

THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ICSID CASE No. ARB/20/11 (ANNULMENT PROCEEDINGS)

PETERIS PILDEGOVICS AND SIA NORTH STAR

CLAIMANTS

V.

THE KINGDOM OF NORWAY

RESPONDENT

APPLICANTS' REPLY FOR CONTINUATION OF STAY OF ENFORCEMENT

26 APRIL 2024

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I. INTRODUCTION

1. The Applicants write, pursuant to the *Ad Hoc* Committee's calendar, and their 24-hour extension requested 25 April, and granted by the Committee, to respond to Norway's letter of 19 April 2024 responding to Applicants' request for continuation of stay of enforcement without conditions.
2. Applicants have already put their position on the law applicable to the continuation of a stay, with or without conditions, in their submission of 10 April 2024. Applicants will not further address the matter in detail.
3. In this submission, Applicants address the following points:
 - The circumstances of the case allow for the stay to be continued without conditions because access to justice will otherwise be restricted **(II)**;
 - As a matter of good faith the Applicants undertake to ensure any portion of the costs award not annulled by the *ad hoc* Committee will be paid **(III)**;
 - The balance of hardship strongly weighs in favour of Applicants **(IV)**;
 - Parallel proceedings are either irrelevant or further weigh in favour of showing that the balance of hardship weighs in favour of Applicants **(V)**.
4. The Applicants then reiterate their prayer for relief **(VI)**.

II. THE CIRCUMSTANCES OF THE CASE ALLOW FOR THE STAY TO BE CONTINUED WITHOUT CONDITIONS AS ACCESS TO JUSTICE WOULD OTHERWISE BE RESTRICTED

5. The circumstances of the present case undoubtedly allow for the Committee to continue the stay without conditions since proceeding otherwise would excessively affect Applicants' right of access to justice. Many *ad hoc* Committees have underscored that access to justice is guaranteed by ensuring an applicant can see through its annulment application.¹
6. If the claimants in *Libananco* were allowed to proceed with their annulment request on the basis of a continued stay of enforcement without conditions, then the Applicants can be granted the same. It may be recalled the claimant's stay in *Libananco* was continued without conditions despite a USD 15 million costs award in favour of Turkey, and despite serious allegations concerning how the Uzan family (the ultimate owners of *Libananco* and related businesses) ran various businesses in Turkey.²
7. By contrast, the Applicants contributed to the creation of over 60 jobs in the small Norwegian town of Baatsfjord, and Baatsfjord's former mayor testified in the ICSID arbitration in favour of Applicants. Further, Norway's Minister of Fisheries, Elizabeth Aspaker, visited the Baatsfjord factory in September 2015. Mr. Pildegovics was the host, serving her snow crab, which she appeared to appreciate. While Norway later tried to characterize North Star's vessels as engaging in "IUU" fishing (*ie* illegal, unreported, illegal fishing), which would have justified some sort of crack down, the reality is that brief attempts at characterizing the Applicants as criminals in the

¹ See e.g. *Churchill Mining Plc and Planet Mining Pty Ltd v. Republic of Indonesia*, ICSID Case No. ARB/12/14 and 12/40, Annulment Proceeding, Decision on the Request for Continued Stay of Enforcement of Award, 27 June 2018, **AL-0006**, para. 38 ("*The Committee agrees with the Applicants that their access to justice cannot be frustrated. Access to justice refers here to the right to apply for annulment provided by Article 52 of the Convention. Such right cannot be impaired by the conditions imposed for the continuation of the stay.*").

