Oral Argument

Professor Albert Jan van den Berg

THE RUSSIAN FEDERATION

VERSUS

HULLEY ENTERPRISES LIMITED
VETERAN PETROLEUM LIMITED
YUKOS UNIVERSAL LIMITED

DISTRICT COURT OF THE HAGUE, HEARING, 9 FEBRUARY 2016

GROUNDS FOR SETTING ASIDE

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

JURISDICTION GROUND 1
- Article 45 ECT -

Violation of Russian Federation's Sovereignty as a State

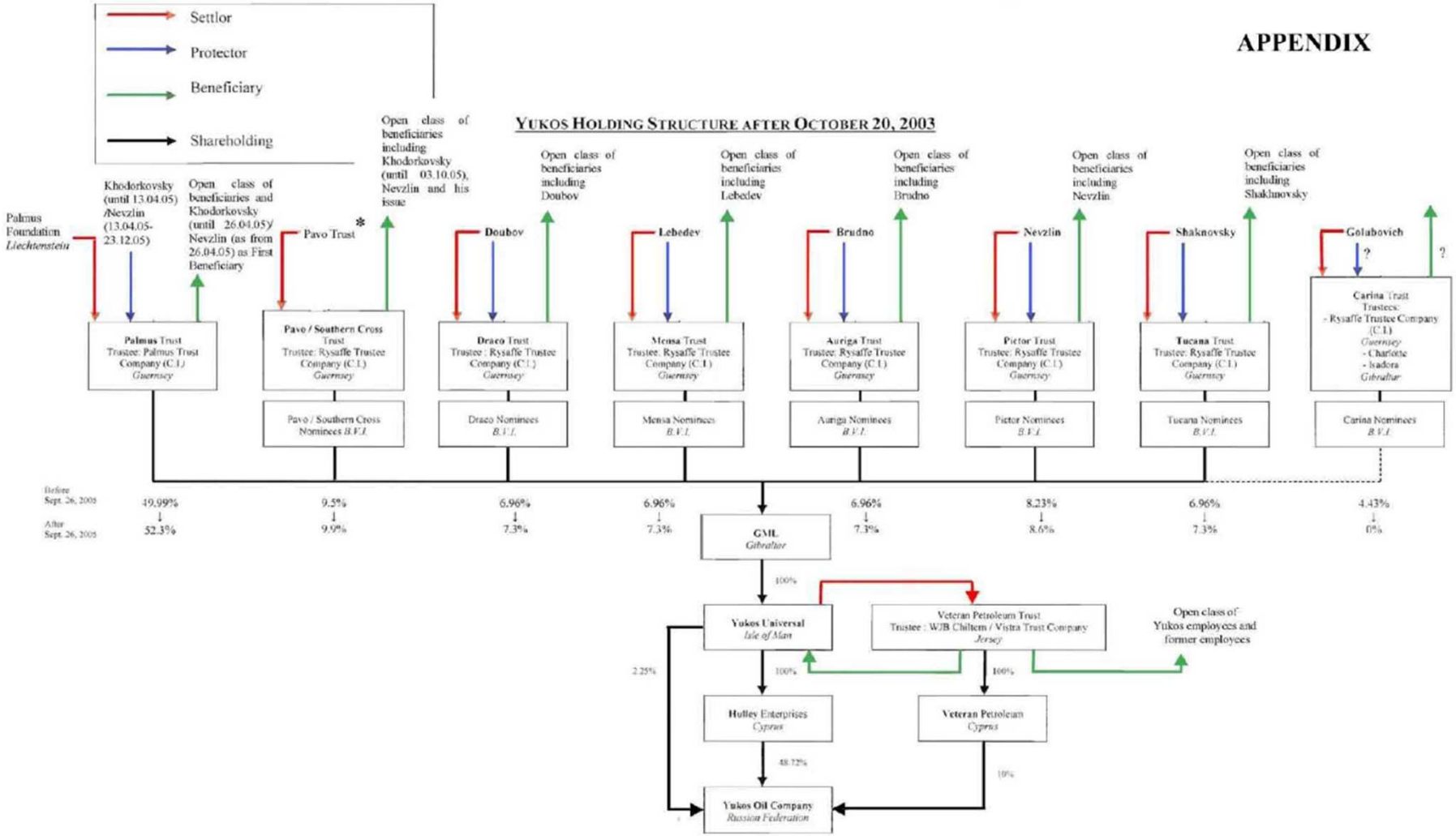
No Jurisdiction on the Basis of Article 45(1) ECT

"Each signatory agrees to apply this Treaty provisionally pending its entry into force (...), to the extent that such provisional application is not inconsistent with its constitution, laws or regulations."

