UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

HULLEY ENTERPRISES LTD., YUKOS UNIVERSAL LTD., AND VETERAN PETROLEUM LTD.,	Case No. 1:14-cv-01996-BAH
Petitioners,	Chief Judge Beryl A. Howell
v.	
THE RUSSIAN FEDERATION,	
Respondent.	

SIXTH DECLARATION OF PROFESSOR ALBERT JAN VAN DEN BERG

I, ALBERT JAN VAN DEN BERG, declare as follows:

1. I submit this Declaration in support of the Russian Federation's Reply in Support of the Motion to Extend the Stay. In this Declaration, I address various misstatements and mischaracterizations by Petitioners in their submissions of July 8, 2020[1] regarding the parallel litigation in European courts, enforcement under the New York Convention, and the set-aside proceedings before the Dutch courts. Specifically, I address in this Declaration the following five sets of issues.

- Petitioners' misstatements regarding parallel litigation from 2015 to 2017 in Belgium, France, Germany, and England;
- Petitioners' mischaracterizations of other case examples involving set aside litigation (annulment) at the place of arbitration and parallel enforcement attempts in secondary jurisdictions under the New York Convention;

[1] Pet'rs' Opp'n to the Russian Federation's Mot. to Extend this Court's Stay of Litigation (Pet'rs' Opp'n), ECF No. 181; Decl. of Michael Cotlick ("Cotlick Declaration"), ECF No. 181-2.

- Petitioners' misinterpretation of the terms "set aside" and "suspension" under Article VI of the New York Convention;
- Petitioners' mischaracterization of issues pertaining to whether the Court of Appeal of The Hague's legal rulings are "subject to reversal" by the Dutch Supreme Court; and
- A summary of the litigation in the Court of Appeal of The Hague regarding the Oligarchs' *de facto* control over and extraction of billions of US dollars from Petitioners.

2. I am able to address these issues because of my expertise in international arbitration, the New York Convention, and Dutch arbitration law. Moreover, I have been lead counsel since 2014 for the Russian Federation in the worldwide litigation relating to Petitioners' arbitral awards (the "Awards") (ECF Nos. 2-1 through 2-6). My relevant professional and academic qualifications are detailed in my five previous declarations (ECF Nos. 24-9, 108-2, 127-1, 152-2, 180).

I. Petitioners Make Incorrect Statements Regarding the Parallel Litigation in Belgium, France, Germany, and England

3. With my Fifth Declaration, I submitted Annex B (ECF No. 180-2) containing a list of the judicial proceedings that resulted from Petitioners' attempt to obtain enforcement (exequatur) of the Awards and attachments of property around the world. As reflected in Annex B, Petitioners' parallel litigation led to at least seventy-five separate judicial proceedings in the courts of Belgium, France, Germany, India, the United Kingdom, and the United States.[2]

4. In their latest submission, Petitioners allege that "the vast majority of those proceedings were initiated by the Russian Federation, not by Petitioners."[3] Petitioners' declarant

[2] I am fluent in the procedural languages of each of these parallel proceedings: French, English, and German. To confirm my brief summaries of the procedural documents for this Declaration, I have consulted as necessary with my HVDB law firm partners, Niuscha Bassiri (qualified in Germany) and Paul Lefebvre (qualified in Belgium), Andrea Pinna of Foley Hoag (qualified in France), and Markus Burianski of White & Case LLP (qualified in Germany).

[3] Pet'rs' Opp'n 4 (emphasis in original).

Michael Cotlick, moreover, alleges that "[t]he Russian Federation initiated many protective proceedings against Petitioners . . . [including] thirty-three proceedings in Germany . . . [and] two proceedings in Belgium."[4]

5. As detailed below, Petitioners mischaracterize the nature of these parallel judicial proceedings by omitting important context relating to the procedural law applicable in Belgium, France, and Germany. In each of these jurisdictions, the procedure for enforcement is typically that the petitioner obtains *ex parte* leave for enforcement or attachment, upon which the award debtor must initiate adversarial judicial proceedings to have the *ex parte* enforcement or attachment order quashed. Logically, the Russian Federation would not (and did not) try to enforce the Awards against itself. The Russian Federation also would not (and did not) attempt to seize its own property. The details are further elaborated below.

6. In every instance in which the Russian Federation did "initiate" any judicial proceeding, it was always in response to some earlier action taken by Petitioners to pursue enforcement (exequatur) or attachment in that same jurisdiction. This is summarized below using illustrative examples for Belgium, France, and Germany.

- *Belgium*: On June 17, 2015, Petitioner Yukos Universal Limited (YUL) filed a request for leave to enforce the arbitral awards with the Brussels Court of First Instance.[5] On the same day, bailiffs acting on behalf of YUL also served forty-seven writs of conservatory attachment on accounts of the Russian Federation in Belgium.[6] The Court of First Instance granted the Belgian Exequatur Request in an order dated June 24, 2015 (Exequatur Order).[7]

  The Russian Federation accordingly responded to YUL's *ex parte* actions. On July 31, 2015, the Russian Federation filed a brief with the Court of First Instance in

[4] Cotlick Decl. ¶ 5.

[5] Civ. Bruxelles Court of First Instance, 15/1976/B, Request for Recognition and Execution of a Foreign Arbitral Award (Jun. 17, 2015).

[6] Bailiff, Jun. 17, 2015, Writ of Conservatory Attachment.

[7] Civ. Bruxelles Court of First Instance, 15/1976/B, Exequatur Order of Arbitral Awards (Jun. 24, 2015).

Brussels, seeking annulment of the Exequatur Order and a suspension of all enforcement measures pending the outcome of an appeal of the arbitral award in the Netherlands.[8] The Russian Federation also filed separate briefs against the attachment of its accounts,[9] as well as against the attachment of its real estate.[10] Accordingly, even where the Russian Federation was designated as the "applicant" rather than the "respondent", the Russian Federation was nonetheless responding to the previous actions taken by YUL on June 17, 2015, which "initiated" the Belgian litigation as a whole.

- *France*: On December 1, 2014, in response to Petitioners' request, the President of the First Instance Court of Paris ordered the exequatur of the six arbitral awards *ex parte*.[11] Petitioners also proceeded to obtain attachments—for example, on nine properties on June 2, 2015[12] and on two additional properties on December 15, 2015.[13]

  This exequatur order caused the Russian Federation to take several measures in response, including initiation of several proceedings to defend itself against attachment of assets in France. These defensive measures were presented to the first instance court in an orientation hearing on December 17, 2015.[14]

  Similarly, on January 18, 2015, Petitioner Veteran Petroleum Limited (VPL) attached a debt due to the third party Roscosmos by SA Arianespace following the exequatur of Veteran's Award. On July 9 and 21, 2015, SA Arianespace and Roscomos initiated proceedings in order to challenge the attachment.[15]

  Accordingly, even where the Russian Federation or a third party was designated as the "applicant" rather than the "respondent", the judicial proceeding was nonetheless responding to the previous actions taken by Petitioners on December 1, 2014, and in subsequent attachment proceedings, which "initiated" the French litigation as a whole.

