

No. _____

In the Supreme Court of the United States

UKRAINE,
Applicant,

v.

PAO TATNEFT,
Respondent.

APPLICATION FOR AN EXTENSION OF TIME
TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE D.C. CIRCUIT

APPLICATION TO THE HONORABLE
CHIEF JUSTICE JOHN G. ROBERTS, JR.
AS CIRCUIT JUSTICE

LAUREN GAILEY
SPENCER W. CHURCHILL
Winston & Strawn LLP
1901 L Street, NW
Washington, DC 20036

LINDA T. COBERLY
Winston & Strawn LLP
35 W. Wacker Drive
Chicago, IL 60601

MARIA KOSTYTYSKA
Counsel of Record
Winston & Strawn LLP
68 rue du Faubourg Saint Honoré
Paris 75008, France
(202) 282-5841
mkostystka@winston.com

Counsel for Applicant

**To the Honorable John G. Roberts, Jr., Chief Justice of the United States
and Circuit Justice for the D.C. Circuit:**

Pursuant to Rule 13.5 of the Rules of this Court, Applicant Ukraine hereby requests a 60-day extension of time within which to file its petition for a writ of certiorari, up to and including July 5, 2022. Respondent PAO Tatneft consents to this application.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

Ukraine seeks review of the December 28, 2021, decision and judgment of the U.S. Court of Appeals for the D.C. Circuit in *PAO Tatneft v. Ukraine*, No. 20-07091 (attached as Exhibits 1–2). The D.C. Circuit denied panel rehearing and rehearing en banc on February 3, 2022 (attached as Exhibits 3–4).

JURISDICTION

The Court will have jurisdiction over any timely filed petition for certiorari in this case pursuant to 28 U.S.C. § 1254(1). Under Rules 13.1 and 13.3 of the Rules of this Court, a petition for a writ of certiorari is due to be filed on or before May 4, 2022—90 days after the D.C. Circuit’s denial of rehearing on February 3, 2022. In accordance with Rule 13.5, this application is being filed more than 10 days in advance of the May 4, 2022 deadline.

REASONS JUSTIFYING AN EXTENSION OF TIME

“For good cause, a Justice may extend the time to file a petition for a writ of certiorari for a period not exceeding 60 days.” S. Ct. R. 13.5. A 60-day extension of the May 4, 2022, deadline would last until July 5, 2022, because July 3 and 4 are

excluded from the 60-day period as a Sunday and a federal holiday, respectively. *See* S. Ct. R. 30.1. There is good cause for the requested extension of time in this case for the following reasons.

1. The war in Ukraine has resulted in a state of emergency and the declaration of martial law. The President of Ukraine has ordered, and the Parliament of Ukraine has approved, a 30-day extension of the initial period of martial law, which had been set to expire on March 25, 2022.¹

2. In the words of President Biden, “[t]he Russian military has begun a brutal assault on the people of Ukraine without provocation, without justification, without necessity. This is a premeditated attack. Vladimir Putin has been planning this for months, as I’ve been — as we’ve been saying all along. He moved more than 175,000 troops, military equipment into positions along the Ukrainian border.”² Further, “[w]e saw a flagrant violation of international law in attempting to

¹ Order of the President of Ukraine No. 133/2022, “On the Extension of Martial Law in Ukraine” of March 14, 2022; Law of Ukraine “On Approval of the Order of the President of Ukraine “On the Extension of Martial Law in Ukraine”; *see also* Ex. 5, Markarova Declaration, ¶¶ 33–35 (describing initial period of martial law).

² Remarks by President Biden on Russia’s Unprovoked and Unjustified Attack on Ukraine (February 24, 2022), available at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/02/24/remarks-by-president-biden-on-russias-unprovoked-and-unjustified-attack-on-ukraine/>.

unilaterally create two new so-called republics on sovereign Ukrainian territory. And at the very moment that the United Nations Security Council was meeting to stand up for Ukraine’s sovereignty to stave off invasion, Putin declared his war. Within moments — moments, missile strikes began to fall on historic cities across Ukraine. Then came in the air raids, followed by tanks and troops rolling in.”³

3. In the words of Ukraine’s U.S. Ambassador, Oksana Markarova, “Ukraine is facing and countering an existential threat to its sovereignty, territorial integrity, statehood and national identity. The world is facing and countering a brutal affront to the very principles of freedom and self-determination on which the democratic order is based.”⁴

4. In this context, the Government of Ukraine must focus its attention on defending itself against the war. Ukraine’s communications and other infrastructure is under constant attack. Communications are disrupted. The attacks have “not only made it impossible to maintain normal day-to-day operation of utilities, transportation, telecommunications and IT systems, but also interfered with the smooth functioning of the state organs, including the Ministry of Justice of Ukraine,” which is responsible for overseeing Ukraine’s litigation with PAO Tatneft and for providing instructions on behalf of Ukraine in connection with the present case.⁵

³ *Id.*

⁴ Ex. 5, Markarova Declaration, ¶ 48.

⁵ *Id.* ¶ 49.

5. On this basis, Ukraine has sought and received stays in other proceedings in various fora on account of the war. For example, Ukraine successfully moved for wartime moratoria in three post-judgment discovery proceedings related to this case, where it was joined by PAO Tatneft in explaining that a moratorium would be “in the interest of justice.” *See* Attachments 6–10.

6. Similarly, an extension of time for Ukraine to file its petition for a writ of certiorari in this case would serve the interests of justice by reducing the prejudice to Ukraine that would otherwise follow from the war’s inevitable disruption of its litigation efforts.

7. Counsel for Respondent, PAO Tatneft, has consented to Ukraine’s requested 60-day extension of time in this case.

CONCLUSION

For these reasons, Ukraine respectfully requests that the Court grant an extension of 60 days, up to and including July 5, 2022, for Ukraine to file its petition for a writ of certiorari in this case.⁶

⁶ For the avoidance of doubt, Ukraine expressly reserves foreign sovereign immunity from attachment and execution against its property, as contemplated by Section 1610 of the Foreign Sovereign Immunities Act, the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, and all applicable national and international law.

Respectfully submitted.

LINDA T. COBERLY
Winston & Strawn LLP
35 W. Wacker Drive
Chicago, IL 60601

LAUREN GAILEY
SPENCER W. CHURCHILL
Winston & Strawn LLP
1901 L Street, NW
Washington, DC 20036

s/ Maria Kostytska

MARIA KOSTYTYSKA
Counsel of Record
Winston & Strawn LLP
68 rue du Faubourg Saint Honoré
Paris 75008, France
(202) 282-5841
mkostytska@winston.com

LIST OF EXHIBITS

1. D.C. Circuit Slip Opinion
2. D.C. Circuit Judgment
3. D.C. Circuit Order Denying Panel Rehearing
4. D.C. Circuit Order Denying Rehearing En Banc
5. Second Declaration of Ambassador Markarova in D.C. District Court
6. D.D.C. Joint Motion for Wartime Moratorium
7. D.D.C. Order Granting Wartime Moratorium
8. S.D.N.Y. Joint Motion for Wartime Moratoria in Cases 21-mc-00376 and 21-mc-00036
9. S.D.N.Y. Order Granting Wartime Moratorium in Case 21-mc-00376
10. S.D.N.Y. Order Granting Wartime Moratorium in Case 22-mc-00036

Exhibit 1

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued October 15, 2021

Decided December 28, 2021

No. 20-7091

PAO TATNEFT,
APPELLEE

v.

UKRAINE, c/o MR. PAVLO PETRENKO, MINISTER OF JUSTICE,
APPELLANT

Appeal from the United States District Court
for the District of Columbia
(No. 1:17-cv-00582)

Maria Kostytska argued the cause for appellant. With her on the briefs was *Geoffrey P. Eaton*.

Mark E. McDonald argued the cause for appellee. With him on the brief were *Jonathan I. Blackman* and *Matthew D. Slater*.

Before: SRINIVASAN, *Chief Judge*, and HENDERSON, *Circuit Judge*, and EDWARDS, *Senior Circuit Judge*.

Opinion for the Court filed by *Circuit Judge* HENDERSON.

KAREN LECRAFT HENDERSON, *Circuit Judge*: Pao Tatneft (Tatneft), a Russian company, filed a petition in district court to confirm and enforce its arbitral award against Ukraine. The district court granted the petition, rejecting Ukraine's arguments that the court should have declined to enforce the award under The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), June 10, 1958, 21 U.S.T. 2517, and should have dismissed the petition on the basis of *forum non conveniens*. As explained *infra*, we agree with the district court and affirm its judgment.

I. BACKGROUND

In July 1995, the Republic of Tatarstan (Tatarstan) and Ukraine founded the CJSC Ukrtatnafta Transnational Financial and Industrial Oil Company (Ukrtatnafta), a joint-stock company that owns and operates Kremenchug, a Ukrainian oil refinery. Ukrtatnafta had three major shareholders: Tatarstan, Tatneft and Ukraine. Tatneft had close ties to the Russian government and Tatarstan is a Russian republic—i.e., one of Russia's federated states. To ensure equal ownership between Russian and Ukrainian interests, Ukraine owned half of Ukrtatnafta and the two Russian entities, Tatneft and Tatarstan, owned the other half. Securing their respective ownership stakes, Ukraine agreed to contribute the oil refinery, Tatarstan, the rights to its region's oil deposits and Tatneft, \$180.9 million in oil-related capital assets. Ukraine contributed the oil refinery but Tatneft and Tatarstan failed to make their promised contributions. Tatneft instead contributed \$31 million in cash and had its ownership stake reduced by 57%, as approved by Ukrtatnafta's shareholders.

In 1998 and 1999, Ukrtatnafta sold share offerings to AmRuz Trading Co. (AmRuz) and Seagroup International Inc.

(Seagroup). AmRuz and Seagroup agreed to issue promissory notes in exchange for the shares. Media sources have since reported that, at the time of the transaction with Ukrtatnafta, Tatneft executives owned AmRuz and Seagroup. AmRuz, Seagroup, Tatarstan and Tatneft then entered into a Russian voting alliance, eventually formalized through an agreement in October 2006, that controlled 55.7% of Ukrtatnafta's shares.

Beginning in 2001, private and public Ukrainian actors challenged AmRuz and Seagroup's share purchases, arguing that Ukrainian law prohibited the purchase of shares with promissory notes. While this litigation was ongoing, Tatneft purchased AmRuz and Seagroup. After a series of lawsuits, the Kyiv (Ukraine) Economic Court invalidated the share purchases and ordered AmRuz and Seagroup to return their shares to Ukrtatnafta.

A Ukraine conglomerate, the Privat Group, then acquired a small share in Ukrtatnafta. The Privat Group initiated further litigation that resulted in the Economic Court of the Poltava Region, another Ukrainian court, forcing Ukrtatnafta to sell the returned shares at auction. The court did not inform Tatneft, AmRuz or Seagroup about the impending sale. The Privat Group was the sole bidder and purchased the shares.

On May 21, 2008, Tatneft served Ukraine with a Notice of Arbitration and Statement of Claim pursuant to the Russia-Ukraine Bilateral Investment Treaty. *See* Russia-Ukraine Bilateral Investment Treaty, Russ.-Ukr., Nov. 27, 1998. Tatneft claimed that Ukraine, including the Ukrainian courts, improperly facilitated the Privat Group's acquisition of Ukrtatnafta shares and sought damages for unpaid oil deliveries. In accordance with the Russia-Ukraine Bilateral Investment Treaty, each party appointed an arbitrator. *Id.* art.

10. The party-appointed arbitrators then appointed the third arbitrator, Professor Francisco Orrego Vicuña.

In an initial jurisdictional proceeding, Ukraine argued that the arbitral tribunal lacked jurisdiction because Tatneft could not raise claims on behalf of AmRuz and Seagroup. The tribunal disagreed and affirmed its jurisdiction of the dispute. The parties submitted merits arguments but before the tribunal issued its final decision, both Tatneft's law firm (Cleary Gottlieb Steen & Hamilton LLP) and Ukraine's law firm (King & Spalding LLP) had appointed Vicuña as an arbitrator in separate matters. The Russia–Ukraine Bilateral Investment Treaty incorporates the United Nations Commission on International Trade Law's (UNCITRAL) arbitration rules. *Id.* art. 9(2)(c). Under UNCITRAL rules, Vicuña had to notify all parties to the Tatneft-Ukraine arbitration about his subsequent appointments if the appointments raised “justifiable doubts” about his impartiality. UNCITRAL Arbitration Rules, art. 9, G.A. Res. 31/98, U.N. Doc. A/RES/31/98 (Dec. 15, 1976). Vicuña did not inform either party that he had accepted an arbitral appointment from the other party's counsel.