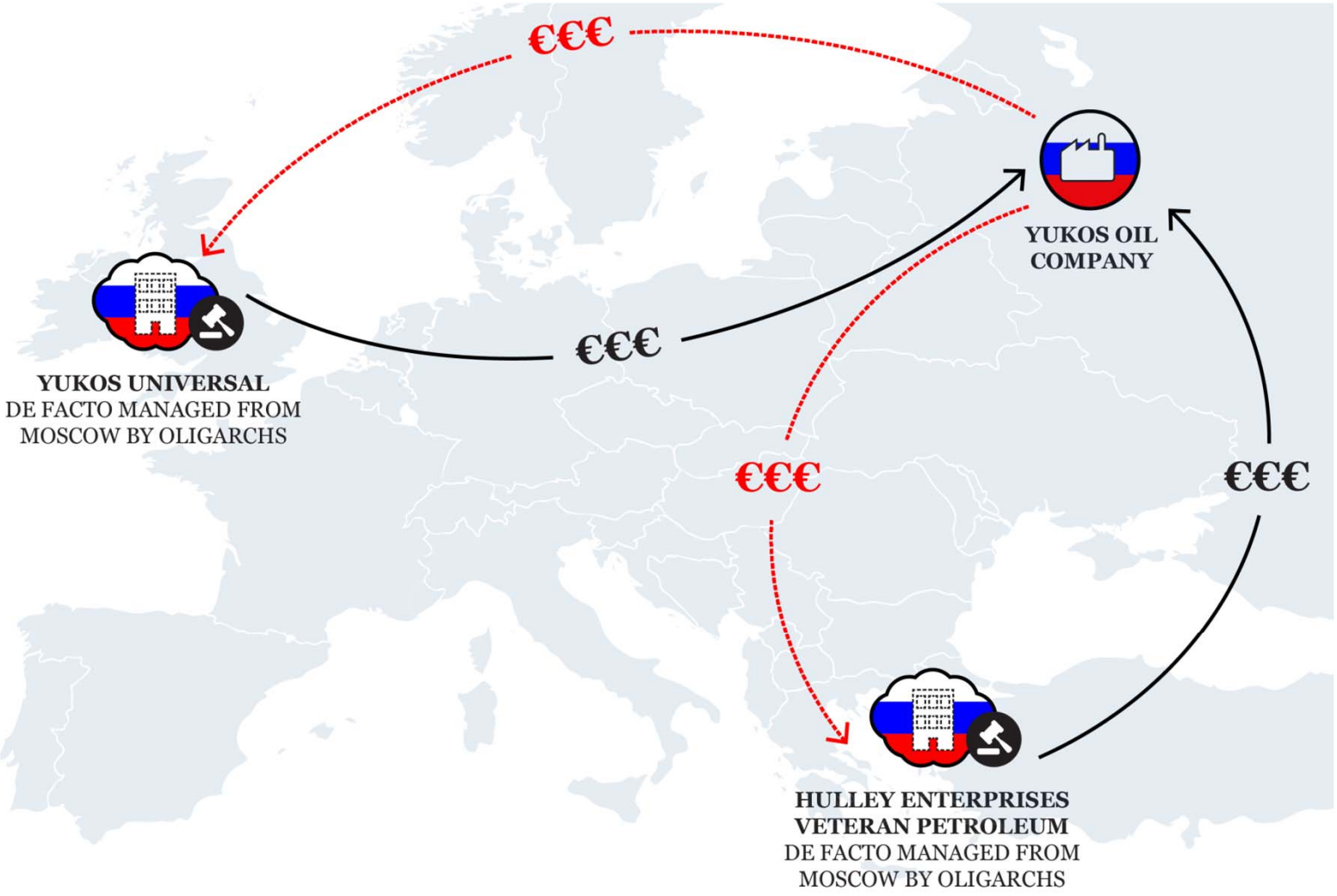
JURISDICTION GROUND 2
- Article 1(6) and (7) ECT -

