this contractual freedom is not without its limitations, but these lie beyond the scope of this opinion.³

9. A second fundamental principle of Norwegian contract law is the freedom of contractual form. There are no specific requirements to the form of a contract for it to be legally binding *inter partes*. This principle is an undisputed cornerstone of Norwegian contract law.⁴ It has been confirmed by the Norwegian Supreme Court on several occasions.⁵ Thus, an oral agreement is equally binding as a written contract. This is also the case in more complex areas of business, where one could assume that a formal written and signed contract would be required.⁶

¹ Lilleholt in Irgens-Jensen. Harald (2019) «Knophs oversikt over Norges rett», 15th ed., Universitetsforlaget, **AR-0006**, p. 226.

² Law of 15. April 1687 «Kong Christian Den Femtis Norske Lov», 5th book, chp. 1, article 2 (NL-5-1-2), **AR-0007**.

³ For example limitations imposed by consumer protection.

⁴ Woxholth (2017) «Avtalerett», **AR-0023**, p. 30-31., Hov og Høgberg (2012) «Alminnelig avtalerett», 2nd ed., Painian, **AR-0005**, p. 43. The principle also follows from Kong Christian Den Femtis Norske Lov, NL-5-1-1.

⁵ For instance in Rt. 1998 p. 946, **AR-0012**, Rt. 2011 p. 410, **AR-0015**, and Rt. 2006 p. 1585, **AR-0016**.

⁶ See for example Rt. 2006 p. 1585, **AR-0016**, para 45-49.

10. The legal point of departure is summarized by the Norwegian Supreme Court in Rt. 1987 p. 1205:

«The question of whether a binding agreement has been entered into, rests in my opinion first and foremost on a legal assessment of what has passed between the parties.»⁷

11. The case involved the sale of a hotel property where the parties had not yet concluded and signed a written contract. Based on the negotiations between the parties and the relevant correspondence, the Supreme Court nevertheless concluded that a binding agreement had been entered into.

12. Thirdly, Norwegian contract law is based on a principle of respect and protection of legitimate expectations. This stems from the fundamental duty of mutual loyalty in contractual relations which underpins Norwegian contract law. The Norwegian Supreme Court has ruled that a binding contract had been concluded based on an assessment of such legitimate expectations on numerous occasions.⁸

13. The basic principles outlined above are of course interconnected. The Supreme Court summarized the legal status in Rt. 1998 p. 946:

Oral agreements are binding unless otherwise provided by the law, agreement or provided for by parties. The Supreme Court has, in several decisions based on a specific assessment, assumed that the parties will be bound when they have agreed on all essential points of an agreement, even though not all matters have been clarified and the signed agreement does not exist, cf. Rt.-1987-1205, Rt.-1991-1171, and Rt.-1996- 415. There is no legal basis for generally requiring writing in more complex contractual terms, but in such cases the negotiation situation may cause the parties to mutually require a final draft and signature before being bound. This may, for example, be the case where several are participating in the negotiations on the behalf of the parties or where the parties are from two or more countries.

In cases where the parties have agreed in writing in some form to the main terms, it will be obvious to consider the agreement entered into when the parties have agreed on the other essential terms. As the results of the negotiations emerge and agreement is reached, each of the parties may, on the basis of a general assumption of mutual loyalty, have a basis for assuming that the parties are bound even if the final agreement is not signed.

14. As the Supreme Court states, the assessment of whether a contract has been entered into is based on a contextual examination of the parties' relationship and negotiations, their legitimate expectations, and whether they have agreed on what is deemed to be the

⁷ Rt. 1987 p. 1205, **AR-0011**, on p. 1210 (my unofficial translation).

⁸ i.e., Rt. 1987 p. 1205, **AR-0011**, Rt. 2001 p. 1288, **AR-0020**.

“significant terms”. In Rt. 1987 p. 1205 mentioned above the Supreme Court also gave weight to the fact that the parties had agreed on the “significant terms”.⁹

15. The same follows from more recent Supreme Court case-law. In Rt. 2011 p. 411 the Supreme Court held:

It is plain that an agreement can be considered to be concluded when there are clear statements of parties or other circumstances that substantiate that the parties have intended to bind to a contractual relationship or that one party has acted in a way to give reasonable grounds to the co-contractor to believe that an agreement has been made. A starting point for the assessment is whether the parties have agreed on the essential points of the agreement, cf Rt.-1998-946 on page 958. The assessment must be based on a condition of loyalty during the negotiations.¹⁰

16. The Supreme Court reviewed an e-mail exchange between the parties as well as a set of oral exchanges and concluded that there was a binding agreement between the parties. The Supreme Court determined whether an agreement has been reached based on an assumption of mutual loyalty.

2.2.1 Application

17. The business relationship between Mr. Pildegovics and Mr. Levanidov is described by the parties in their witness statements.