- *Germany*: On June 29, 2015, Petitioner Hulley Enterprises submitted an *ex parte* "Request for a declaration of enforceability of an arbitral award" (Request) to the

[8] Civ. Bruxelles Court of First Instance, Motion of Third-Party Opposition (Jul. 31, 2015).

[9] Civ. Bruxelles Court of First Instance, a/15/8181/A, Motion of Third-Party Opposition (Oct. 28, 2015).

[10] Civ. Bruxelles Court of First Instance, 15/8991/A, Motion of Third-Party Opposition (Nov. 20, 2015).

[11] *See* Paris Court of Appeal [CA] Decision, Jun. 27, 2017, 15/11668.

[12] Paris Court of First Instance [Civ.] Summons to Pay, June 2, 2015.

[13] Paris Court of First Instance [Civ.] Summons to Pay, Dec. 15, 2015.

[14] *See, e.g.*, Paris First Instance Court [TGI], 15/00318, Conclusions for the Purpose of Contesting a Seizure of Property (Dec. 17, 2015).

[15] Paris Court of Appeal [CA] Decision, Oct. 5, 2016, 16/09363.

> Berlin Higher Regional Court.[16] This act caused the Russian Federation to take several measures in response, which would have been anticipated and reasonably foreseeable within the Germany legal system. Among other things, the Russian Federation availed itself of the German procedure of filing a *Schutzschrift*, or protective brief, in jurisdictions where attachments could be reasonably anticipated. On November 6, 2015, the Russian Federation submitted protective briefs in a number of German jurisdictions. The protective briefs named Petitioners as "presumable applicants," and the Russian Federation as the "presumable respondent." The Berlin Higher Regional Court declined to decide any application for a preliminary enforcement order *ex parte* without first conducting an oral hearing.[17] Even if Petitioners were not aware of these protective writs, their filing would have been anticipated in the German system. Accordingly, even where the Russian Federation was designated as the "applicant" rather than the "respondent", the Russian Federation was nonetheless responding to the previous actions taken by Petitioners on June 29, 2015, which "initiated" the German litigation as a whole.

7. As these examples all reflect, the Russian Federation did not commence "the vast majority" of these proceedings. To the contrary, the process of enforcement and attachment as a whole was commenced in Belgium, France, and Germany by Petitioners. This is logical, because the Russian Federation was not seeking to enforce the awards against itself.

8. I also will address another matter, relating to Petitioners' argument that a French court denied the Russian Federation's application for a stay in 2015.[18] Here, too, Petitioners have omitted the relevant procedural context in making their argument. That French proceeding involved different considerations from the present proceeding in the United States.

9. The legal framework regarding a stay in the French courts in the arbitration enforcement context is different from most other jurisdictions. French courts generally do not apply the New York Convention to the enforcement of foreign arbitral awards. Rather, they apply

[16] Berlin Higher Regional Court [KG], Request for a Declaration of Enforceability of an Arbitral Award, June 29, 2015.

[17] Berlin Higher Regional Court [KG], Protective Writ, Nov. 6, 2015.

[18] Pet'rs' Opp'n 4.

their own law on the enforcement of awards made outside France.[19] One of these features of French law on the enforcement of awards made in another State is that it does not authorize refusal of enforcement on the ground that the award has been set aside in the country where the award was made. This unique feature, unknown to the vast majority of enforcement laws of other countries, is in sharp contrast to Article V(1)(e) of the New York Convention, which contains as ground for refusal of enforcement that the award has been set aside (or suspended) in the country where made.[20] The consequence is that a stay of enforcement by French courts is not considered and decided on the basis of the provisions of Article VI of the New York Convention relating to the adjournment of the decision on enforcement. Relatedly, from a practical perspective, French courts do not consider that they derive any benefits of efficiency or judicial economy by waiting to see how the set-aside (annulment) litigation is concluded at the place of the arbitration.

10. Notably, Petitioners also discuss the stay in the English proceedings, which currently remains in effect.[21] Petitioners requested a stay of the English proceedings in 2016 after the annulment of the Awards by the District Court of The Hague (much like what occurred in the U.S. litigation). Petitioners' witness Michael Cotlick has observed that "Petitioners filed an application with the High Court in London to lift the stay of recognition and enforcement proceeding in the United Kingdom . . . on July 6, 2020."[22]

[19] As permitted by the more-favorable-right-provision of Article VII(1) of the New York Convention: "The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon."

[20] Albert Jan van den Berg, "Should the Setting Aside of the Arbitral Award Be Abolished?" ICSID Rev. 1-26 (2014).

[21] Pet'rs' Opp'n 5.

[22] Cotlick Decl. ¶ 4.

11. The Russian Federation, however, is now in the process of opposing Petitioners' request to lift the stay in the English litigation, and no judicial decision regarding the stay has yet been rendered. The English court is presently in the process of hearing the parties' submissions regarding the schedule.

12. Finally, Petitioners are incorrect in their assertion that the Russian Federation is pursuing a "never pay" policy, including by "deny[ing] the arbitral tribunal's jurisdiction" in various disputes, "initiat[ing] set-aside proceedings" after the conclusion of arbitration, and "refus[ing] to pay the recognition judgment."[23] In support of these statements, Petitioners cite specifically to the Russian Federation's litigation in this case and in several other cases in Switzerland, France, and the Netherlands.[24] Such proceedings—*i.e.*, set-aside litigation at the place of arbitration and enforcement proceedings under the New York Convention—do not provide any evidence of a "never pay" policy. To the contrary, this type of post-award litigation is a standard part of the modern international arbitration system. The New York Convention, together with the UNCITRAL Model Law and other similar instruments, uniformly reflect the consensus of the international legal community that arbitration requires judicial supervision, including by permitting award debtors to raise legal defenses.[25] And, indeed, it is entirely appropriate and well within the rights of the Russian Federation for the state to raise a challenge to the awards on the good faith basis that there was no clear and unambiguous applicable agreement to arbitrate.

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[23] Pet'rs' Opp'n 7-10.

[24] Pet'rs' Opp'n 7-10.

[25] Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention"), June 10, 1958, 21 U.S.T. 2517; U.N. Comm'n on Int'l Trade L., *UNCITRAL Model Law on International Commercial Arbitration 1985: with amendments as adopted in 2006* (Vienna: United Nations, 2008).

II. Petitioners Mischaracterize Previous Cases Involving Parallel Enforcement and Annulment

13. In their Opposition, Petitioners attempt to compare the current status of the Awards and the appeal at the Dutch Supreme Court in this case to two arbitration annulment and enforcement cases that are well known to the international arbitration community. Specifically, Petitioners cite the *Chevron v. Ecuador* and the *Thai-Lao Lignite* proceedings, which involved parallel enforcement litigation in the United States, as well as annulment proceedings in the primary jurisdictions of the Netherlands and Malaysia, respectively.[26] Petitioners do not provide proper context for their discussion of these cases—cases which, in fact, suggest a cautious approach in a secondary jurisdiction as is appropriate in the present case.

