

IN THE MATTER OF AN ARBITRATION UNDER THE 1976 RULES OF THE UNITED
NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

SERGEI VIKTOROVICH PUGACHEV

Claimant

v.

THE RUSSIAN FEDERATION

Respondent

AWARD ON JURISDICTION

Tribunal

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Prof. Thomas Clay
Prof. Bernardo Cremades

Secretary

Mr. Rafael Rincón

Place of arbitration: Madrid, Kingdom of Spain

18 June 2020

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LIST OF DEFINED TERMS

¶	Paragraph
26 May 2017 Order	Tribunal's order whereby (i) it ordered specific measures in order to preserve the integrity and efficiency of the arbitration, and (ii) it submitted a proposal to the Parties to balance confidentiality and transparency concerns in this Arbitration dated 26 May 2017
Arbitration	The present arbitration commenced by Sergei Viktorovich Pugachev against the Russian Federation
BIT or Treaty	Agreement Between the Government of the French Republic and the Government of the United Soviet Socialist Republics on the Reciprocal Promotion and Protection of Investments dated July 4, 1989
Claimant	Sergei Viktorovich Pugachev
Claimant's Answers to the Tribunal's Questions	Claimant's Answers to the Tribunal's Questions dated 19 July 2019
Claimant's Counter-Memorial on Jurisdiction	Claimant's counter-memorial on jurisdiction dated 20 July 2018
Claimant's Observations on Respondent's Request for Bifurcation	Claimant's observations on Respondent's Request for Bifurcation dated 27 November 2017
Claimant's Post-Hearing Brief	Claimant's Post-Hearing Brief dated 13 January 2020
Claimant's Presentation of Costs	Presentation of costs submitted by Claimant on 15 May 2020 as amended and clarified on 22 May 2020
Claimant's Rejoinder on Jurisdiction	Claimant's rejoinder on jurisdiction dated 26 March 2019
Claimant's Request for Production of Documents	Claimant's request for production of documents dated 3 August 2018
Claimant's Statement of Claim	Claimant's statement of claim dated 29 September 2017
DIA	Deposit Insurance Agency
DS	Dmitrovskiy Sovkhoz
EPC	CJSC Enisey Production Company, a company which owned a licence for the exploitation of the Elegest Plateau of the Ulug Khemsky coal basin in Tuva, and the development of the coal mine, including a project of constructing a railway to transport the mined coking coal
Exceptional Services Route	A form of acquiring French nationality having special consideration to exceptional services rendered to France or France's exceptional interest in the naturalisation of the applicant
Expert Report of Mr. Hugues Hourdin	Expert Report of Mr. Hugues Hourdin dated 26 March 2019
Expert Report of Professor William E. Butler	Expert Report of Professor William E. Butler dated 26 March 2019

Expert Report Professor Etienne Pataut	Expert Report Professor Etienne Pataut dated 26 March 2019
First Expert Report of Mr. Belov	First expert report of Sergey Aleksandrovich Belov dated 6 April 2018
First Expert Report of Professor Bevzenko	First expert report of Professor Roman Sergeevich Bevzenko dated 18 December 2018
First Expert Report of Professor Jault-Seseke	First expert report of Fabienne Jault-Seseke's dated 5 April 2018
First Preliminary Application	Preliminary Order sought by Claimant as part of his Request for Interim Measures dated 19 December 2016
First Preliminary Application Decision	Tribunal's decision on the First Preliminary Application dated 4 January 2017
First Witness Statement of Mr. Rybankov	First witness statement of Dmitry Sergeevich Rybakov dated 18 December 2018
Hague Convention	Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters dated 15 November 1965
Hearing on Interim Measures	Hearing on interim measures that was held on 17 April 2017 at the ICC Hearing Centre in Paris, France.
Hearing on Jurisdiction	Hearing on jurisdiction that was held from 12 November to 15 November 2019 at the ICC Hearing Centre in Paris, France
ILC Articles	Draft articles on Responsibility of States for Internationally Wrongful Acts
Interim Award	Interim award on interim measures dated 7 July 2017
Niva	Niva CJSC (originally LLC)
Notice of Arbitration	Notice of Arbitration dated 21 September 2015
Optik Trade	ZAO Optik Trade
p	Page
PCA	Permanent Court of Arbitration
Plescheevo	Plescheevo CJSC
PO1	Procedural Order No. 1 dated 1 March 2017
PO2	Procedural Order No. 2 dated 7 July 2017
PO3	Procedural Order No. 3 dated 22 December 2017
PO4	Procedural Order No. 4 dated 12 September 2018
PO5	Procedural Order No. 5 dated 5 March 2019
PO6	Procedural Order No. 6 dated 1 July 2019
PO7	Procedural Orden No. 7 dated 29 September 2019
PO8	Procedural Order No. 8 dated 4 October 2019
PO9	Procedural Order No 9 dated 27 April 2020

Red Square Project	A project to renovate and redevelop a number of historic buildings adjoining the Red Square in Moscow to turn them into a luxury hotel and high-end residential complexes
Reply to Respondent's Security for Costs Application	Claimant's reply to Respondent's Security for Costs Application dated 10 March 2017
Residence Route	A form of acquiring French nationality having special consideration to the residence of the applicant
Respondent	Russian Federation
Respondent's Answers to the Tribunal's Questions	Respondent's Answers to the Tribunal's Questions dated 19 July 2019
Respondent's Post-Hearing Brief	Respondent's Post-Hearing Brief dated 13 January 2020
Respondent's Presentation of Costs	Presentation of costs submitted by Respondent on 15 May 2020
Respondent's Reply on Jurisdiction	Respondent's Reply Memorial on Jurisdiction dated 19 December 2018
Respondent's Request for Bifurcation	Respondent's request for bifurcation dated 30 October 2017
Respondent's Request for Production of Documents	Respondent's request for production of documents dated 3 August 2018
Respondent's Security for Costs Application	Respondent's security for costs application dated 10 February 2017
Respondent's Submission on Jurisdiction	Respondent's submission on jurisdiction dated 6 April 2018
Response to Claimant's Request for Interim Measures" or "Response to Request for Interim Measures	Respondent's response to the Request for Interim Measures dated 10 February 2017
Response to the First Preliminary Application	Respondent response to Claimant's First Preliminary Application dated 27 December 2016
Response to the Second Preliminary Application	Respondent's response to Second Preliminary Application dated 10 January 2017
Second Expert Report of Mr. Belov	Second expert report of Sergey Aleksandrovich Belov dated 17 December 2018
Second Expert Report of Professor Jault-Seseke	Second expert report of Professor Jault-Seseke dated 17 December 2018
Second Preliminary Application	Claimant's second Application for a Preliminary Order dated 8 January 2017
Second Preliminary Application Decision	Tribunal's decision on the Second Preliminary Application dated 20 January 2017
TOA	Terms of Appointment dated 1 March 2017
Tr	Transcript
Tribunal's Questions	Tribunal's Questions to the Parties dated 17 May 2019
UNCITRAL Rules	1976 UNCITRAL Rules
VCLT	Vienna Convention on the Law of Treaties

I. INTRODUCTION

1. This Arbitration concerns the disputes between Mr. Sergei Viktorovich Pugachev (“**Claimant**”) and the Russian Federation (“**Respondent**” and together with Claimant, the “**Parties**”) for alleged breaches of the Agreement Between the Government of the French Republic and the Government of the United Soviet Socialist Republics on the Reciprocal Promotion and Protection of Investments dated July 4, 1989 (the “**BIT**” or the “**Treaty**”).
2. The Parties’ disputes broadly relate to Respondent’s alleged breaches of its international obligations under the Treaty to afford a fair and equitable treatment, full protection and security and not to expropriate assets in relation to five alleged investments of Mr. Pugachev:
 - a. A project to renovate and redevelop certain historic buildings adjoining the Red Square in Moscow into a luxury hotel and high-end residential complexes (the “**Red Square Project**”);
 - b. CJSC Enisey Production Company, a company which owned a licence for the exploitation of the Elegest Plateau of the Ulug Khemsky coal basin in Tuva, and the development of the coal mine, including a project of constructing a railway to transport the mined coking coal (“**EPC**”);
 - c. OAO Northern Shipyard or “Severnaya Verf” (the “**Northern Shipyard**”), OAO Baltic Shipyard or “Baltiysky Zavod” (the “**Baltic Shipyard**”) and OAO Iceberg Central Design Office or Central Design Bureau Iceberg (the “**Iceberg Shipyard**” and together with the Northern Shipyard and the Baltic Shipyard the “**Shipyards**” or “**Shipyard Interest**”);
 - d. A number of land plots located in the Krasnogorsky District of the Moscow Region (the “**Land Plots**”); and
 - e. Other investments outside the Russian Federation (the “**Non-Russian Investments**”).
3. In the appropriate procedural opportunity, Respondent requested to bifurcate these proceedings in accordance with the procedural calendar established in Scenario 3 of Annex 1 to Procedural Order No. 1 (“**PO1**”). Claimant requested the Tribunal to dismiss Respondent’s request for bifurcation in its entirety. Having carefully examined the arguments put forward by both Parties, on 22 December 2017, the Tribunal issued Procedural Order No. 3 (“**PO3**”) ordering the bifurcation of the Arbitration.
4. During the jurisdictional phase of the Arbitration, both Parties submitted multiple allegations as to the Tribunal’s jurisdiction over the dispute. Accordingly, in the present Award on Jurisdiction the Tribunal will decide, *inter alia*, whether or not Claimant: (i) is an “investor” in accordance with the Treaty; (ii) made protected investments in the Russian

Federation; and (iii) whether or not Claimant satisfied the procedural requirements set forth under Article 7 of the Treaty.

5. For the reasons set out in this Award on Jurisdiction, the majority of the Tribunal finds that (i) the Treaty requires Claimant to have held French nationality at the time he made his alleged investments; and (ii) that Claimant did not hold French nationality at the date of all of his alleged investments. Accordingly, in the operative part of this Award on Jurisdiction, the majority of the Tribunal will declare that it does not have jurisdiction over the present dispute because Mr. Pugachev is not an “investor” in accordance with the Treaty. In consequence, the majority of the Tribunal will dismiss all of Claimant’s claims.
6. In the following Sections of this Award on Jurisdiction, the Tribunal summarizes the procedural background of the Arbitration (Section II) and the arguments put forward by both Parties in their submissions (Section III). Afterwards, the Tribunal sets forth its analysis and considerations (Section IV), decides on the costs of the Arbitration (Section V), and provides its decision (Section VI).

II. PROCEDURAL BACKGROUND

7. Claimant served a Notice of Arbitration dated 21 September 2015 (the “**Notice of Arbitration**”) on Respondent pursuant to Article 7 of the Treaty and the 1976 Arbitration Rules of the United Nations Commission on International Trade Law (the “**UNCITRAL Rules**”).
8. Pursuant to Article 3(2) of the UNCITRAL Rules, and as confirmed in paragraph 2.3 of the Terms of Appointment dated 1 March 2017 (the “**TOA**”), these arbitration proceedings are deemed to have commenced on 22 September 2015, the date on which Respondent received the Notice of Arbitration.
9. Claimant initiated the proceedings in the present arbitration represented by the French law firm *Lazareff – Le Bars*. Respondent was represented by itself at the beginning.
10. By letter dated 17 June 2016 (received by Respondent on 21 June 2016), Claimant appointed Professor Thomas Clay, a French national, as the first arbitrator pursuant to Article 7(1) of the UNCITRAL Rules.
11. In the same letter dated 17 June 2016, Claimant proposed that the Secretary General of the Permanent Court of Arbitration (the “**PCA**”) act as appointing authority in this Arbitration. By letters dated 9 and 10 August 2016, Respondent agreed to the PCA Secretary General acting as appointing authority in this Arbitration.
12. On 19 August 2016, the Secretary General of the PCA appointed Dr. Bernardo M. Cremades, a Spanish national, as the second arbitrator pursuant to Article 7(2)(b) of the UNCITRAL Rules.
13. On 19 September 2016, the two Arbitrators having failed to reach an agreement on the chairman within the time limit, Claimant asked the PCA to appoint the chairman.

14. On 24 October 2016, The Respondent informed that it would now be represented by the international law firm, *White & Case*.
15. On 31 October 2016, the Secretary General of the PCA appointed Dr. Eduardo Zuleta Jaramillo, a Colombian national, as the presiding arbitrator pursuant to Article 7(3) of the UNCITRAL Rules, as modified by agreement of the Parties.
16. On 9 November 2016, the Tribunal ordered the Parties to refrain from making public statements or disclosing any information related to this Arbitration during their discussions on procedural matters, including the applicable confidentiality rules.
17. By letter dated 14 December 2016, Claimant informed the Tribunal and Respondent that he would henceforth be represented only by the French law firm *Betto Seraglini*. Claimant enclosed a Power of Attorney, dated 12 December 2016.
18. On 19 December 2016, Claimant submitted the Request for Interim Measures. As part of its Request for Interim Measures, Claimant sought a Preliminary Order (the “**First Preliminary Application**”).
19. On 27 December 2016, Respondent submitted its Response to Claimant’s First Preliminary Application (the “**Response to the First Preliminary Application**”).
20. On 4 January 2017, the Tribunal issued its Decision on the First Preliminary Application (the “**First Preliminary Application Decision**”), rejecting Claimant’s request.
21. On 8 January 2017, Claimant submitted a Second Application for a Preliminary Order (the “**Second Preliminary Application**”).
22. On 10 January 2017, Respondent replied to the Second Preliminary Application (the “**Response to the Second Preliminary Application**”). Respondent submitted further information regarding the Second Preliminary Application in a letter dated 12 January 2017, to which Claimant replied on 14 January 2017.
23. On 20 January 2017, the Tribunal issued its Decision on the Second Preliminary Application (the “**Second Preliminary Application Decision**”) rejecting (i) Claimant’s Second Preliminary Application, and (ii) Claimant’s request for the Tribunal to revisit its Decision on the First Preliminary Application issued on 4 January 2017.
24. On 10 February 2017, Respondent filed its Response to the Request for Interim Measures (the “**Response to Claimant’s Request for Interim Measures**” or “**Response to Request for Interim Measures**”).
25. On the same date, Respondent submitted to the Tribunal its Security for Costs Application (the “**Respondent’s Security for Costs Application**”).
26. On 1 March 2017, the Tribunal issued the TOA. Pursuant to paragraph 6.1 of the TOA, the place of the Arbitration is Madrid, Spain.

27. On the same date, the Tribunal issued PO1. As per the Tribunal's order dated 9 November 2017, Article 10.5 of PO1 provides that the Parties shall refrain from making any public statements or disclosures that undermine the integrity and efficiency of this Arbitration, including the disclosure of any confidential material submitted by either Party as part of this arbitral proceeding.
28. By letter dated 3 March 2017, Claimant raised to the attention of the Tribunal that Respondent had allegedly breached the confidentiality provisions contained in Article 10 of PO1 by publishing a press release related to the Arbitration on the website of the Russian Federation's Public Prosecutor.
29. On the same date, Respondent informed the Tribunal of a series of public statements, press releases, and interviews made by Claimant related to the Arbitration, allegedly in breach of the Tribunal's order of 9 November 2017 and PO1.
30. By email dated 3 March 2017, the Tribunal invited the Parties to comment on each other's letter sent on that same date.
31. On 8 March 2017, Claimant responded to Respondent's letter dated 3 March 2017 opposing it and requesting the Tribunal to order Respondent to refrain from making future communications that undermine the efficiency and integrity of this Arbitration.
32. On the same date, Respondent commented on Claimant's letter dated 3 March 2017 opposing it and seeking an additional relief by way of a Partial Award.
33. On 10 March 2017, Claimant submitted its Reply to Respondent's Security for Costs Application (the "**Reply to Respondent's Security for Costs Application**").
34. On 13 March 2017, Claimant brought to the attention of the Tribunal a letter received on 8 March 2017 from the law firm *Hogan Lovells* in London on behalf of the Deposit Insurance Agency (the "**DIA**"). Claimant alleged that this letter requested Claimant's counsel to disclose information covered by the attorney-client privilege.
35. On 16 March 2017, Respondent responded to Claimant's letter dated 13 March 2017 and requested the Tribunal to reject all of Claimant's requests.
36. On 17 March 2017, the Tribunal reiterated that the place of the arbitration is Madrid, Spain, but that, pursuant to Section 6.2 of the TOA and Section 1.1 of PO1, the hearings may be held in other locations. The Tribunal considered all arguments put forward by the Parties, particularly in the submissions of 3 March 2017 and 8 March 2017, as to the appropriate venue for the upcoming hearing, and decided to hold a hearing on 17 April 2017 in Paris, France exclusively devoted to Claimant's Request for Interim Measures (the "**Hearing on Interim Measures**"), and to reserve 18 April 2017 if needed. The Tribunal established that the aforesaid decision only applied for the Hearing of Interim Measures and shall not be construed in any way as a ruling on the location of any future hearing in this Arbitration, or as a judgment on the merits of any of the applications put forward by the Parties in their submissions.

37. On 17 April 2017, the Hearing on Interim Measures was held in the ICC Hearing Centre 112, avenue Kléber 75016 in Paris, France. The following persons participated in the Hearing:

Tribunal	
<ul style="list-style-type: none"> - Dr. Eduardo Zuleta Jaramillo – Presiding Arbitrator - Professor Thomas Clay – Arbitrator - Professor Bernardo M. Cremades – Arbitrator 	<ul style="list-style-type: none"> - Mr. Rafael Rincón – Secretary to the Tribunal
Claimant	Respondent
<ul style="list-style-type: none"> - Julien Fouret, Betto Seraglini law firm - Gaëlle Le Quillec, Betto Seraglini law firm - Elsa Nicolet, Betto Seraglini law firm - Yasmina Najem, Betto Seraglini law firm - Valeriya Tsekhanska, Betto Seraglini law firm - Natalia Dozortseva, Legal Consultant. - Anne-Jessica Fauré, De Baecque Fauré Bellec Law Firm - Marie Roumiantseva, Roumiantseva Law Firm 	<ul style="list-style-type: none"> - David Goldberg, White & Case - Thomas Vail, White & Case - Stephanie Stocker, White & Case - Oleg Todua, White & Case - Hadia Hakin, White & Case - Mikhail Vinogradov, Director, Department of International Law and Cooperation, Ministry of Justice of the Russian Federation.

38. During the Hearing on Interim Measures, the Tribunal recalled that the Parties were bound by the confidentiality obligations provided for under PO1 and, accordingly, they could not hold press conferences, issue statements to the press, or the likes, related to this Arbitration.¹
39. Furthermore, the Tribunal closed the proceedings pertaining to Claimant's Request for Interim Measures, Respondent's Security for Costs, applications on confidentiality, and any

¹ Transcript, Hearing on Interim Measures, p. 3, lines 23 to 25.

other interim measure. In this regard, the Tribunal noted that it would only receive additional submissions from the Parties with prior authorization from the Tribunal in the event that something new and urgent arose.²

40. On 20 April 2017, Respondent submitted an application alleging further breaches by Claimant of PO1 and of the orders made by the Tribunal during the Hearing on Interim Measures. On 24 April 2017, Claimant submitted its comments to Respondent's application.
41. On 29 April 2017, the Tribunal invited the Parties to provide additional comments and information concerning the alleged breaches of PO1. As requested by the Tribunal, Respondent submitted its comments on 4 May 2017, and Claimant responded on 9 May 2017.
42. On 26 May 2017, the Tribunal sent a letter to the Parties whereby (i) it ordered specific measures in order to preserve the integrity and efficiency of the arbitration, and (ii) it submitted a proposal to the Parties to balance confidentiality and transparency concerns in this Arbitration (the "**26 May 2017 Order**"). The Tribunal invited the Parties to submit joint or separate comments to the proposal on or before 5 June 2017.
43. On 6 June 2017, Respondent submitted its comments to the proposal put forward by the Tribunal and alleged that Claimant breached the specific orders made in the 26 May 2017 Order. Accordingly, Respondent requested the Tribunal to take such steps as it considers necessary to ensure Claimant's compliance with its orders, including in particular the 26 May 2017 Order. In addition, Respondent expressed the view that, until Claimant indicates a willingness to comply with the Tribunal's orders in this Arbitration, it should not be required to incur further time and expense in defending itself, including in relation to agreeing on logistics for the publications of documents relating to the arbitration.
44. On 9 June 2017, Claimant responded to Respondent's letter dated 6 June 2017. Claimant stated that he has complied with the 26 May 2017 Order and removed 103 pages from his website that contained publications concerning this Arbitration. Claimant argued that Respondent failed to point out to any article, post or any publication, for the simple reason that Claimant removed from his website all articles and publications as per Tribunal's direction. Claimant urged this Tribunal to (i) acknowledge that Claimant has complied with the 26 May 2017 Order; (ii) order full transparency, in exchange for its extremely strict confidentiality provision; and (iii) decide on the entity that should be designated to administer the website in order to avoid further obstructive attitude from Respondent in that respect.
45. On 12 June 2017, Respondent submitted a letter to the Tribunal alleging Claimant's further breaches of the 26 May 2017 Order. Respondent maintained that, in breach of the 26 May 2017 Order: (i) as of 2 June 2017, multiple publications and documents with respect to the Arbitration had not been removed from Claimant's website; (ii) it was only after Respondent's letter dated 6 June 2017 that Claimant started to remove such materials; and

² Transcript, Hearing on Interim Measures, p. 135, lines 17 to 23.

(iii) that, as of 12 June 2017, a number of such materials remain on Claimant's website. Respondent repeated its request made in its letter dated 6 June 2017, *i.e.* that the Tribunal take whatever measures it deems necessary to ensure Claimant's compliance with its orders.

46. On 12 June 2017, the Tribunal, after carefully reviewing the multiple applications and cross-applications submitted by the Parties related to alleged breaches of the confidentiality orders and the additional relief sought, informed the Parties that such matters addressed several issues that needed to be resolved in the context of the Request for Interim Measures and Respondent's Security for Costs Application. However, the Tribunal noted that, despite the fact that the proceedings were closed during the Hearing of Interim Measures, the Parties continued submitting additional applications and cross-applications on these matters, the last one filed on 12 June 2017. Hence, the Tribunal informed the Parties that it would not issue an interim award by 17 June 2017 but during the last days of June or the first days of July.
47. On 13 June 2017, the Tribunal requested the Parties to submit any objection on or before 14 June 2017 to the Tribunal's understanding of the procedural timetable and the resulting dates of issuance of the interim award. Neither Party submitted any objection to this effect.
48. On 7 July 2017, the Tribunal issued an interim award ("**Interim Award**") within the time limits agreed upon by the Parties, in regard to an extradition request formulated by the Russian Federation to France ("**France Extradition Request**"). In its decision, the Tribunal ordered Respondent to take all necessary actions to suspend the France Extradition Request and to abstain from initiating any future extradition request to France. The Tribunal denied all other claims and applications and ordered each Party and respective counsels to refrain from making public statements about any fact regarding this Arbitration.
49. On the same date, 7 July 2017, the Tribunal issued Procedural Order No. 2 ("**PO2**") maintaining the confidentiality provisions of PO1 with respect to the documents that are not Available Documents.
50. On 29 September 2017, Claimant submitted its Statement of Claim ("**Claimant's Statement of Claim**").
51. On 30 October 2017, Respondent sent a letter to the Tribunal attaching its Request for Bifurcation ("**Respondent's Request for Bifurcation**"), together with Legal Exhibits RL-61 to RL-91 and Factual Exhibits R-54 to R-59.
52. On 10 November 2017, Respondent sent a letter to the Tribunal referring to (i) the Interim Award, (ii) PO2, (iii) the Tribunal's letter of 2 August 2017, and (iv) Claimant's statement of 3 August 2017 which addressed the removal of posts and publications concerning the Arbitration from his website. Additionally, Respondent referred to its letter of 2 November 2017 regarding Claimant's non-compliance with the Tribunal's instructions on confidentiality. Respondent stated that, as Claimant failed to respond to such letter, he (i) failed to comply with the Tribunal's instructions regarding confidentiality made in the Interim Award and PO2; (ii) submitted a wholly incorrect statement regarding his compliance with the Tribunal's request; and (iii) breached the Tribunal's order to refrain

from making public statements in the press. Respondent concluded by requesting the Tribunal to consider applicable sanctions to Claimant.

53. On 27 November 2017, Claimant submitted his Observation on Respondent's Request for Bifurcation (the "**Claimant's Observations on Respondent's Request for Bifurcation**").
54. On 22 December 2017, the Tribunal issued Procedural Order No. 3 ("**PO3**") ordering the bifurcation of the proceedings.
55. On 18 January 2018, the Tribunal sent a letter to the Parties requesting Claimant to submit, on or before 20 January 2018, a letter or memorial: (i) identifying the extracts from the Statements of Claim he purported to disclose; (ii) substantiating his request to disclose pursuant to the criteria set forth in PO2; and (iii) clarifying whether the disclosed extracts from the Statement of Claim will remain confidential if submitted before the French civil proceedings, or whether it would, therefore, become public by virtue of it being provided in those proceedings.
56. On 20 January 2018, Claimant submitted a letter to the Tribunal in reference to the Tribunal's letter of 18 January 2018 with respect to Claimant's request to produce extracts of the Statement of Claim in the French civil proceedings. Claimant clarified that the request had a very limited scope, only seeking to avoid contradicting findings and decisions of the Tribunal and of the parallel proceedings worldwide.
57. On 22 January 2018, Respondent sent a letter to the Tribunal referring to Claimant's letter of 20 January 2018, stating its disagreement with Claimant's request for permission to disclose extracts of the Statement of Claim, and noting that the said request was not submitted before the French court in a timely fashion. In Respondent's view, the said delay in submitting the request is evidence that such request is not central to Claimant's case.
58. On 26 January 2018, Respondent sent a letter to the Tribunal referring to the Statement of Claim and its exhibits, as well as the Tribunal's decision in PO3 to bifurcate the proceedings. In this letter, Respondent requested Claimant to provide a series of documents by 1 February 2018.
59. On 7 February 2018, Respondent sent a letter to the Tribunal bringing to its attention that Claimant has failed to respond to any of its requests and requesting the Tribunal to order Claimant to provide the documents and confirmations as listed in its letter.
60. On 12 February 2018, Claimant responded to the Tribunal's letter of 7 February 2018 related to Respondent's request for disclosure documents. Claimant urged the Tribunal to deny Respondent's request as it aimed to unilaterally amend the arbitral proceedings. Claimant noted that the document production phase was to occur between 13 July and 7 September 2018, and that there was no reason to change such dates. In Claimant's view, the only way to preserve the equality of arms and due process is to keep the arbitral procedure as agreed by the Parties and to respect the agreed-upon phases, their times and dates.

61. On 14 February 2018, Respondent sent a letter to the Tribunal stating that Claimant cannot cherry-pick certain pages of documents for exhibition when those pages are unhelpful to Claimant's case. Respondent stated that the Parties have an obligation to cooperate in good faith in the process of gathering and providing evidence to the Tribunal; failure to disclose or produce evidence entitles the Tribunal to draw an adverse inference in respect of such evidence.
62. On 16 February 2018, Claimant sent a letter to the Tribunal responding to Respondent's request for disclosure of documents of 14 February 2018. In the view of Claimant, Respondent's request disregards the Tribunal's orders and instructions, as well as the content of PO1, which addresses all matters pertaining to the taking of evidence and the document production phase of the Arbitration. Claimant invited the Tribunal to refuse Respondent's request.
63. On 5 April 2018, Claimant submitted Fabienne Jault-Seseke's First Expert Report ("**First Expert Report of Professor Jault-Seseke**").
64. On 6 April 2018, Respondent submitted its Memorial on Jurisdiction (the "**Respondent's Submission on Jurisdiction**"), as well as Sergey Aleksandrovich Belov's First Expert Report ("**First Expert Report of Mr. Belov**").
65. On 20 July 2018, Claimant submitted its Counter-Memorial on Jurisdiction ("**Claimant's Counter-Memorial on Jurisdiction**").
66. On 3 August 2018, Respondent submitted its Request for Production of Documents ("**Respondent's Request for Production of Documents**"). On the same date, Claimant submitted its Request for Production of Documents ("**Claimant's Request for Production of Documents**").
67. On 12 September 2018, the Tribunal issued Procedural Order No. 4 ("**PO4**") (i) ordering Respondent to produce certain documents as provided for in Claimant's Redfern Schedule, (ii) ordering Claimant to produce certain documents as provided in Respondent's Redfern Schedule; (iii) rejecting the Parties' request to produce certain documents as provided for in the terms of the Redfern Schedules; (iv) ordering the Parties to produce the documents ordered by the Tribunal in the Redfern Schedules; and (v) reserving the power to request the Parties to produce additional documents.
68. On 19 November 2018, Respondent sent a letter to the Tribunal referring to PO1 and PO4, disputing the authenticity and/or completeness of certain documents submitted by Claimant. Respondent noted that the Tribunal has the competence to decide on the authenticity of the Disputed Documents, as well as the power to request the production of legible and complete copies of the final versions of the Disputed Documents.
69. On 30 November 2018, Claimant sent a letter to the Tribunal in response to Respondent's letter of 19 November 2018 and emails from 20 and 21 November 2018. Claimant noted that the documents that Respondent requested were already in its possession as they were almost exclusively created by Respondent itself. Claimant stated that Respondent has the

burden of proving that its concerns as to the authenticity of the Disputed Documents are justified. In its letter, Claimant requested the Tribunal to dismiss Respondent's request.

70. On 17 December 2018, Respondent submitted the Supplementary Expert Report of Sergey Aleksandrovich Belov (the "**Second Expert Report of Mr. Belov**"). On the same date, Claimant submitted the Second Expert Report of Professor Jault-Seseke (the "**Second Expert Report of Professor Jault-Seseke**").
71. On 18 December 2018, Respondent submitted (i) Professor Roman Sergeevich Bevzenko's First Expert Report (the "**First Expert Report of Professor Bevzenko**"), and (ii) the First Witness Statement of Dmitry Sergeevich Rybakov (the "**First Witness Statement of Mr. Rybankov**").
72. On 19 December 2018, Respondent submitted its Reply Memorial on Jurisdiction (the "**Respondent's Reply on Jurisdiction**").
73. On 11 February 2019, Claimant sent a letter to the Tribunal in response to its letter of 4 February 2019 and its invitation for additional comments by the Parties on the new Hearing dates. Claimant requested the Tribunal to issue an order on interim measures under Article 26 of the UNCITRAL Rules to preserve Claimant's rights until the Decision on Jurisdiction is rendered. Claimant noted that, due to the circumstances that surround the case, any delays in the Arbitration were financially and morally detrimental exclusively to Mr. Pugachev.
74. On 19 February 2019, Respondent sent a letter to the Tribunal referring to Claimant's letter of 11 February 2019 making an application for interim measures. Respondent requested the Tribunal to dismiss Claimant's petition, arguing that there has been no material change in circumstances to justify such an application.
75. On 5 March 2019, the Tribunal issued Procedural Order No. 5 ("**PO5**"), rejecting Claimant's request for interim measures as submitted in Claimant's Application.
76. On 26 March 2019, Claimant submitted his Rejoinder on Jurisdiction ("**Claimant's Rejoinder on Jurisdiction**").
77. On 17 May 2019, the Tribunal submitted a series of questions to the Parties (the "**Tribunal's Questions**").
78. On 1 July 2019, the Tribunal issued Procedural Order No. 6 ("**PO6**"), establishing the procedural timetable in its Annex 1.
79. On 19 July 2019, Claimant submitted his answer to the Tribunal's Questions ("**Claimant's Answers to the Tribunal's Questions**") and Respondent submitted its answers to the Tribunal's Questions ("**Respondent's Answers to the Tribunal's Questions**").
80. On 26 July 2019, the Tribunal sent a letter to the Parties pursuant to PO1 and PO6, with the proposed agenda for the hearing on jurisdiction of 12-17 November 2019.

81. On 29 August 2019, the Tribunal sent a letter to the Parties setting forth the agenda for the pre-hearing organizational conference call to be held between the Parties and the Tribunal on 4 September 2019.
82. On 29 September 2019, the Tribunal issued Procedural Order No. 7 (“**PO7**”), establishing the time and place of the hearings on jurisdiction to be held on 12 November 2019 (the “**Hearing on Jurisdiction**”), as well as all details related to it. PO7 included the identification of the witnesses summoned for cross-examination, the order of examination of witnesses, the Tribunal’s summon of additional witnesses, the list of the attendees to the Hearing on Jurisdiction, among other issues.
83. On 4 October 2019, the Tribunal issued Procedural Order No. 8 (“**PO8**”) allowing the Parties to include additional witnesses in the hearing, in the interest of guaranteeing procedural equality. The Tribunal further instructed that any additional contact, communication and engagement by either Party with the additional witnesses is to be made in writing with the Tribunal’s authorization; and the other Party is to receive a copy of such communication.
84. By letter dated 4 October 2019, Claimant’s counsel informed the Tribunal and Respondent of a change in the composition of its team, as well as of its name to *Betto Perben Pradel Filhol*.
85. From 12 to 15 November 2019, the Hearing on Jurisdiction was held in the ICC Hearing Centre 112, avenue Kléber 75016 in Paris, France. The following individuals assisted the Hearing on Jurisdiction:

Tribunal	
<ul style="list-style-type: none">- Dr. Eduardo Zuleta Jaramillo – Presiding Arbitrator- Professor Thomas Clay – Arbitrator- Professor Bernardo M. Cremades – Arbitrator	<ul style="list-style-type: none">- Mr. Rafael Rincón – Secretary to the Tribunal
Claimant	Respondent
<ul style="list-style-type: none">- Mr. Jean-Georges Betto (Betto Perben law firm)- Ms. Gaëlle Filhol (Betto Perben law firm)- Mr. Martin Pradel (Betto Perben law firm)	<ul style="list-style-type: none">- Mr. David Goldberg (White & Case)- Mr. Oleg Todua (White & Case)- Ms. Stephanie Stocker (White & Case)- Ms. Pavini Emiko Singh (White & Case)

<ul style="list-style-type: none"> - Ms. Luiza Saldanha Pena Costa, (Betto Perben law firm) - Mr. Florian Renaux (Betto Perben law firm) - Mr. Antoine Cottin (Betto Perben law firm) - Ms. Charlotte Harel (Betto Perben law firm) 	<ul style="list-style-type: none"> - Mr. Andrey Ushakov (White & Case) - Ms. Julia Ogievetsky (White & Case) - Mr. Dmitriy Laverychev (White & Case).
Other Attendees on behalf of Claimant	Other Attendees on behalf of Respondent
<ul style="list-style-type: none"> - Mr. Sergei Viktorovich Pugachev (Fact witness/Claimant) - Ms. Natalia Dozortseva (Assistant of Mr. Pugachev) - TBC (Personal security guard of Mr. Pugachev) - Mr. Hugues Hourdin (Expert) - Prof. Etienne Pataut (Expert) (attendance by video-conference due to unavailability) - Prof. William E. Butler (Expert) 	<ul style="list-style-type: none"> - Ms. Aleksandra Usacheva (Respondent's representative) - Mr. Vadim Tarkin (Respondent's representative) - Mr. Oleg Afanasyev (Respondent's representative) - Prof. Fabienne Jault-Seseke (Expert) - Prof. Roman Bevzenko (Expert) - Mr. Sergey Belov (Expert)

86. The Tribunal had sent four letters of invitation to Mr. Alexeï Kudrin, Mr. Viktor Zubkov, Ms. Oksana Reinhardt and Mr. Georgievitch Guram Gachechiladze, respectively, to testify at the Hearing on Jurisdiction. None of them attended the Hearing. Some responded that they will not attend, and others did not respond to the invitation.
87. During the Hearing on Jurisdiction, the Parties submitted their respective arguments in accordance with the rules established in PO7. The entirety of the Hearing on Jurisdiction was transcribed by Opus 2 International. On 2 January 2020, Hearing Transcripts were finally circulated in their reamended version.
88. On 13 January 2020, Claimant submitted his Post-Hearing Brief (the “**Claimant’s Post-Hearing Brief**”). On that same date, Respondent submitted its Post-Hearing Brief (the “**Respondent’s Post-Hearing Brief**”).

89. On 27 April 2020, the Tribunal issued Procedural Order No 9 (“**PO9**”), declaring the closing of the jurisdictional phase of the arbitration and inviting the Parties to make their presentations of costs.
90. On 15 May 2020, each Party submitted their presentations of costs to the Tribunal (“**Claimant’s Presentation of Costs**” and “**Respondent’s Presentation of Costs**”).
91. On 19 May 2020, the Tribunal acknowledged receipt of the Parties’ correspondence and requested Claimant to clarify the scope of his presentation of costs and certain related matters.
92. On 22 May 2020, Claimant submitted his clarification to Claimant’s Presentation of Costs pursuant to the Tribunal’s instructions.

III. THE PARTIES’ SUBMISSIONS

93. The Tribunal summarizes below the position of the Parties regarding the Tribunal’s jurisdiction. The Tribunal has taken into consideration all the arguments and evidence submitted by the Parties. The fact that an argument or a specific piece of evidence is not mentioned in the summary does not mean that the Tribunal has not considered it.

A. Respondent’s Position

94. Respondent advanced four objections to the jurisdiction of the Tribunal to hear Claimant’s claims, asserting that anyone of such objections is capable of disposing of all, or a material part of the entire case.³ Respondent highlighted that it is Claimant who has the burden of proving that the Tribunal has jurisdiction, which, it argues, Mr. Pugachev has failed to do.⁴
95. In the view of Respondent:⁵
- a) Claimant is not an “investor” in accordance with Article 1.2 of the BIT; consequently, the Tribunal lacks jurisdiction *ratione personae*;
 - b) Claimant’s claims are abusive because Mr. Pugachev sought to artificially acquire French nationality, with the sole purpose of gaining access to international arbitration under the BIT;
 - c) The DIA’s actions are not attributable to Respondent, and the DIA is not a contracting party under the BIT; and

³ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 4.

⁴ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 10, citing **Exhibit RL-92**, *Vito G. Gallo v Government of Canada*, PCA Case No. 55789, Award, dated 15 September 2011, ¶ 277; **Exhibit RL-93**, *National Gas S.A.E. v Arab Republic of Egypt*, ICSID Case No. ARB/11/7, Award, dated 3 April 2014, ¶ 118; **Exhibit CL-150**, *Tulip Real Estate and Development Netherlands B.V. v Republic of Turkey*, ICSID Case No. ARB/11/28, Decision on Bifurcated Jurisdictional Issue, dated 5 March 2013, ¶ 48.

⁵ Respondent’s Reply on Jurisdiction, 19 December 2018, ¶¶ 11-12.

- d) Claimant failed to comply with the mandatory pre-conditions for arbitration as established in Article 7 of the BIT.

96. The Tribunal summarizes the main aspects of Respondent's arguments below.

a) The definition of "investor" under the BIT

97. Respondent argues that Claimant bears the burden of proving that it complies with the definition of "investor" in order to have access to international arbitration under the BIT.⁶ In this case, the Russian Federation asserts that Mr. Pugachev has not discharged such burden, as he has failed to prove (1) that he validly acquired French nationality in accordance with French law; (2) that the BIT is applicable to him as a holder of dual nationality (*i.e.*, French and Russian); (3) that his dominant and effective nationality is French and not Russian; and (4) that he held French nationality at the relevant times for application of the BIT (*i.e.*, at the time of the making of the investment, at the time of occurrence of the alleged breaches of the BIT, and at the time of the introduction of the arbitral proceedings).⁷

1. The validity of Claimant's acquisition of French nationality

98. Respondent states that Claimant did not comply with the mandatory requirements for acquiring nationality through naturalisation under French Law, "*notwithstanding the French authorities' decision to naturalise him*".⁸ It argues that the Tribunal is competent to independently determine⁹ – for the purposes of this Arbitration – whether or not Mr. Pugachev has French nationality, in accordance with French law.¹⁰ The Russian Federation highlights that the Tribunal has the power to disregard any nationality documents, as they merely constitute *prima facie* evidence; in its view, Claimant acquired French nationality either by error or fraud.¹¹
99. According to Respondent, under French law, foreigners can *acquire* French nationality through the process of naturalisation.¹² Both the process and the requirements are set out in Articles 21-15 to 21-27 of the French Civil Code, applicable at the time of Claimant's

⁶ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 13. Respondent's Reply on Jurisdiction, 19 December 2018, ¶¶ 16-24; **Exhibit RL-95**, *Limited Liability Company Amto v Ukraine*, Arbitration No. 080/2005, Final Award, dated 26 March 2008, ¶ 64; **Exhibit RL-70**, *Hussein Nuama Soufraki v United Arab Emirates*, ICSID Case No. ARB/02/7, Award, dated 7 July 2004, ¶ 58; **Exhibit RL-96**, *Alasdair Ross Anderson et al v Republic of Costa Rica*, ICSID Case No. ARB(AF)/07/3, Award, dated 19 May 2010, ¶ 44.