18. Mr. Pildegovics states in para. 13-14:

13. Each of the Claimants' investments at issue in this case was made in the context of a joint project I developed with my cousin Kirill Levanidov starting in early 2010, which led to the conclusion of a joint venture agreement between us in January 2014.

14. While no written instrument was drawn to formalize the terms of our joint venture agreement, I consider myself bound by it and I recognize that this agreement generates legal rights and obligations between Mr. Levanidov and myself.

19. Mr. Levanidov's witness statement states at para. 36-39:

36. In mid-to-late 2013, Mr Pildegovics and I had several exchanges regarding the possible launch of a joint venture between us. As part of this joint venture, Mr

⁹ Rt. 1987 p. 1205, **AR-0011**, on p. 1210-1211.

¹⁰ Rt. 2011 p. 410, **AR-0015**, para. 47.

Pildegovics would launch a new fishing company that would bring snow crab supplies to Ishavsbruket's Baatsfjord factory. For this purpose, Mr Pildegovics researched the possibility of establishing such a company in Latvia and reviewed the regulatory and licensing requirements for the operation of Latvian fishing vessels. Together, we also started looking for suitable ships that could be available for purchase.

37. In late 2013, Mr. Pildegovics informed me that he was interested in taking part in the joint business project I had proposed, and we arranged a meeting in Riga in January 2014 to seal our agreement.

38. On 29 January 2014, Mr. Pildegovics and I agreed to coordinate our business efforts as part of a joint venture spanning the harvest, processing and sale of snow crabs in Norway. Our joint venture agreement was concluded through a handshake.

39. Despite the absence of a written instrument setting out the terms of this agreement, I agree that I am bound by it and that our agreement generates rights and obligations between Mr. Pildegovics and myself.

20. It is apparent from these witness statements that the parties have intended to enter into an agreement regarding a joint venture “*spanning the harvest, processing and sale of snow crabs in Norway.*” Clearly, their description gives rise to a binding contract under Norwegian law.

21. The parties concur that their agreement was concluded through a handshake in January 2014. Through this meeting and handshake both parties have acted in such a way as to give the other party reasonable grounds to believe that an agreement had been reached. Further, it is evident from the witness statements that the parties consider themselves bound by their agreement.¹¹

22. From Mr. Levanidov's statement I note that the parties had agreed that Mr. Pildegovics “*would launch a new fishing company that would bring snow crab supplies to Ishavsbruket's Baatsfjord factory.*” Mr. Levanidov would through his companies be responsible for the processing of the snow crab that Mr. Pildegovics delivered at his factories. Their roles and responsibilities under the contract were discussed in “*several exchanges*” both oral and by e-mail. Through these numerous exchanges the parties have agreed on what can be deemed the ‘significant terms’ of an agreement.

¹¹ Mr. Pildegovics' witness statement para. 14, Mr. Levanidov's witness statement para. 39.

23. In the words of the Supreme Court in Rt.1998 p. 946, there is no “*statute or an agreement between the parties, including by necessary implication*” to the contrary, *i.e.*, nothing prevents the formation of a contract. As such, there are no grounds under Norwegian contract law which would prevent the finding that the parties – through their exchanges and conduct – have entered a binding contract. An oral contract is equally binding as a written contract, in line with the principle of freedom of contractual form.

24. This conclusion would also apply to more specific contracts for the supply of snow crab between the parties’ respective companies Seagourmet AS and SIA North Star, which I understand were initially oral and later formalized in writing.¹²

3 HOW WOULD THIS CONTRACT BE CHARACTERIZED UNDER NORWEGIAN LAW?

3.1 Overview

25. Having concluded question A in the affirmative, question B is how this contract would be characterized under Norwegian law.

3.2 General principles

26. There are no formal legal requirements as to the form of a contract for it to be legally binding *inter partes*, and an oral agreement is by Norwegian law equally binding as a written contract, cf. section 2.

27. Norwegian contract law does not list different contractual relationships with specific legal criteria to fulfil a relevant characterization. The nature and extent of the contract and the contractual obligations follow from an interpretation of the contract itself, the parties’ intentions, and the relevant circumstances.

28. In their witness statements, the parties use the terms “joint venture” and “joint enterprise” to characterize their business relationship. The term “joint venture” is not a legally defined term with specific criteria under Norwegian law. Consequently, the term can encompass different kinds of cooperation from cooperation in a particular and time-limited project, to more formalised and long-term collaborative structures.¹³

29. Thus, the term joint venture is broad and can, given the circumstances, be used to describe an ad hoc cooperation, more established common business activities between different entities, and formalised collaborations through a joint company structure. In the last instance, it is most common for the parties to set up a limited company for this purpose.

30. Where cooperation is only governed by agreement, it can however still fall within the definition of an unlimited liability partnership under the Norwegian “Partnership Act”.¹⁴ To determine the existence of such a partnership, one must examine whether the

¹² Request for Arbitration (2020) para. 95 and factual exhibits to the RFA C-53 and C-54.

