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U.S. HELSINKI COMMISSION HEARING

"Russian Violations of the Rule of Law: How Should the U.S. Respond? 3 Case Studies"

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Testimony of Timothy William Osborne

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Mr. Chairman, Commission Members, ladies and gentlemen.

Good afternoon.

My name is Tim Osborne, Director of GML Limited, a global holding corporation and the indirect majority shareholder of the former Yukos Oil Company ("Yukos").

I have been asked to testify today concerning the economic dimension and commercial aspect of the Helsinki Process -- specifically the Russian government's failure to uphold the rule of law in the Yukos case.

The Russian Federation's actions with regards to Yukos and GML's investment in Yukos have served as both a case study on Russia's behaviour and a cautionary tale on the risks of investing in the Russian market. Today, I will address how the rule of law is central to exposing Russia's violations, seeking legal remedies in response, and ultimately, obtaining fair treatment and justice. I have been involved in two separate legal processes surrounding the Yukos case in which Russia has clearly demonstrated its attitude to its international legal obligations and the rule of law.

GML AND THE YUKOS AFFAIR

I am a director of GML Limited, which through its wholly-owned subsidiaries Hulley Enterprises Limited ("Hulley") and Yukos Universal Limited ("Yukos Universal"), together with Veteran Petroleum Limited (a pension fund for Yukos employees) ("Veteran") owned approximately 70% of Yukos. When Yukos was "nationalised" in 2004 through a

combination of spurious tax claims, government sponsored asset freezing and rigged auctions, we tried very hard to talk to the Russian Federation to obtain an understanding of their concerns and objectives and to attempt to reach a reasonable compromise. These approaches were completely rejected and consequently in 2005 Hulley, Yukos Universal and Veteran commenced arbitrations under the Energy Charter Treaty. The arbitrations were administered by the Permanent Court of Arbitration based in the Peace Palace in The Hague. The Energy Charter Treaty is a landmark multi-lateral investment treaty reached in 1994 in the aftermath of the Cold War to promote investment in the energy sector of the former eastern bloc and provide a dispute resolution mechanism to facilitate the resolution of disputes between investors and host countries.

Rule of Law Mechanisms and the Energy Charter Treaty

As a result of Hulley, Yukos Universal and Veteran's recourse to protections provided by the Energy Charter Treaty and rule of law process, they were able to obtain justice and the right to compensation. The arbitrations initiated by Hulley, Yukos Universal and Veteran led over a 9 year period to Final Awards (which were unanimous decisions) issued in July 2014 by the independent Arbitral Tribunal in their favour which concluded that the Russian Federation had, in contravention of the Energy Charter Treaty, expropriated Yukos without compensation. The Tribunal awarded damages to Hulley, Yukos Universal and Veteran in a total amount exceeding $50 billion plus costs (the "Awards"). The Tribunal gave Russia a six month interest free period during which the Awards could be paid. No payment was received and interest has been accruing on the Awards since mid-January 2015.

The arbitration award in excess of $50 billion is the largest amount of damages ever awarded in a commercial arbitration and would not have been possible without recourse to the Energy Charter Treaty. Because the United States is not a signatory to the Energy Charter Treaty and does not have a Bilateral Investment Treaty with Russia, U.S. shareholders, who also collectively lost billions of dollars, are without a similar rule of law mechanism that can help them to obtain compensation in the Yukos case.

Appeals, Enforcement and Collection

Hulley, Yukos Universal and Veteran remain on solid footing due to the rule of law as they proceed to the next stage of their case, after winning the historic Awards. As the seat of the arbitration was The Netherlands, Russia has the right to apply to the courts in The Hague to have the Awards set aside. This is not an appeal but is a limited right to have certain aspects of the Awards reviewed by the court, although the bar to setting aside the Awards is high. They do however have the right to have the question as to whether or not there was a binding arbitration agreement reviewed de novo and this is part of their application. The exchange of pleadings in the application to set aside the Awards is almost complete and a hearing is scheduled for 9th February 2016.

It is fair to say that the Russian Federation has "thrown the kitchen sink" at the Awards finding, in its view, many instances where the Tribunal (comprising three esteemed arbitrators, including one, an American citizen, appointed by the Russian Federation) found wrongly (although unanimously) in favour of Hulley, Yukos Universal and Veteran. In my view the application to set the Awards aside is nothing more than a further delaying tactic. The Russian Federation's strategy throughout the arbitration process was primarily to delay matters as much as possible.