⁷ Respondent's Reply on Jurisdiction, 19 December 2018, ¶ 37.

⁸ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 23.

⁹ Respondent's Submission on Jurisdiction, 6 April 2018, ¶¶ 24-27, citing as examples **Exhibit RL-99**, *Italian-United States Conciliation Commission, Flagenheimer*, Decision No. 182, dated 20 September 1958, p. 337; **Exhibit RL-101**, *Ioan Micula and others v Romania*, ICSID Case No. ARB/05/20, Decision on Jurisdiction and Admissibility, dated 24 September 2008, ¶ 86.

¹⁰ Respondent's Reply on Jurisdiction, 19 December 2018, ¶ 54.

¹¹ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 34.

¹² Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 36; **Exhibit RL-103**, F. Jault-Seseke, S. Corneloup, S. Barbou des Place, *Droit de la nationalité et des étrangers*, dated 2015, Presses Universitaires de France, p. 117.

request for naturalisation, and they include conditions pertaining to morality, age,¹³ assimilation and residence. Respondent pays particular attention to the requirements of assimilation and residence,¹⁴ which are to be independently assessed.¹⁵

100. Regarding the requisite of assimilation of the French culture, based on the expert report of Professor Jault-Seseke, Respondent argues that Mr. Pugachev does not comply with such a requirement, as he would have been unable to provide evidence of sufficient knowledge of the French language, for example.¹⁶
101. Furthermore, based on the case law of the French *Conseil d'État*, the Russian Federation submits that the residency requirements are fulfilled if the applicant has located “*the centre of his interests in a stable manner*”¹⁷ in France.¹⁸ To make this determination, the French authorities rely on elements such as the length of the stay of the applicant in French territory, his family situation and his source of income during such stay.¹⁹ Respondent notes that “*the financial situation of the applicant plays an important role in the assessment carried out by the French authorities. The financial links of the applicant with France imply that his income originates from France and more precisely that the applicant exercises a profession in France*”.²⁰
102. Respondent noted the different assertions made by Claimant with respect to Mr. Pugachev’s residence, highlighting that: (i) in the Notice of Arbitration, Claimant stated that Mr. Pugachev “*has resided permanently in France from 2011 onwards*”;²¹ (ii) in the Statement of Claim he asserted that Mr. Pugachev “*resides permanently in France since 1996*”;²² and (iii) in his witness statement, Claimant stated that “[i]n 2009 ... [he] decided to once more establish a permanent residence in France”.²³ In Respondent’s view, it is highly unlikely that Claimant could have been habitually residing in France before 2009, which would entail that he did not comply with the residence requirements of the Request for Naturalisation.

¹³ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 37, citing the First Expert Report of Professor Jault-Seseke, **Exhibits FJS-1, FJS-11**.

¹⁴ According to the Respondent: “Articles 21-16 and 21-17 of the French Civil Code provide two cumulative conditions of residence in France: i) The applicant must prove that he has been living in France for the last five years or, in exceptional cases, two years, before the Request for Naturalization was made (Article 21-17); and ii) The applicant must be residing regularly in France when the naturalization decree is signed (Article 21-16).” [footnotes omitted]; Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 37(d).

¹⁵ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 38.

¹⁶ First Expert Report of Professor Jault-Seseke, ¶¶ 55-56.

¹⁷ First Expert Report of Professor Jault-Seseke, ¶ 18; **Exhibit FSJ-15**, CE, No. 57464 and CE No. 50277, dated 28 February 1986.

¹⁸ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 40.

¹⁹ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 42, citing the First Expert Report of Professor Jault-Seseke, ¶ 19.

²⁰ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 42, citing the First Expert Report of Professor Jault-Seseke, ¶ 34.

²¹ Claimant’s Notice of Arbitration, 21 September 2015, ¶ 115.

²² Claimant’s Statement of Claim, 29 September 2017, ¶ 615.

²³ Witness Statement of Sergei Viktorovich Pugachev, dated 29 September 2017, ¶ 200.

Respondent additionally highlights that the fact that the Ninth Arbitrazh Court of Appeals of Moscow made a reference to the nationality of Mr. Pugachev does not entail that the Russian courts acknowledged the validity of his nationality. It states:

“[c]ontrary to the Claimant’s assertion, it is clear from the decision of the Ninth Arbitrazh Court that the Russian Court did not review the Claimant’s acquisition of French nationality, rather, it simply verified, on the premise put forward by the Claimant, that he holds French nationality, whether or not the requirements set by the Hague Convention on the service abroad of judicial and extrajudicial documents were fulfilled. The Claimant’s French nationality was not challenged before the Russian Court and hence the Russian Court did not review his nationality.”²⁴

103. In the view of the Russian Federation, from the evidence available in the record of this Arbitration,²⁵ it cannot be established that Mr. Pugachev transferred the centre of his interests to France; thus, failing to comply with all the requirements to acquire French nationality under French law.²⁶ In light of this conclusion, in its answer to the Tribunal’s Question No. 8, Respondent notes, that *“the French authorities have a discretionary power to refuse naturalization in circumstances where the applicable conditions are met, but do not have any discretionary power to grant naturalization where the applicable conditions are not fulfilled”*.²⁷
104. The Russian Federation thus concluded that Claimant did not meet the conditions for naturalisation established in French law, making his naturalisation the product of material error or fraud.²⁸ As a result, Respondent submits that the Tribunal does not have jurisdiction *ratione personae* as Mr. Pugachev does not qualify as an “investor” under the BIT.

2. The applicability of the BIT to dual nationals of Russia and France

105. Respondent submits that international dispute settlement mechanisms are not intended to resolve domestic disputes between an investor and his home State; it states that this principle is confirmed in the Preamble of the BIT, as it intends *“to create favourable conditions for French investments in the Union of Soviet Socialist Republics and Soviet investments in France”*.²⁹ In this sense, the Russian Federation submits that the BIT excludes dual

²⁴ Respondent’s Reply on Jurisdiction, 19 December 2018, ¶ 48, citing **Exhibit C-493**, Decision of the Ninth Arbitrazh Court of Appeals, Case No. A40-119763/10, 15 February 2018; **Exhibit C-495**, Decision of the Commercial Court of the Moscow Circuit, Case No. A40-119763/10, 9 July 2018.

²⁵ Throughout its different written submission, the Respondent referred to Claimant’s tax data, family situation and location of his nuclear family, his financial situation, his personal and business ties with different countries, among others. See, Respondent’s Submission on Jurisdiction, 6 April 2018, ¶¶ 66-78; Respondent’s Reply on Jurisdiction, 19 December 2018, ¶¶ 73-80.

²⁶ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 48.

²⁷ Respondent’s Responses to the Tribunal’s Questions, 19 July 2019, ¶ 30; Reply on Jurisdiction, ¶¶ 4, 42, 76, 160-170; Respondent’s Reply on Jurisdiction, 19 December 2019, ¶¶ 161-162, citing the First Expert Report of Professor Jault-Seseke; **Exhibit FJS-012(b)**, Circular DPM No. 2000-254 of May 12, 2000 relating to naturalisations, reinstatement in French nationality and loss of French nationality, p. 3.

²⁸ Respondent’s Reply on Jurisdiction, 19 December 2019, ¶¶ 173-178.

²⁹ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 87 [emphasis omitted].

nationals of France and Russia, which entails that dual nationals are not “investors” under the BIT. Consequently, the Tribunal lacks jurisdiction *ratione personae*.³⁰

106. Respondent submits that in applying Articles 31(1) and 32 of the Vienna Convention on the Law of Treaties (the “**VCLT**”), the correct interpretation of Article 1.2 of the BIT excludes its applicability to dual nationals of Russia and France. The argument of the Russian Federation is based on the language used by the Parties in Article 1.2 of the BIT: “*read in context in light of the object and purpose of the BIT, taking into account the entirety of the provisions of the BIT*”.³¹ It argues that all other provisions of the BIT, including those related to the arbitration clause, refer to “*investors of the other contracting Party*”,³² “*investors of this Contracting Party*”³³ or “*investors of one of the other contracting Parties*”.³⁴

107. Respondent highlights that:³⁵

“The Claimant has attempted to allege that ‘none of these expressions exclude dual nationals from the scope of the Treaty’.³⁶ However, he has himself previously recognized that these expressions result in the express exclusion of dual French-Russian nationals from the scope of bilateral investment treaties:

a) in his Statement of Claim, he stated that ‘France has expressly excluded dual nationals from the scope of the BITs concluded with Ethiopia, China, Kazakhstan and Uruguay’,³⁷ which respectively apply to the investors having ‘the nationality of one or the other of the contracting Parties’,³⁸ to the nationals of one or the other

³⁰ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶¶ 87-117; Respondent’s Reply on Jurisdiction, 19 December 2019, ¶¶ 179-229.

³¹ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 94.

³² **Exhibit CL-1**, Agreement Between the Government of the French Republic and the Government of the United Soviet Socialist Republics on the Reciprocal Promotion and Protection of Investments, signed on 4 July 1989, entered into force on 18 July 1991, Articles 2, 3, 4, 5, 7 and 8.

³³ **Exhibit CL-1**, Agreement Between the Government of the French Republic and the Government of the United Soviet Socialist Republics on the Reciprocal Promotion and Protection of Investments, signed on 4 July 1989, entered into force on 18 July 1991, Article 6.

³⁴ **Exhibit CL-1**, Agreement Between the Government of the French Republic and the Government of the United Soviet Socialist Republics on the Reciprocal Promotion and Protection of Investments, signed on 4 July 1989, entered into force on 18 July 1991, Article 4.1.

³⁵ Respondent’s Reply on Jurisdiction, 19 December 2019, ¶ 212.

³⁶ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 95.

³⁷ Claimant’s Statement of Claim, 29 September 2017, ¶ 604 and footnote 579.

³⁸ **Exhibit CL-103**, Agreement between the Government of the Federal Republic of Ethiopia and the Government of the French Republic for the Reciprocal Promotion and Protection of Investments, signed on 7 August 2004, Article 1.2.

contracting Parties’,³⁹ and to the ‘nationals of the French Republic or of the Republic of Kazakhstan’;⁴⁰ and

b) in his Counter-Memorial on Jurisdiction, he admitted that Article 4.1 of the BIT which refers to the “investments made by investors of one or the other of the contracting Parties”⁴¹ uses the same wording as the France China bilateral investment treaty’.⁴²

108. In the view of the Russian Federation, albeit the fact that Article 1.2 of the BIT does not contain an explicit exclusion of dual nationals,⁴³ the correct interpretation of the language used in other provisions of the BIT – *i.e.*, the ordinary meaning of the words⁴⁴ – evidences the intent of the Parties to exclude dual nationals; granting the protections of the BIT only to investors of either France or Russia.⁴⁵
109. Respondent additionally argues that this interpretation is in line with the position taken by the law of the former USSR (in force at the time of the conclusion of the BIT) in relation to dual nationals; as Article 8 of the law of the former USSR on Citizenship (in effect on 4 July 1989) expressly provided that foreign citizenship of a USSR citizen “*must not be recognized*”.⁴⁶ According to Respondent, the cited provision evidences that the former USSR (and thus Russia) could not have agreed to treaty claims submitted by investors holding dual nationality, as such investors would have only been recognized as nationals of the USSR.

3. The “dominant and effective nationality” test

110. Respondent submits that Mr. Pugachev remains a Russian national, as (i) he has not (and could not have) renounced to his Russian nationality as a matter of Russian law;⁴⁷ and (ii) his genuine links,⁴⁸ and thus, his “*real and effective nationality*” is that of Russia.

³⁹ **Exhibit CL-104**, Agreement between the Government of the French Republic and the Government of the People’s Republic of China for the Reciprocal Promotion and Protection of Investments, signed on 30 May 1984, terminated on 19 March 1985, Article 1.3.

⁴⁰ **Exhibit CL-105**, Agreement between the Government of the French Republic and the Government of the Republic of Kazakhstan for the Promotion and Protection of Investments, signed on 3 February 1998, entered into force on 21 August 2000, Article 1.2.

⁴¹ **Exhibit CL-1**, Agreement Between the Government of the French Republic and the Government of the United Soviet Socialist Republics on the Reciprocal Promotion and Protection of Investments, signed on 4 July 1989, entered into force on 18 July 1991, Article 4.1.

⁴² Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 98.

⁴³ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 97.

⁴⁴ Respondent’s Reply on Jurisdiction, 19 December 2019, ¶ 200.

⁴⁵ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 96.

⁴⁶ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 102, citing the First Expert Report of Mr. Belov, ¶ 33.

⁴⁷ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 115.

⁴⁸ Respondent’s Reply on Jurisdiction, 19 December 2019, ¶ 104, citing the Second Expert Report of Professor Jault-Seseke, ¶ 8.

111. *Regarding Claimant's renunciation to his Russian nationality*, Respondent states that Claimant's assertions of such renunciation,⁴⁹ are inconsistent with his own actions and with the evidence submitted to this Arbitration.⁵⁰ It notes that in the Notice of Arbitration Mr. Pugachev declared that he had been a national of France since 2009; yet he was also a national of Russia.⁵¹ According to the Russian Federation, Claimant has failed to produce the certificate of acceptance of his request for renunciation to his Russian nationality for consideration by the relevant official, which – it states – is issued automatically under Russian law.⁵²
112. *With respect to the issue of Claimant's "genuine links" with France*, after referring to Mr. Pugachev's background from the personal, academic, professional and political standpoints,⁵³ Respondent elaborates on the principle of dominant and effective nationality, as found in the "*relevant rules of international law applicable in the relations between the parties*".⁵⁴ Based on the *Nottebohm* case,⁵⁵ the Russian Federation states that one of these rules of international law is, that a nationality granted by a domestic law can only be recognized at the international level if it corresponds to a genuine link between the natural person and the State of which he claims nationality.⁵⁶
113. Respondent highlights that international arbitrators apply the principle of real and effective nationality when deciding on "*allegations of nationality by the applicant State which were contested by the respondent State*".⁵⁷ Respondent furthered its argument with the findings of the Iran-United States Claims Tribunal in Case A/18, which established the criteria required to apply the "real and effective nationality" test: his habitual place of residence, his centre of interests, his family ties, his participation in public life and other evidence of attachment.⁵⁸ The Russian Federation concluded that:

"Applying the criteria set forth by the IUSCT in Case A/18 mentioned above, it is obvious that the Claimant's effective and dominant nationality is not that of France. The Claimant had neither his habitual residence, nor his centre of interests, nor his

⁴⁹ Respondent's Reply on Jurisdiction, 19 December 2019, ¶ 219, citing the Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 111.

⁵⁰ Respondent's Reply on Jurisdiction, 19 December 2019, ¶¶ 222-223, citing Claimant's Counter-Memorial on Jurisdiction, ¶¶ 65, 67-68 and 73; Second Expert Report of Mr. Belov, **Exhibit SB-20**, Claimant's renunciation to his Russian nationality form, dated 10 August 2012 and produced by Claimant on 29 August 2018.

⁵¹ Respondent's Reply on Jurisdiction, 19 December 2019, ¶ 219, citing Claimant's Notice of Arbitration, 21 September 2015, ¶ 115.

⁵² Respondent's Reply on Jurisdiction, 19 December 2019, ¶ 224(b), citing the Second Expert Report of Mr. Belov, ¶ 8.

⁵³ Respondent's Submission on Jurisdiction, 6 April 2018, ¶¶ 131-158.

⁵⁴ **Exhibit RL-106**, Vienna Convention on the Law of Treaties concluded on 23 May 1969, Article 31.

⁵⁵ **Exhibit RL-68**, *Affaire Nottebohm (Liechtenstein c. Guatemala)*, Deuxième Phase, I.C.J. Reports 1955, p. 24.

⁵⁶ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 120.

⁵⁷ **Exhibit RL-68**, *Affaire Nottebohm (Liechtenstein c. Guatemala)*, Deuxième Phase, I.C.J. Reports 1955, pp. 12-22.

⁵⁸ **Exhibit RL-65**, Iran-United States Claims Tribunal, Case No. 32-A/18FT, 5 Iran-U.S. Cl. Trib. Rep. 251 (1984-1), p. 265.

*family, in France. All of these elements were located in Russia, where his real ties in fact lie.”*⁵⁹

114. In this manner, the Russian Federation concludes that Mr. Pugachev’s dominant and effective nationality is Russian;⁶⁰ consequently, “*the Tribunal should dismiss the Claimant’s claims on the basis that he is not a French national in accordance with principles of international law and the BIT*”.⁶¹

4. *Claimant’s holding of French nationality at the relevant times for application of the BIT*

115. Respondent argues that, in addition to requiring the investor to hold the nationality of the non-host State (i) at the time of the alleged violations of the BIT,⁶² and (ii) at the date when arbitral proceedings were commenced,⁶³ Article 1.2(a) of the BIT requires the investor to demonstrate that he was a national of the other Contracting Party (iii) at the time the investment was made. These are the critical dates for assessment of the investor’s nationality under the BIT.⁶⁴
116. In the view of Respondent, Claimant has failed to demonstrate that Mr. Pugachev was a national of France at the time of making the investment, as well as at the time of the alleged breaches of the BIT, even assuming that he lawfully acquired French nationality on 30 November 2009.⁶⁵ Accordingly, Mr. Pugachev is not an investor under the BIT, and the Tribunal thus, lacks jurisdiction *ratione personae*.⁶⁶
117. According to Respondent, the language of the BIT is sufficiently clear to require the analysis of the nationality of the investor at the time when the investment was made. Russia supports this argument on the rules of treaty interpretation established in Article 31 of the VCLT.

⁵⁹ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 129.

⁶⁰ Respondent’s Reply on Jurisdiction, 19 December 2019, ¶¶ 230-252.

⁶¹ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 159.

⁶² Respondent’s Submission on Jurisdiction, 6 April 2018, ¶160, citing **Exhibit CL-87**, *Serafín García Armas and Karina García Gruber v Bolivarian Republic of Venezuela*, PCA Case No. 2013-3, Decision on Jurisdiction, dated 15 December 2014, ¶ 214; **Exhibit RL-63**, *Société Générale in respect of DR Energy Holdings Limited and Empresa Dsistribuidora de Electricidad del Estado, S.A. v The Dominican Republic*, Award on Preliminary Objections to Jurisdiction, dated 19 September 2008, ¶¶ 44 and 109.

⁶³ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 160, citing **Exhibit RL-108**, *Ceskoslovenka Obchodni Banka A.S. v Slovak Republic*, ICSID Case No. ARB/05/20, Decision of the Arbitral Tribunal on Objections to Jurisdiction, dated 24 May 1999, ¶ 31; **Exhibit RL-109**, *AIG Capital Partners, Inc. and CJSC Tema Estate Company v Republic of Kazakhstan*, ICSID Case No. ARB/01/6, Award, dated 7 October 2003, ¶ 9.3.4.

⁶⁴ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 160.

⁶⁵ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 162.

⁶⁶ Respondent’s Reply on Jurisdiction, 19 December 2019, ¶¶ 253-316.

118. Respondent submits that the BIT consistently refers to investments “*made*” and not simply “*held*” by a natural person,⁶⁷ including Articles 1.1, 1.2, 7, 3.1, 4.1 and 8 of the BIT.⁶⁸ In its analysis of the ordinary meaning of the words, Respondent argues that the language used in the BIT requires that the investor be a national of the other Contracting State before making the investment in the territory of the host State.⁶⁹ Respondent asserts, on the basis of the dissenting opinion of Professor Rodrigo Oreamuno in the *Serafín García* case,⁷⁰ and the decision of the Paris Court of Appeal setting aside such award,⁷¹ that the BIT’s choice of language evidences the intent of the Contracting Parties to require the investor to be a national of the other Contracting Party.⁷²
119. In Respondent’s Post-Hearing Brief, the Russian Federation cites Article 1.2(a) as follows:
- “Any natural person who is a national of one of the Contracting Parties and who is permitted [may], in accordance with the laws of that Contracting Party, to make investments on the territory or in the maritime zone of the other Contracting Party (emphasis added)”*.⁷³
120. The Russian Federation states that the emphasized quoted text is critical, as it creates a temporal requirement applicable to natural persons, to be a national of the home State at the time of making the investment; so as to be permitted to do so in accordance with the laws of that State.⁷⁴
121. Respondent addresses the cases cited by Claimant in support of his arguments, stating that “[n]one of the treaties applied in the investment arbitration awards on which the Claimant relies in support of this assertion contain the specific wording of the BIT – either as regards the expression ‘investment made by investor’, or as regards the requirement for the national to be permitted by the laws of the contracting State of his nationality to make investments in the territory of the other contracting State”:⁷⁵

⁶⁷ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 165, citing **Exhibit CL-1**, Agreement Between the Government of the French Republic and the Government of the United Soviet Socialist Republics on the Reciprocal Promotion and Protection of Investments, signed on 4 July 1989, entered into force on 18 July 1991, Articles 1-10.

⁶⁸ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 165.

⁶⁹ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶¶ 163-165.

⁷⁰ **Exhibit RL-110**, *Serafín García and Karina García Gruber v Bolivarian Republic of Venezuela*, PCA Case No. 2013-3, Decision on Jurisdiction, dated 15 December 2014, Dissenting Opinion of Professor Rodrigo Oreamuno, ¶¶ 7-9.

⁷¹ **Exhibit RL-111**, Court of Appeal of Paris, dated 25 April 2017, in *Bolivarian Republic of Venezuela v Serafín García Armas and Karina García Gruber*, p. 21.

⁷² Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 166.

⁷³ Respondent’s Post-Hearing Brief, 13 January 2020, ¶ 11(a) [emphasis in original].

⁷⁴ Respondent’s Post-Hearing Brief, 13 January 2020, ¶ 11(a).

⁷⁵ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 175.

- a. With respect to *Pac RIM Cayman v El Salvador*, Respondent points out that the wording used to define the term “investor” in the treaty applicable in said arbitration is materially different from the BIT.⁷⁶
 - b. With respect to *Aguas des Tunari v Bolivia*, Respondent highlights that the award rendered in that case only refers to the abuse of a change of nationality by the investor and does not analyse the conditions established in the treaty to be considered a protected investor, rendering the award irrelevant to the present case.⁷⁷
 - c. With respect to *Vladislav Kim v Uzbekistan*, Respondent notes that the tribunal applied the ICSID Convention – which is not applicable in this case – to conclude that the Convention requires the investor to be a national of the other contracting State at three critical dates that do not include that of the investment. Furthermore, the question of the critical dates was undisputed in that case, rendering the decision irrelevant to the present case.⁷⁸
122. Respondent, therefore, states that the definition of investor under Article 1.2(a) of the BIT requires the investor natural person to have the legal capacity under the laws of the home State – France – to make investments in the territory of the host State – Russia. This is a requirement that precedes the making of the investment, *i.e.* its acquisition by or transfer to the investor.⁷⁹
123. Respondent asserts that Claimant has admitted to have made – at least – three of the investments, object of this arbitration, before his acquisition of the French nationality;⁸⁰ namely, the Red Square Project,⁸¹ the Shipyards⁸² and the Land Plots.⁸³ Regarding the EPC, Respondent asserts that “[d]uring his cross-examination, the Claimant claimed not to recall how he made his investment in EPC. However, in his Statement of Claim his case is that this investment was made in 2003: ‘Mr Pugachev acquired EPC in July/September 2003’.”⁸⁴ The Russian Federation states that “[t]he Claimant’s own statements illustrate that the investments on which he bases his claims were made before he allegedly obtained French nationality.”⁸⁵

⁷⁶ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 176.

⁷⁷ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 177.

⁷⁸ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 178.

⁷⁹ Transcript, Hearing Day 1, p. 38, lines 1 to 8.

⁸⁰ Respondent’s Reply on Jurisdiction, 19 December 2019, ¶ 258; Transcript, Hearing Day 1, p. 38, lines 10 to 13.

⁸¹ Claimant’s Statement of Claim, 29 September 2017, ¶ 36.

⁸² Respondent’s Submission on Jurisdiction, 6 April 2018, ¶¶ 189 and 191; Claimant’s Statement of Claim, 29 September 2017, ¶¶ 122-123.

⁸³ Respondent’s Post Hearing Brief, 13 January 2020, ¶ 8.

⁸⁴ Respondent’s Post Hearing Brief, 13 January 2020, ¶ 9 [footnotes omitted].

⁸⁵ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 185.

124. Respondent also argues that the “*other non-Russian investments*” do not fall within the scope of the BIT, as they were made in third-party countries. However, they appear to have been made before Claimant allegedly became a French national.
125. In response to Claimant’s allegations related to Article 10 of the BIT,⁸⁶ the Russian Federation submits that the text of this provision supports its argument according to which the BIT provides protection to investments “*made*”, and not simply “*held*” by investors.⁸⁷ Respondent asserts that a different interpretation – one favouring the Claimant’s position – would render Article 10 of the BIT meaningless, “*as all investments would be protected, regardless of the date they were made*”.⁸⁸ According to the Russian Federation, this was not the intent of the Contracting Parties when signing the BIT.⁸⁹
126. Therefore, according to the Russian Federation, by not being a national of France at the time of the making of his investments in Russia, Claimant does not qualify as an investor in the sense of the BIT.
127. Regarding the transnational nature of the investment, in its Response to the Tribunal’s Question No. 11, Respondent emphasized that the BIT only covers transnational investments and requires that an investor be a national of the other contracting State at the time the investment was made.⁹⁰
128. Furthermore, Respondent argues that Claimant was required to demonstrate that he held French nationality at the time of the alleged violations of the BIT,⁹¹ and highlights that for the Tribunal to have jurisdiction *ratione temporis*, the BIT cannot retroactively apply to acts or facts that occurred before its entry into force.⁹² The Russian Federation states that international case law confirms this understanding, as found by the tribunals in *Société Générale v Dominican Republic*⁹³ and *Philip Morris v Australia*.⁹⁴
129. Respondent recalls Mr. Pugachev’s claim that the Russian Federation terminated and expropriated the Red Square Project, and states that “*even accepting the Claimant’s factual case, this termination and expropriation was first purportedly considered in 2007 and took*

⁸⁶ Claimant’s Counter Memorial on Jurisdiction, 20 July 2018, ¶ 158.

⁸⁷ Respondent’s Reply Memorial on Jurisdiction, 19 December 2018, ¶ 269.

⁸⁸ Respondent’s Reply Memorial on Jurisdiction, 19 December 2018, ¶ 270.

⁸⁹ Respondent’s Reply Memorial on Jurisdiction, 19 December 2018, ¶¶ 288-290.

⁹⁰ Respondent’s Answers to the Tribunal’s Questions, 19 July 2019, ¶ 59.

⁹¹ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 180, citing **Exhibit CL-151**, *Abaclat and Others v The Argentine Republic*, ICSID Case No. ARB/13/6, Decision on Jurisdiction, dated 8 March 2017, ¶ 191.

⁹² Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 181, citing **Exhibit RL-113**, E. Z. Jaramillo, A. Saldarriaga *et. al.*, Treaty Planning: Current Trends in International Investment Disputes that Impact Foreign Investment Decisions and Treaty Drafting, in Miguel Angel Fernandez-Ballester and David Arias (eds), *Liber Amicorum Bernardo Cremades*, 2010, p. 1239; **Exhibit RL-106**, Article 28 of the Vienna Convention; **Exhibit RL-114**, Article 13 of the Articles on Responsibility of States for Internationally Wrongful Acts.

⁹³ **Exhibit RL-63**, *Société Générale v Dominican Republic*, LCIA Case No. UN 7927, ¶ 105.

⁹⁴ **Exhibit RL-28**, *Philip Morris Asia Limited v Commonwealth of Australia*, PCA Case No. 2012-12, Award on Jurisdiction and Admissibility, dated 17 December 2015, ¶ 529.

place before the Claimant became a French national on 30 November 2009".⁹⁵ In Respondent's view, the alleged expropriation – on Claimant's case – would have taken place on 13 April 2009, when the Presidential Order allegedly instructed the DPA to ensure the termination of the Red Square Agreement.⁹⁶

b) Claimant's claims are abusive

130. According to Respondent, Claimant has committed an abuse of process or rights, by (i) allegedly acquiring the French nationality with the sole purpose of gaining access to the BIT's protection; (ii) attempting to internationalise a domestic dispute in order to re-litigate issues that have already been decided against him; and (iii) allegedly acquiring and holding French nationality whilst remaining a senator in Russia.⁹⁷
131. In substantiating its argument, Respondent elaborates on the doctrine of abuse, recalling that international case law – including investment arbitration case law – provides authority for the right of a tribunal to dismiss a claim that constitutes an abuse of right or process.⁹⁸ The Russian Federation reiterates that where there is an abuse of process, the Tribunal has a duty to ensure that the BIT does not lead to protect investments that it is not designed to protect.⁹⁹
132. Respondent states that Claimant's alleged acquisition of the French nationality was abusive, as its sole purpose was to gain access to the benefits of the BIT, and to internationalize a domestic dispute that was already decided against him. Based on the decisions of the tribunals in *Venezuela Holdings v Venezuela*,¹⁰⁰ *Société Générale v Dominican Republic*¹⁰¹ and *Renée Levy v Peru*,¹⁰² the Russian Federation argues that such circumstances are not permissible with respect to existing or foreseeable disputes, or better, pre-existing disputes, as such constitute an abusive manipulation of the system of international investment

⁹⁵ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 207.

⁹⁶ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 210; Respondent's Answers to the Tribunal's Questions, 19 July 2019, ¶ 46.

⁹⁷ Respondent's Reply on Jurisdiction, 19 December 2019, ¶¶ 326-394.

⁹⁸ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 215, citing **Exhibit RL-115**, P. Gaffnay, Abuse of Process in Investment Treaty Arbitration, *The Journal of World Investment and Trade* (2010), pp. 519-521; **Exhibit RL-23**, *Venezuela Holdings B.V., and Others (case formerly known as Mobil Corporation and Others) v Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/27, Decision on Jurisdiction, dated 10 June 2010, ¶¶ 169-175.

⁹⁹ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 221, citing **Exhibit RL-26**, *ST-AD GmbH v Republic of Bulgaria*, PCA Case No. 2011-06 (ST-BG), Award on Jurisdiction, dated 18 July 2013, ¶ 423; **Exhibit RL-47**, *Gustav F W Hamster GmbH & Co KG v Republic of Ghana*, ICSID Case No. ARB/07/24, Award, dated 18 June 2010, ¶ 123.

¹⁰⁰ **Exhibit RL-23**, *Venezuela Holdings B.V. and others (Case formerly known as Mobil Corporation and others) v Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/27, Decision on Jurisdiction, dated 10 June 2010, ¶ 205.

¹⁰¹ **Exhibit RL-63**, *Société Générale in respect of DR Energy Holdings Limited and Empresa Distribuidora de Electricidad del Estado, S.A. v The Dominican Republic*, Award on Preliminary Objections to Jurisdiction, dated 19 December 2008, ¶ 110.

¹⁰² **Exhibit RL-30**, *Renée Rose Levy and Gremcitel S.A. v Republic of Peru*, ICSID Case No. ARB/11/17, Award, dated 9 January 2015, ¶ 185.

protection.¹⁰³ In the view of Respondent, the key matter is whether or not Claimant knew, or was able to foresee a dispute under the BIT at the moment he applied for French nationality.¹⁰⁴ According to Respondent:

*“the Claimant knew, on his own case, that a dispute had arisen, or would probably arise, on both 20 April 2009 (when he made his application for French nationality) and on 30 November 2009 (when that application for nationality was granted) in relation to (at least) his investments in the Red Square Project, and that he subsequently acquired French nationality for the purpose of seeking to bring this dispute within the ambit of the BIT. As a result, the Tribunal should not exercise its discretion on the grounds that the Claimant has abused the purpose of the BIT.”*¹⁰⁵

133. The Russian Federation further states that Claimant’s claims have already been extensively considered and dismissed by domestic courts.¹⁰⁶

- i. Respondent recalls Claimant’s arguments in relation to the Shipyard Interests: that (a) Mr. Pugachev was forced to pledge the Shipyard Interests in favour of the Russian Central Bank; (b) the IIB was forced into bankruptcy; (c) the DIA was appointed as its bankruptcy receiver; and that (iv) the Russian Central Bank proceeded to take action to enforce the Shipyard pledges which resulted in the sale of the Shipyard Interests at an alleged undervalue.¹⁰⁷ In its view, these arguments are virtually the same as those advanced and considered before the Russian courts, which entails that Mr. Pugachev’s arguments in this Arbitration constitute a re-litigation of those advanced within the Russian domestic jurisdiction.¹⁰⁸
- ii. Regarding Claimant’s claims related to the Red Square Project, Respondent states that the Russian courts have examined these arguments and have ultimately dismissed them.¹⁰⁹ Respondent highlights that the substance of the claims brought before this Tribunal is manifestly the same as the relief sought by Claimant within Russian jurisdiction.¹¹⁰

¹⁰³ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 224.

¹⁰⁴ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 228.

¹⁰⁵ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 235.

¹⁰⁶ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 258.

¹⁰⁷ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 260. Claimant’s Statement of Claim, 29 September 2017, ¶ 918.

¹⁰⁸ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶¶ 261-266.

¹⁰⁹ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 270, citing **Exhibit C-188**, Ninth Appeal Court Judgement Case No. A40-23148-11-85/201, dated 20 March 2013; **Exhibit C-189**, Judgement of the Federal Arbitrazh Court, Case No. A40-23148-11-85/201, dated 30 July 2013; **Exhibit C-191**, Judgment of the Moscow Commercial Court, Case No. A4061588/2012, dated 20 August 2013; **Exhibit C-194**, Ruling of the Supreme Arbitration Court of the Russian Federation, Case No. A40-61588/2012, dated 10 July 2014.

¹¹⁰ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 271.

- iii. In relation to EPC, Respondent states that EPC challenged the revocation of its mining license in the Moscow City Commercial Court, which, in its view, is substantially similar to Claimant's claims brought before this Tribunal.¹¹¹
 - iv. Regarding the DIA-related claims, the Russian Federation argues that the DIA, in its capacity of bankruptcy receiver, initiated proceedings against Claimant in England and Wales. These proceedings are linked to the Subsidiary Liability Judgement and have already been settled by the English courts.¹¹² Moreover, Respondent submits that international arbitration is not the appropriate forum for this dispute, as it is the DIA, and not the Russian Federation, the party to those proceedings.¹¹³ Respondent additionally points out that "[p]roceedings to enforce the Subsidiary Liability Judgement are ongoing in the Cayman Islands, Luxembourg and France".¹¹⁴
134. Furthermore, Respondent alleges that by submitting his claims to this Arbitration, Claimant is attempting to inappropriately internationalise domestic disputes. Thus, it requests the Tribunal to dismiss the claims.¹¹⁵
135. Lastly, the Russian Federation states that Mr. Pugachev's alleged acquisition of French nationality contravenes Russian law, since Claimant was a Russian parliamentarian at the time of the alleged naturalisation.¹¹⁶
136. Based on the First Expert Report of Mr. Belov, Respondent states that "*Russian legislation expressly prohibits members of the Russian parliament, including members of the Federation Council, from holding foreign nationality (i.e., any nationality other than Russian)*".¹¹⁷ In the view of the Russian Federation, Claimant's deliberate contravention to

¹¹¹ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 273.

¹¹² Respondent's Submission on Jurisdiction, 6 April 2018, ¶¶ 274-277, citing **Exhibit RL-17**, *JCS Mezhdunarodniy Promyshlenniy Bank and State Corporation "Deposit Insurance Agency" v Sergei Pugachev*, [2016], EWHC, (Ch), Judgement of Mrs. Justice Rose, dated 8 February 2016, ¶ 49; **Exhibit RL-18**, *JCS Mezhdunarodniy Promyshlenniy Bank and State Corporation "Deposit Insurance Agency" v Sergei Pugachev*, [2016], EWHC, (Ch), Judgement of Mrs. Justice Rose, dated 12 February 2016.

¹¹³ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 280.

¹¹⁴ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 281, citing Claimant's Statement of Claim, 29 September 2017, ¶¶ 383-384; **Exhibit C-37**, Grand Court of the Cayman Islands, *JCS Mezhdunarodniy Promyshlenniy Bank and State Corporation "Deposit Insurance Agency" v Sergei Pugachev, Arcadia Nominees Limited DB Marine*, Case No. FDS 45, Injunction prohibiting disposal of assets, dated 20 April 2016; **Exhibit C-39**, Notice of an attachment order in Luxembourg delivered by Bailiff to Attorney Lex Thielen, Centx Immo SA, Luxury Investments SA, Sablon International SA, dated 4 May 2016.

¹¹⁵ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 282.

¹¹⁶ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 283.

¹¹⁷ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 283, citing **Exhibit RL-75**, Federal Law No. 3-FZ dated 8 May 1994 "On the Status of a Members of the Federation Council and the Status of a Deputy of the State Duma of the Federal Assembly of the Russian Federation", Article 1(3); First Expert Report of Mr. Belov, dated 6 April 2018, ¶¶ 44-47.

Russian Law reinforces its argument according to which Mr. Pugachev's acquisition of French nationality constitutes an abuse of process in respect of these proceedings.¹¹⁸

137. For these reasons, Respondent requests the Tribunal to refuse to exercise its jurisdiction and entirely dismiss Claimant's claims.

c) The DIA's actions are not attributable to the Russian Federation

138. Respondent refers to the international rules of attribution of actions to States to establish that the conduct of the DIA is not attributable to the Russian Federation as a matter of international law.¹¹⁹ Respondent notes that Claimant's omission to rely on Article 4 of the ILC Articles of Responsibility of States for Internationally Wrongful Acts (the "**ILC Articles**"), amounts to Claimant's concession that the DIA is not a State organ.¹²⁰ Respondent, then, states that (i) the DIA does not act with delegated government authority in the context of Article 5 of the ILC Articles, and that (ii) the DIA was not acting under the instruction, direction or control of Respondent under Article 8 of the ILC Articles.
139. *Regarding Article 5 of the ILC Articles*, Respondent recalls the "functional test", stating that it entails a two-fold approach, where Claimant was required to establish that: (a) the DIA is empowered to exercise governmental authority as a matter of law; and (b) the specific facts of which he complains involved the exercise of that governmental authority.¹²¹
140. According to the Russian Federation, the DIA is not empowered to exercise government authority as a matter of law, as it acted in its capacity of bankruptcy receiver; one of its various functions. It further states that under Russian law, such a function is defined as "*carry[ing] out the functions of a bankruptcy receiver (liquidator) in the bankruptcy of credit organisations*".¹²² Respondent explains that if a collapsed bank does not hold a retail deposits license, the Russian courts have the discretion to appoint either the DIA or a private insolvency administrator to act as bankruptcy receiver;¹²³ However, if the bank holds the aforementioned license, the court must appoint the DIA.¹²⁴

¹¹⁸ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 286.

¹¹⁹ Respondent's Reply on Jurisdiction, 19 December 2018, ¶¶ 515-639.

¹²⁰ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 299.

¹²¹ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 301.

¹²² Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 303, citing **Exhibit CL-36**, Law No. 177-FZ "On Insuring Natural Persons' Deposits with Banks of the Russian Federation", dated 23 December 2003, amended as of 2015, Article 15(4).

¹²³ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 303, citing **Exhibit RL-120**, the Insolvency Law, Article 189.77(2) and (3).

¹²⁴ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 303, citing **Exhibit RL-120**, the Insolvency Law, Article 189.77(1).

