

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES
WASHINGTON, D.C.**

IN THE ARBITRATION PROCEEDING BETWEEN

**CONOCOPHILLIPS PETROZUATA B.V.
CONOCOPHILLIPS HAMACA B.V.
CONOCOPHILLIPS GULF OF PARIA B.V.**
CLAIMANTS

and

BOLIVARIAN REPUBLIC OF VENEZUELA
RESPONDENT

ICSID Case No. ARB/07/30

**DECISION ON THE PROPOSAL TO DISQUALIFY
L. YVES FORTIER, Q.C., ARBITRATOR**

Issued by

Judge Kenneth J. Keith
Professor Andreas Bucher

SECRETARY OF THE TRIBUNAL
Mr. Gonzalo Flores

Date: December 15, 2015

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A. PROCEDURAL BACKGROUND

1. THE ARBITRATION PROCEEDING

1. The Claimants are ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V. and ConocoPhillips Gulf of Paria B.V., three companies incorporated under the laws of The Netherlands (the “**Claimants**”).

2. On November 2, 2007, the Claimants submitted a Request for Arbitration against the Bolivarian Republic of Venezuela (the “**Respondent**”) to the International Centre for Settlement of Investment Disputes (“**ICSID**” or the “**Centre**”). On December 13, 2007, the Secretary-General of ICSID registered the Request for Arbitration.

3. The Tribunal was constituted on July 23, 2008. Its members were Judge Kenneth Keith, appointed as President pursuant to Article 38 of the ICSID Convention; Mr. L. Yves Fortier, appointed by the Claimants; and Sir Ian Brownlie, appointed by the Respondent. The Tribunal was reconstituted on February 1, 2010, with Prof. Georges Abi-Saab, appointed by the Respondent following Sir Ian Brownlie’s death.

4. On October 5, 2011, the Respondent proposed the disqualification of Mr. Fortier after he disclosed that Norton Rose OR LLP (“**Norton Rose**”), the law firm in which he was then a partner, proposed to merge with Macleod Dixon LLP, effective January 1, 2012 (“**First Proposal for Disqualification**”).

5. On February 27, 2012 Judge Keith and Prof. Abi-Saab rejected the First Proposal for Disqualification (“[Decision on the First Proposal for Disqualification](#)”).

6. On September 3, 2013, the Tribunal issued a majority [Decision on Jurisdiction and the Merits](#). The Majority found the Respondent in breach of its international obligation to negotiate compensation in good faith for its taking of the Claimants’ assets in three oil projects in Venezuela. Prof. Abi-Saab dissented from this Decision and provided his [opinion](#) on February 19, 2015.

7. On September 8, 2013, the Respondent requested a clarification and further explanations from the Tribunal regarding certain findings in the Decision on Jurisdiction and the Merits. On March 10, 2014, the Tribunal issued a majority decision rejecting the Respondent's request (the "[Decision on Respondent's Request for Reconsideration](#)"). Prof. Abi-Saab appended a [dissenting opinion](#) to the Decision on the Respondent's Request for Reconsideration.

8. On March 11, 2014, Respondent proposed the disqualification of Judge Keith and Mr. Fortier based on their alleged general attitude toward the Respondent ("**Second Proposal for Disqualification**"). On May 5, 2014, the Chairman of the ICSID Administrative Council rejected the Respondent's Second Proposal for Disqualification (the "[Decision on the Second Proposal for Disqualification](#)").

9. On May 19, 2014, the Claimants submitted their Memorial on Quantum of damages. On August 18, 2014, the Respondent submitted its Counter-Memorial on Quantum. On October 13, 2014, the Claimants submitted their Reply on Quantum and on January 7, 2015, the Respondent filed its Rejoinder on Quantum.

10. On February 6, 2015, the Respondent proposed the disqualification of Mr. Fortier, alleging that he had an ongoing relationship with Norton Rose which demonstrated his lack of independence and impartiality in this case ("**Third Proposal for Disqualification**").

