POLITICAL RISK AND PETROLEUM INVESTMENT IN RUSSIA

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The emergence of the independent states following the break-up of the old Soviet Empire has created immense opportunities for Western investors. However, with these opportunities comes substantial risk. In addition to the ordinary business risk, faced by businessmen investing at home or abroad, investors in the newly formed ex-Soviet states face political risk. This political risk is much greater than that experienced by those investing in liberal Western democracies.

Political risk is the risk associated with unexpected changes in the laws of a country which detrimentally affect an investor may reduce the value of his investment. Put simply, it is the risk of unanticipated government intervention. Examples of political risk include a government: 1) raising import or export duties, 2) increasing taxes, 3) imposing new regulations, or 4) nationalizing or expropriating the assets of the investor.

The investor's options in the face of such government intervention may be very limited, especially if the country does not have an independent judiciary to serve as a check on its powers of legislation. Furthermore, in most circumstances, the investor has no standing under international law to appeal this type of matter to an international tribunal. International law traditionally considers such matters purely within the jurisdiction and discretion of the country involved.[1]

One particularly promising area for Western investment, despite substantial risk, is the Russian Federation's petroleum industry. The Russian Federation is currently one of the world's largest producers of crude oil and natural gas. Nevertheless, its petroleum industry lacks the capital, management, and technology to effectively exploit its vast reserves.[2] The Russian government realizes this, and is in the process of restructuring the entire legal regime of their petroleum industry. One of the goals of the Russian government is to establish a structure more attractive to foreign investment.

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Despite protection for foreign investors built into the current Russian law, political risk remains a significant factor. After reviewing the existing Russian Federation law applicable to petroleum investment, this article discusses methods that investors can utilize in an attempt to reduce its political risk in Russia.

I. LAW OF THE RUSSIAN FEDERATION AFFECTING THE PETROLEUM INDUSTRY

An investor wishing to explore for, and produce, petroleum in the Russian Federation must obtain a license from the State.[3] The Russian Federation has recently adopted three laws which govern licensing and set forth the basic legal framework for the petroleum industry. The first is the Law of the Russian Federation Concerning Subsurface Resources (the Subsurface Resources Law), adopted in February of 1992, the "umbrella" law.[4] The Subsurface Resource Law contains general parameters pertaining to the development of underground minerals.[5] Second is the Statute on Licensing, adopted in July of 1992, which clarifies the Law on Underground Resources.[6] Finally, the Law on Mineral Payments, adopted in October of 1992, concerns payments by mineral licensees.[7] The most significant provisions of these laws are discussed below.

In accordance with the Subsurface Resource Law, licenses may be issued in the form of concessions, production-sharing agreements, service contracts, or any other arrangement acceptable to the parties.[8] The licenses may be issued for production of minerals, exploration of minerals, or both.[9] Exploration licenses may be granted for five year terms, production licenses for twenty year terms, and joint exploration-production licenses for twenty-five year terms. In addition, licensees may apply for extensions of these terms.[10]

Licenses are to be issued on a competitive bid or auction basis.[11] The winner may be refused a license only for 1) failure to submit its bid in accordance with the statutory requirements, 2) intentional misrepresentation of a license application, or 3) failure to show financial and technical means for safe and effective operations.[12]

All licenses must contain the following information: the area covered by the license, the exploration or extraction activity proposed, a time frame for commencement of operations, the financial arrangements between the investor and the State, the agreed-upon level of mineral production, environmental and technical compliance information, and an information sharing agreement. Other terms may be included in a license, as long as those terms are not inconsistent with the law.[13] The possibility of placing additional investor negotiated-clauses into the license offers more protection to the investor against political risk than the safeguards built into Russian law.

The principal payments by the licensee to the State are likely to be in the form of signature bonuses, annual rentals, production bonuses, royalties, production shares, and taxes.[14] In addition, a multitude of fees are likely to be assessed against the licensee for items such as issuance of the license and the use of the land.[15] The form, amounts, and conditions of payment should be set forth in the license.[16]

II. Protection Against Political Risk

A. Investor-State Contracts

While the laws discussed above set forth a framework for petroleum investment, they do not assure the investor that, if a dispute arises between it and the Russian Federation, the dispute will be settled objectively. Furthermore, the investor has no assurance that the Russian Federation will not arbitrarily decide to change the laws already in place and take away rights previously promised to the investor.

Political risks faced by a foreign investor can be greatly reduced if the Russian Federation contractually agrees 1) to settle disputes with the investor in a neutral forum, away from the Russian courts, and (2) to not change its laws vis-à-vis the investor while the contract is in force and effect.

Concerning the first point, there is a conflict in the Russian legal system concerning whether disputes between investors and the Russian government may be settled in a forum other than the Russian courts. The Subsurface Resource Law provides that financial, property, or other disputes related to the use of underground natural resources, as well as appeals from Russian State bodies, are to be resolved internally by Russian courts or through arbitration.[17] However, this law conflicts with an earlier and more general law which remains in effect, the Law of the Russian Soviet Federative Socialist Republic (RSFSR) on Foreign Investment (Foreign Investment Law).[18] Article 9 of the Foreign Investment Law states that "[d]isputes of foreign investors and enterprises with foreign investments . . . are subject to review by RSFSR courts, or pursuant to an agreement of the parties, by arbitration courts." Thus, the Foreign Investment Law contemplates that disputes in concession agreements may be resolved by arbitral bodies outside of the Russian Federation.[19]

While the conflict between these two laws is currently unresolved, a new U.S-Russia Bilateral Investment Treaty[20] contemplates the resolution of disputes between U.S. investors and the Russian government in forums outside of Russia. This treaty should settle the question in favor of allowing the settlement of investor disputes before international arbritral tribunals.

Attempting to reduce political risk by contractually providing that Russia will not arbitrarily change its foreign investment laws remain a difficult proposition. Some commentators argue that by its nature, state sovereignty does not permit such inalienable promises from a state. In other words, a state may always act to "protect" its citizens, no matter what it has previously promised to an investor. International law, however, has consistently recognized that a state can bind itself to international arbitration, and that a state's breach of its own promises carries consequences.[21]

Once a state agrees to be bound to arbitration and stabilization clause provisions, the relationship between the state and the investor becomes subject to international law.