141. On the basis of the decisions of the tribunals in *Plama v Bulgaria*,¹²⁵ *Vocklinghaus v Czech Republic*¹²⁶ and *Oostergetel v Slovak Republic*,¹²⁷ the Russian Federation asserts that the acts carried out by a bankruptcy receiver, an administrator or a liquidator do not constitute the exercise of government authority. In this sense, Respondent holds that the DIA does not exercise government authority as a matter of law.
142. Furthermore, Respondent asserts that the acts of which Claimant complains did not involve the exercise of governmental authority, since the DIA acted in the capacity of bankruptcy receiver. In the view of Respondent, this capacity entails that the DIA was required to act in the best interests of the bank's creditors, and not of the Russian Federation;¹²⁸ making it a representative of the creditors, and not of the State.¹²⁹ Additionally, based on the ILC Commentary of Article 5 of the ILC Articles, Respondent highlights that "*it is not enough that [the State] permits [the] activity as part of the general regulation of the affairs of the community. [Governmental authority] is a rather narrow category*".¹³⁰
143. In the view of Respondent, Claimant failed to establish that the conduct of the DIA of which Mr. Pugachev complains, is attributable to the Russian Federation under Article 5 of the ILC Articles.
144. *Regarding Article 8 of the ILC Articles*, Respondent states that "[i]n order to succeed in arguing that the DIA's actions are attributable to the State [...] the Claimant must not only establish that the State exercised general control over the DIA, but that the DIA acted on the instructions of the State in carrying out the wrongful act".¹³¹
145. Respondent notes that being a State-owned entity or being subject to government control does not necessarily entail that the State gives instructions to or has control over it.¹³²

¹²⁵ **Exhibit CL-232**, *Plama Consortium Limited v Republic of Bulgaria*, ICSID Case No. ARB/03/24, Award, dated 27 August 2008, ¶ 253.

¹²⁶ **Exhibit RL-121**, *Peter Franz Vlockinghaus v The Czech Republic*, UNCITRAL, Final Award, dated 19 September 2011, ¶ 189.

¹²⁷ **Exhibit RL-122**, *Jan Oostergetel and Theodora Laurentius v Slovak Republic*, UNCITRAL, Award, dated 23 April 2012, ¶ 157.

¹²⁸ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 307, citing the Response to the Request for Interim Measures, dated 10 February 2017, ¶ 119; **Exhibit RL-33**, the Insolvency Law, Article 189.78; **Exhibit RL-32**, Credit Organisations Insolvency Law repealed in 2014, Articles 50.21(1) and 59.21(2).

¹²⁹ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 307, citing **Exhibit RL-123**, *MNSS B.V. and Recupero Credito Acciato N.V. v Montenegro*, ICSID Case No. ARB(AF)/12/8, Award, dated 4 May 2015, ¶¶ 313-314; **Exhibit RL-122**, *Jan Oostergetel and Theodora Laurentius v Slovak Republic*, UNCITRAL, Award, dated 23 April 2012, ¶ 155.

¹³⁰ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 310, citing **Exhibit RL-124**, J. Crawford, *The International Law Commission's Articles on State Responsibility*, Cambridge University Press, (2002), pp. 101-102.

¹³¹ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 313, citing **Exhibit CL-166**, *Jan de Nul N.V. and Dredging International N.V. v Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Award, dated 6 November 2008, ¶ 173.

¹³² Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 313, citing **Exhibit RL-125**, *UAB E energija (Lithuania) v Republic of Latvia*, ICSID Case No. ARB/12/33, ¶¶ 825-826; **Exhibit CL-224**, *Saint-Gobain Performance Plastics Europe v Bolivarian Republic of Venezuela*, ICISD Case No. ARB/12/13, Decision on

Additionally it states that the DIA's conduct as bankruptcy receiver is limited by the framework established in Russian law,¹³³ and that there is no legal mechanism that would allow Respondent to interfere with such a function, as it is expressly prohibited. Moreover, Respondent states that Claimant has failed to adduce any evidence on an interference from Respondent to the DIA's functions.¹³⁴

146. In this sense, Respondent submits that Claimant failed to establish that the conduct of the DIA related to the Shipyard Claims, the Other Investments and the Moral Damages Claims, is attributable to the Russian Federation; exceeding the BIT.¹³⁵ Therefore, Respondent asserts that the Tribunal lacks jurisdiction to decide over Claimant's claims.

d) Claimant did not comply with the procedure established in Article 7 of the BIT

147. According to the Russian Federation, Article 7 of the BIT sets out the mandatory requirements to initiate arbitration, which Claimant failed to comply with, because: (1) Mr. Pugachev did not give notice of the dispute under the BIT, and (2) Mr. Pugachev did not comply with the six-month cooling-off period to attempt amicable settlement of the dispute.¹³⁶ Additionally, Respondent argues that (3) Claimant cannot circumvent the application of Article 7 of the BIT via the Most Favoured Nation clause.

1. Mr. Pugachev did not give notice of the dispute under the BIT

148. Respondent explains that Article 7 of the BIT contains three distinct requirements: (i) a notice of a dispute, (ii) an attempt to settle the dispute amicably; and (iii) the expiration of a cooling-off period of six months.¹³⁷ The Russian Federation alleges that Claimant failed to comply with these requirements.
149. *Regarding the notification of the dispute*, Respondent states that when the provision refers to the "raising" of the dispute, it inevitably entails a notification of such dispute as "*it is impossible to conceive how a party could "raise" a dispute tacitly and without notifying the other party of it*".¹³⁸
150. Citing the decision of the tribunal in *Burlington Resources v Republic of Ecuador*, Respondent emphasizes the importance of the notification of the dispute as it is "*an*

Liability and the Principle of Quantum, dated 30 December 2016, ¶ 452; **Exhibit RL-126**, *Mr. Kristian Almås and Mr. Geir Almås v The Republic of Poland*, PCA Case No. 2015-13, Award, dated 27 June 2016, ¶ 270; **Exhibit CL-142**, *Tulip Real Estate and Development Netherlands B.V. v Republic of Turkey*, ICSID Case No. ARB/11/28, Award, dated 10 March 2014, ¶ 310.

¹³³ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 314, citing **Exhibit RL-33**, the Insolvency Law, Articles 129(1) and 189.78(1); **Exhibit RL-32**, Credit Organisations Insolvency Law repealed in 2014.

¹³⁴ Respondent's Submission on Jurisdiction, 6 April 2018, ¶¶ 314-315.

¹³⁵ Respondent's Reply on Jurisdiction, 19 December 2018, ¶¶ 498-504.

¹³⁶ Respondent's Reply on Jurisdiction, 19 December 2019, ¶¶ 402-471.

¹³⁷ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 326.

¹³⁸ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 329.

*opportunity to redress the problem before the investor submits the dispute to arbitration”.*¹³⁹ Respondent notes that, if the notice is not interpreted as mandatory, the provisions of Article 7 of the BIT cannot operate, because the initiation of the attempt to amicably settle the dispute is not triggered.¹⁴⁰

151. According to Respondent, Claimant made no notification of the existence of a dispute under the BIT. Respondent considers there is a discrepancy between the Notice of Arbitration and the Statement of Claim: in his Notice of Arbitration, Claimant asserts that Mr. Pugachev delivered a letter to President Putin on 14 December 2014;¹⁴¹ however, in his Statement of Claim, Claimant asserts that such letter was provided to President Putin on 10 December 2014. The Russian Federation, on its part, claims to have no record of receiving the aforementioned letter, and challenges the genuine nature of the evidence submitted by Claimant in that regard.¹⁴²

2. *Mr. Pugachev did not comply with the six-month cooling-off period to attempt amicable settlement of the dispute*

152. Respondent argues that the use of the word “shall” in the text of Article 7 of the BIT, imposes a mandatory obligation on the Parties to attempt to find an amicable settlement of the dispute during a six-months cooling-off period.¹⁴³ Based on the decisions *Murphy Exploration and Production Company International v Republic of Ecuador*,¹⁴⁴ *Enron Corporation v Argentine Republic*¹⁴⁵ and *Guarachachi America Inc. and Rurelec Plc v The Plurinational State of Bolivia*,¹⁴⁶ Respondent asserts that the relevant inquiry is whether the Parties made a genuine attempt to amicably settle such dispute.
153. Respondent asserts that, aside from failing to notify the dispute, Claimant did not make any attempt to amicably settle the dispute. Furthermore, it objects to Claimant’s statement that he “*had already attempted on numerous occasions to settle the dispute amicably with*

¹³⁹ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 330, citing **Exhibit RL-79**, *Burlington Resources Inc. v Republic of Ecuador*, ICSID Case No. 08/5, Decision on Jurisdiction, dated 2 June 2010, ¶¶ 315 and 338.

¹⁴⁰ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 331.

¹⁴¹ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 341, citing Claimant’s Notice of Arbitration, 21 September 2015, ¶ 134.

¹⁴² Respondent’s Submission on Jurisdiction, 6 April 2018, ¶¶ 341-342.

¹⁴³ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 334.

¹⁴⁴ **Exhibit RL-78**, *Murphy Exploration and Production Company International v Republic of Ecuador [1]*, ICSID Case No. ARB/08/4, Award on Jurisdiction, dated 15 December 2010, ¶ 149.

¹⁴⁵ **Exhibit RL-80**, *Enron Corporation v Argentine Republic*, Decision on Jurisdiction, ICSID Case No. ARB/01/3, IIC 92, dated 14 January 2004, ¶ 88.

¹⁴⁶ **Exhibit CL-259**, *Guarachachi America Inc. And Rurelec Plc v The Plurintional State of Bolivia*, Award, PCA Case No. 2011-17, IIC 628, dated 2014, ¶¶ 386 and 388.

Respondent” by 21 March 2015¹⁴⁷, arguing that the evidence submitted by Claimant in that regard¹⁴⁸ appears insufficient.

154. The Russian Federation also opposes to Claimant’s argument that the obligation is one of “best efforts”,¹⁴⁹ but notes that, “*even if the Tribunal were to adopt this standard, the Claimant did not make a ‘best efforts’ (or indeed, any) attempt at settlement: he simply failed to inform the Respondent sufficiently of allegation of breaches before the dispute was submitted to arbitration – this constitutes no effort to resolve the dispute prior to arbitration on the Claimant’s part*”.¹⁵⁰

3. *Claimant cannot circumvent the application of Article 7 of the BIT via the Most Favoured Nation clause*

155. Respondent rejects Claimant’s argument that Article 7 of the BIT is inapplicable due to the effect of the MFN clause of the BIT, which allows him to import the most-favourable provisions of Article 11 of the Japan-Russia bilateral investment treaty.¹⁵¹ According to the Russian Federation, (i) Claimant is not entitled to engage in disruptive “treaty-shopping”, and (ii) in any event, the MFN clause does not extend to supplementing dispute settlement provisions by treaty shopping.¹⁵²
156. In this sense, Respondent argues that Claimant is seeking to rely on some provisions of the BIT while rejecting others. It notes that Claimant purports to apply Article 11(1) of the Japan-Russia bilateral investment treaty – which is silent on the topic of notification of the dispute; but does not intend to apply Article 11(4) of the Japan-Russia bilateral investment treaty – which prevents an investor from initiating arbitration in the presence of domestic judicial settlement.¹⁵³ In its view, such selective application constitutes disruptive treaty shopping.

¹⁴⁷ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶¶ 351-353, citing Claimant’s Statement of Claim, 29 September 2017, ¶ 681.

¹⁴⁸ **Exhibit C-482**, Letter from the Claimant to Prime Minister Putin, dated 30 March 2012; **Exhibit C-483**, Letter from the Claimant to Prime Minister Putin, Ref. 01-12, dated 11 January 2012.

¹⁴⁹ Claimant’s Statement of Claim, 29 September 2017, ¶ 675; **Exhibit CL-150**, *Tulip Real Estate and Development Netherlands B.V. v Republic of Turkey*, ICSID Case No. ARB/11/28, Decision on Bifurcated Jurisdictional Issue, dated 5 March 2013, ¶ 124.

¹⁵⁰ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 355.

¹⁵¹ Respondent’s Reply on Jurisdiction, 19 December 2018, ¶ 473, citing Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶¶ 324-331.

¹⁵² Respondent’s Reply on Jurisdiction, 19 December 2018, ¶ 475.

¹⁵³ Respondent’s Reply on Jurisdiction, 19 December 2018, ¶¶ 479-479.

157. Respondent notes that the purpose of the MFN clause is to ensure that foreign investors from different countries compete on the same level; not to promote disruptive treaty shopping.¹⁵⁴ The Russian Federation further argues that:¹⁵⁵

“contrary to the Claimant’s assertion that MFN provisions in bilateral investment treaties should be understood to be applicable to dispute settlement, and this position ‘has been since reiterated on multiple occasions’,¹⁵⁶ this is far from being settled jurisprudence. The tribunal in Gas Natural v Argentina stressed that the issue of applying a general MFN clause to the dispute resolution provisions of bilateral investment treaties is not free from doubt, and that different tribunals, faced with different facts and negotiating background, may reach different results.”¹⁵⁷

B. Claimant’s position

158. Claimant requests the Tribunal to dismiss Respondent’s objections to jurisdiction, as – in his view – Claimant has sufficiently and unequivocally established the Tribunal’s jurisdiction to settle the present dispute.¹⁵⁸ In this sense, Mr. Pugachev argues that:¹⁵⁹
- i. Claimant is a protected investor under Article 1.2 of the BIT;
 - ii. Claimant’s claims are not abusive;
 - iii. notwithstanding its limited relevance to this Arbitration, the DIA’s acts are attributable to the Russian Federation; and
 - iv. the provisions of Article 7 of the BIT do not constitute a procedural bar to the Tribunal’s jurisdiction.
159. Claimant begins by making two general preliminary remarks in relation to the burden and the standard of proof in this case, stating that (i) the evidential burden of proof has shifted to Respondent; and that (ii) Claimant has proved his claims under the required standard of proof.¹⁶⁰
160. *Regarding the shift of the evidential burden of proof*, Claimant asserts that, pursuant to the principle of *reus excipiendo fit actor* – the defendant, by raising an exception or by pleading, becomes a plaintiff – reflected in Article 24 of the 1976 UNCITRAL Rules, Claimant has to prove its case; then, it is for Respondent to provide evidence and to prove the defences

¹⁵⁴ **Exhibit RL-157**, P. Acconci, Oxford Handbook of International Investment Law, Most Favoured Nation Treatment, p. 365; **Exhibit CL-137**, *Emilio Agustin Maffezini v Kingdom of Spain*, ICSID Case No. ARB/97/7, Decision on Jurisdiction, dated 25 January 2000, ¶ 63.

¹⁵⁵ Respondent’s Reply on Jurisdiction, 19 December 2018, ¶ 484.

¹⁵⁶ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 326.

¹⁵⁷ **Exhibit CL-331**, *Gas Natural SDG S.A. v Argentina*, ICSID Case No. ARB/03/10, Decision of the Tribunal on Preliminary Questions on Jurisdiction, dated 17 June 2015, ¶ 49.

¹⁵⁸ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 22.

¹⁵⁹ Claimant’s Rejoinder on Jurisdiction, 26 March 2019, ¶ 49; Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 28.

¹⁶⁰ Claimant’s Rejoinder on Jurisdiction, 26 March 2019, ¶ 27.

raised.¹⁶¹ In this context, Mr. Pugachev highlights that he has never contested that he carries the legal burden of proving that (i) he meets the jurisdictional requirements of Article 1.2 of the BIT; (ii) he fulfils the procedural conditions of Article 7 of the BIT; and (iii) the attributability of the DIA's acts to Respondent.¹⁶²

161. Claimant notes that “*contrary to what Respondent suggests, it is a settled principle that once a party adduces sufficient evidence in support of its assertion, the evidential burden shifts to the other party, without affecting the legal burden of proof.*”¹⁶³ Claimant submits that it was thoroughly demonstrated throughout his submissions that he has discharged his evidential burden in all respects.
162. Additionally, Mr. Pugachev highlights that a large amount of the evidence submitted by Respondent is self-made, which creates a strong imbalance between the Parties. Claimant invites the Tribunal to consider such imbalance in ensuring the equality of arms between the Parties.¹⁶⁴
163. *Regarding the standard of proof*, Claimant states that he has already provided sufficient evidence in support of his claims.¹⁶⁵ In this context, Mr. Pugachev notes that:
- “*Under the balance of probabilities standard, any doubt should benefit to Claimant since the evidence brought only needs to be ‘sufficient to incline a fair and impartial mind to one side of the issue rather than the other’.*¹⁶⁶
 - “[...] *Respondent provides no serious explanation as to why its abuse of process claim should be based on a prima facie standard, while it is uncontested that the applicable standard for such a claim is very high; and*
 - *Respondent also fails to justify why Claimant’s claim in relation to the DIA would be an exception to the balance of probabilities standard, which is, on Respondent’s own case, ‘normally applied in international arbitration’.*¹⁶⁷ [...]”¹⁶⁸

¹⁶¹ Claimant’s Rejoinder on Jurisdiction, 26 March 2019, ¶ 28.

¹⁶² Claimant’s Rejoinder on Jurisdiction, 26 March 2019, ¶ 31; Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 16.

¹⁶³ Claimant’s Rejoinder on Jurisdiction, 26 March 2019, ¶ 32, citing **Exhibit CL-195**, *Alpha Projektholding GmbH v Ukraine*, ICSID Case No. ARB/07/16, Award, dated 8 November 2010, ¶ 236; **Exhibit CL-218**, *Asian Agricultural Products LTD (AAPL) v Republic of Sri Lanka*, ICSID Case No. ARB/87/3, Final Award, dated 27 June 1990, ¶ 56; **Exhibit CL-362**, *Marvin Roy Feldman Karpa v United Mexican States*, ICSID Case No. ARB(AF)/99/1, Award, dated 16 December 2002, ¶ 177, citing United States – Measures Affecting Imports of Woven Wool Shirts and Blouses from India, Adopted 23 May 1997, WT/DS33/AB/R, p. 14; **Exhibit CL-190**, *International Thunderbird Gaming Corp. v United Mexican States*, NAFTA, Award, dated 26 January 2006, ¶ 95; **RL-46**, *The Rompetrol Group N.V. v Romania*, ICSID Case No. ARB/06/3, Award, dated 6 May 2013, ¶ 179.

¹⁶⁴ Claimant’s Rejoinder on Jurisdiction, 26 March 2019, ¶ 40.

¹⁶⁵ Claimant’s Rejoinder on Jurisdiction, 26 March 2019, ¶ 41; Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 17.

¹⁶⁶ Respondent’s Reply on Jurisdiction, 19 December 2018, ¶ 34.

¹⁶⁷ Respondent’s Reply on Jurisdiction, 19 December 2018, ¶ 32.

¹⁶⁸ Claimant’s Rejoinder on Jurisdiction, 26 March 2019, ¶ 44.

a) The definition of “investor” under the BIT

164. Claimant begins by highlighting that the Russian courts have officially recognized that Mr. Pugachev is a French national as stated by the judgement of the Ninth Arbitrazh Court of Appeals of Moscow, on 15 February 2018;¹⁶⁹ and as confirmed by the ruling of the Commercial Court of Moscow, on 9 July 2018.¹⁷⁰ In Claimant’s Response to the Tribunal’s Questions, Mr. Pugachev brought to the Tribunal’s attention that, under Russian law, the notification procedure for foreigners used by the Ninth Arbitrazh Court of Appeals of Moscow against Claimant was exclusively applicable to people who are not citizens of Russia, because the main criterion for its application is the existence of foreign citizenship residing abroad.¹⁷¹ Claimant states that this understanding is further confirmed by Ruling No. 23 of the Plenary Session of the Supreme Court of the Russian Federation of 27 June 2017¹⁷² and reiterated by Professor Butler.¹⁷³
165. Claimant thus concludes that Respondent’s denial of Claimant’s French nationality in spite the existence of these rulings, represents an essential flaw within the Russian Federation’s first objection to the Tribunal’s jurisdiction.¹⁷⁴
166. Mr. Pugachev further argues that (1) he validly acquired French nationality, (2) there is no bar to the applicability of the BIT to dual French-Russian nationals, (3) the principle of “dominant and effective” nationality is not applicable to the present case; and that (4) he was a national of France at all the relevant times for the application of the BIT.

1. The validity of Claimant’s acquisition of French nationality

167. In the present case, Claimant argues that his French nationality is valid, as (i) France has sovereign power and a margin of appreciation in the conferment of nationality; and (ii) the Tribunal may only examine France’s sovereign decision to grant nationality to Mr. Pugachev in light of decisive evidence of material error or fraud.¹⁷⁵ According to Claimant, the Russian Federation has failed to meet its burden of proving its own allegations.¹⁷⁶ Claimant also highlights that Respondent’s analysis of French law bears no relevance to this Arbitration.

¹⁶⁹ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 28, citing **Exhibit C-493**, Decision of the Ninth Arbitrazh Court of Appeals, Case No. A40-119763/10, 15 February 2018, p. 4.

¹⁷⁰ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶¶ 28 and 41, citing **Exhibit C-495**, Decision of the Commercial Court of the Moscow Circuit, Case No. A40-119763/20, 9 July 2018; Claimant’s Rejoinder on Jurisdiction, 26 March 2019, ¶¶ 54, 57-64.

¹⁷¹ Claimant’s Responses to the Tribunal’s Questions, 19 July 2019, ¶¶ 4-5, citing **Exhibit C-495**, Decision of the Commercial Court of the Moscow Circuit, Case No. A40-119763/10, 9 July 2018, p. 5.

¹⁷² Claimant’s Responses to the Tribunal’s Questions, 19 July 2019, ¶ 7, citing **Exhibit CL-428**, Ruling No. 23 of the Plenary Session of the Supreme Court of the Russian Federation, 27 June 2017, p. 14.

¹⁷³ Claimant’s Responses to the Tribunal’s Questions, 19 July 2019, Appendix A, Professor Butler’s Answers, ¶ 20.

¹⁷⁴ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 29.

¹⁷⁵ Claimant’s Responses to the Tribunal’s Questions, 19 July 2019, ¶ 93.

¹⁷⁶ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 30.

168. *Regarding France's sovereign power and margin of appreciation in the conferment of French nationality*, Claimant states that it is not for the Tribunal to assess whether the French authorities have rightfully applied French law when conferring French nationality to Mr. Pugachev, which renders Professor Jault-Seseke's expert report on French law, irrelevant.¹⁷⁷ In the view of Claimant, the Tribunal is to determine the opposability of Mr. Pugachev's French nationality for the purposes of this Arbitration, if and only if, Respondent had decisively established that the acquisition of such nationality was fraudulent or the product of a material error.¹⁷⁸ Claimant asserts that Respondent has failed to meet its burden of bringing decisive evidence against Mr. Pugachev in that regard.¹⁷⁹
169. Claimant supports its argument with the reasoning of the tribunal in the *Ioan Micula* case,¹⁸⁰ and states that the margin of appreciation of a State in conferring nationality to a natural person, is confirmed in the Report of the International Law Commission.¹⁸¹ It adds that there exists a presumption in favour of the validity of such conferment.¹⁸²
170. Claimant challenges Professor Jault-Seseke's expert report, noting that it does not contest the existence of the Naturalisation Decree,¹⁸³ but attempts to analyse – in the abstract – whether Mr. Pugachev obtained French nationality under normal conditions.¹⁸⁴ In the view of Claimant, this analysis disregards the fact that Mr. Pugachev is an eminent and political personality, whose citizenship may represent different interests to a State. This justifies the exercise of France's margin of appreciation in conferring him French citizenship.¹⁸⁵
171. Mr. Pugachev also objects to Respondent's allegations based on the *Soufraki* case and notes that there is a clear contrast between that case and the case at hand. According to Claimant, the tribunal in the *Soufraki* case merely disregarded a nationality certificate issued by Italian authorities without enquiring into Mr. Soufraki's situation at that time;¹⁸⁶ whereas in the

¹⁷⁷ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 32.

¹⁷⁸ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 33.

¹⁷⁹ Claimant's Rejoinder on Jurisdiction, 26 March 2019, ¶¶ 89-113; Claimant's Responses to the Tribunal's Questions, 19 July 2019, ¶¶ 94 and 104.

¹⁸⁰ **Exhibit CL-297**, *Ioan Micula Viorel S.C. European Food S.A. S.C. Starmil S.R.L. y S.C. Multipack S.R.L. v Romania*, ICSID Case No. ARB/05/20, Decision on Jurisdiction and Admissibility, dated 24 September 2008, ¶¶ 94-95.

¹⁸¹ **Exhibit CL-298**, Report of the International Law Commission Fifty-sixth Session, dated 3 May – 4 June and 5 July – 6 August 2004, pp. 33-34; **Exhibit CL-299**, *Advisory Opinion of the Inter-American Court of Human Rights in the Proposed Amendments to the Naturalization Provisions of the Political Constitution of Costa Rica*, ¶ 62.

¹⁸² Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 36, citing **Exhibit CL-282**, International Law Commission, Draft Articles on Diplomatic Protection with commentaries, Yearbook of the International Law Commission, 2006, Vol. II, Part Two, p. 34.

¹⁸³ First Expert Report of Professor Jault-Seseke, ¶ 4.

¹⁸⁴ First Expert Report of Professor Jault-Seseke, ¶ 6.

¹⁸⁵ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 37.

¹⁸⁶ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 38, citing **Exhibit RL-70**, *Hussein Nuama Soufraki v United Arab Emirates*, ICSID Case No. ARB/02/7, Award, dated 7 July 2004, ¶¶ 66-68; **Exhibit CL-297**, *Ioan Micula. Viorel S.C. European Food S.A. S.C. Starmil S.R.L. y S.C. Multipack S.R.L. v Romania*, ICSID Case No. ARB/05/20, Decision on Jurisdiction and Admissibility, dated 24 September 2008, ¶¶ 94-96.

present case, Mr. Pugachev's French nationality is materialized by an official decree issued by the sovereign State of France as a result of a positive decision, signed by both the French Prime Minister and the Minister of Immigration.¹⁸⁷

172. Therefore, Claimant states that, as there is no doubt as to the validity of Mr. Pugachev's citizenship, "*he is not required, for the sake of establishing that he is an investor in the meaning of Article 1.2 of the France-Russia BIT, to demonstrate that he fulfilled the requirements set under French law for the acquisition of his French nationality*".¹⁸⁸
173. Furthermore, Claimant asserts that the French authorities have ample discretionary powers in the granting of naturalisation to certain persons, such as Mr. Pugachev. In Claimant's Response to the Tribunal's Questions, he asserted that the aforementioned discretion "*does not only relate to [the French authorities'] power to refuse French nationality when the applicant meets the conditions, but also, to different aspects of their positive decisions*".¹⁸⁹ According to Claimant, these powers are also reflected in (i) the absence of judicial control of the Administration's granting of nationality; (ii) the fact that these decisions are not required to be reasoned;¹⁹⁰ (iii) the Administration's ample margin of appreciation in its assessment of the naturalisation requirements;¹⁹¹ and (iv) the existence of expediency decisions in regard to naturalisation.¹⁹²
174. Claimant further noted that since the French Administration is not required to include any reasoning as to its positive naturalisation decisions, it is not possible for Mr. Pugachev to determine the exact route chosen by the French authorities in this case.¹⁹³ Yet, Claimant highlights that "[a]t the time of his Request for Naturalization, it was clear that his naturalisation represented an interest to France".¹⁹⁴
175. *Regarding the power of the Tribunal to examine France's sovereign decision to grant nationality to Mr. Pugachev,*¹⁹⁵ Claimant asserts that the threshold to override the decision of a sovereign State of conferring nationality to a natural person is very high, and the Tribunal may only do so in the case of a proven fraud or material error.¹⁹⁶ In substantiating

¹⁸⁷ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 40.

¹⁸⁸ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 41; Claimant's Rejoinder on Jurisdiction, 26 March 2019, ¶¶ 114-118.

¹⁸⁹ Claimant's Responses to the Tribunal's Questions, 19 July 2019, ¶ 15.

¹⁹⁰ Claimant's Rejoinder on Jurisdiction, 16 March 2019, ¶ 124; Claimant's Responses to the Tribunal's Questions, 19 July 2019, ¶ 21, citing Expert Report of Professor Etienne Pataut, pp. 3-4.

¹⁹¹ Claimant's Rejoinder on Jurisdiction, 26 March 2019, ¶¶ 129-130; Claimant's Responses to the Tribunal's Questions, 19 July 2019, 24, citing Expert Report Professor Etienne Pataut, p. 9

¹⁹² Claimant's Responses to the Tribunal's Questions, 19 July 2019, ¶ 17.

¹⁹³ Claimant's Responses to the Tribunal's Questions, 19 July 2019, ¶ 41.

¹⁹⁴ Claimant's Responses to the Tribunal's Questions, 19 July 2019, ¶ 39.

¹⁹⁵ Claimant's Rejoinder on Jurisdiction, 26 March 2019, ¶¶ 119-146.

¹⁹⁶ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 42, citing **Exhibit CL-297, Ioan Micula. Viorel S.C. European Food S.A. S.C. Starmil S.R.L. y S.C. Multipack S.R.L. v Romania**, ICSID Case No. ARB/05/20, Decision on Jurisdiction and Admissibility, dated 24 September 2008, ¶ 87.

its argument, Claimant referred to the decisions in *Ioan Micula*¹⁹⁷ and *Mr. Franck Charles Arif v Republic of Moldova*,¹⁹⁸ highlighting that it is not sufficient for Respondent to cast doubts without decisive evidence.

176. In this sense, Claimant submits that:

“Mr. Pugachev has discharged his burden of proof and demonstrated that he is a French national for the purposes of the France-Russia BIT.¹⁹⁹ Respondent, on the other hand, fails to prove any material error or fraud as to Mr. Pugachev’s French nationality, and absent such rebuttal, the presumption in favour of the validity of the State’s conferment of nationality prevails.”²⁰⁰

2. The applicability of the BIT to dual nationals of Russia and France

177. Claimant objects to Respondent’s arguments, stating that (i) dual nationals are not excluded from the BIT; and that (ii) in any event, Mr. Pugachev is not a Russian national.²⁰¹ In this sense, Claimant insists that Respondent should be precluded from objecting to Mr. Pugachev’s standing as a foreign investor under the BIT, provided that its own courts have recognized his foreigner standing.²⁰²

178. In line with this argument, Claimant states that, contrary to the ICSID Convention,²⁰³ the UNCITRAL Rules do not contain a restriction as to the applicability of the BIT to dual nationals of France and Russia.²⁰⁴ In the view of Mr. Pugachev, based on the principles of treaty interpretation,²⁰⁵ the issue of dual nationality should be resolved exclusively in light of the *lex specialis* existent between the Parties; *i.e.*, the BIT.²⁰⁶

¹⁹⁷ **Exhibit CL-297**, *Ioan Micula. Viorel S.C. European Food S.A. S.C. Starmil S.R.L. y S.C. Multipack S.R.L. v Romania*, ICSID Case No. ARB/05/20, Decision on Jurisdiction and Admissibility, dated 24 September 2008, ¶ 97.

¹⁹⁸ **Exhibit CL-184**, *Mr. Franck Charles Arif v Republic of Moldova*, ICSID Case No. ARB/11/23, Award, dated 8 April 2013, ¶ 357.

¹⁹⁹ **Exhibit C-480**, French Passport of Alexander Pugachev, issued on 19 September 2008; **Exhibit C-481**, Request for naturalization issued on 20 April 2009; **Exhibit RL-70**, *Hussein Nuama Soufraki v United Arab Emirates*, ICSID Case No. ARB/02/7, Award, dated 7 July 2004, ¶ 63.

²⁰⁰ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 45.

²⁰¹ Claimant’s Rejoinder on Jurisdiction, 26 March 2019, ¶¶ 198-213.

²⁰² Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 73.

²⁰³ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 89.

²⁰⁴ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 74, citing Article 25(2) of the ICSID Convention; Claimant’s Rejoinder on Jurisdiction, 26 March 2019, ¶¶ 214-218.

²⁰⁵ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 79; Claimant’s Statement of Claim, 29 September 2017, ¶ 590; **Exhibit CL-88**, *International Court of Justice, Competence of the General Assembly for the Admission of a State to the United Nations*, Advisory Opinion, I.C.J. Reports 1950, 3 March 2050, p. 8.

²⁰⁶ **Exhibit CL-87**, *Serafín García and Karina García Gruber v Bolivarian Republic of Venezuela*, PCA Case No. 2013-3, Decision on Jurisdiction, dated 15 December 2014, ¶ 158.

179. Claimant states that, similar to the findings of the tribunal in *Serafín García*,²⁰⁷ the Tribunal is to interpret the BIT in a manner that is compatible with its text, unless persuasive evidence exists suggesting otherwise.²⁰⁸ This reasoning is supported by decisions such as *Abdel Raouf Bahgat v Arab Republic of Egypt*²⁰⁹ and *Dawood Rawat v the Republic of Mauritius*,²¹⁰ which deemed the inexistence of a jurisdictional bar for dual nationals. Claimant notes that similar to the case at hand, these cases were decided under the UNCITRAL Rules.²¹¹
180. Mr. Pugachev emphasizes that the Tribunal cannot impose upon the Parties a definition of investor other than that agreed in the BIT,²¹² therefore, the term “investor” under Article 1.2 shall be interpreted as not excluding dual nationals.²¹³
181. Regarding Respondent’s argument that the USSR Law on Citizenship – that allegedly prohibited dual nationals – is an indication of the signatories’ intention to exclude dual nationals from the BIT,²¹⁴ Claimant asserts that it is misplaced and has no bearing on his standing as a protected investor. He furthers that there is no legitimate basis for having recourse to this domestic law in the context of Article 31 of the VCLT and that the BIT supersedes the Russian domestic law, as recognized by the Paris Court of Appeal decision cited by Respondent.²¹⁵
182. Additionally, Claimant argues that, in any case, Mr. Pugachev is not a dual national, as he renounced to his Russian nationality at the Russian Embassy in London on 10 August 2012.²¹⁶ Mr. Pugachev also notes that any renunciation to his Russian nationality has no bearing on the jurisdiction of the Tribunal, as dual nationals are not excluded from the BIT.

²⁰⁷ The Claimant notes that the Russian Federation’s attempt to distinguish the *Serafín García* case with the case at hand is incorrect, since that tribunal also relied on the definition of investor provided under the relevant BIT in order to confer treaty protection to dual nationals, notwithstanding the existence of scattered terms such as the ones cited by the Respondent in its submissions. See: Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 96, citing the Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 98.

²⁰⁸ **Exhibit CL-87**, *Serafín García and Karina García Gruber v Bolivarian Republic of Venezuela*, PCA Case No. 2013-3, Decision on Jurisdiction, dated 15 December 2014, ¶¶ 164-166.

²⁰⁹ **Exhibit CL-302**, S. Perry, Egypt claim clears hurdle after clash over nationality, Global Arbitration Review, 12 February 2018.

²¹⁰ **Exhibit CL-303**, *Dawood Rawat v the Republic of Mauritius*, UNCITRAL, PCA Case No. 2016-20, Award on Jurisdiction, 6 April 2018, ¶ 172.

²¹¹ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 86.

²¹² **Exhibit CL-304**, Decision of the Paris Court of Appeal, RG 15/01040, *The Bolivarian Republic of Venezuela v Serafín García Armas and Karina García Gruber*, 25 April 2017; **Exhibit CL-305**, Decision of the Paris Court of Appeal, RG 14/17964 and RG 15/20425, *The State of Ukraine v Pao TATNEFT*, 29 November 2016, p. 5; **Exhibit CL-306**, Decision of the French Court of Cassation, 1st Civil Ch., 16-16.568, 28 March 2018.

²¹³ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 91.

²¹⁴ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶¶ 101-103.

²¹⁵ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶¶ 103-105, citing **Exhibit CL-304**, Decision of the Paris Court of Appeal, RG 15/01040, *The Bolivarian Republic of Venezuela v Serafín García Armas and Karina García Gruber*, 25 April 2017, p. 5.

²¹⁶ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 65.

183. In Claimant's Response to the Tribunal's Questions, Mr. Pugachev delved into the three arguments which Professor Butler developed in relation to the implications under Russian law of not having a certificate confirming acceptance of a request for renunciation to the Russian citizenship, concluding that:²¹⁷
- a. If a person never filed for withdrawal from Russian citizenship, that person will remain a Russian citizen.²¹⁸
 - b. If a Russian person has applied to renounce citizenship, there are three options: (i) the denial of the application for failure to submit the necessary documentation in the proper form; (ii) the denial of the application on the basis of statutory provisions; or (iii) a positive withdrawal.²¹⁹ In this last case, if the response to the application thereof is never received, the person is not a Russian citizen and it needs only to request the issuance or reissuance of the corresponding document.²²⁰
 - c. If the person applied for renunciation while physically present in Russia, the application would have been formalized by a Presidential edict and possibly also published in the official gazette of the Russian Federation.²²¹ Should the application for withdrawal be filed while the Russian citizen was abroad, the successful renunciation would have been confirmed by a senior official within the Russian Federal Migration Service.²²²
184. For these reasons, Claimant submits that Mr. Pugachev is a protected investor for the purposes of Article 1.2 of the BIT.²²³

3. The "dominant and effective" nationality test

185. Claimant refers to Respondent's reliance on the *Nottebohm* case, noting that the ICJ's application of the principle of dominant and effective nationality in that case was made in the context of diplomatic protection and was confined to that scope alone.²²⁴ He highlights that "[i]n the more specific context of international investment arbitration, the applicability

²¹⁷ Claimant's Responses to the Tribunal's Questions, 19 July 2019, ¶ 128.

²¹⁸ Claimant's Responses to the Tribunal's Questions, 19 July 2019, ¶ 129, citing Appendix A, Professor Butler's Answers, ¶ 28.

²¹⁹ Claimant's Responses to the Tribunal's Questions, 19 July 2019, ¶ 130, citing Appendix A, Professor Butler's Answers, ¶¶ 29-32.

²²⁰ Claimant's Responses to the Tribunal's Questions, 19 July 2019, ¶ 130.

²²¹ Claimant's Responses to the Tribunal's Questions, 19 July 2019, ¶ 135, citing Appendix A, Professor Butler's Answers, ¶ 35.

²²² Claimant's Responses to the Tribunal's Questions, 19 July 2019, ¶ 136, citing Appendix A, Professor Butler's Answers, ¶ 35.

²²³ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 107.

²²⁴ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 110, citing **Exhibit RL-68**, *Nottebohm* case (*Liechtenstein v Guatemala*), Second Phase, ICJ Reports 1955, p. 23.

*of the principle of dominant and effective nationality was rejected on numerous accounts”.*²²⁵

186. Claimant furthers its argument stating that, contrary to Respondent’s allegations, the BIT does not provide for the application of the principle of dominant and effective nationality, as the contrary would amount to revising the terms of the BIT and adding a condition that was not envisaged by the Parties.²²⁶
187. Mr. Pugachev, therefore, submits that the BIT only requires that the investor be a “*national of one of the Contracting Parties*”²²⁷ and does not provide for the requirement of a dominant and effective nationality.
188. However, in the event that the Tribunal deems the principle of dual and effective nationality as applicable, Claimant submits that Mr. Pugachev’s dominant and effective nationality is that of France.²²⁸ In his submissions, Claimant recounts Mr. Pugachev’s ever-growing ties with France, highlighting that, from as early as the year 2000, he was a member of the Franco-Russian Government commission,²²⁹ owned a significant number of properties in France,²³⁰ had several family members permanently residing in France,²³¹ and finally submitted his file for naturalisation to the French authorities on 20 April 2009,²³² obtaining French nationality on 30 November 2009.²³³
189. In sum, Claimant submits that the principle of dual nationality is not applicable to the present case. Should the Tribunal apply such principle, Mr. Pugachev’s dominant and effective nationality is that of France.

²²⁵ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 114.

²²⁶ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 115, citing **Exhibit CL-306**, Decision of the French Court of Cassation, 1st Civil Ch., RG 16-16.568, 28 March 2018; **Exhibit CL-184**, *Mr. Franck Charles Arif v Republic of Moldova*, ICSID Case No. ARB/11/23, Award, dated 8 April 2013, ¶¶ 358-359; **Exhibit CL-102**, *Saba Fakes v Republic of Turkey*, ICSID Case No. ARB/07/20, Award, dated 14 July 2010, ¶ 70; **Exhibit CL-304**, Decision of the Paris Court of Appeal, RG 15/01040, *The Bolivarian Republic of Venezuela v Serafín García Armas and Karina García Gruber*, 25 April 2017, p. 5; **Exhibit CL-87**, *Serafín García and Karina García Gruber v Bolivarian Republic of Venezuela*, PCA Case No. 2013-3, Decision on Jurisdiction, dated 15 December 2014, ¶ 154; **Exhibit CL-297**, *Ioan Micula. Viorel S.C. European Food S.A. S.C. Starmil S.R.L. y S.C. Multipack S.R.L. v Romania*, ICSID Case No. ARB/05/20, Decision on Jurisdiction and Admissibility, dated 24 September 2008, ¶ 101.

