

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

From: Dr. Anders Ryssdal

Date: 28 February 2022

1 INTRODUCTION

1 Upon engagement by the claimants, Mr. Peteris Pildegovics and SIA North Star, and their counsel, Mr. Pierre-Olivier Savoie, I provided an expert report dated 10 March 2021 to be submitted in ICSID CASE NO. ARB/20/11 before the International Centre for the Settlement of Investment Disputes.

2 On 1 November 2021 I received a copy of i.a. Respondent's, the Kingdom of Norway, counter-memorial and memorial on jurisdiction, which in certain paragraphs refers to and comments on my expert opinion¹.

3 I have been asked to review and provide this addendum to my expert report commenting on:

(i) the contents of the joint venture agreement between Mr. Pildegovics and Mr. Levanidov with regard to "*claims to any performance under contract having an economic value*", cf. the definition of "*Investment*" in Article 1 of the [Norway-Latvia BIT](#); and

(ii) the impact of such contents relating to the issue of legal venue.

4 I will address the contractual rights of the joint venture agreement in section 2 and legal venue in section 3.

5 In addition to my expert report and the relevant documentation referred to in paragraph 5, I have reviewed Respondent's counter-memorial and memorial on jurisdiction as well as Mr. Pildegovics' and Mr. Levanidov's second witness statements dated 28 February 2022.

6 It is my understanding having reviewed the counter-memorial that the Respondent is not contesting my presentation of the general principles of law in my expert report, but rather the application of facts as mainly set out in the witness testimonies of Mr. Pildegovics and Mr. Levanidov on which I have been instructed to base my considerations. Thus, I will in the following focus mainly on application of facts to the principles of law.

¹ Counter-memorial paragraphs 437-459.

7 For the sake of good order, it must be stressed that for my considerations I am instructed to rely on the facts presented to me (including those appearing from the witness statements) without further investigation at my end.

2 THE CONTRACTUAL RIGHTS OF THE JOINT VENTURE AGREEMENT

2.1 Rights and obligations

8 Respondent states² that it has been described what Mr. Pildegovics and Mr. Levanidov “have done in connection with the Båtsfjord snow crab operation and emphasise the closeness of their collaboration”. However, it is emphasised:

“But they do not identify – let alone prove – any of Mr Pildegovics’ alleged “contractual rights in his joint venture agreement” that are said to have been injured by actions of Norway in breach of the BIT.”

9 The Respondent further refers paragraphs 37-39 and 92 of my expert report before stating that:

“The ‘investment’ threshold cannot be crossed simply by asserting that there is a contract which contains unparticularised claims to performance”³.

10 It is not within my assignment to consider the mentioned threshold, but I do not agree with Respondent that the joint venture agreement “contains unparticularised claims”. In this regard, I refer to the following statement from paragraphs 29-30 of Mr. Pildegovics’ witness testimony quoted in paragraph 33 of my expert report:

“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.

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.”

11 It appears from the above that the essential obligations under the joint venture agreement were for Mr. Pildegovics to ensure deliveries of snow crabs and thus he apparently invested at least EUR 10 million in SIA North Star and Sea & Coast AS for “the purchase, repair, equipment and maintenance of a fleet of vessels fitted to harvest snow crabs”⁴.

12 The essential obligations of Mr. Levanidov under the joint venture agreement were to ensure sufficient capacity to process – and hence take delivery of – the snow crabs at the

² Counter-memorial paragraph 436.

³ Counter-memorial paragraphs 439-442.

⁴ Request for Arbitration paragraph 29.

said Båtsfjord factory, Seagourmet AS, for which purpose he apparently invested EUR 12 million⁵.

13 In other words; the right of Mr. Pildegovics was to be able to deliver the snow crab to the Båtsfjord factory for processing which ensured a ready source of demand for the snow crab harvest⁶ and the right of Mr. Levanidov was to get deliveries of snow crab for processing at the said factory.

14 The mentioned rights and obligations are connected to Norwegian territory, namely ability to deliver, take delivery and process snow crab at the Båtsfjord factory.

2.2 Other interpretative principles

15 Respondent has argued that the scope of the joint venture agreement “*must obviously have some terms and limits*” with reference to Woxholth, *Avtalerett*, 11th edition, 2021, part IV section 4.38, p. 500-501 in which simple contractual form indicates less extensive commitments⁷.

16 There are a few comments that must be taken into account in this regard:

(i) The form of contract may be used as an interpretation of the obligations thereunder where the parties to the contract disagrees on the terms. This was for instance the case in the Norwegian Supreme Court decision 29 March 1995 in [Rt. 1995 p. 543](#)⁸ to which Woxholth refers just before the statement quoted by Respondent⁹. In the dispute at hand the situation is different. The parties to the joint venture agreement seem to agree on its terms. It is a third party, i.e. Respondent, who is questioning whether there is in fact an agreement and, if so, what the terms are.

(ii) As stated by the author himself the form only “*indicates*” how extensive the terms may be in case of uncertainty – it is not decisive. He even states in the same section that [my office translation]:

“However, there are limits as to how far it would be relevant to interpret burdensome contract terms restrictively to the benefit of the promissor, cf. section 5.3 regarding criticism against the so-called minimum rule¹⁰.”

