IN THE MATTER OF AN ARBITRATION UNDER THE UNITED STATES-PERU TRADE PROMOTION AGREEMENT, ENTERED INTO FORCE ON FEBRUARY 1, 2009 and THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW, AS REVISED IN 2013 (the "UNCITRAL Rules")

In the Matter of Arbitration between:

BACILIO AMORRORTU (USA),
Claimant,

and

THE REPUBLIC OF PERU,
Respondent.

VIDEOCONFERENCE: HEARING ON PRELIMINARY OBJECTIONS

Monday, August 9, 2021
06:00 (GMT-4) New York/Washington, D.C.

The hearing in the above-entitled matter convened before:

JUDGE IAN BINNIE, CC, QC, President
PROF. BERNARD HANOTIAU, Co-Arbitrator
MR. TOBY LANDAU, QC, Co-Arbitrator

APPEARANCES:

On behalf of the Claimant:

MR. FRANCISCO A. RODRIGUEZ
MS. REBECA E. MOSQUERA
MS. TRACY LEAL
MS. FRANCHESCA SUBER
Akerman LLP
Three Brickell City Centre
98 Southeast Seventh Street
Suite 1100
Miami, Florida 33131-1714
United States of America

Party Representative:

MR. BACILIO AMORRORTU

APPEARANCES: (Continued)

On behalf of the Respondent:

SRA. VANESSA RIVAS PLATA Saldarriaga
SRA. MÓNICA GUERRERO ACEVEDO
SR. CIANCARLO PERALTA MIRANDA
SR. JHANS PANIHUARA ARAGÓN
Comisión Especial Que Representa a la República del Perú en Controversias Internacionales de Inversión

SR. MIGUEL LUIS MARTÍN ALEMÁN URTEAGA
SRA. Giovanna Elizabeth GÓMEZ VALDIVIA
Ministerio de Relaciones Exteriores de la República del Perú

MR. KENNETH J. FIGUEROA
MR. ALBERTO WRAY
MR. OFILIO J. MAYORGA
MR. JOSÉ M. GARCÍA REBOLLED
MR. JUAN PABLO HUGUES
Foley Hoag LLP
1717 K Street, N.W.
Washington, D.C. 20006-5350
United States of America

ALSO PRESENT:

MR. NIKITZA CHÁVEZ ATAPOMA
MR. ROBERTO GUZMÁN OLIVER
MS. DIANA LIZÁRRAGA SÁNCHEZ
Perupetro S.A.
Mr. Petro Novikov
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PRESIDENT BINNIE: Do we have Counsel present at
this point?

MR. RODRIGUEZ: Good morning, Mr. President. On
behalf of the Claimant, yes, we are.
(Overlapping speakers.)

MR. FIGUEROA: Mr. President, Members of the
Tribunal, good morning or good afternoon, as the case may
be. On behalf of the Respondent, Republic of Perú, Counsel
is present.


Thank you for getting up early in order to participate.

I don't believe there is any housekeeping we have
to deal with at this point.

I want to express to Counsel the Tribunal's
appreciation for having worked out a mutually satisfactory
timetable for this morning.

If there are items of housekeeping, would Counsel
care to raise them now? Otherwise, perhaps you could
introduce the other members of your team, and then the
Respondent commence Opening Statement.

MR. FIGUEROA: Mr. President, if I--
(Overlapping speakers)

MR. FIGUEROA: Oh, go ahead, Francisco.

MR. RODRIGUEZ: No, go ahead.

I was just going to introduce our team and to
confirm that we don't have any housekeeping issues, but if
you do have a housekeeping issue, please go ahead.

MR. FIGUEROA: Thank you. Yes. And good morning
to you, Francisco. Hope all is well.

We do have a small issue that just came up.

As the Tribunal may know, the Parties agreed to
exchange cross binders a few minutes before the actual
cross-examination commences. Obviously, that is consistent
with what would normally have happened in a live hearing.

The issue, though, that results from that is that the
Experts themselves will not have access to that binder, to
the cross binder, as normally would happen. And so, I
wanted to raise that issue and perhaps propose a solution,
which is either the Parties can agree to exchange cross
binders a bit earlier to be able to download that binder
and get it to the Experts before examination begins, or the
Parties be permitted to briefly enter the room to provide
the Experts with electronic versions of the cross binder.

PRESIDENT BINNIE: I would think the preferable
procedure is the one you mentioned first, to provide it in
time so that the Expert has access to all the documents at
the time the cross-examination begins.

MR. FIGUEROA: I would agree, Mr. President. If
Claimant is agreeable to that, we can perhaps--well, I

would suggest--I'm looking at my team to see how long it
would take us to download something like that. I guess it
would depend on how long the binder is, but perhaps
30 minutes before cross begins?

PRESIDENT BINNIE: Well, I would think--in terms
of the Opening Statements, there's--I wouldn't think
there's a lot of downside in starting the process now, so
that if there are hitches, they won't interfere with the
timetable.

If that's acceptable to both sides?

MR. RODRIGUEZ: That's perfectly acceptable to
Claimant, Mr. President.

MR. FIGUEROA: Acceptable to us as well.

PRESIDENT BINNIE: Very good.

And, Mr. Figueroa, are there other members of
your team?

MR. FIGUEROA: Yes.

(Overlapping speakers.)

MR. FIGUEROA: Francisco, go ahead.

MR. RODRIGUEZ: Go ahead--no, I was going to
introduce my colleague, Rebeca Mosquera. She's going to be
participating in the examination of Witnesses. Also, my
colleague Tracy Leal will be assisting us, and with us this
morning is Bacilio Amorrortu, who is the Claimant in this

...
As part of this commitment, Perú has sought to achieve a necessary balance between, on the one hand, offering protections to international investors, and, on the other, protecting its sovereign interests and avoiding abuses of the system from frivolous claims.

As an example of this, Perú and the United States agreed in the TPA to two critical provisions which are the subject of these proceedings: First, both States conditioned their respective consent to arbitration to the presentation by the purported investors of a timely and valid waiver of all other claims arising from the alleged measures in the dispute; second, both States provided for mechanisms in which a tribunal, independent of whether it is vested with jurisdiction, can similarly dismiss claims that lack merit as a matter of law.

These provisions, their correct application are critical to ensure the legitimacy of this proceeding and ISDS as a whole. Frivolous claims such as the ones asserted by Mr. Amorrortu not only force a State to incur unnecessary costs and expend its limited resources, but, more significantly, induce criticisms of the investment arbitration system and threaten its proper function. And make no mistake about it: With all due respect to Mr. Amorrortu, his claims are frivolous.

Perú has demonstrated in its submissions that these claims are precisely the type of unfounded disputes that the provisions I mentioned earlier were meant to weed out of the ISDS system.

Mr. Amorrortu’s Claims rest entirely on an alleged right to Direct Negotiations that never existed as a matter of law, and thus could not constitute an interest protected by the Minimum Standard of Treatment.

As Perú has demonstrated and as will be further detailed by Counsel, Mr. Amorrortu’s own factual allegations, taken as true for purposes of Perú’s Article 10.20.4 objection, undermine his legal theory. Furthermore, his interpretation of the law and applicable regulations is simply incorrect.

Moreover, Mr. Amorrortu, in an apparent bid to continue to harass Perú with further litigations in the future, simply ignored the Perú-U.S. TPA’s clear requirement that he waive pursuit of his claims in any other fora.

Instead, and perhaps cognizant of the various jurisdictional defects of his claim, which Perú has presented before this Tribunal, Mr. Amorrortu conditioned his waiver on a reservation of right to pursue claims in other fora in the event this Tribunal determined it did not have jurisdiction.

As Perú has demonstrated, this flatly contradicts
the letter and spirit of the USPTPA’s waiver requirement and its condition to Perú’s consent to arbitration. The Tribunal need not rely solely on Perú’s views on these matters. In addition to the authority and decisions supporting Perú’s position, the Non-Disputing Party’s submission of the United States endorses all the arguments presented by Perú with regard to the interpretation of the USPTPA. In light of the agreement as to the scope of their treaty obligations, Perú respectfully considers that the Tribunal is bound to honor the genuine intent of the State Parties to the Treaty. That same clear agreement between the State Parties exposes Claimants’ contentions that Perú is somehow weaponizing previous Arbitral Decisions, or in any way acting contrary to good faith or procedural propriety, as manifestly unfounded. In light of these considerations, Perú is confident that the various safeguards that the United States and Perú implemented in the TPA will be given full effect and that Claimant will not be allowed to proceed further in this Arbitration. Perú is as confident that its trust in the Investor-State Dispute Settlement system will be justified. Reiterating our respect and appreciation to the Tribunal, the attorneys of the Republic will elaborate further on Perú’s Preliminary and Jurisdictional Objections.

And so, we see here in his Statement of Claim, Claimant asserted that: “In the absence of corruption, Amorrortu would have secured the Contract to operate Blocks III and IV. The commencement of a Direct Negotiation, in essence, guarantees the execution of a contract, particularly when the oil company has a successful track record operating blocks.” And: “Perú failed to comply with each of these requirements of Fair and Equitable Treatment when it implemented a corrupt scheme to deprive Amorrortu of his substantive right to resume his operations of Blocks III and IV through Direct Negotiations.” And as Perú has noted in its submissions, Amorrortu also tied his claim for relief to the existence of a contract, seeking damages based on Graña y Montero’s historical revenues in those blocks. So, we see his comment here; his argument and basis for damages is that Amorrortu properly commenced a Direct Negotiation Process and was deprived of the opportunity to complete the Direct Negotiation and profit from the Contracts to which he was entitled. The Contracts to which he was entitled. Now, in Claimants’ Response to Perú’s submission on preliminary objections, however, Mr. Amorrortu shifted his claim. Faced with Perú’s observation that Peruvian law quite clearly indicates that a Direct Negotiation, even if actually commenced, does not guarantee a contract, Mr. Amorrortu asserted that he “never claimed that a Direct Negotiation guarantees as a matter of law the execution of the Contracts to operate Blocks III and IV.” Mr. Amorrortu’s Claim focused, he said, instead on the allegation that “Amorrortu through Baspetrol acquired all the rights appurtenant and concomitant to the Direct Negotiation Process under Peruvian law.” According to Amorrortu, then, on this next submission, Perú violated the TPA’s requirement of the Minimum Standard of Treatment by interfering with this alleged bundle of rights, which is not—which, by the way, does not include a contract. And we’ll get to that later. Now, in his Rejoinder, Amorrortu shifted his argument yet again, now attempting to reframe these preliminary proceedings on the issue of corruption. Amorrortu argues that: “Perú’s exercise of its power to contract in furtherance of corruption to the detriment of a protected investor is a violation of the FET protections of the USPTPA, irrespective of whether the Direct Negotiation Process commenced.”

I’d like to take a moment now to discuss this latest formulation of Mr. Amorrortu’s Claim because of its shockingly extreme breadth and its blatant attempt to avoid an Article 10.20.4 dismissal by focusing on an element of...
Claimant's Claim that is intrinsically fact-driven, that of corruption. But this attempted end-run to introduce factual issues can be easily dismissed. Now, certainly, corruption is a bane of our modern society, and rightfully has been denounced by the international community and the majority of States, including Perú. The breadth and extent of corruption discovered through investigations such as Lava Jato has affected all of Latin America. And we know that corruption infects all countries, not just Perú, but also here in the United States, where I am, and in Europe as well.

The Republic stands firmly against corruption, and evidence of this are the extensive investigations being led by its Ministry of Justice and teams of competent and hard-working prosecutors. These investigations are transparent, widely reported upon in the national press, and has led to the arrest and imprisonment of two former Peruvian presidents and several other officials.

What Mr. Amorrortu is doing with this Arbitration is attempting to take advantage of Perú’s good faith and forceful efforts against corruption in general, including those in other unrelated economic sectors, in order to create a claim out of thin air. Furthermore, his position, as articulated in his final submission, would effectively open the floodgates for baseless claims whenever there is any indication or evidence of corruption in any State. Let’s take a closer look at his argument again. This is from Paragraph 18 of his Rejoinder on the submission on preliminary objections.

Amorrortu states: "The neologic premise of this dispute is that Perú violated the USPTPA’s FET obligations when it exercised its discretion to contract an oil company to service and operate Blocks III and IV to further a corrupt scheme." And here’s the important part: "This premise stands irrespective—irrespective of whether a Direct Negotiation Process was ever commenced."

Thus, Mr. Amorrortu now argues that, not only is his claim admissible, even though, as he concedes, he never had a right to a contract, but, going even further, he now argues that it is irrelevant whether he even commenced the Direct Negotiation Process or acquired any alleged rights to such a negotiation in the first place. Under this standard, if a purported investor owns an enterprise or investment in a State and evidence arises of corruption having occurred in that State, there is a breach of FET, regardless of whether the investment had any pertinent rights to begin with.

And according to this theory, corruption becomes more than a means by which an obligation might be breached.

Corruption actually then creates a right to a claim for an investor that feels that its interest, no matter how general, no matter how nebulous, no matter how subjective, were affected.

Now, no Arbitral Tribunal has held that corruption alone provides grounds to an investment arbitration claim. There is no support for this extreme position, and Claimant, unsurprisingly, cannot cite to any authority for it.