14. *First*, Petitioners try to draw parallels between the present case and *Chevron v. Ecuador*, which involved an arbitration award issued in the Netherlands and annulment proceedings pursued in Dutch courts. That *Chevron* annulment proceeding resulted in a Judgment of the Dutch Supreme Court on September 26, 2014.[27] From a procedural perspective, however, the *Chevron* case in context is distinguishable from the present case, because of developments at the place of arbitration in the Netherlands.

15. In *Chevron*, each adjudicative body to hear these challenges (*i.e.*, the District Court of The Hague, the Court of Appeal of The Hague, and the Dutch Supreme Court) decided each of the respondent's challenges in the same manner in each proceeding, without any meaningful variations.[28] Here, by contrast, the Russian Federation has raised many challenges under each

[26] Pet'rs' Opp'n 20, 27, 30-33, 40.

[27] *See* HR (Supreme Court of the Netherlands) Sept. 26, 2014 (Republic of Ecuador/Chevron Corp.) No. 13/04679 EV/LZ Judgment, ECF No. 68-26.

[28] In that case, all three courts concluded (1) that the Tribunal possessed jurisdiction under Article VI because the case involved an "investment dispute" and (2) that the Tribunal's acceptance of jurisdiction did not violate the principle of non-retroactivity under the Vienna Convention on the Law of Treaties. *See* Chevron Corporation (USA) and Texaco

distinct provision of Article 1065(1) of the Dutch Code of Civil Procedure.[29] Moreover, the courts which decided in the present case— the District Court of The Hague, and the Court of Appeal of The Hague—have thus far decided multiple questions by giving diametrically opposing answers.[30]

16. Furthermore, those answers given by the two courts differed significantly from each other and those given by the arbitral tribunal. Two examples can illustrate this. First, the two courts and the arbitral tribunal came to three different conclusions regarding the interpretation of Article 45(1) ECT. As I explained in my previous declaration, the District Court of The Hague disagreed with the arbitral tribunal's interpretation of the "Limitation Clause" in Article 45(1) ECT, concluding that the Russian Federation had not agreed to apply the arbitration clause in Article 26 ECT provisionally.[31] The Court of Appeal of The Hague disagreed with the District Court, but notably, *also explicitly rejected the arbitral tribunal's reasoning on that question*.[32] The Court of Appeal, instead, adopted new arguments made by Petitioners for the first time in 2017 during the Dutch appellate proceedings.[33] Second, the Court of Appeal of The Hague disagreed with the arbitral tribunal regarding whether determinations of illegality should account for the entire chain of transactions, or should address only the proximate transaction to the final

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Petroleum Company (USA) v. The Republic of Ecuador, UNCITRAL, PCA Case No. 34877, Interim Award (Dec. 1, 2008) ¶¶ 183-184; Republic of Ecuador v. Chevron Corporation (USA) and Texaco Petroleum Company (USA), Case Nos. 386934/HA ZA 11-402 and 408948/HA ZA 11-2813, District Court of the Hague (May 2, 2012) ¶¶ 4.10-4.13; The Republic of Ecuador v. Chevron Corporation (USA) and Texaco Petroleum Company (USA), Case No. 200.112.516/01, Hague Court of Appeal (June 18, 2013) ¶¶ 20-25, 27; The Republic of Ecuador v. Chevron Corporation (USA) v. Texaco Petroleum Company (USA), Case No. 13/04679 EV/LZ, Supreme Court of the Netherlands (Sep. 26, 2014) ¶¶ 5.2-5.5, 5.7.4-5.7.5, 5.8.2.

[29] HR (Supreme Court of the Netherlands) May 15, 2020 (The Russian Federation/ Veteran Petroleum Ltd., Yukos Universal Ltd., and Hulley Enters. Ltd.), Cassation Submission of The Russian Federation ("Cassation Petition"), ECF No. 176-2.

[30] *See* Decl. of Prof. Albert Jan van den Berg ("Fifth Decl.") ¶¶ 40-46, ECF No. 180.

[31] Cassation Petition ¶ 15.

[32] Cassation Petition ¶¶ 25-26.

[33] Cassation Petition ¶ 30.

acquisition of the investment by the Petitioners. While the arbitral tribunal took the former position, the Court of Appeal apparently took the latter position. Consequently, the Court of Appeal found that Petitioners were "removed" (remote) from the illegal acts by which the Russian Oligarchs obtained the Yukos shares.[34]

17. *Second*, Petitioners address the case of *Thai-Lao Lignite*, where the Malaysian court annulled the arbitral award after other courts (in secondary jurisdictions) had enforced it. I am familiar with the history of that case, as the example is well known to international arbitration practitioners. In that case, the U.S. court vacated its own previous judgment (which had enforced the arbitral award) after being informed of the annulment.[35] Similarly, I note that an English court in 2018 also vacated two 2012 English judgments in the same case on the same basis.[36] The *Thai-Lao Lignite* case is a reminder for judicial prudence in that courts need to be cautious when enforcing an award under the New York Convention when an action for setting aside (annulment) is pending in the country where the award was made. Rather, they should adjourn the decision on enforcement under Article VI of the New York Convention until the court in the country of origin has decided finally the setting aside.

III. Petitioners' Misunderstanding of How "Set Aside" and "Suspension" Are Applied Under Article VI of the New York Convention

18. In their brief, Petitioners seek to distinguish the present case from previous cases where national courts have stayed proceedings under Article VI of the New York Convention because enforcement of the award was suspended in the primary jurisdiction. Petitioners argue

[34] Cassation Petition ¶¶ 157-161.

[35] *See Thai-Lao Lignite (Thailand) Co. v. Gov't of the Lao People's Democratic Republic*, 997 F. Supp. 2d 214, 227 (S.D.N.Y. 2014).

[36] *See Thai-Lao Lignite v. Gov't of Lao People's Democratic Republic*, Claim No CL-2010-000169, Order dated Nov. 12, 2018.

that a different result should be reached in the present case because the Dutch Supreme Court (supposedly) lacks jurisdiction to suspend enforcement of the award under Dutch procedure. As discussed below, however, Petitioners' argument is incorrect for several reasons.

19. As U.S. counsel for the Russian Federation have advised me, the Russian Federation explains in its brief that Article VI of the New York Convention is not directly applicable in this stay proceeding because, as this U.S. court held in 2016, it has not yet been determined whether this Court has jurisdiction under the Foreign Sovereign Immunities Act.[37]

20. In any event, even assuming that Article VI of the New York Convention were applicable here (or inasmuch as it may be informative of the Court's considerations in the exercise of its discretionary powers),[38] Petitioners' argument misconceives the structure and process of the New York Convention. Suspension of enforcement by the court in the country where the award was made (here: The Netherlands) constitutes a ground for refusal of enforcement of the award in other countries (here: the United States) under Article V(1)(e) of the New York Convention: "The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made". (emphasis added). If an application for suspension by a court in the country where the award was made is pending in that country (here: The Netherlands), the enforcement court in another country (here: the United States) may adjourn the decision on enforcement under Article VI of the New York Convention.