²²⁷ **Exhibit CL-1**, the BIT.

²²⁸ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 122.

²²⁹ **Exhibit R-61**, Extract from the website <https://www.pugachevsergei.com/bibliography/>.

²³⁰ **Exhibit C-479**, P. De Guasquet, Sergeï Pougatchev, le tsar de l’épicerie fine, *Les Echos*, 10 December 2007.

²³¹ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶¶ 127-128.

²³² **Exhibit C-481**, Request for naturalization issued on 20 April 2009.

²³³ **Exhibit C-1**, French Naturalization Decree of French Prime Minister Fillon and French Minister of Immigration Besson, 30 November 2009.

4. *Claimant's holding of French nationality at the relevant times for application of the BIT*

190. Claimant challenges Respondent's argument according to which, aside from the dates of the treaty violation and the date of commencement of the arbitral proceedings,²³⁴ there is a third relevant date to assess the investor's nationality: the date of the making of the investment.²³⁵ In Claimant's view, this is an attempt of the Russian Federation to introduce an allegedly third and new condition to the timeframe of the assessment of the nationality of the investor.²³⁶

191. Claimant further objects to Respondent's argument, according to which the BIT consistently refers to investments "made" – as opposed to "held" – by the investor,²³⁷ stating that this is an ill-attempt of Respondent to argue that Mr. Pugachev is not a protected investor. Claimant argues that, contrary to the Russian Federation's allegations, Mr. Pugachev was a French national under the BIT at the *only* relevant times, *i.e.*: (i) at the time of the breaches of the BIT, and (ii) at the time of initiation of this Arbitration.²³⁸ He states:

*"It is indeed a settled principle that the investment is protected as of the investor's acquisition of the relevant nationality, even if posterior to the making of the investment, as long as the breaches of the BIT and the commencement of the arbitral proceedings post-date said acquisition."*²³⁹

192. *Regarding the nationality of Mr. Pugachev at the time of the breaches of the BIT,*²⁴⁰ Claimant notes that Respondent does not contest that Mr. Pugachev held the French nationality at the time of the commencement of this Arbitration, nor at the time of the treaty breaches in regard to the Shipyard Interest, the EPC and the Land Plots. Respondent disputes that Mr. Pugachev was a French national at the time of the breaches to the Red Square Project.²⁴¹

193. With respect to the Red Square Project, Claimant argues that the determination of the date of the breach in cases where the violation of the BIT was not performed in a single act, is

²³⁴ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 142, citing the Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 160; Claimant's Statement of Claim, 29 September 2017, ¶ 584.

²³⁵ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 160.

²³⁶ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 143.

²³⁷ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 165.

²³⁸ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶¶ 148-152, citing the Claimant's Statement of Claim, 29 September 2017, ¶¶ 608-609; **Exhibit CL-102**, *Victor Pey Casado and President Allende Foundation v Republic of Chile*, ICSID Case No. ARB/98/2, Award, dated 8 May 2008, ¶ 414; **Exhibit CL-87**, *Serafin García Armas and Karina García Gruber v Bolivarian Republic of Venezuela*, PCA Case No. 2013-3, Decision on Jurisdiction, dated 15 December 2014, ¶ 214; **Exhibit CL-115**, *Vladislav Kim and others v Republic of Uzbekistan*, ICSID Case No. ARB/13/6, Decision on Jurisdiction, dated 8 March 2017, ¶¶ 190-191.

²³⁹ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 153 [emphasis omitted]; **Exhibit CL-108**, *Ceskoslovenska Obchodni Banka v Slovak Republic*, ICSID Case No. ARB/87/4, Decision on Jurisdiction, dated 24 May 1999, ¶¶ 31-38.

²⁴⁰ Claimant's Rejoinder on Jurisdiction, 26 March 2019, ¶¶ 314-365.

²⁴¹ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 162.

made considering a chain of events.²⁴² Claimant asserts that the Parties agree that the breach will not necessarily be found to have occurred at the time of the first or the last event, but when the interference deprives the investor of its fundamental rights of ownership; this deprivation being not ephemeral but irreversible.²⁴³ Claimant concludes that, since the BIT states that there is no breach if the investor receives “prompt and adequate compensation”, a breach only occurs when it becomes clear that no compensation will be received after the expropriation becomes effective.²⁴⁴ This ultimately means that the relevant date to be examined is that of when the expropriation of the Red Square Project became illegal.²⁴⁵

194. Under this reasoning, Claimant argues that the expropriation of Mr. Pugachev’s investment in the Red Square Project occurred at the earliest in April/May of 2010,²⁴⁶ which is when the Federal Guard Service entered into a State contract No. KC 10-06 for the reconstruction of the Red Square Buildings with ATEKS. According to Claimant, this is the date when Mr. Pugachev was entirely excluded from the Red Square Project.²⁴⁷ Claimant further explains that this expropriation became illegal with the irreversible decision of the Russian courts of 10 July 2014, to not compensate Mr. Pugachev.²⁴⁸ Claimant highlights that the fact that the state budget was amended in April 2009 to ensure compensation for the cancellation of the Red Square Project simply shows a promise of payment that has not yet been fulfilled.
195. Mr. Pugachev additionally states that he has exhausted all domestic judicial remedies available to him, recounting that he initiated two sets of legal proceedings against the Russian Federation in 2011 and 2012 – after his acquisition of the French nationality – seeking compensation for the loss of the Red Square Project.²⁴⁹ However, in 2013, the Russian courts declared the Red Square Investment Agreement null and void and denied compensation.²⁵⁰ On 10 July 2014, the Supreme Court of Arbitration of the Russian Federation rendered its last decision in that regard.²⁵¹

²⁴² Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 166.

²⁴³ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶¶ 167-168, citing the Claimant’s Statement of Claim, 29 September 2017, ¶ 611; and Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 211; **Exhibit CL-123**, *Reza Said Malek v Government of the Islamic Republic of Iran*, IUSTC Case No. 193 (534-193-3), Final Award, dated 11 August 1992, ¶ 114; **Exhibit CL-116**, *Rumeli Telekom A.S. and Telsim Mobil Telekomikasyon Hizmetleri A.S. v Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Award, dated 29 July 2008, ¶ 796.

²⁴⁴ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 169, citing **Exhibit C-1**, Agreement Between the Government of the French Republic and the Government of the United Soviet Socialist Republics on the Reciprocal Promotion and Protection of Investments, signed on 4 July 1989, entered into force on 18 July 1991, Article 4.3.

²⁴⁵ Claimant’s Responses to the Tribunal’s Questions, 19 July 2019, ¶ 66.

²⁴⁶ Claimant’s Responses to the Tribunal’s Questions, 19 July 2019, ¶ 67.

²⁴⁷ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 171; Claimant’s Statement of Claim, 29 September 2017, ¶ 875.

²⁴⁸ Claimant’s Responses to the Tribunal’s Questions, 19 July 2019, ¶ 67.

²⁴⁹ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 178.

²⁵⁰ Claimant’s Statement of Claim, 29 September 2017, ¶¶ 90-108; Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 179.

²⁵¹ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 180; Claimant’s Statement of Claim, 20 September 2017, ¶ 106.

b) Claimant's claims are not abusive

196. Claimant states that his acquisition of the French nationality is not abusive²⁵² and notes that both Parties agree that it is Respondent's burden to prove this objection.²⁵³ He highlights, however, that the standard for arbitral tribunals to find an abuse of process is high,²⁵⁴ and that a tribunal will not presume an abuse of right.²⁵⁵ Such finding is only upheld in very exceptional circumstances.²⁵⁶
197. In any event, Claimant argues that (i) there was no dispute between Mr. Pugachev and the Russian Federation at the time of acquisition of his French nationality;²⁵⁷ (ii) Mr. Pugachev did not acquire French nationality for the sole purpose of the BIT; (iii) Mr. Pugachev did not try to internationalize a domestic dispute;²⁵⁸ and (iv) Mr. Pugachev's position as senator of the Russian Federation is irrelevant to the objection of abuse of process.²⁵⁹
198. *Regarding the non-existence of the dispute at the time of acquisition of Claimant's French nationality*, Mr. Pugachev states that treaty shopping is not illegal as such.²⁶⁰ Citing the reasoning of the tribunal in *Pac Rim v El Salvador*,²⁶¹ he notes that in examining a claim of abuse of process, arbitral tribunals consider "*whether or not all the elements of a treaty cause of action have crystallised prior to the restructuring event*".²⁶²

²⁵² Claimant's Rejoinder on Jurisdiction, 26 March 2019, ¶¶ 366-369.

²⁵³ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶¶ 185-187, citing Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 214.

²⁵⁴ **Exhibit RL-30**, *Renée Rose Levy and Gremcitel S.A v Republic of Peru*, ICSID Case No. ARB/11/17, Award, dated 9 January 2015, ¶ 186; **Exhibit CL-132**, Case Concerning Certain German Interests in Polish Upper Silesia (Germany v Poland), PCIJ, Judgement No. 7, dated 25 May 1926, P.C.I.J. (Ser. A) No. 7, ¶ 30; **Exhibit CL-133**, Case of the Free Zones of Upper Savoy and the District of Gex (France v Switzerland), PCIJ, Judgement No. 17, dated 7 June 1932, 1932 P.C.I.J. (Ser. A/B) No. 46, ¶ 225; **Exhibit CL-131**, *Chevron Corporation (USA) and Texaco Petroleum Company (USA) v Ecuador*, UNCITRAL, PCA Case No. 34877, Interim Award, dated 1 December 2008, ¶ 143.

²⁵⁵ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 187, citing **Exhibit CL-132**, Case Concerning Certain German Interests in Polish Upper Silesia (Germany v Poland), PCIJ, Judgement No. 7, dated 25 May 1926, P.C.I.J. (Ser. A) No. 7, ¶ 88; **Exhibit CL-133**, Case of the Free Zones of Upper Savoy and the District of Gex (France v Switzerland), PCIJ, Judgement No. 17, dated 7 June 1932, 1932 P.C.I.J. (Ser. A/B) No. 46, ¶ 225; **Exhibit RL-30**, *Renée Rose Levy and Gremcitel S.A v Republic of Peru*, ICSID Case No. ARB/11/17, Award, dated 9 January 2015, ¶ 186.

²⁵⁶ **Exhibit CL-131**, *Chevron Corporation (USA) and Texaco Petroleum Company (USA) v Ecuador*, UNCITRAL, PCA Case No. 34877, Interim Award, dated 1 December 2008, ¶ 143; **Exhibit RL-30**, *Renée Rose Levy and Gremcitel S.A v Republic of Peru*, ICSID Case No. ARB/11/17, Award, dated 9 January 2015, ¶ 186.

²⁵⁷ Claimant's Rejoinder on Jurisdiction, 26 March 2019, ¶¶ 388-421.

²⁵⁸ Claimant's Rejoinder on Jurisdiction, 26 March 2019, ¶¶ 430-442.

²⁵⁹ Claimant's Rejoinder on Jurisdiction, 26 March 2019.

²⁶⁰ **Exhibit CL-314**, R. Dolzer, Ch. Schreuer, Principles of International Investment Law, 2nd ed., Oxford, University Press, 2012, p. 53.

²⁶¹ **Exhibit RL-29**, *Pac Rim Cayman LLC v The Republic of El Salvador*, Decision on the Respondent's Jurisdiction Objections, ICSID Case No. ARB/09/12, dated 1 June 2012, ¶ 2.99.

²⁶² **Exhibit CL-130**, S. Jagusch, A. Sinclair, M. Wickramasoori, Chapter 13: Restructuring Investments to Achieve Investment Treaty Protection, in Building International Investment Law: the First 50 Years of ICSID,

199. *Regarding Mr. Pugachev's acquisition of French nationality*, Claimant reiterates that the finding of an abuse in this regard requires that the change of nationality be made with the sole purpose of benefiting from the treaty, and of internationalizing the dispute.²⁶³ In his submissions, Mr. Pugachev elaborates on the criteria required to find an abuse of process following the reasoning of the tribunal in *Mobil v Venezuela*,²⁶⁴ stating that the timing of the acquisition of nationality, the timing of the breach and the timing of the proceedings are the determinant factors. In this sense, Claimant argues that:

*"Mr. Pugachev submitted his Demande de naturalisation on 20 April 2009 and acquired his French nationality on 30 November 2009. On Respondent's own account, from 13 April 2009 to 30 April [sic] 2009, Mr. Pugachev had multiple meetings with Prime Minister Putin during which compensation for the loss of the investment of the Red Square Project was discussed."*²⁶⁵

200. Claimant submits that the dispute over the Red Square Project was not existent, nor highly foreseeable at the time of Mr. Pugachev's acquisition of the French nationality.
201. Referring to the findings of the tribunals in *Mobil v Venezuela*²⁶⁶ and *ST-AD v Bulgaria*²⁶⁷ – cited by Respondent – Mr. Pugachev argues that the acquisition of a nationality before the outbreak of a dispute is valid, even when this is done to shield the investment from a possible future dispute. Claimant notes, however, that these cases are very different from Mr. Pugachev's, as his acquisition of the French nationality was not a last-minute change only aimed at gaining access to international arbitration. Claimant supports this assertion with the various, personal, financial and professional links of Mr. Pugachev with France.²⁶⁸ He further states that:

*"219. Respondent cannot argue that Claimant's motives for obtaining French nationality based on his ties with France are "not plausible" only because he was a senator in Russia when he applied for naturalisation."*²⁶⁹

[...]

Kluwer Law International 2015, p. 175; **Exhibit RL-27**, *Lao Holdings NV v The Lao People's Democratic Republic*, ICSID Case No. ARB(AF)/12/6, Decision on Jurisdiction, dated 21 February 2014, ¶ 76.

²⁶³ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 220.

²⁶⁴ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶¶ 203-304.

²⁶⁵ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 205 [emphasis omitted].

²⁶⁶ **Exhibit RL-23**, *Venezuela Holdings B.V., and Others (case formerly known as Mobil Corporation and Others) v Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/27, Decision on Jurisdiction, dated 10 June 2010, ¶ 204.

²⁶⁷ **Exhibit CL-124**, *Aguas del Tunari S.A. v Republic of Bolivia*, ICSID Case No. ARB/02/3, Decision on Respondent's Objections to Jurisdiction, dated 21 October 2005, ¶ 330(d); **Exhibit CL-128**, *Cervin Investissement S.A. and Rhone Investissements S.A. v Republic of Costa Rica*, ICSID Case No. ARB/13/2, Decision on Jurisdiction, dated 15 December 2014, ¶ 293.

²⁶⁸ Claimant's Statement of Claim, 29 September 2017, ¶ 618; Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶¶ 214-217; Claimant's Rejoinder on Jurisdiction, 26 March 2019, ¶ 77.

²⁶⁹ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 219, citing the Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 240.

*223. Mr. Pugachev could have more easily restructured his investments by selling his shares to foreign based companies under his control. However, his situation is very different: acting as an individual, for personal reasons, he acquired French nationality before he even knew of the existence of the France-Russia BIT.”*²⁷⁰

202. Regarding the internationalization of the dispute, Claimant states that there is no abuse of process present in the sole fact that the investor makes claims before local courts prior to the commencement of arbitral proceedings.²⁷¹
203. Referring to the findings of the tribunal in *Ivan Peter Busta and James Peter Busta v Czech Republic*, Claimant submits that where both the BIT and arbitral case law allowed for shareholder claims, this could not be construed as abusive.²⁷² Claimant does not contest having resorted to local and foreign courts seeking to settle the disputes between the Parties; but highlights that – contrary to Respondent’s position – such proceedings are not the same, in absence of an identity of parties, or when the causes of action are different.²⁷³
204. Moreover, Claimant notes that the BIT lacks a “fork-in-the-road” provision, which ultimately means that the investor is not prevented from submitting his claim before this Tribunal even in the presence of domestic legal proceedings.²⁷⁴
205. Lastly, regarding Mr. Pugachev’s status as a Russian senator, Claimant states that Respondent’s argument that Mr. Pugachev violated Russian law has no bearing on the abuse of process objection. In this sense, the objection relates to an alleged violation of domestic law, with no relation to Mr. Pugachev’s investments in Russia.²⁷⁵
206. Claimant highlights that the objection of abuse of process relates to the validity of the investment itself, as it seeks to prevent illegal investments from benefiting from protection.²⁷⁶ Claimant clarifies that the alleged illegality resulting from Mr. Pugachev’s status as a senator and as a dual national are two different scenarios; and notes that “obtaining a foreign nationality is a ground for early termination of a member of the Federation Council’s mandate”.²⁷⁷

²⁷⁰ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 223; **Exhibit CL-317**, C. Schreuer, Nationality Planning, in Contemporary Issues in International Arbitration and Mediation, The Fordham Papers 2012, Leiden Boston 2013, p. 18.

²⁷¹ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 227.

²⁷² **Exhibit CL-318**, *I. Peter Busta, James Peter Busta v Czech Republic*, SCC Case No. V 2015/014, Final Award, dated 10 March 2017, ¶ 225.

²⁷³ **Exhibit CL-318**, *I. Peter Busta, James Peter Busta v Czech Republic*, SCC Case No. V 2015/014, Final Award, dated 10 March 2017, ¶ 228.

²⁷⁴ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 233.

²⁷⁵ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶¶ 234-235.

²⁷⁶ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 236, citing **Exhibit CL-320**, *Mr. Franz Sedelmayer v The Russian Federation*, SCC Award, dated 7 July 1998, ¶ 275; **Exhibit CL-143**, *Salini Costruttori S.p.A. v Kingdom of Morocco*, ICSID Case No. ARB/00/4, Decision on Jurisdiction, dated 31 July 2001, ¶ 46; **Exhibit CL-127**, *Inceysa Vallisoletana S.L. v Republic of El Salvador*, ICSID Case No. ARB/03/26, dated 2 August 2006.

²⁷⁷ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 329.

207. Claimant thus concludes that Respondent failed to prove its abuse of process objection.

c) The DIA's actions are attributable to the Russian Federation

208. As a preliminary note, Claimant states that the matter concerning the attribution of the DIA's actions to the Russian Federation is one of the admissibility and merits of the dispute and should not be addressed in the jurisdictional stage.²⁷⁸

209. Claimant rejects Respondent's allegation that the DIA's actions, in its capacity of bankruptcy receiver of IIB, are relevant to three sets of claims: The Shipyard Claims,²⁷⁹ the Worldwide Proceedings Declaration²⁸⁰ and the Other Investment and Moral Damages Claims.²⁸¹ He also rejects Respondent's contention that the lack of connection between the DIA's actions and the Russian Federation would result in the dismissal of the claims as being improperly directed.²⁸²

210. In this context, Mr. Pugachev states that the expropriation of the Shipyard Interests was performed through the transfer of the investment to the trust management of the Central Bank of Russia and its significantly undervalued sale without compensation.²⁸³ He notes (i) that Respondent does not contest that the CBR is a State entity and that its actions are attributable to the State; and (ii) that the actions of the DIA, though part of the overall scheme, do not affect the Tribunal's jurisdiction over the Shipyard Interests, nor does it alter the nature of the expropriation. Claimant thus concludes that, should the Tribunal find that the DIA's actions are not attributable to Respondent, Claimant's claims would not be affected.

211. In the matter of attributability, Claimant begins by stating that (i) under Article 4 of the ILC Articles, it cannot be disputed that the DIA is a State organ; in any event, Claimant argues that the actions of the DIA may also be attributed to the Russian Federation under (ii) Article 8 of the ILC Articles and (iii) Article 5 of the ILC Articles.²⁸⁴

212. *In the context of Article 4 of the ILC Articles,*²⁸⁵ Claimant submits that Article 4(2) does not exclude an entity from being a State organ merely because it is not specifically classified as

²⁷⁸ Claimant's Observations on the Respondent's Request for Bifurcation, 27 November 2017, ¶¶ 160-179; Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 334. The Claimant reserves his rights in this respect.

²⁷⁹ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 287.

²⁸⁰ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 288.

²⁸¹ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 291.

²⁸² Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 336; Claimant's Rejoinder on Jurisdiction, 26 March 2019, ¶¶ 588-605.

²⁸³ Claimant's Statement of Claim, 29 September 2018, ¶ 361; Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 338.

²⁸⁴ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 342.

²⁸⁵ Claimant's Rejoinder on Jurisdiction, 26 March 2019, ¶¶ 622-702.

such under law.²⁸⁶ Mr. Pugachev states that other factors are taken into account in order to determine whether an entity is an organ of the State *de jure* and *de facto*.²⁸⁷ He notes that the status of a State organ may be inferred from the purpose of the entity, especially when it serves a public purpose, as opposed to having a private or commercial purpose.²⁸⁸

213. Following this reasoning, Claimant recounts the different aspects that – in his view – evidence the nature of the DIA as a State organ:

- i. On its own account and pursuant to Russian law, the DIA is a State corporation with the purpose of exercising the functions of compulsory deposit insurance, and has a seal bearing the Emblem of the Russian Federation;²⁸⁹ additionally – contrary to Respondent’s allegations – the Russian Federation may be held liable for the actions of the DIA where provided by law.²⁹⁰
- ii. Under Article 42.1 of the Federal Law No. 177-FZ of 23 December 2003, “[c]ontrol over functioning of the deposit insurance system shall be exercised by the Government of the Russian Federation and the Bank of Russia by their representatives’ participation in the Agency’s managerial bodies.”²⁹¹
- iii. Russian courts granted the Ministry of Justice upon request, the access to the entire case file of the bankruptcy proceedings of the IIB and of the subsidiary liability case against Mr. Pugachev.²⁹²

214. *In the context of Article 8 of the ILC Articles*,²⁹³ Claimant asserts that the provision includes three distinct terms: “instructions”, “direction” and “control”. He states that to establish any

²⁸⁶ **Exhibit CL-341**, J. Crawford, Draft Articles on Responsibility of States for internationally Wrongful Acts, 2001, Article 4 of ILC Articles, ¶ 11; **Exhibit CL-199**, R. Dolzer, Ch. Schreuer, Principles of International Investment Law, 2nd ed., Oxford University Press, 2012, p. 219.

²⁸⁷ **Exhibit CL-342**, S. Manciaux, The Relationship between States and their Instrumentalities in Investment Arbitration, in E. Gaillard, J. Younan, State Entities in International Arbitration, IAI Series on International Arbitration, No. 4, 2008, p. 216; **Exhibit CL-343**, J. Crawford, State Responsibility, Cambridge University Press, 2013, p. 124.

²⁸⁸ **Exhibit CL-340**, G. Petrochilos, Chapter 14, Attribution – State Organs and Entities Exercising Elements of Governmental Authorities, in K. Yannaca-Small, Arbitration under International Investment Agreements A Guide to Key Issues, 2nd ed., Oxford University Press, 2018, ¶ 14.30.

²⁸⁹ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 350, citing **Exhibit CL-36**, Federal Law No. 177-FZ of 23 December 2003 “On Insuring Natural Persons’ Deposits Made With Banks Of The Russian Federation, Articles 14.1, 14.2 and 14.3.

²⁹⁰ **Exhibit CL-36**, Federal Law No. 177-FZ of 23 December 2003 “On Insuring Natural Persons’ Deposits Made With Banks Of The Russian Federation, Article 16.2.

²⁹¹ **Exhibit CL-36**, Federal Law No. 177-FZ of 23 December 2003 “On Insuring Natural Persons’ Deposits Made With Banks Of The Russian Federation, Article 42.1.

²⁹² **Exhibit C-509**, Response of the Commercial Court of Moscow to the Ministry of Justice of the Russian Federations request to obtain access to case file, 28 March 2018; **Exhibit C-510**, Complaint to the Moscow Arbitration Court filed by *Virazh CJSC* against Chernukhin Vladimir Alexandrovich (judge of the Moscow Arbitration Court), 3 May 2018.

²⁹³ Claimant’s Rejoinder on Jurisdiction, 26 March 2019, ¶¶ 703-735.

of these terms, an “effective control” test is to be performed, in order to find a real link between the person or entity performing the act, and the State.

215. Claimant elaborates on the “effective control” test, explaining that it can take two forms: (i) when the person or entity acts under the instructions of the State, supplementing State actions while remaining outside of its official structure;²⁹⁴ and (ii) when the State directs or controls a specific operation and the conduct that is subject to the complaint, is an integral part of its operation.²⁹⁵
216. Following this reasoning, Claimant states that the real link between the DIA and the Russian Federation lies in the control operated by Russian courts over the DIA’s legal actions with respect to Mr. Pugachev, as well as on other factual evidence such as the nature of the DIA.²⁹⁶ According to Claimant, these facts evidence the clear – general – control exercised by Respondent over the DIA.
217. Furthermore, Claimant submits that the Russian Federation exercises specific control over the DIA.²⁹⁷ This is evidenced by the fact that the Moscow Commercial Court unlawfully appointed the DIA as receiver of the IIB, albeit the fact that, under Russian law, the DIA is only appointed in such capacity when the bankrupt bank possesses an individuals’ deposit license;²⁹⁸ which was not the case of the IIB.
218. Mr. Pugachev furthers that – contrary to Respondent’s allegations²⁹⁹ – the DIA’s and the Russian Federation’s interests were not materially different in regard to the legal proceedings initiated against Mr. Pugachev, “*as [the DIA’s] actions were all directed at protecting the CBR’s interests at the detriment of that of the remaining creditors and in view of persecuting Mr. Pugachev worldwide.*”³⁰⁰
219. *Lastly, in the context of Article 5 of the ILC Articles,*³⁰¹ Claimant submits that the text of the provision entails a two-fold approach: first, the existence of an empowerment by the State; and second, whether the unlawful acts were taken under such empowerment.³⁰²

²⁹⁴ **Exhibit C-341**, J. Crawford, Draft Articles on Responsibility of States for Internationally Wrongful Acts, 2001, Article 8 of the ILC Articles, ¶ 1.

²⁹⁵ **Exhibit C-341**, J. Crawford, Draft Articles on Responsibility of States for Internationally Wrongful Acts, 2001, Article 8 of the ILC Articles, ¶ 6.

²⁹⁶ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 397.

²⁹⁷ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 405.

²⁹⁸ **Exhibit CL-353**, Federal Law No. 40-FZ of 25 February 1999 “About the Insolvency (bankruptcy) of Credit Organisations” Article 50.11.

²⁹⁹ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 316.

³⁰⁰ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 423.

³⁰¹ Claimant’s Rejoinder on Jurisdiction, 26 March 2019, ¶¶ 736-758.

³⁰² **Exhibit CL-341**, J. Crawford, Draft Articles on Responsibility of States for Internationally Wrongful Acts, 2001, Article 5 of ILC Articles, ¶ 2; **Exhibit CL-340**, G. Petrochilos, Chapter 14: Attribution, in K. Yannachas-Small, *Arbitration under International Investment Agreements*, Oxford University Press, 2018, ¶ 14.35.

220. Mr. Pugachev explains that the concept of governmental authority is broadly interpreted and quotes Professor Crawford to elaborate on the governmental content of an act:

*“[O]ne method by which an act may be describe as having governmental content is if the state ordinarily reserves such conduct for itself. Put another way, if a private person can perform the function without the government’s permission, it is not to be considered governmental.”*³⁰³

221. In this sense, Claimant argues that the administration of bankruptcy estate is considered a non-core function representative of government authority.³⁰⁴ Additionally, Mr. Pugachev notes that the publicly available information related to the DIA evidences that the DIA acts as a regulator of the banking sector and implements governmental policies in this field.³⁰⁵

222. According to Claimant, the DIA – in exercise of this governmental authority³⁰⁶ – has taken a series of acts that have been detrimental to Mr. Pugachev.³⁰⁷ These included, among others:

- i. the illegal appointment of the DIA as bankruptcy receiver of the IIB;³⁰⁸
- ii. the systematic actions of the DIA in the interest and for the benefit of the CBR – and thus, the Russian Federation;³⁰⁹
- iii. the DIA’s lack of contestation as to the termination of IIB’s pledges over the Shipyard Interests;³¹⁰
- iv. the DIA’s worldwide campaign against Mr. Pugachev, since, instead of assigning IIB’s claims to a third party through their sale, it launched worldwide proceedings seeking to confiscate Claimant’s assets in clear violation of the creditor’s interests;³¹¹ and

³⁰³ **Exhibit CL-343**, J. Crawford, *State Responsibility*, Cambridge University Press, 2012, p. 130.

³⁰⁴ **Exhibit CL-354**, *H. G. Venable (U.S.A.) v United Mexican States*, 8 July 1927, concurring opinion of Mexican Commissioner, in *Reports of International Arbitral Awards*, Volume IV, pp. 219-261; **Exhibit CL-340**, G. Petrochilos, Chapter 14: Attribution, in K. Yannaca-Small, *Arbitration under International Investment Agreements*, Oxford University Press, 2018, ¶ 306.

³⁰⁵ **Exhibit C-506**, “Supervision and Regulation – the functions of State bodies”, Interview with the Director General of ASV [the DIA] Alexander Turbanov, BNJ magazine, 16 November 2011; **Exhibit C-504**, “It is time to consider changing the rules of the game”, interview with the Director General of ASV [the DIA] Alexander Turbanov, Bankir.ru, 3 May 2010; **Exhibit CL-348**, A. Turbanov, “The Deposit Insurance Agency is a legal entity under public law”, *Essays on Constitutional Economy*, G.A. Gadzhlev, Moscow, Iustitinform, 2010, 27 December 2010.

³⁰⁶ Claimant’s Responses to the Tribunal’s Questions, 19 July 2019, ¶ 151.

³⁰⁷ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 445.

³⁰⁸ **Exhibit CL-353**, Federal Law No. 40-FZ of 25 February 1999 “About the Insolvency (bankruptcy) of Credit Organisations”, Article 50.11.

³⁰⁹ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶¶ 410-422.

³¹⁰ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶¶ 414-417.

³¹¹ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶¶ 418-419 and 450.

- v. the DIA's launch of the worldwide enforcement proceedings of the Subsidiary Liability Judgement issued against Mr. Pugachev, which lead to the UK Default Judgement and the Cayman Default Judgement, as well as the launching of enforcement proceedings in France, Luxembourg and Saint Barthelemy.³¹²
223. In the view of Claimant, "*the DIA – as the arm of the Russian Federation – is harassing Mr. Pugachev in order to force him into seclusion, and more importantly, deprive him of all his means for the purposes of precluding him from pursuing the present arbitration proceedings.*"³¹³
224. Claimant, thus, concludes that the acts of the DIA are obviously attributable to the Russian Federation in application of the ILC Articles.

d) Article 7 of the BIT does not constitute a procedural bar to the Tribunal's jurisdiction

225. Claimant argues that – contrary to Respondent's allegations – (i) Mr. Pugachev has satisfied the requirements of Article 7 of the BIT; (ii) the provisions of Article 7 of the BIT do not create any jurisdictional hurdle or admissibility bar, as they are purely procedural in nature and, (iii) in application of the Most Favoured Nation Clause, Article 7 of the BIT is not applicable.

1. Claimant satisfied the requirements of Article 7 of the BIT

226. According to Claimant, Article 7 of the BIT³¹⁴ does not require a formal notification of the dispute in order to trigger the six-month period.³¹⁵ He states that the provisions of Article 7 simply require the Parties to attempt negotiations "*if at all possible*" for a period of six months; this period starts "*from the time when [the dispute] was raised by either one of the parties to the dispute*".
227. Following the reasoning of the tribunal in the *Teinver* case,³¹⁶ Claimant explains that by interpreting the language of Article 7 in accordance with the ordinary meaning of the words, it is not possible to rightfully interpret it as containing an additional condition not expressly contemplated in the BIT.³¹⁷

³¹² Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 452.

³¹³ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 458.

³¹⁴ Claimant's Rejoinder on Jurisdiction, 26 March 2019, ¶¶ 475-550.

³¹⁵ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 251, citing the Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 327; Claimant's Rejoinder on Jurisdiction, 26 March 2019, ¶¶ 533-540.

³¹⁶ **Exhibit CL-112**, *Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v The Argentine Republic*, ICSID Case No. ARB/09/1, Decision on Jurisdiction, dated 21 December 2012, ¶¶ 112 and 115-117; **Exhibit RL-78**, *Murphy Exploration and production Company International v Republic of Ecuador* [I], ICSID Case No. ARB/08/4, Award on Jurisdiction, dated 15 December 2010, ¶ 104.

³¹⁷ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶¶ 254-258.

228. According to Claimant, following the decisions of tribunals such as *Abaclat*³¹⁸ and *Ambiente Ufficio*,³¹⁹ the correct interpretation of the obligation contained in Article 7 of the BIT is an obligation of “best efforts”, *i.e.* an obligation of means. Claimant supports this argument, submitting that the correct interpretation of Article 7 of the BIT, is that of the wording of the provision, which fails to make reference to “consultations” or “negotiations”, and on the contrary, refers to amicable consultations “*if at all possible*” or “*autant que possible*”.³²⁰
229. Furthermore, Claimant argues that the vast majority of arbitral tribunals construe waiting periods as non-mandatory in nature, in cases where it is evident that the dispute is unlikely to be settled amicably.³²¹ Mr. Pugachev additionally states that Respondent has wrongfully considered that Claimant did not make the best efforts to settle the dispute. He notes that, well-before 21 March 2015, the Parties had exchanged very different views by means of numerous communications, which have included the highest level of Russian authorities.³²²
230. In Claimant’s view, it is evident that Mr. Pugachev has complied with the six-months period established in Article 7 of the BIT, as the Notice of Arbitration was submitted well-after the dispute was originally raised. Claimant notes that, aside from contending the authenticity of the letter of 10 December 2014, the Russian Federation had the burden of proving the existence of a fraud, which it has failed to meet.³²³

2. The provisions of Article 7 of the BIT are of procedural nature

231. Claimant submits that waiting periods and notices of disputes are not requisites for jurisdiction, but rather, procedural rules³²⁴ to encourage negotiations, with the object of allowing the parties to avoid resorting to arbitration. Additionally, Mr. Pugachev submits that where there is no realistic change for meaningful consultations, Claimant may resort to arbitration before the waiting period has expired.³²⁵

³¹⁸ Claimant’s Statement of Claim, 29 September 2017, ¶ 676; **Exhibit CL-151**, *Abaclat and others (formerly known as Giovanna a Beccara and others) v Argentine Republic*, ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility, dated 4 August 2011, ¶ 564.

³¹⁹ **Exhibit CL-149**, *Ambiente Ufficio S.p.A and others (formerly Giordano Alpi and others) v Argentine Republic*, ICSID Case No. ARB/08/9, Decision on Jurisdiction and Admissibility, dated 8 February 2013, ¶ 579.

³²⁰ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶¶ 272-273.

³²¹ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 274.

³²² Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 280, citing **Exhibit C-2**, Letter from S. Pugachev to Prime Minister Putin, 30 March 2012; **Exhibit C-483**, Letter from S. Pugachev to Prime Minister Putin, Ref. 01-12, 11 January 2012; **Exhibit C-2**, Letter from Mr. Pugachev to the Russian Federation proposing to have an amicable settlement, 10 December 2014.

³²³ **Exhibit C-2**, Letter from Mr. Pugachev to the Russian Federation proposing to have an amicable settlement, 10 December 2014.

³²⁴ Claimant’s Rejoinder on Jurisdiction, 26 March 2019, ¶¶ 541-550.

³²⁵ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 299; Claimant’s Statement of Claim, 29 September 2017, ¶ 696; Claimant’s Rejoinder on Jurisdiction, 26 March 2019, ¶¶ 551-561.

232. Citing the decision in *Tulip v Turkey*, Claimant asserts that the notice of dispute requirement is a procedural provision that does not bar the Tribunal's jurisdiction, nor does it constitute grounds for inadmissibility.³²⁶
233. In relation to the cooling-off period, Claimant first refers to the decision of the *Guarachachi America Inc and Rurelec Plc v The Plurinational State of Bolivia* – cited by Respondent³²⁷ –, which concluded that the tribunal lacked jurisdiction over certain claims because of the claimant's inobservance of the cooling-off period. Claimant clarifies that Respondent omits to note that the relevant treaty in that case contained a very different wording from the BIT, requiring a “*written notification of a claim*”.³²⁸
234. Claimant further highlights that numerous arbitral tribunals, including those in *Enkev v Poland*,³²⁹ *SGS v Pakistan*,³³⁰ *Lauder v Czech Republic*,³³¹ and *Biwater*,³³² (among others)³³³ have considered waiting periods as merely procedural.
235. In this sense, Claimant submits that Respondent has failed to reply to Claimant's many attempts to settle the dispute by way of negotiations; therefore, the Russian Federation's objection is without merit and simply dilatory.³³⁴

³²⁶ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶¶ 301-302, citing **Exhibit C-150**, *Tulip Real Estate and Development Netherlands B.V. v Republic of Turkey*, ICSID Case No. ARB/11/28, Decision on Bifurcated Jurisdictional Issue, dated 5 March 2013, ¶ 57; **Exhibit CL-160**, *Enkev Beheer B.V. v Republic of Poland*, PCA Case No. 2013-01, First Partial Award, ¶¶ 315-323; **Exhibit CL-324**, *Joseph Houben v Republic of Burundi*, ICSID Case No. ARB/13/7, Award, dated 12 January 2016, ¶ 140; **Exhibit CL-20**, *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v Islamic Republic of Pakistan*, ICSID Case No. ARB/03/29, Decision on Jurisdiction, dated 14 November 2005, ¶ 100; **Exhibit CL-325**, *Western NIS Enterprise Fund v Ukraine*, ICSID Case No. ARB/04/2, Order, dated 16 March 2006, ¶ 7.

³²⁷ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 340.

³²⁸ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 303.

³²⁹ **Exhibit CL-160**, *Enkev Beheer B.V. v Republic of Poland*, PCA Case No. 2013-01, First Partial Award, ¶¶ 315-323.

³³⁰ **Exhibit CL-156**, *SGS Société Générale de Surveillance S.A. v Islamic Republic of Pakistan*, Decision of the Tribunal on Objections to Jurisdiction, ICSID Case No. ARB/01/13, dated 6 August 2003, ¶¶ 84-85.

³³¹ **Exhibit CL-154**, *Roland S. Lauder v Czech Republic*, UNCITRAL, Final Award, dated 3 September 2001, ¶ 187.

³³² **Exhibit CL-157**, *Biwater Gauff Ltd. v United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, dated 24 July 2008, ¶¶ 343-347.

³³³ **Exhibit CL-20**, *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v Islamic Republic of Pakistan*, ICSID Case No. ARB/03/29, Decision on Jurisdiction, dated 14 November 2005, ¶ 102; **Exhibit C-326**, *El Paso Energy International Company v Argentine Republic*, ICSID Case No. ARB/03/25, Decision on Jurisdiction, dated 27 April 2006, ¶ 38; **Exhibit CL-151**, *Abaclat and Others v The Argentine Republic*, ICSID Case No. ARB/07/5, Decision on Jurisdiction, dated 4 August 2011, ¶ 564; **Exhibit CL-271**, *Mohamed Abdulmohsen Al-Karfi & Sons Co. v Government of the State of Libya, Ministry of Economy in the State of Libya, General Authority for Investment Promotion and Protection Affairs, Ministry of Finance in Libya and Libyan Investment Authority*, Final Arbitral Award, dated 22 March 2013, pp. 245-246; **Exhibit CL-327**, *Anatolie Stati Gabril Stati, Ascom Group S.A., Terra Raf Trans Trading Ltd v Republic of Kazakhstan*, SCC Case No. V116/2010, Award, dated 19 December 2013, ¶ 829.

³³⁴ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 319.