The tribunal issued its “Final Award” in July 2014. *Tatneft v. Ukraine*, 2017 WL 3311265 (July 19, 2014) (Brower, Lalonde, Vicuña, Arbs.). It concluded that Ukraine acted improperly, primarily due to the Ukrainian litigation's procedural defects, thereby depriving Tatneft of its shares in Ukratnafta. It awarded Tatneft \$112 million in damages and denied Tatneft's claims for unpaid oil deliveries. Ukraine unsuccessfully attempted to annul the Final Award in the Court of Appeal of Paris, which—as the arbitration panel sat in France—had the power to annul the award under the New York Convention. *See* New York Convention art. V(1)(e) (award may be “set aside or suspended by a competent authority of the country in which . . . that award was made”). In 2017 Tatneft

sued to enforce the Final Award, both in the United Kingdom and in the United States District Court for the District of Columbia. *See id.* art. IV(1) (party may apply “for recognition and enforcement” of award). In district court, Ukraine moved to dismiss Tatneft’s suit on the basis of Ukraine’s sovereign immunity and under the doctrine of *forum non conveniens*. The district court rejected both claims. It held that the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. § 1604, did not apply based on the FSIA’s arbitration exception, 28 U.S.C. § 1605(a)(6), as well as the waiver exception, *id.* § 1605(a)(1). *Tatneft v. Ukraine*, 301 F. Supp. 3d 175, 190 (D.D.C. 2018). Regarding the *forum non conveniens* ground, it held that “no alter[n]ative forum . . . has jurisdiction to attach the commercial property of a foreign nation located in the United States.” *Id.* at 192–93. On interlocutory appeal, *Jungquist v. Sheikh Sultan Bin Khalifa Al Nahyan*, 115 F.3d 1020, 1025 (D.C. Cir. 1997) (collateral order doctrine extends to denial of motion to dismiss on sovereign immunity ground), this court affirmed the district court on the sovereign immunity claim and declined to exercise pendent jurisdiction of the *forum non conveniens* claim. *Tatneft v. Ukraine*, 771 F. App’x 9, 10 (D.C. Cir. 2019) (per curiam), *cert. denied sub nom. Ukraine v. Tatneft*, 140 S. Ct. 901 (2020).

On February 13, 2020, Ukraine moved for supplemental briefing on whether AmRuz and Seagroup had illegally purchased their shares with promissory notes. If true, the parties presumably did not consent to arbitrate the dispute pursuant to the Russia–Ukraine Bilateral Investment Treaty. *See* art. 1 (no consent to arbitrate “illegal” investments). The district court could then deny enforcement under the New York Convention. *See* New York Convention art. V(1)(c) (court may deny enforcement if parties have not consented to arbitration). The district court denied the motion because Ukraine did not explain its failure to make the argument timely.

The district court then granted Tatneft's petition on the merits, enforcing the arbitral award under the New York Convention. *Pao Tatneft v. Ukraine*, 2020 WL 4933621 (D.D.C. Aug. 24, 2020). Ukraine had opposed enforcement because Vicuña failed to disclose his outside appointments and thus violated the UNCITRAL rule that he disclose any appointment raising "justifiable doubts" about his impartiality, UNCITRAL Arbitration Rules, art. 9, and because enforcement violated the U.S. policy against illegality, *see United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 42 (1987) ("a court may refuse to enforce contracts that violate law or public policy"), as AmRuz's and Seagroup's purchase of their shares via promissory notes allegedly violated Ukrainian law. The district court rejected both arguments. On the arbitrator bias claim, it held that Vicuña did not have an obligation to disclose a "single" arbitral appointment and that he had not evinced any partiality in ruling for Tatneft. *Pao*, 2020 WL 4933621, at *7–9. On the public policy-against-illegality claim, it held that Ukraine failed to carry its "substantial burden" because it did not identify a specific public policy that enforcement would violate. *Id.* at *9–10.

Ukraine timely appealed. This court then held the appeal in abeyance pending the district court's decision regarding prejudgment interest. Order of January 19, 2021 *in Pao Tatneft v. Ukraine*, No. 20-7091 (D.C. Cir. 2021). The district court subsequently awarded prejudgment interest and ordered Ukraine to pay nearly \$173 million in damages. Ukraine timely filed an amended notice of appeal.

We have jurisdiction of the August 24, 2020 final order pursuant to 28 U.S.C. § 1291. Our jurisdiction also extends to the interlocutory rulings that preceded the district court's entry of final judgment. *Ciralsky v. C.I.A.*, 355 F.3d 661, 668 (D.C.

Cir. 2004). We therefore also have jurisdiction of the March 19, 2018 interlocutory ruling on *forum non conveniens*.

II. ANALYSIS

Ukraine argues that the district court should have denied enforcement under the New York Convention or, in the alternative, should have dismissed the case on *forum non conveniens*. The New York Convention in general requires American courts to enforce international arbitral awards. *See* 9 U.S.C. § 207 (“court shall confirm [foreign arbitral] award[s] unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the [New York] Convention”). Under the Convention, however, a court may deny enforcement if “[t]he award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration,” New York Convention, art. V(1)(c), if “[t]he composition of the arbitral authority . . . was not in accordance with the agreement of the parties,” *id.*, art. V(1)(d), or if enforcement would be “contrary to the public policy of that [court’s] country,” *id.*, art. V(2)(b). Under the *forum non conveniens* doctrine, a court may decline to exercise jurisdiction if it determines it is an inappropriate forum. *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 504–05 (1947).

“We review a district court’s confirmation of an arbitration award for clear error with respect to questions of fact and de novo with respect to questions of law.” *Kurke v. Oscar Gruss & Son, Inc.*, 454 F.3d 350, 355 (D.C. Cir. 2006). We review the district court’s denial of supplemental briefing for abuse of discretion. *Cal. Valley Miwok Tribe v. United States*, 515 F.3d 1262, 1266 (D.C. Cir. 2008). We also review a *forum non conveniens* determination for abuse of discretion, keeping in mind that “[t]here is a substantial presumption in favor of a plaintiff’s choice of forum.” *Agudas Chasidei Chabad of U.S.*

v. Russian Fed'n, 528 F.3d 934, 950 (D.C. Cir. 2008). When a foreign plaintiff seeks review in an American court, however, the presumption applies with less force. *Friends for All Child., Inc. v. Lockheed Aircraft Corp.*, 717 F.2d 602, 605 (D.C. Cir. 1983) (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255–56 (1981)).

A. NEW YORK CONVENTION

Ukraine makes three New York Convention arguments: (1) the Convention's exception to enforcement in Article V(1)(c) applies to this dispute; (2) the district court exceeded its authority under the Convention; and (3) the district court incorrectly enforced the arbitral award, rejecting others of the Convention's exceptions to enforcement.

1. Whether enforcement of the arbitral award should have been denied under New York Convention art. (V)(1)(C)

Ukraine first argues that the arbitral award should not be enforced because AmRuz and Seagroup acquired the disputed shares in exchange for promissory notes in violation of Ukrainian law. In the Russia–Ukraine Bilateral Investment Treaty, the parties consented to arbitration regarding “investments” but defined that term to exclude illegal purchases. Russia–Ukraine Bilateral Investment Treaty art. 1. If AmRuz and Seagroup in fact acquired their shares through illegal purchases, the parties' consent to arbitrate would be vitiated. The district court could therefore have declined to enforce the arbitral award under the Convention. *See* New York Convention art. V(1)(c) (court may deny enforcement if “[t]he award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration”). The district court declined to reach this argument because Ukraine

did not timely raise it. We likewise decline to reach the argument.

Ukraine did not make this argument in its initial responses to Tatneft's petition to confirm the arbitral award. By asserting that AmRuz and Seagroup acquired shares in violation of Ukrainian law, Ukraine alleged the necessary condition for the claim. But Ukraine did not connect the dots and explain how Article V(1)(c) of the New York Convention therefore allows the district court not to enforce the arbitral award. "It is not enough merely to mention a possible argument in the most skeletal way, leaving the court to do counsel's work." *Schneider v. Kissinger*, 412 F.3d 190, 200 n.1 (D.C. Cir. 2005).

Ukraine admitted by implication that it failed to raise the argument when it moved for supplemental briefing on the question. The district court denied that motion. As the district court explained, Ukraine offered no reason that it could not have raised the argument much earlier in the litigation. On appeal, Ukraine claims that supplemental briefing would have been "helpful" or "efficient." As noted, we review a denial of supplemental briefing under the abuse of discretion standard. *Cal. Valley Miwok Tribe*, 515 F.3d at 1266. We do "not substitute our judgment for that of the trial court, . . . determining whether we would have reached the same conclusion." *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, 985 F.3d 1032, 1053 (D.C. Cir. 2021) (citation and internal quotation marks omitted). We instead review whether the district court exceeded its "range of choice" or made a "mistake of law." *United States v. Volvo Powertrain Corp.*, 758 F.3d 330, 345 (D.C. Cir. 2014) (citation omitted). The district court neither exceeded its discretion nor made legal error when it denied Ukraine's motion for supplemental briefing, made years after the parties had initially briefed the merits.

Although we have discretion to consider an issue for the first time on appeal, we exercise it only in “exceptional circumstances.” *Roosevelt v. E.I. Du Pont de Nemours & Co.*, 958 F.2d 416, 419 n.5 (D.C. Cir. 1992). No such circumstance exists here. Ukraine contends that a significant monetary judgment against a foreign government could upset international relations but we have not accepted that argument if the judgment would not threaten the stability of the foreign government. *See Acree v. Republic of Iraq*, 370 F.3d 41, 58 (D.C. Cir. 2004) (“The circumstances of this case are even more extraordinary when one considers the stakes: Appellees have obtained a nearly-billion dollar default judgment against a foreign government whose present and future stability has become a central preoccupation of the United States’ foreign policy.”). The record reflects that Ukraine can pay the \$173 million judgment without risking a collapse.

2. Whether the district court exceeded its authority under the New York Convention

Ukraine next argues that the district court exceeded its authority under the Convention by modifying the Final Award. Although the Convention plainly authorizes the district court to recognize and enforce an arbitral award, New York Convention art. III; *see also* 9 U.S.C. §§ 201, 207, other courts have held that they lack the power to *modify* an arbitral award. *See Gulf Petro Trading Co. v. Nigerian Nat’l Petroleum Corp.*, 512 F.3d 742, 747 (5th Cir. 2008) (court lacks subject-matter jurisdiction over “claims seeking to . . . modify a foreign arbitral award”).

The “modification” Ukraine challenges arises from the Final Award’s provision of differing principal damages in its analysis section and in its “dispositif.” In French law, the *dispositif* is “the operative provisions of the judgment.” *See*

Dispositif, ENCYCLOPEDIA OF INTERNATIONAL LAW (3d ed. 2009). Accordingly, Ukraine argues, the district court necessarily “modified” the Final Award by choosing the award amount included in the *dispositif* and, in effect, nullifying the portion of the analysis that includes different principal damages. For its part, Tatneft disputes that the Final Award has any inconsistency and contends that this court should treat the “*dispositif*” as the binding provision.