² *Libananco Holding Co. Limited v. Republic of Turkey*, ICSID Case No. ARB/06/8, Annulment Proceeding, Decision on Applicant's Request for Continued Stay of Enforcement of the Award, 7 May 2012, **AL-0002**. One allegation before that annulment committee, mentioned in the decision on stay of enforcement, was as follows, at para. 21: "*The Uzans are fugitives from justice that have accumulated enormous wealth by illegal means, in particular by committing massive frauds in the telecoms (the Telsim fraud) and banking sector (the Imar Bank fraud). The Applicant is an alter ego in this enterprise. A recurrent feature, recognize by multiple courts in numerous jurisdictions, has been that the Uzans, and in particular the Applicant's beneficial owner Cem Uza, will do whatever it takes to hide their assets from enforcement of court judgments against them. This includes fraudulent conveyance to prevent Turkey from enforcing the costs awards issued in ICSID (Additional Facility) arbitrations brought by CNH and ECIT, two Polish companies. The Applicant and its backers have the means to comply with the Award, but they will certainly not do so.*"

Norwegian press, and through the zealous actions of an overly enthusiastic public prosecutor, entirely failed. In reality, Mr. Pildegovics still travels frequently to Baatsfjord in Norway, with his business partner and cousin Mr. Levanidov, in order to try to continue their business ventures. Mr. Pildegovics is an upstanding businessman who has contributed, and continues to contribute, to the economic development of Norway.³

8. Nevertheless, concretely, it would be extremely difficult for Applicants to bring ICSID annulment proceedings if the stay of enforcement of the costs award is lifted. It would also be extremely difficult for Applicants to bring ICSID annulment proceedings if the stay is continued on conditions “*such as the establishment of an escrow account or the provision of a bond*”⁴ for the full payment of the EUR 1.4 million costs award.
9. If the stay is discontinued, it is not an exaggeration to say that the integrity of the present proceedings will be threatened. It is likely Applicants would have to fight off enforcement attempts by Norway, while simultaneously trying to move forward the annulment proceedings.
10. As the Tribunal knows, Norway has already threatened to enforce the costs award as of late February 2024, from 60 days after the Award.⁵ This is one of the reasons why Applicants filed their annulment request on 22 February 2024, exactly two months after the Award was rendered, rather than using the full 120 days allowed to finalize their request for annulment.
11. Absent continuation of the stay, would Norway attempt to attach the shares of North Star itself, which Mr. Pildegovics owns (threatening the very existence of the present proceedings)? Would Norway attempt to attach the shares of SIA Baltjura Serviss, another Latvian company owned by Mr. Pildegovics, which has filed a companion EUR 320 million claim regarding another snow crab fishing claim at ICSID (thus attempting to threaten the existence of another ICSID claim against Norway)? Would Norway try to attach the remaining three vessels belonging to North Star and thus disrupt the company’s business and prevent it from earning revenues or obtaining further financing? Would Norway try to go after Mr. Pildegovics’ personal assets during the

³ These facts are well established in the Applicants’ pleadings on the merits of the arbitration and not seriously contested.

⁴ Letter from Respondent to Ad Hoc Committee, 19 April 2024, p. 4.

⁵ Request for Continuation of Stay of Enforcement, 10 April 2024, para. 36; Letter of Norway to Claimants, 12 January 2024, **A-0119** (“*The Claimants are requested to pay the amount [of the costs award] in full no later than 20 February 2024 to avoid enforcement of payment.*”).

course of the annulment proceedings? If Norway pursued any one of those avenues, it would threaten the integrity of the present proceedings and possibly prevent Mr. Pildegovics and North Star from moving ahead with the annulment request.