3. *The non-application of Article 7 of the BIT via the Most Favoured Nation Clause*

236. Mr. Pugachev argues that the use of the MFN clause is a well-settled practice in investor-State arbitration, as first-confirmed in the *Maffezini* case, where it was used to circumvent the conditions of exhaustion of local remedies and expiration of the cooling-off period.³³⁵ Claimant notes that this position has been reiterated on multiple occasions³³⁶ and has been recognized by scholars and practitioners.³³⁷
237. In this sense, Claimant relies on Article 3(2) of the BIT, which contains the MFN Clause that “allows the importation, to the present dispute, of more favourable procedural provisions (i.e., no notice of dispute or cooling-off period)”.³³⁸ In the view of Claimant, he “may rely on the more favourable procedural provisions provided under Article 11 of the *Japan-Russia BIT*”, which circumvents any requirement of a notice of dispute or of a cooling-off period.³³⁹
238. Claimant further states that – contrary to Respondent’s assertions³⁴⁰ – his reliance on the MFN provision does not constitute “disruptive treaty shopping”.³⁴¹ He agrees with Respondent that the purposes of these types of clauses are to “accord foreign investors treatment no less favourable than that accorded to the ‘most favoured’ third nation”;³⁴² therefore, importing the most-favourable provision contained in the Japan-Russia BIT amounts to applying the MFN clause in accordance with its purpose, without undertaking any “cherry-picking”.³⁴³

³³⁵ **Exhibit CL-137**, *Emilio Agustín Maffezini v Kingdom of Spain*, ICSID Case No. ARB/97/7, Decision on Jurisdiction, dated 25 January 2000, ¶ 38.

³³⁶ **Exhibit CL-332**, *Siemens AG v Argentina*, ICSID Case No. ARB/02/8, Decision on Jurisdiction, dated 3 August 2004, ¶ 87; **Exhibit CL-331**, *Gas Natural SDG, S.A. v Argentina*, ICSID Case No. ARB/03/10, Decision of the Tribunal on Preliminary Questions on Jurisdiction, dated 17 June 2005, ¶¶ 42-45; **Exhibit CL-140**, *Camuzzi International S.A. v The Argentine Republic*, ICSID Case No. ARB/03/2, Decision on Objection to Jurisdiction, dated 11 May 2005, ¶ 76; **Exhibit CL-333**, *RosInvest v The Russian Federation*, SCC Case No. V079/2005, Award on Jurisdiction, dated October 2007, ¶ 124; **Exhibit CL-110**, *National Grid plc v Argentine Republic*, UNCITRAL, Decision on Jurisdiction, dated 20 June 2006, ¶ 92; **Exhibit CL-334**, *Suez, Sociedad General de Aguas de Barcelona S.A. and Vivendi Universal SA v Argentina* and *AWG Group Ltd v Argentina*, ICSID Case No. ARB/03/19, Decision on Jurisdiction, dated 3 August 2006, ¶¶ 41-42; **Exhibit CL-336**, *Impregilo SpA v The Argentine Republic*, ICSID Case No. ARB/07/17, Award, dated 21 June 2011, ¶ 99.

³³⁷ **Exhibit CL-338**, W. Ben Hamida, *Clause de la nation la plus favorisée et mécanisme de règlement des différends: que dit l’histoire?*, JDI (Clunet) No. 4, October 2007, also referring to the favourable opinions of Sir G. Fitzmaurice, Baron B. Nolde, E. Ustor, A. Salmaslian, J. G. Gerold, E. Szaszy, P. Pescatore, C. Rousseau or F. Hepp, p. 1.

³³⁸ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 328.

³³⁹ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶¶ 329-330.

³⁴⁰ Respondent’s Reply on Jurisdiction, 19 December 2018, ¶¶ 479 and 482.

³⁴¹ Claimant’s Rejoinder on Jurisdiction, 26 March 2019, ¶ 574.

³⁴² Respondent’s Reply on Jurisdiction, 19 December 2018, ¶ 482.

³⁴³ Claimant’s Rejoinder on Jurisdiction, 26 March 2019, ¶¶ 576-577, citing **Exhibit CL-332**, *Siemens AG v Argentina*, ICSID Case No. ARB/02/8, Decision on Jurisdiction, dated 3 August 2004, ¶¶ 120-121 and 430-442.

239. Lastly, Claimant states that, the fact that the domestic proceedings in Russia allegedly involved “*the very same issues he now brings under the BIT*”³⁴⁴ is purely irrelevant. Mr. Pugachev cites the tribunal’s reasoning in *Alex Gestin v Estonia*³⁴⁵ to hold that the existence of domestic proceedings should not bar a claimant from recurring to investment arbitration. Claimant notes that endorsing otherwise would constitute a genuine denial of justice, since Mr. Pugachev would be deprived of any forum to seek remedy for Respondent’s breaches.³⁴⁶

IV. THE TRIBUNAL’S ANALYSIS

240. The Tribunal has carefully considered all arguments and allegations made by the Parties. The fact that any of the arguments of the Parties summarised above are not referred to below, should not be taken to mean that the argument has not been considered.
241. Each of the following conclusions of the Tribunal in this Award is based on the analysis explained hereinbelow: (A) Claimant has the burden to prove the Tribunal’s jurisdiction over the dispute; (B) Claimant is a French national under international law; (C) dual nationals are not excluded from the Treaty; (D) the Treaty requires a claimant to have held the nationality of the other Contracting Party, *i.e.* the non-host State, at the time the investment is made; and (E) Respondent’s allegations regarding abuse of process, attribution and the fulfilment of mandatory preconditions under the Treaty do not affect the Tribunal’s findings on jurisdiction.

A. Claimant has the burden to prove the Tribunal’s jurisdiction over the dispute

242. Respondent argues that Claimant bears the burden of proof with respect to establishing the Tribunal’s jurisdiction over his claims.³⁴⁷ Respondent refers to the tribunal’s findings in *Gallo v Canada* to claim that the maxim “*who asserts must prove*” applies also in the jurisdictional phase of an arbitration, and that, accordingly, a claimant bears the burden of proving he has standing and the tribunal has jurisdiction over the claims submitted.³⁴⁸ In Respondent’s view, Claimant bears this burden even where, as in the case at hand, Respondent has raised jurisdictional objections.³⁴⁹
243. Respondent clarifies that its objection concerning abuse of process is different because such a challenge, by its nature, goes to the admissibility of Claimant’s claims, rather than to a pure issue of the Tribunal’s jurisdiction.³⁵⁰ Further, Respondent asserts that Claimant

³⁴⁴ Respondent’s Reply on Jurisdiction, 19 December 2018, ¶ 480.

³⁴⁵ **Exhibit CL-417**, *Alex Genin, Eastern Credit Limited, Inc. and A.S. Baltoil v The Republic of Estonia*, ICSID Case No. ARB/99/2, Award, dated 25 June 2001, ¶ 302; **Exhibit CL-418**, *Azurix Corp. v Argentine Republic*, ICSID Case No. ARB/01/12, Decision on Jurisdiction, dated 8 December 2003, ¶¶ 89-92; **Exhibit CL-154**, *Roland S. Lauder v Czech Republic*, UNCITRAL, Final Award, dated 3 September 2001, ¶¶ 159-166.

³⁴⁶ Claimant’s Rejoinder on Jurisdiction, 26 March 2019, ¶ 581.

³⁴⁷ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 10.

³⁴⁸ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 10.

³⁴⁹ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 10.

³⁵⁰ Respondent’s Reply on Jurisdiction, 19 December 2018, ¶ 18.

cannot meet his burden of proof through mere assumptions or allegations. Instead, he must proffer evidence to establish the facts that support his claims with respect to jurisdiction.³⁵¹

244. On the contrary, Claimant submits that a majority of arbitral tribunals and commentators have asserted that, in international arbitral proceedings, the burden of proof rests upon the party that is advancing an allegation.³⁵² It is thus simplistic to assert that Claimant bears the burden of proof in relation to Respondent's objections, especially where Claimant has already provided sufficient evidence in support of his claims.
245. Claimant contends that, by virtue of the principle of *onus probandi actori incumbit*, the burden of proof shifted to Respondent. It is, therefore, Respondent that currently bears the burden of proving its objections.³⁵³

a) Claimant has the burden to prove the Tribunal's jurisdiction over the dispute

246. As a preliminary remark, the Tribunal recalls that under Article 27.1 of the UNCITRAL Rules "*Each party shall have the burden of proving the facts relied on to support its claim or defence*". This leaves no doubt that it is for Claimant to prove the facts on which he relies to hold that the Tribunal has jurisdiction under the BIT and for Respondent to prove the facts that support its defence according to which the Tribunal lacks jurisdiction.
247. The Tribunal observes that Claimant admits that he carries the legal burden of proving that the jurisdictional requirements of the Treaty are met.³⁵⁴ This must be the case because shifting the legal burden of proof would require Respondent to prove a series of negatives (*e.g.* that Claimant is not an investor, that Claimant has not complied with the requirements of the BIT, and that the actions of which Claimant complains are not attributable to Respondent).
248. Moreover, the Tribunal notes that it is an accepted principle of international law that the claimant in an arbitration bears the legal burden of showing that the tribunal has jurisdiction to consider its claim. This principle has been affirmed by a number of investment tribunals, including *Bayindir v Pakistan*,³⁵⁵ *Tulip v Turkey*,³⁵⁶ *National Gas v Egypt*³⁵⁷ and *Emmis v Hungary*.³⁵⁸

³⁵¹ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 11.

³⁵² Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 16.

³⁵³ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 17.

³⁵⁴ Claimant's Rejoinder on Jurisdiction, 26 March 2019, ¶ 31.

³⁵⁵ **Exhibit CL-20**, *Bayindir Insaat Turizm Ticaret Ve Sanayi AS v Islamic Republic of Pakistan*, ICSID Case No. ARB/03/29, Decision on Jurisdiction, dated 14 November 2005, ¶¶ 190 and 192.

³⁵⁶ **Exhibit CL-150**, *Tulip Real Estate and Development Netherlands B.V. v Republic of Turkey*, ICSID Case No. ARB/11/28, Decision on Bifurcated Jurisdictional Issue, dated 5 March 2013, ¶ 48.

³⁵⁷ **Exhibit RL-93**, *National Gas S.A.E. v Arab Republic of Egypt*, ICSID Case No. ARB/11/7, Award, dated 3 April 2014, ¶ 118.

³⁵⁸ **Exhibit RL-129**, *Emmis International Holding, B.V., v The Republic of Hungary*, ICSID Case No. ARB/12/2, Award, dated 16 April 2014, ¶ 171.

249. The Tribunal considers that a distinction must be drawn between the “legal burden” and the “evidential burden” of proof. As numerous tribunals have explained, there is a difference between the legal burden of proof (which never shifts) and the evidential burden of proof (which can shift from one party to another, depending upon the state of the evidence).³⁵⁹ In the case at hand, this distinction is helpful to examine the significant differences in the Parties’ submissions.
250. In this case, the Tribunal considers that the debate about the “legal burden” of proof is just apparent. The real matter of controversy between the Parties is whether Claimant has discharged himself from the “evidential burden” of demonstrating that he satisfied the Treaty’s requirements for the Tribunal’s jurisdiction. If that were to be the case, then the Russian Federation would be required to produce persuasive counter-evidence.
251. In the same vein, the Tribunal agrees that the allegations concerning the abuse of process are distinct. In relation to Respondent’s arguments according to which Claimant’s claims should be deemed inadmissible as they constitute an abuse of process, the Tribunal finds that Respondent has a positive case to put forward in this regard. The Tribunal will not add any further comments since Respondent itself admits carrying the legal burden of proving this objection.³⁶⁰

b) The applicable standard of proof

252. Claimant cannot meet his evidential burden of proof through mere assumptions or allegations. Rather, he must proffer evidence to establish the facts that support his claims with respect to jurisdiction. This implies, *inter alia*, submitting appropriate means of evidence to prove compliance with each of the Treaty’s requirements. Claimant, therefore, has the burden to prove he is an “investor” in accordance with the Treaty, which implies the burden to prove that he holds an investment in Russia; that he has complied with the requirements of Article 7 of the Treaty; and that the acts of the DIA are attributable to Respondent.
253. Throughout his Counter-Memorial on Jurisdiction, Claimant repeatedly referred to a *prima facie* standard as the applicable standard to his burden of proving the Tribunal’s jurisdiction. The Tribunal disagrees. The applicable standard of proof at this jurisdictional stage of the

³⁵⁹ **Exhibit CL-359:** *Apotex Holdings Inc. and Apotex Inc. v United States of America*, ICSID Case No. ARB(AF)/12/1, Award, dated 25 August 2014, at ¶ 8.8: “The Tribunal considers such a distinction exists between the legal burden of proof (which never shifts) and the evidential burden of proof (which can shift from one party to another, depending upon the state of the evidence).”; **Exhibit CL-360:** *Mercer International Inc. v Government of Canada*, ICSID Case No. ARB(AF)/12/3, Award, dated 6 March 2018, at ¶ 7.14: “[...] the Tribunal must also take account of the distinction between the legal burden of proof (which never shifts) and the evidential burden of proof (which can shift from one party to another, depending upon the state of the evidence). [...]”. See also **Exhibit CL-361**, *United Parcel Service of America Inc. v Government of Canada*, ICSID Case No. UNCT/02/1, Award on the Merits, dated 24 May 2007, ¶¶ 83-84: “The Tribunal notes that there are three distinct elements which an investor must establish in order to prove that a Party has acted in a manner inconsistent with its obligations under article 1102. [...] This is a legal burden that rests squarely with the Claimant. That burden never shifts to the Party, here Canada”.

³⁶⁰ Respondent’s Reply on Jurisdiction, 19 December 2018, ¶ 24.

arbitration is not *prima facie*. In this regard, the tribunal in *Emmis v Hungary* determined that:

“[There are] two types of jurisdictional proof [...] The first relates to questions of fact that must be definitively determined at the jurisdictional stage. The second involves questions of fact that go to the merits. [...] [T]he burden of proving that [the Claimants] owned an investment capable of expropriation [...] lies fully within the ambit of the jurisdictional phase. This burden is to be contrasted with the need to establish on a *prima facie* basis at the jurisdictional phase that the Respondent breached the treaty [...]”.³⁶¹

254. A similar approach was followed in *Gallo v Canada*, where the tribunal explained that if jurisdiction rests on the existence of certain facts, these must be proven at the jurisdictional stage.³⁶²

255. During the Hearing on Jurisdiction, Respondent presented the issue of the applicable standard of proof in the following words:

“We say it is Mr Pugachev’s burden to prove that he qualifies as an investor; and this is something that he is not disputing. Where we do disagree with Mr Pugachev is the standards of proof that he needs to meet. Mr Pugachev says that he meets his burden of proof by providing his French passport. Russia says that Mr Pugachev must prove on the balance of probabilities that he is a French national for the purposes of international law. The Tribunal will not have another opportunity to consider Mr Pugachev’s nationality in this arbitration. As is the case with any issue being considered with finality, *prima facie* evidence cannot be adequate.”³⁶³

256. The Parties have not pleaded that during the jurisdictional phase, there is a heightened or exceptional standard of proof. The Tribunal is persuaded that, in the absence of a heightened or exceptional standard of proof, the applicable standard to be met by Claimant must be that which is normally applied in international arbitration. Respondent claims that such standard is the “balance of probabilities”, a term used by several investment tribunals and imported from the common law tradition, which means weighing whether something is more likely than not. In civil law traditions the standard would be the “intimate conviction” of the adjudicator. Tribunals have also used terms such as “preponderance of the evidence”. But in the end, the result is the same. Claimant must persuade the Tribunal so that it reaches the intimate conviction that it is more likely than not that Claimant is a protected investor and that he complied with all the prerequisites set out in the Treaty.

257. As to Respondent’s allegation that the balance of probabilities standard should be modulated exclusively for the abuse of process and attribution claims, the Tribunal finds no compelling reasons to do so. Respondent did not submit substantiated reasons in that regard, just mere allegations. Thus, the applicable standard to prove that Claimant’s claims are

³⁶¹ **Exhibit RL-129**, *Emmis International Holding, B.V., v The Republic of Hungary*, ICSID Case No. ARB/12/2, Award, dated 16 April 2014, ¶¶ 172-173.

³⁶² **Exhibit RL-92**, *Vito G. Gallo v Government of Canada*, PCA Case No. 55798, Award, dated 15 September 2011, ¶ 277.

³⁶³ Transcript, Hearing Day 1, p. 12, lines 9 to 20 (emphasis added).

abusive and that the acts of the DIA are attributable to Respondent should also be balance of probabilities.

c) Claimant has not discharged his burden of proof with respect to all of the Treaty's requirements

258. The Tribunal considers that in order to determine whether Claimant has discharged his burden of proof, each requirement under the Treaty must be analysed separately. Compliance with each requirement depends on a series of facts that must be proven separately for each given requirement. The Tribunal cannot draw a general conclusion that Claimant discharged his evidential burden of proof with regard to all of the Treaty's requirements. On the contrary, it is necessary to determine for each individual prerequisite whether Claimant has provided sufficient evidence to shift the evidentiary burden – not the legal burden – to Respondent.
259. For the avoidance of doubt, the Tribunal reiterates that Claimant has the burden of proving on the balance of probabilities that:
- a. he is an “investor” in accordance with the Treaty, which implies proving that he has investments in the Russian Federation;
 - b. he has complied with the requirements of Article 7 of the Treaty; and
 - c. that the acts of the DIA are attributable to Respondent.
260. On its turn, Respondent bears the burden of proving that Claimant's claims constitute an abuse of process.
261. Without prejudice of the complete analysis provided below, the Tribunal observes that Claimant discharged his evidential burden to prove that he is a French national under French law. Accordingly, the evidential burden of proving that, for purposes of the analysis under international law, Claimant's Naturalisation Decree was the result of fraud or material error lies on Respondent. As further explained in Section IV (B) *infra*, the Tribunal finds that, even though there are some questions in the process of naturalisation of Mr. Pugachev, there is no evidence that allows the Tribunal to conclude that Claimant obtained his French nationality through fraud or material error.

B. Claimant is a French national under international law

262. In its Interim Award, the Tribunal declared that “[...] *until proven otherwise, and without pre-judging Respondent's jurisdictional objections, Mr. Pugachev is a French national, and thus appears to be an investor pursuant to Article 1.2(a) of the France-Russia BIT.*” The Tribunal will now analyse whether Mr. Pugachev is a French national for purposes of determining its jurisdiction. If Claimant is not a French “investor” in accordance with Article 1.2(a) of the Treaty, the Tribunal lacks jurisdiction over Claimant's claims.

263. Claimant submits that Mr. Pugachev is a French national and asserts that even the Russian Federation itself had acknowledged this fact when the Ninth Arbitrazh Court of Appeals of Moscow applied the notification procedure for foreigners in a case against Claimant.³⁶⁴ According to Mr. Pugachev, this decision, which was confirmed by (i) the Commercial Court of Moscow on 9 July 2018;³⁶⁵ (ii) the Plenary Session of the Supreme Court of the Russian Federation on 27 June 2017;³⁶⁶ and (iii) Professor Butler,³⁶⁷ evidences Respondent's understanding that Mr. Pugachev is a French national.
264. Furthermore, Claimant states that Mr. Pugachev validly acquired French nationality, as (i) France has sovereign power and a margin of appreciation in the conferment of nationality; and (ii) the Tribunal may only examine France's sovereign decision to grant nationality to Mr. Pugachev in light of decisive evidence of material error or fraud.³⁶⁸
265. On its part, Respondent argues that Claimant did not discharge its burden of proving that he validly acquired French nationality in accordance with French law. This since, according to the Russian Federation, Mr. Pugachev did not comply with the mandatory requirements for acquiring nationality through naturalisation under French Law, "*notwithstanding the French authorities' decision to naturalise him.*"³⁶⁹
266. Respondent highlights that the Tribunal is competent to independently determine, for the purposes of this Arbitration, whether Mr. Pugachev acquired French nationality in accordance with French law.³⁷⁰ It notes that the Tribunal has the power to disregard any nationality documents, as they merely constitute *prima facie* evidence of Mr. Pugachev's nationality.
267. The Tribunal observes that it is undisputed by the Parties that Mr. Pugachev is a French national under French law. Furthermore, the Parties appear to agree that the Tribunal may only disregard the decision of a sovereign State (*i.e.* France) to confer its nationality to a natural person if that person has acquired such nationality as a result of "fraud" or "material error". The Tribunal reiterates that, as set out in Section IV (A) *supra*, the evidential burden of proving that Claimant's Naturalisation Decree was the result of fraud or material error lies on Respondent.
268. Having thoughtfully reviewed the multiple submission made by both Parties, and for the reasons set out below, the Tribunal finds that (a) the Tribunal has the power to decide

³⁶⁴ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 4.

³⁶⁵ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶¶ 28 and 41, citing **Exhibit C-495**, Decision of the Commercial Court of the Moscow Circuit, Case No. A40-119763/20, 9 July 2018; Claimant's Rejoinder on Jurisdiction, 26 March 2019, ¶¶ 54, 57-64.

³⁶⁶ Claimant's Responses to the Tribunal's Questions, 19 July 2019, ¶ 7, citing **Exhibit CL-428**, Ruling No. 23 of the Plenary Session of the Supreme Court of the Russian Federation, 27 June 2017, p. 14.

³⁶⁷ Claimant's Responses to the Tribunal's Questions, 19 July 2019, Appendix A, Professor Butler's Answers, ¶ 20.

³⁶⁸ Claimant's Responses to the Tribunal's Questions, 19 July 2019, ¶ 93.

³⁶⁹ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 23.

³⁷⁰ Respondent's Reply on Jurisdiction, 19 December 2018, ¶ 54.

whether Mr. Pugachev is a French national for purposes of the present Arbitration; (b) Claimant submitted enough evidence of his French nationality and discharged his burden of proof; (c) the threshold required to override the State's decision to confer its nationality to a natural person is high; and (d) Respondent failed to meet its burden of proving that Claimant's naturalisation was the result of a material error or fraud.

a) The Tribunal has the power to decide whether Mr. Pugachev is a French national for purposes of the present Arbitration

269. The Parties do not dispute that, in order to ascertain *ratione personae* jurisdiction, the Tribunal has the power to determine Mr. Pugachev's nationality for purposes of this Arbitration.

270. An individual's nationality is determined, primarily, by the law of the State of whose nationality is claimed. It is accepted in international law that the nationality of a person is determined within the domestic sovereign jurisdiction of a State which, in accordance with its own laws and regulations, establishes the rules concerning the acquisition and loss of nationality. The Tribunal shares the reasoning set forth in *Soufraki v United Arab Emirates*, where the tribunal explained:

*"It is accepted in international law that nationality is within the domestic jurisdiction of the State, which settles, by its own legislation, the rules relating to the acquisition (and loss) of its nationality. Article 1(3) of the BIT reflects this rule. But it is no less accepted that when, in international arbitral or judicial proceedings, the nationality of a person is challenged, the international tribunal is competent to pass upon that challenge. It will accord great weight to the nationality law of the State in question and to the interpretation and application of that law by its authorities. But it will in the end decide for itself whether, on the facts and law before it, the person whose nationality is at issue was or was not a national of the State in question and when, and what follows from that finding. Where, as in the instant case, the jurisdiction of an international."*³⁷¹

271. The ICSID *ad hoc* committee on the application for annulment of the *Soufraki* award upheld the tribunal's finding. The committee reiterated that:

*"[...] the principle is in fact well established that international tribunals are empowered to determine whether a party has the alleged nationality in order to ascertain their own jurisdiction and are not bound by national certificates of nationality or passports or other documentation in making that determination and ascertainment."*³⁷²

272. Furthermore, the *Micula v Romania* tribunal expressly endorsed the same principle, stating that:

³⁷¹ **Exhibit RL-70**, *Hussein Nuaman Soufraki v United Arab Emirates*, ICSID Case No. ARB/02/7, Award, dated 7 July 2004, ¶ 55 (emphasis added).

³⁷² **Exhibit RL-102**, *Hussein Nuaman Soufraki v The United Arab Emirates*, Decision of the *ad hoc* Committee on the application for annulment of Mr. Soufraki, dated 5 June 2007, ¶ 64 (emphasis added).

“The Tribunal is mindful of the analysis and conclusions of the tribunal and the ad hoc committee in the Soufraki case and of the authorities quoted by the ad hoc committee in Soufraki to the effect that it has the power and the duty to examine the existence of the treaty-required nationality.”³⁷³

273. In the same vein, the tribunal in *Micula v Romania* determined that it would not necessarily defer to the views of national authorities if there has been fraud or material error:

“It would be inappropriate for the Tribunal to consider Mr. Viorel Micula (or his brother) to be a Swedish national for the purpose of the ICSID Convention and the BIT if it were shown that he had obtained Swedish nationality by fraud or material error, in other words in a manner inconsistent with international law.”³⁷⁴

274. Accordingly, and bearing in mind the Parties’ allegations in this regard, the Tribunal concludes that it has the power to determine Mr. Pugachev’s nationality for purposes of the present Arbitration. To this end, even though the Tribunal will pay due consideration to Mr. Pugachev’s French Naturalisation Decree and other documentation, it is not bound by them in order to make its own findings as to the nationality of Claimant under international law.

b) Claimant is a French national

275. The Tribunal observes that Claimant has submitted three different sets of arguments in order to prove his acquisition of French nationality: (i) documents issued by the French authorities; (ii) contextual evidence and other allegations; and (iii) the Russian courts’ apparent recognition of Mr. Pugachev’s French nationality.
276. The Tribunal will analyse each of these arguments below.
277. First, the Tribunal finds that Claimant has submitted appropriate and suitable documentation to prove that he is a national of France.
278. From the outset, the Tribunal notes that Mr. Pugachev’s naturalisation was the result of a positive decision of the French authorities. Unlike some of the cases invoked by the Parties, Mr. Pugachev became a national of France by conduct of an official administrative act of the French Administration. The evidence put forward by Claimant should be assessed with due consideration to this fact.
279. Under French law, nationality can be either granted or acquired.³⁷⁵ French nationality is granted when the person is deemed French as of birth. By contrast, French nationality is acquired when the applicant, born as a foreigner, becomes French through naturalisation.³⁷⁶

³⁷³ **Exhibit RL-101**, *Ioan Micula and others v Romania*, ICSID Case No. ARB/05/20, Decision on Jurisdiction and Admissibility, dated 24 September 2008, ¶ 94 (emphasis added).

³⁷⁴ **Exhibit RL-101**, *Ioan Micula and others v Romania*, ICSID Case No. ARB/05/20, Decision on Jurisdiction and Admissibility, dated 24 September 2008, ¶ 91.

³⁷⁵ **Exhibit RL-103**, F. Jault-Seseke, S. Corneloup, S. Barbou des Places, *Droit de la nationalité et des étrangers*, dated 2015, Presses Universitaires de France, p. 117.

³⁷⁶ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 36.

It is undisputed that Mr. Pugachev is a Russian national from birth, and that he acquired French nationality through naturalisation. The subject matter of this particular dispute is whether Claimant's Naturalisation Decree was the result of fraud or material error.

280. In its Submission on Jurisdiction, Respondent extensively describes the different requirements a person would need to fulfil in order to acquire French nationality. Respondent argues, *inter alia*, that to acquire French nationality through naturalisation, the foreigner must fulfil certain conditions set out in the law. Specifically, Articles 21-15 to 21-27 of the French Civil Code (applicable at the time of Claimant's request for naturalisation), set out the conditions required for granting French nationality through naturalisation. These conditions pertain to age, morality, assimilation and residence.³⁷⁷ In her First Expert Report, Professor Jault-Seseke thoroughly describes and explains each of the conditions required to acquire French nationality.³⁷⁸
281. The Tribunal observes that, pursuant to French law, Mr. Pugachev could have acquired French nationality through naturalisation on two main grounds:
- a. residence in France for 5 years, residence being understood as the location of the applicant's centre of interests (the "**Residence Route**"); or
 - b. exceptional services rendered to France or France's exceptional interest in the naturalisation of the applicant (the "**Exceptional Services Route**").³⁷⁹ The Parties disagree on whether naturalisation through the Exceptional Services Route can only be granted after an advisory opinion issued by the French *Conseil d'État* based on a justified proposal by the competent Minister.
282. Respondent asserts that, regardless of whether Claimant alleges that he requested French nationality based on the Residence or Exceptional Services Route, he would have been required to satisfy two other conditions for the admissibility of his naturalisation request, *i.e.* (i) the assimilation condition provided for in Article 21-24 of the French Civil Code;³⁸⁰ and (ii) the residence requirement at the date of the Decree for Naturalisation pursuant to Article 21-16 of the French Civil Code.³⁸¹
283. At this point, the Tribunal observes that it is undisputed by the Parties that, regardless of the specific route applied, the French Administration grants French nationality through a naturalisation decree.

³⁷⁷ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 37.

³⁷⁸ First Expert Report of Professor Jault-Seseke.

³⁷⁹ Respondent's Reply on Jurisdiction, 19 December 2018, ¶ 74.

³⁸⁰ Respondent's Reply on Jurisdiction, 19 December 2018, ¶ 75; First Expert Report of Professor Jault-Seseke, ¶¶ 52 to 55; **Exhibit FJS-001**, the French Civil Code in force on 30 November 2009, Article 21-24.

³⁸¹ Respondent's Reply on Jurisdiction, 19 December 2018, ¶ 75; First Expert Report of Professor Jault-Seseke, ¶¶ 16 to 39; **Exhibit FJS-001**, the French Civil Code in force at 30 November 2009, Article 21-16.

284. The Tribunal observes that Claimant has submitted the following relevant documents to evidence his French nationality:
- a. Claimant's Naturalisation File;³⁸²
 - b. Claimant's Naturalisation Decree;³⁸³ and
 - c. Claimant's French passport³⁸⁴.
285. The authenticity of the aforementioned documents has not been challenged in this Arbitration. There is no evidence an authority of France, administrative judicial or otherwise, has rendered any of such documents null, void or ineffective. Furthermore, there is no evidence that the above documents have been challenged under French law or before the French authorities.
286. Second, the Tribunal notes that Claimant provides a number of contextual assertions with regard to his acquisition of French nationality. For instance, Claimant asserts that, although he travelled considerably throughout the world for business purposes (*e.g.* to the Russian Federation, the United States of America and Switzerland) it cannot be contested that Mr. Pugachev resides in France since 1996 and is an active resident of the city of Nice.³⁸⁵
287. Moreover, Claimant submits that, as of 1999, members of his family, including his former wife, went to reside to France. Since 2005, Claimant's parents and sister resided permanently in France, both of his parents passed away in France and are buried in Nice, and other members of his family still reside in France.³⁸⁶ Moreover, Mr. Pugachev alleges that his third child was born in Nice on 21 June 2010, that two of his sons were educated in France and that they still both live in France along with Claimant's grandchildren. Claimant further asserts that three generations of his family now live in France and have acquired the French nationality.³⁸⁷

³⁸² **Exhibit C-481**, Request for Naturalisation submitted on 29 April 2009.

³⁸³ **Exhibit C-1**, French Naturalisation Decree of French Prime Minister Fillon and French Minister of Immigration Besson, 30 November 2009.

³⁸⁴ **Exhibit C-480**, French Passport of Alexander Pugachev, issued on 19 September 2008.

³⁸⁵ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 54.

³⁸⁶ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 55.

³⁸⁷ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 58.

288. Claimant submits he owns a number of properties in France and had substantial financial interests there.³⁸⁸ For instance, in October 2007, Claimant acquired the group Hédiard and, in 2007, he acquired up to 20 % of the newspaper France Soir.³⁸⁹
289. The Tribunal considers that some of the references submitted by Claimant may have relevance in certain contexts, but, in this particular case, the preponderance of this evidence is far from convincing to establish that Mr. Pugachev resided in France during the term alleged by him. First, Claimant, as correctly noted by Respondent, incurred in several contradictions regarding the initiation and term of his alleged residence in France.³⁹⁰ Second, it is difficult for the Tribunal to believe that a person that claims to have resided in France for almost two decades is unable to provide substantial evidence of residence, such as evidence of payment of utilities, lease agreements, invoices or receipts. Third, the fact that his parents and sister were living in France is not of significant relevance to determine whether Mr. Pugachev himself resided in France.
290. Third, Claimant asserts that Respondent's own domestic courts have officially recognised that Mr. Pugachev is a French national.
291. The Parties debate the extent to which (if any) the Russian courts' decisions referring to Mr. Pugachev's nationality are relevant to the present Arbitration. Claimant claims that on 15 February 2018, the Ninth Arbitrazh Court of Appeals of the Russian Federation deemed, in clear and unequivocal terms, that Mr. Pugachev is a French national.³⁹¹ The latter decision was confirmed by the ruling of the Commercial Court of the Moscow Circuit dated 9 July 2018.³⁹² In Claimant's view, the Russian Federation's position in the present arbitration proceedings as to Claimant's French nationality is in blatant contradiction with its own courts' recent rulings.³⁹³

³⁸⁸ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 58. On this point, Claimant claims that "in 1999, Mr Pugachev began negotiations with French and foreign banks for the sale of IIB (e.g. Credit Agricole, BNP Paribas, etc.). By 2001, Mr Pugachev was elected as a member of the Federal Council of the Federal Assembly (Russian Parliament) and therefore decided to divest IIB from his group of companies into a trust (of which 25% was owned by top management of IIB and the remaining 75% was owned by Mr Pugachev's family members). From that point on, negotiations for the sale of IIB were conducted by the top management of IIB." Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ft. 61.

³⁸⁹ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 59.

³⁹⁰ Respondent's Reply Memorial on Jurisdiction, 19 December 2018, ¶¶ 92-94.

³⁹¹ **Exhibit C-493**, Decision of the Ninth Arbitrazh Court of Appeals, Case No. A40-119763/10, 15 February 2018, at p. 4. It should be noted that the decision of the Ninth Arbitrazh Court of Appeals is based, inter alia, on Article 253 of the Arbitrazh Procedure Code of the Russian Federation which provides "[i]f foreign persons, participating in a case, considered by a commercial court in the Russian Federation, are located or reside outside the territory of the Russian Federation, such persons are notified of the judicial proceedings by a commercial court ruling forwarded in a letter of request to a juridical institution or to another competent body of a foreign state". Article 121 of the Arbitrazh Procedure Code of the Russian Federation was also invoked by the court and provides "[f]oreign persons are notified by the commercial court according to the rules, established in this Chapter, unless otherwise provided by this Code or an international treaty of the Russian Federation"; **Exhibit C-494**, Excerpts of the Arbitrazh Procedure Code of the Russian Federation.

³⁹² **Exhibit C-495**, Decision of the Commercial Court of the Moscow Circuit, Case No. A40-119763/10, 9 July 2018, at p. 5.

³⁹³ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 29.

292. Conversely, Respondent alleges that it is clear from the decision of the Ninth Arbitrazh Court of Appeals of Moscow that the Russian Court did not review Claimant's acquisition of French nationality. Rather, it simply verified, on the premise put forward by Claimant, whether the requirements set by the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters dated 15 November 1965 (the "**Hague Convention**") on the service abroad of judicial and extrajudicial documents were fulfilled. Claimant's French nationality was not challenged before the Russian Court and, hence, the Russian Court did not review his nationality.³⁹⁴
293. As a preliminary remark, the Tribunal observes that a decision of the Russian courts would not, in principle, be binding on matters of French nationality either in France or before an international arbitration tribunal. This, for the simple reason that it is not for the Russian courts to decide whether or not Mr. Pugachev is a French national in accordance with French law, or whether or not he is a French national for purposes of the BIT.
294. Furthermore, the Tribunal is persuaded by the explanation put forward by Respondent in its Responses to the Tribunal's Questions to the Parties. Respondent describes that Article 121(4)(2) of the Commercial Procedure Code of the Russian Federation sets out the general rule according to which individuals shall be notified at their place of residence: "*Court notices addressed to individuals, including individual entrepreneurs, [shall be] sent to their place of residence [...]*."³⁹⁵ The starting position, therefore, is that under Russian law an individual will be notified at their place of residence, regardless of his or her nationality.
295. The aforementioned provision is complemented by the Hague Convention, which prescribes the method of service abroad. The Tribunal finds particularly enlightening that the use of the Hague Convention does not depend on the nationality of the person to be notified of the relevant court proceedings. As it is evidenced from Article 1, the application of the Hague Convention depends exclusively on whether there is a need to transmit a notice abroad.³⁹⁶
296. For these reasons, the Tribunal concludes that the notification procedure referred to in both Russian courts' decisions on which Claimant relies, applies when the person to be notified is resident or domiciled in a foreign country, regardless of his or her nationality. Accordingly, the only inference that can be drawn from the notification procedure adopted by the Russian courts is that the Russian courts considered that Claimant was resident in France at the time of the Russian court proceedings (*i.e.* from 2017 to 2018), which is not disputed by the Parties.
297. The Tribunal, therefore, concludes that Mr. Pugachev has adduced enough evidence to discharge his legal burden of proof in regard to his nationality. Accordingly, the evidential burden of proof shifted to Respondent, which is required to produce counter-evidence

³⁹⁴ **Exhibit C-493**, Decision of the Ninth Arbitrazh Court of Appeals, Case No. A40-119763/10, 15 February 2018; **Exhibit C-495**, Decision of the Commercial Court of the Moscow Circuit, Case No. A40-119763/10, 9 July 2018.

³⁹⁵ **Exhibit C-494**, the Commercial Procedure Code of the Russian Federation, Article 121(4)(2).

³⁹⁶ Article 1 of the Hague Convention provides that it applies "*where there is occasion to transmit a judicial or extrajudicial document for service abroad*" **Exhibit RL-196**, Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters dated 15 November 1965, Article 1.

showing that Claimant's acquisition of French nationality was the result of fraud or material error.

c) There is a high threshold to override the State's decision to confer its nationality to a natural person

298. The Parties dispute the standard of proof that would be required to rebut Claimant's evidence of having acquired French nationality on 30 November 2009. Specifically, the matter in dispute is whether the threshold to overcome such resumption is "very high" or if it is sufficient to simply "cast doubts" about Claimant's acquisition of French nationality.
299. Claimant asserts that the threshold to override the decision of a sovereign State (*i.e.* France), to confer its nationality to a natural person is "very high" and the Tribunal may only disregard that decision should Respondent prove a decisive case of fraud or material error.³⁹⁷
300. In opposition, Respondent alleges that Claimant bases his assertion according to which a "very high" standard of proof is required on two cases, both of which are distinct from the circumstances of this Arbitration. In Respondent's view, in each of the cases submitted by Claimant, the respondent State proffered no, or nearly no, evidence that Claimant had not complied with the applicable national requirements.³⁹⁸
301. Below the Tribunal will assess the Parties' submissions in this regard.
302. First, the Tribunal notes that it is undisputed by the Parties that there is a presumption established in favour of the legality of the French authorities' decision to grant Mr. Pugachev the French citizenship. Claimant's Naturalisation Decree³⁹⁹, as any other administrative decision issued by the French authorities has been published in the French *Journal Officiel de la République française*, and is deemed to be legal unless otherwise proven.
303. Second, even though this Tribunal has the power to determine Mr. Pugachev's nationality for purposes of this Arbitration, it must respect and display a deferent attitude towards the French authorities' sovereign decisions. As regards French nationality, the French authorities are the only ones empowered to apply French law, assess whether an individual meets the requirement to become a French national and grant French nationality through a naturalisation decree. This deference towards French authorities is underpinned by the fact that those authorities dispose of a wide margin of appreciation in the conferment of its citizenship to a natural person.

³⁹⁷ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 42.

³⁹⁸ Respondent's Reply on Jurisdiction, 19 December 2018, ¶ 66.

³⁹⁹ **Exhibit C-1**, French Naturalisation Decree of French Prime Minister Fillon and French Minister of Immigration Besson, 30 November 2009, *Journal Officiel de la République française*, 2 December 2009, p. 20820.

304. Third, the Tribunal observes that other arbitral tribunals have analysed similar cases and determined that the threshold to override such presumption is “high”. For instance, in *Ioan Micula v Romania*, the tribunal explained that:

*“The burden of proving that nationality was acquired in a manner inconsistent with international law lies with the party challenging the nationality. In that respect, there exists a presumption in favour of the validity of a State’s conferment of nationality. The threshold to overcome such presumption is high.”*⁴⁰⁰

305. In the same vein, the tribunal in *Arif v Moldova* found that it would only be inclined to disregard the decision of the French authorities if there was “*convincing and decisive evidence*” against it, and that for this purpose “*casting doubt is not sufficient*”. In the words of that tribunal:

*“This Tribunal does not consider appropriate to exercise its control over the French authorities’ decision to grant French nationality to Mr. Arif. Following the reasoning of the Tribunal in Micula, it would only be inclined to disregard the decision of the French authorities if “there was convincing and decisive evidence” that Mr Arif’s acquisition of French nationality “was fraudulent or at least resulted from a material error. It is for Respondent to make the showing. For this purpose, casting doubt is not sufficient.” Respondent has not proved that Mr. Arif’s nationality was obtained fraudulently or resulted from a material error of the French authorities.”*⁴⁰¹

306. The Tribunal is aware that there are certain differences between the *Ioan Micula* and *Arif* cases and the present Arbitration. In fact, as argued by Respondent, the arbitral tribunal in *Micula v Romania* stated that “*casting doubt is not sufficient*”, but then went on to state that “[...] the Respondent has presented only limited evidence, none of which is sufficient to make the necessary showing.”⁴⁰² Likewise, in *Arif v Moldova* the respondent did not bring any evidence to support its assertion that the Claimant did not hold the required nationality.⁴⁰³

307. However, regardless of the factual circumstances referred to in the previous paragraph, it is not contested that a State’s conferral of nationality is presumed valid and that the burden of proof lies on the party challenging such conferral. The Tribunal considers that the fact that the respondents in these cases did not bring sufficient evidence, does not necessarily change the underlying solution of the aforementioned tribunals, *i.e.* (i) a shift in the evidential burden of proof; and (ii) a high burden for the party contesting one individual’s nationality.