We need not reach the question of how to interpret a contradictory arbitral award because the Final Award is not internally inconsistent. The arbitral tribunal calculated the total amount that Tatneft paid for its 22.7% equity stake in Ukratnafta (\$112 million) as one measure of the total value of Tatneft’s shares. J.A. 245–46. Other estimates—including the amount the Privat Group paid for its shares—confirmed the \$112 million evaluation. J.A. 245. The arbitral panel applied the evaluation for the total 22.7% shareholding to both the “14.09% indirect shareholding . . . which [Tatneft] held through AmRuz and Seagroup” and Tatneft’s “8.61% direct shareholding in Ukratnafta.” J.A. 249. Accordingly, the arbitral panel held “that interest shall begin to accrue on the amount of US\$ 68.44 million [from the date Tatneft was deprived of its indirect shareholdings], and on the amount of US\$ 43.56 million [from the date Tatneft was deprived of its direct shareholdings].” J.A. 249. Ukraine argues that the Final Award elsewhere defines the principal sums as \$81 million and \$31 million—the amounts Tatneft in fact paid for its indirect and direct shareholdings, with a higher per share price for the indirect transaction. But the arbitral tribunal did not award damages to restore what Tatneft paid for its shares. Instead, it estimated the per share value of Ukratnafta itself (in part by looking at what Tatneft paid, on average, per share) and awarded damages according to the estimated value of the taking from Tatneft. Because the Final Award does not reflect

any award inconsistency, the district court did not exceed its jurisdiction by issuing its enforcement judgment.

3. Whether other New York Convention enforcement exceptions apply

Ukraine also argues that the district court mistakenly enforced the arbitral award, in spite of the New York Convention's "public policy" and "improper composition" exceptions. *See* 9 U.S.C. § 207 ("The court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the [New York] Convention."). We reject both arguments.

A. Public Policy Exception (*New York Convention art. V(2)(b)*)

Ukraine contends that the district court erroneously enforced the award because enforcement would violate the U.S. policy against illegality. *See* New York Convention, art. V(2)(b) (court may deny enforcement if "enforcement of the award would be contrary to the public policy of [the court's] country"). "The public policy defense is to be construed narrowly to be applied only where enforcement would violate the forum state's most basic notions of morality and justice." *TermoRio S.A. E.S.P. v. Electranta S.P.*, 487 F.3d 928, 938 (D.C. Cir. 2007) (citation omitted). Ukraine asserts that AmRuz and Seagroup acquired their shares in Ukratnafta using promissory notes in violation of Ukrainian law. Ukraine thus argues that the district court should decline to enforce the award under Article V(2)(b) because enforcement would violate U.S. policy. Even assuming *arguendo* that AmRuz and Seagroup's share purchases violated Ukrainian law, enforcement did not violate U.S. public policy.

Ukraine’s argument fails because the U.S. does not have a policy against enforcing arbitral awards predicated on underlying violations of foreign law. Under the common law, a court “may refuse to enforce contracts that violate law or public policy.” *United Paperworkers*, 484 U.S. at 42. As applied to a *domestic* arbitral award, the doctrine extends to an “arbitrator’s *interpretation* of . . . [a] contract[] . . . where the contract as interpreted would violate” a public policy. *Id.* at 43 (emphasis in original). But a party does not necessarily “found[] a cause of action upon an immoral or illegal act” if it seeks to enforce an arbitral award as to which some underlying activity was illegal. *Cf. id.* at 43–45 (court enforced arbitration decision reinstating employee discharged for illegal drug use). The parties have already litigated and arbitrated their claims on the merits; now they argue about whether the U.S. can enforce the award. If Ukraine wanted to raise claims about the illegality of the share purchases and the arbitral panel’s jurisdiction, it had the opportunity to raise those claims before the arbitral panel. *See Chevron Corp. v. Ecuador*, 795 F.3d 200, 208 (D.C. Cir. 2015) (parties “consented to allow the arbitral tribunal to decide issues of arbitrability—including whether [the parties] had ‘investments’ within the meaning of the treaty”). We need consider only whether U.S. public policy would be violated by enforcing the arbitral award. Because Ukraine does not offer any argument that the arbitration tribunal interpreted the Russia–Ukraine Bilateral Investment Treaty in such a manner as to violate U.S. public policy, the district court was without authority to apply the New York Convention’s public policy exception.

B. Improper Composition Exception (*New York Convention art. V(1)(d)*)

Ukraine next argues that the district court should have denied enforcement because Vicuña failed to disclose that

Tatneft's law firm appointed him to another arbitration panel. "Recognition and enforcement of the award may be refused" if "[t]he composition of the arbitral authority . . . was not in accordance with the agreement of the parties." New York Convention, art. V(1)(d). The parties' agreement incorporates the UNCITRAL rules. *See* Russia–Ukraine Bilateral Investment Treaty art. 9(2)(c) ("[T]he dispute shall be referred to be considered by . . . an ad hoc arbitration tribunal in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL)."). The UNCITRAL rules require an arbitrator to disclose "any circumstances likely to give rise to justifiable doubts as to his impartiality or independence." UNCITRAL Arbitration Rules, art. 9. Accordingly, if Vicuña failed to disclose circumstances creating "justifiable doubts" about his impartiality, the "composition of the arbitral authority" would not have been "in accordance with the agreement of the parties." Unlike in the domestic arbitral context, the district court did not need to find that Vicuña in fact evinced "evident partiality." *Cf. Belize Bank Ltd. v. Gov't of Belize*, 852 F.3d 1107, 1112 (D.C. Cir. 2017).¹

We conclude that Ukraine has not shown that the appointment "give[s] rise to justifiable doubts as to [Vicuña's] impartiality or independence." Although an arbitrator should promote openness in disclosing other arbitral appointments or any outside contact with a party's counsel, we do not interpret the "justifiable doubts" standard to require a searching review of an arbitrator's ethics. *Cf. id.* at 1112 ("Article V(2)(b) does not require a fly-specking of the ABA Model Rules of

¹ We note that the district court read *Belize Bank* to hold that parties may challenge an arbitrator's bias only under New York Convention art. V(2)(b) (public policy exception). *Belize Bank* limited its analysis to the public policy exception simply because it was the only claim that "warrant[ed] further discussion." *Belize Bank*, 852 F.3d at 1109.

Professional Conduct.”). And we do not think that Vicuña’s failure to disclose raises any question of his impartiality.

In applying the “justifiable doubts” standard, we look to the *International Bar Association Guidelines on Conflicts of Interest in International Arbitration* (2004) (IBA Guidelines) as authority on the ethics of international arbitrators. *Cf., e.g., New Regency Prods., Inc. v. Nippon Herald Films, Inc.*, 501 F.3d 1101, 1110 (9th Cir. 2007) (court “considered” IBA Guidelines). The IBA Guidelines identify conduct that will and will not raise “justifiable doubts.” The “Red List” identifies situations that “give rise to justifiable doubts as to the arbitrator’s impartiality and independence.” IBA Guidelines pt. II, § 2. The “Orange List” identifies situations that “may . . . give rise to doubts as to the arbitrator’s impartiality or independence.” *Id.* pt. II, § 3. Situations not identified in the Orange List, however, “are generally not subject to disclosure” but might raise justifiable doubts depending on specific factual circumstances. *Id.* pt. II, § 6. And the “Green List” identifies “situations where no appearance of, and no actual, conflict of interest exists from the relevant objective point of view. Thus, the arbitrator has no duty to disclose situations falling within the Green List.” *Id.* pt. II, § 7.

The IBA Guidelines do not address the specific conduct here—accepting an arbitral appointment from one party’s counsel—but the included examples suggest that Vicuña’s conduct falls somewhere between the “Green List” and the “Orange List.” The “Green List” includes “initial contact with a party’s . . . counsel[,] prior to appointment” about “availability and qualifications” to serve. *Id.* pt. II, art. 4.4.1. The “Orange List” addresses circumstances in which an “arbitrator has within the past three years been appointed as arbitrator on two or more occasions by . . . an affiliate of one of the parties,” including counsel, *id.* pt. II, art. 3.1.3, and

circumstances in which “[t]he arbitrator has, within the past three years, been appointed on more than three occasions by the same counsel, or the same law firm,” *id.* pt. II, art. 3.3.7. Vicuña accepted only one appointment from Tatneft’s law firm (indeed, neither law firm appointed Vicuña to this Tatneft-Ukraine tribunal), leaving his conduct outside the “Orange List.” But his conduct goes beyond the “Green List” because his contact was not “limited to [discussing] the arbitrator’s availability and qualifications to serve”—Vicuña in fact accepted the appointment.

Even under a strict interpretation of the IBA Guidelines, we think that Vicuña did not have a duty to disclose. Situations not identified in the Orange List “are generally *not* subject to disclosure.” IBA Guidelines, pt. II, § 6 (emphasis added). Ukraine does not identify any additional reason to doubt Vicuña’s impartiality, such as an unusually lucrative fee or an unusually prestigious appointment. And we note that Vicuña accepted a separate arbitral appointment from the law firms for *both* parties, arguably relieving doubt about his impartiality.

Vicuña, a well-known arbitrator, followed an apparently common practice. *See Nat’l Indem. Co. v. IRB Brasil Resseguros S.A.*, 164 F. Supp. 3d 457, 479–80 (S.D.N.Y. 2016) (“it cannot be that selection and payment for a person’s services as a party-arbitrator or umpire, without more, produces a ‘material or commercial financial relationship’ sufficient to constitute disqualifying partiality [because if] it did, the entire commercial arbitration system, which universally uses such procedures, would be undermined”) (citation omitted), *aff’d*, 675 F. App’x 89 (2d Cir. 2017). Indeed, other courts have found no ethical breach. The Court of Appeal of Paris concluded that “a single appointment in the course of the seven years that the arbitration lasted, which did not characterize a history of business between this arbitrator and this law firm,

[did not have] the potential to raise a reasonable doubt about the independence and impartiality of Mr Orrego Vicuña.” J.A. 349. The United Kingdom’s High Court of Justice “d[id] not consider that it can at all be said that a single appointment in the course of the seven years the arbitration lasted would or might provide the basis for a reasonable apprehension about the independence or impartiality of Professor Vicuña; and still less that they were likely to give rise to justifiable doubts so as to trigger the duty of disclosure.” J.A. 996. Nonetheless, we emphasize the narrowness of our holding—Vicuña was not required to disclose his appointment because it did not raise “justifiable doubts” regarding his impartiality.

B. FORUM NON CONVENIENS

Finally, Ukraine maintains that the district court should have dismissed the case under the doctrine of *forum non conveniens*. “A *forum non conveniens* dismissal . . . is a determination that the merits should be adjudicated elsewhere,” *Sinochem Int’l Co. v. Malaysia Int’l Shipping Corp.*, 549 U.S. 422, 432 (2007), “even when jurisdiction is [otherwise] authorized,” *see Gilbert*, 330 U.S. at 507. “In deciding *forum non conveniens* claims, a court must decide (1) whether an adequate alternative forum for the dispute is available and, if so, (2) whether a balancing of private and public interest factors strongly favors dismissal.” *Agudas Chasidei Chabad*, 528 F.3d at 950. Ukraine argues that the parties should litigate this case in Ukraine, the locus of both the controversy and the major portion of the assets with which Ukraine would satisfy any judgment. But we have squarely held “that *forum non conveniens* is not available in proceedings to confirm a foreign arbitral award because only U.S. courts can attach foreign commercial assets found within the United States.” *LLC SPC Stileks v. Republic of Moldova*, 985 F.3d 871, 876 n.1 (D.C. Cir. 2021) (citing *TMR Energy Ltd. v. State Prop. Fund of*

Ukraine, 411 F.3d 296, 303–04 (D.C. Cir. 2005)). For that reason, no adequate alternative forum outside the U.S. exists. The rule applies even if the defendant “currently has no attachable property in the United States, [as] it may own property here in the future.” *TMR*, 411 F.3d at 303.

Ukraine argues that our decisions in *Moldova* and *TMR* run afoul of the Supreme Court’s *Sinochem* decision. In *Sinochem*, a Chinese corporation successfully filed suit in the Guangzhou Admiralty Court, China’s maritime court, against a Malaysian shipping corporation. 549 U.S. at 426. The Malaysian shipping corporation filed a countersuit in the Eastern District of Pennsylvania seeking damages from the Chinese corporation for negligent misrepresentations made in the Chinese court. *Id.* at 427. The district court dismissed on the *forum non conveniens* ground. *Id.* at 427. The Supreme Court recognized that a district court may sometimes address a *forum non conveniens* claim before affirming its jurisdiction because resolving a *forum non conveniens* motion does not require the court to assume a “substantive ‘law-declaring power.’” *Id.* at 433 (quoting *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 584 (1999)). But *Sinochem* does not address the relevant issue here: namely, whether an adequate alternative forum exists if a party seeks to attach assets located in the U.S.