12. Norway proposes conditions for the continuation of the stay “*such as the establishment of an escrow account or the provision of a bond*”⁶ for the full payment of the EUR 1.4 million costs award. However, those conditions cannot be met by either North Star or Mr. Pildegovics at this time.
13. Putting EUR 1.4 million in an escrow account is, from the perspective of North Star and Mr. Pildegovics, the same thing as paying that amount to Norway. They would need to have such liquidities available in full, which they do not at this time.
14. Applicants never questioned the fact that Norway would not pay back the EUR 1.4 million costs award if Applicants paid it now but the *ad hoc* Committee later annulled the costs portion of the award, in part or in full. Applicants assume Norway respects judgments or awards made against it, as its AAA rating across the board (Standard & Poor’s, Moody’s, Fitch, DBRS) would tend to suggest.
15. The question is not where the EUR 1.4 million should be placed at this time, but rather whether it is currently available. It is not, at least at this time, even though North Star does have assets and does have revenues, which have slightly increased from 2021 to 2022.⁷
16. North Star did have current assets valued at EUR 1.52 million at the end of 2022 and current assets valued at EUR 1.17 million at the end of 2021. North Star also had a balance of assets of EUR 2.77 million at the end of 2022 and of EUR 2.6 million at the end of 2021.⁸ However, an important part of those assets are vessels and the company has difficulties with liquidities at this time.
17. As for a EUR 1.4 million “bond” suggested by Norway, Applicants read that suggestion as the equivalent of some sort of bank guarantee. Again, to obtain such a guarantee, which can be triggered and paid upon the realization of a particular defined event (such as confirmation of the costs award by the *ad hoc* Committee), usually the full amount

⁶ Letter from Respondent to Ad Hoc Committee, 19 April 2024, p. 4.

⁷ Annual Report of SIA North Star for FY 2022, **A-0125**.

⁸ *Ibid.*

would have to be placed as collateral with the bank. Again, Applicants do not, at this time, have such liquidities.

18. In present circumstances, which have included trying to reorganize their lines of business following Norway's destruction of their snow crab enterprise, it is already a major financial undertaking for the Applicants to pay the *ad hoc* Committee's fees. This should be obvious from the fact that at this stage only USD 52,000 has been received in respect of the USD 200,000 initial call for funds, as confirmed by ICSID on 23 April 2024.⁹ The Applicants are in the process of organizing the transfer of the remaining amounts of the initial call for funds, in short order. However, the fact it is taking more time than expected shows that Applicants will encounter significant difficulties in advancing the proceedings should a continuation of stay not be granted, or should conditions affecting Applicants' liquidities be imposed.
19. Neither North Star nor Mr. Pildegovics can pay the costs award in present circumstances with current liquidities (though together they do possess substantial assets, which in principle do cover the costs award), nor can they provide a bond or guarantee as suggested by Norway. This is confirmed by Mr. Pildegovics' witness statement.¹⁰ This should also be obvious from North Star's most recent audited financial statement for the year 2022.¹¹ Mr. Pildegovics further confirms in his witness statement that the situation has not since improved in a manner that would change Applicants' capacity to pay the costs award at this time.

III. APPLICANTS OFFER AN UNDERTAKING TO PAY COSTS CONFIRMED BY THE *AD HOC* COMMITTEE TO SHOW THEIR GOOD FAITH

20. To show their good faith, Mr. Pildegovics is ready to undertake that himself and North Star will ensure that any costs award confirmed by the present *ad hoc* Committee will

⁹ Letter from ICSID to the parties, 23 April 2024, **A-0124**.

¹⁰ First Witness Statement of Peteris Pildegovics in Annulment Proceedings, 26 April 2024, **WS-1**.

¹¹ Annual Report of SIA North Star for FY 2022, **A-0125**.

be paid. An undertaking has been held sufficient in other cases. The undertaking is found in Mr. Pildegovics' statement attached.¹²

21. As mentioned, North Star in principle has assets to cover the costs award.¹³
22. The Committee can also note that Mr. Pildegovics is only 46 years old and thus still reaching the prime of his business career. Should the *ad hoc* Committee not annul the costs part of the Award – even though it does suffer, at least in part, from substantial irregularities – Mr. Pildegovics will be personally exposed to a substantial costs award. In the interest of his business career, it is obvious that it will be better not to have any such substantial costs awards outstanding against him, and that it should be paid.
23. As such, and while Applicants believe they could have obtained a continuation of the stay of enforcement with no conditions at all, they offer this undertaking from the perspective that in business matters people and companies (as well as States) should honor their obligations.