Claimant can only cite to EDF v. Romania, in which the Tribunal found that the State had violated its FET obligations because of corruption engaged in by officials in connection with the renewal of a joint venture to operate duty-free shops. But, critically, in that case, and unlike this case, the investor and his investments were already Parties to a Contract to operate those duty-free shops. At issue was the renewal of Claimants' existing contractual rights.

Thus, Amorrortu's latest gambit to expand the nature of his Claim should be disregarded. Mr. Amorrortu's Claim, to survive Perú's Article 10.20.4 objection, must be—in order for him to survive that objection, Amorrortu must be able to sustain that he had a vested right which was violated by means of alleged corruption. And we’ll get to that next.
So, first, it may not be late-flowering, in the sense that it is already in the Memorial, and he actually pleads that as part of his cause of action in Paragraph 341 of the Memorial.

MR. FIGUEROA: Thank you, Mr. President, for that question and that comment. And that is absolutely true.

I think what's critical to understand are two things with respect to that.

First, that is the only factual allegation that specifically relates to Article 10.20.4. His Memorial has an extensive number of pages discussing corruption, and every other allegation relates to other sectors. The only specific allegation regarding Blocks III and IV relate to a ledger which indicates a meeting with the Vice President--I'm sorry, with the First Lady.

That factual issue—and we'll get to this now when I discuss the standards of Article 10.20.4—has to be taken for the factual allegation that it asserts. In other words, the fact that we are admitting to be true, and that must be taken as true, is that there's a ledger that exists that notes a meeting with the First Lady about Blocks III and IV. Whether or not that constitutes corruption is a conclusion that need not be taken as fact for purposes of this preliminary objection.

Now, my point, through, and the point of Perú, is that that is irrelevant, and, really, what Mr. Amorrortu is trying to do is create a smokescreen where the Tribunal feels that they need to address these factual issues when they don't.

Even if that meeting occurred, even if we assume that meeting occurred and Graña y Montero spoke to the First Lady about Blocks III and IV, that still does not give him a right to assert this claim. Why? Because, as we'll discuss, Mr. Amorrortu never had any rights, A, to either a Direct Negotiation, or any alleged rights that accompany that, and certainly not to any contract.

PRESIDENT BINNIE: But this is why I ask you about Paragraph 341 of the Memorial, which says—and it goes to the bidding process, not to the Direct Negotiation. It says: "Perú's fabrication of a public bidding plagued with irregularities and corruption to ultimately benefit a hand-picked company, Graña y Montero, therefore violates the Fair and Equitable Treatment standards."

So, that's a distinct—allegation of a distinct cause of action, quite apart from the Direct Negotiation series of allegations.

MR. FIGUEROA: That is certainly stated there. But, again, this is part of the problem of Mr. Amorrortu's Claim and part of the reason we highlighted how it's changed over time.

Respectfully, I think we need to take the Claim as asserted by Mr. Amorrortu in his submission and in his Pleadings. He does mention issues with respect to his Claim is that there was—regarding this in the public tender, and there may have been corruption with respect to that. But his Claim, quite clearly, as it evolved, I guess, or as he clarified through his submissions, relates to the Direct Negotiation. He clarified that.

In his answer to our submission on preliminary objections, he was very emphatic that his issue was with respect to the Direct Negotiation and a—i.e., it was the interruption of the Direct Negotiation that violated FET. And so, respectfully, I think that it's his Claim; right?

Otherwise, we're reading in and creating claims that he hasn't really, truly asserted.

Mr. Amorrortu has clearly asserted that the violation of FET was the interruption of the Direct Negotiation. All right? And he says—he says, though, that the motivation behind that interruption was corruption which may have been involved, allegedly, with respect to the bidding process, and ultimately award to Graña y Montero, but, again, that talks about the means or the means by which it was—or motivation by which there was an alleged violation. His Claim as to the actual violation, stated and restated, including in his most recent submission, is that it was the interruption of the Direct Negotiation that violated FET, and that's the Claim that there is no legal basis to support.

Now, with respect to the corruption issue, again let me emphasize, whether or not there is corruption is a conclusion; right? The allegations here, the specific allegations of fact, of meetings or no meetings, but—and we have to take those as true for what they say. But, certainly, whether or not there was a meeting with the First Lady, I don't think that, under the standards of Article 10.20.4, we are to assume that there was corruption therefore, because that's a conclusion for which we are not bound to follow.

And another important issue is that the bid was not compliant with the requirements—that's something he also alleges—that the reasons why he was not awarded the contract is he was not complying with the requirements of the bid. But again, these are issues that are irrelevant to the issue before the Tribunal right now. Right.

The issue before the Tribunal right now is whether or not he has asserted a claim, as asserted, that for which an award in his favor can be issued. And his claim, as asserted, is that FET—the FET violation was caused by the interruption of the Direct Negotiation Process. So, then, the issue is: Did he have a right to
The Direct Negotiation Process? And did the Direct Negotiation Process—did that come with any rights involved with it, the so-called “bundle of rights” he asserts?

That’s his claim. And if that claim fails, his claim fails as well.

I hope I answered that question, Mr. President, but I’m happy to continue.

PRESIDENT BINNIE: Well, I just think that the—I mean I understand what your point is and why you are making the point. But as to your statement, well, he didn’t qualify under the terms of the public tender, the allegation that he makes is that the rules of the public tender were manipulated to exclude all of the prospective contractors apart from the company favored by corruption.

So, all I’m suggesting is that there are a number of threads running through his claim on corruption, and a lot of them relate to the bidding process, but you, yourself, lay great stress on—because you say, well, that opened up a new phase, and the fact he participated in it is inconsistent with his argument on the Direct Negotiations.

So, if that’s something new and he alleges there is something wrong and corrupt about the public tender, at some point we are going to have to deal with it. That’s all.

MR. FIGUEROA: Understood, Mr. President.

respect to the issues or potential defects or manipulation of the bid, again, is irrelevant. It is irrelevant to the legal—the discrete legal issue, which is: Mr. Amorrortu claimed he had a right to Direct Negotiation, yet he waived that right when he voluntarily participated in a public tender. What happens afterwards is irrelevant with respect to that legal question. And, so, I just wanted to clarify that point.

But, with the President’s permission, I will continue on with precisely—because this is relevant to this topic, which is just a recap of the standards—right?—of Article 10.20.4.

And basically, what I want to stress is that even under the scenario where we assume these facts to be true—so we assume that these meetings occur, we assume the alleged manipulation, all of that be true—Amorrortu’s claim still fails because his claim is that the interruption of Direct Negotiation was the violation of FET. And, first, the Direct Negotiation Process never commenced as a matter of law. Second, even if it had commenced, Amorrortu never acquired the so-called “bundle of rights” he claims. And, third, even if some limited rights were to have been obtained, the conceded fact that no contract was guaranteed is fatal to his claim. That’s because of the specific language of the USFIPA. And I’ll get to each of these in turn.

And I guess—and my point simply is that there are, I think, purposefully asserted, a lot of strings in these claims that have to be pulled apart carefully because I think part of this is precisely meant to confuse and create issues of fact that ultimately are irrelevant to the legal issue of whether a valid claim has been asserted.

So, the issue about the bid, that’s a factual issue. That is a factual issue that is not pertinent to this preliminary objection and does not even have to be addressed to be able to resolve the issue of whether or not Mr. Amorrortu had a right to a Direct Negotiation, whether that Direct Negotiation commenced, and whether any rights were connected to it. And that, ultimately, is his claim.

And with respect to the last point, we can get to it also later—but just let me stress it now before I forget—is the point there is not what happened. The relevant legal issue with respect to Mr. Amorrortu’s decision to participate in the bid is the fact that he participated in the bid without reserving any rights with respect to his alleged Direct Negotiation or without objecting to the fact that the public tender was being conducted while his alleged Direct Negotiation was occurring; right? Not until afterwards did he do that; right?

So what happens—the factual allegations with
Thus, in this case, whether Direct Negotiation commenced and what rights, if any, are concomitant to the Direct Negotiation Process are legal issues that may, and have been, contested, and which can properly be ruled upon by this Tribunal.

For the Tribunal's assistance--and here is the--what are the factual allegations that should be assumed and which are not.

And for the Tribunal's assistance, we have included the following timeline in our presentation, which highlights the Claimant's factual allegations deemed as true for purposes of this objection. And we see that it begins with Mr. Amorrortu expressing interest to operate Block III in July 2003, Mr. Ortigas responding that it was not available in August of that year, the publication of a temporary contract with Interol for Blocks III and IV, in which indication was made that these blocks would be subject to public tender, and so on. And we put here--I won't read all of these, but they are there for the Tribunal's reference so they see which facts we're talking about and the facts that are relevant to this application.

Now, I turn to Amorrortu's substantive claim, which ultimately rests on his allegation that he received a bundle of rights when he submitted his Proposal of Direct Negotiation on May 28, 2014. His claim fails, first and foremost, because, as a matter of law, a Direct Negotiation Process was never commenced. There are a couple of points concerning PeruPetro's contracting that should be highlighted and that are fundamental to this issue.

First, we must keep in mind that at stake in PeruPetro's contracting is the exploration and exploitation of an important natural resource. The oil blocks that are subject to contracting are often located, as is the case with Blocks III and IV, in sensitive areas with potential impact to the surrounding environment and to local and indigenous communities. Accordingly, PeruPetro must maintain the highest standards in terms of the types of companies with which it contracts and the requirements and protocols that such companies must meet to be able to enter into a contract with PeruPetro over such a significant and important resource.

Second, and in keeping with the importance of natural resources with which it deals, Peruvian law endows PeruPetro with a significant degree of discretion. Peru's Hydrocarbons Law and applicable regulations, such as the Regulation on Qualification. In accordance with the Prelude to Hydrocarbons Law, PeruPetro is empowered to enter into contracts via two processes: Through a process of selection, in other words, via public tender; or through...
Now, in any event, Amorrortu's position is that he was invited to submit a proposal for Direct Negotiation, and Claimant and his Expert argue that when Amorrortu submitted his proposal for Direct Negotiation, he commenced the Direct Negotiation Process; he triggered it, and PeruPetro was, thus, compelled to follow that process through the very end.

According to Amorrortu, this guaranteed an exclusive technical evaluation and community analysis, the so-called "bundle of rights." In support of his allegation, Amorrortu and his Expert rely heavily on procedure GFCN-008, which is an exhibit, CLA-044--yes, CLA-044. And I'll call it, for the rest of this presentation "the Procedures for Direct Negotiation" or "the Procedures."

Now, a close examination of this document, however, demonstrates that it does not support any of Amorrortu's position as a matter of law.

First, as Dr. Vizquerra has explained in his reports, the procedure for Direct Negotiation is an internal protocol created by PeruPetro's management in order to direct its officials as to what steps they should follow when it receives a Letter of Request or Expression of Interest for a Direct Negotiation. It is a checklist that follows the requirements set forth in the Hydrocarbons Law and Applicable Regulations, but it also includes other steps. And we'll see them here.

If you could zoom in. I'm going zoom in so that it's a little bit more visible.

Now, as the Tribunal can see, the procedure is a long list of tasks, of items, and it identifies the relevant office or agency within PeruPetro which was responsible for a particular task. So, we see on the left-hand side, you know, certain tasks are for the general management; certain are for the solicitation and procurement management office; another one for the exploration management. And it even provides a format for particular communications or documents where it's applicable. And you see that, for example, in Item 2, it says that if the area is not available for Direct Negotiation, a letter should be drafted saying that it's ineligible, and the Procedure itself provides a formatted letter.

Notably, if the Tribunal were to go back to that letter, they will see it is literally just a format. It is basically a letterhead, and the content of it is blank, meaning that PeruPetro can, as part of its decision to declare a Direct Negotiation ineligible, for whatever reason, has the discretion and the wherewithal to state whatever relevant facts are necessary.

Now, notably, it sets forth several preconditions and logistical steps as well, so, some not expressly set forth in the Hydrocarbon Law Regulation. And it sets them forth in a decision-tree-style matrix that instructs the officials on where to go next, depending on the results of any particular step.

Thus, for example, if we look at this checklist, and we see that upon receipt of the letter--that is--If you could move it a little over. That is Number 1.

Upon receipt of the Letter of Interest of Direct Negotiation, the first step to be taken is a determination of whether the area is available for a Direct Negotiation process. And that's to ensure that the area is not already subject to a long-term contract or otherwise designated to be contracted via public tender.

Now, this step is in keeping with the laws granting broad discretion to PeruPetro. They get to decide--PeruPetro has broad discretion to decide whether the Block will be contracted through public tender or through Direct Negotiation.

So, we see, from this extract of the Procedure, that if the area is available--you'll see under 1, Possibility 1, P1 is "yes," that takes us to 7, and Item 7 tells us--instructs the officials to start developing a plan for defining the Blocks and the composition of the Blocks. This is obviously an internal protocol to be done by PeruPetro's officials. They have to determine which area of the Blocks are going to be subject to procurement.

Now going back, if the area is not available--we move back over and you see where it says "other," meaning "no," it directs you to go to Number 2. And then in Number 2, that's where the official is instructed to draft a letter notifying the Company that his request may not proceed.

And then there are several steps--several internal steps, right, which we can see here, of review of the letter, revisions of the letter, sending it back. And
Now, it's only after those steps have been completed and any competitors are deemed ineligible that we can deem the negotiation process to have begun; that is, the meeting is finally called for a Direct Negotiation.