Domestic Investments and *Mala Fide* Investments Are Not Protected

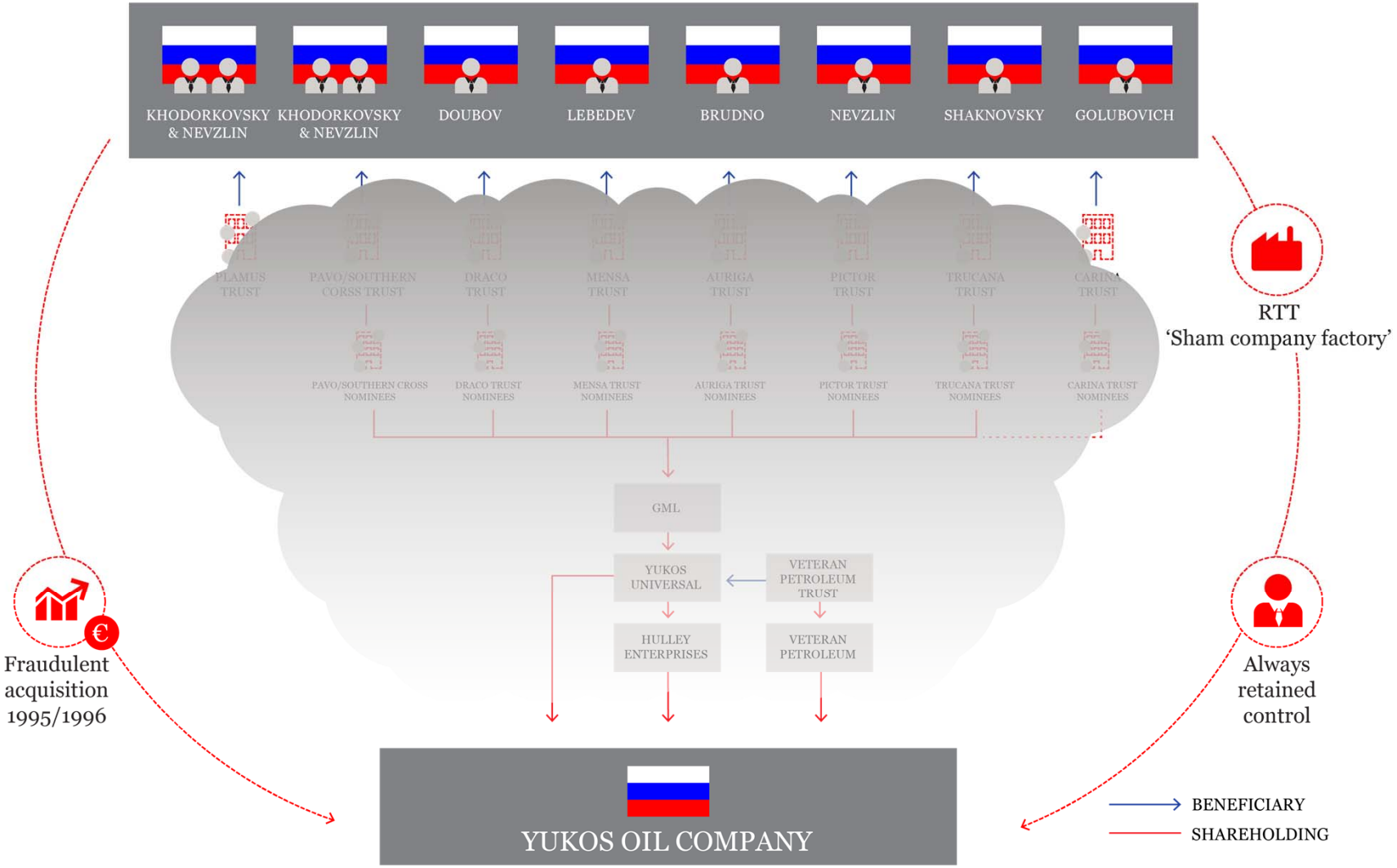
Appendix to Interim Awards ("Russian Sandwich")



The Russian circulation of funds



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



JURISDICTION GROUND 3
- Article 21(1) ECT -

Tax Dispute -
The Massive Fraud in Mordovia

No Jurisdiction on the Basis of Article 21(1) ECT

"Except as otherwise provided in this Article, nothing in this Treaty shall create rights or impose obligations with respect to Taxation Measures of the Contracting Parties. In the event of any inconsistency between this Article and any other provision of the Treaty, this Article shall prevail to the extent of the inconsistency."