IV. THE BALANCE OF HARDSHIP STRONGLY WEIGHS IN FAVOUR OF APPLICANTS

24. On the balance of hardship, the stay should be continued, including without condition, in the light of : a) the absence of any impact of the delayed payment of a EUR 1.4 million costs award by 12-18 months on the operating budget of the government of Norway; and b) the balance of financial hardships regarding the merits of the case.
25. Some States have argued that the amount of the award payable would put in jeopardy their state budget and other financial interests. In its letter of 19 April, Norway writes:¹⁴

In short, Norway has a duty to protect public monies and to take appropriate steps to ensure that debts owed to it are paid promptly or at least properly secured.

¹² First Witness Statement of Peteris Pildegovics in Annulment Proceedings, 26 April 2024, **WS-1**.

¹³ Annual Report of SIA North Star for FY 2022, **A-0125**: North Star did have current assets valued at EUR 1.52 million at the end of 2022 and current assets valued at EUR 1.17 million at the end of 2021. North Star also had a balance of assets of EUR 2.77 million at the end of 2022 and of EUR 2.6 million at the end of 2021.

¹⁴ Letter from Respondent, 19 April 2024, **A-0126**.

26. In *MINE v. Guinea*, the *ad hoc* Committee held that:¹⁵

*Having reviewed the circumstances of the case, the Committee is of the view that termination of the stay at this time would impose hardships on Guinea whose interests would be severely affected.*¹⁶ *This prospect of hardships combined with the risk of frustration of recoupment, in case of Guinea's success in this annulment proceeding, have led the Committee to decide that the provisional stay of enforcement of the Award should continue for the time being.*

27. Applicants respectfully submit that it should not be controversial that delaying the potential payment a EUR 1.4 million costs award in favour of Respondent for a period of about 12-18 months (while the annulment proceedings are pending) should not significantly affect Norway's state budget, if at all.
28. Norway has had only one government budget deficit in the past 25 years, in 2020, because of COVID.¹⁷ Norway otherwise always has substantial budget surpluses. Norway also has a hugely successful sovereign wealth fund, in its Government Pension Fund Global (*Statens pensjonsfond utland*) which had USD 1.626 trillion under management as at March 2024¹⁸ and of USD 1.7540 trillion as at 26 April 2024 at 9:05pm.¹⁹ For the annual financial year ending at 31 December 2022, the Ministry of Finance, as owner of the fund, contributed no less than USD 100 billion in new capital to it.²⁰

¹⁵ *Maritime International Nominees Establishment v. Republic of Guinea*, ICSID Case ARB/84/4 (Annulment Proceedings), Interim Order No. 1: Guinea's Application for Stay of Enforcement of the Award, 12 August 1988, **AL-0015**, para. 27.

¹⁶ *Ibid.* The Committee described the arguments put to it on that matter as follows, para. 26: "*In its written as well as its oral submissions Guinea has pleaded its strained foreign exchange resources as a "circumstance" requiring a continuation of the provisional stay of enforcement. Poverty as such is not a circumstance justifying a stay any more than it would justify non-payment of an award. The criterion is, rather, whether termination of the stay would have what Guinea calls "catastrophic" immediate and irreversible consequences for its ability to conduct its affairs. The parties have submitted conflicting evaluations of the significance for this purpose of the amount of the Award and accrued interest (on the necessary assumption that it would be promptly paid).*"

¹⁷ Trading Economics Chart of Norway Budget Surpluses and Deficits 1999-2023, **A-0127**; Reuters, "Norway's government in deficit for the first time in 25 years", 2 September 2020, **A-0128**.

¹⁸ See generally Government Pension Fund Global, Annual Report 2022, **A-0129**; Wikipedia, "Government Pension Fund of Norway", **A-0130**.

¹⁹ See <https://www.nbim.no/no/oljefondet/markedsverdi/> (a link which updates continuously the value of the fund).