While a state can bind itself to international arbitration and agree that rights promised an investor will not be extinguished by future legislation, no state is under an obligation to do so. States are free to tell investors to invest at your own risk. Nothing in current Russian legislation, however, indicates that the Russian Federation cannot promise investors that rights given will not be taken away by a subsequent change in Russian law.[22]

Agreements by states to settle disputes in international fora and to forgo unilateral changes in the law governing investments usually take the form of two important provisions: 1) international arbitration clauses and 2) stabilization clauses. An international arbitration clause provides that any disputes arising in relation to the agreement will be settled before an international arbitral tribunal. An arbitral tribunal ensures the investor of a neutral forum to protect his rights. A stabilization clause states that the law in force in the State at the time the contract takes effect is the law that will apply to supplement the terms of the contract. The main purpose of a stabilization clause is to prevent the State from enacting new laws which would change the terms of the contract.[23] Once a state agrees to be bound to arbitration and stabilization clause provisions, the relationship between the state and the investor becomes subject to international law.[24]

1. International Arbitration Clauses

An international arbitration clause assures that if a dispute cannot be resolved by negotiation, the dispute will be settled in a neutral forum away from the state's own judicial system. The presence of the arbitration clause serves a dual function. First, it defines the scope of an arbitration and the procedures by which the arbitration will be conducted. Second, and perhaps more importantly, it assists in establishing the jurisdiction of arbitrators to hear the matter before him.

A typical *ad hoc* international arbitration clause will provide detailed provisions concerning the scope of the arbitration clause, the method by which a party can invoke arbitration, the method for choosing the arbitrators, the procedural and substantive laws that will apply, the procedure if one party refuses to participate, the method by which the arbitrators render a decision, and the time period within which the parties must comply with the results of the arbitration.[25] In addition, the clause usually states that the decision of the arbitrators is binding.[26]

To illustrate, a portion of the international arbitration clause found in the concession agreement that was the subject of *British Petroleum v Libyan Arab Republic*[27] arbitration is set forth below. The first paragraph of the arbitration clause establishes the consent of the parties to arbitration, the scope of any arbitration, and the method for choosing an arbitrator. It reads as follows:

Besides defining the scope, procedure, and administrative details of the arbitration, the international arbitration clause also serves as authority for an arbitrator to claim jurisdiction over a dispute.

1. If at any time during or after the currency of this Concession any difference or dispute shall arise between the Government and the Company concerning the interpretation or performance hereof, or anything herein contained or in connection herewith, or the rights and liabilities of either of such parties hereunder and if such parties should fail to settle such difference or dispute by agreement, the same shall, failing any agreement to settle it any other way, be referred to two Arbitrators, one of whom shall be appointed by each such party, and an Umpire who shall be appointed by the Arbitrators immediately after they are themselves appointed.

   In the event of the Arbitrators failing to agree upon an Umpire within 60 days from the date of the appointment of the second Arbitrator, either of such parties may request the President or, if the President is a national of Libya or of the Country where the Company was incorporated, the Vice-President, of the International Court of Justice to appoint the Umpire.[28]

The remainder of the arbitration clause concerns other typical provisions in an *ad hoc* intentional arbitration clause.

As an alternative to *ad hoc* arbitration, which must set out its own procedures and administrative details of a possible arbitration, parties can choose to have their arbitration managed by an international arbitration system, such as the International Center for the Settlement of Investment Disputes (ICSID).[29] ICSID is one of several organizations that provide a detailed arbitration system, a list of experienced arbitrators, as well as administrative amenities.[30]

Besides defining the scope, procedure, and administrative details of the arbitration, the international arbitration clause also serves as authority for an arbitrator to claim jurisdiction over a dispute. This is important, as often a state will object to the jurisdiction of the arbitrator and will refuse to recognize the validity of the proceedings. A firm basis in international law for the validity of the tribunal's authority as expressed by the arbitration clause will assist the investor in later efforts to enforce any award in its favor.

International case law confirms that it is up to an arbitrator to decide whether or not he has authority to hear a matter presented to him.[31] The express consent of the parties should be found in the arbitration clause which provides the arbitrator with the ability to decide jurisdiction. For example, the arbitration clause in the concession at issue in the *Texaco*[32] arbitration contains the following phrase: "The Arbitrators . . . shall determine the applicability of this Clause and the procedure to be followed in the Arbitration." The arbitrator in the *Texaco* case cited this phrase as one of the justifications for his assuming jurisdiction.[33]

Once arbitral jurisdiction is decided, it cannot be revoked unilaterally by the state. Under international law, a government bound by an arbitration clause cannot free itself of this obligation by unilateral action, such as changing its internal law or unilaterally rescinding the contract.[34] "It is well-established in case law that the unilateral cancellation of a contract can have no effect on the arbitration clause which continues to be operative . . . ."[35] An arbitration clause is severable from the remainder of the concession, and thus, cannot be nationalized by the state even where the state nationalizes other rights contemplated by the concession agreement.

2. Stabilization Clauses

As stated above, a stabilization clause provides that the law in force in the state at a given date—typically, the time the concession takes effect—is the law that will apply to the terms of the contract, regardless of future legislation, decrees, or regulations issued by the government.[36] Its purpose is to "preclude the application to an agreement of any subsequent legislative (statutory) or administrative (regulatory) act issued by the government . . . that modifies the legal situation of the investor."[37] In other words, the state concedes its right to unilaterally change the regime and rights relied upon by, and promised to, the investor.

The concession contract between the parties in *Liamco v. Libya*[38] provides a good example of a stabilization clause, and reads as follows:

> (1) The Government of Libya, the Commission and the appropriate provincial authorities will take all steps necessary to ensure that the Company enjoys all the rights conferred by this Concession. The contractual rights expressly created by this Concession shall not be altered except by mutual consent of the parties.
>
> (2) This Concession shall throughout the period of its validity be construed in accordance with the Petroleum Law and the Regulations in force on the date of execution of the Agreement of Amendment by which this paragrph [sic] (2) was incorporated into this Concession Agreement. Any amendment to or repeal of such Regulations shall not affect the contractual rights of the Company without its consent.[39]

The first paragraph makes it clear that mutual consent of the parties is needed to alter the contractual rights secured by the concession. The second paragraph establishes that the municipal law by which the concession is to be interpreted is fixed as of a certain date, so that later government legislation or action cannot infringe upon the company's contractual rights. The key element of the stabilization clause is the removal of the government's right to unilaterally alter the investor's rights by changing its municipal law. This intention is made more explicit by the requirement that the investor's consent is necessary before any such change in law will affect the investor.[40]