11. On February 20, 2015, Prof. Abi-Saab submitted his resignation from the Tribunal with immediate effect. At the time of Prof. Abi-Saab's resignation, he and Judge Keith had not yet decided the Respondent's Third Proposal for Disqualification.

12. By letter of March 25, 2015, Respondent amended its Third Proposal for Disqualification by adding a request to disqualify both Judge Keith and Mr. Fortier on the basis of their alleged general negative attitude toward the Respondent, after Judge Keith and Mr. Fortier decided not to consent to Prof. Abi-Saab's resignation.

13. On July 1, 2015, the Chairman of the ICSID Administrative Council rejected the Respondent's Third Proposal for Disqualification, as amended (the "[Decision on the Third Proposal for Disqualification](#)").

14. On August 10, 2015, the Tribunal was reconstituted, with Prof. Andreas Bucher appointed by the Chairman of the Administrative Council. On the same date, Respondent filed a request for reconsideration of the Tribunal's Decision on Respondent's Request for Reconsideration of March 10, 2014.

2. RESPONDENT'S FOURTH PROPOSAL TO DISQUALIFY L. YVES FORTIER

15. By letter of October 26, 2015, Respondent brought to the attention of the Tribunal a report of a linguistics expert filed by the Russian Federation in the set-aside proceedings of the *Yukos* awards pending before the District Court of The Hague and in the enforcement proceeding before the U.S. District Court, Washington, D.C. According to the report, it was "[e]xtremely likely that Mr. Valasek wrote significant portions" of the substantive sections of the *Yukos* decisions.¹ If that report is correct, Mr. Valasek's role in the *Yukos* arbitrations would not comport with the description of that role provided earlier by Mr. Fortier. The Respondent called on Mr. Fortier to clarify that point.

16. The Claimants replied to this letter on October 28, 2015, arguing that Respondent's allegations were irrelevant and merely dilatory. Respondent answered that same day, rejecting Claimants' statements and reiterating its request.

17. On October 30, 2015, Mr. Fortier replied to Respondent's letters, as follows:

Mesdames, Gentlemen,

I have seen the Respondent's letters of 26 and 28 October to the Tribunal and attachments. I have also seen the Claimants' letter of 28 October.

As you know, the *Yukos* tribunals are *functus officio* and not parties to the set aside proceeding in the *Yukos* cases presently pending in the District Court of The Hague or the proceeding relating to the *Yukos* awards in the United States District Court for the District of Columbia. Therefore, I cannot comment on any evidence which may have been submitted to these two courts.

¹ See Annex 2 of Respondent's Letter of October 26, 2015, entitled "Expert Report Regarding Authorship of the Final Awards prepared by Carole E. Chaski, Ph.D., dated September 11, 2015, *Hulley Enterprises Ltd. et al. v. Russian Federation*, Case No. 1:14-cv-01996-ABJ, U.S. District Court, District of Columbia (Excerpt)".

As for the “clarification” which the Respondent seeks, I reiterate what I wrote in paragraph 6 of my Explanations of 16 April 2015:

“[...] Mr. Valasek undertook numerous tasks assigned to him by the Tribunals, including summarizing evidence, researching specific issues of law and organizing the massive case file. Notwithstanding any press reports to the contrary and the speculation of the Respondent, Mr. Valasek was not involved and did not play any role in the Tribunal’s decision-making process.” This is a true and correct description of Mr. Valasek’s role in the *Yukos* cases.

I note that, in its letter of 28 October 2015, the Respondent refers again to “[my] ongoing relationship with Norton Rose.” In this connection, I reiterate again what I wrote in paragraph 2 of my Explanations of 16 April 2015:

“I affirm on my conscience and honour that I severed all of my professional links with Norton Rose as of 31 December 2011.”

18. By letter of October 30, 2015, Respondent rejected Mr. Fortier’s explanations and requested Mr. Fortier to provide a clear answer to the question whether Mr. Valasek did in fact write the Tribunal’s reasoning and conclusions of the *Yukos* awards.