So, technically, it is only at this point that one can deem the negotiation process to have begun; that is, the meeting is finally called for a Direct Negotiation Process.

Alternatively, it could be argued that, at its earliest, it could be Step 22, when general management is informed that Direct Negotiation will take place. But the procedure for Direct Negotiation contains within them the negotiation process set forth in the laws and regulations, but also, various preconditions and steps. So it is worth noting also that in the procedures, the procedure itself uses distinct language when it is referring to itself as "the Procedure" and when it's referring to the actual negotiation process where it uses the words "Negotiation Process."

The procedure, thus, is not the process, and that's a fundamental error in Mr. Amorrortu's claim. For, as we saw, the negotiation process only begins, really, at Step 34, or even--if you wanted to try to make the case--that it could arguably begin, at the earliest, at Step 22. But to the extent--notably, both of those steps, however, occur only after a company has requested a Certification for Qualification that has been evaluated.

We know that because the Hydrocarbon Law and its Regulations establish very clear thresholds for the commencement of the Direct Negotiation Process. In particular, and as Dr. Vizquerra has highlighted in his Opinion, the regulation on qualification of petroleum companies--sorry, here is the diagram. I apologize. I should have forwarded that, but we'll go forward. The Regulations clearly state that an oil company must first qualify in order to initiate a negotiation of a contract. Thus, no Direct Negotiation can occur until the Certification for Qualification takes place.

And this is also reflected in the Procedures. Turn back to C-4--and we've highlighted it here for easy reading. Item 13 of the checklist indicates "evaluate company in accordance with the "Qualifications of Oil Companies' procedure." And there then are additional several steps, if the tribunal were to look at CLA-44--there are additional steps including, as I will note earlier, publication of the availability of the oil Blocks and possible consideration of competing bids in a public way designate discrete phases required under the law; they are simply diagrams meant to facilitate this long list of action items and, basically, decision-tree tasks.

Now, Mr. Amorrortu fundamentally misreads or misrepresents the procedures as constituting the Direct Negotiation Process itself. But that's not the case. And how do we know that?

They do not create rights or liabilities to third parties, independent of what is already established in the Hydrocarbon Law or Regulations. Furthermore, the Hydrocarbon Law and Regulations have supremacy over the procedures and, thus, to the extent there is any apparent conflict between the two instruments, the procedures or the action items and, basically, decision-tree tasks.

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Now as Dr. Vizquerra has indicated, and as is clear from the content of the checklist and the nature of the procedure, these are internal legal documents that do not have any regulatory effect. They do not have any regulatory effect.

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Now, it's only after those steps have been completed and any competitors are deemed ineligible that we see, finally, at Step 22 of the Procedures, "notify general management of selection of the procurement by Direct Negotiation Process." If you look at the original Spanish, there's a slight--you know, I guess the translation is slightly off. What the original Spanish says is that it's "notify general management that procurement via negotiation process will take place." That is, at Step 22 of these procedures, all these preconditions have occurred, and they have all resulted to the point where now, at this stage, general management is informed, okay, we are going to proceed with the Direct Negotiation Process.

Now, there are then a series of other steps on the checklist which aren't highlighted here, but I invite the Tribunal to look through those. And they include the development of the Baseline, which are steps 28-31, and the request that the petroleum company name their representatives to the Negotiation Committee as well as calling a first meeting. And those are at Step 34.

So, technically, it is only at this point that one can deem the negotiation process to have begun; that is, the meeting is finally called for a Direct Negotiation Process.
because Mr. Amorrortu never submitted a compliant Request for Qualification and never received a Certification of Qualification. So he simply never got to the beginning of the Direct Negotiation Process.

Now, Amorrortu cannot--

PRESIDENT BINNIE: Can I just ask a question?

MR. FIGUEROA: Yes, Mr. President.

PRESIDENT BINNIE: Because your Expert says, well, these documents, as you point out, are internal procedures, and departure might engender some kind of administrative repercussions for officials who don’t follow it. But these are not rules that affect the Applicant. They don’t give the Applicant any rights. And if they don’t give him any rights, presumably, they don’t create obligations.

So, to what extent are these procedures binding on an outsider who neither can benefit nor be prejudiced by them, according to your Expert?

MR. FIGUEROA: I’d probably prefer to let the Expert answer that question.

(Audio interference.) Interruption regarding microphone feedback

MR. FIGUEROA: Thank you.

I’ll let the Expert, I think, answer that question, with all due respect, Mr. President, and with your permission. Perhaps the Expert will be best placed to answer that.

What I do–our position is that this does not–the principal point here is that this is an internal regulation. As an internal regulation, it has some binding effect on PeruPetro. It is published so folks are aware–folks like Amorrortu, who allegedly knows the market, knows the industry–would be aware of these procedures and know their steps.

The important point, though is, that whatever these procedures say, they are superseded by the law and the regulation. The law and the regulation sets out the rules and the liabilities and obligations that are binding on third parties. These procedures are important. They may set forth rules and protocols that should be followed and that both require the Applicant to follow these protocols because they know that if they don’t follow them, their applications will be rejected, and also permits an Applicant to know what steps PeruPetro will follow in making its decisions.

But again, I reserve that question also for the Expert to be able to answer it more fully.

PRESIDENT BINNIE: Thank you.

MR. FIGUEROA: Now, Amorrortu cannot deny, and

concedes, that he never received a Certification of Qualification. However, Amorrortu points to Article 14 of the Regulation, which states that PeruPetro is obligated to grant a qualification within 10 business days of receiving the request referred to in Article 5 and Article 6 of this regulation. Amorrortu and his Legal Expert, Dr. Quiroga, argue that because PeruPetro did not reply to his Proposal for Direct Negotiation within the 10-day period set forth in this regulation, he should be deemed to have received it or is somehow entitled to this qualification. And there are several problems with this argument.

First, Mr. Amorrortu and Dr. Quiroga ignore that the qualification, the Certificate of Qualification, is a physical certification that must be issued in order for the petroleum company to register itself in the Official Register of Hydrocarbons, a precondition to be able to enter into any contract.

So, the regulation simply does not contemplate, and cannot contemplate, an implied qualification because you can’t take an implied qualification to the Official Register in order to register yourself to sign a contract; right? You need an actual certificate issued by PeruPetro that certifies you as qualified, which then you can provide to the register and be registered so you can enter into contracts. So, the regulation simply cannot provide for this type of implied qualification.

And, second, Amorrortu’s arguments completely ignore the express terms of the regulation. Article 4(2) of the regulation does not refer to a Request for Direct Negotiation, which is a completely different request under Peruvian law and under the regulations. It, rather, refers to a request in accordance with Articles 5 and 6 of—let me go back so the Tribunal can see, Articles 5 and 6 of this regulation. And that’s a specific request.

If we go to Article 5, right, which incidentally describes the requirements for qualification of experienced oil companies, right. Mr. Amorrortu claimed that Baspetrol was an experienced oil company, so Article 5 would be an applicable provision. There is also Article 6, which refers to requirements for oil companies without experience. But, again, Amorrortu claims Baspetrol was an experienced company. We’ll take that allegation as true, and so Article 5 would be applicable; right.

And as we see on the screen, Article 5 requires that the Applicant provide or make a request that a company’s—I’m sorry, it requires that an Applicant submit an Application for Qualification, so not a Request for Direct Negotiation but an Application for Qualification that is accompanied by a litany of documents. And we see here among the documents is: A copy of the Deed of


Incorporation; Articles of Incorporation of the relevant Company; a sworn declaration, no older than 90 days, that the Company is not subjected to bankruptcy or other legal impediment; a sworn declaration certifying that the Company has management level personnel and specialized technical professionals to carry out the operations; financial statements for the previous three years; and information of hydrocarbon exploration and exploitation carried out in the last three years. These are very specific documents that are required. And it makes sense to require them, given the operations that are involved and the types of oil Blocks that PeruPetro licenses to contractors and the sensitivity of the natural resources involved.

Yet, none these documents are included in the Baspetrol Proposal for Direct Negotiation. Indeed, the Baspetrol proposal nowhere even references a Request for Qualification. And as Article 1 of the Regulation on Qualification indicates, the qualification process commences with the presentation of a Request for Qualification accompanied by the documents referenced in Article 5, documents detailed in Article 5.

So, Mr. Amorrortu, by not submitting a specific Request for Qualification with the very specific documents that were required, did not even trigger the process of qualification, which is a precondition for a Direct Negotiation.

Negotiation.

Now, as the Tribunal will recall, the Baspetrol Proposal—and I invite the Tribunal to look at it again. It is Exhibit C-011—it is a mere 15-page, barebones document with little to no concrete details about Baspetrol or its financial sustainability; no information, specific information about its personnel or management or its recent projects. It is what can best be described as a preliminary sketch of a plan with unsubstantiated representations and no explanation as to its feasibility.

More significantly, as a matter of law, it did not contain the very specific documents and the very specific Requests for Qualification required under the applicable regulation.

Notably, neither Mr. Amorrortu nor Dr. Quiroga, his Legal Expert, even addressed this fundamental and fatal flaw in Amorrortu's claim. They completely ignore it. But having failed to present a Request for Qualification with the proper documentation, the qualification process never commenced. And the 10-day period for the Admission of Certification that's referenced by Amorrortu was never triggered. Thus, PeruPetro's lack of response both is reasonable and logical, for it did not have anything to respond to.

And its lack of response, thus, it has no legal impact. Moreover, as Dr. Vizquerra notes in his response, the notion of implied consent or positive administrative silence is inapplicable here. Even if, assuming arguendo administrative silence were to apply, Dr. Vizquerra says that in light of the importance of the natural resources involved, the implication would be the opposite. It would be a negative one. That is, the silence of PeruPetro would mean that, in fact, they denied qualification for Amorrortu or for Baspetrol.

Finally, it should be noted that Article 14 of the regulation clearly sets out the consequences of a failure to respond within the 10-day period. It's limited to an administrative penalty to the official. It does not provide for the implied omission of a Certificate of Qualification to the Applicant—Applicant, which is consistent with Dr. Vizquerra's analysis. In light of the sensitive nature of the resources under Contract or under possible procurement, there can be no implied qualifications.

And, given the importance of the natural resources involved, if there were to be implied qualifications, that would have to be expressly stated, and it is not. Here, the penalties are very limited to responsibility for the specific official involved in not issuing the qualification.
procedures for Direct Negotiations. So, let’s deal with the community analysis first. This appears in Steps 9 and 10 of the checklist in the procedures for Direct Negotiation. We’re going to highlight those for the Tribunal now.

So, if we look at 9, note that the instruction to PeruPetro officials is that they implement other procedures. So, we see here “order implementation of Procedure GFRC-001, citizen participation.” There’s another reference to “if applicable, Procedure GFRC-011, execution of prior consultation process.”

Now, Dr. Vizquerra has clarified in his Report that the latter is an error and should refer to GFRC-010, which is the applicable procedure. But these have been submitted as Exhibits RLA-44 and RLA-48.

Now, what could be easily discerned is that these procedures have extensive steps and checklists of their own. As Dr. Vizquerra has clarified, these are activities under PeruPetro’s sole responsibility involving informing and receiving input from the local communities in the area of influence of the oil blocks, who may be impacted by the hydrocarbon activity to be conducted there. This does not involve in any way the petroleum company. So, there are no rights there.

Moreover, as can be seen in the checklist and decision tree diagram, the instruction to implement these procedures implies that the task indicated in those procedures will simply commence with an eye to completing those later in the future. They are to implement them at this stage, but each relevant procedure has various steps.

And I invite the Tribunal to look at those procedures. They are in Spanish, but one can see the number of steps that are involved.

And so, if we look at Page 12 of the procedures for Direct Negotiation, let me see here—this is a diagram highlighting the steps below. We see there the same Step, 9 and 10, ordering the implementation of these new procedures for citizen participation. And you see the arrow takes us to—if you go to the right, please. The rightward arrows.

That’s the other implementation of procedure for Direct Negotiation, citizen participation, right, and prior citizen consultation. That arrow takes us to Letter F; right. If we follow the instructions to F, which is on Page 14—that’s going to be on the right side, if we zoom there—we see that F takes us to receiving in-person event Reports and/or consultation Minutes. In other words, so the notion is back on Step 9 and 10, we were commencing a procedure; right, to of local community involvement and participation and discussion, ending here at Step 32.

And in the interim, if we look around at the stage, we see the other events occurring at this time is development of the baseline. Which occurs after a company has received a certification of qualification, by—submitted a request for a certification of qualification, and after Step 22; right, which we highlighted earlier, which is when the general management of PeruPetro is be notified that there will be a Direct Negotiation Process.

So, this alleged right to community involvement, first of all, only involves PeruPetro. It is PeruPetro who is involved with the community to ensure that they are aware that there will be a Project there, and the point of that process is to get to Reports that will be submitted in time after the Direct Negotiation Process has begun; right?, the formal Direct Negotiation Process, so there is no right to the Company here. This is a purely logistical step that PeruPetro must do in order to complete contracting later on.

Now, Mr. Amorrortu’s alleged right to exclusivity upon which Amorrortu places more emphasis is likewise a falsehood. As Peru observed in its Reply Submission, according to the procedures for Direct Negotiation, once a company has submitted a compliant request for qualification, and that is eligible for a certification of qualification, the very next step instructs PeruPetro to post the Block’s availability to the web for 30 calendar days, thus, inviting other companies to show interest.