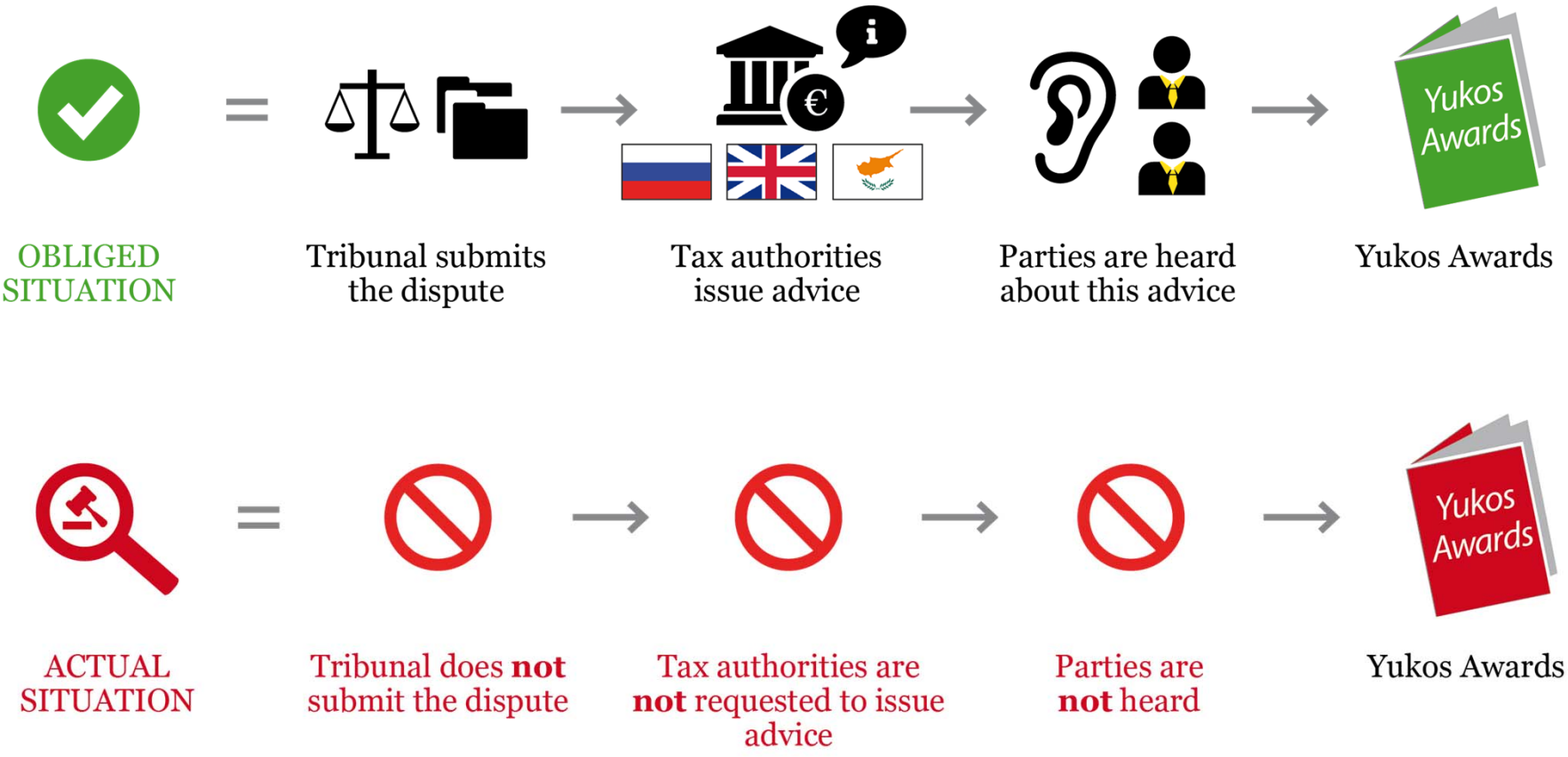
MANDATE GROUND 1
- Article 21(5)(b)(i) ECT -

The Arbitral Tribunal Has Failed to Refer the Dispute on Expropriation to the Competent Tax Authorities.

Breach of referral obligation
Article 21(5)(b)(i) ECT

"(…) bodies called upon to settle disputes (…) <u>shall</u> make a referral to the relevant Competent Tax Authorities."