19. On November 6, 2015, Mr. Fortier replied to Respondent as follows:

Mesdames, Gentlemen,

I acknowledge receipt of the Respondent’s letter of 30 October 2015.

I have answered the Respondent’s question in my letter of 30 October. Mr. Valasek’s role in the *Yukos* cases was as I described it in my previous explanations of 16 April 2015 and 30 October 2015.

The Respondent says it is irrelevant that the *functus officio Yukos* tribunals are not parties to the *Yukos* court proceedings. I beg to differ. If I were to assert that “the expert report regarding the authorship of the *Yukos* decision” was incorrect, I would be commenting on evidence which has been submitted to these two courts and I would be breaching the confidentiality of the tribunal’s deliberations. This, I cannot do.

With the greatest of respect for Respondent’s Counsel, I will now put an end to our correspondence.

20. On November 9, 2015, the Respondent proposed the disqualification of Mr. Fortier (the “**Proposal**” or “**Respondent’s Submission of November 9, 2015**”).

21. On November 10, 2015, the Secretary of the Tribunal confirmed that, in accordance with ICSID Arbitration Rule 9(6), the proceeding was suspended until a decision was taken with respect to the Proposal.

22. On the same date, the President of the Tribunal, having consulted with Professor Bucher, set a timetable for the parties' submissions and for Mr. Fortier's explanations.

23. The Claimants filed a submission on November 12, 2015 ("**Claimants' Reply Submission of November 12, 2015**") and Mr. Fortier furnished his explanations on November 20, 2015 ("**Mr. Fortier's Explanations of November 20, 2015**").

24. On November 27, 2015, both parties submitted additional observations on the Proposal ("**Respondent's Additional Observations**" and "**Claimants' Additional Comments**", respectively).

B. THE PARTIES' ARGUMENTS AND MR. FORTIER'S EXPLANATIONS

1. RESPONDENT'S PROPOSAL OF NOVEMBER 9, 2015

25. The Respondent makes its Proposal in accordance with Article 57 of the ICSID Convention and Rule 9 of the ICSID Arbitration Rules. It recalls at the outset its concern, expressed to the Tribunal since 2011, about Mr. Fortier's relationship with Norton Rose which, through its merger with McLeod Dixon in 2011, became the firm more adverse to Venezuela and Petróleos de Venezuela ("**PDVSA**") than any other in the world. That concern included the materiality of the connections between Mr. Fortier and Norton Rose attorneys, including Mr. Martin Valasek, given that (i) Norton Rose represented ConocoPhillips companies in cases against PDVSA arising out of the same association agreements that are involved in this case and (ii) Mr. Fortier's ongoing relationship with Mr. Valasek was in connection with cases that involved some of the same critical issues that are involved in this case, such as the proper valuation date in the case of expropriation, at the same time as those issues were being litigated here.

26. After referring to a statement made by Mr. Fortier in 2011 about severing his ties with Norton Rose by the end of 2011 in which he said that he "may" continue to call upon

members of Norton Rose for assistance after January 2012 and a related statement made by the Chairman of the ICSID Administrative Council in his decision of July 1, 2015,² the Respondent turns to the proceedings in The Hague and Washington D.C. relating to the *Yukos* awards and the exchanges involving Mr. Fortier in respect of those proceedings.³ It understands the sentence at the end of Mr. Fortier's message of November 6, 2015, as meaning that he will not be answering Respondent's direct question or providing any further clarification. It continues:

Under the circumstances, Respondent is constrained to propose the disqualification of Mr. Fortier on the ground that he has made incomplete, inaccurate and/or misleading statements concerning his ongoing relationship with Norton Rose attorneys. As pointed out in our letter of October 30, 2015, there is an obvious and material distinction between: (i) everything Mr. Fortier has disclosed about the role of Norton Rose attorneys in his cases (including both the role he described in his original disclosure in October of 2011, when he stated that he may "continue to call upon" Norton Rose attorneys who had assisted him with certain files "e.g. by acting as Administrative Secretary to the Tribunal" and the tasks of Mr. Valasek that Mr. Fortier described in his explanations submitted on April 16, 2015, and reiterated on October 20, 2015); and (ii) writing the reasoning and conclusions of the awards in the *Yukos* cases.⁴