Enforcement - The New York Convention and Rule of Law

Another important rule of law element to this case, as with any other international arbitration case, is that there is actually a mechanism to allow collection of the Awards. Hulley, Yukos Universal and Veteran are entitled to enforce the Awards pursuant to the New York Convention. The New York Convention is a multi-national treaty (signed by over 150 countries, including all major states) which provides a framework for the recognition and enforcement of foreign arbitral awards in member states whether awards are made against persons, corporate entities or sovereign states. The New York Convention is implemented by each member state in its own domestic legislation.

In order to enforce an award, it must first be recognised (in the US the term used is "confirmed") by the local court. Once the recognition process is complete, then that

effectively converts the arbitral award into a binding ruling of the local court and is thus enforceable as such. The enforcing party is then at liberty to attach assets of the relevant debtor in the relevant country and, with the assistance of the court, such assets will be transferred or sold and the proceeds of sale transferred to the claimant in partial settlement of the debt. With respect to enforcement against a sovereign state the general rule is that usually enforcement is only possible against assets which are used by that state for commercial purposes. Enforcement is usually not possible against assets of a sovereign state which are used for sovereign purposes (i.e. diplomatic assets such as embassy buildings).

U.S. Actions and Global Enforcement

Enforcement and collection of the Awards is not simply theoretical – it is happening as we speak and there is a process for doing so.

All countries have slightly different processes for implementation of the New York Convention. For instance, in the United States, we commenced our recognition action by issuing proceedings in the District Court in Washington. The court gave permission for our recognition action to proceed and agreed for the papers to be served on the Russian Federation. The papers were then transferred to a section in the State Department which processes these types of actions. They transferred the papers to the United States Embassy in Moscow and the Embassy served the papers on the Russian Federation. Russia has appointed a leading firm of United States lawyers to represent it and the Russian Federation's deadline to file its detailed brief opposing confirmation was yesterday. I have not as yet seen their filing. We are assuming that it will be next year at the earliest before the case is in court and then there are rights of appeal etc. before we get to enforcement. We have commenced similar processes in the United Kingdom, France, Belgium and Germany. The proceedings in the United Kingdom are roughly at the same stage as in the United States and we expect a hearing at first instance next year.

Germany is slightly behind and we are awaiting confirmation that the papers have been served on the Russian Federation by the German Embassy in Moscow.

Enforcement and Initial Success

In France and in Belgium the Awards have been recognised. Exequaturs have been issued and these permit immediate enforcement against Russian Federation assets in each jurisdiction. With regard to real estate, notaries have been appointed by the courts to sell the properties. In both France and Belgium we have frozen bank accounts belonging to the Russian Federation (and have unfrozen accounts when it has been demonstrated to us that those accounts were used for diplomatic purposes). Russia has appealed against the Exequaturs and has commenced proceedings in both France and Belgium to suspend enforcement proceedings.

Future Enforcement – Russian State Owned/Controlled Enterprises

In due course, we will also look at enforcement against assets in the hands of state-owned and/or state-controlled entities such as Gazprom and Rosneft but that will require us to negotiate a further obstacle as the Russian Federation will, no doubt, argue that such entities are separate and independent of the Russian state and do not hold Russian state assets. It will be for us to convince the court otherwise. In the Awards the Tribunal expresses its view that Rosneft which was, and still is, a state-owned company, was a co-conspirator alongside the Russian Federation in the expropriation of Yukos by facilitating the bankruptcy of Yukos in the Moscow courts and then taking over the majority of the strategic Yukos assets at the rigged bankruptcy auctions.

Russian Retaliation

One very interesting development is that on receipt of the papers from the US Embassy in Moscow, the Russian Ministry of Foreign Affairs wrote to the Embassy claiming that the Awards were "an unjust and politically motivated act …… incompatible with the ideas of the rule of law, independent, impartial and professional international justice". This notwithstanding the fact that Russia had participated fully in the ECT process including in two very lengthy hearings, submitted voluminous pleadings and had appointed one of the arbitrators. Even more interesting, the Russian Ministry of Foreign Affairs goes on to say

that if the US courts allow recognition and enforcement against Russian property in the USA, this will be considered by the Russian Federation as grounds "for taking adequate and proportionate retaliatory steps in relation to the USA, its citizens and legal entities", i.e. that Russia will inter alia confiscate assets of the US, US companies and/or US citizens as a tit for tat measure, notwithstanding that the US government, and/or the US companies and/or the US citizens have no connection with the arbitrations or the Awards. This is set out in the State Department's letter of July 17th 2015 to the United States District Court, which is on the court docket and is attached to this submission for your ease of reference. I believe this letter succinctly sets out Russia's general attitude to the rule of law and its attitude to its international legal obligations.