Breach of Referral Obligation



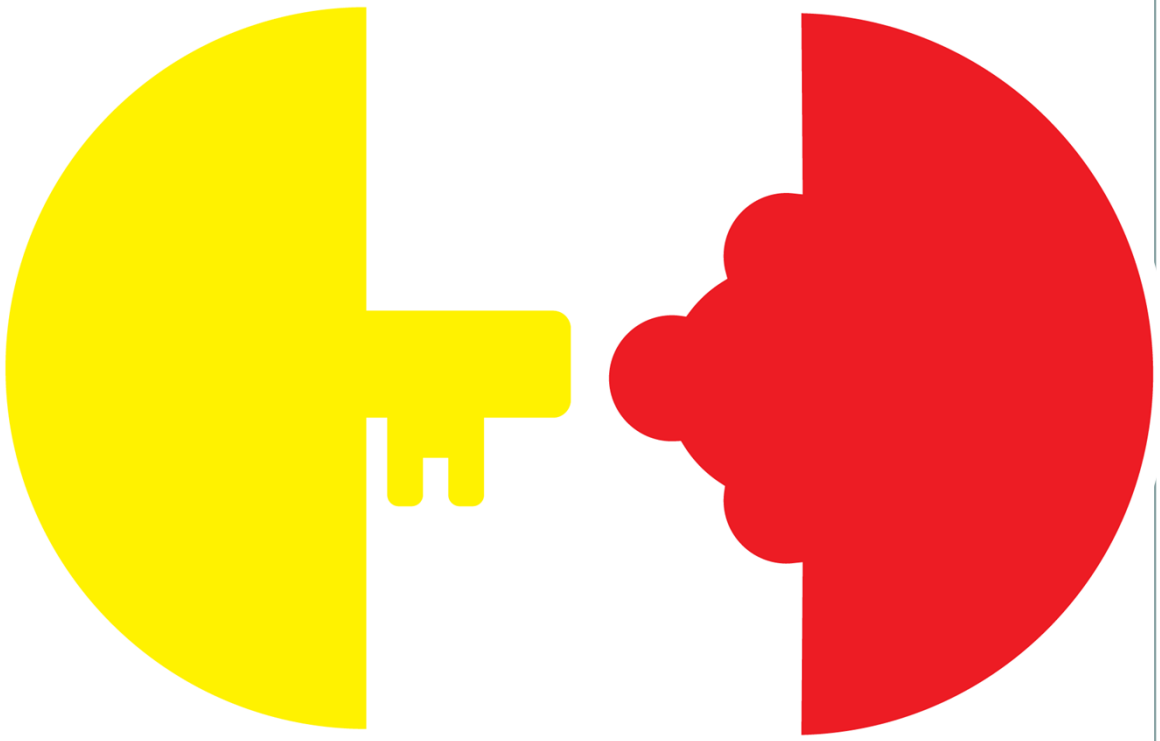
MANDATE GROUND 2

- surprise decision -
- own method -
- no due process -

The Arbitral Tribunal Has Failed to Comply with Its Mandate When Determining the Amount of Damages

The Determination of Damages by the Arbitral Tribunal

DAMAGES = **Equity value** + **Dividend**



MANDATE GROUND 3

- Assistant -

The Arbitrators Have Not Fulfilled Their Mandate Personally

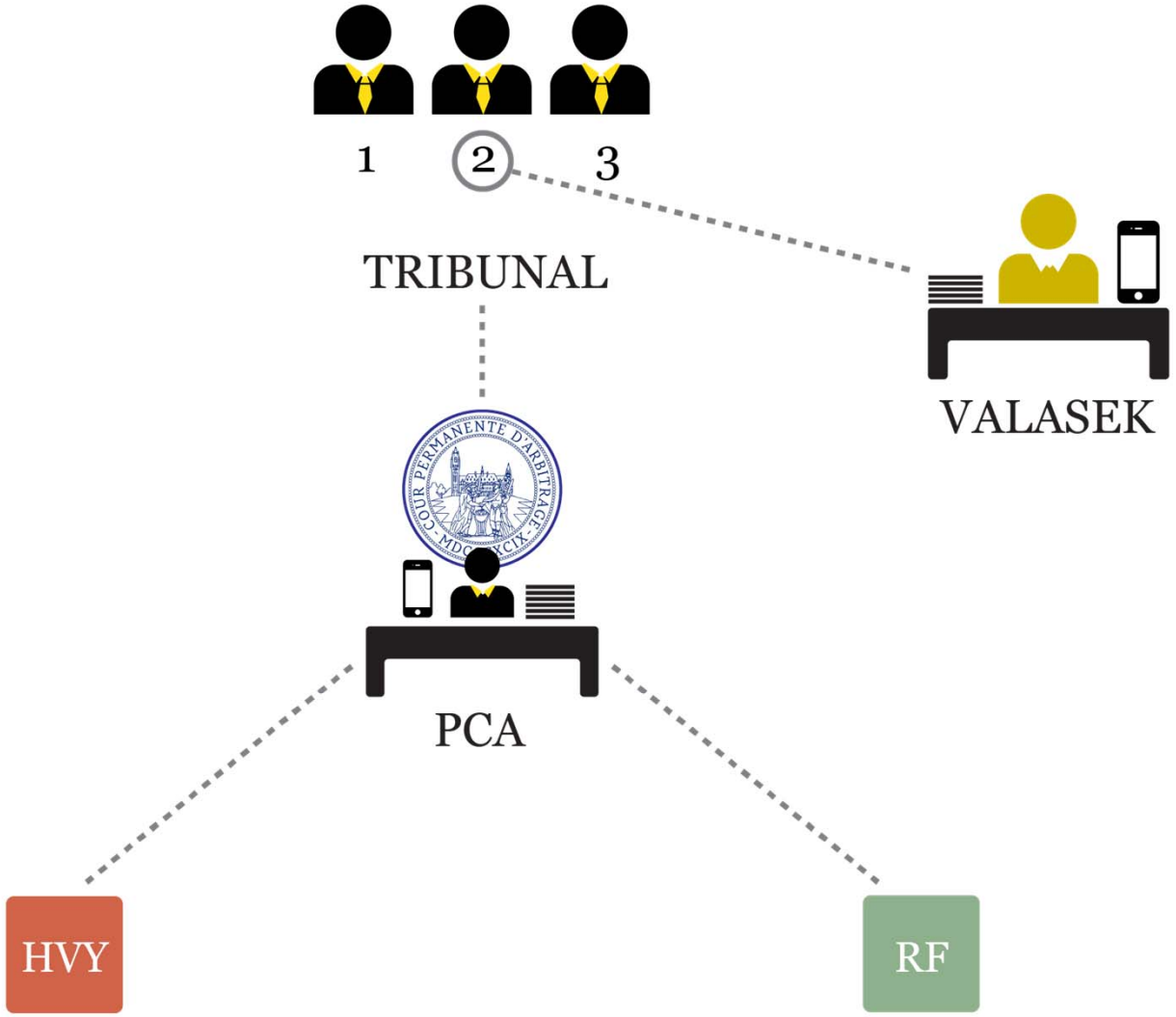
Introduction of the “Assistant”