For the foregoing reasons, we affirm the judgment of the district court enforcing the arbitration award against Ukraine.

So ordered.

Exhibit 2

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-7091

September Term, 2021

FILED ON: DECEMBER 28, 2021

PAO TATNEFT,

APPELLEE

v.

UKRAINE, C/O MR. PAVLO PETRENKO, MINISTER OF JUSTICE,
APPELLANT

Appeal from the United States District Court
for the District of Columbia
(No. 1:17-cv-00582)

Before: SRINIVASAN, *Chief Judge*, and HENDERSON, *Circuit Judge*, and EDWARDS, *Senior
Circuit Judge*

J U D G M E N T

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia and was argued by counsel. On consideration thereof, it is

ORDERED and **ADJUDGED** that the judgment of the District Court enforcing the arbitration award against Ukraine be affirmed, in accordance with the opinion of the court filed herein this date.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/

Daniel J. Reidy
Deputy Clerk

Date: December 28, 2021

Opinion for the court filed by Circuit Judge Henderson.

Exhibit 3

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-7091**September Term, 2021****1:17-cv-00582-CKK****Filed On:** February 3, 2022

Pao Tatneft,

Appellee

v.

Ukraine, c/o Mr. Pavlo Petrenko, Minister of
Justice,

Appellant

BEFORE: Srinivasan, Chief Judge; Henderson, Circuit Judge; and Edwards,
Senior Circuit Judge**ORDER**Upon consideration of appellant's petition for panel rehearing filed on January
27, 2022, it is**ORDERED** that the petition be denied.**Per Curiam****FOR THE COURT:**

Mark J. Langer, Clerk

BY: /s/
Anya Karaman
Deputy Clerk

Exhibit 4

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-7091**September Term, 2021****1:17-cv-00582-CKK****Filed On:** February 3, 2022

Pao Tatneft,

Appellee

v.

Ukraine, c/o Mr. Pavlo Petrenko, Minister of
Justice,

Appellant

BEFORE: Srinivasan, Chief Judge; Henderson, Rogers, Tatel, Millett, Pillard,
Wilkins, Katsas, Rao, Walker, and Jackson, Circuit Judges; and
Edwards, Senior Circuit Judge

ORDER

Upon consideration of appellant's petition for rehearing en banc, and the
absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/
Anya Karaman
Deputy Clerk

Exhibit 5

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PAO TATNEFT,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 1:17-cv-00582-CKK
)	
UKRAINE,)	
)	
Respondent.)	

SECOND DECLARATION OF AMBASSADOR MARKAROVA

I, Oksana Markarova, declare as follows:

Introduction

1. I am Ambassador Extraordinary and Plenipotentiary of Ukraine to the United States of America. I have served in this capacity since my Credentials were formally accepted by President Joseph R. Biden, Jr. on July 7, 2021.

2. Before being appointed as Ambassador of Ukraine to the U.S., I served in Ukraine’s Ministry of Finance in 2015-18 as First Deputy Minister and Government Commissioner on Investments, and then from 2018 to 2020 as Minister of Finance of Ukraine. Prior to my career in public service, I spent 17 years working in private equity and financial sector, held leadership roles in ITT Investment Group, Western NIS Enterprise Fund, Chemonics, and the World Bank.

3. This declaration, which is my second declaration in connection with Tatneft’s third-party subpoenas, is based on my personal knowledge, experience, and expertise, including as the Ambassador Extraordinary and Plenipotentiary of Ukraine to the United States.

4. Nothing in my declaration should be taken as a waiver of any privilege or right on the part of Ukraine. For the avoidance of doubt, nothing in my declaration should be taken as amounting to acceptance of jurisdiction or a waiver of the sovereign immunity of Ukraine, including the immunity of its officials and its property under the Foreign Sovereign Immunities Act and

international law. Nothing in my declaration should be taken as a waiver of diplomatic and consular immunity under the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, and international law. All rights, privileges, and immunities are expressly reserved.

Tatneft's discovery

5. I understand from the Ministry of Justice of Ukraine that Tatneft has served discovery requests on Ukraine in D.C. District Court case 1:17-cv-00582. Upon considering Tatneft's requests, it is clear to me that they are so broadly worded as to include within their scope important national security information the disclosure of which would significantly undermine the national defense of Ukraine. For example, a full response would include detailed information about the nature and extent of Ukraine's military, defense, and intelligence resources and expenditures. This would reveal substantial non-public information about Ukraine's military, defense, and intelligence capabilities and vulnerabilities, about bank accounts belonging not only to Ukraine but also to the United States and other allies who have provided funding or sold equipment to Ukraine, and about the identities of Ukraine's military and intelligence personnel, and suppliers of military and intelligence equipment and technology.

6. I also understand from the Ministry of Justice of Ukraine that Tatneft has served subpoenas on a number of financial institutions in Southern District of New York case 1:21-mc-00376. Upon considering Tatneft's subpoenas, it is clear to me that they have a similar scope to the requests served on Ukraine in the D.C. District Court, raising the same concerns about the disclosure of sensitive, non-public national security information that would undermine the national defense of Ukraine.

7. Moreover, I have been informed by the Ministry of Justice of Ukraine that the discovery requests served by Tatneft in both proceedings define "Ukraine" to include 19 specifically

identified third parties (such as SC Ukroboronprom, which oversees Ukraine's defense industry, and SE Ukrkosmos, which maintains satellite communications in Ukraine that are necessary to gather intelligence and to coordinate movements of military personnel and supplies) and innumerable other third parties (including but not limited to the Ministry of Defense) in a catch-all provision for all "agencies, instrumentalities, ministries, political subdivisions, representatives, State Controlled Entities, alter-egos, and assigns, and all other Persons acting or purporting to act for or on Ukraine's behalf, whether or not authorized to do so." This brings additional important national security information within the scope of discovery, although disclosure of this information would significantly undermine the national defense of Ukraine. A full response to Tatneft's discovery requests would include documents that identify business counterparts and cash flows on which SC Ukroboronprom and SE Ukrkosmos depend to fulfill their vital roles in maintaining Ukraine's defense industry and Ukraine's satellite communications. It would also include documents that shed light on the assets, financial health, and economic vulnerabilities of SC Ukroboronprom, SE Ukrkosmos, and their business counterparts.

8. I have said before and repeat again with utmost conviction that disclosure of this information will be extremely harmful to Ukraine's national security interests and defense—especially given Russia's ongoing invasion of Ukraine. For example, this information can be used to evaluate Ukraine's defense capabilities, to plan offensive measures that account for Ukraine's defense capabilities and exploit its weaknesses, and to interfere with Ukraine's efforts to sustain its national defense efforts, including by identifying, intimidating, and harming companies and individuals, including soldiers, and intelligence agents, with important roles in Ukraine's national defense. The threats to Ukraine's national security posed by Tatneft's discovery very real before the war. These threats are even more vital now that Ukraine is resisting an ongoing Russian invasion.

Deterioration of the geopolitical situation: Russian invasion of Ukraine

9. My first declaration discussed the significant deterioration of geopolitical circumstances and the marked increase in Russian aggression against Ukraine during late 2021 and the first few weeks of 2022.

10. Since my first declaration, the geopolitical situation has dramatically deteriorated.

11. Preparatory steps for the Russian invasion of Ukraine and threat of a full-scale war.

12. On February 9, 2022, Press Secretary of the White House Jen Psaki reiterated the advice for American citizens residing in Ukraine to leave its territory.¹

13. On February 10, 2022, the Russian Federation began joint military exercises with Belarus, moving around 30,000 troops to Belarus, which, according to NATO, is the biggest Russian deployment there since the Cold War.² That made for, in total, about 130,000 troops positioned by Russia close to Ukraine's border.³

14. On February 10, 2022, the Ministry of Foreign Affairs of Ukraine issued a formal protest against the actions of the Russian Federation in parts of the Black Sea, the Sea of Azov and the Kerch Strait.⁴ Under the pretext of holding regular naval exercises, the Russian Federation

¹ White House, "Press Briefing by Press Secretary Jen Psaki" (February 9, 2022) (available at: <https://www.whitehouse.gov/briefing-room/press-briefings/2022/02/09/press-briefing-by-press-secretary-jen-psaki-february-9-2022/>).

² Holly Ellyatt, "Russia Begins Massive Military Drills with Belarus; U.S. Slams 'Escalatory' Action", CNBC (February 10, 2022) (available at: <https://www.cnbc.com/2022/02/10/russia-set-to-begin-massive-military-drills-with-belarus.html>); see DW, "Ukraine Crisis: Russia Begins Military Drills in Belarus" (February 10, 2022) (available at: <https://www.dw.com/en/ukraine-crisis-russia-begins-military-drills-in-belarus/a-60722862>).

³ David Brown, "Ukraine: How Prepared is Russia for Attack?", BBC News (February 14, 2022) (available at: <https://www.bbc.com/news/world-europe-60158694>).

⁴ Ministry of Foreign Affairs of Ukraine, "Statement by the Ministry of Foreign Affairs of Ukraine on the Decision of the Russian Federation to Block Parts of the Black Sea and the Sea of Azov and the Kerch Strait" (February 10, 2022) (available at: <https://mfa.gov.ua/en/news/statement-ministry-foreign-affairs-ukraine-decision-russian-federation-block-parts-black-sea-and-sea-azov-and-kerch-strait>).

actually caused a naval blockade of Ukraine, making any navigation in these areas virtually impossible.⁵

15. On February 11, 2022, Jake Sullivan, U.S. National Security Advisor, confirmed continuing “signs of Russian escalation, including new forces arriving at the Ukrainian border”. He also stated that “we are in the window when an invasion could begin at any time should Vladimir Putin decide to order it” and advised that any American in Ukraine should leave as soon as possible.⁶

16. On February 12, 2022, the U.S. Department of State stated that the situation in Ukraine is apparently headed to “some kind of active conflict”, leading it to suspend consular services in the U.S. Embassy in Ukraine, leaving only limited capacity to provide emergency consular services in Lviv.⁷

17. On February 12, 2022, Dutch airline KLM decided to suspend the flight to Ukraine due to rising fears of Russian invasion and the call from the Government of the Netherlands urging its citizens to leave Ukraine. Other airlines, namely Lufthansa, Swiss Airlines and Austrian Airlines had also decided to limit exposure to Ukraine.⁸

⁵ Amy Mackinnon, “Russian Black Sea Exercises Raise Specter of Naval Blockade”, *Foreign Policy* (February 10, 2022) (available at: <https://foreignpolicy.com/2022/02/10/russia-ukraine-naval-black-sea-exercises-military-threat-invasion/>).

⁶ White House, “Press Briefing by Press Secretary Jen Psaki and National Security Advisor Jake Sullivan” (February 11, 2022) (available at: <https://www.whitehouse.gov/briefing-room/press-briefings/2022/02/11/press-briefing-by-press-secretary-jen-psaki-and-national-security-advisor-jake-sullivan-february-11-2022/>); *see also* The Guardian, “US Warns of ‘Distinct Possibility’ Russia Will Invade Ukraine Within Days” (February 11, 2022) (available at: <https://www.theguardian.com/world/2022/feb/11/biden-ukraine-us-russian-invasion-winter-olympics>).

⁷ U.S. Department of State, Special Briefing, “A Senior State Department Official on Our Diplomatic Presence in Ukraine” (February 12, 2022) (available at: <https://www.state.gov/a-senior-state-department-official-on-our-diplomatic-presence-in-ukraine/>); *see* Kylie Atwood, Oren Liebermann, “US Moves Some Forces out of Ukraine and Orders Evacuation of Most Embassy Staff as Fears of a Russian Invasion Grow”, *CNN* (February 12, 2022) (available at: <https://edition.cnn.com/2022/02/12/politics/us-embassy-ukraine-evacuation/index.html>).