And if there is interest, as there likely would have been for Blocks III and IV—we know several people bid, several companies bid for that—that PeruPetro must implement a public tender, and the so-called “Direct Negotiation Procedure” is terminated.

So, contrary to Amorrortu’s assertion had he—assuming for the sake of argument—assuming that the sake of argument that Amorrortu somehow impliedly received qualification, the very next step, according to the procedures, is that the availability of the blocks would be made public and other competitors would be invited to submit competing bids. Thus, there is no right to exclusivity.

And notably, neither Mr. Amorrortu nor Dr. Quiroga contest this legal reality. Thus, neither of the rights identified by Amorrortu as being valuable and guaranteed exist as a matter of law. As a result, Mr. Amorrortu’s claim fails, even assuming that a Direct Negotiation Process had actually begun.

And another independent reason why Mr. Amorrortu’s claim fails, even assuming arguing a Direct Negotiation Process had begun, is that he waived any...
and all rights, as we indicated, when he decided to participate in the public tender.

Now, Mr. Amorrortu and Dr. Quiroga attempt to turn this point on its head by suggesting that, by not expressly waiving any rights, he somehow retained them, notwithstanding his active conduct in submitting a bid.

But neither Mr. Amorrortu nor Dr. Quiroga provide any legal support for this proposition. As Dr. Visquerra states, a public tender is inherently inconsistent with a Direct Negotiation, right? PeruPetro has a discretion to do one or the other, not both. And thus, in fact, in the procedure as we see, if there is any competition, the Direct Negotiation ends and a public tender takes place.

So, given that inconsistency, the onus was on Mr. Amorrortu to object or reserve his rights, and he did neither. Instead, he opted to participate in the public tender.

Now, again, this is the relevant point for this particular argument; right? So, it's what his allegations with respect to alleged manipulations in that public tender are irrelevant to the fact that by participating in it, on Step 1, he waived his interest or his rights to a Direct Negotiation. And again, his focus of his Claim as he has stated is that it's the interruption of the Direct Negotiation that caused the violation of FET. So, that's critically important.

Another critical important point here is that this is one and a subsidiary argument of why Mr. Amorrortu's Claim fails. The Tribunal need not even address this point, as I indicated, because Mr. Amorrortu's Claim fails from the very first analysis, which is that the Direct Negotiation Process never began, and the analysis I just indicated, that, even if it had begun, there was no such bundle of rights of exclusivity.

So, again, the Tribunal's analysis can end here, and Claimant has failed to assert any rights protected in a Direct Negotiation Process and, thus, his claims fail as a matter of law. But even assuming for the sake of argument that the Direct Negotiation Process had commenced and that some limited rights to some level of negotiation or review had vested, Mr. Amorrortu's Claim would still fail, and this is because, as Claimant and his Legal Expert have conceded, a Direct Negotiation Process does not guarantee that PeruPetro would actually sign a Contract.

As PeruPetro has noted—"I'm sorry, as Peru has noted, this is fatal to Amorrortu's Claim because of the specific requirement of the USPTPA.

Article 10.16 of the USPTPA established that the elements for a recognizable claim under the Treaty, and specifically a Claimant must demonstrate a breach of a standard under Section A, and the Claimant must show that he has incurred loss or damage by reason of, or arising from that breach. Notably, Article 10.26 also specifically requires the Tribunal to award monetary damages, including in lieu of restitution.

Thus, the assertion of a legal viable claim includes the assertion of a legally viable Damages Claim as an essential component. This is also consistent with International law, and we cited to several cases, which Tribunals have held that a claim cannot be asserted unless there is a claim, a viable claim for damages.

ANBITRATOR LANDAU: Can I ask a question at that point?

MR. FIGUEREA: Sure. Of course.

ANBITRATOR LANDAU: Where does that leave an application for declaratory relief? There is a claim in this case for declaratory relief, Paragraph 409 of the Claimant's Memorial, which is a declaration that Peru has breached Article 10.5 of the USPTPA. That would be analytically distinct from a claim for damages.

Is it your position that you cannot apply for declaratory relief under the Treaty?

MR. FIGUEREA: Yes. Correct. That would be our position. The Treaty fairly clearly—certain treaties certainly permit that. The language is pretty broad. This Treaty very specifically requires a demonstration of loss in order to assert a claim. And so, I think the State Parties very clearly intended for claims here, the claims to be asserted to be claims for damages and not mere declaratory requests.

ANBITRATOR LANDAU: Thank you.

MR. FIGUEREA: So, as noted earlier, Amorrortu's claim for damages is premised on his alleged entitlement to the licensing Contracts over Blocks III and IV. I cite them here, again.

Mr. Amorrortu claims no other form of prejudice or loss of value. Amorrortu and his Expert admit, even if a Direct Negotiation Process had commenced, he was never guaranteed a contract. Without a legal right to those licensing contracts, Mr. Amorrortu cannot support his claim, loss, or damages, and his Claim under the USPTPA fails.

Now, Amorrortu attempts vainly to save his claim by converting what is a legal element into a factual one or attempting to, but this is inappropriate. Note that what is at issue is not the specific valuation of the alleged loss of revenue or the alleged value of the Contracts.

That would be a factual issue to be determined in a damages phase in this Arbitration. Rather, what's at issue here is the very legal premise of the damages
claimed. The only loss he is asserting is one that can only occur if he had a right to the Contracts, and he doesn't. And here, again, is where we turn to the discretion that Peruvian law grants PeruPetro.

As I mentioned earlier, PeruPetro maintains that discretion, including not to execute a contract, through the Direct Negotiation Process. Amorrortu, once again, tries desperately to salvage his Claim by trying to characterize this issue as a factual one. He claims that, as a factual matter, no Direct Negotiation Process has ever--has ever not concluded with the Contract, and, thus, he was essentially guaranteed as a factual matter a contract for that reason. But this argument is misguided.

First, it bears emphasizing as PeruPetro pointed out in its submissions that Mr. Amorrortu's assertion that most, if not all, cases of Direct Negotiation result in a contract is based on only two, only two Direct Negotiations over the course of the last 30 years. That's all he can cite to. This is hardly a reliable sample size that supports such a conclusory allegation, and, thus, may not be taken as true.

But secondly and, more importantly, the number of successful Direct Negotiations in the past does not and cannot eliminate the legal right and discretion of PeruPetro to enter or not enter into contracts. As long as PeruPetro's discretion to deny a contract existed as a matter of law, Amorrortu cannot claim an entitlement to the Contract or damages derived therefrom, and therefore, his Claim fails.

Thus, to conclude this part of Perú's argument, on Article 10.20.4 objection, Mr. Amorrortu's claim fails on various levels.

First, Claimant never met the preconditions to commence a Direct Negotiation Process, and, thus, cannot claim any rights related to such a process.

Second, even if a Direct Negotiation Process was properly commenced with the presentation of the Baspetrol Proposal, the rights claimed by Mr. Amorrortu, particularly with respect to exclusivity, do not exist. And, finally, because Claimant was never entitled to a contract, essential component necessary for his Claim under the USPTPA, the legal basis for damages, as claimed by Mr. Amorrortu fails. Mr. Amorrortu's Claim is, thus, demonstrably frivolous, and should be dismissed with prejudice by this Tribunal.

Now, I'll just take a couple more minutes to address the waiver issue, which Perú believes is very clear.

As the Tribunal is aware, the USPTPA very clearly establishes as a condition to Perú's consent to arbitration the submission of a valid and timely waiver, and the waiver must be unconditional in order to be effective, and the language of the Treaty specifically says that it must accompany the Notice of Arbitration, and Claimant himself must sign it. It must be accompanied, and that's very important. I'll skip through here just to reserve some time for later.

Now, the submission of the United States, the Non-Disputing Party submission, supports Perú's position, and it clearly establishes that the State Parties to the USPTPA clearly understand the waiver to be a critical component of consent and, therefore, the failure to provide such a valid waiver means there is no consent, and that cannot be cured. That certainly cannot be cured at this stage.

The U.S. Non-Disputing Party submission actually states that a valid waiver must be submitted before the Constitution of the Tribunal. Perú, in its submissions, indicated that the Treaty suggests that maybe there's some language where the valid waiver could be submitted by the Statement of Claim, but, either way, we're past that point, and under either interpretation, Mr. Amorrortu cannot cure his waiver. His waiver remains defective. Perú never consented to this proceeding and therefore, respectfully, there is no jurisdiction.

Quickly, with respect to the Claimant's written waiver of any right, this is the USPTPA. The important point about having a separate document, which Mr. Amorrortu tries to evade, is the fact that the separate document gives the waiver weight. It gives it a specific juridical weight in future proceedings, where the State, if the investor violates his waiver, the State has a document that could be easily presented to the relevant fora and indicate that there has been a waiver.

Including it in the brief signed by attorneys, as Mr. Amorrortu did, would complicate issues. It may involve having to dispute whether or not that was the investor's intent. He may disavow his attorneys' statements, and he may even change attorneys. So, the requirement for an individual waiver signed by the Claimant is critical, and, not only that, it is consistent with arbitral practice. CAFTA, which has very similar language, in every single case involving CAFTA, the Claimant submitted a separate waiver signed by the investor.

I've covered these points.

And again, this is--the position by the U.S. in this proceeding is the same as that submitted in Renco I, that very clearly decided that the issue of the waiver is a consensual issue for which the Tribunal cannot permit to cure later on.
I want to quickly address, before I conclude, Claimants’ arguments with respect to the warning language.

And I apologize. So, with respect to the warning language, the main issue there is that—and this relates to the cure.

There.

Mr. Amorortu tries to justify his conditional waiver by indicating that the Treaty did not provide a specific warning as it does with the fork-in-the-road provision. But this argument is, again, misguided and wrong. It is inappropriate, to be frank. The waiver very clearly states what must—the waiver provision very clearly states what must be provided, and it very clearly states the risk that an investor takes. Yes, there is a risk.

If an investor believes that he may have jurisdictional issues, he can proceed with an investment arbitration but knowing that the risk is, if he loses, he can no longer bring that Claim elsewhere.

But consent to arbitration is a special jurisdiction provided by the State, and, therefore, is not broad like other jurisdiction. The investor may very well bring—is free to bring Claims elsewhere if he wants to, if he has any doubts with respect to jurisdiction. The language is very clear. It does not need a warning. And again, this further supports the need for a separate deficient waiver, is it not the case that Perú consented to the Tribunal making an order against the Claimant for this Third-party Funding information, that Perú asked the Tribunal to make? And how can you ask a nonexistent Tribunal to make an order, which then imposes an obligation on the other side?

So, what I’m getting at is a sequence. I mean, it’s one thing to look at it as the moment the arbitration is commenced in your Reply. It’s another going down the road, was it, consent, not given, and affirmed at the time, so that the challenge—I think the argument is the challenge is estopped because it never materialized beyond a threat in the initial response to the Notice of Arbitration.

MR. FIGUEROA: Yes. Yes, thank you, Mr. President. I think the issue—first, it is very critical—very important to note that no Tribunal has held that a State is estopped from asserting timely-placed jurisdictional objections merely because it requested certain measures from the Tribunal before the deadline to assert those jurisdictional objections. And here, the deadline is clearly stated under the UNCITRAL Rules as a time—as the date to file its Counter-Memorial.

Perú actually did that earlier with its answer. It reserved its rights, and once it made those reservation

document signed by the Claimant because it makes that weight that much more apparent. And, finally, with respect to the estoppel argument, the U.S. in its Non-Disputing Party submission very clearly indicated, and that it is an agreement with Perú, that the mere—a request for preliminary measures by the Tribunal does not waive jurisdictional objections that are reserved and that are raised on a timely basis. Perú reserved its jurisdictional objections at the very beginning with its Answer, and clearly reserved an objection on a ratione voluntatis basis. And, thus, there can be no estoppel.

And with that, I conclude my argument, and I’m happy to answer any questions.

PRESIDENT BINNIE: Can I just jump in with a question on your last point because the—Perú made the reservation in the Reply to the Notice of Arbitration, it wasn’t a challenge. It was reserving the right to bring a challenge, and then the September 25 Application for Third-party funding did not make—did not renew the reservation, it is silent as to whether there was a reservation or not.

But when you, regardless of what the United States or Perú say as to the intention, and assuming that there is a problem at the outset with the allegedly

of rights, it is Perú’s position that it need not consistently renew those rights every time it has an application to the Tribunal. Keep in mind that the rules permit the State to assert jurisdictional objections on a timely basis up until the Counter-Memorial.

And so, between the Constitution of the Tribunal and the Counter-Memorial, several issues may occur that require the State to go to the Tribunal. And by doing so, it doesn’t waive its jurisdictional objections. If that were the case, States’ hands would be tied. States could never present applications to the Tribunal. Or, if they did, they always had to make sure that they waived their rights, even though the waiver here occurred in the very first submission that Perú made.

That waiver was very—‘I’m sorry, the reservation of rights. The reservation of rights occurred at the very First Submission which Perú made. So, once it has reserved its right, that it will, that it is reserving its rights to submit jurisdictional objections, for which it has under the Rules the right to assert at the Counter-Memorial, it need not consistently reserve its rights because it already has done so.