²⁰ Government Pension Fund Global, Annual Report 2022, **A-0129**, p. 72 (Statement of changes in owner's capital).

29. As such, Norway's budgetary and financial situation cannot be compared to that of Guinea in the *MINE* case. Deferred payment of about EUR 1.4 million into the Norwegian government budget, will not have any noticeable consequences, for example in how the government of Norway can fund various infrastructure, cultural, educational, sports and other important government programmes. In any event, it is possible that the funds would have to be reimbursed.
30. What Norway has gained financially from its measures affecting the Applicants should also be considered.
31. One document in the record of the arbitration shows that EU vessels had an approximately 35% share of the snow crab fisheries in 2015 and 2016 in relevant parts of the Barents Sea.²¹ The remainder was shared between Norwegian and Russian vessels. The 2018 document, referring to a conservative estimate generated by a Norwegian government institution, the Institute of Marine Research, puts total annual value of such catches at about USD 230 million (or NOK 2.5 billion).²² A simplified calculation would tend to show that Norway and the Russian Federation, together, took at least USD 80 million in annual fishing revenues from the EU fleet, which was mostly represented by Baltic States (from Latvia and Lithuania), as well as 1 Spanish vessel. There were 10 Latvian licenses: North Star had 4 operating vessels and had purchased two additional vessels which ultimately were never used; Baltjura had 4 operating vessels. There were also 3 Lithuanian licenses: Arctic Fishing had 3 operating vessels.
32. If Norway and Russia increased in a similar way their catches following the absence of EU vessels, Norway could have netted 50% of at least USD 80 million in yearly value of catches for now 7 years, from 2017-2023. Without taking into consideration interest or additional lost value over time, that is USD 280 million in additional revenues for Norwegian vessels. Without considering all effects in the Norwegian economy stemming from salaries (and income tax), relevant VAT revenues, etc., the corporate

²¹ Brooks A. Kaiser and others, "A case for the commons: The Snow Crab in the Barents", *Journal of Environmental Management* 210 (2018), 338-348, **BK-0063**, p. 342 (Table 1).

²² Brooks A. Kaiser and others, "A case for the commons: The Snow Crab in the Barents", *Journal of Environmental Management* 210 (2018), 338-348, **BK-0063**, p. 342 ("According to the Institute of Marine Research in Norway (IMR) the value of the Snow Crab fishery might reach of to 2.5 billion NOK"). For another, larger estimate, from the same author, also at p. 342: "Despite existing uncertainties in the stock estimates and the difficulties in biomass simulations, there are expectations for sustainable landings of 50,000 tons within a 10 year horizon and for 75,000 tons within the next 20 years. If these expectations are met, then the Snow Crab fishery will be of much greater commercial value than the mackerel, herring and saithe (~830 m NOK) fishery and possibly greater than the value of the important cod fishery (~6.788 m NNOK)".

income taxes at 22%²³ for USD 280 million of corporate revenues would be some USD 60 million to Norway (without accounting for costs deductions; but even after costs fishing companies should net substantial profits). Just the additional VAT (which is 25% in Norway²⁴) on fuel purchases by Norwegian vessels to catch snow crab previously being caught by EU vessels would also likely outweigh substantially the EUR 1.4 million costs award for which Applicants respectfully request an extension of the stay of enforcement.