¹³ See Sætermo (2015) «Joint Venture – Fellesforetak», *Forretningsjuridisk tidsskrift*, AR-0022.

¹⁴ Ibid.

activity in question is “a business”, for “the joint account and risk” of “two or more partners”, cf. the Partnership Act section 1-1:

Section 1-1. General range of application

This Act is applicable to a business which is conducted for the joint account and risk of two or more partners, of whom at least one has unlimited personal liability for the total obligations of the business.

3.2.1 Application

31. From the parties’ own descriptions in the witness statements, it is evident that they have established a contract of cooperation for their joint business activities in the snow crab business in Norway.

32. This binding contract gives them a contractual obligation to cooperate. The duty of cooperation and the principle of a mutual duty of loyalty apply to their contractual relationship. These are fundamental obligations between parties to a contract under Norwegian law which can also have consequences outside the contract between the parties.

33. One question to consider further is what this contract entails. Mr. Pildegovics states in his witness statement at para. 29-30:

29. In late 2013, Mr. Levanidov and I started discussing the possibility of establishing a venture whereby we would work collaboratively towards the operation of an integrated snow crab fishing and processing enterprise based in Baatsfjord.

30. As part of this joint venture, I would be responsible for building a fishing company to deliver supplies of snow crab, while Mr. Levanidov would build capacity to process these snow crabs at his company’s Baatsfjord factory. Mr. Levanidov would also leverage his contacts in the international seafood markets to find outlets for our snow crab products and help arrange financing for the project.

34. It further follows from Mr. Pildegovics’ statement para. 34-35:

34. While we each had our respective duties as part of the joint venture, we agreed to operate our investments collaboratively and for our common benefit. From January 2014 onward, Mr. Levanidov and I together made all the strategic decisions concerning North Star, Sea & Coast and Seagourmet within the framework of the joint venture. The employees of our respective companies worked together on a day-to-day basis towards the achievement of our common goal: to build a vertically integrated enterprise spanning snow crab fishery; the processing of raw snow crab

catches and their transformation into end products; and the marketing and sale of such products to customers.

35. *As part of my role within our joint venture, I was closely involved in the planning and building of Seagourmet's factory at Baatsfjord. Mr. Levanidov was consulted on all the decisions made with respect to the purchase and operation of North Star's fleet of fishing vessels. Together, we ran our businesses as a single integrated enterprise and we both derived important competitive advantages from the coordinated management of our companies.*

35. Mr. Levanidov states in para. 49-50:

49. *Mr. Pildegovics and I initially decided to maintain separate ownership of our respective investments and companies. While these companies would work together on a daily basis, and while Mr. Pildegovics and I took all important decisions together regarding each company participating in our joint venture (namely North Star, Seagourmet and Sea & Coast AS), each company maintained its independent existence and profit-and-loss profile.*

50. *Mr. Pildegovics and I agreed that we would discuss the possibility of developing a profit-sharing mechanism between us once our investments came to maturity, including the possibility of bringing our respective assets together within a single corporate structure. When Norway started taking adverse action against North Star, we had not yet settled this aspect of our joint venture, and the discussion has since been suspended due to the destruction of the value of our respective investments following Norway's decision to stop EU vessels from harvesting snow crabs in the Barents Sea.*

36. I note from the statements that Mr. Pildegovics was responsible for “*building a fishing company to deliver supplies of snow crab while Mr. Levanidov would build capacity to process these snow crabs at his company's Baatsfjord factory.*”¹⁵ The activity had a broad scope “*spanning snow crab fishery, the processing of raw snow crab catches and their transformation into end products, and the marketing and sale of such products to customers*”,¹⁶ and lasted at least since 2013 until today – a period of at least six years.

¹⁵ Mr. Pildegovics witness statement para. 30.

¹⁶ Mr. Pildegovics' witness statement para. 34.

37. The parties have undoubtedly entered a binding contract between them regarding their business activities in the snow crab business in Norway. Under this contract, Mr. Pildegovics and Mr. Levanidov had clear roles. They had also agreed to operate their investments based on continuous consultation and a common strategy. They were to work together on a daily-basis and consult each other on important decisions regarding the companies participating in the joint venture, which I understand consisted of North Star, Seagourmet Norway AS and Sea and Coast AS. The contractual obligation to cooperate and the duty of mutual loyalty apply to this contract.

38. As mentioned in section 2.3 a cooperation based on agreement can under the circumstances fall within the definition of a “partnership” in the Norwegian “Partnership Act”, where the business activity is conducted for the joint account and risk of two or more partners. In this case, the parties to the contract “*derived important competitive advantages from the coordinated management of our companies*”,¹⁷ and had agreed they would be “*developing a profit-sharing mechanism between us once our investments came to maturity, including the possibility of bringing our respective assets together within a single corporate structure*”.¹⁸ These discussions were however stopped and suspended when the Norwegian authorities took actions against North Star.