And there are various different issues for which a State may need to request a Tribunal to act, and the Tribunal has competence up until it has decided that it has
no competence to decide those issues. And there are various procedural issues that might occur. There may be a preliminary measure that has to be issued, something very important that has to be protected lest a right be violated on an irreparable basis. A State cannot have its hands tied to be able to do that, if it’s reserved its right for a jurisdictional objection and submits it on a timely basis.

In addition, here, Perú requested a disclosure that is consistent with international practice, is consistent with the trends in international arbitration, which is disclosure for third-party funders, and the reason we need that disclosure is so that Perú, its attorneys and the arbitrators are able to make a determination about whether or not there’s a conflict. And that’s why the Tribunal issued an order requiring that that information be provided.

But, by doing so, Claimant asserts that somehow it was disadvantaged, or Perú was benefited, and, yet, it can’t really identify how it did so. It seems to suggest as if it would not have disclosed its Third-party Funder if it thought Perú was going to object jurisdictionally, even though it knew that it would because Perú reserved its rights earlier on.

And that position is, quite frankly, absurd, nor is it right or true that Perú obtained any particular benefit from the disclosure of the Third-party Funder. It’s a benefit that was for the entire process. It was a benefit to the Tribunal to be able to know that it is legitimately in place and that there is no risk of conflicts.

So, even the elements of estoppel are not met if it applied, assuming it applied because there was no--

PRESIDENT BINNIE: Is one more contextual than the--your response suggests? For example, on the Third-party--I’m quite sure there are steps that have to be taken, as, indeed, there were in Renco before the objection was determined. But in terms of those steps, they appear to be related to the performance on its role by the Renco Tribunal; whereas, here the conflict issue is irrelevant if the arbitration is dead in the water.

In other words, it accomplishes nothing other than to say to the Tribunal: "You are constituted. You have the authority to make these orders. You made the Order," and now you say, "well, the Order that you made was made by a Tribunal that didn’t exist," according to Renco.

The Arbitration Agreement never comes into existence because there was never any consent, because there was no waiver.

It just seems to me there’s some complexities in

here that have to be addressed.

MR. FIGUEROA: With all due respect, Mr. President, I believe--I truly believe that the Decision the Tribunal was asked to make in this case was also relevant with respect to its role as a Tribunal, as the controller of the legitimacy of this proceeding. The fact that there was a Third-party Funder, that clearly there were indications of that. And that the State, I think quite rightly and legitimately, requested that there be disclosure. That disclosure allows for clarity as to the lack of conflict and legitimacy of this Tribunal.

And you’re quite correct, Mr. President, if there is no consent, you know, the Tribunal, in theory, does not exist and the--and maybe the Arbitral Agreement doesn’t either, but, with respect, while it is in place, the Tribunal has an obligation to maintain the legitimacy of the proceeding. And requesting a third-party funding disclosure is absolutely within it.

There’s another wrinkle here to add to the wrinkles you identify, Mr. President, but there’s another one here in that the Treaty specifically--and this relates to the 10.20.4 objection and to Perú’s request that the Tribunal issue a decision as it is respectfully mandated to do under the Treaty, irrespective of its Decision on Jurisdiction. And that also creates kind of a quandary or

an apparent conflict, except that the Treaty resolves it for us. The Treaty specifically authorizes the Tribunal to make a decision on 10.20.4 submissions, irrespective of a jurisdictional objection--irrespective of a jurisdictional decision, and, not only that, it specifically mandates. It says, it "shall decide" a 10.20.4 objection.

So, this is another example of the Tribunal being vested with specific authority to make Decisions that will have impact on the Parties, even though it may eventually decide that it had no jurisdiction.

And so, I think that’s a separate issue. I think the issue, I think any request to the Tribunal that has to do with the legitimacy of the proceedings, including a third-party request, is also a valid request to be made of the Tribunal that is not impacted by a jurisdictional objection.

PRESIDENT BINNIE: Okay. Thank you very much.

Would either of my colleagues have any questions?

ARBITRATOR LANDAU: I have no questions at this point. No.

PRESIDENT BINNIE: Mr. Nanotiau?

MR. NANOTIAU: None here.

PRESIDENT BINNIE: Okay. Thank you very much. Counsel. I think now we go straight in to the Claimant’s Opening Statement. Is that the order of
the corruption extended to the Direct Negotiation process, 
but also extended to the public bidding and tainted the 
entire process. We made clear that the proposal submitted 
by Bacilio Amorrortu was treated by Perú, abandoned, 
shelved away, denied in an untimely manner, but, more 
importantly, in a corrupt, arbitrary, and capricious 
manner. And by definition, under every Decision that we 
have cited in our Briefs, that constitutes a breach of the 
Fair and Equitable Treatment obligations of Perú.

Now, in their Reply and in today’s argument, Perú 
makes clear that what it’s arguing, it is not that we do 
not state a claim under the Treaty. That, they must admit. 
They cannot dispute our factual allegations. They cannot 
dispute that corruption violates Fair and Equitable 
Treatment. What Perú is really saying is that Amorrortu is 
not entitled to the damages he seeks because he did not 
commence a process of Direct Negotiation.

The problem with that is that we allege in our 
Statement of Claim that in the absence of corruption, in 
the absence of corruption, in a good faith process, as 
Amorrortu was entitled, he would have obtained the 
Contract. And that, Members of the Tribunal, is a 
fact-intensive inquiry. It is a fact-intensive inquiry 
that is going to provide to the Tribunal evidence showing 
the experience, the successful experience, of Amorrortu in 
the Talara Basin. It is a fact-intensive inquiry that is 
going to show to the Tribunal that Amorrortu’s proposal far 
surpasses the rigged proposal accepted by Graña y Montero, 
and it is a fact-intensive inquiry that requires this 
Tribunal to delve into the facts, and that it cannot be the 
subject of a preliminary objection. Amorrortu has the 
procedural right to present evidence to this Tribunal that, 
in the absence of corruption, he would have obtained the 
Contract.

Now, my esteemed colleague on the other side 
argues that we are opening a Pandora box because then 
anybody who is tangentially impacted by corruption can file 
a claim. Not so. Mr. Amorrortu is not anybody. 
Mr. Amorrortu is somebody who managed, operated, invested 
successfully in the Talara Basin. Mr. Amorrortu is 
somebody who submitted a proposal for Direct Negotiation at 
the request of PeruPetro. Mr. Amorrortu is somebody who 
submitted a request at the public bidding process, and all 
those three processes were rigged with corruption, and 
that’s what gives rise to this claim. And that’s why 
Objection 1 should be rejected: Because it is not a proper 
objection. 

Now, Objection 4 is equally frivolous. This case 
is not Renco. This case is not Renco because, in Renco, 
Perú did not do—even though Perú did a number of
an investment under the Treaty.

Now, Baspetrol was not any company. As we allege in the Statement of Claim, Baspetrol assembled a team, Mr. Amorrortu assembled a team, of top-line, top-tier industry Experts, ready to do what? To negotiate with PeruPetro the right, the Contract that it had lost, the Contract to operate, to service, to optimize Block III. And he did so, and his Statement of Claim could not be clearer on this particular point. With this team, with the resources that he invested in this enterprise, he had a plan. He had a plan to go back to PeruPetro. He had a plan to--he knew that the Contract with InterOil was about to expire. He had a plan to get in line and prepare a competitive and attractive offer to PeruPetro. And that's exactly what he did.

As we allege in the Statement of Claim, he formed Baspetrol, and in 2013 and 2014 he had several communications with PeruPetro and its president, Luis Ortizas. Specifically, on May 22, 2014—and this is not only his testimony, which obviously we all assume to be true for purposes of these proceedings, but the documents confirm that this meeting took place and that Mr. Ortizas instructed Amorrortu to go back to Houston, where he lived at the time, and present a proposal for Direct Negotiations within seven days. Very specific instructions.

Amorrortu explained to Mr. Ortigas his plans for Block III, but Mr. Ortigas even told him: "Include Block IV, and I need that proposal within seven days." And that's exactly what Mr. Amorrortu did. He prepared the proposal and submitted that proposal in writing on May 28.

When you look at the documents regarding--relating to the submission, you see that the documents explicitly reference the conversation that he had with Mr. Ortigas.

Now, Mr. Ortigas did not tell Mr. Amorrortu that the lot was not available for Direct Negotiation. Quite the contrary: Mr. Ortigas told Mr. Amorrortu, "Submit--go back to Houston, prepare a proposal along the terms we have discussed, and present that to us within seven days." And that's exactly what Mr. Amorrortu did.

Now, what happened to this proposal? What Mr. Amorrortu did not know was that the entire process was already rigged. The entire process was already subject to a pervasive Corruption Scheme where the First Lady and the President of Perú would grant to Graña y Montero, and had committed to grant to Graña y Montero, some of the most lucrative Government contracts during the Humala Administration.

Now, this is not an allegation, even though those allegations have to be assumed to be true. Graña y Montero
has admitted that this was the case. Graña y Montero has admitted in Perú that it, in fact, paid bribes to the Humala and Nadine Heredia, the First Lady, to get lucrative Government contracts under the appearance of transparent public bidding processes. That was the modus operandi that Graña y Montero was displaying, and that is exactly what we allege in our Statement of Claim.

Now, this Direct Negotiation Process that Mr. Amorrortu commenced—and we are going to talk more about the process in a second—was aborted to give the Concession to Graña y Montero by the instructions of the First Lady. It is clear, and we allege, that the President of Perú, together with his advisors, concocted a plan to award Government contracts to Graña y Montero through a rigged public bidding process. And this is key because, at the end of the day, our Claim is not limited to the Direct Negotiation Process.

The Direct Negotiation Process, as we will explain in a second and we have explained in our filings, is critical to and is an important component to our theory of damages because, at the end of day, we will have to prove as a factual matter that in the absence of corruption, Mr. Amorrortu, Baspetrol, would have obtained the Contract. But it has nothing to do with the Claim.

The Claim involves not only Direct Negotiation, but it was shelved away. It was not timely responded. It was ignored. Why? Because Graña y Montero was the chosen winner. Graña y Montero had paid the bribe. The two other companies interested in participating in the international bidding process were disqualified. It was not only Baspetrol. And that is a corruption. And to make it even worse, Graña y Montero did not even comply with its own qualification requirements of the public bidding process. In our Statement of Claim, not only we allege that the Direct Negotiation Process was tainted with corruption, not only we allege that the public bidding process was tainted with corruption, but we also allege that the requirements of the public bidding process were designed to favor Graña y Montero. And if you really delve into those requirements and Graña y Montero’s purported compliance with those requirements, you will see that they didn’t comply.

Why? Because the entire process—and this is a point that Perú seems to miss in its objections. The entire process, from its inception to its end, was corrupt, was arbitrary, was capricious, and therefore was in violation of the Fair and Equitable Treatment obligations of Perú.

Indeed, indeed, the qualification requirements were amended—and we allege that in the Statement of
But even if—-even if PeruPetro had any issue with Amorrortu, if Amorrortu—now, granted, and let’s keep in mind, Amorrortu had the experience that no other company had. Amorrortu had a plan to benefit the community of the Talara Basin and the approval of the community of Talara that no other proposal had. Amorrortu had a participation for Perú in the profits that no other proposal had.

But even if—even if PeruPetro had any issue with Amorrortu’s proposal, they had the obligation to ask in writing, communicate that, and then—and even if they had made the decision, then that triggers a process under which Mr. Amorrortu could appeal that decision, and yet that was not done.

Why? Because his proposal was shelved away in a corrupt, arbitrary, and capricious manner.

Now, Amorrortu’s treaty claims are very clear. Perú does not dispute that corruption is an international evil, that it is contrary to good morals and to international public policy. This was said in an ICC Award in 1963, and I think we all agree with that. Perú does not dispute that corruption is an international evil, that it is contrary to good morals and to international public policy. This was said in an ICC Award in 1963, and I think we all agree with that. Perú does not dispute that corruption is an international evil, that it is contrary to good morals and to international public policy. This was said in an ICC Award in 1963, and I think we all agree with that. Perú does not dispute that corruption is an international evil, that it is contrary to good morals and to international public policy. This was said in an ICC Award in 1963, and I think we all agree with that. Perú does not dispute that corruption is an international evil, that it is contrary to good morals and to international public policy.
This is so important, Members of the Tribunal, because, at the end, this is the essence of Mr. Amorrortu’s Claim: A State that uses its discretion to contract in furtherance of a Corruption Scheme violates the Fair and Equitable Treatment obligations. And a corrupt, arbitrary, and capricious violation of domestic law, of internal procedures, to the prejudice of protected investors, which Amorrortu is, is a violation of the Fair and Equitable Treatment. That—these two principles, Peru does not dispute, and these two principles require, require the denial of Objection 1.

ARBITRATOR LANDAU: Can I interrupt, can I ask a question, just for clarification?

MR. RODRIGUEZ: Absolutely.

ARBITRATOR LANDAU: If, just for the sake of argument, one were to assume that there was a problem with the Direct Negotiations portion of your Claim, how would you articulate the rest of the Claim? Would everything that you are saying still stand? It would then be a breach of FET focused upon the public tender?

MR. RODRIGUEZ: That is correct except that our Claim on the Direct Negotiation Process stands, and I’ll tell you why: Because there is a dispute as to how advanced the Direct Negotiation Process was.