International law upholds both the validity of stabilization clauses and the right of a sovereign nation to bind itself through the use of such clauses.[41] The tribunal in *Texaco* stated that "[n]othing can prevent a State, in the exercise of its sovereignty, from binding itself irrevocably by the provisions of a concession and from granting to the concessionaire irretractable rights."[42] Although some nations protest that it is an infringement on their sovereignty for a tribunal to rule that they may not legislate in a way that would violate the terms of a concession agreement, the tribunal in *Texaco* held that, "in entering into concession contracts with the plaintiffs, the Libyan State did not *alienate* but *exercised* its sovereignty . . . ."[43]

Although a stabilization clause is valid in principle under international law, arbitrators differ as to the consequences of expropriation of an investor's property in violation of such a clause.[44] Generally, arbitrators will not order specific performance of a concession agreement, even if it contains a stabilization clause. The unwillingness to order specific performance is due to bothe the tribunal's respect for state sovereignty and its inability to enforce such an award.[45] Instead, expropriation which violates a stabilization clause is more likely to lead to a higher damage award, or make it more certain that damages will be awarded by the tribunal.[46]

A recent international arbitration that contains a significant discussion of stabilization clauses is the *Kuwait v. Aminoil*[47] arbitration. In 1948 Aminoil was granted a concession by Kuwait "for the exploration and exploitation of petroleum and natural gas in what was then called the Kuwait 'Neutral Zone'."[48] In 1961, Kuwait became fully independent, and the concession was modified by a supplemental agreement. In December 1974, OPEC countries adopted the "Abu Dhabi formula," which effectively raised taxes on the oil produced by Aminoil; Aminoil objected to this new law.[49] Negotiations between the parties were unsuccessful, and in 1977 Kuwait expropriated Aminoil's assets.[50] In the ensuing arbitration, Aminoil claimed that the OPEC action was a breach of the stabilization clause contained in the concession agreement. The stabilization clause provides:

> The Shaikh shall not by general or special legislation or by administrative measures or by any other act whatever annul this Agreement except as provided in Article 11. No alteration shall be made in the terms of this Agreement by either the Shaikh or the Company except in the event of the Shaikh and the Company jointly agreeing that it is desirable in the interest of both parties to make certain alterations, deletions or additions to this Agreement.[51]

While the tribunal stated that stabilization clauses were valid in principle, it reasoned that this particular clause did not accomplish what it contemplates on its face.

First, the tribunal held that the stabilization clause did not prohibit nationalization because it contained no express prohibition.[52] The arbitrator reasoned that a "contractual limitation on the state's right to nationalize . . . would be a particularly serious undertaking which would have to be expressly stipulated for . . . ."[53] He stated further that "[t]he case of nationalization is certainly not expressly provided against by the stabilization clauses of the Concession."[54] Thus, this particular clause was ineffective to prevent nationalization despite its apparently clear and express wording.

International law upholds both the validity of stabilization clauses and the right of a sovereign nation to bind itself through the use of such clauses.

Second, the tribunal held the fact that Aminoil agreed during protracted negotiations to allow changes to the concession "brought about a metamorphosis in the whole character of the Concession."[55] In essence, the tribunal's position was that since the investor had been willing to compromise during negotiations, it had in effect implicitly agreed to a weakening of the stabilization clause. Therefore, under this diluted or weakened stabilization clause, nationalization was permissible under the concession agreement as long as compensation was paid.[56]

Despite the wording of the stabilization clause which seems to clearly prohibit unilateral changes in law, the tribunal held that the existence of the clause merely warranted an award of damages. Nevertheless, the existence of the stabilization clause—even weakened—was an important element in the tribunal's justification of the award of damages. The standard used to determine the amount of damages was that of "appropriate compensation".[57]

The investor negotiating a stabilization clause should learn two valuable lessons from the Aminoil case. First, a stabilization clause should be very explicit in what it is meant to prohibit; the clause should provide that the State expressly waives its right to nationalize.

Second, a stabilization clause should provide that its terms are binding regardless of subsequent compromise, negotiation, or amendment of the contract unless both parties expressly provide, in writing, to change the meaning or binding effect of the stabilization clause. Following these principles will allow the investor to negotiate changes in the contract with the state if circumstances change, without fear that a tribunal may later declare that the investor's participation in negotiations had somehow weakened or changed the nature of the stabilization clause.[58]

3. Enforceability of Awards of Damages

As discussed above, the relevance of a stabilization clause in international law is not that it will be, or even can be, specifically enforced.[59] Rather, a stabilization clause makes damages awarded by an international tribunal either more certain to be awarded, or likely to be higher, than if a stabilization clause were not present. An award of damages, can help to bring international opinion and pressure to bear upon the nationalizing state and thereby aiding in settlement negotiations between the parties. It may also sometimes be recognized and enforced in national courts against property of the defendant state within the court's jurisdiction.

In fact, there are various international agreements and treaties in force which are designed to assist in the enforcement of foreign arbitral awards. Perhaps the most important is the Convention on the Recognition and Enforcement of Foreign Arbitral Awards,[60] first signed in New York in 1958 (N.Y. Convention), which provides for enforcement of foreign arbitral awards. This is useful "where the assets of parties may be situated in different countries and transnational enforcement is desired."[61] The Russian Federation is a signatory to the N.Y. Convention.[62]

Despite problems in enforcement, obtaining an award of damages is desirable, as it increases the chances an investor has of obtaining compensation from the offending state. Furthermore, the mere prospect of having an award granted to an expropriated investor may help dissuade a state from taking the investor's property in the first place.