39. Whether the parties’ contract also constitutes a “partnership” today is therefore a somewhat open question, but it is not necessary to conclude on this point, as long as it is clear that a valid contract to collaborate exists in contractual or corporate form.

4 IF THE EXISTENCE OF A CONTRACT IS RECOGNIZED BY NORWEGIAN LAW, UNDER NORWEGIAN RULES OF PRIVATE INTERNATIONAL LAW, (I) WOULD NORWEGIAN LAW BE APPLICABLE TO THE CONTRACT AND (II) WOULD NORWEGIAN COURTS HAVE JURISDICTION OVER DISPUTES ARISING UNDER IT?

4.1 Overview

40. The questions in this section are (i) whether Norwegian law is applicable to the contract, and (ii) whether Norwegian courts would have jurisdiction over disputes arising under the contract (question C).

41. In Norwegian international private law, the first question is whether Norwegian courts have jurisdiction. The court must have jurisdiction to solve the question of choice of law based on Norwegian international private law. For this reason, we ask first whether Norwegian courts have jurisdiction (the question of venue) and secondly, we ask whether Norwegian law is applicable (the question of choice of law).

42. At the outset, it can be noted that the answers to the questions of jurisdiction and choice of law before a Norwegian court can depend on the specific circumstances of a claim, the parties’ connection to it, and the case’s connection to Norway and/or to other countries.

¹⁷ Mr. Pildegovics’ witness statement para. 35.

¹⁸ Mr. Levanidov’s witness statement para. 50.

Consequently, the answer to these questions may necessarily vary depending on who the claimant is, who the defendant is, and the nature of the specific claim.

43. Moreover, Norwegian international private law is subject to harmonisation with EU law. Norwegian courts have in the later years put weight on the solutions prescribed by the Rome I and Rome II regulations, even though Norway is not formally bound by these legal instruments of EU law, as they are not part of the EEA Agreement.¹⁹

44. It can also be highlighted that a main rule of Norwegian and EU international private law is that the parties can choose the jurisdiction and applicable law that will govern their contract. From the facts presented, I understand that the parties have not chosen the venue and applicable law of the oral contract between them regarding the cooperation of their activities in the snow crab business in Norway. In the absence of choice, the questions must be solved based on the rules of international private law.

4.2 Would Norwegian courts have jurisdiction over disputes arising under the contract?

4.2.1 General principles

45. The question of venue and jurisdiction is governed by the Norwegian Dispute Act chapter 4, and the Lugano Convention, cf. Disputes Act section § 4-8.²⁰ The Lugano Convention is the correct starting point for international disputes if the *defendant* is based in Norway or in another state in the EEA area. It is still a somewhat unresolved question whether the Lugano Convention is applicable in an international dispute regardless of whether the *claimant* is based in Norway, in another EEA state, or *outside the EEA area*.²¹ If the Lugano Convention is not applicable, the question of venue must be solved based on the Norwegian Dispute Act.

46. The Lugano Convention article 2 (1) states that “*Subject to the provisions of this Convention, persons domiciled in a State bound by this Convention shall, whatever their nationality, be sued in the courts of that State.*” Pertaining to article 3 (1), however, “*Persons domiciled in a State bound by this Convention may be sued in the courts of another State bound by this Convention only by virtue of the rules set out in Sections 2 to 7 of this Title.*”

47. It follows from article 5 (1) a) (“Special Jurisdiction”) that “*A person domiciled in a State bound by this Convention may, in another State bound by this Convention, be sued in matters relating to a contract, in the courts for the place of performance of the obligation in question.*” (emphasis added).

¹⁹ EU Regulation 593/2008 (Rome I), **AR-0003** and EU Regulation 854/2007 (Rome II), **AR-0004**. The Rome I regulation regards claims based on contract and would be the relevant source in contractual matters.

²⁰ The Lugano Convention of 2007, **AR-0001** is implemented in the Norwegian Dispute Act (law of 17. June 2005 nr. 90, **AR-0009**, section § 4-8).

²¹ Cordero-Moss (2018), **AR-0002** p. 32-39 with references to EU case law and Rt. 2012 p. 1951, **AR-0017**.

48. In matters relating to a contract, the claimant may therefore sue a person domiciled in a convention state before the courts of that state, *or* in the courts of the state of the *place of performance* of the obligation in question. It is not uncommon for courts of different countries to have jurisdiction over the same case.

49. If the court finds that the Lugano Convention is not applicable, the question of venue must be solved based on the Norwegian Dispute Act.