THE CHAIRMAN: Thank you, Mr Greig. I would like to bring to the attention of the parties that I have asked one of my colleagues in my office in Montreal to assist me in the conduct of this case. Because, like all of us, I travel a lot, if at any time I am unreachable, you could always contact him. (...)

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

Procedural hearing, 31 October 2005, p 92/93

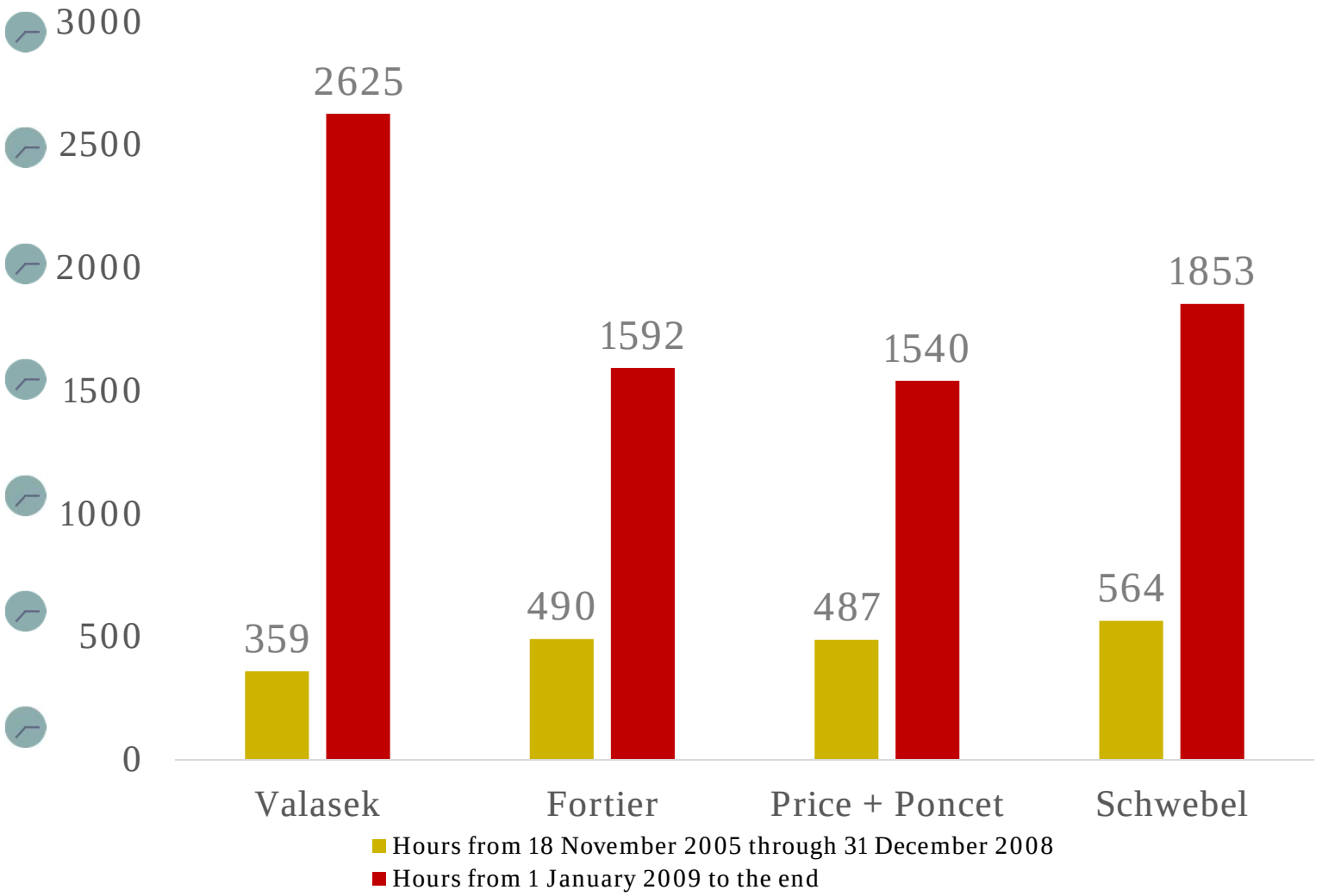
The Introduction of the "Assistant"