33. A further consideration in respect of the balance of hardship is the international perception that Applicants are in the right.
34. As already mentioned, the European Union has taken the position in international *fora* that the Applicants deserve to be compensated by Norway.²⁵ The European Union has also taken the position that a recent Norwegian Supreme Court decision breaches Applicants' rights to fish snow crab in Norway.²⁶
35. In what can be characterized as an unusual fact pattern in an investment treaty case, the ICSID tribunal did find jurisdiction in favour of the Applicants. That conclusion was not necessarily obvious. At the outset of the case the Applicants suggested bifurcating the case only on jurisdiction, a proposition Norway objected to. On its face, Norway stated it refused because it needed to see Applicants' entire case on the merits before making its objections to jurisdiction.²⁷ However, after forcing Applicants to put in a full memorial, including an expensive damages report, Norway unilaterally decided that it did not have to submit its own²⁸ – most likely because looking at the financials of snow crab fisheries was not in its interest – and also further misled²⁹ to the Tribunal to obtain bifurcation of damages.
36. Even though the Tribunal found jurisdiction in favour of Applicants, the Tribunal then caused a denial of justice by refusing to decide certain questions going to the liability of Norway, on the basis of the *Monetary Gold* principle, because the Russian

²³ PWC Tax Summary for Norway on Corporate Income Tax, **A-0131**.

²⁴ PWC Tax Summary for Norway on Value Added Tax, **A-0132**.

²⁵ Request for Continuation of Stay of Enforcement, 10 April 2024, para. 39.

²⁶ *Ibid.*

²⁷ Decision on Bifurcation and Other Matters, 12 October 2020, **A-0133**.

²⁸ Request for Annulment of the Award, 22 February 2024, paras. 59-67.

²⁹ *Ibid.*

Federation was an absent party in the proceedings. (It is not clear how it could have been present; and there was certainly no way for Applicants to sue the Russian Federation as a party before that ICSID tribunal.) So the Applicants, a private individual and a small enterprise, from Latvia, are now trying to bring an annulment proceeding against an Award they find manifestly unfair, in circumstances where their country of nationality and the European Union seem to believe they should have won and/or otherwise been compensated by Norway.

37. It is therefore the Applicants' respectful submission that, in such circumstances, the *ad hoc* Committee should do everything in its power to ensure that Applicants' rights of access to justice can be fully exercised. This is especially so as the Applicants' financial situation has been rendered very difficult following years of being affected by Norway's actions interfering with their fishing activities, while Norway has significantly benefitted from such measures.

V. PARALLEL PROCEEDINGS ARE IRRELEVANT FOR PRESENT PURPOSES BUT, IF ANYTHING, FURTHER SHOW THAT THE BALANCE OF HARDSHIP WEIGHS IN FAVOUR OF APPLICANTS

38. Last but not least, it is not clear why Norway thinks the existence of two parallel cases concerning the same measures, where claimants are represented by the same counsel, have any bearing on whether the stay of enforcement should be continued.
39. If anything, the existence of the two other ICSID cases, *Baltjura Serviss* and *Arctic Fishing*, brought under the Latvia-Norway BIT and Lithuania-Norway BIT, respectively, show Norway's general heavy-handedness in dealing with the litigation risk arising following its closure of the Loophole, and then of the Svalbard area, to EU snow crab vessels in 2016 and 2017.
40. In August 2022 the Applicants learned from Norway that it had agreed to terminate, on a mutual basis, including by terminating the sunset clause, the Latvia-Norway BIT.³⁰ It was discovered shortly thereafter that the Lithuania-Norway BIT was also in the

³⁰ See generally **A-0088** to **A-0096** (correspondence of 19 and 24 August and exhibits on termination of Latvia-Norway BIT) and **A-0105** (Claimants' Letter of 17 March 2023 on termination of Latvia-Norway BIT).

process of being terminated on a similar basis. Norway also appears to have terminated mutually its BITs with Estonia, Romania, and Hungary.³¹