50. The Norwegian Dispute Act section § 4-3 (1) states that “*Disputes in international matters may only be brought before the Norwegian courts if the facts of the case have a sufficiently strong connection to Norway.*”

51. The requirement of “sufficiently strong connection to Norway”, will be interpreted considering inter alia the rules of ordinary venue in the Dispute Act section § 4-4 - § 4-6.²² Based on Norwegian case law, the courts may also give weight to other factors connecting the matter to Norway.²³

52. Whether Norwegian law is applicable to the matter at hand can also impact the assessment. This means that the court, in some instances, will assess the question of applicable law preliminarily while ruling on the question of jurisdiction.

53. For contractual relationships it follows from the Dispute Act section § 4-5 (2) that “*Actions relating to contractual relationships may be brought at the location where the obligation upon which the action is based has been performed or is to be performed. This does not apply to claims for the payment of money if the defendant has an ordinary venue in Norway pursuant to Section 4-4.*”

54. The rule in the Dispute Act section § 4-5 corresponds with the Lugano Convention article 5 (1) a). Both rules stipulate that in matters relating to contractual relationships the claimant can sue the defendant at the location where the obligation has been performed or is to be performed. As mentioned above, this rule of ordinary venue will be a factor for the court when assessing the venue of an international dispute based on section § 4-3 (if the court does not find the Lugano Convention applicable).

55. Consequently, if the place of performance of the contractual obligation in question is found to be in Norway, Norwegian courts would have jurisdiction over the dispute, regardless of whether the defendant is domiciled in a Convention state or not.

4.2.2 Application

56. In the witness statements, it is stated that Mr. Pildegovics is a national of the Republic of Latvia, and is based in Riga, Latvia. Mr. Levanidov is a national of the United States and based in Redmond, Washington, United States.²⁴

²² Skoghøy (2017) “Tvisteløsning”, 3rd ed., Universitetsforlaget, **AR-0021**, p. 55-57.

²³ Skoghøy (2017), **AR-0021**, p. 57-58 with reference to Rt. 1998 p. 1647, **AR-0013** and Rt. 2010 p. 1197, **AR-0014**.

²⁴ Mr. Pildegovics’ witness statement para. 5-6, Mr. Levanidov’s witness statement para. 1 and 8.

57. Seeing as Mr. Pildegovics and Mr. Levanidov are nationals of Latvia and the United States respectively and domiciled in these countries, a claim based on their contract regarding their joint business activity of harvesting, processing, marketing and sale of snow crab in Norway, would be considered a dispute of an international character.

58. Latvia is a party to the Lugano convention, whereas the United States is not. As set out above, whether a Norwegian court would solve the question of venue based on the Lugano Convention or the Norwegian Disputes Act, would depend on which party (or entity) was bringing a claim against the other party (or entity).

59. However, both the Lugano Convention and the Norwegian Dispute Act state that in matters relating to contractual relationships the claimant can sue the defendant at the location where the obligation has been performed or is to be performed.

60. The contract of Mr. Pildegovics and Mr. Levanidov regards a joint enterprise “*spanning snow crab fishery, the processing of raw snow crab catches and their transformation into end products, and the marketing and sale of such products to customers*”.²⁵ As I understand from the facts of the case, the joint enterprise operated its different activities from the municipality of Baatsfjord in Norway (and in areas under Norwegian jurisdiction).

61. Thus, the business activities took place in Norway. It must then be concluded that the place of performance of the contractual obligations between the parties belongs in Norway, and more specifically in the municipality of Baatsfjord.

62. Pertaining to the Norwegian Disputes Act section § 4-5 (2) the ordinary venue for a claim where the place of performance is Baatsfjord, would be the Øst-Finnmark district court. As noted above, the fact that a case has an ordinary venue based on the Norwegian rules of venue in the Dispute Act, contributes to a finding that a case has a “sufficiently strong connection to Norway”, cf. section § 4-3.

63. As the place of performance of a contractual obligation would be in Norway, this finding is also in line with the rules of special jurisdiction in the Lugano Convention section 5 (1) a), should the court find the Lugano convention applicable in the specific instance.

64. Norwegian authorities have already taken jurisdiction over some of the parties’ business activities under the contract. In the criminal case *Norwegian Snow Crab Case (2019)* Norwegian authorities (and courts) concluded that the activities of Mr Pildegovics and/or his companies and Mr Levanidov’s activities were governed by Norwegian law.²⁶ The enforcement actions taken by the Norwegian authorities themselves reinforce the connection to Norway. Based on the factual exhibits presented in the RFA, these actions

²⁵ Mr. Pildegovics’ witness statement para. 34.

²⁶ Request for Arbitration (2020) para. 156. A translated version of the judgment is found in factual exhibit to the RFA C-0038.

include inter alia inspections of ships, regulatory controls, administrative applications and appeal proceedings, and the above-mentioned criminal court actions.