⁸ Lisa Kim, “Dutch Airline KLM Suspends Flights to Ukraine Amid Rising Fears of Russian Invasion”, *Forbes* (February 12, 2022) (available at: <https://www.forbes.com/sites/lisakim/2022/02/12/dutch-airline-klm-suspends-flights-to-ukraine-amid-rising-fears-of-russian-invasion/?sh=6ffb723014e6>).

18. On February 14, 2022, Liz Truss, the UK Foreign Secretary, said that the UK government was “very clear there could be an imminent invasion of Ukraine” and urged British citizens to leave Ukraine while commercial routes were still available.⁹

19. On February 15, 2022, Ukraine was a victim of the largest cyber-attack in its history, which blocked access to the websites of Ukrainian defense agencies and banks.¹⁰ According to the State Security Service of Ukraine (SBU), the only country interested in such move was Russia.¹¹ The Deputy Prime Minister Mykhailo Fedorov said that the attacks came namely from IP addresses located in the Russian Federation.¹²

20. On February 15, 2022, the State Duma, the Russian parliament’s lowest chamber, voted in favor of recognizing the independence of the self-proclaimed so-called Donetsk and Luhansk “People’s Republics.”¹³

21. On February 18, 2022, Russian-backed separatist leaders of the self-proclaimed so-called Donetsk and Luhansk “People’s Republics” published videos calling for evacuation of inhabitants of these territories to Russia.¹⁴ Reportedly, these videos were pre-recorded two days

⁹ BBC News, “Ukraine: There Could be a Russian Invasion Almost Immediately – Truss” (February 14, 2022) (available at: <https://www.bbc.com/news/av/world-europe-60381478>).

¹⁰ Sean Lyngaas, Anastasia Graham-Yooll, Tim Lister and Matthew Chance, “Ukraine Cyberattack is Largest of its Kind in Country’s History, Says Official”, CNN (February 16, 2022) (available at: <https://edition.cnn.com/2022/02/16/europe/ukraine-cyber-attack-denial-service-intl/index.html>).

¹¹ Natalia Zinets, “Ukraine Points Finger of Suspicion at Russia Over Massive Cyberattack”, Reuters (February 16, 2022) (available at: <https://www.reuters.com/world/europe/ukrainian-security-official-suspects-russia-behind-cyber-attacks-military-banks-2022-02-16/>).

¹² Natalia Zinets, “Ukraine Points Finger of Suspicion at Russia Over Massive Cyberattack”, Reuters (February 16, 2022) (available at: <https://www.reuters.com/world/europe/ukrainian-security-official-suspects-russia-behind-cyber-attacks-military-banks-2022-02-16/>).

¹³ Victor Jack, “Russia’s Parliament Urges Putin to Recognize Separatist Republics in Ukraine”, Politico (February 15, 2022) (available at: <https://www.politico.eu/article/russia-state-duma-parliament-donetsk-luhansk-moscow-putin-kremlin-ukraine-conflict/>).

¹⁴ Maria Kiselyova, Tom Balmforth, Mark Heinrich, “Separatists In Eastern Ukraine Begin Mass Evacuation -Interfax”, Reuters (February 18, 2022) (available at: <https://www.reuters.com/world/europe/separatists-eastern-ukraine-begin-mass-evacuation-interfax-2022-02-18/>); see also RFE/RL’s Russian Service, “Videos by Russia-Backed Separatists in Eastern Ukraine Calling for ‘Emergency’ Evacuation Were Filmed Two Days Earlier”, Radio Free Europe Radio Liberty (February 19, 2022) (available at: <https://www.rferl.org/a/ukraine-separatists-evacuation-video-metadata/31711344.html>).

earlier on February 16, 2022, meaning that this sudden call was staged.¹⁵ According to the information of the Russian News Agency, over 80 buses with civilians, including children, arrived from Donbass to the Rostov region across the border with Russia.¹⁶ President Putin ordered the Russian government to offer 10,000 rubles (about USD 130) to each evacuee.¹⁷

22. On February 19, 2022, the separatist leaders ordered full mobilization of men aged 18 to 55, spreading the fear of further escalation of the conflict.¹⁸ The opinion emerged in the West that Russia was trying to stage a crisis to justify the invasion.¹⁹ At the same time, the NATO Secretary-General warned that Russia was planning a full-scale attack on Ukraine, which could be launched at any time.²⁰

23. On February 21, 2022, President Putin, recognized the independence of the separatist-lead self-proclaimed so-called Donetsk and Luhansk “People’s Republics” and issued the relevant orders.²¹ The situation was compared to the similar scenario orchestrated by Russia in 2008 in Georgia, where the military intervention was followed by recognition of the so-called republics

¹⁵ RFE/RL’s Russian Service, “Videos by Russia-Backed Separatists in Eastern Ukraine Calling for ‘Emergency’ Evacuation Were Filmed Two Days Earlier”, Radio Free Europe Radio Liberty (February 19, 2022) (available at: <https://www.rferl.org/a/ukraine-separatists-evacuation-video-metadata/31711344.html>); see also The Economic Times, “Shelling in East Ukraine, Russia Nuclear Drill Raise Tension” (February 21, 2022) (available at: <https://economictimes.indiatimes.com/news/defence/shelling-in-east-ukraine-russia-nuclear-drill-raise-tension/articleshow/89703470.cms>).

¹⁶ TASS Russian News Energy, “Over 80 Buses with People Evacuated from Donbass Reach Russia’s Rostov Region” (February 18, 2022) (available at: <https://tass.com/russia/1406269>).

¹⁷ The Economic Times, “Shelling in East Ukraine, Russia Nuclear Drill Raise Tension” (February 21, 2022) (available at: <https://economictimes.indiatimes.com/news/defence/shelling-in-east-ukraine-russia-nuclear-drill-raise-tension/articleshow/89703470.cms>).

¹⁸ Aljazeera, “Separatists in Ukraine Order ‘General Mobilization’ Amid Shelling” (February 19, 2022) (available at: <https://www.aljazeera.com/news/2022/2/19/separatists-in-ukraine-order-general-mobilisation>).

¹⁹ Euronews, “Ukraine Separatists Mobilise Troops as Clashes Intensify Amid Russia Invasion Fears” (February 20, 2022) (available at: <https://www.euronews.com/2022/02/19/ukraine-rebels-mobilise-troops-amid-fears-russia-seeking-pretext-to-invade>).

²⁰ DW, “Ukraine Latest: NATO Chief Says Russia Planning ‘Full-Scale Attack’” (February 20, 2022) (available at: <https://www.dw.com/en/ukraine-latest-nato-chief-says-russia-planning-full-scale-attack/a-60839276>).

²¹ DW, “Russia Recognizes Independence of Ukraine Separatist Regions”, (February 21, 2022) (available at: <https://www.dw.com/en/russia-recognizes-independence-of-ukraine-separatist-regions/a-60861963>).

of Abkhazia and South Ossetia.²² The same day, President Putin signed the bilateral treaties of friendship, cooperation and mutual assistance with the separatist leaders of the self-proclaimed republics.²³

24. On February 22, 2022, the State Duma ratified these treaties, which provided the Russian Federation with the right to give military assistance to the self-proclaimed republics and construct military bases on their territory.²⁴ Under the guise of “peacemaking activities” on the territories of the so-called “republics,” President Putin ordered the intervention of Russian troops, which was qualified by U.S. officials as “creating a pretext for war.”²⁵

25. On February 22, 2022, the U.S. Department of the Treasury reacted to the decision made by Russia by imposing new sanctions on Russian state banks, Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank (VEB) and Promsvyazbank Public Joint Stock Company (PSB), along with 42 of their subsidiaries, as well as on several members of President Putin’s close circle.²⁶

²² Joshua Kucera, “Putin’s Donbas Recognition Reverberates in Caucasus”, Eurasianet (February 22, 2022) (available at: <https://eurasianet.org/putins-donbas-recognition-reverberates-in-caucasus>).

²³ President of Russia, “Signing of Documents Recognising Donetsk and Luhansk People’s Republics” (February 21, 2022) (available at: <http://en.kremlin.ru/events/president/news/67829>).

²⁴ Ukrinform, “Russia’s State Duma Ratifies Friendship Agreements with Pseudo-Republics ‘DPR’, ‘LPR’” (February 22, 2022) (available at: <https://www.ukrinform.net/rubric-politics/3409406-russias-state-duma-ratifies-friendship-agreements-with-pseudorepublics-dpr-lpr.html>); *see also* Tom Balmforth, Maria Kiselyova, Anton Kolodyazhnyy and Mark Trevelyan, “Russian Lawmakers to Ratify Treaties Claiming Right to Military Bases in East Ukraine”, U.S. News/Reuters (February 22, 2022) (available at: <https://www.usnews.com/news/world/articles/2022-02-22/russian-lawmakers-to-ratify-treaties-claiming-right-to-military-bases-in-east-ukraine>).

²⁵ BBC, “Ukraine Crisis: Russia Orders Troops into Rebel-Held Regions” (February 22, 2022) (available at: <https://www.bbc.com/news/world-europe-60468237>).

²⁶ U.S. Department of the Treasury, “U.S. Treasury Imposes Immediate Economic Costs in Response to Actions in the Donetsk and Luhansk Regions” (February 22, 2022) (available at: <https://home.treasury.gov/news/press-releases/jy0602>).

26. On February 22, 2022, Russia announced that it will start evacuation of its diplomats from Ukraine.²⁷ The United States also announced the evacuation of American diplomats from Ukraine to Poland for security reasons.²⁸

27. On February 22, 2022, President Zelensky issued a decree on the mobilization of operational military reservists aged 18-60 for service of up to one year.²⁹

28. At the same time, President Joe Biden's administration warned that a full-scale Russian invasion of Ukraine could highly likely start within 48 hours.³⁰

29. As of midnight on February 24, 2022, the nationwide state of emergency was introduced by Order of the President of Ukraine and Law of Verkhovna Rada (Parliament) for a period of 30 days, which can be extended for another 30 days.³¹ The state of emergency was rapidly transformed into martial law starting at 5:30 a.m. on February 24, 2022.³²

30. Start of Russia's war in Ukraine. On February 24, 2022, just before 5:00 am Eastern European Time, President Putin broadcast a televised announcement to his citizens to inform that he had decided to carry out a "special military operation" to protect Russians in eastern Ukraine and

²⁷ Rachel Scully, "Russia Evacuating Diplomats from Ukraine", The Hill (February 22, 2022) (available at: <https://thehill.com/policy/international/europe/595347-russia-evacuating-diplomats-from-ukraine>).

²⁸ Rachel Scully, "Russia Evacuating Diplomats from Ukraine", The Hill (February 22, 2022) (available at: <https://thehill.com/policy/international/europe/595347-russia-evacuating-diplomats-from-ukraine>).

²⁹ VOA News, "Ukrainian President Drafts Reservists, Rules Out General Mobilization for Now", Reuters / VOA News (February 22, 2022) (available at: <https://www.voanews.com/a/ukrainian-president-drafts-reservists-rules-out-general-mobilization-for-now-/6454514.html>).

³⁰ Naveed Jamali, Tom O'Connor and David Brennan, "Exclusive: U.S. Warns Ukraine of Full-Scale Russian Invasion Within 48 Hours", Newsweek (February 23, 2020) (available at: <https://www.newsweek.com/exclusive-us-warns-ukraine-full-scale-russian-invasion-within-48-hours-1681798>).

³¹ Order of the President of Ukraine No. 63/2022, "On Introduction of the State of Emergency in Separate Regions of Ukraine" (February 24, 2022) (available at: <https://www.president.gov.ua/documents/632022-41393>); *The Law "On Approval of the Order of the President of Ukraine "On Introduction of the State of Emergency in Separate Regions of Ukraine" Was Adopted*, INFORMATION DEPARTMENT OF THE VERKHOVNA RADA OF UKRAINE (February 23, 2022) (available at: <https://www.rada.gov.ua/news/Novyny/219975.html>).