Their Expert said that the Direct Negotiation Process was at its infancy. Our Expert says that because of the administrative silence and because the process had started, it was quite advanced. And that is relevant for us to establish that, in the absence of corruption, we would have gotten the Contract.

However, there is no dispute—and this is very important, Mr. Landau. There is no dispute that the internal procedure for the Direct Negotiation Process was commenced. And at the end of the day, even if there’s a problem, even if you were to agree with Perú’s Expert that Mr. Amorrortu’s Direct Negotiation proposal was defective, even if you were to agree with Perú’s Expert that the Direct Negotiation Process was not commenced, Mr. Amorrortu is still able and still has the right to present evidence to the Tribunal that, based on Mr. Ortigas’ invitation, in the absence of corruption, he would have been able to complete that Direct Negotiation Process. So, that’s with respect to the Direct Negotiation aspect of the case.

But you are absolutely right that the Direct Negotiation Process is separate and apart from the public bidding process, because that is—(I mean, these are two parts of the entire process that was tainted. So, our Claim still prevails. The question is how much more difficult it would be for us to prove that, in the absence of corruption, Mr. Amorrortu would have been entitled to the Contract.

And, obviously, if you agree with our Expert that the negotiations were advanced, that’s a much easier case for us. If you don’t, then we still go through the Direct Negotiation Process because there was an invitation, and that’s undisputed, and there was a proposal, even if you assume, for the sake of argument, that it was defective. And the question is: How likely was Peru to continue that Direct Negotiation Process there? But the Claim does not disappear.

And this is a very important point. I’m going to talk about Objection 1 in a second, and I’m going to show you some slides, but I want to emphasize this point in light of the some of the statements made by my colleague in the Opening Statement.

You’re going to hear from two Experts on Peruvian law, and those two Experts on Peruvian law are going to present you different versions of interpretation or conclusions or opinions as to how advanced the Direct Negotiation Process was. Peru’s Expert will say that the Direct Negotiation Process was not actually started, that what Mr. Amorrortu commenced was just the actual internal procedure of PeruPetro. Mr. Amorrortu’s Expert, Dr. Quiroga, will say no, the process was quite advanced.

At the end of the day, that dispute is very interesting with respect to the ability of Mr. Amorrortu to prove that, in the absence of corruption, he would have been entitled to a contract. Obviously, the more advanced this process is, the easier it is for Mr. Amorrortu to satisfy his burden. But at the end of the day, that academic—that discussion, that dispute, has nothing to do with the viability of the Claim under the Treaty, because that viability of a claim under the Treaty is based on a corrupt, arbitrary, and capricious process that encompassed the Direct Negotiation Process. Irrespective of how infant that process was or how advanced that process was, it encompassed public bidding process and goes all the way to the granting of the Contracts to Graña y Montero.

So, at the end of day, I look forward to the participation of these Experts, but that is a question of Damages. It’s not a question of viability of the Claim.

Now, going back to Objection 1—if we can go back to the PowerPoint, please—there’s another problem with Objection 1. Objection 1, as it will be very obvious to the Tribunal and as we have indicated in our Brief, it is rife with factual disputes. If you look at the objections that Peru has submitted, one of the seminal points that they make is that there was never a formal determination by PeruPetro to commence Direct Negotiations as required by law.
The problem with this is that it disputes, it assumes, it ignores, that Mr. Ortigas, the President of PeruPetro, told Amorrortu, told Mr. Amorrortu, that he had to file his Direct Negotiation proposal within seven days.

It ignores, it ignores, that the public bidding process, which in itself was corrupt, was not actually commenced until July 2014, more than 30 days after the initial proposal was presented. It ignores that that process was—the requirements from that process were not enacted until July or later. So, that's a factual dispute.

Again, Blocks were never available--Blocks III and IV were never available for Direct Negotiation as required by law. That’s a factual dispute. Not so, say our Witnesses. Not so, because Ortigas told us to file this Direct Negotiation proposal. Not so, because the international—public bidding process was not commenced until July, and Mr. Amorrortu presented this proposal in May. Not so, because there’s no evidence—there’s no evidence indicating that these Blocks III and IV were subjected to either a public bidding process that had commenced or a Contract for the period at issue prior to the submission of Mr. Amorrortu's Direct Negotiation proposal. But--

(Overlapping speakers.)

MR. RODRIGUEZ: Yes, Mr. President.

This Tribunal has to look at Ortigas’ statement. The certification is subsumed in the President Ortigas' statement. On the contrary, it is quite consistent, because here's what Ortigas tells Amorrortu, Mr. Amorrortu. President Ortigas tells Amorrortu: "You have to send me your direct proposal within seven days."

Why are those seven days' proposal? "Go back to Houston and present that proposal within seven days." It is because the following month, the requirements for this public bidding process are going to be decided and approved.

In May of 2008 there was no requirement for the public bidding process that had been designed or approved. In May of 2008 there is no decision that it's going to be public bidding or it's going to be, in fact, Direct Negotiation. And that is a critical element. And that's why we maintain that here, we have a factual dispute.

This Tribunal has to look at Ortigas' statement. This Tribunal has to look at the chronology. What is it that PeruPetro did in Perú? What is the statement made in PeruPetro—by PeruPetro in Perú in April of 2014? What is it that Ortigas told Mr. Amorrortu? How do these two statements can be reconciled? What happened in June/July 2014 when the international—public bidding requirements were announced, and what happened when the public bidding was actually commenced?

And, of course, driving all these four events we have a seminal meeting between the executives of Graña y Montero and First Lady Nadine Heredia. When? In April 2014, Mr. President, which confirms and is consistent with our allegations that all of this is part of a Corruption Scheme. And that's why this is a very important factual dispute.

With respect to the certification, that certification—and I think my colleague admitted this in his presentation. The certification is subsumed in the PeruPetro procedure. And this process was aborted before Mr. Amorrortu was able to complete the entire process. This Tribunal cannot award PeruPetro, Perú, for corrupting the process at the early stages. Whether the corruption impacted the early stages of the process, whether the corruption impacted the middle stages of process, whether the corruption impacted the final stages of the process, the reality is that the process was corrupt, the process was arbitrary, and the process was capricious, and that constitutes a breach of the Treaty.
Now, here's another confusion. Beyond the right to Direct Negotiation, Mr. Amorrortu never had a right to a contract. This is a distortion of his Claim. He presented a proposal. He presented a proposal, not only in the Direct Negotiation, but in the public bidding process, and it's a factual analysis to determine this. He has a right to present evidence to this Tribunal that, in the absence of corruption, he would have been able to obtain this Contract.

Now, in our Statement of Claim, we do say that the Direct Negotiation Process, in essence--and that's the determinative word. You are never going to see any allegation where we say that a Direct Negotiation Process guarantees as a matter of law the right to a contract. That's not our position.

What our position is: That, in essence--and it has been consistent throughout--that, in essence, it guarantees it. Why? Because you look at the history of PeruPetro and you will see that a company with the type of experience that Amorrortu had managing and operating these Blocks, a company with the type of community support that Amorrortu had, a company with the type of team that Amorrortu had assembled has never, has never, started the process of Direct Negotiation and not received and in that process--with the culmination of a contract.

manner, and that is enough to establish a claim, irrespective of their reasonable expectations.

And that is clear with respect to the case of Lemire v. Ukraine, Bosca v. Lithuania, EDF v. Romania. Each of these Decisions confirm that when you have a country that enacts an arbitrary and capricious process and frustrates an investment based on an arbitrary and capricious violation of its own domestic law, that is a violation of Fair and Equitable Treatment. And, indeed, in EDF v. Romania, you have a very similar situation as ours because EDF v. Romania involved corruption as well.

And it's particularly true in this case because the Treaty itself defines an investor not only as somebody who makes an investment, but who makes attempts through concrete action to make an investment. So, certainly somebody who has made an attempt to make an investment is protected; then Mr. Amorrortu is protected as well.

Now, let me talk about Objection 4 because Objection 4 is also quite frivolous. This case, Members of Tribunal, is not Renco, and it is not Renco because there are two important distinguishing factors from Renco.

Number one, number one here in this particular case, Peru would not have itself the existence of this Tribunal without making any reservation--without making any objection to the existence of a Tribunal. And it is very important to distinguish jurisdictional objections from consent objections because a consent objections go to the existence of the Tribunal, whereas most jurisdictional objections go to the viability of the claim or the ability of a claim to be covered by the Treaty itself. Here, Peru consented to the existence of this Tribunal by asking relief.

But there's another important aspect in the distinction between this case and Renco. And it is the following: Mr. Amorrortu, in this particular case gave the Tribunal the power to control the date when he filed his Statement of Claim and the date when he accepted Peru's invitation or offer to arbitrate. And that power includes, by definition, the power to allow Mr. Amorrortu to supplement or amend its Statement of Claim.

This a very nuanced issue, and the United States in its submission completely misses this issue, but I'll explain it in a second. We can bring up the PowerPoint. Danny, please.

See, under Article 17 of the Treaty, Article 10.17 is very clear. It says that the acceptance of Peru's offer to arbitrate is perfected upon the submission of the case to arbitration. The filing of a Notice of Intent to Arbitrate does not, does not constitute an acceptance of the offer to arbitrate. The filing of the
Notice of Arbitration by itself does not constitute an acceptance.

What does is the submission—the Constitution of the Tribunal itself does not constitute an acceptance, by definition. What constitutes an acceptance, the key moment, the key moment in time when Amorrortu, Mr. Amorrortu accepts Perú's offer to arbitrate is when the Claim is submitted to arbitration.

Article 10.17 is clear on that particular point.

Now, Article 10.16.4 makes a very clear distinction between an arbitration that is commenced under the ICSID Rules of Arbitration and the UNCITRAL Rules of Arbitration.

And you have in front of you Article 10.16.4, and you see that a claim shall be deemed submitted to arbitration under this section when the Claimant’s Notice of or Request for Arbitration, Notice of Arbitration, A, referred to in Paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary General; or, two, it talks about the same thing but under the Additional Facility.

In other words, when you have a process under ICSID, the moment in time in which the investor accepts—Perú, Perú’s offer of arbitration—is when the Notice of Arbitration is filed. Not so, under the UNCITRAL Rules. Not so, under the UNCITRAL Rules. And 4(c) makes that clear, and it’s in front of you right here.

When you file an action under the UNCITRAL Rules, the process of arbitration is submitted, and that offer of arbitration is accepted when the Notice of Arbitration referred to in Article 3 of the Rules, together with the Statement of Claim referred to in Article 18 of the UNCITRAL Arbitration Rules are received by the Respondent.

In other words, Members of the Tribunal, contrary, contrary to what Perú argues here—and this is a very important distinction with Renco—here, the Tribunal was not improperly constituted. Here, the Treaty itself contemplates a procedure in which the Tribunal is impaneled prior to the acceptance of the offer to arbitrate, in which the Tribunal is given control to decide the time. And of course, here, Mr. Amorrortu filed its Statement of Claim on September 11, 2020, pursuant to this Tribunal’s order.

And this Tribunal’s ability to set the time when Mr. Amorrortu filed his Statement of Claim and, therefore, accepts Perú’s offer to arbitrate, by definition also includes the ability of the Tribunal to accept, and under the UNCITRAL Rules, allow Mr. Amorrortu the ability to amend its Statement of Claim, or withdraw the Statement of Claim, which purportedly does not comply with the acceptance, with the offer required by Perú, and Amorrortu

remains the master of his acceptance and, therefore, he can withdraw that Statement of Claim or supplement it as he has done here.

This is not a case, like Renco, where the Tribunal asks itself, well, what ability, what authority does the Tribunal have—well, does the Renco Tribunal have to allow an amendment to the Notice of Arbitration? Because in Renco, unlike here, the Tribunal was constituted after the purportedly defective acceptance to arbitrate.

Now, what happened in Renco? Did the Renco Tribunal miss this nuance, as the U.S. did? No. The problem with Renco, and you see it in Paragraph 5 of the Renco Decision. The problem and the difference in Renco is that, in Renco, the investor took and made the decision to file the Notice of Arbitration together on the same day that it filed the Statement of Claim.

Why did it do that? Maybe there are several strategic reasons, maybe concerns with the statute of limitations, and, therefore, when the Tribunal was constituted, when the Tribunal in Renco was impaneled, at that point there was already a defective acceptance in place, and the Tribunal—the Renco investor divested the Tribunal of the ability to determine the time and control the filing of the Statement of Claim. Not so, here. Not so, here.
its acceptance, gave control to this Tribunal to determine the date when that was going to happen, and that power, obviously, includes the power to allow the amendment.

ARBITRATOR LANDAU:  Sorry.  Sorry to interrupt, again.  But just can you just, then, explain what is the nature or the source of the Tribunal’s authority to do anything in the period before that has been on your case, consent to arbitration?

MR. RODRIGUEZ:  It is the inherent power that the Tribunal has under this Treaty to be constituted prior to--during the process.  And it is a little bit of an anomaly, but that's what the Treaty says.  And thanks for referring back to it.  The power of the Tribunal is an inherent power to regulate the acceptance of the Arbitration Agreement.

Amororrtu--Perú gives, under this Treaty--Perú and the United States give investors the option to give the inherent power to the Tribunal to regulate the filing of a Statement of Claim and, as such, to regulate the moment in time in which the acceptance the Arbitration Agreement is perfected.