65. There are several other contracts (i.e., supply agreements for the sale and delivery of snow crabs between North Star and Seagourmet, and other companies controlled by Mr. Levanidov) all relating to the snow crab business in Norway.²⁷ The performing debtor in these different contractual relationships will necessarily vary. Considerations of effectiveness and predictability call for the focus to be on the business activities and where they take place, and not on the domicile and/ or nationality of the two international business persons behind the joint venture. The principle of predictability for the parties involved underpins Norwegian international private law and its harmonisation with EU international private law.²⁸

66. In addition, it can be remarked that there are no activities under the contract conducted elsewhere that can serve to negate such a finding. The contract does not have a connection to another country which would prevent a claim under the contract from having sufficient connection to Norway. In any case, it can also be noted that for the assessment under the Dispute Act section § 4-3, the criteria of “sufficient connection to Norway” is not to be interpreted as “the strongest” connection to Norway.²⁹

67. Considering the above, I conclude that Norwegian courts would have jurisdiction over disputes arising under the contract.

4.3 Would Norwegian law be applicable to the contract?

4.3.1 General principles

68. If a Norwegian court finds that it has jurisdiction over the dispute, the next question would be whether the court based on the rules of Norwegian international private law finds that the dispute must be resolved based on Norwegian substantive law.

69. The choice of law rules for matters under Norwegian contract law are mainly non-statutory.³⁰

70. The traditional Norwegian doctrine where there are no statutory rules regulating the question, follows from the Norwegian Supreme Court case Rt. 1923 II p. 58 (“Irma Mignon”). The Supreme Court stated:

In deciding on the binding provisions in terms of a country, then, as far as I understand, one is essentially bound to base upon ordinary legal principles and

²⁷ Request for Arbitration (2020) para. 49, and factual exhibits to the RFA C-0053, C-0054, C-0065-C-0067.

²⁸ i.e., HR-2017-1297-A, **AR-0019**, para. 86.

²⁹ Rt. 2010 p. 1197, **AR-0014**, para. 41.

³⁰ With the exception of the Norwegian “kjøpslovsloven”, law of 3. April 1964 nr. 1, **AR-0008**. This law regards situations where a commodity is sold/ bought across an international border, cf. kjøpslovsloven section § 1.

*the nature of the relationship in question. After all, the issues of what principles should be laid down for resolving international-private law matters have been the subject of gross disparity in opinions. For me, however, it is natural to assume that a relationship should preferably be judged by the law of the country to which it has its strongest affiliation or where it most closely belongs.*³¹

71. The elements to consider can be summarized as follows: where the obligations to be performed would take place, where the parties concluded the contract, the extent to which the parties have a common link to the legal system, the language in the contract, and finally the parties' assumptions and conduct.

72. There has been a development in Norwegian international private law towards harmonisation with EU law. This is articulated as follows by the Norwegian Supreme court in HR-2016-1251-A (para. 27):

*The starting point for the choice of law is – where there is no law, customary law, or other firmer rules governing the question – to identify the state that the case after a comprehensive assessment has the closest connection to (Irma-Mignon). If the question of choice of law is not solved in Norwegian law, there can be reason to give weight to the EU law codified in the Rome regulations. I refer to Rt. 2009 p. 1537 section 32 and 34, and Rt. 2011 p. 531 section 29 and 46 on the Irma-Mignon-formula and the use of the Rome regulations under Norwegian law. The question is whether there is a codified rule of choice of law that applies to our case.*³²

73. The development towards a more standardized way of solving questions of Norwegian international private law, is in line with EU law. The goal is to provide better predictability for people and companies participating in a more international and interconnected economy, as highlighted by the Supreme Court in HR-2017-1297-A:

Against this background, I will turn to reviewing the possible choices of law. I repeat that the EU has no firm choice of law rule for these matters, and I endorse the recommendation of Cordero-Moss, see International private law, page 90:

*«The choice of law in each case should thus not be seen as a single act to be carried out freely in accordance with the judge's discretion, but as part of the system under international private law – which gives predictability for the parties involved».*³³

³¹ Rt. 1923 II p. 58, **AR-0010**, on p. 60.

³² HR-2016-1251-A, **AR-0018**, para. 27 (my unofficial translation).

³³ HR-2017-1297-A, **AR-0019**, para. 86 (my unofficial translation).