27. The Proposal addresses, by reference to commentaries, the distinction between the tasks of an administrative secretary or assistant and writing the substantive portions of an award. It then states that the "only remaining question . . . is whether as a matter of fact Mr. Valasek's activity in the *Yukos* cases did indeed include writing the reasoning and conclusions of the *Yukos* awards. That is the question we have posed to Mr. Fortier. The answer is obviously within his personal knowledge and it does not take long to say either 'yes' or 'no'. Since he has refused to answer, we assume, and we believe a reasonable third party would assume, that the answer is 'yes' which means that the description provided by Mr. Fortier on April 16, 2015, and reiterated on October 30, 2015, did not fulfil his duty to provide full and accurate disclosure in this case".

² See ¶13 above.

³ See ¶¶ 15-19 above.

⁴ Respondent's Submission of November 9, 2015, ¶10.

28. The Respondent continues by saying that the foregoing should be viewed against the background of incomplete, inaccurate and misleading disclosures made by Mr. Fortier from the beginning concerning his relationship with Norton Rose. It gives seven examples from October 18, 2011, to June 18, 2015.

29. “In sum”, the Proposal says:

[G]iven Mr. Fortier’s refusal to answer the direct question regarding the authorship of the substantive portions of the *Yukos* awards, his disclosures in this case have been incomplete, inaccurate and/or misleading, which constitutes a clear ground for his disqualification to serve as arbitrator in this case. A reasonable third party observer would simply not equate the tasks described in any of Mr. Fortier’s disclosures with the writing of a tribunal’s reasoning and conclusions. Moreover, even if Mr. Valasek did not write the *Yukos* tribunal’s reasoning and conclusions, Mr. Fortier’s failure to answer the direct question posed would itself constitute grounds for disqualification inasmuch as none of his reasons for not answering the question is tenable. In particular: (i) the fact that the *Yukos* tribunals are *functus officio* and are not parties to the *Yukos* court proceedings is irrelevant; (ii) there is no bar to Mr. Fortier’s commenting on the expert report submitted in the *Yukos* court proceedings; (iii) Respondent’s straightforward question can be answered with a simple “yes” or “no” without referring to the expert report in the *Yukos* court proceedings; and (iv) the confidentiality of tribunal deliberations relates to the exchange of views among the arbitrators, not to information unrelated to the deliberations.⁵

2. CLAIMANTS’ REPLY SUBMISSION OF NOVEMBER 12, 2015

30. The Claimants in their reply contend that the new challenge is frivolous and brought in bad faith. They request that the unchallenged members (a) promptly reject the proposal, (b) order the Respondent to bear the Claimants’ costs in addressing this proposal, to be paid immediately, and (c) dismiss any further proposals to disqualify Mr. Fortier based upon events on the unrelated *Yukos* proceedings.

31. The Claimants contend that the Proposal rests on a regurgitation of arguments already rejected in earlier challenges to Mr. Fortier. The Claimants also reject the Respondent’s contention that arbitrators answer every query a party chooses to put to them, however irrelevant, on pain of disqualification.

⁵ Respondent’s Submission of November 9, 2015, ¶16.

3. L. YVES FORTIER'S EXPLANATIONS OF NOVEMBER 20, 2015

32. Mr. Fortier provided his explanation on November 20, 2015 (Annex A).

4. RESPONDENT'S ADDITIONAL OBSERVATIONS OF NOVEMBER 27, 2015

33. The Respondent, in its additional observations, concluded by agreeing with Mr. Fortier that there are two bases for its Proposal:

