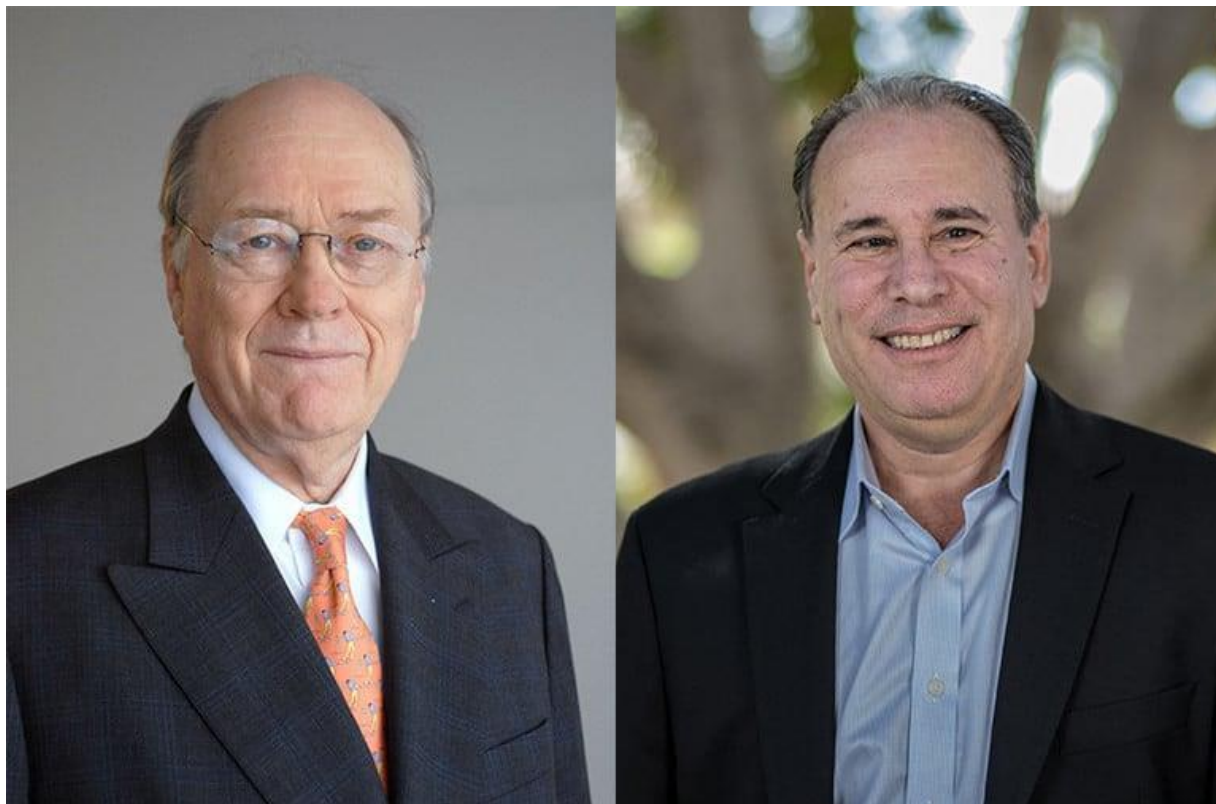


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Crimea Arbitration Awards and the Complex Path to Enforcement in U.S. Courts

Over the past few years, there have been a number of arbitration awards against Russia arising out of its annexation of Crimea. Recent rulings by the D.C. Court of Appeals provide important clarification concerning the procedural path through which enforcement actions of these awards may be pursued in U.S. courts.

By **Lawrence W. Newman & David Zaslowsky** | March 27, 2026



Russia's 2014 annexation of Crimea produced not only a geopolitical crisis but also a substantial wave of investor-state arbitration claims from Ukrainian businesses whose assets were located on the peninsula when Russian authorities assumed control. These claims have been brought under the 1998 bilateral investment treaty between the Russia Federation and Ukraine, which provides for arbitration of disputes between investors and the host state.

The treaty-based arbitrations brought by Ukrainian investors against the Russian Federation involve assets claimed to have been seized or rendered unusable after 2014. UNCTAD's (United Nations Conference on Trade and Development) [Investment Dispute Settlement Navigator](#) has identified at least ten such arbitration proceedings, all of them brought before the Permanent Court of Arbitration in the Hague.