74. In practice, a Norwegian court would follow this (somewhat simplified) scheme:
- 1) Is there a codified rule (law, customary law etc.) in Norwegian international private law that governs the question?
 - 2) If not, do the Rome regulations provide a solution to the question?
 - 3) If not, which country does the case have the closest connection to? (traditional Irma-Mignon)³⁴
75. The Rome I regulation article 4 stipulates the applicable law for different contract types, cf. Rome I article 4.1 litra a-h. If neither of the categories in article 4.1 apply or the elements of the contract would be covered by more than one of points a-h, “*the contract shall be governed by the law of the country where the party required to effect the characteristic performance of the contract has his habitual residence*”, cf. article 4.2.
76. “Habitual residence” is further defined in article 19, which prescribes that “*For the purposes of this Regulation, the habitual residence of companies and other bodies, corporate or unincorporated, shall be the place of central administration.*” For a natural person acting in the course of his business activity the habitual residence “*shall be his principal place of business.*”, cf. article 19.1. If the principle place of business of a natural person acting in the course of his/her business activity is Norway, article 4.2 would stipulate that Norwegian law apply.
77. According to article 4.3 “*Where it is clear from all the circumstances of the case that the contract is manifestly more closely connected with a country other than that indicated in paragraphs 1 or 2, the law of that other country shall apply.*” When the law applicable cannot be determined pursuant to the former paragraphs, the contract “*shall be governed by the law of the country with which it is most closely connected.*”
78. As made clear above, the Rome I regulation is not binding for Norway, as it is not included in the EEA Agreement. Based on the developments in the Supreme Court’s case law, a solution following from Rome I will, however, be given weight in the assessment of applicable law. This is also in line with recommendations in Norwegian legal theory.³⁵
79. As has been shown, there is also discretionary room for interpretation in the Rome I regulation where the contract “manifestly” is more connected to a country other than the country indicated by the main rules in the Rome I regulation article 4 a-h.
80. If the Rome Regulations do not provide an answer to the question of applicable law, the court must determine which country the case has the closest connection to. It is important to bear in mind that the rules of international private law, both in the Norwegian and the EU context, have been developed to provide a manner of defining under which country’s laws the case belongs - namely to which country the case at hand has the closest connection.

³⁴ Limitations as “ordre public” etc. are not relevant for the matter at hand.

³⁵ As cited in HR-2017-1297-A, **AR-0019**, para. 86.

4.3.2 Application

81. As the contractual dispute here discussed is hypothetical, it is not possible to conclude in a definitive manner whether the specific categories of the Rome I article 4 would apply.

82. Notwithstanding, I recall that the rules of international private law, both in the Norwegian and the EU context, have been developed to define to which country a case is most closely connected. I also recall that considerations of effectiveness and predictability imply the focus to be on the business activities and where they take place.

83. The contract of Mr. Pildegovics and Mr. Levandiov regards a joint enterprise “*spanning snow crab fishery, the processing of raw snow crab catches and their transformation into end products, and the marketing and sale of such products to customers*”.³⁶ The joint business activities of the business partners and their respective companies took place in Norway. There are no business activities conducted elsewhere, or any provisions for a formal seat or governance structures of their cooperation in any other place or state that contradict this. The centre of gravity of the activities under the contract is thus in Norway. This is true independently of whether one party also operates other business activities elsewhere.

84. The place of performance of the contractual obligations between the parties is in Norway, and more specifically mainly in the municipality of Baatsfjord. I have already concluded that these factors would give a Norwegian court jurisdiction over a dispute arising under the contract. These factors also imply that the contract is governed by Norwegian law.

85. There are other contracts between the parties’ respective companies, some of them written.³⁷ Some of the individual written contracts between these companies state that they are governed by Latvian law (but with different choices of court and arbitration). However, the language of these written contracts is English, and not Latvian (or Russian). I also note that the parties have refrained from making a similar explicit choice of law to govern their oral contract of cooperation in the joint venture.

86. Several of these other contracts were physically signed in Baatsfjord, underlining the geographical nexus of the parties’ business activities with Norway. In sum, this serves to demonstrate that the oral contract of cooperation is between two international business persons based in Latvia and the United States respectively regarding their joint business activities taking place in Norway.

87. Additionally, Norwegian authorities have effectively themselves concluded that the activities of Mr. Pildegovics and/or his companies and Mr Levandiov’s activities are governed by Norwegian law, namely in the criminal case *Norwegian Snow Crab Case (2019)*, and through the enforcement actions and administrative processes involving the

³⁶ Mr. Pildegovics’s witness statement para. 34.

³⁷ Request for Arbitration (2020) para. 49, and factual exhibits to the RFA C-0053, C-0054, C-0065-C-0067.

different entities in the joint venture. This points to the parties' contract also being governed by Norwegian law.

88. Thus, there are clear and sufficient links and nexus with Norway for a dispute under the parties' contract to be governed by Norwegian law. This conclusion is in line with the principle of predictability underpinning both Norwegian and EU international private law.

5 ANALYSIS OF THE BIT TREATY CRITERIA

5.1 Overview

89. The final question posed to me (question D), reads as follows:

If the business relationship between Mr. Pildegovics and Mr. Levanidov is recognized as giving rise to a contract, would Mr Pildegovics and/or North Star hold "claims to any performance under contract having an economic value" under the contract?