⁴⁰⁰ **Exhibit RL-101**, *Ioan Micula and others v Romania*, ICSID Case No. ARB/05/20, Decision on Jurisdiction and Admissibility, dated 24 September 2008, ¶ 87 (emphasis added).

⁴⁰¹ **Exhibit CL-184**, *Mr. Franck Charles Arif v Republic of Moldova*, ICSID Case No. ARB/11/23, Award, dated 8 April 2013, ¶ 357 (emphasis added).

⁴⁰² **Exhibit RL-101**, *Ioan Micula and others v Romania*, ICSID Case No. ARB/05/20, Decision on Jurisdiction and Admissibility, dated 24 September 2008, ¶ 95.

⁴⁰³ **Exhibit CL-184**, *Mr. Franck Charles Arif v Republic of Moldova*, ICSID Case No. ARB/11/23, Award, dated 8 April 2013, ¶ 357.

308. The Tribunal notes that the Parties' debate over the standard of proof is a linguistic debate, rather than a legal debate. The Parties do not explain what the difference under international law is, if it exists, between a "very high", "high", or "casting of doubt" standard of proof. The relevant issue here is that Respondent must prove that there was an error or a fraud in the issuance of a State administrative act, for which the French State has a wide margin of discretion.
309. Proving an error or fraud in the issuance of a discretionary administrative act of a Sovereign State granting nationality to a foreigner requires much more than "casting doubt" as to the French authorities' determination. It requires clear and convincing evidence that there was a fraud or that the French authorities incurred in a material error, and that such fraud or error rendered the decision of the French State invalid under international law. As analysed below, no such evidence has been submitted in this Arbitration.

d) Respondent failed to prove that Claimant's acquisition of French nationality was the result of fraud or material error

310. Up to this point, the Tribunal has found that (i) it has the power to decide whether Mr. Pugachev is a French national for purposes of the present Arbitration; (ii) Claimant submitted enough evidence of his French nationality and discharged his burden of proof; and that (iii) in order to override the French State's decision to confer its nationality to Claimant, positive evidence of a fraud or a material error must be submitted. The Tribunal will now assess whether Respondent fulfilled its burden of proving that Mr. Pugachev's acquisition of French nationality was the result of a material error or fraud.
311. Respondent sustains that there is strong and compelling evidence that Claimant is not a French national for purposes of the BIT. Indeed, Claimant did not meet the requirements set out by French law to be granted nationality either by the Residence Route or by the Exceptional Services Route. Moreover, Claimant did not fulfil the requirements common to both routes. There is no other lawful route by which Claimant could have acquired French nationality and hence the only conclusion is that Claimant acquired his French nationality in a manner not compatible with international law.⁴⁰⁴
312. On the contrary, Claimant claims that Respondent failed to meet its burden of bringing decisive evidence of a material error or fraud committed by the French authorities. In Claimant's opinion, none of these two grounds (*i.e.* material error or fraud) arise from Mr. Pugachev's acquisition of French nationality and Respondent cannot convincingly contend the contrary. Respondent solely based its arguments on mere assumptions and scattered information with no probative value.⁴⁰⁵
313. The Tribunal clarifies that it is not within its authority to assess whether the French authorities have rightfully applied French law when conferring the French nationality to

⁴⁰⁴ Respondent's Reply on Jurisdiction, 19 December 2018, ¶ 80.

⁴⁰⁵ Claimant's Rejoinder on Jurisdiction, 26 March 2019, ¶¶ 89-94.

Mr. Pugachev. The Tribunal will only examine the opposability of Mr. Pugachev's French nationality for the purposes of the present Arbitration.

1. Respondent failed to prove Mr. Pugachev acquired French nationality through fraud

314. During this Arbitration, Respondent appears to have changed its argument of fraud. In its Request for Bifurcation, Respondent asserted that "[...] *Claimant's alleged acquisition of French nationality appears to be fraudulent, and in any event the Claimant remains a Russian national.*"⁴⁰⁶ However, during the jurisdictional phase of the Arbitration, Respondent nuanced its argument and claimed that "*Respondent has already accepted that the Tribunal would need to conclude that the Claimant acquired French nationality either by error, fraud, or some other similar serious failing.*"⁴⁰⁷
315. The Tribunal considers that fraud allegations are not to be taken lightly. In cases where the alleged fraudulent measure was taken with respect to a naturalization procedure, the fraud would also affect the sovereign State. In other words, claiming that Mr. Pugachev acquired French nationality through fraud would most likely imply that the French Administration colluded with Claimant in order to grant him French citizenship. These are serious accusations that must be evaluated with the utmost rigor.
316. The Tribunal finds that, from the evidence on the record, it is not possible to conclude that Mr. Pugachev concealed information from or provided incorrect information to the French authorities. As further explained below, the Tribunal is aware that in Respondent's view the following information should have caused Mr. Pugachev's naturalisation to be rejected:
- a. he signed his naturalisation application in Moscow;
 - b. he had a temporary Schengen visa;
 - c. his wife was still living in Russia and she had no interest in being naturalised French;
 - d. he was a Russian Senator; and
 - e. he provided a ten-month lease of his apartment when, in fact, he could have given the property title of his house in Nice.⁴⁰⁸
317. Having considered Respondent's position in light of the evidence on the record, the only abnormality that the Tribunal observes in Claimant's Naturalisation File was Mr. Pugachev's omission to mention his new-born son. However, the Tribunal considers that this omission does not amount to the category of "fraud".

⁴⁰⁶ Respondent's Request for Bifurcation, 30 October 2017, ¶¶ 23-29.

⁴⁰⁷ Respondent's Reply on Jurisdiction, 19 December 2018, ¶ 65.

⁴⁰⁸ Hearing Transcript Day 4, p. 122, lines 1-10.

318. During the Hearing on Jurisdiction, Professor Jault-Seseke admitted that her allegation regarding Mr. Pugachev's new-born son (*i.e.* that his name was omitted illegally from Claimant's Naturalisation File) had been made without knowing whether Mr. Pugachev was legally his father at the time of the application.⁴⁰⁹ On the contrary, as explained by Mr. Hourdin, the omission of a child could not have had any impact on the legality of the Naturalisation Decree, in particular, as Mr. Pugachev did not ask for the naturalisation of his children.⁴¹⁰
319. The Tribunal finds worthy of note that, as explained by Mr. Hourdin, fraud is not just an omission, because what matters is both the intentionality and the purpose of the fraud: "[...] *it must be voluntary, willful [...] dissimulation in the exclusive aim of obtaining French nationality.*"⁴¹¹ In other words, an act of dishonesty amounts to fraud if it is made to obtain an unjustified gain.
320. In this case, Mr. Pugachev had no gain in omitting his new-born son from Claimant's Naturalisation File, since his eldest sons were both listed in his application as living in Russia.⁴¹² As to Claimant's argument according to which he did not mention his relationship with Ms. Tolstoy in his naturalisation file due to personal considerations, the Tribunal finds it of no value for the purposes of this Arbitration. Pure personal decisions cannot be construed, *ex-post*, as a defence for not fulfilling a legal burden - *nemo auditur propriam turpitudinem allegans*.
321. The Tribunal observes that Professor Jault-Seseke avoided to conclude on the existence of fraud in her two expert reports.⁴¹³ In her First Expert Report, for instance, she only affirmed that "[...] *the request for naturalisation should have been declared inadmissible.*"⁴¹⁴ However, as Claimant points out, she failed to conclude to the existence of a material error or fraud. Moreover, during the Hearing on Jurisdiction, Professor Jault-Seseke failed to establish that Mr. Pugachev's acquisition of French nationality was the result of fraud.⁴¹⁵
322. Moreover, the expert reports of Professor Etienne Pataut and Mr. Hugues Hourdin argue that Respondent's conclusion is misconceived both under French law and in accordance with the administrative practice, as it omits two essential aspects:
- a. regardless of the route by which Claimant obtained his nationality, the French Administration holds a discretionary power in matters of conferment of French nationality that may go beyond the strict application of the texts; and

⁴⁰⁹ Hearing Transcript Day 3, p. 106, lines 13-15.

⁴¹⁰ Transcript, Hearing Day 4, p. 47, lines 2-3. *See also* Expert Report of Mr. Hugues Hourdin, p. 38.

⁴¹¹ Transcript, Hearing Day 4, p. 59, lines 4-16.

⁴¹² **Exhibit FJS-048**, Request for Naturalisation now in its entirety, p. 10. *See* Transcript, Hearing Day 4, p. 124, lines 7-14.

⁴¹³ First Expert Report of Professor Jault-Seseke, p. 52; Second Expert Report of Professor Jault-Seseke, p. 13.

⁴¹⁴ First Expert Report of Professor Jault-Seseke, Conclusion, p. 20.

⁴¹⁵ Transcript, Hearing Day 3, p. 90, lines 8-14. *See also* Transcript, Hearing Day 1, p. 66, lines 3-6.

- b. any challenge against Mr. Pugachev's nationality would now be precluded under French law.

323. In conclusion, the Tribunal finds that there are certain inconsistencies in Claimant's Naturalisation File and that it is not entirely clear whether the French government considered Mr. Pugachev a resident for a time sufficient to qualify under the Residence Route or one of the special cases under the Exceptional Service Route in which the French Government may exercise an even wider discretion to grant naturalisation. However, for this Tribunal, those inconsistencies do not amount to the level of "fraud". Absent compelling evidence showing that Mr. Pugachev acquired his French nationality fraudulently, the Tribunal has no reason to overcome the sovereign decision adopted by the French Administration.

2. Respondent failed to prove Mr. Pugachev acquired French nationality as a result of a material error

324. The Parties have submitted multiple claims debating whether Mr. Pugachev fulfilled the conditions set out in the French Civil Code and whether his naturalisation was the result of a material error.

325. First, and as noted above, the Tribunal observes that Mr. Pugachev could have acquired his French nationality either by (i) the Residence Route; or by (ii) the Exceptional Service Route. The requirements and conditions for acquiring French nationality through each of these routes are different and are subject to different procedures.

326. With regard to the Residence Route, the Tribunal understands that in order to acquire French nationality through this route, a foreigner must fulfil certain conditions set out in the law. These conditions include that the applicant:

- a. must be 18 years old at the time of the request for French nationality;
- b. must be "of good morality" and has not been subject to certain criminal convictions;
- c. must justify his assimilation into the French community through, among other factors, a sufficient knowledge of the French language and of the rights and obligations granted by French nationality; and
- d. must have been living in France for the last five years or, in exceptional cases, two years, and the applicant must be residing regularly in France when the naturalisation decree is signed.⁴¹⁶

327. In addition to the above, the French *Conseil d'État* considers that the residency requirements are only fulfilled if the applicant locates in France "*the centre of his interests in a stable*

⁴¹⁶ Respondent's Submission on Jurisdiction, 6 April 2018, ¶ 37.

manner".⁴¹⁷ The French *Conseil d'État* also considers that the five year residency period must precede the application and only starts running when the applicant has fixed his centre of interests in France.⁴¹⁸

328. With regard to the Exceptional Service Route, the Tribunal observes that Article 21-19 of the French Civil Code provides an exception from the requirement of a probationary period in case of "exceptional services" or "important services" rendered to France. This Article provides:

"The following persons may be naturalized without fulfilling the requirement of a residential qualifying period:

[...]

*6° A foreigner who gave exceptional services to France or one whose naturalization is of exceptional interest for France. In this event, the naturalization decree can be granted only after the advisory opinion issued by the Conseil d'État based on the substantiated report of the competent minister."*⁴¹⁹

329. The Parties disagree about whether naturalisation can only be granted after an advisory opinion issued by the French *Conseil d'État* based on a justified proposal by the competent Minister. Professor Pataut further explains that the distinction between "important services" and "exceptional services" is at the sole discretion of the government.⁴²⁰
330. Second, the Tribunal is persuaded that the French Administration enjoys a wide margin of appreciation in the assessment of the above-mentioned conditions.
331. As noted above, French authorities dispose of a large power of appreciation when assessing the legal requirements for naturalisation. In this sense, as explained by Claimant, the French *Conseil d'État* has defined naturalisation as "*a favour granted by the French State to a foreigner.*"⁴²¹ The discretionary power of French authorities is brought to light, *inter alia*, through the exceptions envisaged to the Residence Route by the French Civil Code itself.
332. The Tribunal agrees that naturalisation's specific legal regime leads to judicial review that is essentially limited to admissibility and that, in practice, exclusively relates to the refusal decision. During the Hearing on Jurisdiction, it was further explained that the French Civil Code imposes an obligation to motivate decisions to naturalise only if those decisions are negative:

"[...] All of the disputes concerning nationality are disputes on the [...] limits of the discretionary power of the State, [and] primarily aim at looking at whether the State

⁴¹⁷ First Expert Report of Professor Jault-Seseke, ¶ 18; **Exhibit FJS-15**, CE, No. 57464 and CE No. 50277, dated 28 February 1986.

⁴¹⁸ First Expert Report of Professor Jault-Seseke, ¶¶ 18-19.

⁴¹⁹ First Expert Report of Professor Jault-Seseke; **Exhibit FJS-001**, the French Civil Code in force on 30 November 2009, Article 21-19.

⁴²⁰ Expert Report of Professor Etienne Pataut, p. 9.

⁴²¹ Expert Report of Professor Etienne Pataut, p. 3; Expert Report of Mr. Hugues Hourdin, p. 5.

did not act arbitrarily by refusing naturalisation or by withdrawing [a] naturalisation already granted. And notably in article 21.27 of the Civil Code, which imposes an obligation to motivate decisions to naturalise only if those decisions are negative."⁴²²

333. In line with the above, the Tribunal invited Claimant to explain whether he acquired his French nationality through an exception to the Residence Route; and, if that was the case, which one of the exceptions to the Residence Route was applied to his case. In response to the Tribunal's question, Claimant explained that:

"At the time of his Request for Naturalisation, it was clear that his naturalisation represented an interest to France. Indeed, he had been the owner of the French company Hédiard for almost two years, and of an important number of shares in France Soir.²⁹ More importantly, Mr Pugachev was at the time of his request the founder and sole shareholder of OPK group, which would be in charge of parts of the construction of the Mistral ships in the Baltic Shipyards and therefore was involved in the Mistral deal, a role that was known by the French authorities.

In this vein, as the Tribunal may note, Mr Pugachev listed the ownership of Hédiard and OPK in his Request for Naturalisation, and also referred to his roles as a Senator in Russia and as the President of the executive board of IIB.

Yet, as previously explained, the Administration is not required to include any reasoning to its positive decisions when deciding to grant French nationality. This is exactly the case of Claimant's naturalisation: there is no reasoning available as to the Administration's choice of a specific route and, in the absence of such a justification, Claimant is not able to determine the exact route chosen by the French authorities for granting him French nationality."⁴²³

334. The above explanation seems to be consistent with Professor Pataut's expert report, which stated that:

"This assessment is not intended to be challenged in court, as, by excellence, it is left to the government's discretion. It is particularly noteworthy that no criterion makes it possible to distinguish it from the simple reduction of the probationary period of article 21-18, 2°, which reduces to two years the residence requirement of an individual who "has rendered or may render by his capacities and talents important services to France". In this case, the distinction between "important services" and "exceptional services" - which is sometimes noted as "provoke[ing] smiles" - is indeed the sole discretion of the government."⁴²⁴

335. Moreover, the margin of appreciation is also relevant when the applicant is of interest to France. According to the French Conseil d'État:

"[the administrative authority] [...] may, in the exercise of this discretion, in particular, take into account, when assessing the interest of granting the French nationality, the integration of the individual concerned into French society, his or

⁴²² Transcript, Hearing Day 4, p. 25, lines 9-16.

⁴²³ Claimant's Answer to the Tribunal's Questions, 19 July 2019, ¶¶ 39-41.

⁴²⁴ Expert Report of Professor Etienne Pataut, p. 9 (emphasis added).

*her social and professional integration and the fact that he has the resources to provide for his long term needs in France.”*⁴²⁵

336. In sum, the Tribunal agrees that the French authorities dispose of a large power of appreciation and discretion when assessing the legal requirements for naturalisation. As a result of the discretionary nature of the naturalisation procedure, the control by the administrative courts is limited to a minimum.⁴²⁶
337. Third, if Claimant was naturalized through the Residence Route, certain inconsistencies in his naturalisation do not necessarily amount to a material error.
338. Respondent argues that it cannot be established that Claimant’s Request for Naturalisation included all of the documents that, according to its interpretation of the requirements set out under French law, were necessary to include in the application.⁴²⁷ Furthermore, Respondent affirms that pages five and six of Claimant’s Request for Naturalisation are missing and these pages should contain critical information about Claimant’s professional situation and domicile that constitute the main elements taken into account by the French *Conseil d’État* to verify the fulfilment of the residence requirements.⁴²⁸
339. Respondent also alleges that Claimant did not have his centre of interests in France during the requisite period. As set out above, Respondent alleges that key requirements to establish a “centre of interest” in France include the length and permanency of the residency in France, and the location of the applicant’s “nuclear family”.⁴²⁹ In this regard, Respondent argues that Claimant’s partner and children lived in London during the relevant period and that Claimant’s Request for Naturalisation itself offers reasons for doubt because, *inter alia*, it provides that Claimant’s former wife and two children were residing in Moscow, not France.⁴³⁰ In addition, Respondent claims that Mr. Pugachev failed to respond that he was residing in France during the relevant period.⁴³¹
340. It is also apparent that Claimant disclosed two passports with Schengen visas that allowed a maximum stay duration of 90 days. In Respondent’s view, it can be inferred by this that Mr. Pugachev was not allowed to stay in France (or in another Schengen State) for more than 90 days until he was granted a residence permit in or around July 2009, *i.e.* just before the Decree for Naturalisation was issued.⁴³²

⁴²⁵ Expert Report of Professor Etienne Pataut, p. 5 (emphasis added).

⁴²⁶ Expert Report of Professor Etienne Pataut, p. 5.

⁴²⁷ **Exhibit C-481**, Request for Naturalization submitted on 20 April 2009.

⁴²⁸ Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 47; **Exhibit C-481**, Request for Naturalization submitted on 20 April 2009.

⁴²⁹ Respondent’s Reply on Jurisdiction, 19 December 2018, ¶ 85; First Expert Report of Professor Jault-Seseke, ¶ 26.

⁴³⁰ Respondent’s Reply on Jurisdiction, 19 December 2018, ¶ 88.

⁴³¹ Respondent’s Reply on Jurisdiction, 19 December 2018, ¶ 92.

⁴³² Respondent’s Reply on Jurisdiction, 19 December 2018, ¶ 99; Second Expert Report of Professor Jault-Seseke; **Exhibit FJS-046**; Second Expert Report of Professor Jault-Seseke, ¶ 3. “*The passport provided by Mr. Pugachev*

341. Furthermore, Claimant failed to produce, when ordered to do so, copies of his passports held between 1996 and 2016, alleging that they were not in his possession because these were surrendered to the DIA and the Bank's solicitors pursuant to the English proceedings.⁴³³ However, the English court confirmed that Claimant had failed to deliver his French passport. Claimant did not surrender his French passport and should have produced it in this Arbitration.
342. Mr. Pugachev also produced his declarations to the tax authorities and a letter from the Safra Bank which indicates that he was residing in the Russian Federation.⁴³⁴ Respondent sustains that these documents provide further substantive evidence that Claimant did not meet the requirements under French law for naturalisation through the Residence Route.⁴³⁵
343. Against this background, the Tribunal reiterates that naturalisation is, by essence, the domain of sovereignty of the State and, accordingly, the French Administration disposes of a large margin of appreciation in the assessment of the requirements.
344. Likewise, as pointed by Professor Etienne Pataut, because of the discretionary nature of the naturalisation procedure, the control by the French administrative courts is limited.⁴³⁶ Only a gross error of qualification or analysis by the Administration will be likely to call into question the validity of the decision to grant nationality.⁴³⁷ In particular, Professor Etienne Pataut explains that:
- a. the assessment of the residence requirements is sufficiently broad to allow the Administration a wide margin of manoeuvre; and
 - b. the respective weight to be given to each of the necessary criteria falls within the sovereign discretion of the Administration. The Tribunal recognizes that the French authorities dispose of a large power of appreciation when assessing the legal requirements for naturalisation.⁴³⁸
345. Moreover, the Tribunal understands that decisions in favour of naturalisation are very rarely contested because the individual who has benefited from them will not act against the decree, and third parties will very rarely be able to challenge the validity of the

reveals that he was staying in France on the basis of a Schengen visa which allowed him only short stays of no more than 90 days. This visa was issued in February 2008. It was only after his naturalization request filed on 20 April 2009 that Mr. Pugachev was granted a resident permit. As explained previously, with no long-term resident permit, the condition of stability of the applicant's residence as required by the applicable nationality law is not met".

⁴³³ **Exhibit R-112**, Letter from the Claimant to the Respondent, dated 26 September 2018, ¶ 4.

⁴³⁴ Second Expert Report of Professor Jault-Seseke; **Exhibit FJS-052**, Claimant's tax returns in France for the financial years 2005 to 2007, produced by the Claimant on 29 August 2018; Second Expert Report of Professor Jault-Seseke; **Exhibit FJS-050**, Letter from the Safra Bank to the Claimant dated 22 April 2009, produced by Claimant on 29 August 2018.

⁴³⁵ Respondent's Reply on Jurisdiction, 19 December 2018, ¶ 107.

⁴³⁶ Expert Report of Professor Etienne Pataut, p. 5.

⁴³⁷ Expert Report of Professor Etienne Pataut, p. 5.

⁴³⁸ Expert Report of Professor Etienne Pataut, p. 9.

naturalisation decree because there is no interest to do so. There is no evidence on the record showing that Mr. Pugachev's naturalisation has been challenged before French domestic courts and that those courts assessed the legality of Claimant's Naturalisation Decree. As explained below, all legal actions that could be filed against Claimant's Naturalisation Decree are time-barred under French law.

346. The Tribunal also finds it plausible that a failure to have the family unit or material interests in France can only become a reason for inadmissibility if no particular circumstances emerge from the file, making it possible to put into perspective the importance of such ties.⁴³⁹ In other words, a global appreciation of the elements may be undertaken and the respective weight to be given to each of the necessary criteria falls within the sovereign discretion of the Administration.⁴⁴⁰
347. Finally, the Tribunal considers that if Mr. Pugachev was naturalized through the Residence Route, such naturalisation inevitably displays certain inconsistencies. However, from the evidence on the record, it is unclear whether Claimant was naturalized by way of the Residence Route and, accordingly, whether the Residence Route's requirements applied to his case. Instead, the evidence on the record suggests that it is likely that the French authorities granted naturalization through the Special Services Route. Thus, and bearing in mind the Tribunal's findings as to the French Administration's wide margin of appreciation, the Tribunal cannot conclude from the evidence on the record that Mr. Pugachev was naturalized through the Resident Route, and if so, that the apparent inconsistencies in Mr. Pugachev's naturalisation raise to the level of "material error".
348. Fourth, Claimant's naturalisation was not granted in a specific decree issued specifically for Claimant but in a collective decree involving various individuals.
349. The cases cited by Claimant reveal that the French Administration can make a choice of pure expediency and issue a decree of naturalisation without necessarily having to follow the "exceptional" path through the French *Conseil d'État*.
350. Respondent contends, *inter alia*, that in the case of an Exceptional Services Route, it would have been necessary for the competent Minister to prepare a report and for the French *Conseil d'État* to issue an opinion, but Claimant's Naturalisation File does not contain such report.⁴⁴¹ Moreover, Professor Jault-Seseke compared Mr. Mamadou Gassama's naturalisation decree for exceptional services with Claimant's and found that:

"[w]hile the latter [Mr Gassama's] is a collective decree simply referring, among various names of naturalized persons, to that of Mr. Pugachev, the former is an individual decree which refers to the various specificities of the naturalization

⁴³⁹ **Exhibit CL-369**, Conseil d'État, 13 October 2006, No. 282099.

⁴⁴⁰ **Annex EP-25**, Circular DPM No. 2000-254 of 12 May 2000 relating to naturalization, reinstatement in French nationality and loss of French nationality, unpublished at the Official Journal, published in BO Aff. Soc. No. 2000-27 from 3 to 9 July 2000 "*for each decision, the individual characteristics of each candidacy pursuant to the law, principles set out in [the administrative instructions] and all other elements which allow to appreciate the interest for France for each naturalization.*"

⁴⁴¹ Second Expert Report of Professor Jault-Seseke, ¶ 12.

framework. Mr. Gassama's naturalization decree indicates that it was issued on the basis of the report made by the Minister of the Interior; it refers explicitly to various articles of the Civil Code including Article 21-19, 6°, as well as to the naturalization request; it specifies that the Conseil d'Etat has been heard.”⁴⁴²

351. In contrast with the above, Claimant submits that Mr. Antony Sandler, Mr. Alek Skarlatos and Mr. Spencer Stone (*i.e.* the three American heroes from the Thalys train) were granted French nationality on 18 September 2018.⁴⁴³ These three Americans who had never lived in France and have no knowledge of the French tongue had their names included within a collective decree, among various names of naturalised individuals, similar to Claimant's Naturalisation Decree.⁴⁴⁴
352. During the Hearing on Jurisdiction, Respondent's expert recognized that the three Americans had indeed been naturalised French for exceptional services by means of a collective decree.⁴⁴⁵ This would also show that the French authorities have a discretionary power to refuse naturalisation in circumstances where the applicable conditions are met and also to admit naturalisation where the applicable conditions are not fulfilled.
353. The Tribunal is persuaded that this form of naturalisation through a collective decree, with no reference to the various specificities of the naturalisation framework, could be the result of the French Administration's margin of appreciation and of the existence of an expediency choice in this matter. Just as for the three Americans, the French Administration may have used its discretionary power to examine Mr. Pugachev's situation.
354. However, the question remains why Mr. Pugachev represented a special interest to France for his “exceptional services” or “important services”. In Claimant's view, there were different elements in Claimant's Naturalisation File that prove his interest to France. These include, *inter alia*:

“Mr Pugachev indicated in his Request for Naturalisation that his father, mother and sister lived in Beausoleil (France);

One of his children, Mr Alexander Pugachev, was already French at the time of his Request for Naturalisation;

Mr Pugachev declared he was the owner of the French company Hédiair since 2007 (among other companies); As previously explained, Hédiair was considered as the flagship of the French luxury market and was founded in 1854. It included the largest food products chain in the world, with more than 120 shops in more than 30 different countries. Mr Pugachev invested more than EUR 100 million into Hédiair.

⁴⁴² Second Expert Report of Professor Jault-Seseke, ¶ 12.

⁴⁴³ **Exhibit C-513**, Naturalisation Decree of Mr Antony Sandler, Mr. Alek Skarlatos and Mr. Spencer Stone, dated 18 September 2018.

⁴⁴⁴ **Exhibit C-513**, Naturalisation Decree of Mr Antony Sandler, Mr. Alek Skarlatos and Mr. Spencer Stone, dated 18 September 2018.

⁴⁴⁵ “Q. Do you know why [the Thalys Heroes have been naturalised French]? A. (Interpreted). For exceptional braveryship and therefore exceptional services rendered to France.” Transcript, Hearing Day 3, p. 115, lines 2-4.

Mr Pugachev declared two residences in France: since 2003 in Nice, and since 9 April 2009 at Avenue Foch, in Paris;

He provided an attestation of a Monegasque Bank certifying that he held bank account with a net asset value of more than EUR 180,000;

The complete version of Exhibit R-84, refers to a short-stay visa for family reasons from 26 February 2008 to 25 February 2012 (1460 days), i.e. 365 days per year.”⁴⁴⁶

355. In addition, in his response to the Tribunal’s Questions, Claimant expressed that:

“At the time of his Request for Naturalisation, it was clear that his naturalisation represented an interest to France. Indeed, he had been the owner of the French company Hédiard for almost two years, and of an important number of shares in France Soir. More importantly, Mr Pugachev was at the time of his request the founder and sole shareholder of OPK group, which would be in charge of parts of the construction of the Mistral ships in the Baltic Shipyards and therefore was involved in the Mistral deal, a role that was known by the French authorities.

In this vein, as the Tribunal may note, Mr Pugachev listed the ownership of Hédiard and OPK in his Request for Naturalisation, and also referred to his roles as a Senator in Russia and as the President of the executive board of IIB.”⁴⁴⁷

356. Likewise, Claimant submits that his involvement in the Mistral deal was of key importance to France. According to Claimant, the Mistral contract was negotiated between 2008 and 2011, between France and Russia. It provided for the sale of two Mistral ships, to be constructed in part at the Baltic Shipyards, owned by Mr. Pugachev and from which he was allegedly expropriated in 2011 by the Russian Federation. Mr. Pugachev promoted the government-to-government deal between France and Russia and had an important role in bringing such deal to France.⁴⁴⁸

357. It is not for this Tribunal to assess whether Mr. Pugachev rendered “exceptional services to France” or whether he was of “an exceptional interest to France”. That is a matter within the wide margin of appreciation of the French Administration and there is no evidence that allows to conclude that Claimant’s naturalisation amounts to a “material error” of assessment by the said Administration.

358. Fifth, no challenge of Mr. Pugachev’s French nationality is available under French law.

359. The Tribunal already found that under French law the decision of the French Administration is presumed to be legal unless otherwise proven. Now, the Tribunal will examine whether any purported non-fulfilment of the conditions for naturalisation set forth under French law could have legal consequences regarding the validity of Mr. Pugachev’s French nationality.

⁴⁴⁶ Claimant’s Rejoinder on Jurisdiction, 26 March 2019, ¶ 150; See **Exhibit R-110**, Full Naturalisation File as produced by the Claimant.

⁴⁴⁷ Claimant’s Answer to the Tribunal’s Questions, 19 July 2019, ¶¶ 39-40.

⁴⁴⁸ Claimant’s Answer to the Tribunal’s Questions, 19 July 2019, ¶¶ 45-46.

360. As a preliminary point, the Tribunal shares Professor Pataut's reservation as regards to whether a foreign State could act before the administrative courts to challenge a naturalisation decision for lack of interest and lack of standing.⁴⁴⁹
361. Despite this probable lack of standing preventing Respondent to contest the French authorities' decision to grant Claimant the French nationality, Professor Etienne Pataut and Mr. Hugues Hourdin have assessed the three possible recourses against said decision. These include (i) an action for misuse of power, (ii) the withdrawal of the naturalisation decree and, finally, (iii) an objection of illegality in the ambit of another dispute.
362. The first possibility for challenging a naturalisation decree would be that of an appeal for misuse of power, which is open against any administrative act within two months as from its notification (by the person who is concerned by such decision) or within two months of its publication (by an interested third party).⁴⁵⁰ This deadline has expired in the case of Mr. Pugachev, whose Naturalisation Decree is dated 30 November 2009.
363. The second possibility is that, under certain conditions, a naturalisation decree may be withdrawn by the State, with the assent of the French *Conseil d'État*. Such an action is provided under Article 27-2 of the French Civil Code, that provides:
- "A decree deciding naturalisation or reinstatement may be withdrawn with assent of the Conseil d'Etat within one year after its publication in the Journal Officiel where the person making the request does not comply with the statutory requirements; where the decision was obtained by lie or fraud, the decree may be withdrawn within two years from the detection of fraud."*⁴⁵¹
364. Any withdrawal for material error would be time-barred one year after the publication of the Naturalisation Decree, *i.e.* one year after its release in the *Journal officiel de la République française* dated 2 December 2009.⁴⁵²
365. Finally, a naturalisation decree could also be indirectly contested before judicial courts pursuant to Article 29 of the French Civil Code.⁴⁵³ Both Professor Pataut and Mr. Hugues Hourdin consider that a naturalisation decree is an individual administrative act.⁴⁵⁴ Consequently, the plea of illegality cannot be invoked before courts beyond the normal time limit for appeal against the administrative decision, as held by the civil courts.

⁴⁴⁹ Expert Report of Professor Etienne Pataut, p. 6.

⁴⁵⁰ Expert Report of Mr. Hugues Hourdin, p. 10.

⁴⁵¹ **Exhibit CL-370**, Excerpts of the French Civil Code, Article 27-2 (applicable in 2009).

⁴⁵² See **Exhibit C-1**, French Naturalisation Decree of French Prime Minister Fillon and French Minister of Immigration Besson, 30 November 2009.

⁴⁵³ "The civil courts of general jurisdiction shall exercise exclusive jurisdiction over disputes relating to French or foreign nationality of natural persons. Issues of nationality shall be preliminary before any other administrative or judicial court except criminal courts with a criminal jury" **Exhibit CL-370**, Excerpts of the French Civil Code, Article 29.

⁴⁵⁴ Expert Report of Professor Etienne Pataut, p. 15; Expert Report of Mr. Hugues Hourdin, p. 15.

366. The Tribunal is persuaded that no legal or administrative action is available under French law to challenge Mr. Pugachev's French nationality. This means that Claimant's Naturalisation Decree is an administrative decision presumed to be legal under French law, and whose legality cannot be contested before the French courts. For the avoidance of doubt, the Tribunal is aware that Respondent is not seeking to take recourse under French law in respect of Claimant's Naturalisation Decree, but rather, that it is seeking to have the Tribunal assess, under international law and the Treaty, its jurisdiction over the dispute. As a result, whether Claimant's nationality remains capable of challenge or revocation under French law is not material to the question of the Tribunal's jurisdiction under the Treaty, which is a question of international law.
367. In conclusion, absent any compelling evidence showing that Mr. Pugachev acquired his French nationality fraudulently or as a result of a material error, the Tribunal has no reason to overcome the sovereign discretionary decision taken by the French Administration.

C. Dual nationals are not excluded from the Treaty

368. The Parties dispute whether dual nationals are excluded from the Treaty and whether Claimant renounced to his Russian nationality in 2012. Having carefully analysed the Parties' submissions in this regard, the Tribunal finds that dual nationals are not excluded from the Treaty. In consequence, the Tribunal will not assess whether Claimant effectively renounced to his Russian nationality or whether the principle of dominant and effective nationality applies to this case.
369. Respondent submits that the Treaty is not silent as to dual nationals, but rather that it expressly excludes them from its scope. When Article 1.2(a) of the BIT is interpreted in light of Articles 31 and 32 of the VCLT, it is evident that the parties to the Treaty only intended to protect the investors of the State not hosting the investment.⁴⁵⁵
370. Further, Respondent alleges that, contrary to Claimant's assertion in his Counter-Memorial on Jurisdiction, Respondent did not "*search for the intention of the signatories*" as such but deduced such intention from the specific wording of the BIT, as required by the VCLT. Claimant, therefore, does not qualify as an investor under the Treaty.⁴⁵⁶
371. On the contrary, Claimant asserts that Article 1.2(a) of the Treaty contains no restriction regarding investors holding both French and Russian citizenship in accordance with the ordinary meaning of its terms. In any event, even if the Arbitral Tribunal were to interpret Article 1.2 of the Treaty in light of its context, the entirety of the France-USSR BIT does not exclude dual nationals from its scope.⁴⁵⁷
372. Likewise, Claimant affirms that Respondent should be precluded from objecting to Mr. Pugachev's standing as a foreign investor under Article 1.2 of the Treaty, because only a few months earlier its own courts deemed that he is a foreigner and, therefore, subject to

⁴⁵⁵ Respondent's Reply on Jurisdiction, 19 December 2018, ¶ 217.

⁴⁵⁶ Respondent's Reply on Jurisdiction, 19 December 2018, ¶¶ 217-218.

⁴⁵⁷ Claimant's Rejoinder on Jurisdiction, 26 March 2019, ¶¶ 217-218.

the procedure of notification of decisions applicable thereto.⁴⁵⁸ Claimant further upholds that dual nationals are foreigners with respect to their respective home State as citizens of another and, accordingly, their investments should be afforded protection.⁴⁵⁹

373. From the outset, the Tribunal observes that Article 1.2(a) of the Treaty does not contain an express exclusion of dual nationals. Article 1.2(a) of the Treaty provides that:

*“The term “investor” shall signify: a) Any natural person who is a national of one of the Contracting Parties and who is allowed, in accordance with the laws of that Contracting Party, to make investments on the territory or in the maritime zone of the other Contracting Party.”*⁴⁶⁰

374. It is a general principle of international law that treaty provisions should be given their natural and ordinary meaning. This was expressly recognised by the ICJ in its Advisory Opinion on the Competence of the General Assembly for the Admission of a State to the United Nations in 1950.⁴⁶¹ This customary principle of treaty interpretation was later codified under Article 31 of the VCLT as the “general rule of interpretation” of treaties.

375. Article 31(1) of the VCLT provides that:

“1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty; (b) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; (c) any relevant rules of international law applicable in the relations between the parties.

*4. A special meaning shall be given to a term if it is established that the parties so intended.”*⁴⁶²

⁴⁵⁸ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 73.

⁴⁵⁹ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 72.

⁴⁶⁰ **Exhibit CL-1**, Agreement Between the Government of the French Republic and the Government of the United Soviet Socialist Republics on the Reciprocal Promotion and Protection of Investments, signed on 4 July 1989, entered into force on 18 July 1991, Article 1.2(a).

⁴⁶¹ **Exhibit CL-88**, International Court of Justice, Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion, I.C.J Reports 1950, 3 March 1950, at p. 8.

⁴⁶² **Exhibit CL-95**, Article 31 of the Vienna Convention, United Nations Treaty Series, 1980 (emphasis added).

376. Pursuant to Article 31(1) of the VCLT, the Treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the Treaty. In this sense, unless the Treaty's terms are obscure or unreasonable, they must be interpreted within the limits of its own terms.
377. Article 31 of the VCLT expresses the general rule for the interpretation of treaties. This requires interpretation in good faith. This principle, which flows directly from the rule of *pacta sunt servanda*, means that good faith implies elements of reasonableness that go beyond the mere literal interpretation of a term as well as consideration of the object and purpose, while recurring to supplementary means of interpretation.
378. The Tribunal views Article 31 as a set of elements for interpretation that are to be appreciated in the context and circumstances of the particular case. Article 31 as a whole - including all of its paragraphs and not limited to the standpoint of Article 31(1) - is an integral single rule for interpretation of treaties. This is underscored by the fact that Article 31 is entitled the "General Rule [in the singular] of Interpretation". In this process, the interpreter shall consider the ordinary meaning of the words, in their context, and taking into account the object and purpose of the treaty. The ordinary meaning may not reveal a single meaning, which explains why it must be considered in the context of the treaty.
379. However, although object, purpose and context, as well as the other rules of interpretation can all provide the interpreter with important guidance and can lead the interpreter to discern the meaning in a treaty provision, they cannot be used to negate the meaning of a treaty provision if that meaning is plain and if that interpretation is consonant with the treaty's object and purpose and any other relevant context. In other words, treaty interpretation is a way of establishing shared intent, but cannot be used as a process to make contextual or purposeful hurdle, in order to give effect to the parties' intent, if expressed plainly.
380. This implies, *inter alia*, that the ordinary meaning to be given to the terms of a treaty is the starting point in the interpretative analysis. As noted by the tribunal in *Suez v Argentina*:

*"In interpreting these provisions, the Tribunal is guided by established principles of treaty interpretation as provided by Article 31 of the Vienna Convention on the Law of Treaties, pursuant to which treaty language is to be interpreted in accordance with its 'ordinary meaning.' In that respect, the text of the treaty is presumed to be the authentic expression of the parties' intentions. The starting place for any exercise in interpretation is therefore the treaty text itself."*⁴⁶³

381. The Tribunal agrees with the reasoning of the tribunal in *Pey Casado* in which a dual Chilean and Spanish citizen sought protection under the Spain-Chile BIT:

"To meet the nationality condition under the BIT, it is sufficient for the claimant to demonstrate that it holds the nationality of one of the contracting States. Contrary to the respondent's claim, the fact that the claimant holds a dual nationality,

⁴⁶³ **Exhibit CL-373**, *Suez, Sociedad General de Aguas de Barcelona S.A., and InterAguas Servicios Integrales del Agua S.A. v The Argentine Republic*, ICSID Case No. ARB/03/17, Decision on Jurisdiction, dated 16 May 2006, ¶ 54 (emphasis added).

including the nationality of the respondent, does not exclude it from the scope of the BIT.