21. Petitioners create confusion by invoking their argument that the Dutch Supreme Court would lack jurisdiction to decide on the Russian Federation's suspension of enforcement

[37] Mem. Op. 24, Sept. 30, 2016, ECF No. 154.

[38] Mem. Op. 24, Sept. 30, 2016, ECF No. 154.

request to the Dutch Supreme Court. That is a matter to be decided by the Dutch Supreme Court in due course. For the purposes of the New York Convention, the application for suspension is pending before the court in the country where the award was made—which fulfils the condition set forth under Article VI of the New York Convention. In any event, my colleague Rob Meijer explains that Petitioners' jurisdictional challenge does not have merit as a matter of Dutch procedural law.[39] Moreover, even Petitioners do not dispute that the Russian Federation has the right to pursue a suspension request. Rather, Petitioners dispute that the Russian Federation filed the request in the correct court.

22. I also note that Article VI of the New York Convention presents two alternatives. An adjournment of the decision on enforcement is permissible either where a party has made "an application for the setting aside" of an arbitral award, or where a party has made "an application for . . . suspension" of the arbitral award. Either condition is independently sufficient, and in the present case, the Russian Federation has made both types of applications in the Netherlands.

- *Set aside*: In 2014, the Russian Federation submitted an application for set-aside to the District Court of The Hague. The current appeal to the Dutch Supreme Court is part of that same litigation. Indeed, if the Russian Federation prevails at the Dutch Supreme Court, then the result will be the reinstatement of the set-aside judgment, or a remand to a lower Dutch court to further consider aspects of the Russian Federation's set-aside application.
- *Suspension*: In 2020, the Russian Federation submitted an application for suspension. Therefore, the condition "[i]f an application for. . . suspension" under Article VI New York Convention is satisfied. This is true regardless of whether Petitioners oppose that application, including on supposed jurisdictional grounds. Indeed, as noted above, Petitioners do not contest that the Russian Federation is permitted to apply for suspension in the Dutch courts, but merely contest which court is proper for such application.

23. Accordingly, even assuming that Article VI of the New York Convention were directly applicable here (which I understand it is not because of the sovereign immunity

[39] 2d Decl. of Rob Meijer ¶ 41, Aug. 5, 2020

considerations applicable under U.S. law), either the current request for suspension or the ongoing appeal before the Dutch Supreme Court in the set-aside (annulment) litigation would be independently sufficient to satisfy Article VI of the New York Convention.

IV. The Hague Court of Appeal's 2018 and 2020 Decisions are Subject to Reversal

24. In their brief, Petitioners argue that the 2018 and 2020 judgments issued by the Court of Appeal of The Hague are not likely to be subjected to reversal.[40] This is incorrect, for the reasons detailed below. Table A presents four questions of law[41] that Petitioners concede must be decided *de novo* by the Dutch Supreme Court:

	Table A – Questions that Petitioners Concede are Subject to *De Novo* Review	
1.	**Procedural Fraud** – Whether the CoA was right to disregard the Russian Federation's allegations of Petitioners' procedural fraud during the arbitration because the Russian Federation raised these allegations under Article 1065(1)(e) DCCP during an ongoing legal proceeding, rather than under Article 1068 DCCP in a separate legal proceeding?	Pet'rs' Opp'n 19; TCJ Decl. ¶ 113; *see also* Cassation Petition Section 1.
2.	**Russian Ownership and Control** – Whether the CoA was right to decide that the nationality of Petitioners' alleged "control persons" is irrelevant to the ECT's definition of "investor" and "investment"?	Pet'rs' Opp'n 17; TCJ Decl. ¶ 102; *see also* Cassation Petition Section 3.2.
3.	**Foreign Capital** – Whether the CoA was right to decide that a contribution of foreign capital is not required by the ECT's definition of investment?	Pet'rs' Opp'n 17; TCJ Decl. ¶ 102; *see also* Cassation Petition Section 3.3.
4.	**Lifting the Corporate Veil** – Whether the CoA was right to decide that the ECT's definition of investor is not to be	Pet'rs' Opp'n 17; TCJ Decl. ¶ 102; *see also* Cassation Petition Section 3.4.

[40] Pet'rs' Opp'n 13-20, 33-34.

[41] Tables A and B in this Declaration correspond to the same Tables A and B in the Second Declaration of my colleague, Rob Meijer. These two tables list the many questions of Dutch and EU law that the Dutch Supreme Court will review *de novo*.

These two Tables supplement Table 1 in the Russian Federation's Motion, which listed the several categories of overlapping issues that will be decided in the ongoing Dutch litigation, and which are also at issue in the various substantive Motions pending before this Court.

	interpreted in accordance with the international law principle of lifting the corporate veil?	

25. Petitioners attempt to characterize the Russian Federation's arguments on these questions as meritless. This is rebutted by the Cassation Petition (ECF No. 176-2), certain elements of which are summarized below: [All these descriptions need to be more carefully harmonized with the text of the Cassation Petition.]

i. **Procedural Fraud** - The Court of Appeal of The Hague improperly refused to consider the Russian Federation's claim of Petitioners' procedural fraud, submitted under Article 1065 Dutch Code of Civil Procedure. According to the (unprecedented) decision of the Dutch Court of Appeal in this case, such challenges can be brought exclusively under Article 1068 of the Dutch Code of Civil Procedure.[42]

ii. **Russian Ownership and Control** – The Court of Appeal of The Hague improperly interpreted the Energy Charter Treaty ("ECT") definitions of "investor" and "investment" to ignore the Russian nationality of Petitioners' control persons—*i.e.*, the Russian Oligarchs who direct Petitioners' activities and obtain all benefit from any payments to Petitioners. Under Article 31 of the Vienna Convention on the Law of Treaties, treaties should be interpreted: i) in "good faith"; ii) in accordance with "ordinary meaning" and iii) the "context" of treaty provisions; and iv) in light of the treaty's "object and purpose." The Court of Appeal improperly ignored several of these factors, each of which demonstrates that the ECT protects foreign investments. Among other things, the explicit object and purpose of the 1991 European Energy Charter was aimed at "foreign investment."[43] State practice in application of the ECT, and subsequent attempts at clarification by the European Union, reflect that the ECT was not intended to protect letterbox companies such as Petitioners that participate in "round trip" or "U-turn" investment.[44] In their brief, Petitioners argue that Professor Alain Pellet, who submitted an expert report on behalf of the Russian Federation in the Dutch proceedings, issued an opinion in an unrelated ECT case (*RREEF v. Spain*[45]) that supposedly contradicts the Russian Federation's position.[46] Petitioners mischaracterize the analysis in that distinguishable case. As Professor Pellet explained in his Expert Opinion of August 13, 2019 (which Petitioners simply ignore), the *RREEF* case did not address "round trip" or "U-turn" investment. The ultimate owners of the shell company in that case did not have Spanish nationality—*i.e.*, the

[42] Cassation Petition ¶¶ 9-10, ECF No. 176-2.

