GROUNDS FOR SETTING ASIDE

1. Article 45 "to the extent" is not the same as "if"
2. Domestic Russian dispute
3. Tax Dispute
4. Deliberate breach of treaty obligation
5. Surprise decision with exorbitant damages award
6. Impermissible delegation of tasks
JURISDICTION GROUND 1
- Article 45 ECT -

Violation of Russian Federation’s Sovereignty as a State
No Jurisdiction on the Basis of Article 45(1) ECT

“Each signatory agrees to apply this Treaty provisionally pending its entry into force (...), to the extent that such provisional application is not inconsistent with its constitution, laws or regulations.”
JURISDICTION GROUND 2
- Article 1(6) and (7) ECT -

Domestic Investments and *Mala Fide* Investments Are Not Protected
Appendix to Interim Awards ("Russian Sandwich")

APPENDIX

YUKOS HOLDING STRUCTURE AFTER OCTOBER 20, 2003

JURISDICTION GROUND 2: DOMESTIC + MALA FIDE INVESTMENTS

RUSSIAN FEDERATION
The Russian circulation of funds

- YUKOS Universal
  - De Facto managed from Moscow by oligarchs

- Hulley Enterprises
  - Veteran Petroleum
  - De Facto managed from Moscow by oligarchs

- YUKOS Oil Company

Jurisdiction ground 2: Domestic + Mala Fide Investments

Russian Federation
Domestic and/or *Mala Fide* Investments Are Not Protected

**Jurisdiction Ground 2: Domestic + Mala Fide Investments**

**Russian Federation**
JURISDICTION GROUND 3
- Article 21(1) ECT -

Tax Dispute -
The Massive Fraud in Mordovia
No Jurisdiction on the Basis of Article 21(1) ECT

“Except as otherwise provided in this Article, nothing in this Treaty shall create rights or impose obligations with respect to Taxation Measures of the Contracting Parties. In the event of any inconsistency between this Article and any other provision of the Treaty, this Article shall prevail to the extent of the inconsistency.”
The Arbitral Tribunal Has Failed to Refer the Dispute on Expropriation to the Competent Tax Authorities.
“(...) bodies called upon to settle disputes (...)
shall make a referral to the relevant
Competent Tax Authorities.”
Breach of Referral Obligation

OBLIGED SITUATION

Tribunal submits the dispute → Tax authorities issue advice → Parties are heard about this advice → Yukos Awards

ACTUAL SITUATION

Tribunal does not submit the dispute → Tax authorities are not requested to issue advice → Parties are not heard → Yukos Awards

MANDATE GROUND 1: BREACH OF REFERRAL OBLIGATION  
RUSSIAN FEDERATION
The Arbitral Tribunal Has Failed to Comply with Its Mandate When Determining the Amount of Damages
The Determination of Damages by the Arbitral Tribunal

\[
\text{DAMAGES} = \text{Equity value} + \text{Dividend}
\]
The Arbitrators Have Not Fulfilled Their Mandate Personally
THE CHAIRMAN: Thank you, Mr Greig. I would like to bring to the attention of the parties that I have asked one of my colleagues in my office in Montreal to assist me in the conduct of this case. Because, like all of us, I travel a lot, if at any time I am unreachable, you could always contact him. 

(...)

It may come to pass that you wish to find out something with respect to the tribunal that Brooks Daly might not be aware of. Martin at my office in Montreal could be reached and hopefully will have the answer for you.
The Introduction of the “Assistant”

1  2  3

TRIBUNAL

VALASEK

PCA

HVY  RF

MANDATE GROUND 3: MANDATE NOT FULFILLED PERSONALLY  RUSSIAN FEDERATION
The Hours Spent by the “Assistant”

<table>
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<tr>
<th></th>
<th>(1) Hours as of 18-11-2005 through 31-12-2007</th>
<th>(2) Hours in 2008, including jurisdiction hearing November - December 2008</th>
<th>(3) Hours as of 18-11-2005 through 31-12-2008</th>
<th>(4) Hours as of 1-1-2009 through end</th>
<th>(5) Hours as of 18-11-2005 through end</th>
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<td>Valasek</td>
<td>22</td>
<td>359</td>
<td>381</td>
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<td>Fortier</td>
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<td>275,5</td>
<td>490,5</td>
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<tr>
<td>Poncet</td>
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<td>349</td>
<td>1540</td>
<td>1889</td>
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<td>(replaced Price)</td>
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<td>Schwebel</td>
<td>411,85</td>
<td>152,75</td>
<td>564,6</td>
<td>1852,6</td>
<td>2417,2</td>
</tr>
</tbody>
</table>

MANDATE GROUND 3: MANDATE NOT FULFILLED PERSONALLY
RUSSIAN FEDERATION
Arbitrators Have Not Fulfilled Mandate Personally

- Valasek: 359 hours
- Fortier: 490 hours
- Price + Poncet: 487 hours
- Schwebel: 564 hours

- 2625 hours from 18 November 2005 through 31 December 2008
- 1592 hours from 1 January 2009 to the end

MANDATE GROUND 3: MANDATE NOT FULFILLED PERSONALLY
RUSSIAN FEDERATION
The Assistant as Fourth Arbitrator

MANDATE

TRIBUNAL

1 2 3

VALASEK

PCA

HVY RF

MANDATE GROUND 3: MANDATE NOT FULFILLED PERSONALLY

RUSSIAN FEDERATION
Average probability according to Dr Chaksi’s model that Valasek was the author of each of the subsections of the Representative Sections attributed to him.

MANDATE GROUND 3: MANDATE NOT PERSONALLY FULFILLED

RUSSIAN FEDERATION