(i) that he failed to answer the question posed to him by Respondent as to the authorship of the *Yukos* awards; and (ii) that his disclosures in this case have been incomplete, inaccurate and/or misleading. On the first ground, after stating categorically that he would not and could not answer the question referred to in (i) above and advising that he was bringing the correspondence to a close, he did provide an answer, but one that only gives rise to additional questions, such as whether Mr. Valasek wrote any substantive part of the *Yukos* awards or only prepared drafts, as opposed to the final awards themselves. On the second ground, Respondent submits that a reasonable third party would conclude that Mr. Fortier's disclosures regarding his relationships with Norton Rose and its attorneys, which he has dribbled out begrudgingly only after repeated requests by Respondent, do not meet the standard of "complete and accurate" disclosure set forth in Mr. Fortier's own explanations. Even the answer belatedly provided to the question regarding authorship of the *Yukos* awards has to be weighed against the findings of the forensic linguistic expert that "it is extremely likely that Mr. Valasek wrote the majority" of the sections of the awards on preliminary objections, liability and quantum, and viewed against the background of Mr. Fortier's other disclosures reviewed above. Respondent therefore again urges Mr. Fortier to reconsider his decision not to resign, but if he does not, Respondent respectfully submits that the "accumulation of circumstances" requires his disqualification and requests that you so decide.⁶

5. CLAIMANTS' ADDITIONAL COMMENTS OF NOVEMBER 27, 2015

34. The Claimants, in their additional comments, "in light of Mr. Fortier's response", seek the immediate relief set out in their submissions.⁷

⁶ Respondent's Additional Observations of November 27, 2015, p. 11.

⁷ See ¶30 above.

C. THE TRIBUNAL'S REASONS

35. The Respondent makes its Proposal for disqualification in terms of Article 57 of the ICSID Convention (which refers back to Article 14) and Rule 9 of the ICSID Arbitration Rules. They provide as the ground for disqualification a manifest lack of the qualities required on appointment. That quality which is relevant here is that the arbitrator may be relied upon to exercise “independent judgment”. The Spanish version of Article 14 requires “imparcialidad de juicio” (impartiality of judgment) and the French “toute garantie d'indépendance dans leurs fonctions” (guaranteed independence in the exercise of their functions). Given that all language versions of the Convention are equally authentic, it is accepted that arbitrators must be impartial and independent. In relation to disqualification, the judgment whether the arbitrator is manifestly lacking in the ability to act independently and impartially is to be made objectively, as if by a reasonable third person.

36. Although the Respondent in the first sentence of its Proposal of November 9, 2015, bases its Proposal on Article 57 of the ICSID Convention and Rule 9 of the ICSID Arbitration Rules, the Two Members note that the Respondent does not ever set out the standard those provisions state nor does it directly address it, either in general terms or by reference to the particular facts to which it refers. In its additional observations it does refer to a failure to disclose facts that “in the eyes of the parties” might create doubts as to the arbitrator’s impartiality or independence. The reference is to the IBA Guidelines on Conflicts of Interest in International Arbitration adopted in October 2014. The Respondent reads this guideline in this subjective way: it is for the Respondent to determine what it might in good faith consider relevant for disclosure and, once it had, it was incumbent upon Mr. Fortier to make complete and accurate disclosure.⁸

37. The Two Members consider in turn the two grounds for disqualification identified by the Respondent and Mr. Fortier, beginning with the allegation about his disclosures – that they have been incomplete, inaccurate and/or misleading. The allegations relating to Mr. Valasek’s role in the *Yukos* cases are considered later. As just noted, the Respondent

⁸ See Respondent’s Additional Observations of November 27, 2015, pp 6-8, para (i); Respondent’s Submission of November 9, 2015, p.5 n.12, also refers to the Explanation to the relevant Guideline.

gives some emphasis to the 2014 IBA Guidelines.⁹ More relevant in this context is the continuing obligation of arbitrators in ICSID cases under Rule 6(2) of the ICSID Arbitration Rules promptly to notify the Secretary-General of the Centre of (a) any relationships with the parties or (b) any other circumstances that may cause the arbitrator's reliability for independent judgment to be questioned by a party that arises during the proceedings. No specific breach of that obligation to inform the Secretary-General is alleged. All the facts relating to this ground as presented in seven groups set out in the Proposal occurred from October 18, 2011, to June 18, 2015.¹⁰ All of that material and related comments and submissions by the parties were before the Chairman of the ICSID Administrative Council when, in his decision of July 1, 2015, he rejected the Proposal of the Respondent to disqualify a majority of the Tribunal. In the light of that decision, a challenge based on the same facts cannot be presented again, either individually or cumulatively. The Two Members also recall the requirement in Arbitration Rule 9(1) that proposals for disqualification be filed promptly. This has been done in the past but cannot be complied with again now in relation to the same facts. This ground for disqualification accordingly fails.