[...]

The BIT does not expressly deal with the question of whether or not dual Spanish and Chilean citizens are covered by its scope. In the arbitral Tribunal opinion, it is not justified to add (on the basis of alleged rules of customary international law) a condition which does not result either from its terms or from its spirit.”⁴⁶⁴

382. The Tribunal is of the opinion that, where the Treaty does not require an investor to be the national of only one of the Contracting Parties, the Tribunal cannot add a condition that is not provided for in the Treaty. In other words, the Tribunal cannot create a distinction not made in the text and context of the Treaty. If the Tribunal were to adopt this route, it would impose upon the Parties a definition of “investor” other than the one agreed upon by the Contracting States.
383. Having thoroughly examined the arguments submitted by both Parties, the Tribunal observes that Article 1.2(a) of the Treaty merely requires an investor to be a national of one of the Contracting Parties and be allowed, in accordance with the laws of the non-host State, to make investments in the territory of the other party. The Treaty does not require that the investor hold only one nationality, nor does it impose further conditions. In other words, from a reading of the Treaty in accordance with the ordinary meaning of its terms, there is no reason to conclude that dual nationals are excluded. The expressions “one” and “other” in Article 1.2(a) only seek to establish that an investor must have at least one nationality different from the home state of the investment.
384. Moreover, the Tribunal notes that, contrary to the ICSID Convention, which expressly excludes dual nationals in its Article 25, the UNCITRAL Rules do not contain any such restriction. The issue of dual nationality should be resolved considering the Treaty, as it is the *lex specialis* between the Parties.
385. In fact, the Contracting States could have chosen to include a restriction for dual nationals but did not include it in the Treaty. It is worthy of note that France has expressly excluded dual nationals from the scope of the bilateral investment treaties concluded with Ethiopia, China, Kazakhstan, and Uruguay.⁴⁶⁵ Likewise, Russia included a similar provision in Article 1.2 of the treaty concluded with Iran, which provides that:

⁴⁶⁴ **Exhibit CL-102**, *Victor Pey Casado and President Allende Foundation v Republic of Chile*, ICSID Case No. ARB/98/2, Award, dated 8 May 2008, ¶ 415.

⁴⁶⁵ **Exhibit CL-103**, Agreement between the Government of the Federal Republic of Ethiopia and the Government of the French Republic for the Reciprocal Promotion and Protection of Investments, signed on 25 June 2003, entered into force on 7 August 2004 (See Article 1.2 : “[t]he term “nationals” means natural persons possessing the nationality of either contracting party”); **Exhibit CL-104**, Agreement between the Government of the French Republic and the Government of the People’s Republic of China for the Reciprocal Promotion and Protection of Investments, signed on 30 May 1984, terminated on 19 March 1985 (See Article 1.3: “[t]he term “investors” means [...] [t]he natural persons possessing the nationality of one or the other contracting Parties”); **Exhibit CL-105**, Agreement between the Government of the French Republic and the Government of the Republic of

“The term “investor” with respect to any of the Contracting Parties shall refer to: (a) Individuals who, in accordance with the laws and regulations of that Contracting Party are citizens of its State and do not have the citizenship of the State of the Contracting Party in whose territory the Investments were made.”⁴⁶⁶

386. Accordingly, if either of the Contracting States had intended to exclude dual nationals from the scope of the France-USSR BIT, they would have done so expressly.
387. In sum, the Tribunal observes that, according to the ordinary meaning of the Treaty’s terms, Article 1.2(a) grants protection to investors having the citizenship of one of the signatories and having made an investment in the territory of the other state. The Treaty does not contain any restriction regarding investors holding both French and Russian citizenship.
388. For the reasons set out above, the Tribunal concludes that dual nationals are not excluded from the Treaty’s scope of protection. Even if Claimant held the nationality of France and the nationality of Russia, it does not disqualify him as an investor under the Treaty.

D. The Treaty requires Claimant to have held French nationality at the time he made his alleged investments

389. It is common ground between the Parties that the date of the alleged violation of the Treaty and the date of the commencement of the arbitral proceedings are relevant dates for assessing Claimant’s nationality. For this reason, the Tribunal will deal only with the issue in dispute, *i.e.* whether Claimant was required to have held French nationality at the time he made his alleged investments.
390. Respondent submits that the Treaty requires Claimant to have held French nationality at the time he made his alleged investments as well as at the time of the alleged Treaty’s breaches. Respondent invokes Article 1.2(a) of the Treaty to argue that an investor is required to hold the nationality of the non-host State at the time the investment is made.
391. Under Article 1.2(a) of the Treaty, a protected investor is: “*a national of one of the Contracting Parties and who is allowed, in accordance with the laws of that Contracting Party, to make investments on the territory [...] of the other Contracting Party*”. In Respondent’s view, Article 1.2(a) creates a temporal requirement according to which, in order to qualify as an “investor”, a natural person must be a national when he or she makes

Kazakhstan for the Promotion and Protection of Investments, signed on 3 February 1998, entered into force on 21 August 2000 (See Article 1.2: “[t]he term “nationals” refers to the natural persons who are the nationals of the French Republic or of the Republic of Kazakhstan, in accordance with the law of each of the contracting Parties”); **Exhibit CL-106**, Agreement between the Government of the French Republic and the Government of the Oriental Republic of Uruguay for the Reciprocal Promotion and Protection of Investments, signed on 14 October 1993, entered into force on 9 July 1997 (See Article 1.2: “[t]he term “nationals” means any natural individual holding the nationality of one of the contracting Parties, in accordance with their respective laws. This Agreement does not apply to investments made by natural individual who are nationals of both contracting Parties, except in the event that these individuals are, or were at the time of the investment, living outside of the territory of the contracting Party in which the investment was made”).

⁴⁶⁶ **Exhibit CL-107**, Agreement between the Government of the Russian Federation and the Government of the Islamic Republic of Iran for the Reciprocal Promotion and Protection of Investments, signed on 23 December 2015 (emphasis added).

the investments. At the time a national makes the investment, he or she must be permitted to do so in accordance with the national law of the non-host State.⁴⁶⁷

392. Respondent adds that the above-mentioned reading of Article 1.2(a) is “obvious”. However, if support for it is required, it can be found throughout the Treaty, which repeatedly refers to investments “made” and not simply “held”. In any event, the Treaty should be interpreted in accordance with Article 31(1) of the VCLT, *i.e.* in good faith in accordance with the ordinary meaning, context, object and purpose of the BIT. Respondent claims that its interpretation of the BIT gives the words their ordinary meaning and that the word “make” entails the creation of an investment.⁴⁶⁸
393. Furthermore, Respondent asserts that its position is supported by Professor Rodrigo Oreamuno’s dissenting opinion in *Serafín García v Venezuela*. Unlike the authorities on which Claimant relies, the definition of “investor” in the Spain-Venezuela bilateral treaty is close to that of the Treaty.⁴⁶⁹
394. On the contrary, Claimant alleges that the BIT does not require Claimant to hold French nationality at the time of the making of the investment in order to qualify as a protected investor.
395. Claimant argues that Article 1.2(a) of the Treaty sets out two clear conditions to qualify as a protected “investor” under the BIT: (i) be a national of France and (ii) be authorized by French law to make investments in Russia. In Claimant’s view, Article 1.2(a) does not require that the investor hold the relevant nationality at the time the investment is made and nothing in the wording evidences that such special meaning is to be given to these terms.⁴⁷⁰
396. In addition, Claimant asserts that even if the wording of Article 1.2(a) justifies an interpretation, Respondent’s proposed reading (i) is not based on an ordinary reading of Article 1.2(a); and (ii) eludes that the verb “make”, on which it exclusively relies, is used in the present tense – “*who is allowed [...] to make investments*” instead of “*who has been allowed to make investments*”. Consequently, a natural person will qualify as a protected investor if he or she “*is allowed to make investments*” in Russia, in accordance with French law. This requirement is obviously not one of timing but one of legality, aimed at ensuring that the investor is legally capable under French law to make, hold, and manage investments on the Russian territory.⁴⁷¹
397. Having carefully analysed the arguments put forward by both Parties, the majority of the Tribunal finds that (a) the Treaty requires Claimant to have held French nationality at the time he made his alleged investments; and (b) that Claimant did not hold French nationality at the date of his alleged investments.

⁴⁶⁷ Respondent’s Post Hearing Brief, 13 January 2020, ¶ 11.

⁴⁶⁸ Respondent’s Post Hearing Brief, 13 January 2020, ¶ 11.

⁴⁶⁹ Respondent’s Post Hearing Brief, 13 January 2020, ¶¶ 13-14.

⁴⁷⁰ Claimant’s Post Hearing Brief, 13 January 2020, ¶¶ 54-55.

⁴⁷¹ Claimant’s Post Hearing Brief, 13 January 2020, ¶ 58.

a) The Treaty requires Claimant to have held French nationality at the time he made his alleged investments

398. It is well settled under international law that the foreignness of the investment is determined by the investor's nationality. If the investor wishes to have the protection of a determined treaty, it must show that it has the nationality of one of the two State parties. In this regard, the investor's nationality is relevant for at least two purposes: (i) the substantive standards guaranteed in a treaty will only apply to the respective national; and (ii) the jurisdiction of a tribunal is determined, *inter alia*, by a claimant's nationality.

399. In the present case, the Parties debate whether Claimant was required to have held French nationality at the time he made his alleged investments. At the core of both Parties' positions figures Article 1.2(a) of the Treaty, which, according to the English translation of the Treaty submitted by Claimant, provides:

*"The term "investor" shall signify: a) Any natural person who is a national of one of the Contracting Parties and who is allowed, in accordance with the laws of that Contracting Party, to make investments on the territory or in the maritime zone of the other Contracting Party;"*⁴⁷²

400. Both Parties have grounded their arguments on the interpretation of the Treaty in accordance with Article 31 of the VCLT. In accordance with this Article, the terms of the Treaty should be given their ordinary meaning in their context and in light of the object and purpose of the Treaty. Article 31 of the VCLT provides that:

"1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty; (b) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; (c) any relevant rules of international law applicable in the relations between the parties.

⁴⁷² **Exhibit CL-1**, Agreement Between the Government of the French Republic and the Government of the United Soviet Socialist Republics on the Reciprocal Promotion and Protection of Investments, signed on 4 July 1989, entered into force on 18 July 1991, Article 1.2(a).

*4. A special meaning shall be given to a term if it is established that the parties so intended.”*⁴⁷³

401. Pursuant to Article 31 of the VCLT, the Treaty shall be interpreted in good faith in accordance with the ordinary meaning of its terms and in the light of its object and purpose. The VCLT defines what should be understood by “context” for the purposes of interpretation, in addition to the text of the treaty itself, its preamble and its potential annexes.

402. In addition, Article 32 of the VCLT contemplates supplementary means of interpretation to complement Article 31. Article 32 provides as follows:

*“Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable.”*⁴⁷⁴

403. Claimant argues that the supplementary means of interpretation provided in Article 32 of the VCLT can only be relied upon if the interpretation carried out according to Article 31 leads to an ambiguous or manifestly absurd or unreasonable consequence.⁴⁷⁵ The Tribunal disagrees. Article 32 expressly permits the use of supplementary means also to “*confirm the meaning resulting from the application of Article 31*”. This position has been endorsed by the International Law Commission.⁴⁷⁶

404. The Tribunal will analyse Article 1.2(a) of the Treaty in accordance with the VCLT and the arguments put forward by both Parties.

405. First, the Tribunal draws its attention to the very particular wording of Article 1.2(a). In particular, the Tribunal observes that this Article requires a specific authorization under national law in order to be considered a protected investor under the Treaty:

*“The term “investor” shall signify: a) Any natural person who is a national of one of the Contracting Parties and who is allowed, in accordance with the laws of that Contracting Party, to make investments on the territory or in the maritime zone of the other Contracting Party;”*⁴⁷⁷

⁴⁷³ **Exhibit CL-95**, Article 31 of the Vienna Convention, United Nations Treaty Series, 1980 (emphasis added).

⁴⁷⁴ **Exhibit RL-106**, Vienna Convention on the Law of Treaties, Article 32.

⁴⁷⁵ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 82.

⁴⁷⁶ **Exhibit RL-137**, International Law Commission, Draft Articles on the Law of Treaties with commentaries Yearbook of the International Law Commission, 1966, Vol. II, page 220.

⁴⁷⁷ **Exhibit CL-1**, Agreement Between the Government of the French Republic and the Government of the United Soviet Socialist Republics on the Reciprocal Promotion and Protection of Investments, signed on 4 July 1989, entered into force on 18 July 1991, Article 1.2(a).

406. The French text, which is one of the original languages of the BIT (the other one being Russian) provides as follows:

“Le terme “investisseur” désigne a) Toute personne physique qui possède la nationalité de l’une des Parties contractantes et qui peut conformément à la législation de cette Partie contractante, effectuer des investissements sur le territoire ou dans la zone maritime de l’autre Partie contractante.”

407. Pursuant to Article 1.2(a), in order to qualify as an investor, a person has to be authorised according to the laws of his nationality (in this case the laws of France) to make investments in the territory of the other Contracting Party (in this case the Russian Federation). This understanding of Article 1.2(a) is not disputed by the Parties.⁴⁷⁸ The real matter of controversy between the Parties is whether Article 1.2(a) of the Treaty implies that the authorization according to the laws of the investor of the non-host State should be assessed before the making of the investment. As Claimant explains in his Rejoinder on Jurisdiction:

“Although Claimant agrees with Respondent that the investing party must have the capacity pursuant to the laws of his nationality to make investments in the territory of the other Contracting Party, the wording of Article 1.2(a) of the Treaty does not suggest that such a capacity should be assessed before the making of the investment.”⁴⁷⁹

408. On this point, Claimant submits that Article 1.2(a) uses the present tense (“who is allowed”) and not the past (“was allowed”) and does not refer to a specific investment made by the investor but to the general formulation “to make investments”. Therefore, the reference to the law of the State of nationality only serves to ensure that the investor can lawfully make investments according to the said law once he invokes the Treaty protection.

409. The majority of the Tribunal is not persuaded by Claimant’s reading of Article 1.2(a), and, particularly, by his argument according to which the issue is a matter of legality and not of timing.⁴⁸⁰ Claimant submits that the language of the aforesaid Article only serves to ensure that the investor can lawfully make investments according to the said law when he invokes the protection under the Treaty. The Parties do not disagree that the investor must be authorized by the law of his or her home State to invest in the other contracting State. They disagree as to when the investor needs to have such authorization. Hence, this confirms that the issue in debate is one of timing, not only legality. The question is whether the investor of one contracting party must be authorized to make investments in the territory of other contracting party prior to making the investment (as claimed by Respondent) or prior to invoking the protection of the Treaty (as claimed by Claimant).

410. The Tribunal agrees with Claimant on the fact that Article 1.2(a) uses the present tense (“who is a national”, “who is allowed” and “make investments”) (“*qui possède*”, “*qui peut*” and “*effectuer*” in the French original). However, for the majority of the Tribunal, the fact that the article is drafted in the present tense and not in the past tense does not allow to

⁴⁷⁸ Claimant’s Rejoinder on Jurisdiction, 26 March 2019, ¶ 321.

⁴⁷⁹ Claimant’s Rejoinder on Jurisdiction, 26 March 2019, ¶ 321.

⁴⁸⁰ Claimant’s Post Hearing Brief, 13 January 2020, ¶ 58.

conclude, as Claimant does, that it refers to the time at which the investor makes the claim under the BIT. On the contrary, being redacted in the present tense means, for the majority of the Tribunal, that the verb used in the text of Article 1.2(a) is neutral with respect to the timing at which the investor must be authorized by the law of his or her home State to make investments in the other contracting State. Therefore, both interpretations of the text alone, the one of Claimant and the one of Respondent, are plausible if the Tribunal were to simply follow the common use of the words.

411. Second, according to the definition of “investor” in Article 2.1(a) of the BIT, the investor must be authorized to make investments in the territory of the other contracting party (“*effectuer des investissements*” in the French original). Article 1 of the BIT defines “investment” as “*goods and rights of any kind, and more specifically but not exclusively*” followed by a non-exhaustive list of assets and rights. Article 1 further provides that the term investment “*shall also indicate indirect investments made by investors of one of the Contracting Parties on the territory or in the maritime zone of the other Contracting Party through the intermediary of an investor of a third country*”.
412. The BIT, therefore, clearly authorizes the so-called “indirect investments” and thus the debate as to whether Article 1.2(a) of the BIT refers to “investments held” or “investments made” is entirely different from the debate related to indirect investments that has taken place in other investment disputes. Moreover, Article 1.2(a) of the BIT refers exclusively to investments made by natural persons – not legal entities. The definition of “investment” of legal entities is contained in Article 1.2(b) of the Treaty. Therefore, this is not a case where the parties are debating a change of domicile of a corporation, or a corporate restructuring, or which company in a chain of control should be considered for purposes of a given treaty. For the majority of the Tribunal, this case refers exclusively to alleged investments made by an individual in Russia, and to whether such individual, born Russian and who acquired the French nationality after making the investments, must have had the French nationality at the time the investments were made.
413. For the majority of the Tribunal, the Treaty clearly refers to investments made (“*investissements effectués*” or “*investissement réalisé*”) and not to investments held (“*investissements détenus*”). Nothing in the BIT - or for that matter in the French language or in the English language to which the BIT was translated by Claimant -, would allow the Tribunal to conclude that the terms “made” (“*effectués*” or “*réalisé*”) and the term “held” (“*détenus*”) are synonymous or have the same meaning.
414. Third, the majority of the Tribunal considers that this understanding is further supported by examining other provisions of the Treaty in their context. The Treaty consistently refers to investments “made” by the investor of one Contracting Party in the territory of the other Contracting Party, it does not refer in any way to investments “held” by this person. For example:
- a. Article 1.1 defines the term “investments” as “*assets such as goods and rights of any kind*” which shall “*be or must have been invested in accordance with the laws*

of the Contracting Party on whose territory or in whose maritime zone the investment is made".

- b. Article 1.2(a) defines the term "investors" as "[a]ny natural person who is a national of one of the Contracting Parties and who is permitted in accordance with the laws of that Contracting Party, to make investments on the territory or in the maritime zone of the other Contracting Party".
- c. Article 7, which contains the arbitration clause, provides that the Tribunal has jurisdiction to decide on the disputes arising between "*one of the Contracting Parties and an investor of the other Contracting Party concerning the effects of a measure taken by the first Contracting Party and relating to the management, maintenance, enjoyment or disposal of an investment made by such investor [...]*".
- d. Article 3.1 similarly provides that each contracting party shall ensure fair and equitable treatment to the "*investments made by the investors of the other contracting Party*".
- e. Article 4.1 also provides: "*[i]nvestments made by investors of one or the other of the contracting Parties shall enjoy full and complete protection and security on the territory and in the maritime zone of the other Contracting Party*".
- f. Article 8 of the BIT likewise provides: "*[e]ach Contracting Party shall observe all commitments made with regard to an investor of the other Contracting Party in relation to an investment made by such investor on the territory or in the maritime zone of the first Contracting Party*"⁴⁸¹.

415. Fourth, the Tribunal majority's reading of Article 1.2(a) is also supported by the object and purpose of the Treaty. The preamble of the Treaty is clear in that its aim was the promotion of foreign investment by nationals of one State into the other State:

"Wishing to strengthen the economic and commercial ties as well as the scientific and technical cooperation between the two States in their mutual interest and to create favourable conditions for French investments in the Union of Soviet Socialist Republics and Soviet investments in France;

Convinced that the reciprocal promotion and protection of these investments are apt to stimulate the transfer of capital and the exchange of leading-edge technologies between the two States in the interest of their economic development."⁴⁸²

416. For the majority of the Tribunal, according to the preamble of the Treaty, this promotion of foreign investment from one State to the other can only be accomplished if, on the one hand,

⁴⁸¹ **Exhibit CL-1**, Agreement Between the Government of the French Republic and the Government of the United Soviet Socialist Republics on the Reciprocal Promotion and Protection of Investments, signed on 4 July 1989, entered into force on 18 July 1991, Article 1, 3, 4, 7 and 8.

⁴⁸² **Exhibit CL-1**, Agreement Between the Government of the French Republic and the Government of the United Soviet Socialist Republics on the Reciprocal Promotion and Protection of Investments, signed on 4 July 1989, entered into force on 18 July 1991, Preamble.

the investor of one of the State parties to the BIT makes – not simply holds – an investment in the territory of the other State party; and if, on the other hand, the investment is made by way of a transfer of capital or the exchange of leading-edge technologies between the two States in the interest of their economic development.

417. Therefore, the majority of the Tribunal considers that the language of the Treaty requires that an investment, in order to be protected, must be (i) transnational (cross-border) from inception, (ii) made through the transfer of capital and the exchange of leading-edge technology and (iii) made by an investor of one of the Contracting Parties. As noted above, the Treaty refers to investments made (“*investissements effectués*” or “*investissement réalisé*”) by a national of one Contracting Party on the territory of the other Contracting Party, rather than investments simply held.
418. For the majority of the Tribunal, an investment cannot be “made” on the date on which the investor seeks for the protection under the Treaty, as claimed by Claimant. On that date, the investment has already been made, the transfer of capital should have already occurred, otherwise there would be no investment. The investment is made, according to the BIT, when the investor acquires, in accordance with the law of the host State, any of the assets and rights listed in Article 1 of the BIT and a transfer of capital takes place. The Treaty requires the investor to be allowed, in accordance with the laws of that Contracting State, to make investments, *i.e.* to make a transfer of capital to the other Contracting State. It is a necessary consequence of the references to investments “made” rather than investments “held”, that the nationality condition must be fulfilled at the time of the making of the investment.
419. From this perspective, the Treaty does not protect investments simply held by nationals of the other Contracting Party at the time of claiming protection under the Treaty. Therefore, for the majority of the Tribunal, the relevant date for purposes of determining when the investor should have been authorized by the law of his or her State to make an investment in the other contracting State is the date on which the investment was made.
420. Therefore, in the instant case, in the opinion of the majority of the Tribunal, for Mr. Pugachev to be considered an investor under the Treaty, he must have held the French nationality, must have been authorized to make an investment on the date on which the investment was made, and should have made the investment, *i.e.* the transfer of capital, as a French national.
421. Fifth, Claimant invokes the dissenting opinion of Professor Oreamuno in *Serafín García v Venezuela*, where the applicable Spain-Venezuela BIT defined “investors” as “*any physical person who possesses nationality of one Contracting Party pursuant to its legislation and makes investments in the territory of the other Contracting Party*”, and “investments” as “*any kind of assets invested by investors of one Contracting Party in the territory of the other Contracting Party*”. In view of these provisions, Professor Oreamuno considered that:

“[...] There is no doubt that, in order for a person to be deemed an investor and, consequently, for his or her investment to be protected [under the BIT], that person

must possess the nationality of one of the Contracting Parties when making such investment in the territory of the other.”⁴⁸³

422. Claimant rightly points out that Professor Oreamuno’s position in *Serafín García v Venezuela* was a dissenting opinion. Professor Oreamuno’s opinion was endorsed by the Paris Court of Appeal which had to decide on an application to set aside the award. In a decision dated 25 April 2017, the Court ruled that:

“Considering that according to the ordinary meaning to be given to these terms, the investment is *not* an asset simply “held” by an investor of the other contracting Party – which would exclude any reference to the date of acquisition - *but* an asset “invested” by an investor of the other contracting Party – which necessarily refers to a condition of nationality of the investor at the date of the investment.”⁴⁸⁴

423. The majority of the Tribunal is mindful that there are obvious differences in the wording of each treaty, and that the treaty analysed by the Paris Court of Appeal did not have the specific language on legal authorization contained in the BIT. However, Respondent is correct in that the Court of Appeal highlighted the difference between “making” an investment and “holding” an investment. According to the ordinary meaning of Article 1.2(a), “to make investments” cannot be assimilated to simply “held an investment”.
424. Whilst the decision of the Paris Court of Appeal was set aside by the French *Cour de cassation* in February 2019, as rightfully emphasized by Claimant, this was on procedural grounds (*i.e.* that the Paris Court of Appeal was required to set aside the decision on jurisdiction in its entirety but had done so only partially).⁴⁸⁵ The decision of the *Cour de cassation* did not disturb, or even criticise, the findings of the Paris Court of Appeal in relation to issues of nationality on which the Respondent relies.
425. Sixth, the majority of the Tribunal considers that Claimant’s interpretation of Articles 1.1 and 10 of the Treaty do not support his case.
426. The Parties dispute the extent to which Article 10 would affect the investor’s nationality requirement. Treaties often contain a provision (such as the one contained in Article 10) to the effect of extending the protection conferred therein to investments made prior to the treaty’s entry into force. In Claimant’s view, such provision entails that requirements pertaining to the nationality of the investment are not relevant nor applicable to the date of

⁴⁸³ **Exhibit RL-110**, *Serafín García and Karina García Gruber v Bolivarian Republic of Venezuela*, PCA Case No. 2013-3, Decision on Jurisdiction, dated 15 December 2014, Dissenting Opinion of Professor Rodrigo Oreamuno, ¶ 9 “[N]o hay la menor duda de que para que se considere que una persona es un inversor y, consecuentemente, su inversión está protegida por el APPRI, debe tener la nacionalidad de una de las Partes Contratantes cuando haga su inversión de la otra” (emphasis added).

⁴⁸⁴ **Exhibit RL-111**, Court of Appeal of Paris, dated 25 April 2017, in *Bolivarian Republic of Venezuela v Serafín García Armas and Karina García Gruber*, page 8 (emphasis added).

⁴⁸⁵ **Exhibit RL-202**, French Supreme Court overturns decision that had partly annulled an award against Venezuela, IAREporter, dated 15 February 2019.

the making of the investments since the treaty was not even in force for investments made before January 1950 and these investments will still be protected.⁴⁸⁶

427. The majority of the Tribunal finds that Claimant's argument based on his interpretation of Article 10 does not stand up to scrutiny. Article 10 of the Treaty refers to the *ratione temporis* jurisdiction of the Tribunal, rather than to its *ratione personae* jurisdiction that is the one under analysis. For the majority of the Tribunal, the fact that the Treaty applies to investments made prior to its entry into force does not change the requirements pertaining to the nationality of the investor imposed by Article 1.2(a), *i.e.* that Claimant must hold the relevant nationality at the date the investments are made, whether such an investment is made before or after the Treaty's entry into force.
428. Further, Claimant contends that the definition of investments under Article 1.1 of the Treaty provides for protected investments that are in practice "held" by the investor rather than "made", such as "*movable and immovable assets and rights in rem*", "*shares and other forms of equity [...]*", or "*copyrights, industrial property rights [...]*." Thus, it is false to assert that an investment can only be "made" under the BIT as Respondent does.⁴⁸⁷ The majority of the Tribunal is not persuaded by this argument either. On the contrary, it considers that the assets mentioned by Claimant can be "made", for example, when an investor acquires them or when such rights or assets are transferred by the corresponding method to transfer property.
429. Seventh, even though the reasoning above will be sufficient for the conclusions of the majority as to the meaning of Article 1.2(a), such meaning is also confirmed by the historical context in which the Treaty was drafted. During the Hearing on Jurisdiction, Respondent explained that the wording of Article 1.2(a) could be explained by the circumstances of the Treaty's conclusion:

"The history or background to such an unusual provision is that in Russia -- well, first of all, it is 1989. 1989 is Soviet Union. So the Berlin Wall collapsed in 1991. So 1989 is the treaty dated. It is ratified in 1991. But the text is Soviet. And in the Soviet Union there were very strict restrictions as to who could carry out foreign trade. So you need to be allowed by Soviet law to do foreign transactions, to invest outside of Soviet Union. That's why this treaty -- this provision is here, which suggests that if you are Soviet or Russian and you are making an investment in France, you should -- this should be legal from the Soviet or Russian point of view.

*Vice versa, if you are French and make an investment in Soviet Union or Russia as it then became, you should be French and it should be -- your investment should be allowed by France to be made abroad. That's the idea."*⁴⁸⁸

430. Respondent's description of the historical background of the Treaty is consistent and provides a reasonable explanation for the requirement set forth in Article 1.2(a). Moreover,

⁴⁸⁶ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 158.

⁴⁸⁷ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 160.

⁴⁸⁸ Transcript, Hearing Day 1, p. 105, lines 2 to 17.

the Tribunal observes that, during the Arbitration, Claimant did not dispute Respondent's narrative of the Treaty's historical context.

431. However, even if Claimant had argued that the nationality requirement in Article 1.2(a) exclusively applied to outward foreign investments made by Soviet investors – which is not the case –, the Tribunal cannot disregard the bilateral nature of the Treaty and create a distinction when the text of the Treaty itself does not make it. In accordance with Article 32 of the VCLT, recourse may be had to supplementary means of interpretation, including the circumstances of the Treaty's conclusion, in order to confirm the meaning resulting from the application of Article 31 of the VCLT, but not to impose a distinction that is not envisaged in the text of the BIT.
432. Eight, the majority of the Tribunal observes that Claimant relies on a number of awards that are inapposite to the present case.
433. Claimant asserts that, “*as a matter of principle*”, the critical dates for purposes of determining Claimant's standing to commence an arbitration are (i) the date of the violation of the substantive provisions of the BIT; and (ii) the date of the proceedings.⁴⁸⁹ In support of this assertion, Claimant relies on the following cases: *Pac Rim v Salvador*, *Aguas del Tunari v Bolivia*, *Vladislav Kim v Uzbekistan*, *Pey Casado v Chile* and *Serafín García v Venezuela*. However, the majority of the Tribunal observes that even though it is correct that a substantial number of awards have analysed the aforesaid dates as critical dates, none of these decisions support the notion of a “principle” that contradicts, much less derogate, the requirement set forth in the Treaty that an investor must be a national of one of the Contracting Parties when making an investment in the territory of the other Contracting Party. Moreover, none of the treaties analysed in the decisions put forward by Claimant contain a language imposing a requirement similar to the one contained in the BIT.
434. For instance, the majority of the Tribunal observes that the issue of critical dates to determine whether a natural person could be deemed to be a protected investor was not discussed by the tribunal in *Aguas del Tunari* and *Vladislav Kim*.⁴⁹⁰ Likewise, in *Pey Casado*, the question as to whether the relevant treaty required the investor to have the relevant nationality at the moment of making the investment was not disputed and not analysed by the tribunal.⁴⁹¹ In any event, the applicable Spain-Chile treaty in that case contains a different wording to that of the Treaty, and does not require the investor to be permitted by the law of the non-host State to make investments on the territory of the other contracting party.⁴⁹²

⁴⁸⁹ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 151.

⁴⁹⁰ **Exhibit CL-124**, *Aguas del Tunari S.A. v Republic of Bolivia*, ICSID Case No. ARB/02/3, Decision on Respondent's objections to Jurisdiction, dated 21 October 2005; **Exhibit CL-115**, *Vladislav Kim and others v Republic of Uzbekistan*, ICSID Case No. ARB/13/6, Decision on Jurisdiction, dated 8 March 2017.

⁴⁹¹ **Exhibit CL-102**, *Victor Pey Casado and President Allende Foundation v Republic of Chile*, ICSID Case No. ARB/98/2, Award, dated 8 May 2008.

⁴⁹² **Exhibit RL-141**, *Bilateral Investment Treaty between Chile and Spain*, signed on 2 October 1991 and entered into force on 28 March 1994, Article 1.1, original in Spanish: “*Por "inversionistas o inversores" se entenderán:*

435. Furthermore, the majority of the Tribunal disagrees that there is a principle in international investment law according to which, regardless of the specific wording of each treaty, an investor is not required to have the nationality of the non-host State when making the investment. In fact, the awards in *Pac Rim v El Salvador* and *Serafín García v Venezuela* demonstrate that, contrary to Claimant's assertions, this issue is not a matter of general principle, but rather depends upon the specific wording of each treaty⁴⁹³.
436. Claimant also attempts to rely on the decision of the *Serafín García* tribunal. However, as set out above, the *Serafín García* award has been partially set aside by the Paris Court of Appeal because the arbitral tribunal did not consider the nationality of the alleged investor at the date the investment was made.⁴⁹⁴ For the majority of the Tribunal, it is apparent that, contrary to Claimant's assertions, the requirement that an investor holds the relevant nationality at the time of his investment must be determined according to the specific language of each treaty and cannot be excluded as a matter of principle.
437. Claimant also submits that the findings of Professor Oreamuno's dissenting opinion should be disregarded since they would "crystallize" the investor's nationality at the date of his own investment, regardless of subsequent nationality changes.⁴⁹⁵ The majority of the Tribunal disagrees. The Tribunal's interpretation of the Treaty would not render subsequent nationality changes irrelevant; on the contrary, the Tribunal majority's position is that Claimant must have held French nationality on: (i) the date he made his investment; (ii) the date of the alleged breach of the Treaty; and (iii) the date of the commencement of the proceedings.
438. Whether Claimant was always required to have held French nationality between the aforementioned dates is not a matter of dispute put forward by the Parties. Moreover, the Tribunal was not asked to decide what the status of Claimant's nationality would be if he had held French nationality at the date of making the investment, lost it, and regained it before the alleged breach of the BIT. The Tribunal is not called to decide upon the existence of a continuous nationality rule under customary international law.
439. In fact, the evidence submitted by Claimant supports the Tribunal's reasoning. As explained by Respondent, M. Laazouzi concludes that "[t]he scope of the decision should then be limited, in the sense that it crystalizes the nationality of an investor at the date of his own

Las personas físicas o naturales nacionales, según el derecho de la Parte correspondiente y las personas jurídicas, incluidas compañías, asociaciones de compañías, sociedades mercantiles y otras organizaciones que se encuentren constituidas o, en cualquier caso, debidamente organizadas según el derecho de esa Parte y tengan su sede en el territorio de la misma, no obstante pertenezcan a personas naturales o jurídicas extranjeras."

⁴⁹³ See **Exhibit RL-29**, *Pac Rim Cayman LLC v The Republic of El Salvador*, ICSID Case No. ARB/09/12, Decision on the Respondent's Jurisdictional Objections, dated 1 June 2012; **Exhibit RL-111**, Court of Appeal of Paris, dated 25 April 2017, in *Bolivarian Republic of Venezuela v Serafín García Armas and Karina García Gruber*.

⁴⁹⁴ **Exhibit RL-111**, Court of Appeal of Paris, dated 25 April 2017, in *Bolivarian Republic of Venezuela v Serafín García Armas and Karina García Gruber*.

⁴⁹⁵ Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 156.

investment, without consideration of future modifications.”⁴⁹⁶ The majority of the Tribunal agrees with Respondent in the sense that the issue in this case is the nationality the investor held on particular dates (and whether that qualifies him as an ‘Investor’ under the BIT), and not whether the investment itself should be considered French or Russian.

440. Finally, Claimant claims that the Crimean cases, filed pursuant to the Ukraine-Russia BIT, confirm his reasoning that treaties can extend protection conferred to investments if the “nationality” of the investment changes.⁴⁹⁷ However, the Crimean cases do not appear, from the publicly available information, to be comparable to the case at hand. For the majority of the Tribunal, the matter in dispute in Crimea evolved from domestic disputes to international ones by virtue of a territorial change and, more importantly, the issue in the Crimean cases is not the nationality of the investor but the status of the investments.⁴⁹⁸
441. Based on the aforementioned, the majority of the Tribunal concludes that the Treaty requires Claimant to have held French nationality at the time he made his alleged investments. One of the arbitrators issued a dissenting opinion precisely on this point.

b) Claimant did not hold French nationality at the date of his alleged investments

442. Claimant has initiated this Arbitration in connection with five groups of investments, *i.e.* (i) the Red Square Project; (ii) the Shipyards; (iii) EPC; (iv) the Land Plots; and (v) other non-Russian investments.
443. The Parties debated on the evidence in the record regarding the alleged investments of Mr. Pugachev, including the date or dates in which the investments were made. Therefore, for purposes of establishing the date in which these investments were made, the Tribunal considered the evidence on the record, but, in addition, during the Hearing, the Tribunal addressed specific questions to Claimant as to the aforementioned dates.
444. Claimant himself, in responding to the questions posed during the Hearing, indicated when the respective investment was made, and, according to Claimant’s own assertions, he made his alleged investments before he obtained French nationality on 30 November 2009. In the following sub-sections, the Tribunal examines the temporal context of each investment.

1. Red Square Project

445. According to Claimant, he invested in the Red Square Project through an investment agreement dated 9 August 2004 concluded between a Russian State enterprise (*i.e.* Kremlevskiy) and LLC Middle Trading (also known as Stredniye Torgoviye Ryady or STR). In his Statement of Claim, Mr. Pugachev explained that:

⁴⁹⁶ **Exhibit CL-310**, M. Laazouzi, ‘Chronicle of Arbitral Jurisprudence in Investment Law, I. The determination of the nationality of the investor and its impact on the jurisdiction of the arbitral tribunal’, *Rev.arb.* (Comité français de l’Arbitrage), 2017, Issue 2, p. 648- 666; Respondent’s Post-Hearing Brief, 13 January 2020, ¶ 27.

⁴⁹⁷ Claimant’s Counter-Memorial on Jurisdiction, 20 July 2018, ¶¶ 158-159.

⁴⁹⁸ **Exhibit CL-312**, Press releases on Crimean arbitration cases based on the Ukraine-Russia BIT.

*“On 9 August 2004, Kremlevskiy entered into an investment agreement (the “Red Square Investment Agreement”) with Mr. Pugachev’s company, LLC Middle Trading Rows, also known as Stredniye Torgoviye Ryady (“STR”). STR had been specifically created on 25 March 2004 for the purpose of the Red Square Project and had for sole member IIB. On 29 December 2004, IIB transferred its shares to Global Treasures Equity, which was indirectly owned by Mr. Pugachev. Global Treasures Equity held 80,6 % of STR’s shares. TechnoAlliance, which was also indirectly owned by Mr. Pugachev, held the remaining 19,4 % of STR.”*⁴⁹⁹

446. During the Hearing on Jurisdiction, Mr. Pugachev was asked to provide an estimated date for his investment in the Red Square Project. Mr. Pugachev confirmed that his investment took place between 2004 and 2005:

“Q.: Well, we can open tab 11, the Statement of Claim, page 29, paragraph 36. But one of the issues in this arbitration is timing of your both investment and then alleged breach. And, therefore, from your point of view, when would you say your Red Square investment project was made, as an investment?”

A.: (Interpreted). We would have to turn up the investment contract. And obviously they -- there is a detailed timeline and plan for the implementation of the construction, the selection of contractors and so on and so forth, including the general contractor. So when the management company was put in place, when the director was appointed, the people were recruited, when the whole thing began, when the ball was kicked in, that's when the investment began. And we're looking at huge amounts of funds that were then invested directly into that particular project.

Q.: Can you please turn to tab 25, Claimant's witness Statement.

DR CREMADES: Excuse me. Could you give a date of those investments you are talking about?

A. (Interpreted): Yes, it was translated. So are you looking to get the date when that investment was made?

DR CREMADES: Correct.

A. (Interpreted): Of course I do not recall exactly. I think the contract says it all in detail, but I don't have this contract in front of me. I don't have those documents available to me. But obviously this is part of the case file. I just don't have that document available to me as I sit here today. So I'm not in a position to give you a date.

DR CREMADES: Well, I am not asking for a concrete date but more or less between which years this investment took place.

A. (Interpreted): Well, if the contract was executed -- and I am sure you are in a better position to recall that when did the investment contract deploy full legal force and effect, I don't have it in -- available to me. Let's say in 2004, and I think it took about six months, so it would have been between 2004 and 2005. That's when the investment started. That's when we kicked the ball rolling on the investment.