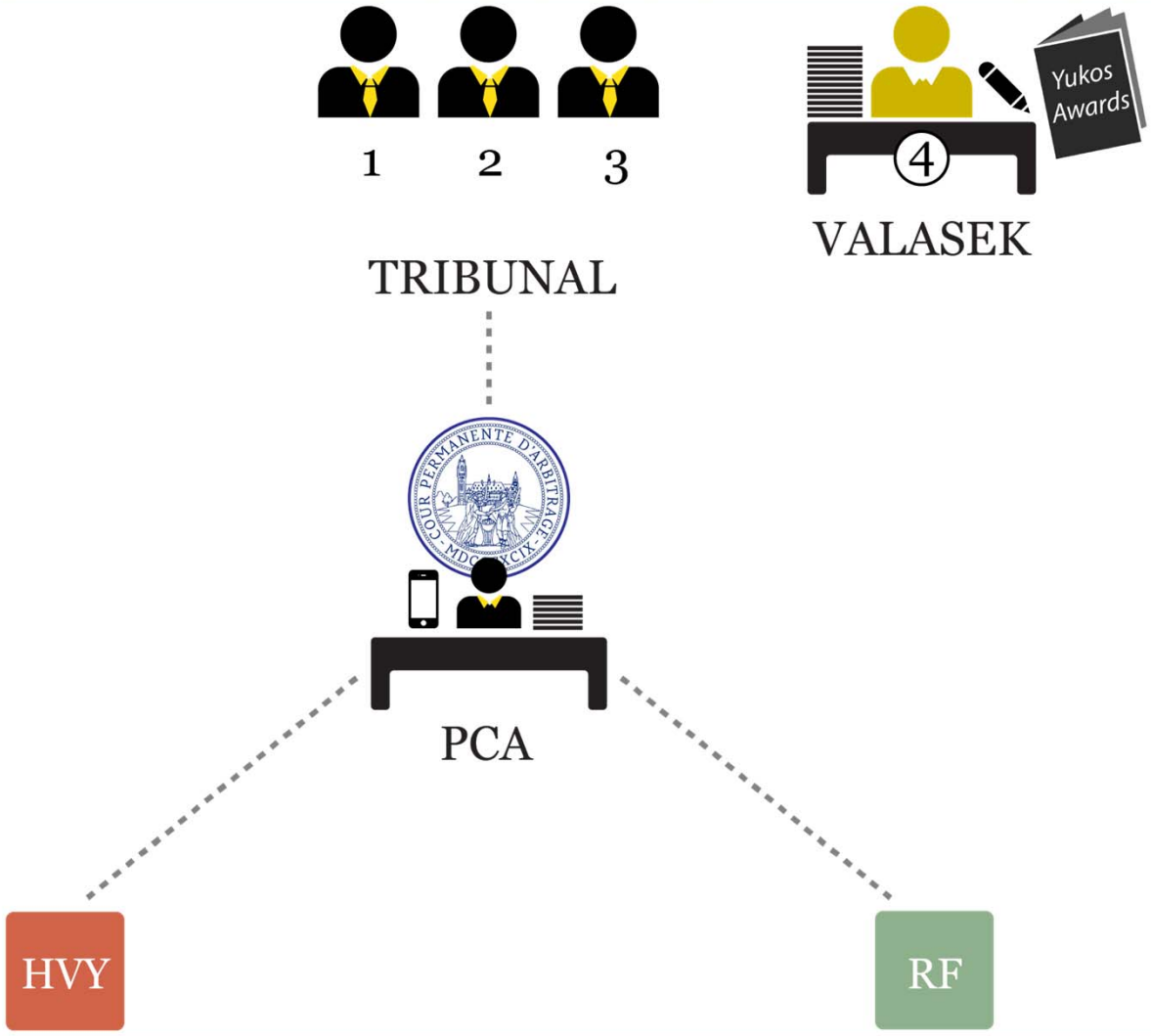
The Hours Spent by the "Assistant"