4. Damages Clause

As discussed above, one of the benefits of having a stabilization clause is that it makes likely a higher damages award than could be expected without it. An additional method to help guarantee that the full value of the rights expropriated is awarded is for the investor to negotiate a damages clause. The damages clause should provide that although the state has no right under the contract to violate its terms, if the state nevertheless expropriates the investor's property or other rights, the state is obliged to compensate the investor for the full value, including lost profits, to the investor (i.e., both *damnum emergens* and *lucrum cessans*).[63]

An example of this type of clause is found in a recent Ghanaian concession contract, which contained an arbitration clause with the following paragraph:

> If any Contractor's rights, interests or property provided for herein are expropriated, nationalized or otherwise taken by reason of any act of the State or any central or local governmental authority of Ghana, then the arbitrators shall apply the principle of *full and fair* compensation for *loss of profits* determined on the basis of a going concern (emphasis added).[64]

Terms like "full and fair" and even the term "lost profits," however, may be subject to conflicting interpretations. The damages clause should, therefore, provide for a specific method for determining valuation in order to avoid disputes over the proper accounting method. A well drafted damages clause would make a state more unlikely to expropriate an investor's property because much of the temptation to take property is removed if the state must pay for it.

Additionally, several decisions and authorities indicate that the amount of damages awarded may be higher if the expropriation is considered illegal under international law.[65] The concept of international "illegality" is, however, a vague and uncertain one. Therefore, it would be advantageous for the investor to have the stabilization clause provide further that any nationalization or expropriation contrary to the terms of the agreement is, and is deemed to be by both parties, illegal and unlawful under international law. This should help to further ensure an award of damages which compensates the investor for the full value of the property and other contractual rights taken.

The provisions of the U.S.-Russia BIT provide a regime which reduces the political risk of investing in Russia.

B. The U.S.-Russia Bilateral Investment Treaty

Another factor which will assist in reducing political risk for an investor in Russia is the United States-Russia Bilateral Investment Treaty,[66] to enter into force sometime this year. A bilateral investment treaty (BIT) sets forth standards for treatment of foreign investors in areas such as expropriation of property, repatriation of funds, and settlement of investment disputes.[67] While investors can and should use other methods to reduce political risks—such as concession agreements[68] and government-sponsored insurance programs[69]—the presence of a treaty provides a strong incentive for a host state to honor its obligations under international law and its agreements with the investor. When a host state violates the rights guaranteed to the investor by a treaty, that state has not only violated norms of customary international law (such as the requirement to expropriate only for a public purpose, in a nondiscriminatory fashion, and upon the payment of prompt, adequate and effective compensation[70]), but has also breached a treaty with the investor's home state.

The provisions of the U.S.-Russia BIT provide a regime which reduces the political risk of investing in Russia. The treaty contains, for example, relative treatment provisions, which means that Russia must treat U.S. investment as well as it treats investment from any other country,[71] as well as absolute treatment provisions, under which Russia must treat U.S. investment fairly and equitably, and in accordance with international law, regardless of how it treats non-U.S. investment.[72]

Article III of the U.S.-Russia BIT limits Russia's right to expropriate U.S. investments in Russia, and provides for compensation when expropriation does occur.[73] Article III provides that investments shall not be expropriated, directly or indirectly, unless: (1) for a public purpose; (2) performed in a nondiscriminatory manner; (3) upon payment of prompt, adequate and effective compensation; and (4) in accordance with due process of law and the "absolute" standards of treatment discussed above.[74]

Realistically, although Russia would be in breach of a treaty obligation, as well as customary international law, if it were to take property in a discriminatory manner or not for a public purpose, merely deeming Russia to have violated international law will be of little economic benefit to an expropriated investor, who may well be out of millions or even billions of dollars' worth of assets and other rights.

Therefore, one of the most important guarantees an investor can have is a guarantee that it will be compensated if there is an expropriation. Practically speaking, it is impossible to prevent a nation from expropriating assets it is determined to confiscate, since other states would not be willing to prevent the expropriation by force. This is especially true in the context of the modern movement towards "permanent sovereignty over natural resources." Under this theory many states (typically, third-world, developing economies) have declared that a state always retains the right to expropriate certain assets, such as natural resources, if the "public interest" demands it—even if the state has promised not to do so, e.g. in a concession agreement or in a BIT.[75]

The courts of other nations are in certain circumstances willing to enforce a damages award, based upon an obligation to compensate, against the assets of the offending state located within that court's jurisdiction.

It is, however, more acceptable under current international law and practice for a state to bind itself to pay compensation in the event that it does nationalize or expropriate an investor's property. The courts of other nations are in certain circumstances willing to enforce a damages award, based upon an obligation to compensate, against the assets of the offending state located within that court's jurisdiction.[76] Most countries consider the enforcing of a commitment to pay compensation a lesser infringement on the sovereignty of the confiscating state than declaring that the confiscating state may not perform expropriating acts within its own territory.[77]

Thus the Article III provision requiring "payment of prompt, adequate and effective compensation" is one of the most potentially useful provisions to an investor. Such a requirement is likely to be one of the most effective in terms of protecting the value of the investment. This is for two reasons. First, other nations are more willing to enforce a damages award based on this obligation. Second, Russia would be less willing to expropriate in the first place if it would have to pay for the property it confiscates.

Of further benefit to the investor is the adoption of the "prompt, adequate and effective compensation" standard, and the further requirement that compensation should be the fair market value of the expropriated investment immediately before the expropriatory action was taken or became known.[78] This compensation standard is the "Hull Formula"[79] which is promoted by the United States, but not universally accepted as customary international law. This standard better protects the investor by insisting that the aggressor nation pay the true economic value of the investment which is taken, rather than "appropriate" compensation, an inadequate standard which is often favored by less developed countries.[80]

Article IV of the U.S.-Russia BIT also provides for free transfer of currency into and out of the Host State, and states that each country shall allow "all transfers related to an investment to be made freely and without delay into and out of its territory."[81] Investors are allowed to convert currency "into the freely convertible currency of their choice."[82] Article IV does, however, list several qualifications.[83] Russia is allowed to require reports of currency transfers by the investor,[84] and is also allowed to impose withholding taxes on currency which is expatriated.[85] Finally, Russia is allowed to pass laws protecting the rights of creditors, which may interfere with an investor's right to freely transfer currency.[86]

Article VI of the U.S.-Russia BIT addresses the settlement of disputes between the investor and the Host State.[87] "Investment disputes" are defined as disputes arising over either (a) an investment agreement between the investor and the host state, (b) the authority given to the investor by the host state, or (c) a breach of the BIT itself.[88] The Treaty mandates that the parties resolve their disputes through a previously agreed-upon arbitration procedure or, in the absence of such an agreement, through an international arbitration body such as International Center for Investment Disputes.[89]

Article XIII provides that the U.S.-Russia BIT enters into force thirty days after it has been ratified by both the U.S. and Russia, and remains in force for at least ten years.[90] Of particular importance to investors with already-existing investments in Russia, Article III also provides that the BIT "shall apply to investments existing at the time of entry into force as well as to investments made thereafter."[91] This provision helps reduce any incentive an investor might have to wait until the BIT is in force before investing, and also protects current investments on an equal footing with post-BIT investments. After the initial ten-year period, either Russia or the U.S. may, by giving at least one year's written notice, terminate the BIT.[92]

III. Conclusion

The Russian petroleum industry needs the capital and knowledge of Western investors. To attract these investors, the Russian Federation must offer them reasonably stable opportunities for making profits. Unless political risks are minimized, investors will not be willing to invest precious time and capital. The resulting lack of investment would be detrimental to both investors and the Russian Federation.