[43] Cassation Petition ¶ 113, ECF No. 176-2.

[44] Cassation Petition ¶¶ 115-120, ECF No. 176-2.

[45] ICSID, Decision on Jurisdiction, 6 June 2016, RREEF Infrastructure v. Kingdom of Spain, ICSID Case No. ARB/13/30, p. 40, paras. 142-147.

[46] Pet'rs' Opp'n 17.

nationality of the respondent State. The arbitration in that case thus did not undermine the key goal of investor-State dispute settlement, which is to stimulate foreign investment.

iii. **Foreign Capital** – The Court of Appeal of The Hague improperly interpreted the ECT definition of "investment" to ignore the treaty requirement of a genuine contribution of foreign capital. As noted above, analysis of the ECT should be conducted with regards to each of the several factors under Article 31 of the Vienna Convention on the Law of Treaties. Most notably, the clear object and purpose of the ECT was to promote and protect foreign economic investment.

iv. **Lifting the Corporate Veil** – The Court of Appeal of The Hague improperly refused to apply the international legal principle of lifting the corporate veil in cases where the corporate form has been used for fraud and malfeasance. This principle was recognized by the International Court of Justice in the *Barcelona Traction* case.[47] Furthermore, it is settled law in the European Court of Justice that EU law cannot be relied upon for abusive or fraudulent ends.[48] The Court of Appeal therefore ignored a well-established legal principle under both international and EU law.

26. This case implicates many other questions subject to *de novo* review by the Dutch Supreme Court, although Petitioners incorrectly try to re-classify these as questions of "fact" or "foreign law," which can only be reviewed with deference to the findings by the Court of Appeal.[49] To the contrary, with respect to these questions, the record reflects that the Court of Appeal did not make the relevant factual decisions—but rather made incorrect legal decisions that allowed the Court of Appeal to leave the relevant factual questions unanswered. A non-exclusive list of six examples are set forth below in Table B.

	Table B – Questions that Petitioners Incorrectly Assert Are Not Subject to *De Novo* Review	
5.	**"Remoteness" of the illegality** – Whether the CoA was right to conclude that an "illegality" defense to the Tribunal's jurisdiction or the admissibility of the claims based on public policy should be determined based only on the "illegality" of the final acquisition	Pet'rs' Opp'n 17-18; TCJ Decl. ¶¶ 118, 122; *see also* Cassation Petition Section 3-4; 2d Forwood Decl. ¶¶ 27-29.

[47] Cassation Petition ¶¶ 130-132, ECF No. 176-2.

[48] Cassation Petition ¶ 135, ECF No. 176-2.

[49] *See* Pet'rs' Opp'n 13-20.

	of the assets—rather than evaluating the entire chain of transactions in an instance where the same natural persons arranged each transaction and controlled each entity in the chain of ownership?	
6.	**"Separateness" of the perpetrator** – Whether the CoA was right to conclude that an "illegality" defense to the Tribunal's jurisdiction under Article 26 ECT or the admissibility of the claims based on public policy should be determined based only on the "illegality" of the actions of the purported investor itself—rather than evaluating the actions of the natural persons who own and control the purported investor?	Pet'rs' Opp'n 17, 18; TCJ Decl. ¶¶ 121-122; *see also* Cassation Petition Section 3-4; 2d Forwood Decl. ¶¶ 27, 30-31.
7.	**"Clear and Unambiguous" Consent to Jurisdiction** – Whether the CoA was right to conclude that Article 45(1) ECT provides a clear and unambiguous consent to arbitration given that the Russian Federation is a signatory only and not a Contracting Party?	Pet'rs' Opp'n 14-15; TCJ Decl. ¶¶ 99-100; *see also* Cassation Petition Section 2.
8.	**Circular Reasoning** – Whether the CoA was right to conclude that the Limitation Clause of Article 45 ECT, insofar as relevant for this case because the Russian Federation has not ratified the ECT, is to be interpreted to mean that an "inconsistency" exists only if national law prohibits application of a treaty provision authorizing arbitration of public law disputes—or whether the inquiry should consider exclusively the signatory State's "existing internal legal order" in effect prior to signature?	Pet'rs' Opp'n 14-15; TCJ Decl. ¶¶ 99-100; *see also* Cassation Petition Section 2.5.
9.	**"Competent Tax Authorities"** – Whether the CoA was correct to conclude that the phrase "Competent Tax Authorities" is to be interpreted as referring only to the "Competent Tax Authority" of the respondent State, or does it also refer to the "Competent Tax Authorities" of each claimant entity's State of nationality (as even the Tribunal and Petitioners have conceded)?	Pet'rs' Opp'n 18-19; TCJ Decl. ¶ 110; *see also* Cassation Petition Section 5.
10.	**Arbitrators' Legal Duty to Inform the Parties** – Whether the CoA was correct to conclude that a precondition for the Tribunal's delegation of substantive drafting to an Assistant was to have the parties' informed consent—and whether the CoA	Pet'rs' Opp'n 19-20; TCJ Decl. ¶ 115; *see also* Cassation Petition Section 6.

	was correct to reject the Russian Federation's request to hear witness evidence on this question?	

27. All of these questions are subject to *de novo* review by the Dutch Supreme Court, despite Petitioners' attempt to mischaracterize them:

v. **"Remoteness" of the illegality** – The Court of Appeal of The Hague's ruling on this question is based on an erroneous, excessively narrow construction of the scope of the ECT.[50] In analyzing the Russian Federation's arguments regarding illegality in the making of the investment, the Court of Appeal of The Hague restricted itself to analyzing the last transaction in the chain whereby the Petitioner entities (Hulley, Veteran, and Yukos Universal) acquired the Yukos shares. The Court of Appeal thus found that illegality in the acquisition of the shares by the Oligarchs in 1995-1996 was too remote. The Court of Appeal's decision to ignore the myriad related-party transfers that led back to the Oligarchs' original acquisition in 1995-1996, however, required an overly rigid and incorrect interpretation of the ECT to exclude consideration of such laundering of an investment originally obtained illegally.

The Russian Federation's appeal of the Court of Appeal of The Hague's ruling on this issue, moreover, is well-supported. As explained in the Cassation Petition, the ECT arbitral tribunal itself found that "an examination of the legality of an investment should not be limited to verifying whether the last in a series of transactions leading up to the investment was in conformity with the law."[51] The European Court of Justice similarly has found that those committing illegalities cannot escape their responsibility through paper organizational or restructuring changes.[52]

vi. **"Separateness" of the perpetrator** – The Court of Appeal of The Hague's ruling is based on an erroneous legal finding regarding the court's role when faced with allegations of a public policy violation.[53] Here, the Court of Appeal agreed with the ECT arbitral tribunal that "HVY cannot be imputed for actions performed by others before HVY became shareholder" and therefore restricted itself from considering the illegal conduct of the Oligarchs in acquiring the same Yukos shares that they later transferred to Petitioners.[54] This refusal to consider the evidence, however, requires an overly restrictive and incorrect legal finding that Dutch courts have no obligations when faced with alleged illegalities and violations of public policy.