³² Order of the President of Ukraine No. 64/2022, "On the Introduction of Martial Law in Ukraine" (February 24, 2022) (available at: <https://www.president.gov.ua/documents/642022-41397>); *The Law "On Approval of the Order of the President of Ukraine "On Introduction of Martial Law in Ukraine" Was Adopted*, INFORMATION DEPARTMENT OF THE VERKHOVNA RADA OF UKRAINE (February 23, 2022) (available at: <https://www.rada.gov.ua/news/Novyny/219987.html>).

to “demilitarize” and “de-Nazify” Ukraine.³³ President Putin warned that any country attempting to interfere would see “consequences you have never seen in history.”³⁴

31. Immediately after this announcement, the Russian Federation launched a wide-scale attack along the full length of the Russian–Ukrainian border and parts of the Belarusian–Ukrainian border, with intense shelling, missile and bombing raids of military and other important defense facilities, border units in different cities throughout the entire territory of Ukraine.³⁵ The largest Boryspil airport in Kyiv in particular was attacked and civil aviation was suspended. The governmental IT systems began experiencing escalating cyber-attacks.³⁶

³³ The New York Times, “Putin Announces Invasion of Ukraine” (February 24, 2022) (available at: <https://www.nytimes.com/video/world/europe/100000008225243/putin-ukraine-invasion.html>); The Kyiv Independent, “Putin Declares War on Ukraine” (February 24, 2022, 04:57 am) (available at: <https://kyivindependent.com/national/putin-declares-war-on-ukraine/>); Euronews, Here's how Russia's invasion of Ukraine unfolded on day one (25 February 2022, 11:51) (available at: <https://www.euronews.com/2022/02/24/russia-launches-special-military-operations-in-east-ukraine>).

³⁴ The New York Times, “Putin Announces Invasion of Ukraine” (February 24, 2022) (available at: <https://www.nytimes.com/video/world/europe/100000008225243/putin-ukraine-invasion.html>); The Kyiv Independent, “Putin Declares War on Ukraine” (February 24, 2022, 04:57 am) (available at: <https://kyivindependent.com/national/putin-declares-war-on-ukraine/>); Euronews, Here's how Russia's invasion of Ukraine unfolded on day one (February 25, 2022, 11:51) (available at: <https://www.euronews.com/2022/02/24/russia-launches-special-military-operations-in-east-ukraine>).

³⁵ BBC, “Ukraine conflict: Russian forces attack from three sides” (February 24, 2022) (available at: <https://www.bbc.com/news/world-europe-60503037>); The Washington Post, “Russia unleashes military assault on Ukraine that Biden calls ‘premeditated war’” (February 24, 2022) (available at: <https://www.washingtonpost.com/national-security/2022/02/23/russia-attack-ukraine/>); DW, “Russia launches massive invasion of Ukraine — as it happened” (available at: <https://www.dw.com/en/russia-launches-massive-invasion-of-ukraine-as-it-happened/a-60893588>); Press-release from the official website of the Ministry of Defence of Ukraine (February 24, 2022) (available at: <https://www.mil.gov.ua/en/news/2022/02/24/russia-has-launched-a-new-military-operation-against-our-state-martial-law-is-being-imposed-throughout-ukraine/>); Announcement of the General Staff of the Armed Forces of Ukraine, published at the official website of the Ministry of Defence of Ukraine (February 24, 2022) (available at: <https://www.mil.gov.ua/en/news/2022/02/24/the-general-staff-of-the-armed-forces-of-ukraine-announcements/>); Twitter post of Ukraine’s Minister for Foreign Affairs, Dmytro Kuleba (February 24, 2022) (available at: https://twitter.com/DmytroKuleba/status/1496695889401896964?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembe%7Ctwterm%5E1496695889401896964%7Ctwgr%5E%7Ctwcon%5Es1_%2F%2Fua%2Fukraine%2Fpolitics%2Fputin-obyavil-voynu-24-fevralya-sobytiya-v-kieve-harkove-i-na-donbasse-novosti-ukrainy-50219414.html).

³⁶ The Guardian, “Airstrikes at dawn as Russia begins ‘war of aggression’ with Ukraine” (February 24, 2022) (available at: <https://www.theguardian.com/world/2022/feb/24/airstrikes-dawn-russia-begins-war-aggression-with-ukraine-vladimir-putin>); Security alert of the US Embassy in Ukraine (February 24, 2022) (available at: <https://ua.usembassy.gov/security-alert-attack-on-ukraine-022422/>); BBC, “Ukraine crisis: ‘Wiper’ discovered in latest cyber-attacks” (February 24, 2022) (available at: <https://www.bbc.com/news/technology-60500618>).

32. The Russian military attacked several large Ukrainian cities, including Kyiv, Kharkiv, Sumy, Chernihiv, Vinnytsia, Mariupol and Herson, from air and launched missile strikes, which intensified at night. The Russian military then moved its tanks into Ukraine in an attempt to seize territories and cities across the Ukrainian border.³⁷

33. Martial law in Ukraine. The events of February 24, 2022, resulted in a state of war in Ukraine and introduction of martial law.³⁸ Martial law under Ukrainian legislation is a special legal regime which is introduced by the President of Ukraine and approved by the Ukrainian Parliament in case of armed aggression or threat to independence of Ukraine and its territorial integrity. In the modern 30-year history of Ukraine, this is only the second time when martial law was introduced (the first time being in November 2018 in respect of 10 regions of Ukraine when Russia seized three Ukrainian warships in the Black Sea) and the first time when martial law extends to the entire territory of Ukraine.³⁹

34. Martial law shall be effective for a period of thirty days starting from February 24, 2022, with a possibility of further extension. During this period, control over Ukraine's affairs passes to the Military Command, comprising, among others, the President of Ukraine, the General Staff of the Armed Forces of Ukraine, the National Guard of Ukraine and the Security Service of Ukraine.⁴⁰ The government, including all ministries, are bound to assist the Military Command in

³⁷ BBC, "Ukraine conflict: Russian forces attack from three sides" (February 24, 2022) (available at: <https://www.bbc.com/news/world-europe-60503037>).

³⁸ President Volodymyr Zelenskyy signed Decree No. 64/2022 "On the imposition of martial law in Ukraine" (in Ukrainian) (available at: <https://www.president.gov.ua/documents/642022-41397>). The Ukrainian Verkhovna Rada approved the document by 300 votes. See Law of Ukraine "On Approval of Decree of the President of Ukraine "On the imposition of martial law in Ukraine" (in Ukrainian) (available at: <https://zakon.rada.gov.ua/laws/show/2102-IX#Text>). Press-release from the official website of the Ministry of Defence of Ukraine (February 24, 2022, 08:58 am Kyiv time) (Available at: <https://www.mil.gov.ua/en/news/2022/02/24/president-signed-a-decree-on-the-imposition-of-martial-law-in-ukraine-the-verkhovna-rada-approved-it/>).

³⁹ BBC Ukraine, Martial law in Ukraine. How it works (February 24, 2022) (available at: <https://www.bbc.com/ukrainian/features-60503455>).

⁴⁰ Article 3(1) of Law of Ukraine "On the Legal Regime of the Martial Law" No. 389-VIII dated May 12, 2015 (available at: <https://zakon.rada.gov.ua/laws/show/389-19#Text>).

implementing the measures of martial law.⁴¹ This includes the Ministry of Justice, which as I understand, gives instructions on Ukraine's representation in this case.

35. The President of Ukraine has defined a list of constitutional rights which may be restricted for the duration of martial law, including freedom of movement, right to privacy of correspondence, right to work, etc.⁴² To this date, the following measures have been introduced, and continue to be introduced, as part of martial law in Ukraine: (i) curfew from 10 pm to 7 am every day across Ukraine and the latest week-end curfew from Saturday at 5 p.m. until Monday at 8 a.m.; (ii) civil defense system, involving shelters in the underground facilities from regular Russian air-raids; (iii) call to active duty for all men aged from 18 to 60 listed in the reserve of the Armed Forces of Ukraine; (iv) prohibition for all men aged from 18 to 60 who are mobilizable to leave the country.⁴³

36. Severance of diplomatic relations of Ukraine with Russia and international response. Against this background, Ukraine severed diplomatic relations with the Russian Federation on February 24, 2022.⁴⁴

37. On the same day, the international community gave a clear response to Russia's war against Ukraine, as 48 states and 5 international organizations expressed their support for Ukraine in this war.⁴⁵

⁴¹ Article 8(1) of Law of Ukraine "On the Legal Regime of the Martial Law" No. 389-VIII dated May 12, 2015 (available at: <https://zakon.rada.gov.ua/laws/show/389-19#Text>).

⁴² Decree No. 64/2022 dated 24 February 2022 "On the imposition of martial law in Ukraine" (available at: <https://www.president.gov.ua/documents/642022-41397>).

⁴³ Decree No.69/2022 dated 24 February 2022 "On general call-duty" (available at: <https://www.president.gov.ua/documents/692022-41413>).

⁴⁴ Press-release from the official website of the President of Ukraine (February 24, 2022, 02:13 pm) (available at: <https://www.president.gov.ua/en/news/ukrayina-rozirvala-diplomaticchni-vidnosini-z-rosiyeyu-yaka-p-73133>).

⁴⁵ SlovoDilo, "Invasion of Russia in Ukraine: how worlds leaders react" (February 24, 2022) (available at: <https://www.slovoidilo.ua/2022/02/24/infografika/polityka/vtorhnennya-rosiyi-ukrayinu-yak-reahuyut-svitovilidery>).

- In the words of President Biden, “The Russian military has begun a brutal assault on the people of Ukraine without provocation, without justification, without necessity. This is a premeditated attack. Vladimir Putin has been planning this for months, as I’ve been — as we’ve been saying all along. He moved more than 175,000 troops, military equipment into positions along the Ukrainian border.”⁴⁶ Further, “We saw a flagrant violation of international law in attempting to unilaterally create two new so-called republics on sovereign Ukrainian territory. And at the very moment that the United Nations Security Council was meeting to stand up for Ukraine’s sovereignty to stave off invasion, Putin declared his war. Within moments — moments, missile strikes began to fall on historic cities across Ukraine. Then came in the air raids, followed by tanks and troops rolling in.”⁴⁷ President Biden “authoriz[ed] additional strong sanctions and new limitations on what can be exported to Russia.”⁴⁸ “In today’s actions, we have now sanctioned Russian banks that together hold around \$1 trillion in assets. We’ve cut off Russia’s largest bank — a bank that holds more than one third of Russia’s banking assets by itself — cut it off from the U.S. financial system. And today, we’re also blocking four more major banks. That means every asset they have in America will be frozen. This includes V.T.B., the second-largest bank in Russia, which has \$250 billion in assets.”⁴⁹ “On Tuesday, we stopped the Russian government from raising money from U.S. or

⁴⁶ Remarks by President Biden on Russia’s Unprovoked and Unjustified Attack on Ukraine (February 24, 2022), available at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/02/24/remarks-by-president-biden-on-russias-unprovoked-and-unjustified-attack-on-ukraine/>.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

European investors. Now, we're going to apply the same restrictions to Russia's largest state-owned enterprises — companies with assets that exceed \$1.4 trillion.”⁵⁰

- In the words of Prime Minister Boris Johnson, “President Putin of Russia has unleashed war in our European continent. He has attacked a friendly country without any provocation and without any credible excuse. Innumerable missiles and bombs have been raining down on an entirely innocent population. A vast invasion is underway by land by sea and by air.”⁵¹ Prime Minister Boris Johnson further stated, “Today in concert with our allies we will agree a massive package of economic sanctions designed in time to hobble the Russian economy. And to that end we must also collectively cease the dependence on Russian oil and gas that for too long has given Putin his grip on western politics.”⁵²
- The G7 issued a statement condemning the large-scale military aggression by the Russian Federation against the territorial integrity, sovereignty and independence of Ukraine. They reaffirmed that this crisis caused by Russia's attack on Ukraine was a serious threat to the rules-based international order, with ramifications well beyond Europe, whereas President Putin's decision to recognize Donetsk and Luhansk self-declared entities as “independent states” was a grave violation of the basic principles enshrined in the UN Charter.⁵³

⁵⁰ *Id.*

⁵¹ Prime Minister's address to the nation on the Russian invasion of Ukraine (February 24, 2022) (available at: <https://www.gov.uk/government/speeches/prime-ministers-address-to-the-nation-on-the-russian-invasion-of-ukraine-24-february-2022>).