⁴⁹⁹ Claimant's Statement of Claim, 27 September 2017, ¶ 36 (emphasis added).

*DR CREMADES: Thank you.*⁵⁰⁰

447. In consequence, according to Claimant's own contentions, his investment in the Red Square Project occurred in 2004, *i.e.* more than five years before he allegedly acquired French nationality in 2009.
448. During the Hearing on Jurisdiction, Claimant was asked to clarify the terms of his investment in the Red Square Project. According to Claimant, his involvement in the Red Square Project comprised, broadly, three different steps. First, Mr. Pugachev alleges that President Putin asked him to provide \$1.5 billion for a specific purpose. Second, President Putin offered Mr. Pugachev a project in payment of that sum of money. Mr. Pugachev chose the Red Square Project. Third, a tender process was opened for the Red Square Project, Mr. Pugachev submitted a bid for \$1.5 billion, and won the tender.
449. The aforementioned was accepted by Claimant during the Hearing on Jurisdiction:

"THE PRESIDENT: Thank you. I have a follow-up question on that same point. If we go to your witness testimony and what you have declared today. I'm going to go step by step. And please correct me if I'm saying something that is not. First you say that you were asked by Mr President Putin to put \$1.5 billion -- 1.5 billion for some particular purpose that he needed for. Step one. Step two --

A. (Interpreted): May I just add, before we move on, he asked for 1.5 billion to be provided to relocate, resettle the military personnel, to build flats for the military personnel. Not just: give me 1.5 billion. That was to build apartments for the military personnel. So that's the first link with the Red Square Project.

THE PRESIDENT: Okay. Step two, according to your testimony, he offered you to give you a project in payment of that. And you said that you chose the project, the Red Square Project; and I told him that I was prepared to pay 1.5 billion and would tender for the Red Square. That is correct?

A. (Interpreted): Yes.

THE PRESIDENT: And then the bid was opened, and you bid for 1.5 billion and you won the bid. Is that an accurate statement?

A. (Interpreted): Correct.

*THE PRESIDENT: Okay.*⁵⁰¹

450. In addition, Mr. Pugachev did not submit for this alleged investment, or for any other of the alleged investments for which he claims protection, convincing evidence that the funds he allegedly delivered to Mr. Putin – or any funds related to that transaction – had a French origin or that a transfer of funds took place in order to make the investment.
451. In conclusion, Mr. Pugachev submits he made this investment at the time he was a Russian national in the context of an alleged understanding with President Putin, for which there is

⁵⁰⁰ Transcript, Hearing Day 2, p. 22, line 12 to p. 24, line 4 (emphasis added).

⁵⁰¹ Transcript, Hearing Day 2, p. 167, line 21 to p. 168, line 22 (emphasis added).

no evidence, concerning a domestic bid. Therefore, at the time of the alleged investment in the Red Square Project, Mr. Pugachev was a Russian national who made an alleged investment in Russia.

2. Shipyards

452. As regards the Shipyards, Claimant makes an unparticularised allegation that he acquired an equity stake in the Northern Shipyard around the end of the 1990s, through a process that would have taken, according to him, several years.⁵⁰²

453. In his Notice of Arbitration, Mr. Pugachev claims that, in 1999, the managers of the Northern Shipyard approached him seeking a loan for the expansion of the shipyard:

“In 1999, the managers of Northern Shipyard in St. Petersburg approached IIB seeking a loan to finance the expansion of a refueling station for ships at Northern Shipyard. In his capacity as then Chairman of IIB, Mr. Pugachev visited Northern Shipyard. At the time, the shipyard was dilapidated and in a state of neglect. No new ships had been built at Northern Shipyard in over 20 years, and the business had been reduced to renting the premises to small businesses for use as a storage facility.

*Mr. Pugachev, however, recognized its potential, and he devised a business plan to redevelop Northern Shipyard. He proposed to invest in the shipyard and manage the project in return for an equity stake in Northern Shipyard, and the then-managers of Northern Shipyard agreed to this proposal. In this manner, Mr. Pugachev acquired an equity stake in Northern Shipyard.”*⁵⁰³

454. Later, in his Statement of Claim, Claimant reiterated that he made his investments in the Northern Shipyard at the end of the 1990s.⁵⁰⁴ Mr. Pugachev further alleges that he purchased more than 75 % of the shares in the Northern Shipyard’s group companies and that, over the ensuing years, he invested further and acquired additional stakes in the Northern Shipyard. However, as shown below, Claimant did not provide a specific date for these subsequent deals:

“Mr. Pugachev formally acquired an equity stake in the Northern Shipyard from Mr. Boris Kuzyk, former advisor to President Boris Yeltsin. Mr. Kuzyk was a major shareholder of the Northern Shipyard.

Eventually, Mr. Pugachev purchased more than 75% of the shares of the Northern Shipyard’s group companies (apart from the Northern Shipyard itself the group

⁵⁰² Claimant’s Statement of Claim, 27 September 2017, ¶¶ 114-115.

⁵⁰³ Claimant’s Notice of Arbitration, 21 September 2015, ¶ 35 (emphasis added).

⁵⁰⁴ Claimant’s Statement of Claim, 27 September 2017, ¶¶ 114-115. (“At the end of 1990s, the managers of a shipyard in St. Petersburg, known as the “Northern Shipyard” approached IIB seeking a loan to finance the expansion of a refuelling station for ships. In his capacity as then Chairman of IIB, Mr. Pugachev visited the Northern Shipyard. At the time, the shipyard was dilapidated and in a state of neglect. No new ships had been built in over 20 years, and the business had been reduced to vessels’ fuelling services and renting the premises to small businesses for use as a storage facility. Mr. Pugachev, however, recognised its potential, and devised a business plan to redevelop the Northern Shipyard. He then gradually acquired shares in the Northern Shipyard on the open market. Other shareholders of the Northern Shipyards agreed to sell their stakes to Mr Pugachev. The process took several years”).

included transport services, machinery production companies, other companies related to the Shipyard).

*Over the ensuing years, Mr. Pugachev invested further, and acquired additional stakes in the Northern Shipyard. In parallel, Mr. Pugachev acquired stakes in another shipyard located in St. Petersburg, known as the "Baltic Shipyard" and of a construction bureau affiliated with the shipyards known as the "Iceberg Shipyard". The Baltic Shipyard was the sole competitor of the Northern Shipyard able to construct the same class of vessels in the Russian Federation. It was important for Mr. Pugachev to acquire shares in the Baltic Shipyard in order to concentrate in his hands production of both navy and civil vessels. Mr. Pugachev acquired his shares from the main shareholders of the Baltic Shipyard, namely Mr. Nesis, Mr. Shulikovsky (then director of the Baltic Shipyard), Mr. Ilya Klebanov (then deputy Prime Minister of Russia) and other individuals."*⁵⁰⁵

455. During the Hearing on Jurisdiction, Mr. Pugachev was asked to provide a temporal reference regarding his alleged investment in the Shipyards. He explained that he began purchasing shares in the 1990s and that he finished buying them around 2005 or 2007:

"Q.: Let's turn to your investments in shipyards then. There were three shipyards: Baltic, Northern and Iceberg. Is that correct? And if you turn to your Statement of Case at tab 11, page 52, paragraph 124, you say that by 2009 you held majority interests in all three shipyards. Is that right?

A. (Interpreted): Yes. Absolutely.

Q.: Can we try to reconstruct when did you bought each of the shipyards?

*A. (Interpreted): Okay. Let's begin by saying that the shares were publicly traded. It was not privatisation. I was not buying it from a single individual or from the Government. The shares -- some of the shares were even held by the workers, people who were employed there -- and we're looking at 17,000 people of employees. So, with respect to when I began purchasing shares, that was in the 1990s. When I finished buying them? I would have said that that would have been maybe, I don't know, around 2005 or 2007. Something like that. So it was a lengthy process; but by the year 2009 -- it is just a statement of fact. By the year 2009 I did own those equity stakes."*⁵⁰⁶

456. Also, during the Hearing on Jurisdiction, Mr. Pugachev explicitly asserted that by November 2009, he had bought all three of the shipyards:

"Q.: I appreciate you're trying to be helpful to the Tribunal, but can we still try to get to my question. I'll reword it. Would it be, then, correct to say that by November 2009 you bought all three of the shipyards? Is that "yes" or "no"?

*A. (Interpreted): Yes."*⁵⁰⁷

457. Although Claimant's allegations as regards the date of his alleged investment in the Shipyards are surprisingly vague and poorly supported for an alleged significant investment,

⁵⁰⁵ Claimant's Statement of Claim, 27 September 2017, ¶¶ 116-118.

⁵⁰⁶ Transcript, Hearing Day 2, p. 40, line 24 to p. 41, line 19 (emphasis added).

⁵⁰⁷ Transcript, Hearing Day 2, p. 42, line 22 to p. 43, line 2 (emphasis added).

it is clear that the alleged investment was made at the end of the 1990s or at the beginning of the 2000s. In any event, as admitted by Claimant during the Hearing on Jurisdiction, by November 2009 (*i.e.* the date on which he acquired French nationality) he had already bought the Northern, Baltic and Iceberg Shipyards.

458. Again, there is no convincing evidence that the funds used to acquire the shares came from a jurisdiction other than Russia, much less from France.

3. EPC

459. As to his purported investment in EPC, Claimant indicates that he acquired this company in 2003 through one of his companies, LLC ForwardStyle. This is explained in the Statement of Claim, as follows:

*“Mr. Pugachev identified the potential of the Eleget plateau region as it is rich in raw minerals but lacked the requisite level of investment in order to extract them. Thus, Mr. Pugachev acquired EPC in July/September 2003, through his company LLC ForwardStyle. By that time, EPC had already acquired the Licence, but was not undertaking any exploration or mining operations yet, since it required massive investments. Mr. Pugachev acquired 100 % of the shares in EPC from three individuals namely, Mr. Yuri Shirmankin, Mr. Yevgeniy Chervyakov and Mr. Vladimir Kumanyev [...]”*⁵⁰⁸

460. Notwithstanding the above, the Tribunal finds it surprising that, during his cross-examination in the Hearing on Jurisdiction, Mr. Pugachev claimed not to recall how he made his investment in EPC:

“MR GOLDBERG: Can we turn to EPC, please. That is tab 11. Statement of Case - of Claim, page 125 at paragraph 409. Just to remind you, that what it says is that you invested through LLC ForwardStyle; is that right? Do you remember this company? Did you invest through this company?

A. (Interpreted): I do not recall exactly, to be honest with you. To be honest, I do not recall.

Q.: But was that investment made in July or September 2003?

A. (Interpreted): I'm not sure I understand which investment you're referring to. What kind of investment and where, please?

Q.: I will just make sure that EPC is translated correctly.

A. (Interpreted). Yes. Yes, I understand.

Q. So what I'm trying to get is for you to confirm that investment was made through ForwardStyle LLC in July or September 2003.

⁵⁰⁸ Claimant's Statement of Claim, 27 September 2017, ¶ 409 (emphasis added).

*A. (Interpreted): Sitting here today, I'm not sure I can recall that. I don't remember the name, to begin with. We had hundreds of companies, both resident and non-resident companies.*⁵⁰⁹

461. The Tribunal further notes that Respondent made a number of document requests during the document production phase of this Arbitration, by which it asked Claimant to demonstrate the time at which he made his alleged investments. To demonstrate the date of the alleged investment in EPC, Claimant produced an extract from the Russian Unified State Register of Legal Entities in respect of LLC ForwardStyle. However, this document (i) was obtained in 2018; (ii) lists Mr. Viktor Petlenko as its sole shareholder; (iii) makes no reference to Claimant; and (iv) does not demonstrate a connection to LLC ForwardStyle or the date of Mr. Pugachev's investment in EPC.⁵¹⁰
462. Accordingly, from the evidence on the record and in accordance with Claimant's own assertions, the Tribunal must conclude that, in the best of cases, Claimant's investments in EPC were made through ForwardStyle LLC, in July or September 2003.

4. Land Plots

463. Claimant submits that he acquired a plot of land in the Krasnogorsk District of the Moscow Region on 24 August 2010, through ZAO Optik Trade ("**Optik Trade**"). The plot was later divided into 167 plots (the "**Land Plots**"), and it is the alleged expropriation of the Land Plots of which Claimant complains.
464. In his Statement of Claim, Claimant described the ownership's chain of the land that eventually constituted the Land Plots as follows:

"The Plot originally belonged to a larger plot of land owned by the farming collective Leninskii Luch ("LL Collective"). Ownership of the Plot then changed hands on several occasions prior to Optik Trade's acquisition. All these changes of ownership were duly registered in the Moscow Region Register of Companies and the State Land Registry.

In 2003, the LL Collective, by decision of its General Assembly dated 5 February 2003, decided to contribute two land plots located in the Moscow Region, Krasnogorsk District, East of Dmitrovskoye and Gribanovo villages ("Land Plot No. 45" and "Land Plot No. 41") (one of which included the Plot) to the charter capital of ZAO Dmitrovskii Sovkhoz ("DS"), a company created jointly with OOO "ForwardStyle", OOO "Oleandr" and OOO "Universal", in exchange for shares.

*On 21 April 2003, during the General Meeting of the founding members of DS, which was attended by LL Collective, the charter capital of DS, the founding members' contribution (notably the contribution by LL Collective of the Plot) and the shares' distribution were unanimously approved. In application of these decisions, on 6 June 2003, DS and LL Collective entered into a transfer and acceptance statement for Land Plot No. 45 and Land Plot No. 41.*⁴⁸⁷

⁵⁰⁹ Transcript, Hearing Day 2, p. 43, line 21 to p. 44, line 17 (emphasis added).

⁵¹⁰ Respondent's Reply on Jurisdiction, 19 December 2018, ¶ 303.

In compliance with these decisions and agreements, on 19 December 2003, DS registered its ownership rights over these land plots at the Land Registry.

In February 2004, DS divided Land Plot n° 45 into three new plots of land (“Land Plot No. 47”, “Land Plot No. 48”, “Land Plot No. 49”), and then merged Land Plots n°48 and n°49 into one single plot (“Land Plot No. 72”).

In March 2004, DS decided to contribute Land Plot No. 72 to the charter capital of Niva, in exchange for shares. Niva then transformed this land plot into Land Plot No. 77 and Land Plot No. 78 (the Plot).

On 16 August 2010, Niva contributed the Plot to the charter capital of Plescheevo, one of Mr. Pugachev’s companies, in exchange for shares. Plescheevo later sold the Plot to Optik Trade.

After it acquired the Plot, Optik Trade applied for and received governmental approval to subdivide the Plot into 167 individual plots to be used for the construction of residences (“167 Land Plots”). Optik Trade is the registered owner of all 167 Land Plots.”⁵¹¹

465. Based on the above, the Tribunal considers that the chain of ownership of the Land Plots can be summarized in four distinct moments:
- a. from 2003 to 2004, the Land Plots were owned by Dmitrovskiy Sovkhoz (“**DS**”);
 - b. from March 2004 to August 2010, the Land Plots were owned by Niva CJSC (originally LLC) (“**Niva**”);
 - c. during August 2010, the Land Plots were purchased by Plescheevo CJSC (“**Plescheevo**”); and
 - d. on 24 August 2010, the Land Plots were sold by Plescheevo to Optik Trade.
466. Of great importance to this case is that Claimant describes Niva as “[a]n entity indirectly owned by Mr Pugachev which had acquired Land Plot no. 72 from DS”.⁵¹² He also defines Plescheevo as “one of Mr Pugachev’s companies”.⁵¹³ This means that, since Niva acquired the Land Plots in 2004, they were, either directly or indirectly, an asset of Mr. Pugachev.
467. During the Hearing on Jurisdiction, Mr. Pugachev was extensively cross-examined in relation to the acquisition of the Land Plots.⁵¹⁴ The Tribunal notes that Mr. Pugachev did not remember the date or the form in which he made his investment in the Land Plots. However, at the end of his cross-examination on this subject, Mr. Pugachev affirmed that by March 2004, all the property was already acquired by Niva:

⁵¹¹ Claimant’s Statement of Claim, 27 September 2017, ¶¶ 496-503 (emphasis added).

⁵¹² Claimant’s Statement of Claim, 27 September 2017, p. 14.

⁵¹³ Claimant’s Statement of Claim, 27 September 2017, ¶ 502.

⁵¹⁴ Transcript, Hearing Day 2, p. 46, line 9 to p. 56, line 5.

“THE PRESIDENT: Excuse me. Mr Pugachev, I have two questions here, just to see if we can move on. Is Niva a company -- was Niva a company owned by you? "Yes" or "no"?

A. (Interpreted): Yes.

THE PRESIDENT: It was. Okay. Now, you're saying in -- and I'm referring to the Statement of Claim, paragraph 502 that we have here -- that on August 16, 2010, Niva contributed a plot to the capital of Plescheevo. Is that correct? It's another company of yours?

A. (Interpreted): Yes, it does. Absolutely.

THE PRESIDENT: Okay. So for the purposes of the dates of the acquisition, all the acquisition of the lands, of the plots, took place, in any event, before August 16, 2010? Is that a fair statement? Because if on August 16, 2010, Niva contributed a plot to the charter of another company that means by at least August 16, 2010, everything was consolidated; is that correct?

A. : Yes. Sure, sure, sure.

THE PRESIDENT: Okay.

A.: Yes.

THE PRESIDENT: Then, in paragraph 501, it says that in March 2004 there was a contribution of land plot 72 to the charter capital of Niva in exchange for shares. So in March 2004 all the property was already acquired; is that correct or not?

A. (Interpreted): I think so. I do not know the exact date, but if it says so in the Statement of Claim then it is so.

THE PRESIDENT: Let's move on, please.”⁵¹⁵

468. In other words, during the Hearing on Jurisdiction, Mr. Pugachev acknowledged that (i) both Niva and Plescheevo were companies owned by him; and (ii) that in March 2004, all of the property was already acquired by Niva.
469. The Tribunal further observes that Respondent requested Claimant to prove the timing of his investment in the Land Plots, including his interests or involvement with DS. During the document production phase of this Arbitration, Claimant only produced documents dating back to 2018 in relation to ZAO Optik Trade and Plescheevo, which do not mention Claimant, and no documents at all in relation to Niva and DS.⁵¹⁶
470. In light of the above, the Tribunal concludes that Claimant acquired the land which was subsequently divided into the Land Plots no later than March 2004.

⁵¹⁵ Transcript, Hearing Day 2, p. 55, line 1 to p. 56, line 5.

⁵¹⁶ Respondent's Reply on Jurisdiction, 19 December 2018, ¶ 303.

5. *Non-Russian investments*

471. Regarding Claimant's "other substantial investments" in non-Russian companies (*i.e.* OPK Biotech LLC, Hédiard Group, Péridot SA and Luxury Investment SA) the Tribunal notes that these were also made before Mr. Pugachev acquired French nationality.

472. First, Claimant contends that he established OPK Biotech LLC on 7 July 2009. In his Statement of Claim, Claimant asserts that:

*"OPK Biotech LLC was incorporated in the State of Delaware on 7 July 2009. Claimant ultimately owns and controls OPK Biotech LLC, as well as a series of entities related to OPK Biotech LLC, including OPK Biotech Holdings Company. OPK Biotech LLC acquired its assets on 9 September 2009 from Biopure Corporation during Biopure's Chapter 11 bankruptcy case."*⁵¹⁷

473. Second, Claimant claims that he acquired Hédiard Group in 2007. On this point, he explains that:

*"Illustrating his strong links and commitments to France, Mr. Pugachev purchased the worldwide famous épicerie Hediard from Michel Pastor in 2007."*⁵¹⁸

474. Third, Claimant asserts that he acquired Péridot SA in September 2009. In the Statement of Claim, it is established that:

*"Peridot SA was a Swiss luxury watches manufacturer's assets with notably the trademarks BLU and Sinocron, machinery, tools, models and lease of premises. It was acquired by Mr. Pugachev in September 2009 from BLU SA for CHF 1,2 million. Mr. Pugachev also acquired Peridot's building and completely renovated such premises including the production facilities. Mr Pugachev owned Peridot via his companies Luxury Investments SA and Poljot SA."*⁵¹⁹

475. Finally, Claimant submits that Luxury Investment SA was established in 2006. Claimant claims that:

*"Luxury Investments SA (Luxembourg), established in 2006, was a holding company for Claimant's non-Russian assets such as Hediard, Poljot-Peridot or Luxe TV."*⁵²⁰

476. The Tribunal concludes that, pursuant to Claimant's own assertions, all of his non-Russian investments were made before he acquired French nationality, *i.e.* 30 November 2009. The Tribunal will not analyse whether these investments fall within the scope of the Treaty considering that they were made in third countries.

477. For the reasons set out above, the majority of the Tribunal concludes that the alleged investments made by Claimant were investments made before Claimant obtained his French nationality. Considering that (i) the Treaty requires Claimant to have held French nationality

⁵¹⁷ Claimant's Statement of Claim, 27 September 2017, ¶ 537 (emphasis added).

⁵¹⁸ Claimant's Statement of Claim, 27 September 2017, ¶ 552 (emphasis added).

⁵¹⁹ Claimant's Statement of Claim, 27 September 2017, ¶ 560 (emphasis added).

⁵²⁰ Claimant's Statement of Claim, 27 September 2017, ¶ 566 (emphasis added).

at the time he made his alleged investments; and (ii) that Claimant did not hold French nationality at the date of all of his alleged investments, in the operative part of this Award on Jurisdiction, the majority of the Tribunal will declare that it does not have *ratione personae* jurisdiction because Mr. Pugachev is not an “investor” in accordance with the Treaty. In consequence, the Tribunal will dispose all of Claimant’s claims.

E. Respondent’s allegations regarding Claimant’s dominant and effective nationality, abuse of process, attribution and the fulfilment of mandatory preconditions under the Treaty do not affect the Tribunal’s findings on jurisdiction

478. In addition to the Parties’ various submissions examined at Sections IV (A) to (D) *supra*, the Russian Federation has further argued that:

- a. Claimant’s dominant and effective nationality is Russian;
- b. Claimant’s claims are abusive;
- c. Claimant has not fulfilled the mandatory preconditions under Article 7 of the Treaty;
and
- d. The DIA’s actions are not attributable to Respondent.

479. The Tribunal observes that none of the above-mentioned claims could affect the decision made by the majority of the Tribunal set out at Section IV (D), *i.e.* that the Tribunal does not have *ratione personae* jurisdiction because Mr. Pugachev is not an “investor” in accordance with the Treaty. For this reason, the Tribunal will not examine the additional claims put forward by Claimant.

V. COSTS OF THE ARBITRATION

480. Claimant requests the Tribunal to issue an Award ordering Respondent to bear the burden of the overall costs incurred by Claimant in order to defend against Respondent’s Memorial on Jurisdiction.⁵²¹ In his Post-Hearing Brief, Claimant further requests the Tribunal to order Respondent to bear the burden of all costs incurred by Claimant so far in this Arbitration.⁵²²

481. Respondent, in turn, requests the Tribunal to issue an Award ordering Claimant to pay the costs of this Arbitration and all expenses that Respondent has incurred in defending its position, including, but not limited to, fees and expenses of the Tribunal, legal counsel, experts, and consultants.⁵²³

⁵²¹ See Claimant’s Counter Memorial on Jurisdiction, 20 July 2018, ¶ 461; Claimant’s Rejoinder on Jurisdiction, 26 March 2019, ¶ 759.

⁵²² See Claimant’s Post Hearing Brief, 13 January 2020, ¶ 130.

⁵²³ See Respondent’s Submission on Jurisdiction, 6 April 2018, ¶ 362; Respondent’s Reply on Jurisdiction, 19 December 2018, ¶ 644.

482. For the reasons explained below, the Tribunal finds that Claimant shall assume the entirety of the Arbitration Costs, his own Legal Costs, and 40% of Respondent's Counsel Fees.

a) The UNCITRAL Rules provide that costs follow the event

483. The Tribunal notes that neither the Treaty nor the Terms of Appointment or the Procedural Orders issued in this Arbitration provide for a specific rule on allocation of costs.

484. Paragraph 7.9 of PO1 provides that "[...] [t]he Tribunal will decide upon the appropriate allocation of such costs in its final award". Paragraph 12.5 of the Terms of Appointment provides that, in accordance with Article 38 of the UNCITRAL Rules, "*any payment made from the deposit shall be without prejudice to a final allocation of costs by the Tribunal in an award*".

485. According to Article 38 of the UNCITRAL Rules, "[t]he arbitral tribunal shall fix the costs of arbitration in its award." In turn, Article 40 of the UNCITRAL Rules provides that:

1. Except as provided in paragraph 2, the costs of arbitration shall in principle be borne by the unsuccessful party. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

2. With respect to the costs of legal representation and assistance referred to in article 38, paragraph (e), the arbitral tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.

3. When the arbitral tribunal issues an order for the termination of the arbitral proceedings or makes an award on agreed terms, it shall fix the costs of arbitration referred to in article 38 and article 39, paragraph 1, in the text of that order or award. [...]

486. The aforementioned set of rules grant the Tribunal some discretion to decide on the costs of the Arbitration.

487. Article 40 of the UNCITRAL Rules draws a distinction between costs of legal representation and assistance ("**Legal Costs**") and the rest of the costs incurred in connection with the arbitration ("**Arbitration Costs**").

488. With respect to the Arbitration Costs, the UNCITRAL Rules provide for the general rule that the "loser pays", *i.e.* costs follow the event, but allows the Tribunal to apportion the costs between the Parties if the Tribunal considers that the apportionment is reasonable considering the "circumstances of the case".

489. As regards Legal Costs, the UNCITRAL Rules grant the Tribunal a general discretion, considering the "circumstances of the case", to make either Party responsible for said costs or to apportion the costs between the Parties according to what it considers to be "reasonable."

b) Summary of the Legal Costs and Arbitration Costs of this Arbitration

490. Claimant's Legal Costs amount to EUR 8,172,102.79. The sum of EUR 7,527,400.98 corresponds to counsel fees ("**Claimant's Counsel Fees**"). In accordance with Claimant's Statement of Costs, these costs are as follows:

Nature	Detail	EUR (Incl. VAT)
Legal fees	Betto Perben Pradel Filhol fees	1,852,054.00
	Other Counsel Fees (as clarified and amended in Claimant's correspondence dated 22 May 2020)	5,675,346.98
Expenses of Betto Perben Pradel Filhol	Transport fees	5,639.33
	Food expenses	5,356.33
	Reprography expenses	31,835.43
	Delivery expenses	2,637.54
	Furnitures expenses	8,021.60
	Translation expenses	135,274.38
	ICC Hearing Centre	26,741.10
	Court reporter expenses	15,454.27
Expert and consultant fees and expenses	Expert fees and expenses (Profs. Butler and Pataut)	114,717.88
	Consultant fees and expenses	299,023.95
SCC advances on costs	SCC initial deposit (Jan. 2017)	400,000.00
	SCC deposit (Nov. 2019)	200,000.00
	SCC administrative fee (Jan. 2020)	3,000.00
Total (as clarified and amended in Claimant's correspondence dated 22 May 2020)		8,775,102.79

491. Respondent's Legal Costs amount to GBP 10,497,093.89. Of this amount, GBP 9,568,775.65 corresponds to counsel fees ("**Respondent's Counsel Fees**"). In accordance with Respondent's Statement of Costs, these costs are as follows:

Category (concept) of costs		Amount (in GBP, unless stated otherwise)
Costs incurred prior to the Interim Award of 7 July 2017		
1	White & Case fees	1,401,397.50
2	Translation costs	3,235.77
3	Hearing arrangements	5,621.57
4	French law consultant	26,133.93
5	Other expenses and disbursements, including travel expenses	23,646.33
Costs incurred between 7 July 2017 and 27 April 2020		
6	White & Case fees	8,167,378.15

Category (concept) of costs		Amount (in GBP, unless stated otherwise)
7	Expert fees and expenses	53,882.47
8	Translation costs	123,276.07
9	Hearing arrangements	39,104.37
10	French law consultant	545,998.60
11	Other expenses and disbursements, including travel expenses	107,419.13
Deposits on account of arbitration costs (ordered by the Tribunal)		
12	Deposits on account of arbitration costs	EUR 600,000
Total		GBP 10,497,093.89 and EUR 600,000

492. On the other hand, the Arbitration Costs amount to EUR 1,001,748.55.
493. Claimant and Respondent have, as of the date of this Award, placed the amount of EUR 600,000 each on deposit with the SCC in respect of Arbitration Costs, for a total of EUR 1,200.000.
494. The fees per hour for the members of the Tribunal was established at paragraph 12.1 of the Terms of Appointment. In turn, paragraph 12.3 of the Terms of Appointment provides that the members of the Tribunal shall be reimbursed for all charges reasonably incurred in connection with the Arbitration.
495. The Tribunals' total fees and expenses, as of the date of this Award on Jurisdiction, amount to EUR 988,939.55. The SCC has charged the amount of EUR 12,809 for its fund-holding services in connection with the Arbitration.
496. The SCC will send to the Arbitral Tribunal and the Parties an updated statement of account after the issuance of this Award on Jurisdiction.
497. Accordingly, the Tribunal will now apportion the Arbitration Costs and Legal Costs between the Parties in accordance with the UNCITRAL Rules.

c) Claimant must assume the entirety of the Arbitration Costs

498. The Tribunal has no reason to depart from the "costs follow the event" rule with respect to the Arbitration Costs in this specific case.
499. During the jurisdictional phase of the Arbitration, the Parties submitted their positions in multiple rounds of written memorials – including Post-Hearing Briefs – and, in November 2019, the Parties and the Tribunal held the Hearing on Jurisdiction.
500. In this Award on Jurisdiction, Claimant succeeded in its defences to the jurisdictional objections filed by Respondent regarding whether Claimant is a French national under international law and whether that dual nationals are excluded from the Treaty.

501. However, Respondent succeeded in its jurisdictional defence that the Treaty requires Claimant to have held French nationality at the time he made his alleged investments and therefore, that the Tribunal does not have *ratione personae* jurisdiction because Mr. Pugachev is not an “investor” in accordance with the terms of the Treaty. This means that Respondent was fully successful in challenging the Tribunal’s jurisdiction and, for this reason, the Tribunal dismissed Claimant’s claims in their entirety.

502. In addition, and as explained further in the following section, the costs of the arbitration were impacted by multiple applications filed by Claimant on a variety of matters, which in most of the cases were rejected by the Tribunal.

503. The Tribunal, therefore, concludes that Claimant must assume the entirety of the Arbitration Costs. This decision will be recorded in the operative part of this Award on Jurisdiction.

d) Claimant must assume his own Legal Costs and 40% of Respondent’s Counsel Fees

504. Concerning the Legal Costs, the Tribunal will exercise its general discretion by reference to the circumstances of the case and according to what it considers to be reasonable.

505. As a departing point, the Tribunal must consider the fact that Respondent prevailed since the Tribunal dismissed the entirety of Claimant’s claims. However, the Tribunal acknowledges that this Arbitration involved complex factual and legal matters, including complex legal debates rooted upon Russian law and public international law resulting from the very particular text of the Treaty.

506. In addition, an important portion of the Legal Costs, including costs of experts, were related to the jurisdictional defences in which Respondent did not succeed, particularly the defences on whether Claimant was a French national under French law and international law.

507. Both Parties conducted the proceedings in a professional manner. The Tribunal did not observe lack of professional courtesy, unsubstantiated fraud allegations, delaying tactics, or willingness to slow down the proceedings. Furthermore, during the stage of document production, both Parties displayed a professional conduct and assisted the Tribunal in the efficient conduction of the Arbitration.

508. The Tribunal must also consider the fact Claimant submitted multiple applications concerning a wide variety of matters. There were at least four applications for provisional or interim measures – including orders to courts elsewhere to suspend proceedings or take particular measures – that were filed by Claimant and that were rejected by the Tribunal. Furthermore, out of the several measures requested by Claimant, the only provisional measure granted in the Interim Award was the suspension of the France Extradition Request initiated by the Russian Federation. Most of the other requests made by Claimant were rejected for lack of merit.

509. The Tribunal further acknowledges the fact that the Parties debated whether Respondent’s jurisdictional objections should be decided in a separate proceeding. Claimant argued, inter

alia, that none of Respondent's grounds for seeking a bifurcation of the proceedings were jurisdictional in nature, and that, in any event, the bifurcation will not serve the efficiency of the present proceedings. Claimant did not succeed in its position and the Tribunal ordered the bifurcation of the Arbitration in the terms set out in PO3. The bifurcation of the proceedings allowed Respondent to conduct in an efficient manner its case and provide the Tribunal with the opportunity to focus exclusively on the jurisdictional objections raised in the Arbitration.

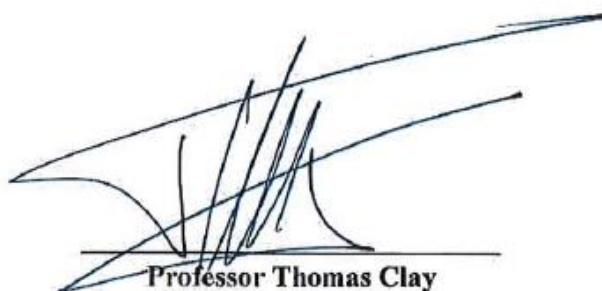
510. Based on the above-mentioned considerations, the Tribunal finds that Claimant must assume his own Legal Costs plus 40 % of Respondent's Counsel Fees. This decision will be recorded in the operative part of this Award on Jurisdiction.

VI. THE TRIBUNAL'S DECISION

511. For the reasons set out above, the Tribunal by majority hereby:

- a. Declares that the Tribunal lacks jurisdiction over the Claimant's claims;
- b. Dismisses Claimant's claims in their entirety;
- c. Dismisses all other claims raised by the Parties during the Arbitration;
- d. Lifts the order to take all actions necessary to suspend the France Extradition Request, as defined in the Interim Award;
- e. Orders Claimant to assume the entirety of the Arbitration Costs as provided in Section V(c) of this Award on Jurisdiction; and
- f. Orders Claimant to assume his own Legal Costs, 40 % of Respondent's Counsel Fees as provided in Section V(d) of this Award on Jurisdiction.

THE ARBITRAL TRIBUNAL:



Professor Thomas Clay
Subject to his Dissenting Opinion

Date:
18/06/2020



Dr. Bernardo M. Cremades

Date:
18/06/2020



Dr. Eduardo Zuleta Jaramillo
Presiding Arbitrator

Date: 18/06/20

Place of arbitration: Madrid, Kingdom of Spain

APPENDIX NO. 1

ACCEPTED CORRECTIONS TO THE AWARD ON JURISDICTION

Reference	Original Text	Accepted Correction
List of Defined Terms (row “BIT or Treaty”)	United Soviet Socialist Republics	Union of Soviet Socialist Republics
List of Defined Terms (row “First Witness Statement of Mr. Rybankov”)	Rybankov	Rybakov
List of Defined Terms (row “First Witness Statement of Mr. Rybankov”)	Dimitry	Dmitry
List of Defined Terms (row “PO7”)	Procedural Orden No. 7 dated 29 September 2019	Procedural Order No. 7 dated 23 September 2019
Paragraph 1	United Soviet Socialist Republics	Union of Soviet Socialist Republics
Paragraph 37 (table)	Thomas Vail	Tomas Vail
Paragraph 37 (table)	Hadia Hakin	Hadia Hakim
Paragraph 63	On 5 April 2018, Claimant submitted Fabienne Jault-Seseke’s First Expert Report (“ First Expert Report of Professor Jault-Seseke ”).	On 5 April 2018, Respondent submitted Fabienne Jault-Seseke’s First Expert Report (“ First Expert Report of Professor Jault-Seseke ”).
Paragraph 70	On the same date, Claimant submitted the Second Expert Report of Professor Jault-Seseke (the “ Second Expert Report of Professor Jault-Seseke ”).	On the same date, Respondent submitted the Second Expert Report of Professor Jault-Seseke (the “ Second Expert Report of Professor Jault-Seseke ”).
Paragraph 71	Rybankov	Rybakov
Paragraph 71	Dimitry	Dmitry
Paragraph 85	The following individuals assisted the Hearing on Jurisdiction	The following individuals attended the Hearing on Jurisdiction
Paragraph 85 (table)	[...] - Mr Dmitriy Laverychev (White & Case)	Add Mr. Ivan Philippov (White & Case) under the ‘Respondent’ column: - Mr Dmitriy Laverychev (White & Case) - Mr Ivan Philippov (White &

Reference	Original Text	Accepted Correction
		Case)
Paragraph 85 (table)	[...] - Ms. Aleksandra Usacheva (Respondent's representatives) - Mr Vadim Tarkin (Respondent's representative)	Remove Ms. Aleksandra Usacheva (Respondent's representative) from the 'Other Attendees on behalf of Respondent' column.
Paragraph 85 (table)	[...] - Mr. Hughes Hourdin (Expert)	Remove bold - Mr. Hughes Hourdin (Expert)
Paragraph 86	Alexei Kudrin	Alexei Kudrin
Paragraph 86	Georgievitch Guram Gachechiladze	Guram Georgievich Gachechiladze
Paragraph 94	asserting that anyone of such objections	asserting that any of such objections
Paragraph 97	Claimant bears the burden of proving that it	Claimant bears the burden of proving that he
Paragraph 116	at the time of making the investment	at the time of making the investments
Paragraph 117	Russia supports	The Russian Federation supports
Paragraph 123	object of this arbitration	object of this Arbitration
Paragraph 133(ii)	In relation to EPC, Respondent states that EPC challenged the revocation of its mining license in the Moscow City Commercial Court, which, in its view, is substantially similar to Claimant's claims brought before this Tribunal.	In relation to EPC, Respondent states that EPC challenged the revocation of its mining license in the Moscow City Commercial Court, which, in its view, is similar in substance to Claimant's claims brought before this Tribunal.
Paragraph 139	(b) the specific facts of which he complains involved the exercise of that governmental authority.	(b) the specific acts of which he complains involved the exercise of that governmental authority.
Paragraph 154	The Russian Federation also opposes to Claimant's argument that	Respondent also opposes Claimant's argument that
Paragraph 175	In substantiating its arguments, Claimant	In substantiating his arguments, Claimant
Paragraph 186	Claimant furthers its argument	Claimant furthers his argument

Reference	Original Text	Accepted Correction
Paragraph 192	Respondent does not contest that Mr. Pugachev held the French nationality	Respondent does not contest that Mr. Pugachev held French nationality
Paragraph 206	Claimant clarifies that the alleged illegality resulting from Mr. Pugachev's status as a senator and as a dual national are two different scenarios; and notes that "obtaining a foreign nationality is a ground for early termination of a member of the Federation Council's mandate".	Claimant clarifies that the alleged illegality resulting from Mr. Pugachev's status as a senator and as a dual national are two different scenarios; and notes, citing the Respondent, that "obtaining a foreign nationality is a ground for early termination of a member of the Federation Council's mandate".
Paragraph 206, footnote 277	Claimant's Counter-memorial on Jurisdiction, 20 July 2018, ¶ 329.	Claimant's Counter-Memorial on Jurisdiction, 20 July 2018, ¶ 239.
Paragraph 221, footnote 305	Iustitininform	Iustitsinform
Paragraph 231	Mr. Pugachev submits that where there is no realistic change for meaningful consultations, Claimant may resort to arbitration before the waiting period has expired.	Mr. Pugachev submits that wherethere is no realistic chance for meaningful consultations, Claimant may resort to arbitration before the waiting period has expired.
Paragraph 265	Claimant did not discharge its burden	Claimant did not discharge his burden
Paragraph 313	French authorities have rightfully applied French law when conferring the French nationality	French authorities have rightfully applied French law when conferring French nationality
Paragraph 354	Hédiar	Hédiard
Paragraph 411	according to the definition of 'investor' in Article 2.1(a) of the BIT	according to the definition of 'investor' in Article 1.2(a) of the BIT
Paragraph 421	Claimant invokes the dissenting opinion of Professor Oreamuno	Respondent invokes the dissenting opinion of Professor Oreamuno
Paragraph 445	LLC Middle Trading	LLC Middle Trading Rows
Paragraph 445	Stredniye Torgoviye Ryady	Sredniye Torgoviye Ryady