41. Norway stated at the time that it was terminating its BITs with EU countries based on its review of the *Achmea* judgment and EU law, apparently some four years after the fact (even though Norway is not an EU member state; as if Norway was an EU member state, it would be sharing its fish with Latvia and the current dispute would never have arisen). If one takes seriously Norway's statements, it appears Norway was drawing comparisons between intra-EU investment protection principles and apparently similar principles existing under the EEA-EFTA free trade agreement (between the EU on the one hand, and Norway, Switzerland, Liechtenstein and Iceland on the other). Applicants do not believe there exist similar principles of "mutual trust" in respect of the judiciaries of the EU and EEA countries as there does in the EU pursuant to the EU treaties. Moreover, Norway does not appear to have terminated its BITs with Poland, the Czech Republic and Slovakia.³²
42. Applicants' impression has always been that Norway initiated the termination of its BITs, in particular with Latvia and Lithuania, to prevent the *Arctic Fishing* and *Baltjura* cases from going forward. Since the treaties were terminated mutually (at Norway's request), including the sunset clause, their termination would prevent cases not yet filed from going forward. Norway was of course well aware of Arctic Fishing's potential claim due to its joint notice of dispute, with North Star, made in February 2017. As for *Baltjura*, Norway was also well aware of the identity of the various EU vessels, including those of *Baltjura*, that had caught snow crab in the Loophole in 2015 and 2016.
43. The initial wording of the termination agreement of the Latvia-Norway BIT even appeared to affect the potential continuation of the present proceedings. After Mr. Pildegovics' lobbying of Latvia's foreign affairs commission, the Latvian parliament's adoption of the termination agreement actually changed the wording of the agreement to clarify that the present proceedings should not be affected.³³

³¹ UNCTAD, Status of Norway's BITs, 26 April 2024, **A-0016**.

³² UNCTAD, Status of Norway's BITs, 26 April 2024, **A-0016**.

³³ **A-0105** (Claimants' Letter of 17 March 2023 on termination of Latvia-Norway BIT).

44. Decisions were taken to file Requests for Arbitration for Arctic Fishing and Baltjura before the termination of the BITs. For Baltjura, a notice of dispute also had to be sent. In both cases, the Requests for Arbitration were registered at ICSID weeks if not days before the final date at which the BIT was still in force.
45. Considering the cases were filed under the 2022 ICSID Arbitration Rules, immediate calls for funds were made, only to claimants, as under the new rules calls for funds to respondents are made only later, after a claimant has satisfied its call. Both Baltjura and Arctic Fishing explained to ICSID that they had filed their cases merely to preserve their rights, which they would possibly lose immediately after the termination of the BITs.³⁴ In those circumstances, ICSID accepted to exceptionally lower the amount of the initial call for funds.³⁵
46. To Norway's benefit, it accepted Applicants' initial proposal that the parties would not pay any arbitration fees while the cases were suspended. However, ICSID insisted that at least its USD 52,000 annual fee be covered, adding the parties could not opt out of the institution's fees.
47. In both cases Norway and the claimant also agreed to suspend the proceedings until a decision (on jurisdiction and merits) or award was rendered in the present case. Since then, Norway has been asked, for example in the Baltjura case, to agree on a continued suspension of the proceeding, until the end of the present annulment. Norway has not so agreed at this time.
48. If Norway had not proceeded with the termination of its BITs with Latvia and Lithuania, and in particular of their sunset clauses, it is possible the two additional cases would never have been filed. It is therefore unclear why Norway is complaining about a situation it has entirely brought upon itself.

³⁴ See eg Letter of Baltjura to ICSID, 23 May 2023, **A-0134**.

³⁵ See eg Letter of ICSID to Baltjura, 29 May 2023, **A-0135**.

VI. CONCLUSION AND PRAYER FOR RELIEF

49. For the reasons set out above and in Applicants' Request for Continuation of Stay of Enforcement of 10 April 2024, the Applicants request:

- That the *ad hoc* Committee confirm the stay of enforcement of all of the Award, without condition;
- That the *ad hoc* Committee reserve the question of costs for its annulment Decision.

50. In the alternative, the Applicants request:

- That the *ad hoc* Committee confirm the stay of enforcement of all the Award, taking note of the Applicants' undertaking to ensure the payment of any portion of the costs award found in Award confirmed (or not annulled) by the *ad hoc* Committee.

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Respectfully submitted

[signed]

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