⁵² *Id.*

⁵³ G7 Leaders' Statement on the invasion of Ukraine by armed forces of the Russian Federation: 24 February 2022 (available at: <https://www.gov.uk/government/news/g7-leaders-statement-on-the-invasion-of-ukraine-by-armed-forces-of-the-russian-federation-24-february-2022>).

- The NATO held an emergency meeting of the North Atlantic Council to respond to Russia’s unjustified and unprovoked attack on Ukraine and issued a statement “to condemn in the strongest possible terms Russia’s horrifying attack on Ukraine”. The North Atlantic Council stated that “Russia’s actions pose a serious threat to Euro-Atlantic security, and they will have geostrategic consequences.”⁵⁴
- The European Council has condemned “in the strongest possible terms the Russian Federation’s unprovoked and unjustified military aggression against Ukraine”.⁵⁵ It has expressly concluded that “By its illegal military actions, Russia is grossly violating international law and the principles of the UN Charter and undermining European and global security and stability.” Further the European Council has supported the right of Ukraine to “choose its own destiny” and deplored the ongoing losses of life among the civilian population of Ukraine in connection with Russia’s ongoing attack throughout Ukrainian territory.
- OSCE also condemned Russia’s attack on Ukraine: “We strongly condemn Russia’s military action against Ukraine. This attack on Ukraine puts the lives

⁵⁴ Statement by the North Atlantic Council on Russia's attack on Ukraine (February 24, 2022) (available at: https://www.nato.int/cps/en/natohq/official_texts_192404.htm).

⁵⁵ European Council conclusions on Russia’s unprovoked and unjustified military aggression against Ukraine (February 24, 2022) (available at: https://eeas.europa.eu/delegations/ukraine/111627/%D0%B2%D0%B8%D1%81%D0%BD%D0%BE%D0%B2%D0%BA%D0%B8-%D1%94%D0%B2%D1%80%D0%BE%D0%BF%D0%B5%D0%B9%D1%81%D1%8C%D0%BA%D0%BE%D1%97-%D1%80%D0%B0%D0%B4%D0%B8-24-%D0%BB%D1%8E%D1%82%D0%BE%D0%B3%D0%BE-2022-%D1%80%D0%BE%D0%BA%D1%83-%D0%B2%D0%B8%D1%81%D0%BD%D0%BE%D0%B2%D0%BA%D0%B8-%D1%94%D0%B2%D1%80%D0%BE%D0%BF%D0%B5%D0%B9%D1%81%D1%8C%D0%BA%D0%BE%D1%97-%D1%80%D0%B0%D0%B4%D0%B8-%D1%89%D0%BE%D0%B4%D0%BE_uk).

of millions of people at grave risk and is a gross breach of international law and Russia's commitments."⁵⁶

- The Council of Europe suspended Russia from its rights of representation in the Committee of Ministers and in the Parliamentary Assembly as a result of Russia's attack on Ukraine.⁵⁷

38. A number of states have also proceeded with imposition of sanctions against Russia and its entities and leading oligarchs, to stop the military attack of Russia against Ukraine:

- The United States introduced a number of sanctions⁵⁸ related to (i) accounts and transactions related to certain foreign financial institutions,⁵⁹ and (ii) Prohibitions Related to New Debt and Equity of Certain Russia-related Entities.⁶⁰
- UK and EU imposed sectoral sanctions on Russia, freezing its assets, as well as halting access of Russian banks to European financial markets.⁶¹
- Australia, New Zealand and Japan have also introduced sanctions against Russia.⁶² For instance, according to Japan's Prime Minister Fumio Kishida,

⁵⁶ Joint statement by OSCE Chairman-in-Office Rau and Secretary General Schmid on Russia's launch of a military operation in Ukraine (February 24, 2022) (available at: <https://www.osce.org/chairmanship/512890>).

⁵⁷ Press-release of the Council of Europe "Council of Europe suspends Russia's rights of representation" (February 25, 2022) (available at: <https://www.coe.int/en/web/portal/-/council-of-europe-suspends-russia-s-rights-of-representation>).

⁵⁸ Twitter post of the US Treasury Department (February 25, 2022). (available at: <https://twitter.com/i/web/status/1496933459784306699>).

⁵⁹ Directive 2. Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions (February 24, 2022) (available at: https://home.treasury.gov/system/files/126/correspondent_accounts_directive_2.pdf)

⁶⁰ Directive 3 - Prohibitions Related to New Debt and Equity of Certain Russia-related Entities (February 24, 2022) (available at: https://home.treasury.gov/system/files/126/new_debt_and_equity_directive_3.pdf)

⁶¹ BBC, Ukraine conflict: UK sanctions target Russian banks and oligarchs (February 24, 2022) (available at: <https://www.bbc.com/news/uk-60515626>); Webpage of the UK Government "Russia sanctions: guidance" (available at: <https://www.gov.uk/government/publications/russia-sanctions-guidance>); Press-release of the European Council "EU restrictive measures in response to the crisis in Ukraine" (February 23-24, 2022) (available at: <https://www.consilium.europa.eu/en/policies/sanctions/ukraine-crisis/>).

⁶² The Hill, "Japan, Australia, New Zealand impose penalties on Russia following invasion in to Ukraine" (February 24, 2022) (available at: <https://thehill.com/policy/international/595787-japan-australia-new-zealand-impose-penalties->

these sanctions include export controls on high-tech products such as semiconductors, a freeze on assets held by Russian financial institutions and a suspension of visa issuance for certain Russian individuals and entities. The three Russian banks targeted by Japan's sanctions are VEB, Russia's state development bank; state-backed Promsvyazbank, which focuses on the country's defense sector; and Bank Rossiya.⁶³

39. Latest update as of February 25, 2022. On February 25, 2022, Russian troops have seized control over the decommissioned Chernobyl Nuclear Power Plant and nuclear waste depository—the site of the world's worst nuclear disaster in 1986.⁶⁴

40. From early morning on February 25, 2022, Russia also carried out numerous air raids on Ukraine's largest cities, hitting numerous civilian buildings, which led to casualties. Ukrainians also had to hide in bomb shelters numerous times throughout the day, including in Kyiv, whereas newborns from intensive care unit in Dnipro had to be moved to a makeshift bomb shelter, due to Russia's air raids.⁶⁵ Civil housing in the capital suffered from collateral damage as well, showing that the targeted attacks went far beyond the military infrastructure.

on-russia-following); First Package of Japan sanctions was imposed on February 23, 2022 (available at: <https://www.reuters.com/world/japan-imposes-sanctions-russia-over-actions-ukraine-2022-02-23/>).

⁶³ The Wall Street Journal, "Japan's Russia Sanctions Include Three Midsize Banks" (February 25, 2022) (available at: <https://www.wsj.com/livecoverage/russia-ukraine-latest-news/card/SaC7GVYPYJZwvIMujFNEK>).

⁶⁴ UkraineNow, "Russia attacks Chernobyl" (February 25, 2022) (available at: <https://ukraine.ua/news/russia-attacks-chernobyl/>); CTVNews, "Chernobyl no-go zone targeted as Russia invades Ukraine" (February 25, 2022) (available at: <https://www.ctvnews.ca/world/chernobyl-no-go-zone-targeted-as-russia-invades-ukraine-1.5794537>).

⁶⁵ BBC live reporting on Russia war in Ukraine (available at: <https://www.bbc.com/news/live/world-europe-60517447>); Reports on current state of war by the Armed Forces of Ukraine (available at: https://www.zsu.gov.ua/new_page/6217e45a4909af00130a405a); ABC News, "Ukraine residents sheltering in subway stations, basements and purpose-built bunkers as Russia invades" (February 24, 2022) (available at: <https://www.abc.net.au/news/2022-02-25/ukraine-schools-and-subways-become-bomb-shelters-and-gun-ranges/100860338>); DailyMail, "Heartbreaking footage of newborn babies in makeshift bomb shelter in Ukraine children's hospital as Putin's missiles rain down above" (February 25, 2022) (available at: <https://www.dailymail.co.uk/news/article-10550331/Newborn-infants-childrens-hospital-Dnipro-eastern-Ukraine-moved-bomb-shelter.html>).

41. Ukrainian troops are defending several of the largest cities of Ukraine, including Kharkiv, Sumy, Kherson and Kyiv.⁶⁶ The Ukrainian army had to detonate several bridges in Kyiv and Kharkiv region to block the advancement of Russian troops.⁶⁷ However, Russian troops still managed to enter the capital.⁶⁸

42. In Kharkiv, loud explosions were heard, and missiles were launched in the city centre.⁶⁹ The city mayor called for all citizens to hide in bunkers, metro and basements.⁷⁰ Two power grids were impacted by Russian attacks, which deprived many houses of electricity.⁷¹

43. In Henichesk, occupied by Russia, Ukrainian serviceman Vitaliy Skakun blew up a bridge at the cost of his own life in order to stop the advancement of a tank column.⁷²

44. In Kherson, the crossing to the city was lost after a battle, leaving the access to the city to the Russian Armed Forces.⁷³

45. In Chernigiv, the building of the State Security Service burned after being hit by two missiles.⁷⁴ Russia reported that its forces surrounded the city.⁷⁵

⁶⁶ BBC live reporting on Russia war in Ukraine (available at: <https://www.bbc.com/news/live/world-europe-60517447>); Reports on current state of war by the Armed Forces of Ukraine (available at: https://www.zsu.gov.ua/new_page/6217e45a4909af00130a405a).

⁶⁷ Daily Mail, “Ukrainian troops are engaged in fierce fighting with Putin’s tanks 20 MILES outside of Kyiv and blow up three bridges to halt their advance after Russian jet was shot down over capital: Zelensky rages at Biden for leaving the country ‘alone’,” (February 25, 2022) (available at: <https://www.dailymail.co.uk/news/article-10549113/Kiev-fall-weekend-troops-encircle-capital-taking-Chernobyl-despite-EU-sanctions.html>).

⁶⁸ Forbes, “Live: Russian Forces Advance Into Kyiv Amid Stiff Resistance By Ukrainian Troops”, Forbes (February 25, 2022) (available at: <https://www.forbes.com/sites/dereksaul/2022/02/24/live-russia-ukraine/?sh=76d8082b5020>).

⁶⁹ Ukrinform, “Харків обстрілюють: мер розповів про ситуацію у місті” (February 25, 2020) (available at: <https://www.ukrinform.ua/rubric-ato/3412822-harkiv-obstriluut-mer-rozpoviv-pro-situaciu-u-misti.html>).

⁷⁰ РБК Україна, “Ситуація в Харкові прямо зараз: що відбувається в місті” (February 25, 2020) (available at: <https://www.rbc.ua/ukr/stylar/situatsiya-harkove-pryamo-seychas-proishodit-1645692584.html>).

⁷¹ Укрінформ, “Харків обстрілюють: мер розповів про ситуацію у місті” (February 25, 2020) (available at: <https://www.ukrinform.ua/rubric-ato/3412822-harkiv-obstriluut-mer-rozpoviv-pro-situaciu-u-misti.html>).

⁷² Ukrinform, “Ukrainian serviceman Skakun blows up Henichesk bridge to stop advance of tank column” (February 25, 2022) (available at: <https://www.ukrinform.net/rubric-ato/3412500-ukrainian-serviceman-skakun-blows-up-henichesk-bridge-to-stop-advance-of-tank-column.html>).

⁷³ РБК Україна, “Російські війська прорвали оборону Херсона” (February 25, 2020) (available at: <https://www.rbc.ua/ukr/news/rossiyskie-voyska-prorvali-oboronu-hersona-1645801809.html>).

⁷⁴ РБК Україна, “У Чернігові атакували управління СБУ. Будівля горить” (February 25, 2020) (available at: <https://www.rbc.ua/ukr/news/chernigove-atakovali-upravlenie-sbu-zdanie-1645800442.html>).

⁷⁵ Owen Amos, “BBC News coverage of Ukraine crisis”, BBC (February 25, 2022) (available at: <https://www.bbc.com/news/live/world-europe-60517447>).