Russia has communicated the same message to the governments of France and Belgium.

YUKOS AND THE EUROPEAN COURT OF HUMAN RIGHTS

The second law suit that I would like to bring to your attention is a case brought before the European Court of Human Rights ("ECtHR") by Yukos itself. This case was brought by the Yukos management on behalf of all Yukos shareholders and complained about the expropriation without compensation of Yukos and the way the Russian Federation had treated Yukos generally. The ECtHR takes a much different approach to these types of questions than international arbitration tribunals. The tribunal which rendered our Awards (and two other arbitration tribunals which rendered awards in other Yukos related cases) concluded that Russia's attack on Yukos was not a genuine attempt to collect taxes but looking at the total picture was clearly an expropriation under the guise of taxation.

The ECtHR, which starts from the premise that governments can be trusted and tell the truth (the so called "margin of appreciation") and which hears no oral testimony, looked at each action of the Russian government separately and whilst it concluded on that approach that Russia was entitled to take many of the actions that it did take, nevertheless, it did conclude that Russia had breached Yukos' rights in a number of instances. On July 31st 2015, the ECtHR awarded damages of approximately €1.9billion (which equates to roughly $2.2billion). Such damages are to be distributed to the former shareholders of Yukos. This is the largest award of damages ever made by the ECtHR. The Russian Federation was ordered

to agree a distribution plan with the Committee of Ministers (which is responsible for the implementation of ECtHR decisions) within six months of the ECtHR's decision becoming final. That decision became final on December 15th 2014 (when the Grand Chamber of the ECtHR declined to hear any appeal of the case) and consequently Russia was supposed to have agreed a distribution plan with the Committee of Ministers by June 15th 2015.

Russia's Failure to Meet Obligations

Prior to their June 2015 meeting, Hulley and Yukos Universal (as shareholders of Yukos) reminded the Secretariat of the Committee of Ministers of Russia's obligations under the ECtHR's decision and even provided a draft distribution plan just to prove how simple this would be. Notwithstanding, Russia had not even discussed this with the Secretariat to the Council of Ministers by the next Committee of Ministers meetings after the June 15th 2015 deadline (i.e. the September meeting) the Committee of Ministers made it very clear that they expected the Russian Federation to have a distribution plan in place by their March 2016 meeting. Immediately after that "decision" by the Committee of Ministers, Russia stated that it was not developing any plans to compensate Yukos' shareholders and that further actions in relation to the ECtHR's decision would be based on "national interests". I attach copies of press articles from 25th September 2015 which record the Russian Justice Ministry's comments.

Russia is also reinterpreting its own laws to convince itself (if no-one else) that it is entitled to ignore decisions of the ECtHR. Article 15.4 of the Russian Constitution states:

"Universally recognized principles and norms of international law as well as international agreements of the Russian Federation should be an integral part of its legal system. If an international agreement of the Russian Federation establishes rules, which differ from those stipulated by law, then the rules of the international agreement shall be applied."

This effectively means that in a conflict of laws between Russian law and international law, international law prevails. However, the Russian Federation, with the help of its Constitutional Court, is using the phrase "those stipulated by law" to claim that there is a distinction between laws and the Constitution itself and that the Constitution is above the law

(rather than forming part of it), thus enabling the Russian State to prioritise its national interests over international commitments.

CONCLUSION

Mr. Chairman and Members of the Commission, I believe it is clear that the Russian Federation is not honouring its obligations and commitments under the rule of law or in a manner consistent with the Helsinki process. Russia's tendency, more often than not, has been to ignore, delay, obstruct or retaliate when faced with its international law responsibilities.

I think Russia's general prevarication on all matters related to Yukos, its threats to the US, French and Belgian governments (including potential tit for tat confiscations) and the claims that it can ignore its international obligations if that best serves its national interests demonstrate unequivocally that Russia cannot be trusted in international matters and that even when it has signed up to international obligations, it will ignore them if that is what it thinks serves it best.

I hope that my testimony has shed more light on Russia's behaviour and demonstrated the need to encourage Russia to respect and adhere to the rule of law. I encourage the Commission to do so.

I appreciate the opportunity to share my views and I thank you for your time.