[50] Cassation Petition ¶ 158, ECF No. 176-2.

[51] Cassation Petition ¶ 158, ECF No. 176-2 (citing Final Awards ¶ 1369).

[52] Cassation Petition ¶ 159, ECF No. 176-2.

[53] Cassation Petition ¶ 175, ECF No. 176-2.

[54] Cassation Petition ¶ 175, ECF No. 176-2.

The Russian Federation's appeal of the Court of Appeal of The Hague's ruling on this issue is well supported. As explained in the Cassation Petition, prior decisions of the Dutch Supreme Court reflect the well-established Dutch law principle that judges must actively investigate if there is a possible violation of public policy.[55] The Court of Appeal of The Hague's failure to investigate is particularly problematic in this case, where the ECT arbitral tribunal disregarded the illegal conduct by the Oligarchs in the acquisition of the Yukos shares as unrelated to Petitioners, but, by contrast, considered the Russian Federation's conduct with regards to the Oligarchs themselves (not Petitioners) to find an expropriation of Petitioners' Yukos assets.

vii. **"Clear and Unambiguous" Consent to Jurisdiction** – The Court of Appeal of The Hague's ruling is based on an erroneous legal finding as to the requirements for consent to arbitrate under the ECT.[56] Here, the Court of Appeal found that the Russian Federation's consent to arbitration was satisfied by the existence of the arbitration clause in Article 26 of the ECT ("Settlement of Disputes Between an Investor and a Contracting Party"). As explained in the Cassation Petition, the Court of Appeal's decision that Article 26 provides sufficient evidence of agreement to arbitrate conflates the Russian Federation—a mere "signatory"—with a Contracting Party.[57] Notably, it is undisputed that the Russian Federation never became a Contracting Party under the ECT, and applied that treaty provisionally under Article 45 ECT. In any event, the Russian Federation's provisional application of the ECT under Article 45 did not constitute an unambiguous consent to arbitration, given that the Court of Appeal itself found that "a difference of opinion is possible" about the interpretation of Article 45 in light of Russian law.[58] Indeed, as explained in the Cassation Petition, the Court of Appeal of The Hague disagreed with multiple aspects of the Tribunal's analysis, and the District Court of The Hague reached yet a third interpretation.[59] In such a circumstance, it is not possible to conclude that a State has given "clear and unambiguous" consent to jurisdiction. This was confirmed by a recent decision of the European Court of Human Rights, which concluded that where three different Swiss courts had interpreted the relevant contractual clause in three "very different manners," that provision could not be said to reflect the "clear and unequivocal" intention of Burundi to waive its immunity from jurisdiction.[60]

viii. **Circular Reasoning** – As explained in Section 2.5 of the Cassation Petition, the Court of Appeal's decision is based on circular reasoning. Article 45(1) ECT requires the application of the treaty in the event of a conflict with Russian law. The Tribunal

[55] Cassation Petition ¶ 175, ECF No. 176-2.

[56] Cassation Petition ¶¶ 17-23, ECF No. 176-2.

[57] Cassation Petition ¶ 21, ECF No. 176-2.

[58] Cassation Petition ¶ 19, ECF No. 176-2.

[59] Cassation Petition ¶ 95, ECF No. 176-2.

[60] *Ndayegamiye-Mporamazina v. Switzerland*, Case No. 16874/12, European Court of Human Rights (Feb. 5, 2019) ¶ 59.

found, however, that no conflict existed because signature of the ECT had allegedly caused the ECT to become a part of Russian law. This is impermissibly circular reasoning. As explained in the Cassation Petition, the ordinary meaning of Article 45(1) ECT concerns inconsistency with the existing legal order of the signatory state, and does not include the ECT itself.[61] Furthermore, the Court of Appeal's decision to consider the ECT (and the Article 26 ECT arbitration provision) as part of the "legal order" of the Russian Federation, thus concluding that Article 26 ECT was not contradictory to the Russian Federation's constitution, laws or regulations, was at bottom a circular argument.

ix. **"Competent Tax Authorities"** – The Court of Appeal of The Hague's ruling is based on an erroneous legal interpretation of Article 21 ECT.[62] Here, the Court of Appeal found that the ECT arbitral tribunal's failure to refer the dispute to the Russian, Cypriot, and UK tax authorities did not violate Article 21's requirement to refer the dispute to the "relevant tax authorities," in part because Article 21 did not require reference to the Cypriot and UK tax authorities. This finding required a legal interpretation of the meaning of "relevant tax authorities" under Article 21.

The Russian Federation's appeal of Court of Appeal of The Hague's ruling on this issue is well supported. As explained in the Cassation Petition, the Court of Appeal made findings based on an erroneous excerpt of the Article 21 ECT by referring to a singular "relevant competent tax authority."[63] Moreover, the Court of Appeal's interpretation of Article 21 did not accord with the drafting history, the weight of commentaries and subsequent case precedents, or the object and purpose of the Article 21.[64]

x. **Arbitrators' Legal Duty to Obtain the Informed Consent of the Parties –** The CoA stipulated that the assistant of the Tribunal (Mr. Valasek) "has made significant contributions to the drafting of chapters IX, X and XII of the final award by supplying the Arbitrator with (draft) text which they fully or partially incorporated into the Arbitral Award". The CoA concluded, however, that the Tribunal had no duty under Dutch law to disclose this delegation to the parties. The CoA also declined to hear the proffered witnesses on this question, as required under Article 166 DCCP. These two questions of Dutch law are subject to *de novo* review.

28. For the above reasons, Petitioners' argument, that the Court of Appeal of The Hague's judgment is not subject to reversal, is incorrect. Under these circumstances, the text of

[61] Cassation Petition ¶¶ 56-61, ECF No. 176-2.

[62] Cassation Petition ¶¶ 184-207, ECF No. 176-2.

[63] Cassation Petition ¶ 197, ECF No. 176-2.

[64] Cassation Petition ¶¶ 197-198, ECF No. 176-2.

the New York Convention and international judicial practice (with the notable exception of France) permit and indeed encourage the stay or adjournment of enforcement proceedings in secondary jurisdictions in the interest of efficiency and judicial economy.

V. Summary of the Litigation Before The Hague Court of Appeal Regarding the Oligarchs' Control of Petitioners and Extraction of US$ 4.4 Billion from Petitioners During 2003 to 2004

29. Finally, in this section, I describe the litigation before the Court of Appeal of The Hague regarding the evidence demonstrating that a handful of Russian Oligarchs have continuously exercised *de facto* control over Petitioners, and extracted US$ 4.4 billion from Petitioners in 2003 and 2004.

30. The purpose of this summary is to assist the Court to understand that the Court of Appeal of The Hague did not render any factual decisions on these subjects, but merely chose (as a legal matter) to disregard these facts and the relevant evidence completely.