⁵ Request for Arbitration paragraph 31, see also Mr. Pildegovics’ witness statement paragraph 32 et seq.

⁶ Request for arbitration paragraph 34, see also Mr. Pildegovics’ witness statement paragraph 32 et seq.

⁷ Counter-memorial paragraph 450.

⁸ AR-0024.

⁹ Counter-memorial paragraph 450 and Woxholth, *Avtalerett*, 11th edition, 2021, part IV section 4.38, p. 500, AR-0025.

¹⁰ Woxholth, *Avtalerett*, 11th edition, 2021, part IV section 4.38, p. 501, AR-0025.

17 Consideration of these principles does not lead me to change my conclusion expressed in
the previous section and in my initial report about the existence of an agreement and its
terms.

18

3 LEGAL VENUE

19 Respondent criticizes my expert report based on the facts and states as follows:

*“Norwegian courts would not assume jurisdiction in the event of a dispute between
the Mr Pildegovics and Mr Levanidov in connection with their alleged
agreement”¹¹.*”

20 Based on the witness testimonies of Mr. Pildegovics and Mr. Levanidov as emphasized in
section 2 above, the most vital rights and obligations under the joint venture agreement
pertaining to deliver on one side and take delivery and process on the other, are both
connected to the Båtsfjord factory.

21 On the basis of the facts set out, Norwegian courts are more likely than not to assume
Norwegian jurisdiction irrespective of whether such venue is based on [Sections 4-3 and 4-
5 no. 2 of the Norwegian Dispute Act](#) or [Article 5 no. 1 of the Lugano Convention](#)¹².

22 With regard to the Lugano Convention, it is correct that [Article 2](#) sets out the main rule
that a person should be sued in the courts of domicile. However, this is *“subject to the
provisions of this Convention”*. One such provision is [Article 5 no. 1](#) stating that a person
domiciled in a state *“may”* be sued in another state (both states having ratified the
convention) *“in matter relating to a contract, in the court for the place of performance of
the obligation in question”*¹³.

23 In this connection, it must be observed that it cannot be deemed a condition for legal venue
that a written formal agreement is in place in which the legal venue is mentioned. If so,
[Section 4-6 of the Norwegian Dispute Act](#)¹⁴ and/or [Article 23 of the Lugano Convention](#)
relating to formal agreements on legal venue could apply.

24 Further, it is not a criterion that an agreement must be in writing or that all parts of the
agreement must be evident. Reference is made to the fact that under Norwegian contract
law an oral agreement is equally binding as a written contract¹⁵. As such, when applying
[Section 4-5 no. 2 of the Norwegian Dispute Act](#) the court must place emphasis on the

¹¹ Counter-memorial paragraph 453 et seq.

¹² AR-0001.

¹³ Cf. the decision 10 May 1996 in [Rt. 1996 p. 822](#) by the Appeal Committee of the Norwegian Supreme Court,
AR-0026.

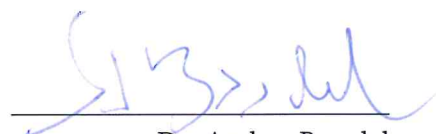
¹⁴ AR-0009.

¹⁵ My expert report paragraph 23.

claimant's pretensions¹⁶. With regard to the Lugano Convention, it appears from the decision 25 September 2008 in Rt. 2008 p. 1207¹⁷ paragraph 16 by the Appeal Committee of the Norwegian Supreme Court that:

"It does not prevent application of Article 5 no. 1 that the respondent disputes that a contract exists. It is assumed to be sufficient to make probable to a certain degree that a contractual obligation in fact exists [...]."

25 On the above basis and the facts provided to me, I maintain my conclusion that Norwegian courts would assume jurisdiction over disputes arising under the joint venture agreement¹⁸.



Dr. Anders Ryssdal
Oslo, 28 February 2022

¹⁶ See NOU 2001:32 B Rett på sak p. 696 (Report on Preparatory Work for Norwegian Dispute Act, 20 December 2001), AR-0027.

¹⁷ AR-0028.

¹⁸ My expert report paragraph 67.

CONSOLIDATED 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, «Kjøpslovvalgsloven» (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) |

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| 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 |
| AR-0024 | Judgement of the Norwegian Supreme Court of 29 March 1995 (Rt. 1995 p. 543) |
| AR-0025 | Woxholth, <i>Avtalerett</i> , 11 th edition, 2021, part IV section 4.38, pp. 50-51 |
| AR-0026 | Judgment of the Appeal Committee of the Norwegian Supreme Court of 10 May 1996 (Rt. 1996, p. 822) |
| AR-0027 | NOU 2001:32 B Rett på sak Lov om tvisteløsning (tvisteloven) (Report on Preparatory Work for Norwegian Dispute Act, 20 December 2001) |

AR-0028

Judgment of the Appeal Committee of the
Norwegian Supreme Court of 25 September 2008
(Rt. 2008, p. 1207)