38. That is to say, the Two Members cannot accept that they can be seized with a “cumulative record” of this and all prior proposals for Mr. Fortier's disqualification, as claimed by the Respondent in its additional observations, submitting that these prior proposals are incorporated into the present Proposal.¹¹ The Two Members are seized only with the Proposal made on November 9, 2015. The Proposal does not allege new facts requiring them to reconsider the facts alleged in relation to prior requests for disqualification.

39. The Two Members now consider the other ground invoked by the Respondent for the disqualification of Mr. Fortier – that he failed to answer the question posed to him by

⁹ While Respondent is correct in noting that General Standard 3(a) refers to “the eyes of the parties”, it is not clearly stated that the IBA Guidelines are promoting a subjective test, which may be based on the views of one party only. The standard refers to facts or circumstances that may “give rise to doubts as to the arbitrator's impartiality or independence”, and General Standard 2(b) further states that the test for disqualification is “an objective one”.

¹⁰ See Respondent's Submission of November 9, 2015, ¶15.

¹¹ *Id.*, ¶1.

the Respondent as to the authorship of the *Yukos* awards. In the opinion of the Two Members, Mr. Fortier has in fact fully answered that question. In his explanations,¹² he first recalls what he said in his April 16, 2015, explanations; “Mr. Valasek was not involved in and did not play any role in the [*Yukos*] tribunal’s decision-making process”. Second, he says, “my answer to the Respondent’s question is NO. Mr. Valasek did not write the tribunal’s reasoning and conclusions of the *Yukos* awards”. The Two Members understand that, in this statement, Mr. Fortier fully answers the Respondent’s question to him about the authorship of the *Yukos* tribunal’s reasoning and conclusions of the awards. They note that the Respondent did not comment on the part of the explanation in which Mr. Fortier said “my answer to the Respondent’s question [seeking a simple ‘Yes’ or ‘No’] is NO”.

40. The Two Members also note that the Respondent’s submission on this matter depends on an assumption which, as it acknowledges, is yet to be established. The assumption is based on the expert advice so far presented by one side (and only some portion of which is before the Two Members). That is not a basis on which the Two Members can depend, particularly in the face of the statement clearly made by Mr. Fortier. The allegation, assuming it can be established, must be capable of being related to the present case – that is, that the particular collaboration with Mr. Valasek gives rise to a manifest lack of independence and impartiality in this case. The Two Members conclude that the challenge under this heading also fails. The Respondent has not established that Mr. Fortier manifestly lacks the ability to act independently and impartially in the current arbitration.

D. COSTS

41. The Two Members see no reason to depart from the standard practice of determining costs issues at the end of the proceeding.

¹² See ¶32 above and Annex A.

E. DECISION

42. For the foregoing reasons, the Two Members:

- (1) decide to dismiss the Proposal made by the Respondent to disqualify Mr. Yves Fortier as Arbitrator, and
- (2) decide to defer the application made by the Claimants for an order for costs to a later stage in the proceedings.

[Signed]

Judge Kenneth J. Keith

[Signed]

Professor Andreas Bucher

Annex A attached

Annex A – Mr. L. Yves Fortier’s Explanations of November 20, 2015

“Dear Chairman, dear Professor Bucher,

In accordance with the schedule which you have established, I now provide my explanations to the Respondent’s new proposal of 9 November 2015 to disqualify me because, in summary, according to Respondent, “[I have refused] to answer the direct question regarding the authorship of the substantive portions of the Yukos awards [and because my] disclosures in this case have been incomplete, inaccurate and/or misleading” (para. 16).