That's something that the United States and Perú, under the Treaty, gives this Arbitral Tribunal.  It is no different, it is no different than Perú’s admission that

Article 10.16(4) is the one that tells you that.

So, Article 10.17 tells you that the agreement exists upon the submission of arbitration, and Article 10.16(4) tells you what is the moment, the procedural moment in time when the action is submitted to arbitration.

So, reading the two together, you see that in a case under the UNCITRAL Rules of Arbitration, a case, the offer to accept is not perfected until the Statement of Claim is filed.

And again, Perú admits this in its Briefs, and acknowledges that there’s a significant distinction between an action filed under the Statement of Claim under the UNCITRAL Rules and an action filed under the ICSID Rule.

That distinction--it was not present in Renco because Renco, the Renco investor merged both of them.

And what you're going to see is that in Renco, in 2011, in 2011 the investor filed both, he filed the Notice of Arbitration, together with the Statement of Claim, as he was allowed to do under the UNCITRAL Rules because UNCITRAL Rules allow you to give you the option.

Mr. Amorrortu took a different route.  Mr. Amorrortu decided to file the Notice of Arbitration, to impanel the Tribunal, and then to officially and formally accept the invitation to arbitrate.  And as the master of
Here, it is a different situation because Mr. Amorrortu gave the power, the inherent power to this Tribunal, as provided under the Treaty to set the time and control the perfection of this Arbitration Agreement, if you will, and the Tribunal took that time, took that inherent power when he set a timeframe for that.

Now, what’s interesting is that there’s another distinction between Renco and this case. In Renco, the arbitration offer was accepted in April 2011. The Decision did not come until five years later. A lot had transpired. A lot had transpired.

Here, Mr. Amorrortu, immediately after, immediately after Perú raised this issue for the first time, which, again, happened after he had invoked the jurisdiction of this Tribunal, and had benefited itself from the jurisdiction of this Tribunal, offer to supplement its Statement of Claim.

At that point, nothing prevents this Tribunal from continuing with that inherent authority to accept the Supplemental Waiver offered by Mr. Amorrortu. Certainly, there is no prejudice. Certainly, there is nothing that has happened, and the UNCITRAL Rules provide and allow this Tribunal to do so.

Again, the—and Perú, it recognizes this issue.

Perú recognizes this inherent authority granted to this

Perú tries to minimize the impact of this Order, but, obviously, this is an Order that Amorrortu fought, and this Tribunal rendered its Decision without making—Perú did not make—and this time is very important.

After the Agreement to arbitrate was perfected, Perú did not make or even reference any, any issue with this Tribunal’s authority or existence until he got the relief that he wanted. So, at that point, Perú is either stopped under the doctrine of estoppel, doctrine of abuse of process, doctrine of good faith, look here—and Perú—and I implore this Tribunal, I implore this Tribunal not to adopt a rule that allows a State to benefit from the existence of a Tribunal, and then turn around and challenge the very existence of a Tribunal that benefited.

That would be an injustice, is not required by the Treaty, and it would be a total abuse of process that this Tribunal cannot allow.

Perú is seeking to weaponize and abuse Renco I. Renco I is a Decision that has very little bearing on these particular issues, because in Renco I, the Notice of Arbitration was filed together with the Statement of Claim. In Renco I, Perú never, never—even though we had a five-year delay—never sought substantive relief from the Tribunal that whose existence it was challenging.

And the Tribunal in Renco I was bothered by what

Tribunal because Perú maintains, number one, it acknowledges that the Arbitration Agreement is not perfected and so, the submission of a Statement of Claim. And, number two, Perú acknowledges that this Tribunal has the inherent authority to decide its Objection Number 4. I’m sorry, its Objection Number 1, under 10.20.4.

So, Perú acknowledges that, prior to the moment in time in which the Arbitration Agreement is accepted, this Tribunal is vested with inherent authority to act, and it is the same—Perú cannot say that somehow this Tribunal has inherent authority to entertain Objection 1, but that that inherent authority—and that this Tribunal has the inherent authority to set the time and data for the submission of a Statement of Claim, whether that inherent authority does not extend to allow and accept the Amendment Offer by Mr. Amorrortu. That is not consistent.

And again, as we have said, Friday, October 23, after this arbitration was submitted, after we submitted our Statement of Claim, after the Arbitration Agreement had been--had perfected, Perú, without making any argument, Perú asked this Tribunal to issue an Order. And this Tribunal issued an order, which, by definition, contemplates its existence. This is a substantive Order of this Tribunal.

Tribunal because Perú maintains, number one, it acknowledges that the Arbitration Agreement is not perfected and so, the submission of a Statement of Claim. And, number two, Perú acknowledges that this Tribunal has the inherent authority to decide its Objection Number 4. I’m sorry, its Objection Number 1, under 10.20.4.

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Perú was doing, was really bothered by the fact Perú waited five years to submit, and, sure enough, warned Perú not to challenge the limitations availability, the statute of limitations argument. And that's exactly what Perú did in Renco II, as this Tribunal is fully aware.

And obviously, what Perú did here would be quite an injustice. It would be allowing Perú to come to this Tribunal, request substantive relief, obtain substantive relief, and then turn around and says, no, that Tribunal that gave me substantive relief does not exist. I challenge that existence.

In any event, to expedite this process, and this process had been expensive for Mr. Amorrortu, it has delayed this process, we immediately, immediately asked for leave to amend and supplement our filings, and Mr. Amorrortu has said that. And obviously, the Treaty itself allows for the amendment of the Notice of Arbitration, and the rules itself and, in the record, you have a complainant—according to Perú's own interpretation, a fully compliant waiver of any other forum. So, on that issue, that Objection 4 also fails.

Now, there was a question with respect to the ability to award declaratory relief in this particular case that I believe, Mr. Landau, you asked. And I just want to make clear, that in this particular action, our Claim for Declaratory Relief is a part of our Claim for Damages. And what we ask is, yes, we ask Perú to be declared in breach of the Fair and Equitable Treatment obligations but also to be condemned in damages, to pay damages, and there's an "and" there. There is no independent action for declaratory relief, and that's very important.

However, nothing prevents this Tribunal from looking at the Claim submitted and determining there's a violation and the damages are, in determining the amount of damages. In fact, the Article of the Treaty provided and relied by Perú is an Article that has to do with the submission to arbitration, not with the Award itself. When you look at the Award section of the Treaty, the Award section says no punitive damages are allowed, but that is really the only limitation that you have with respect to an Award to the Tribunal.

So, based on that, we respectfully ask that the Tribunal reject Objections 1 and 4, that the Tribunal award Amorrortu its costs and attorneys' fees incurred in opposing Objections 1 and 4, pursuant to Article 10.26, and order Perú to file its Statement of Claim without more delays, and any other relief that the Tribunal deems just and proper.

I'm open to answer any questions that the Tribunal may have, but that concludes our initial presentation. Thank you for your attention.

PRESIDENT BINNIE: Thank you, Mr. Rodriguez.

Do either of my colleagues have questions before we go to the break?

ARBITRATOR LANDAU: No, thank you.

PRESIDENT BINNIE: All right. Professor Hanotiau?

MR. HANOTIAU: No.

PRESIDENT BINNIE: All right. We are obviously running a bit of a time issue here. Of course, it has been very helpful, and it's up to Counsel to use the time as they think best, but it would appear that the time overrun will necessitate some adjustment in what has been set aside for the examination of the Experts and the Closing Statements.

If the Secretary could provide Counsel with the statement of how much time each has used, and then maybe if Counsel can confer as to an adjustment in the timetable that will bring us home on time.

Again, there is no protest. It has been very enlightening and helpful to have the complete submissions that we've had.

So, it is now 6 minutes after the hour. I propose that we resume at 16 minutes after the hour, and that will be with the examination of the Respondent's Expert.

Any other housekeeping items, or shall we go to the break?

MR. RODRIGUEZ: Nothing from the Claimant, Mr. President.

MR. FIGUEROA: Nothing from Respondent, either. Thank you, Mr. President.

PRESIDENT BINNIE: Okay. Thank you, both. And we will now break.

(Brief recess.)

PRESIDENT BINNIE: Are the Parties present?

MR. FIGUEROA: We are ready to proceed, Mr. Chairman.

(Discussion off the record.)

CARLOS RAÚL JOSÉ VIZQUERRA PÉREZ ALBELA, RESPONDENT’S WITNESS, CALLED

PRESIDENT BINNIE: All right. Is the Witness available?

MR. FIGUEROA: Yes, Mr. President. The Expert, Dr. Vizquerra, is available. I’ll also clarify that my colleague Alberto Wray will introduce the Expert.

Before we begin, with your indulgence, I’m afraid we still have not received—oh, we did? Just now?

(Comments off microphone.)

MR. FIGUEROA: I’m afraid we just received the
MR. WRAY: Thank you very much, Mr. President.

DIRECT EXAMINATION

BY MR. WRAY:

Q. Thank you, Mr. Vizquerra. Good morning.

I would like to confirm to you—rather, confirm with you whether you submitted two Expert Reports in this Arbitration.

THE INTERPRETER: I'm sorry, Mr. President. This is the interpreter. We cannot hear the—Mr. President, this is the interpreter. There are issues with sound.

REALTIME STENOGRAPHER: Dr. Wray's audio is not good. It cuts off on and off.

(Comments off microphone.)

THE INTERPRETER: We can hear you now, sir.

Mr. Chairman, if you can ask the counselor to start again.

No, we cannot hear, Mr. President. It is cutting on and off.

(Comments off microphone.)

PRESENTER BINNIE: I was just going to ask Mr. Figueroa if he can start again, to the extent that there was a problem in transcribing his initial statement.

(Comments off microphone.)

MR. FIGUEROA: I think perhaps, just to move this along, if I might, I'll just ask the remainder of the questions to Dr. Vizquerra, and then he can proceed.

PRESENTER BINNIE: All right. Thank you.

MR. FIGUEROA: And then in the meantime, we will also try to figure out the microphone situation.

BY MR. FIGUEROA:

Q. Mr. Vizquerra, could you please confirm to me that you confirm the contents of your Reports, both of them?

A. Yes, I do, both of them.

Q. Do you have any correction or any amendment that you would like to let the Tribunal know about?

A. I do not have any amendments or any corrections or any clarifications.

MR. FIGUEROA: With that, I'm going to give the floor to you, sir, so that you can begin your presentation.

THE WITNESS: Yes. Thank you very much.

I'm going to begin my presentation.

DIRECT PRESENTATION

THE WITNESS: Thank you very much. Good morning, everyone. I'm going to very simply indicate to you what the Direct Negotiation and oil company qualification processes are.

My name is Carlos Raúl Vizquerra. I was introduced. I am a lawyer. My specialty is hydrocarbons. I have experience in the conduction of contract negotiation...
From what I’ve read and from what I’ve heard, it appears that there is a confusion between Procedure 6, the procedure for the qualification of oil companies, and Procedure 8, which is a procedure that specifically has to do with the contracting via Direct Negotiation. It is clear that there is no confusion. These are different procedures, and these are management procedures related to the activities carried out by PeruPetro and PeruPetro's management offices and all of the other aspects related to internal control.

All of these procedures are to be subject to the Hydrocarbons Law and its regulations. Procedure 6 is the procedure for the qualification of oil companies, and Procedure 8 is the procedure for contracting by Direct Negotiation. I will refer to them as Procedure 6 and Procedure 8. Although they are connected, they are completely independent and autonomous. Procedure 6 is implemented not only when the previous activities of 8 have been fulfilled, but also in other cases that have no relation to a Direct Negotiation procedure.

The question we need to pose to ourselves is: When does Procedure 8 begin, the Direct Negotiation contracting procedure? According to Step 1 in that procedure, the procedure starts with the presentation of a letter of interest from the person interested in conducting exploration and exploitation activities, or the exploitation of hydrocarbons within a given surface area in Perú.

Clearly, that letter of interest does not implement the qualification process of an oil company. In the context of a Direct Negotiation procedure, that qualification only comes into play when the prior activities have been conducted, activities prior to Step 13 of the Direct Negotiations procedure. According to Article 2 of the Regulations for the Qualification for Oil Companies—and this is consistent with the Procedure 8—Direct Negotiation is an activity that, in order to be carried out, necessarily requires that the interested Party be previously qualified and the prior steps be taken, the steps under Procedure 8.

Article 2, first paragraph: "Qualification of oil company: Every oil company must be duly qualified by PeruPetro S.A. to initiate the negotiation of a contract. The granting of a qualification will not create any right over the contract area."

This article should be interpreted strictly under two very clear elements here. First, you must be duly qualified to start the negotiation of the Contract; and, second, that the qualification, the granting of the qualification, does not give the Applicant any right over the Contract area that the Applicant may be interested in.

Initially, we talked about the prior activities that needed to be carried out in the context of a Direct Negotiation Procedure, Procedure 8. These activities are not any-which-way activities. These are activities that are established in order to move ahead with a potential negotiation of a contract.

First, when there is an interest, the Company—rather, the State Company, PeruPetro, has to verify whether the area or Block that is being requested is available for Direct Negotiation. Also, it has to determine a minimum program of work in connection with hydrocarbon activities, and also the economic, technical, and financial indicators they are going to use to evaluate the capacity of the candidates. Also, it has to conduct procedures related to social issues—for example, the prior consultation procedure or the citizen participation procedure—when applicable.