46. On the Serpent Island in the Black Sea, thirteen Ukrainian coastguards gave their lives for the defence of the strategic island near the coast of Romania, under a fatal attack from a Russian warship.⁷⁶

47. In Okhtyrka, missiles hit the building of a kindergarten. The security guard was killed, the service lady and two children suffered from injuries.⁷⁷

Conclusionary remarks

48. Ukraine is facing and countering an existential threat to its sovereignty, territorial integrity, statehood and national identity. The world is facing and countering a brutal affront to the very principles of freedom and self-determination on which the democratic order is based.

49. The Russian invasion of Ukraine not only made it impossible to maintain normal day-to-day operation of utilities, transportation, telecommunications and IT systems, but also interfered with the smooth functioning of the state organs, including the Ministry of Justice of Ukraine, which has conduct of the proceeding and gives instructions on behalf of Ukraine in the present case.

50. In my prior declaration, I explained my concern that disclosure of sensitive information to Tatneft will harm Ukraine's national security. My concern is even greater now. Disclosure of sensitive information to an entity with close ties to Russia—especially information pertaining to military defense and national infrastructure—poses an even more acute threat to Ukraine's welfare now that Russia has sent a large invasion force across the territorial borders of Ukraine. Now, even more so than before, it would be unconscionable for sensitive information to end up in the wrong hands. I am of the strong view of that ordinary protections against

⁷⁶ CNN, "Soldiers' defiant last words as Russian warship targets Snake Island" (February 25, 2022) (available at: <https://edition.cnn.com/2022/02/25/europe/ukraine-russia-snake-island-attack-intl-hnk-ml/index.html>).

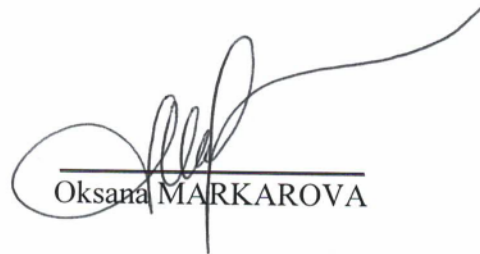
⁷⁷ РБК Україна, "При обстрілі дитсадка в Охтирці загинув охоронець. Поранено співробітницю та двох дітей" (February 25, 2020) (available at: <https://www.rbc.ua/ukr/news/obstrele-detsada-ahtyrke-pogib-ohrannik-raneny-1645804038.html>).

unauthorized disclosure or transmission of sensitive information, which may theoretically function at times of peace, are meaningless and illusory at times of war.

51. I agree with the statements made in Ukraine's legal submissions, relayed to me by the Ministry of Justice of Ukraine, that Tatneft's discovery requests are far broader and far more intrusive than necessary to collect on a circa \$170 million judgment. They appear to be a mere pretext to obtain disclosure of information of great importance to Ukrainian national security. They appear to be driven by a more far-reaching interstate agenda and cannot now be dissociated from Russia's ongoing invasion of Ukraine.

52. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on 28 February 2022



Oksana MARKAROVA

Exhibit 6

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

PAO TATNEFT,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 1:17-cv-00582-CKK
)	
UKRAINE,)	
)	
Respondent.)	

JOINT MOTION FOR A MORATORIUM ON DISCOVERY

Due to the war in Ukraine, the parties jointly move for a moratorium on discovery and all related proceedings before this Court, consistent with the parties’ right to modify ordinary discovery procedures by stipulation, pursuant to the inherent authority of the Court, and in the interest of justice. *See* Fed. R. Civ. P. 29(b); *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). Tatneft has stipulated that discovery should be suspended until further order of the Court.

Dated: March 4, 2022

Respectfully submitted,

/s/ Jonathan I. Blackman
Jonathan I. Blackman
Cleary Gottlieb Steen & Hamilton
One Liberty Plaza
New York, New York
(212) 225-2000
(212) 225-3999 (fax)

/s/ Maria Kostytska
Maria Kostytska (D.C. Bar # 500678)
Winston & Strawn, LLP
68 rue du Faubourg Saint Honoré
Paris 75008, France
(202) 282-5841
(331) 53648220 (fax)

Counsel for Petitioner

Counsel for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of March 2022 I caused the foregoing Motion for a Moratorium on Discovery to be electronically filed with the Clerk of Court using the CM/ECF system, which will send a notification of such filing to all counsel of record.

/s/ Maria Kostytska
Maria Kostytska (D.C. Bar # 500678)
Winston & Strawn, LLP
68 rue du Faubourg Saint Honoré
Paris 75008, France
(202) 282-5841
(331) 53648220 (fax)

Counsel for Respondent

Exhibit 7

Exhibit 8



North America Europe Asia

68 rue du Faubourg Saint-Honoré
75008 Paris, France
T +33 (0) 1 53 64 82 82
F +33 (0) 1 53 64 82 20

VIA ECF

March 4, 2022

The Honorable Sarah Netburn
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

**Re: *Ukraine v. PAO Tatneft*, No. 1:21-mc-00376-JGK-SN
Ukraine v. PAO Tatneft, No. 1:22-mc-00036-JGK-SN**

Dear Judge Netburn:

Due to the war in Ukraine, the parties jointly move for a moratorium on discovery and all related proceedings before this Court in Cases 21-mc-00376 and 22-mc-00036, consistent with the parties' right to modify ordinary discovery procedures by stipulation, pursuant to the inherent authority of the Court, and in the interest of justice. *See* Fed. R. Civ. P. 29(b); *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936).

The parties agree that briefing on Ukraine's Amended Motion in Case 22-mc-00036 (Dkt. 25) should be stayed in the interest of justice. Tatneft has further stipulated that compliance with the third-party subpoena in both cases should be tolled until further order of the Court.

Accordingly, the parties respectfully request entry of the accompanying proposed orders regarding the requested stay of proceedings.

Respectfully submitted,

/s/ Maria Kostytska
Maria Kostytska, Partner
WINSTON & STRAWN LLP
Counsel for Ukraine

/s/ Lauren K. Handelsman
Lauren K. Handelsman, Partner
BINDER & SCHWARTZ LLP
Counsel for PAO Tatneft

Cc: The Honorable John G. Koeltl (via ECF)
All Counsel of Record (via ECF)

Exhibit 9

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 3/4/2022

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE SUBPOENAS SERVED ON
LLOYDS BANKING GROUP PLC;
LLOYDS AMERICA SECURITIES
CORPORATION; LLOYDS BANK
CORPORATE MARKETS PLC; THE
CANADIAN IMPERIAL BANK OF
COMMERCE; CIBC BANK U.S.A.; BANK
OF AMERICA CORPORATION; BANK OF
AMERICA, N.A.; WELLS FARGO &
COMPANY; WELLS FARGO BANK, N.A.;
THE GOLDMAN SACHS GROUP, INC.;
GOLDMAN SACHS & CO. LLC;
GOLDMAN SACHS INTERNATIONAL;
MORGAN STANLEY; MORGAN
STANLEY & CO. LLC; MORGAN
STANLEY & CO. INTERNATIONAL PLC;
MIZUHO BANK, LTD.; MIZUHO
AMERICAS LLC; MIZUHO SECURITIES
USA LLC; CRÉDIT AGRICOLE CIB;
CREDIT AGRICOLE SECURITIES (USA)
INC.; CREDIT AGRICOLE AMERICA
SERVICES, INC.; SOCIÉTÉ GÉNÉRALE
S.A.; SG AMERICAS SECURITIES, LLC;
BANCO SANTANDER, S.A.; AND
SANTANDER HOLDINGS USA, INC.:

UKRAINE,

Petitioner,

-against-

PAO TATNEFT,

Respondent.

Misc. Case No. 1:21-mc-00376

ORDER

Upon consideration of the parties' joint letter brief, filed March 4, 2022, and the stipulations reflected therein, it is hereby

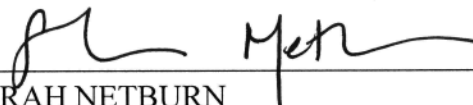
ORDERED that the requested moratorium on discovery and discovery-related proceedings until further order of the Court is **GRANTED**; it is further

ORDERED that the subpoena recipients (the above-referenced financial institutions) shall take notice that their compliance with the subpoenas is tolled for the duration of the moratorium; and it is further

ORDERED that Tatneft shall not move to compel compliance with the subpoenas by the subpoena recipients (the above-referenced financial institutions) for the duration of the moratorium.

The parties shall file a status letter no later than May 31, 2022.

SO ORDERED.



SARAH NETBURN
United States Magistrate Judge

Dated: March 4, 2022
New York, New York

Exhibit 10

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 3/4/2022

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

IN RE SUBPOENAS SERVED ON JSC STATE EXPORT-IMPORT BANK OF UKRAINE; BANK POLSKA KASA OPIEKI SA; DEUTSCHE BUNDESBANK; RESERVE BANK OF AUSTRALIA; AB SEB BANKAS; SEB SECURITIES, INC.; BANK OF MONTREAL; BMO FINANCIAL CORP.; BMO CAPITAL MARKETS CORP.; THE BANK OF NEW YORK MELLON CORPORATION; BARCLAYS BANK PLC; BARCLAYS CAPITAL INC.; BNP PARIBAS FORTIS SA/NV; BNP PARIBAS USA, INC.; BNP PARIBAS; CITIBANK N.A.; CITIGROUP INC.; CITIGROUP GLOBAL MARKETS LTD.; COMMERZBANK AG; COMMERZ MARKETS LLC; CREDIT SUISSE (SWITZERLAND) LTD.; CREDIT SUISSE AG; CREDIT SUISSE (USA), INC.; DANSKE BANK A/S; DANSKE MARKETS INC.; DEUTSCHE BANK TRUST COMPANY AMERICAS; DEUTSCHE BANK TRUST CORPORATION; DEUTSCHE BANK AG; DNB BANK ASA; DNB CAPITAL LLC; DNB MARKETS, INC.; HSBC BANK PLC; HSBC NORTH AMERICA HOLDINGS INC.; JPMORGAN CHASE BANK N.A.; JPMORGAN CHASE & CO.; J.P. MORGAN SECURITIES PLC; J.P. MORGAN SECURITIES LLC; MUFG BANK, LTD.; MUFG AMERICAS HOLDING CORPORATION; MUFG SECURITIES AMERICAS INC.; RAIFFEISEN BANK INTERNATIONAL, AG; RB INTERNATIONAL MARKETS (USA) LLC; SANTANDER BANK POLSKA S.A.; STANDARD CHARTERED BANK PLC; STANDARD CHARTERED BANK (HONG KONG) LTD.; STANDARD CHARTERED SECURITIES (NORTH AMERICA) LLC; UBS SWITZERLAND AG; UBS AMERICAS INC.; UBS AG; UBS AMERICAS HOLDINGS LLC; UNICREDIT BANK AG; AND UNICREDIT CAPITAL MARKETS LLC:

UKRAINE,

Petitioner,

-against-

PAO TATNEFT,

Respondent.

Misc. Case No. 1:22-mc-00036

ORDER

Upon consideration of the parties' joint letter brief, filed March 4, 2022, and the stipulations reflected therein, it is hereby

ORDERED that the requested moratorium on discovery and discovery-related proceedings until further order of the Court is **GRANTED**; it is further

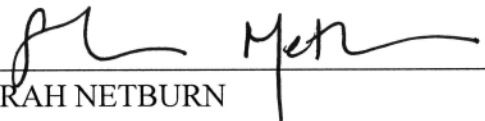
ORDERED that the briefing schedule adopted on March 3, 2022 is suspended until further order of the Court; it is further

ORDERED that the subpoena recipients (the above-referenced financial institutions) shall take notice that their compliance with the subpoenas is tolled for the duration of the moratorium; and it is further

ORDERED that Tatneft shall not move to compel compliance with the subpoenas by the subpoena recipients (the above-referenced financial institutions) for the duration of the moratorium.

The parties shall file a status letter no later than May 31, 2022.

SO ORDERED.



SARAH NETBURN
United States Magistrate Judge

Dated: March 4, 2022
New York, New York