I vehemently deny the Respondent’s allegations.

The record of the present arbitration reveals that the Respondent has previously proposed to disqualify me from continuing to serve as an arbitrator in the present proceedings on four occasions. I submitted detailed explanations to each one of these proposals which were all dismissed in reasoned decisions by, in turn, my two co-arbitrators (at that time) and the Chairman of the Administrative Council. I assume that these decisions as well as my explanations are all part of the record that you have received from the ICSID Secretariat. I hereby incorporate all of my previous explanations (and the decisions dismissing them) to this new proposal by the Respondent.

I have previously answered all questions put to me by the Respondent and my disclosures have always been complete and accurate. Nevertheless, to be clear, I wish to reiterate the following:

1. I reaffirm on my conscience and honour that I severed all my professional ties with Norton Rose as of 31 December 2011 and that I have no ongoing professional relationship today with any Norton Rose lawyer, save that many of them have been for many years and continue to be my friends (see footnote 32 on page 12 of Respondent’s letter).
2. I have already described the many tasks that Martin Valasek undertook at the request of the tribunal during the 10 years that he served as Assistant to the Yukos tribunals. I specifically stated in para. (6) of my explanations of 16 April 2015 that “notwithstanding any press reports to the contrary and the speculation of the Respondent, Mr Valasek was not involved in and did not play any role in the tribunal’s decision-making process.”

3. The “press reports” and the “speculation” of the Respondent referred to in the previous paragraph appear to be buttressed by the submission of the Russian Federation¹ (Petitioner in the Dutch proceedings to which the “*functus officio*” Yukos tribunals are not parties) based on its “expert” report that, in April 2015 “[I] made an untrue statement” about Mr Valasek’s role (para. 3). I categorically deny that statement.
4. In para. 6 of its Proposal, the Respondent writes “[...] if the expert report regarding the authorship of the Yukos decisions is correct, it would not comport with Mr Fortier’s disclosure in this case.”

In this connection, I submit the following:

- Firstly, I recall that the Chairman of the Administrative Council has already determined in his decision of 1 July 2015 that “the facts concerning Mr Valasek’s involvement in the Yukos arbitrations are irrelevant to Mr Fortier’s independence and impartiality in this case.” (para. 95).
- Secondly, I have already replied to the Respondent’s question when I stated, clearly and unequivocally, on 16 April 2015 that “[...] Mr Valasek was not involved in and did not play any role in the [Yukos] tribunal’s decision-making process.”
- Thirdly, Nevertheless, while, as I have written previously, I do not wish to litigate here the challenge by the Russian Federation before the Dutch Courts of the Awards issued in July 2014 by the Yukos tribunals, in view of the fact that the Respondent has decided to challenge me on the basis of “evidence” which has been submitted to the Dutch Courts in these set-aside proceedings, and after having sought and obtained legal advice (and assuming that these challenge proceedings will remain confidential), my answer to the Respondent’s question is NO. Mr Valasek did not write the tribunal’s reasoning and conclusions of the Yukos awards.

¹ I note that in the 20 October 2015 Global Arbitration Review Article referred to by the Respondent, the Yukos shareholders are due to file their Reply to the submission of the Russian Federation on 16 December 2015.

5. In view of the Respondent’s renewed submission (para. 15, at p.10) that my professional relationship with Martin Valasek in the Yukos arbitrations “presents special circumstances exacerbating the conflict in this case”, I reiterate that Martin Valasek has never participated in any way in the present arbitration.

I note that the Respondent calls upon me to resign voluntarily. In view of the facts which are before you, I see no reason to withdraw voluntarily as arbitrator.

Notwithstanding the Respondent’s repeated proposals seeking my disqualification, I reiterate my profound conviction that I am, always have been and will remain able to exercise independent judgement in the present arbitration and I commit to do so until the end of the proceedings to the best of my ability.

Yours sincerely,

Yves Fortier QC”