The disputes have arisen from a common factual pattern. Following Russia's military intervention in Crimea in early 2014 and its subsequent annexation of the territory, Ukrainian businesses that operated on the peninsula alleged they had their assets seized, nationalized or otherwise placed under Russian control without compensation.

The affected investments reportedly included bank branches, gasoline stations, airport facilities, real estate developments and energy infrastructure.

One of the earliest awards in these proceedings was rendered in *Everest Estate LLC et al. v. Russian Federation*, PCA Case No. 2015-36, where the tribunal concluded that Russia had violated the Russia–Ukraine BIT by expropriating real estate and related investments owned by Ukrainian companies operating in Crimea. This was one of the first cases to establish that a BIT protected investments in territory under a state’s “de facto” control, even if that control was illegally established.

The tribunal’s award, issued on May 2, 2018, reportedly granted the claimants more than \$150 million in damages.

Arbitral tribunals have reached similar conclusions in disputes involving Ukrainian energy and infrastructure companies. In *PJSC Ukrnafta v. Russian Federation*, PCA Case No. 2015-34, a tribunal held that Russia had unlawfully taken control of gasoline stations and related assets located in Crimea and awarded damages exceeding \$40 million. In a parallel arbitration, *Stabil LLC et al. v. Russian Federation*, PCA Case No. 2015-35, the tribunal likewise concluded that Russia had breached the investment treaty and awarded compensation to the claimants in the principal amount of about \$34.5 million.

The Crimea arbitrations have also involved claims by large Ukrainian state-owned enterprises. In *Oschadbank v. Russian Federation*, PCA Case No. 2016-14, an arbitral tribunal reportedly awarded approximately \$1.1 billion to the Ukrainian state savings bank for losses arising from the takeover of its Crimean banking operations. In *Naftogaz and others v. Russian Federation*, PCA Case No. 2017-16, a Hague-seated tribunal reportedly awarded more than \$5 billion in damages in connection with the expropriation of energy assets located in Crimea.

In 2023, another arbitral tribunal awarded \$207 million to a Ukrainian electricity distributor for the uncompensated expropriation of its electricity distribution business and infrastructure in Crimea. *SC DTEK Krymenergo v. Russian Federation*, PCA Case No. 2018-41.

Russia declined to participate, at least in part, in some of the proceedings, contending that the treaty did not apply because Crimea had become part of the Russian Federation following the annexation. Arbitral tribunals have rejected that position. Beginning with the jurisdictional decision in *Everest Estate*, tribunals have concluded that the treaty protections extended to Ukrainian investments located in Crimea once Russia established effective control over the territory. The upshot has been that Russia’s exercise of governmental authority in Crimea was sufficient to trigger the protections of the investment treaty.

So far as is publicly known, Russia has paid no compensation for the expropriation of the Crimean investments that gave rise to these awards. Award creditors have therefore pursued recognition and enforcement proceedings in a number of countries. Public reporting and court records indicate that enforcement efforts have been pursued in France, the Netherlands, the United Kingdom, Switzerland and the United States, among other forums. For example, Ukrainian energy company Naftogaz has reportedly initiated enforcement proceedings in several jurisdictions following its multibillion-dollar arbitration award. Similar enforcement efforts have been reported in connection with other Crimea awards, including the *Oschadbank* arbitration.

The United States has become one of the important forums in which these enforcement efforts have been pursued. Several award creditors—including Naftogaz, Oschadbank, Stabil and DTEK—have filed actions in the U.S. District Court for the District of Columbia seeking confirmation of arbitral awards against the Russian Federation.

Proceedings of this kind necessarily implicate the Foreign Sovereign Immunities Act (FSIA), which governs the jurisdiction of U.S. courts over foreign states. Under the FSIA, foreign sovereigns are generally immune from suit unless a statutory exception applies. The exception most relevant to the Crimea awards is the arbitration exception, codified at 28 U.S.C. §1605(a)(6), which permits federal courts to exercise jurisdiction over actions

seeking confirmation of arbitral awards governed by international conventions such as the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention).