Fortunately, there are methods to reduce the political risks inherent in investment in the Russian petroleum industry. Stabilization and international arbitration clauses in licenses negotiated for petroleum exploration and production are one method of reducing political risks; purchasing government-sponsored or private insurance is still another. Finally, the protection won by BITs serve to reduce political risks even further by creating a regime anchored in international law which is favorable, rather than hostile, to property rights—a regime which attempts to prevent expropriation, direct or indirect, and to provide for full compensation when expropriation does occur.

Hopefully, for the sake of both investors and the Russian Federation, this trend towards greater protection of the property rights of investors will continue in a positive direction.

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ENDNOTES

1. Recent trends in international law indicate that this principle may not apply if human rights violations against the investor are involved. Such matters are, however, beyond the scope of this article. *See generally* Rosalyn Higgins, *The Taking of Property by the State: Recent Developments in International Law*, 3 RECUEIL DES COURS DE L'ACADÉMIE DE DROIT INTERNATIONAL (COLLECTED COURSES OF THE HAGUE ACADEMY OF INTERNATIONAL LAW) 259, 355-75 (1982).
2. Gary B. Conine, *Petroleum Licensing: Formulating an Approach for the New Russia, in Symposium: The Russian Petroleum Legislation Project at the University of Houston Law Center*, 15 HOUS. J. INT'L L. at 317, 320 (1993). [hereinafter *Petroleum Licensing*].
3. 2 Vedomosti S'ezda Narodnykh Deputatov Rossiskoi Federatsii i Verkhovnogo Soveta Rossiskoi Federatsii Item 834 (1992), *translated in* Russian Law on Underground Resources of 2/92, enacted Feb. 21, 1992, effective Apr. 16, 1992, art. 11, *provided* by U.S. Dept. of Commerce, Office of General Counsel, (1992) (PB92-967131) [hereinafter Subsurface Resources Law].
4. *Id. See also Petroleum Licensing*, *supra* note 2, at 427.
5. An important features of this law is the resolution of the dispute over mineral control that exists between the federal government and the local governments within the Russian Federation. The law creates a system of joint jurisdiction to be exercised "in the interest of the people" of the Russian Federation. While the different levels of government share jurisdiction, the investor deals with only one licensing authority, which is currently the State Committee on Underground Resources. For a detailed discussion of the jurisdictional issues, *see Petroleum Licensing*, *supra* note 2, at 428.
6. 33 Vedomosti S'ezda Narodnykh Deputatov Rossiskoi Federatsii i Verkhovnogo Soveta Rossiskoi Federatsii Item 1917 (1992), *translated in* Russian Statute on Procedure for Mineral Licensing of 7/92, effective July 15, 1992, *provided* by U.S. Dept. of Commerce, Office of General Counsel (1992) (PB92-967142). *See also Petroleum Licensing*, *supra* note 2, at 427.
7. Russian Statute on Payment for Mineral Extraction Rights of 11/92 and Law on Changes to Law on Mineral Resources (Law on Underground Resources), effective Nov. 6, 1992 *provided* by U.S. Dept. of Commerce, Office of General Counsel (1992) (PB92-967171).
8. Subsurface Resources Law, *supra* note 3, art. 12. *See also* James L. Culcis, *Russian Foreign Investment and Trade, in* STATE BAR OF TEXAS PROF. DEV. PROGRAM, ADVANCED INTERNATIONAL LAW INSTITUTE: INVESTMENT AND TRADE WITH EMERGING ECONOMIES, F3, F3-5 (May 14, 1993).
9. Subsurface Resources Law, *supra* note 3, art. 7.
10. *Id.* art. 10.
11. *Id.* art. 13.
12. *Id.* art. 14.
13. *Id.* art. 12.
14. The Law on Mineral Payments sets forth the various payments in greater detail.
15. *Petroleum Licensing*, *supra* note 2, at 438.
16. Subsurface Resources Law, *supra* note 3, art. 43.
17. *Id.* art. 50.
18. Russian Law on Foreign Investments of 7/91, effective July 25, 1991, *provided* by U.S. Dept. of Commerce, Office of General Counsel (1992) (PB92-967104).
19. *Id.* art. 9. *See* Gary B. Conine & J. Lanier Yeates, *Russian Petroleum Legislation: Assessing The New Legal Framework*, RUSSIAN OIL & GAS GUIDE, Jan. 1993, at 4. Additionally, it should be noted that "[e]nforcement of an international arbitration apparently still requires approval of the award by a Soviet court." *Id.* at n.20.
20. *See* discussion *infra* part III.B.
21. *See, e.g.*, *infra* notes 41-43 and accompanying text.
22. It is currently unresolved whether a license granted under the current legislation is a contract or a permit under a regulatory scheme. *Petroleum Licensing*, *supra* note 2, at 448. If a license is the former, the State will be bound to its agreements by international law. If a license is the latter, then provisions negotiated between the investor and the State will not prevent the State from unilaterally passing legislation in contravention of any clauses in a license to the contrary. It is the authors' opinion that the current law is not merely regulatory, but allows for contracts between the State and the investor.
23. There are many other considerations that must be taken into account when negotiating agreements with states, which are beyond the scope of this article. *See generally* Detlev F. Vagts, *Dispute-Resolution Mechanisms in International Business*, 3 RECUEIL DES COURS DE L'ACADÉMIE DE DROIT INTERNATIONAL (COLLECTED COURSES OF THE HAGUE ACADEMY OF INTERNATIONAL LAW) 9 (1987) and the bibliography contained therein; A. Z. El Chiati, *Protection of Investment in the Context of Petroleum Agreements*, 4 RECUEIL DES COURS DE L'ACADÉMIE DE DROIT INTERNATIONAL (COLLECTED COURSES OF THE HAGUE ACADEMY OF INTERNATIONAL LAW) 9 (1987) and the bibliography contained therein [hereinafter *Protection of Investment*]; Ernest E. Smith & John S. Dzienkowski, International Petroleum Transactions Institute (November 20, 1992, Houston, Texas, sponsored by The University of Texas School of Law, forthcoming as a coursebook on International Energy Transactions); KEITH W. BLINN ET AL., INTERNATIONAL PETROLEUM EXPLORA-