31. In November 2017, the Russian Federation submitted the following exhibits to the Court of Appeal of The Hague reflecting the Oligarchs' control of Petitioners:

- **2011 Letter from Group Menatep Limited to Bruce Misamore**[65] – This letter reflects that one of the Oligarchs, Mikhail Brudno, personally conducted negotiations on behalf of Petitioners regarding a multimillion-dollar agreement. This 2011 agreement by Petitioners' parent company, GML, involved payment of kickbacks to the directors of two Dutch foundations ("*stichtings*") to secure for Petitioners certain proceeds from liquidating assets formerly belonging to Yukos.[66] This letter demonstrates that actual control over GML and Petitioners (who are

[65] Letter from GML to Bruce Misamore, Deposition of Eric Wolf, Ex. 2, *Yukos Capital S.A.R.L. v. Feldman*, Case No. 15-cv-04964 (S.D.N.Y. 2015), ECF No. 113-4.

[66] Mem. of Points and Authorities in Support of The Russian Federation's Suppl. Mot. to Dismiss the Pet. to Confirm Arbitration Awards Under the Foreign Sovereign Immunities Act and the N.Y. Convention, at 27-28, Aug. 4, 2016, ECF No. 142-2.

mentioned expressly in the letter) is exercised by the Oligarchs and not the supposedly independent "trustees" that ostensibly direct GML.[67]

- **Deposition of David Godfrey**[68] – One of the directors of the Dutch *stichtings*, Mr. David Godfrey, was deposed in a litigation in New York court. Mr. Godfrey explained that in order to negotiate a settlement between the *stichtings* and Rosneft, he needed the Oligarchs' prior authorization. Mr. Godfrey specifically met with the Oligarch Mr. Brudno because: "were they not to be in support of that, it would be a waste of my time, very substantial time, to actually make that happen."[69] Mr. Godfrey further explained the *de facto* control that the Oligarchs exercised over GML (and thus Petitioners), noting that Mr. Brudno is "one of the principals in the group we call core shareholders, so the people behind Menatep or GML," and that another Oligarch Leonid Nevzlin is "one of the so-called oligarchs who ultimately control Yukos through their shareholdings."[70]

- **Deposition of Eric Wolf**[71] – The Oligarchs also have controlled Petitioners through designated agents such as Mr. Eric Wolf, who admitted in a 2015 deposition that he negotiated on behalf of HVY with a third party. As Mr. Wolf explained, "Mr. Nevzlin and his former partners have asked me to facilitate a negotiated settlement between Promneftstroy and Yukos."[72] Notably, the Guernsey trustees evidently had no role in directing Mr. Wolf.

- **Emails between Mr. Wolf, Mr. Nevzlin, and GML**[73] – Mr. Wolf, moreover, disclosed emails between him, the Oligarch Mr. Nevzlin, and the third party that demonstrate the Oligarchs' control and direction of Petitioners. As discussed in the Russian Federation's Supplemental Motion to Dismiss, these letters indicate that Mr. Wolf negotiated on behalf of the Oligarchs, who were the "principals whose money is actually on the line."[74]

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[67] Mem. of Points and Authorities in Support of The Russian Federation's Suppl. Mot. to Dismiss the Pet. to Confirm Arbitration Awards Under the Foreign Sovereign Immunities Act and the N.Y. Convention, at 28-31, Aug. 4, 2016, ECF No. 142-2.

[68] Dep. of David Godfrey ("Godfrey Dep."), June 7, 2016, *Yukos Capital S.A.R.L. v. Feldman*, No. 15-cv-04964 (S.D.N.Y. 2015) (Annex F).

[69] Godfrey Dep. 433:22-24 (Annex F).

[70] Godfrey Dep. 435:5-6 (Annex F).

[71] Dep. of Eric Wolf ("Wolf Dep."), Oct. 5, 2015, *In re: Appl. of OOO Promneftstroy For An Order To Conduct Discovery For Use In A Foreign Proceeding*, No. 15-MC-290 (S.D.N.Y. 2015) (Annex G).

[72] Wolf Dep. 31:9-12 (Annex G).

[73] Emails between Eric Wolf, Promnefstroy, Leonid Nevzlin, Wolf Dep., Exs. 1, 5, 6 (Annex H).

[74] Mem. of Points and Authorities in Support of The Russian Federation's Suppl. Mot. to Dismiss the Pet. to Confirm Arbitration Awards Under the Foreign Sovereign Immunities Act and the N.Y. Convention, at 30, Aug. 4, 2016, ECF No. 142-2.

32. In February 2019, Petitioners submitted a series of four witness statements to the Court of Appeal of The Hague denying the Oligarchs' control of Petitioners:

- **Declaration of Leonid Nevzlin**[75] – The Oligarch Mr. Nevzlin denied that he was owner or co-owner over Petitioners, and denied that he exercised any control over them. Mr. Nevzlin further alleged that the Oligarchs' shares in GML were owned by trustees of certain trusts, who "act completely independently from my former partners and me."[76]
- **Declaration of Kelvin Hudson**[77] – Mr. Hudson is one of the ostensible trustees who manages the trusts that hold the Oligarchs' GML shares. Among other things, Mr. Hudson alleged that he acted as the lead director in relation to managing the trust assets, and that each of the trustees makes independent decisions with respect to the trust assets.[78]
- **Declaration of Timothy Osborne**[79] – Mr. Osborne is one of the board members of Petitioners' parent company GML and a board member of Petitioners Hulley and Yukos Universal. Among other things, Mr. Osborne alleged that important decisions taken by the GML board are consulted with the "shareholders" of GML – the trustees such as Mr. Kelvin Hudson.[80] Mr. Osborne alleges that he does not "take instructions from any beneficiary" of the trusts (*i.e.*, the Oligarchs) and denies that the Oligarchs control GML.[81]

[75] Court of Appeal of The Hague (The Russian Federation v. Veteran Petroleum Ltd., Yukos Universal Ltd., Hulley Enters. Ltd.), Case No. 200.197.097/01, Witness Statement of Leonid Borisovich Nevzlin ("Nevzlin Decl.") (Feb. 15, 2019); Court of Appeal of The Hague (Veteran Petroleum Ltd., Yukos Universal Ltd., Hulley Enters. Ltd. v. The Russian Federation), Case No. 200.197.097/01, Deed Commenting on Exhibits and Responding to Chapters VII.H, III.B, III.C AND IV.C(C) of the Statement of Defence on Appeal ("Deed Commenting on Statement of Defense") (Feb. 26, 2019).

[76] Nevzlin Decl. ¶ 64.

[77] Declaration of Kelvin Hudson, Feb. 14, 2019, Hague Ct. of Appeal (The Russian Federation v. Veteran Petroleum Ltd., Yukos Universal Ltd., Hulley Enters. Ltd.), Case No. 200197071-1, Deed Commenting on Statement of Defense (Feb. 26, 2019).

[78] Hudson Decl. ¶ 23.

[79] Court of Appeal of The Hague (The Russian Federation v. Veteran Petroleum Ltd., Yukos Universal Ltd., Hulley Enters. Ltd.), Case No. 200.197.097/01, Witness Statement of Timothy William Osborne ("Osborne Decl.") (Feb. 14, 2019); Deed Commenting on Statement of Defense.