Recently, US courts have addressed the process by which determinations must be made whether, in a given case, the FSIA jurisdictional requirements have been satisfied. The court's decision in *NextEra Energy Global Holdings B.V. v. Kingdom of Spain*, 112 F.4th 1088, 1100 (D.C. Cir. 2024), articulated the D.C. Circuit courts' test: "To proceed under this clause of the FSIA's arbitration exception, we have explained, a district court must find three 'jurisdictional facts': an arbitration agreement, (2) an arbitration award and (3) a treaty potentially governing award enforcement."

The D.C. Circuit elaborated on these requirements in *Hulley Enterprises Ltd. v. Russian Federation*, 149 F.4th 682 (D.C. Cir 2025), a case arising from enforcement proceedings relating to the well-known Yukos arbitration awards. In that decision the court emphasized that the three elements of the arbitration exception refer to jurisdictional facts that must be independently examined by the district court to determine whether the FSIA permits the enforcement action to proceed. This task may not (as we discussed in our column on September 16, 2025), be "outsourced" to an arbitration tribunal to which the parties have assigned the dispute.

Against that doctrinal background, the D.C. Circuit has recently considered several cases involving attempts by Ukrainian investors to enforce Crimea-related arbitration awards against the Russian Federation. In the recently decided combined cases of *Stabil LLC v. Russian Federation* and *JSC DTEK Krymenergo v. Russian Federation*, Nos. 25-7005 and 25-7064 (D.C. Cir. Feb. 13, 2026), Russia argued, as it has elsewhere, that the FSIA arbitration exception did not protect claimant investor activity in Crimea after 2014.

The D.C. Circuit rejected those jurisdictional objections. Applying the framework articulated in *NextEra* and *Hulley*, the court explained that the FSIA arbitration exception requires a court to determine whether the three jurisdictional facts exist—arbitration agreement, an arbitral award and a treaty potentially governing enforcement of the award. Once those jurisdictional elements are established, the FSIA arbitration exception permits the enforcement action to proceed.

The court further emphasized that disputes concerning the scope or applicability of the arbitration agreement—such as whether the Russia-Ukraine BIT applied to occupied Crimea—do not relate to jurisdiction under the arbitration exception. Rather, such arguments concern the reach of the arbitration agreement and therefore concern the merits of the dispute rather than the court's jurisdiction under the FSIA arbitration exception.

Another issue raised by these cases is that the framework for the separate determination of the existence of FSIA jurisdiction by the district court places the burden of persuasion on the foreign state. In *Hulley Enterprises*, the court noted that the United States has repeatedly argued that this framework is incompatible with the jurisdictional nature of the FSIA. *Hulley Enterprises*, 149 F.4th 682, 688 n. 2. Under that argument, because the burden of establishing subject-matter jurisdiction is with the party asserting jurisdiction, there is no justification for placing the ultimate burden of persuasion on a foreign state that is presumptively immune from suit.

The court in *Next Era* made the same observation, saying, "The United States objects to Chevron's burden-shifting framework," because "the plaintiff, as the party invoking the federal court jurisdiction, must satisfy both the burden of production and persuasion." *NextEra Energy Global Holdings B.V. v. Kingdom of Spain*, 112 F.4th 1088, 1095 (D. C. Cir. 2024). However, in *Republic of Hungary v. Simon*, the Supreme Court explicitly declined to reach this issue, thereby leaving the D.C. Circuit's framework undisturbed. 604 U.S. 115, 145 S. Ct. 480, 490 n.1, 221 L.Ed.2d 1 (2025).

The recent D.C. Circuit decisions do not resolve all issues that arise in the enforcement of Crimea-related awards. Even when a federal court confirms an arbitral award against a foreign sovereign, the ability of the judgment creditor to attach or execute against sovereign property is governed by separate provisions of the FSIA, which impose significant limitations on execution against foreign-state assets. *See* 28 U.S. Code §§1609-1611.

Nevertheless, the court's recent rulings provide important clarification concerning the procedural path through which enforcement actions based on Crimea-related arbitration awards may be pursued in U.S. courts. By confirming the limited but critical jurisdictional inquiry required under the FSIA arbitration exception, the D.C. Circuit has provided guidance that will shape future enforcement litigation involving the Russian Federation.

The Crimea arbitration awards illustrate a broader reality of modern ISDS (investor-state dispute settlement): the issuance of an arbitral award is often only the beginning of a longer process. For prevailing investors, the ultimate question remains, of course, whether victories obtained in international tribunals can be translated into enforceable judgments against sovereign assets in national courts.

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