TION AND EXPLOITATION AGREEMENTS: LEGAL, ECONOMIC, AND POLICY ASPECTS (1986); GEORGES R. DELAUME, TRANSNATIONAL CONTRACTS: APPLICABLE LAW AND SETTLEMENT OF DISPUTES (1982); RALPH H. FOLSOM ET AL., INTERNATIONAL BUSINESS TRANSACTIONS (1992); A.F. LOWENFELD, INTERNATIONAL PRIVATE INVESTMENT (2d ed. 1982); ALAN REDFERN & MARTIN HUNTER, LAW AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION (1986) [hereinafter LAW AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION]; Note, *Unilateral Action by Oil Producing Countries: Possible Contractual Remedies of Foreign Petroleum Companies*, 9 FORDHAM INT'L L.J. 63 (1985-1986); RAYMOND F. MIKESELL, PETROLEUM COMPANY OPERATIONS AND AGREEMENTS IN THE DEVELOPING COUNTRIES (1984); AND JAMES BARROWS, *International Trends and Latest Changes in Oil Laws, Concession, and Production-Sharing Agreements Worldwide*, 1983 INST. ON INT'L OIL & GAS L. at A-1.

24. *See, e.g., infra* notes 41-43 and accompanying text.
25. LAW AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION, *supra* note 23, at 38-41, 113-127.
26. *Id.*
27. BP Exploration Company (Libya) Limited v. Government of the Libyan Arab Republic, 53 I.L.R. 297, 302 (Oct. 10, 1973 and Aug. 1, 1974) (Lagergren, Arb.).
28. *Id.*
29. Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, Mar. 18, 1965, 17 U.S.T. 1270, 575 U.N.T.S. 159.
30. For further discussion of international arbitration mechanisms, including a comparison of *ad hoc* and institutionalized arbitration, *see* Detlev F. Vagts, *Dispute-Resolution Mechanisms in International Business*, 3 RECUEIL DES COURS DE L'ACADÉMIE DE DROIT INTERNATIONAL (COLLECTED COURSES OF THE HAGUE ACADEMY OF INTERNATIONAL LAW) 9 (1987); Leo J. Bouchez, *The Prospects for International Arbitration: Disputes Between States and Private Enterprises*, 8 J. INT'L ARB. 81, 93-95 (Mar. 1991) [hereinafter *Prospects for International Arbitration*]; and William W. Park, *Arbitration of International Contract Disputes*, 39 BUS. LAW. 1783 (1984).
31. *See* the Nottebohm Case (Liechtenstein v. Guatemala), 1953 I.C.J. 111. *See also* Case Concerning the Arbitral Award Made by The King of Spain on December 23, 1906 (Honduras v. Nicaragua), 1960 I.C.J. 192.
32. Texaco Overseas Petroleum Company and California Asiatic Oil Company (Texaco) v. The Government of the Libyan Arab Republic, 53 I.L.R. 389, 403-04 (Preliminary Award, Nov. 27, 1975; Award on the Merits, Jan. 19, 1977) (Dupuy, Arb.).
33. *Id.* at 406.
34. Jiménez de Aréchega, "L'Arbitrage entre les Etats et les Sociétés Privées Etrangères," in Mélanges en l'Honneur de Gilbert Gidel 367, 375 (1961), cited in Texaco, 53 I.L.R. at 410 n.14.
35. Texaco, 53 I.L.R. at 409, citing the *Losinger* case.
36 Principles of international law may also apply. The state's municipal law, as it stands on a given date, is often chosen as the law to govern certain local matters. *Protection of Investment, supra* note 23, at 121.
37. *Id.* at 115. For examples of various stabilization clauses, *see id.* at 115-21.
38. Libyan American Oil Company (LIAMCO) v. Government of the Libyan Arab Republic, 62 I.L.R. 140, 170 (Award, Apr. 12, 1977) (Mahmassani, Arb.).
39. *Id.*
40. The first paragraph, in requiring mutual consent to change the concession contract, is sometimes referred to as an "intangibility clause" to distinguish it from a stabilization clause, which freezes the law as of a certain date. *See, e.g., Prospects for International Arbitration, supra* note 30, at 86-89. Most such clauses, however, combine both complementary aspects. *Protection of Investment, supra* note 23, at 115-16. Therefore, the term "stabilization clause" in this article will refer to both intangibility and stabilization provisions, as set out in the two paragraphs of the Liamco stabilization clause.
41. *See, e.g., Protection of Investment, supra* note 23, at 161, stating that "[s]tabilization clauses, validly entered into, are valid and binding."
42. Texaco, 53 I.L.R. at 474, quoting Saudi Arabia v. Arabian American Oil Company (Aramco), 27 I.L.R. 117, 168 (Award, Aug. 23, 1958) (Sauser-Hall, Referee; Badawi/Hassan, Habachy Arb.).
43. Texaco, 53 I.L.R. at 482 (emphasis added). *See also Prospects for International Arbitration*, supra note 30, at 86, discussing a similar holding by the Permanent Court of International Justice in the *Wimbledon* case, 1928 P.C.I.J. (ser. A) No. 1, at 25.
44. As stated in LIAMCO, 62 I.L.R. at 205, international law is unclear on the question of damages. *See also* MALCOLM N. SHAW, INTERNATIONAL LAW 521 (3d ed. 1991) [hereinafter INTERNATIONAL LAW].
45. Texaco, discussed above, is an exception to this rule. *See supra* notes 32-35 and accompanying text.
46. *See Protection of Investment, supra* note 23, at 165, stating that "the extent of the indemnity due to the investor ... may vary from compensation for the value of the property taken to the financial equivalent of restitution and may even include, at least theoretically, punitive damages." (Footnote omitted.) *See also* INTERNATIONAL LAW, *supra* note 44, at 523-24.
47. Government of Kuwait v. American Independent Oil Company (Aminoil), 66 I.L.R. 518 (Mar. 24, 1982) (Reuter, Sultan, and Fitzmaurice Arb.).
48. *Id.* at 546-47.
49. *Id.* at 554-55.
50. *Id.* at 558. *See also* the discussions of the *Aminoil* case in Fernando R. Tesón, *State Contracts and Oil Expropriations: The Aminoil-Kuwait Arbitration*, 24 VA. J. INT'L L. 323 (1984); and Geoffrey Marston, *The Aminoil-Kuwait Arbitration*, 17 J. WORLD TRADE L. 177 (1983).
51. Aminoil, 66 I.L.R. at 520.
52. *Id.* at 525-26.
53. *Id.*
54. *Id.*
55. *Id.*
56. *Id.*
57. *Id.* The international law principle of requiring "appropriate compensation" in such cases was codified in U.N. General Assembly Resolution no. 1803 (XVII) of 14 December, 1962, on Permanent Sovereignty over Natural Resources, Article 4. *Id. See also Texaco*, 53 I.L.R. at 489 (citing the standard "appropriate compensation" with approval as a rule of customary law).
58. The separate opinion of Sir. G. Fitzmaurice, Aminoil, 66 I.L.R. at 614-27, which is better reasoned than the main opinion, concurs in the judgment. Fitzmaurice reasons differently, and states that stabilization clauses do not need to be express to be effective; that this clause was express anyway; and that the character of the concession or of the stabilization clause had not changed due to subsequent negotiations and amendments. *Id.*
59. Although the tribunal in *Texaco* awarded restitution, such an award will not, in practice, be enforceable against the offending state, nor will an award of damages be enforceable against property within the territory of the state. "The problems ... of enforcing such restitution awards against a recalcitrant state may be imagined." INTERNATIONAL LAW, *supra* note 44, 521-24. "The futility of claiming a *restitutio in integrum* has become so apparent that some litigants do not even bother to claim it." *Protection of Investment, supra* note 23, at 161.
60. New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38.
61. Ian F. G. Baxter, *International Business Disputes*, 39 INT'L & COMP. L.Q. 288, 294 (1990). For further information concerning enforcement of foreign arbitral awards, *see Prospects for International Arbitration, supra* note 30, at 111-15; Peter M. McGowan, *Arbitration Clauses as waivers of Immunity from Jurisdiction and Execution under the Foreign Sovereign Immunities Act of 1976*, 5 N.Y.L. SCH. J. INT'L & COMP. L. 409, 417-19 (1984); Note, *Enforcing International Commercial Arbitration Agreements and Awards Not Subject to the New York Convention*, 23 VA. J. INT'L L. 75 (1982); Georges R. Delaume, *State Contracts and Transnational Arbitration*, 75 AM. J. INT'L L. 784 (1981); and J. Stewart McClendon, *Enforcement of Foreign Arbitral Awards in the United States*, 4 NW. J. INT'L L. & BUS. 58 (1982).
62. News and Notes from the ITA (Inst. of Transnational Arb., Houston, Texas), July 1993, at S-3.
63. *See* INTERNATIONAL LAW, *supra* note 44, at 433-35.
64. *Protection of Investment*,