	(1) Hours as of 18-11-2005 through 31-12-2007	(2) Hours in 2008, including jurisdiction hearing November - December 2008	(3) Hours as of 18-11-2005 through 31-12-2008	(4) Hours as of 1-1-2009 through end	(5) Hours as of 18-11-2005 through end
Valasek	22	359	381	2625,2	3006,2
Fortier	215	275,5	490,5	1592,25	2082,75
Price	138,05	0	138,05	0	138,05
Poncet *(replaced Price)*	48,5	300,5	349	1540	1889
Schwebel	411,85	152,75	564,6	1852,6	2417,2

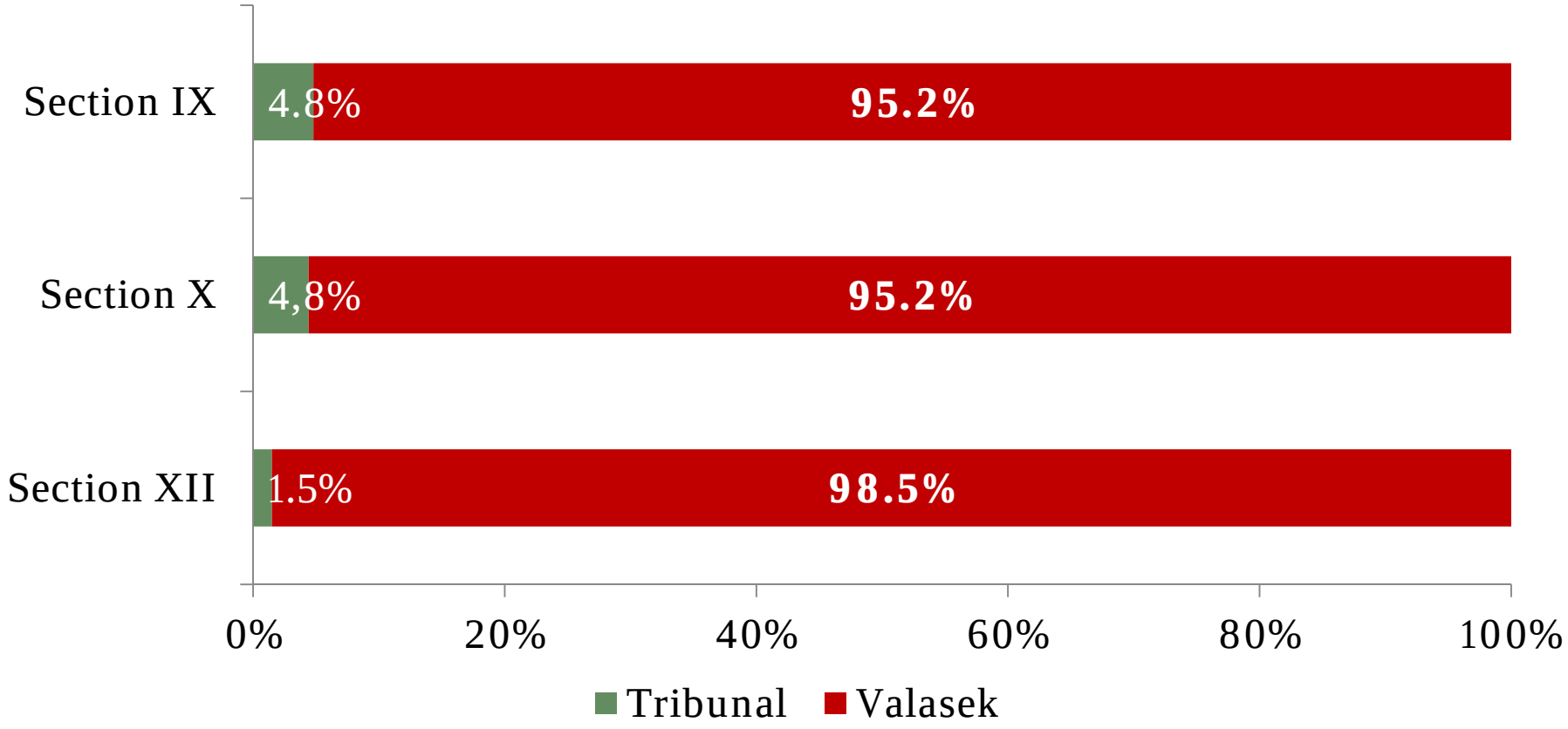
Arbitrators Have Not Fulfilled Mandate Personally



The Assistant as Fourth Arbitrator



Valasek as author



Average probability according to Dr Chaski's model that Valasek was the author of each of the subsections of the Representative Sections attributed to him

CONCLUSION