90. The wording "*claims to any performance under contract having an economic value*" is from the wording of the Norway-Latvia BIT's article 1 "Definitions" section 1. (III).³⁸

5.2 Application

91. I have concluded that a contract exists between Mr. Pildegovics and Mr. Levanidov and that it is both recognized and governed by Norwegian law. Norwegian courts would have jurisdiction over disputes arising under the contract.

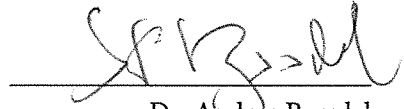
92. As elaborated on above, the contract created reciprocal contractual duties between the parties. The parties have a contractual duty to cooperate and a duty of loyalty towards each other. Each and any of the contract(s) between the parties, oral or written, provide such obligations. The contract therefore plainly gives 'claims' to 'performance' between the parties. These claims could materialise in many different scenarios, i.e., if one of the parties did not fulfil his agreed role in the joint venture or failed to comply with the agreed common strategy.

93. The parties' contract regards a cooperation of business endeavours "*spanning snow crab fishery, the processing of raw snow crab catches and their transformation into end products, and the marketing and sale of such products to customers*".³⁹ The business activities has an economic character and clearly aim at a profit. I further recall that the parties to the contract already "*derived important competitive advantages from the coordinated management of our companies*"⁴⁰. It is therefore clear that any "claims to performance" under the contract would be of an economic value to the parties.

³⁸ Legal exhibits to the RFA CL-0001 p. 1.

³⁹ Mr. Pildegovics' witness statement para. 34.

⁴⁰ Mr. Pildegovics' witness statement para. 35.

A handwritten signature in black ink, appearing to read 'Dr. Ryssdal', written over a horizontal line.

Dr. Anders Ryssdal
Oslo, 10 March 2021

INDEX OF EXHIBITS TO EXPERT REPORT OF DR. ANDERS RYSSDAL

NO.	Description
AR-0001	Convention on jurisdiction and the enforcement of judgements in civil and commercial matters (The Lugano Convention), 30 October 2007
AR-0002	Cordero-Moss, Giuditta, «Internasjonal privatrett», 2nd ed., Universitetsforlaget, 2018, p. 32-39
AR-0003	EU Regulation 593/2008 (Rome I)
AR-0004	EU Regulation 854/2007 (Rome II)
AR-0005	Hov, Jo and Høgberg, Alf Petter, «Alminnelig avtalerett», 2nd ed., Painian, 2012, p. 43
AR-0006	Lilleholt, Kåre, in Irgens-Jensen, Harald, «Knophs oversikt over Norges rett», 15th ed., Universitetsforlaget, p. 226
AR-0007	Lov av 15. april 1687 «Kong Christian Den Femtis Norske Lov», 5th book, Chp. 1, article 1 and 2 (NL-5-1-1, NL-5-1-2) (Law of 15 April 1687)
AR-0008	Lov av 3. april 1964 nr. 1, «Kjøpslovvalgsløven» (Law of 3 April 1964 nr. 1)
AR-0009	Lov av 17. juni 2005 nr. 90, «Tvisteloven» (Law of 17 June 2005 nr. 90 «The Dispute Act»)
AR-0010	Judgement of the Norwegian Supreme Court of 25 September 1923 (Rt. 1923 II p. 58)
AR-0011	Judgement of the Norwegian Supreme Court of 16 October 1987 (Rt. 1987 p. 1205)
AR-0012	Judgement of the Norwegian Supreme Court of 3 June 1998 (Rt. 1998 p. 946)

AR-0013	Interlocutory order from the Norwegian Supreme Court of 27 October 1998 (Rt. 1998 p. 1647)
AR-0014	Interlocutory order from the Norwegian Supreme Court of 13 October 2010 (Rt. 2010 p. 1197)
AR-0015	Judgement of the Norwegian Supreme Court of 17 March 2011 (Rt. 2011 p. 410)
AR-0016	Judgement of the Norwegian Supreme Court of 8 December 2006 (Rt. 2006 p. 1585)
AR-0017	Interlocutory order of the Norwegian Supreme Court of 20 December 2012 (Rt. 2012 p. 1951)
AR-0018	Judgement of the Norwegian Supreme Court of 14 June 2016 (HR-2016-1251-A)
AR-0019	Judgement and interlocutory order of the Norwegian Supreme Court of 28 June 2017 (HR-2017-1297-A)
AR-0020	Judgement of the Norwegian Supreme Court of 11 October 2001 (Rt. 2001 p. 1288)
AR-0021	Skoghøy, Jens-Edvin, «Tvisteløsning», 3rd ed., Universitetsforlaget, 2017, p. 55-57
AR-0022	Sætermo, Harald, «Joint Venture – Fellesforetak», Forretningsjuridisk tidsskrift, 23.12.2015
AR-0023	Woxholth, Geir, «Avtalerett», 10th ed., Gyldendal Juridisk, 2018, p. 30-31