supra note 23, at 166.

65. *See* INTERNATIONAL LAW, *supra* note 44, 523-24. For further discussion of compensation issues, *see* C. F. Amerasinghe, *Issues of Compensation for the Taking of Alien Property in the Light of Recent Cases and Practice*, 41 INT'L & COMP. L.Q. 22 (1992); Patrick M. Norton, *A Law of the Future or a Law of the Past? Modern Tribunals and the International Law of Expropriation*, 85 AM. J. INT'L L. 474 (1991); Charles N. Brower, *Current Developments in the Law of Expropriation and Compensation: A Preliminary Survey of Awards of the Iran-United States claims Tribunal*, 21 INT'L LAW. 639 (1987); Derek W. Bowett, *State Contracts with Aliens: Contemporary Developments on Compensation for Termination or Breach*, 1988 BRIT. Y.B. INT'L L. 49; Eli Lauterpacht, *Issues of Compensation and Nationality in the Taking of Energy Investments*, 8 J. ENERGY & NAT. RESOURCES L. 241 (1990); Brice M. Clagett, *Present State of the International Law of Compensation for Expropriated Property and Repudiated State Contracts in*, PRIVATE INVESTORS ABROAD ch. 12 (Carol J. Holgren ed. 1989); William C. Lieblich, *Determining the Economic Value of Expropriated Income-Producing Property in International Arbitrations*, 8 J. INT'L ARB. 59 (1991); William C. Lieblich, *Determinations by International Tribunals of the Economic Value of Expropriated Enterprises*, 7 J. INT'L ARB. 37 (1990); Edith Penrose et al., *Nationalization of Foreign-owned Property for a Public Purpose: An Economic Perspective on Appropriate Compensation*, 55 MOD. L. REV. 351 (1992); Felix Praendl, Note, *Measure of Damages in International Commercial Arbitration*, 23 STAN. J. INT'L L. 263 (1987); Halirurton Fales, *A Comparison of Compensation for Nationalization of Alien Property with Standards of Compensation Under United States Domestic Law*, 5 NW. J. INT'L L. & BUS. 871 (1983); James W. Weller, Note, *International Parties, Breach of Contract, and the Recovery of Future Profits*, 15 HOFSTRA L. REV. 323 (1987); and Christopher P. Bauman, Note, *An International Standard of Partial Compensation Upon the Expropriation of an Alien's Property*, 19 CASE W. RES. J. INT'L L. 103 (1987).

66. Treaty Between the United States and the Russian Federation Concerning the Encouragement and Recriprocal Protection of Investment, *done at* Washington, June 17, 1992, U.S.-R.S.F.S.R., 31 I.L.M. 794 [hereinafter the U.S.-Russia BIT]. The U.S.-Russia BIT has received the advice and consent of the U.S. Senate, and is awaiting similar domestic approval from the Russian government before it enters into force. This information concerning the current status of BITs negotiated with C.I.S. republics is based on a telephone conversation between Paul E. Comeaux and the Office of Treaty Information, U.S. Department of State, on Apr. 5, 1993.