[80] Declaration of Timothy Osborne ¶ 11, Feb. 14, 2019, Hague Ct. of Appeal (The Russian Federation v. Veteran Petroleum Ltd., Yukos Universal Ltd., Hulley Enters. Ltd.), Case No. 200197071-1, Deed Commenting on Statement of Defense (Feb. 26, 2019).

[81] Osborne Decl. ¶¶ 12, 15.

33. In June and August 2019, the Russian Federation submitted the following exhibits to the Court of Appeal of The Hague rebutting the denials of Petitioners' witness statements:

- **Mr. Nevzlin signature on multimillion dollar GML contracts**[82] – The Oligarch Mr. Nevzlin himself signed several multimillion dollar contracts on behalf of GML in 2003 and 2004. Other documents confirm that GML arranged for the English translation of the multimillion dollar contracts that Mr. Nevzlin signed, and then implemented the contracts together with the countersigning party, Mr. Kagalovsky.[83]

- **Confirmation of Oligarchs' *de facto* control at 2003 GML Board Meeting**[84] – The Oligarchs' investment manager, Mr. Oleg Pavlov, confirmed to the GML International Advisory Board in 2003 that GML's ownership structure "remain[ed] largely unchanged in practice" even after the supposed transfer of the shares to ostensibly independent offshore trusts. Mr. Nevzlin was characterized as the "senior representative" of GML, despite the presence of Mr. Curtis (the ostensible sole director of GML) at the meeting.

- **Mr. Nevzlin approval of hundred million dollar GML and YUL payments**[85] – The Oligarch Mr. Nevzlin met with the then-sole director of GML Stephen Curtis after the Oligarchs supposedly transferred their control over GML. As reflected in the notes of Mr. Curtis's assistant James Jacobson, Mr. Nevzlin gave explicit approval for GML and YUL to make payments worth approximately $ 740 million, even though Mr. Nevzlin supposedly had no control over GML. One of these payments involved the transfer of US$ 438 million to Tempo Finance Ltd,[86] a shell company owned by the so-called "Red Directors."[87]

- **Intervention at Yukos vote by Oligarchs' Attorney**[88] – The Oligarchs' lawyer, Mr. Anton Drel, provided instructions to GML executives to ensure that Petitioners Yukos Universal and Hulley voted "In Favour Of" resolutions proposed at a Yukos shareholder meeting in June 2004. The ballots cast at shareholder meetings confirm that VPL voted together with Yukos Universal and Hulley in 99.9% of instances.[89]

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[82] Agreements between Group Menatep Limited and Konstantin Kagalovsky, Jan. 18, 2004 (Annex I).

[83] Email from Maria Puzitskaya to James Jacobson, Jan. 26, 2004 (confirming that Maria Puzitskaya arranged for the English translation of the two Russian-language contracts); Email between GML Services and the Russian Oligarchs, Apr. 29, 2003 (confirming that Maria Puzitskaya was a representative of GML Services)

[84] Minutes of GML International Advisory Board Meeting, Dec. 14 2003 (Annex J).

[85] Handwritten notes by James Jacobson, "Payments made and signed by Stephen Curtis," Dec. 12 2003 (Annex K).

[86] Handwritten notes by James Jacobson, "Payments made and signed by Stephen Curtis," Dec. 12 2003 (Annex K).

[87] Cassation Petition ¶¶ 144-148.

[88] Email from Marita Puzitskaya to Kevin Bromley, June 18, 2004 (Annex L).

[89] Voting Instructions from VPL Voting Committee.

34. The Russian Federation also submitted to the Court of Appeal of The Hague further documents illustrating the Oligarchs' extraction of funds equal to US$ 4.4 billion from HVY in 2003 and 2004:

- **Spreadsheet detailing extraction of $ 4.4 billion from Petitioners and GML**[90] – The former financial advisors of GML, Oleg Pavlov and two other persons named Francois Buclez and Alan Sipols, circulated a spreadsheet in February 2004 detailing the billions of dollars in assets extracted through Petitioners and GML from Yukos in 2003 and 2004.

35. In addition, the Russian Federation requested that the Court of Appeal of The Hague call the following witnesses to testify regarding these issues as required under the Dutch Code of Civil Procedure for disputed facts.

- "Mr. [Dmitry] Gololobov and others (e.g. those involved with the company Quadrum) to prove the factual allegations in section III.B(d) relating to the obstruction of the tax authorities, destruction of evidence, as well as the facts relating to the money siphoned to and held by offshore companies"[91]
- "Mr. [Aleksey Dmitriyevich] Golubovich, Mr. [Gitas Povilo] Anilionis, Mr. [Arkady Vitalyevich] Zakharov and Mr. [Dmitry] Gololobov and others involved to prove factual allegations in section III.C, including the fact that the Russian Oligarchs control various legal entities, including HVY and that they make and have made false statements in this regard."[92]

36. Notably, the Court of Appeal of The Hague declined to call the fact witnesses requested by the Russian Federation. As explained in my prior Declaration, if the Court of Appeal had reached any factual conclusions relating to the subject matter of potential testimony of a requested fact witness, the Court of Appeal would have been obligated under Dutch law to call that fact witness to testify in person.[93] As explained in my prior Declaration and discussed above,

[90] Email from Alan Sipols to James Jacobson, Feb. 17, 2004 (Annex M).

[91] Court of Appeal of The Hague (The Russian Federation v. Veteran Petroleum Ltd., Yukos Universal Ltd., Hulley Enters. Ltd.), Case No. 200.197.097/01, Russian Federation Defense on Appeal ¶ 1246 (Nov. 28, 2017).

[92] Court of Appeal of The Hague (The Russian Federation v. Veteran Petroleum Ltd., Yukos Universal Ltd., Hulley Enters. Ltd.), Case No. 200.197.097/01, Russian Federation Defense on Appeal ¶ 1246 (Nov. 28, 2017).

[93] Fifth Decl. ¶ 37; *see also* Dutch Code of Civil Procedure, Art. 166 Rv.

the Court of Appeal decided to ignore this fact evidence by making a shocking decision regarding the legal framework for analyzing "illegality" under the ECT and under Dutch law.[94] The Court of Appeal relied on the concept that the Russian Oligarchs' illegal acts were "remote" from Petitioners' acquisition of the YUKOS shares,[95] even though the evidence above shows that the Russian Oligarchs controlled and received all benefit from Petitioners' YUKOS shares continuously since 1995 and 1996. As explained above, these questions are now subject to *de novo* review at the Dutch Supreme Court.

* * *

The foregoing is a true and correct reflection of my professional opinion. I declare under penalty of perjury under the laws of the United States pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on 5 August 2020 in
Brussels, Belgium.

Albert Jan van den Berg

[94] Fifth Decl. ¶¶ 42-45.

[95] Court of Appeal of The Hague (Veteran Petroleum Ltd., Yukos Universal Ltd., and Hulley Enters. Ltd. V. The Russian Federation) Case No. 200.197.079/01, Judgment (Feb. 18, 2020), ECF No. 176-1.