67. For further discussion of RITs, *see generally* KENNETH J. VANDEVELDE, UNITED STATES INVESTMENT TREATIES: POLICY AND PRACTICE (1992). *See also* Jeswald W. Salacuse, *BIT by BIT: The Growth of Bilateral Investment Treaties and Their Impact on Foreign Investment in Developing Countries*, 24 INT'L LAWYER 655, 655 (1990); Kenneth J. Vandevelde, *The Bilateral Investment Treaty Program of the United States*, 21 CORNELL INT'L L.J. 201, 203 (1988); Michael R. Reading, note, *The Bilateral Investment Treaty in ASEAN: A Comparative Analysis*, 42 DUKE L.J. 679 (1992); Eileen D. Denza & Shelagh B. Brooks, *Investment Protection Treaties: United Kingdom Experience*, 36 INT'L & COMP. L.Q. 908, 909 (1987); T. Modybo Ocran, *Bilateral Investment Protection Treaties: A Comparative Study*, 8 N.Y.L. SCH. J. INT'L & COMP. L. 401 (1987); Valerie H. Ruttenberg, comment, *The United States Bilateral Investment Treaty Program: Variations on the Model*, 9 U. PA. J. INT'L BUS. L. 121 (1987); and Glenn Gallins, *Bilateral Investment Protection Treaties*, 2 J. ENERGY & NAT. RESOURCES L. 77 (1984).

68. *See* discussion *supra* part III.A. *See also* Paul E. Comeaux & N. Stephan Kinsella, *Reducing The Political Risk of Investing in Russia and Other C.I.S. Republics: International Arbitration and Stabilization Clauses*, RUSSIAN OIL & GAS GUIDE, Apr. 1993, at 21.

69. *See generally* Paul E. Comeaux & N. Stephan Kinsella, *Insuring Investments in Russia and Other C.I.S. Republics: MIGA and OPIC*, forthcoming in THE RUSSIAN OIL & GAS GUIDE. *See also* Malcolm D. Rowat, *Multilateral Approaches to Improving the Investment Climate of Developing Countries: The cases of ICSID and MIGA*, 33 HARVARD INT'L L.J. 103 (1992); Klaus P. Berger, *The New Multilateral Investment Guarantee Agency Globalizing the Investment Insurance Approach Towards Development*, 15 SYR. J. INT'L L. & COM. 13 (1988); Ibrahim F. I. Shihata, *Factors Influencing the Flow of Foreign Investment and the Relevance of a Multilateral Investment Guarantee Scheme*, 21 INT'L LAW. 671 (1987); Adcoye Akinsanya, *International Protection of Direct Foreign Investment in the Third World*, 36 INT'L & COMP. L.Q. 58 (1987); S. K. Chatterjee, *The Convention Establishing the Multilateral Guarantee Agency*, 36 INT'L & COMP. L.Q. 76 (1987); and Dr. Hansen S. Zakariye, *Insurance Against Political Risks in Oil Development*, 4 J. ENERGY & NAT. RESOURCES L. 217 (1986).

70. *See* INTERNATIONAL LAW, *supra* note 44, 431-35.

71. U.S.-Russia BIT, *supra* note 66, at 801.

72. *Id.* at 802.

73. *Id.* at 803.

74. *Id.*

75. For further discussion of the concept of "permanent sovereignty over natural resources," *see* G. W. Haight, *The New International Legal Order and the Charter of Rights and Duties of States*, 9 INT'L LAW. 591 (1975); Andres Rozenthal, *The Charter of Economic Rights and Duties of States and the New International Legal Order*, 16 VA. J. INT'L L. 306 (1976); Charles N. Brower and John B. Tepe, Jr., *The Charter of Economic Rights and Duties of States*, 9 INT'L LAW 295 (1975); Garcia Amador, *The Proposed New International Economic Order; A New Approach to the Law Governing Nationalization and Compensation*, 12 LAWYER OF THE AMERICAS 1 (1980); and INTERNATIONAL LAW, *supra* note 44, at 521-23.

76. For information concerning enforcement of arbitral awards, *see* Ian F. G. Baxter, *International Business Disputes*, 39 INT'L & COMP. L.Q. 288 (1990); *Prospects for International Arbitration*, *supra* note 30, at 111-12; Peter M. McGowan, *Arbitration Clauses as Waivers of Immunity from Jurisdiction and Execution under the Foreign Sovereign Immunities Act of 1976*, 5 N.Y.L. SCH. J. INT'L & COMP. L. 409, 417-19 (1984); Note, *Enforcing International Commercial Arbitration Agreements and Awards Not Subject to the New York Convention*, 23 VA. J. INT'L L. 75 (1982); Georges R. Delaume, *State Contracts and Transnational Arbitration*, 75 AM. J. INT'L L. 784 (1981); and J. Stewart McClendon, *Enforcement of Foreign Arbitral Awards in the United States*, 4 NW. J. INT'L L. & BUS. 58 (1982).

77. It is not realistic to expect an award of specific performance, or of restitution, to either be awarded or enforced against a sovereign state. Although the tribunal in Texaco awarded restitution, such an award will not, in practice, be enforceable against the offending state, nor will an award of damages be enforceable against property within the territory of the state. "The problems . . . of enforcing such restitution awards against a recalcitrant state may be imagined." INTERNATIONAL LAW, *supra* note 44, 521-24. *See also* *Protection of Investment*, *supra* note 23, at 158. "The futility of claiming a *restitutio in interum* has become so apparent that some litigants do not even bother to claim it." *Id.* at 161.

78. Oscar Schachter, comment, *Compensation for Expropriation*, 78 AM. J. INT'L L. 121, 123 (1984).

79. *Id.* at 121-122.

80. The international law principle of requiring "appropriate compensation" in such cases was codified in U.N. General Assembly Resolution no. 1803 (XVII) of 14 December, 1962, on Permanent Sovereignty over Natural Resources, Article 4. Aminoil, 66 I.L.R. at 518. *See also* Texaco, 53 I.L.R. at 403-04. Texaco also cites the standard "appropriate compensation" with approval as a rule of customary law. Texaco, 53 I.L.R. at 489.

81. U.S.-Russia BIT, *supra* note 66, at 804.

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.* at 804-806.

88. *Id.* at 804-06.

89. *Id.* at 805.

90. *Id.* at 808.

91. *Id.*

92. *Id.*