PeruPetro has to appoint a working committee in charge of the procedure. And something that is interesting is that, if there are third parties—because PeruPetro has to publish for 30 consecutive days the availability of this Block, now, if there are third parties that are interested in contracting this Block, PeruPetro is obligated to calling a selection procedure and to assess the future contracting of the Block.

If no third parties appear, PeruPetro continues with this processing, and it prepares the baseline proposal that is going to be used in the negotiation of the License Contract. This baseline for the potential License Contract must be approved by the Board of Directors of PeruPetro. After that, PeruPetro is going to ask the oil company to appoint its representatives for the negotiation because these negotiations are to be carried out by specific individuals representing the Companies for the License Agreement.

PeruPetro also asks the oil company to establish the date of the start of the first meeting, the kickoff meeting, and this is when the Direct Negotiation begins, and this has to be done within 60 days.

We have talked about Procedure 8 and how Procedure 8 begins. And we also talked about the prior steps that need to be taken within Procedure 8 for a—for an oil company to be qualified in the context of a...
negotiation.

Procedure 6 is independent from Procedure 8. If it is also applied in other cases. For example, a company may be qualified when it wants to incorporate itself to an already existing contract, a License Contract. So, PeruPetro will establish the technical, financial, legal, and economic capacity of the company that wants to be included in the other contract.

The second case in which the qualification of an oil company is implemented is in a selection process. PeruPetro has to determine the minimum tentative work program related to the oil block subject matter of the selection process and to establish the indicators that will allow it to determine whether all of the bidders are--

THE INTERPRETER: Excuse me, we can't hear, Mr.--Mr. President, we cannot hear.

(Please off microphone.)

PRESIDENT BINNIE: Can the Respondent organize communication to see what the problem is?

MR. FIGUEROA: Yes, Mr. President. We are on that right now. We are getting a technician over there.

(Please off microphone.)

MR. FIGUEROA: I apologize, Members of the Tribunal, Mr. President. We'll try to get this fixed as quickly as possible.

an oil company? Our law is very clear in this regard. Article 4 of the Regulations for the Qualification of Oil Companies establishes that the qualification procedure starts with the submission of an application, accompanied by the documents provided for in Article 5 of the Regulations, and also there has to be a statement of the intention to negotiate a contract.

Under Article 4 of the Regulations, Procedure 6 states that the qualification application has to be accompanied by all of the documents established in the Regulations for the Qualification of Oil Companies. Any communication that contains good intentions or allusions cannot be considered a request for the qualification of an oil company. We’re talking about natural resources here, and we are talking about the possibility for a private party or a State-owned company to have access to natural resources that belong to the Peruvian State.

That is why Article 5 indicates the documents that need to be attached: First, an uncertified copy of the document of incorporation of the oil company; also, there has to be a sworn statement indicating that the oil company is not in bankruptcy, insolvency, or has some kind of impediment to enter into contracts with the State of Peru; the oil company has to attach to the application a sworn statement indicating that it has managerial, professional, and specialized staff in the field of hydrocarbons. Also, the Company has to attach the financial statements of the Company for the last three years, showing the economic and financial capabilities. How else it is going to show its condition?

And last, but not least, it has to show its experience by showing information in connection with the experience it has related to the carrying out of hydrocarbon activities. The experience has to date back three years—only the last three years; right? It doesn’t matter what it did before that. And it also has to detail every year’s works of exploration, the number and type of wells, oil wells, drilled, what is the production level and the proven crude reserves, natural gas, investments.

Also, the Company has to show PeruPetro the License Agreements, and also the technical evaluation agreements, that it has entered into.

Also, it has to show the activities that it is carrying out in the different areas it is exploiting and the activities carried out in investments and the results, as well as the participation interest that it has in each one of those Blocks and whether it is an operator or not of those Blocks, because the Applicant will have a different qualification if it is an operator or if it is not an operator.
And this is not by happenstance. This is specifically provided for in Article 4 of the Regulations for the Qualification of Oil Companies. Article 4 is called the qualification process. The qualification process will begin with the presentation of a request from the oil company to PeruPetro, S.A., together with the documents provided for in Article 5 of this Regulation.

In that request, the oil company must state its intention to negotiate a contract or associate itself with an oil company that has a valid existing contract. I think Article 8 is self-explanatory as to what the requirements are for a qualification procedure to begin.

When is it applicable to provide a qualification to an oil company? Article 14 of the Regulations say that PeruPetro is obligated to grant the qualification of the oil company within 10 working days of receiving the request, provided that: The oil company has requested for the qualification and has submitted the documents provided for under Article 5, as I mentioned, fully; that the Company has stated its intention to negotiate a contract; and, after the request with the documents was submitted and, if, after the intention of negotiating a contract was stated, PeruPetro found no observations, errors, or omissions in those documents.

We are not talking about omissions or errors in connection with the submission of the information. We are talking about errors or omissions or observations related to the documents under Article 5.

Of course, the oil company has to meet the requirements and is able to follow the guidelines established by PeruPetro in connection with the qualification.

Now, how is the qualification materialized? Well, it is materialized by the issuance by PeruPetro of a Certificate of Qualification, which is a fundamental requirement to register the oil company in the Peruvian Hydrocarbons Registry. The granting of the qualification, as I said at the beginning, does not create any rights whatsoever over the Contract area being requested. Although you may have a Certificate of Qualification, well, that does not give any rights to the Contract area, the subject matter of the application.

Now, in this specific case, Baspetrol's communication filed on May 28, 2014 is a request for qualification. After having assessed that communication, I can say that it failed to comply with the concurrent requirements under Article 4 of the Regulations for the Qualification of Oil Companies and Step 1 of the Procedure of Qualification of PeruPetro.

Why? As I indicated, the Company has not expressly requested its qualification, and the Company failed to submit the documents required by Article 5. It didn't submit one single document of the ones required under Article 5. So, this 28 May request for qualification cannot be deemed a qualification request under the terms of the Regulations for the Qualification of Oil Companies.

Did Baspetrol obtain the qualification, considering that the 28 May document failed to comply with the requirements to be considered a request for qualification? Well, that situation did not start the 10 days that PeruPetro has to conduct the assessment under Article 9 of the Regulations. As we have seen, a qualification can only be materialized if a Certificate for Qualification is issued, so legally Baspetrol did not obtain a qualification of oil company, and it didn't acquire any kind of right to obtain such qualification, and it did not have any rights related to the area that was the subject matter of the request.

Now, we can ask ourselves whether Block 3 and Block 4 were available for the direct negotiation sought by Baspetrol, and I am going to read Paragraph 1 of Article 11 of the Hydrocarbons Law. And it says the following: "The Contracts that Article 10 refer to may be made at the discretion of the Contracting Party before a Direct Negotiation is established or by a call for bids."
constructive approval would have been applied because the
administrative silence, we need to go back to the law
that is applicable—that was applicable back then. If we
apply that standard, it was proper to consider the
constructive denial, since this case referred to public
interest in the area of natural resources. So, once again,
assuming—because, once again, this was not the case—that
the communication presented by Baspetrol and the lack of
response, well, in this case governed by the agency’s
administrative silence, the constructive denial had to be
applied, and that communication would have been considered
denied.

Finally, and to conclude, I can state the
following: That the communication of Baspetrol filed on
May 20, 2014 cannot be considered a request for
qualification according to the terms set forth in the
Regulations for the Qualification of Oil Companies.
Therefore, the computation of the term of 10 business days
was not triggered without PeruPetro’s pronouncement on the
qualification.
Baspetrol did not obtain the qualification
required by the Regulations for the Qualification of Oil
Companies, and it did not have any rights to obtain it or
any rights on the Contract area of interest.

Third, assuming that the 10 business days had
elapsed as stated under Article 14 of the Regulations, no
Q. You have the English now, and the Spanish will
Do you see that?
A. Yes.
Q. Okay. Excellent.
Good morning, Mr. Vizquerra. My name is Francisco Rodriguez, and I'm part of a team that represents
Mr. Amorrortu, the claimant in this action.
Now, I have some questions for you. You have
submitted two reports in this action; correct? March 15
and May 24?
A. Correct. Yes.
Q. And in those—those Reports are going to be
part--I’m going to ask you some questions of those Reports.
Let me bring up the Report that you filed on
March 15.
This is the Report that you filed on March 15,
your CV. English version on my left, and the Spanish
version on the right.
Q. Do you see that?
A. Yes.
Q. Okay. And you filed those Reports in support of
Perú’s Preliminary Objections; correct?
A. Correct.
Q. Now, let me direct your attention to Page 3 of
those Reports.
In Paragraph 3 of the Report, you outline the
issues that you’ve been asked to opine on.
You have the English now, and the Spanish will
come up in a second.
A. Correct.
Q. Okay. And the first issue is whether Amorrortu
started the Direct Negotiation Process, then whether
Amorrortu obtained the qualification of PeruPetro and, if
Amorrortu had stated the process of Direct Negotiations
with PeruPetro, would Amorrortu have the right to be
awarded the License Agreement; correct?
A. Correct.
Q. Okay. You have not been asked to render an
opinion as to whether the process of evaluating
Mr. Amorrortu’s Direct Negotiation proposal was tainted
with corruption; correct?
A. Correct.
Q. Okay. You have not been asked to render an
opinion as to whether the public bidding process that,
according to your testimony and Opinion, started—or was
somehow decided in April was, in fact, a fake process
designed to give the Contracts to Graña y Montero.
You don’t have an Opinion as to that; correct?
A. Correct.
Q. Okay. And you don’t have an opinion as to
whether, in the absence of corruption, Baspetrol would have
been able to continue the Direct Negotiation Process;
correct?
A. Specifically that question no.
Q. Okay. Now, as you know, in this particular phase
of the proceedings, we have to assume—Mr. Amorrortu’s
factual allegations are assumed to be true.
You’re aware of that; correct?
A. Correct.
Q. And on Page 3--at the bottom of Page 3 and
continuing on Page 4, you have a number of assumptions that
you’ve made or that you’ve been asked to make in connection
with your opinion in this case; correct?
A. Correct.
Q. Are all these the assumptions that you have
relied on for this case?
(Audio interference.)
(Comments off microphone.)
SPANISH REALTIME STENOGRAPHER: Mr. Rodriguez,
you need to pause. Otherwise, if you ask too quickly, we
cannot hear the response. We cannot interpret. So, we
just need a pause between question and answer.
MR. RODRIGUEZ: If you can, pause for a second
after I make the question, I ask the question, and then
I’ll try to pause after you state your answer so that the
April 2014, there was a meeting between the Executives of Graña y Montero and the First Lady, Nadine Heredia, with respect to the Blocks III and IV?

Q. So, that is a fact that you did not take into consideration in your analysis?

A. Correct, because that is the speculation that had nothing to do with the Peruvian legislation that I was asked to analyze.

Q. And you understand that that is a factual allegation made by Mr. Amorrortu in this case?

A. At least that is what you are saying.

(Stenographer clarification.)

Q. Now, if we continue down, we see that on May 28, 2014, you have the submission of the proposal of Mr. Amorrortu to PeruPetro; right?

A. Correct.

Q. And then, again, you jump on August 20, 2014.

A. Yes. The next paragraph refers to a fact that took place on August 20, yes.

Q. So, there's a gap between the submission of the Amorrortu proposal and the letter from Isabel Tafur...
A. Correct.

Q. But you do not mention any of the meetings between--follow-up meetings between the First Lady and the Executives of Graña y Montero alleged by Mr. Amorrot in his Statement of Claim?

A. Correct. I do not refer to that.

Q. Now, sir, you would agree with me that--

THE INTERPRETER: The Court Reporter is not receiving the answers in Spanish because the voices are overlapping. And he’s repeating.

THE WITNESS: Correct. I have not referred to the question as by Mr. Francisco.

BY MR. RODRIGUEZ:

Q. Now, you agree with me that a process tainted by corruption and influenced by corruption is, by definition, not a good-faith process; correct?

A. Correct. And I also consider that PeruPetro’s good faith in their conversations may not be understood as corruption.

Q. So, you are disputing the corruption allegations?

A. No. I am just making a comment.

Q. Now, you would agree with me that the Baspetrol’s proposal was influenced by corruption, then you are in agreement with Dr. Quiroga. That is not a good-faith process; correct?

A. No. As a matter of fact, you have misinterpreted my statement. What I am saying in this portion of the Report is that, based on public interest and the general interest and the benefit of the Peruvian State, it would be strange to assert that someone would like to have Direct Negotiation as opposed to a bidding process. Whenever contract licenses are granted, the idea is to obtain the highest benefit for the Peruvian State through the royalties and the investments made in these oil areas. So, how could you assert that, by opening up this process for granting these Blocks to a call for bids, we are having a corrupted situation?

It is quite the contrary. We have a company or an individual that is interested in a private negotiation with the State to have a License Contract, so--a License Agreement. So, an open process is less opaque or less closed than an individual process. That was the context of this paragraph.

Q. So, you would agree with me that if, in fact, corruption is, by definition, not a good-faith process; correct?

A. Correct.


In Paragraph 40 of your Report--and I’ll give you a second to read it--you take issue with Dr. Quiroga’s conclusion that PeruPetro’s conduct violated the principle of good faith and procedural conduct and infringed the basic guarantees of due process.

Do you see that?

A. Could you please show me the text in Spanish, more to the left?

Q. Yes. Can you see it? It is to my right. The Spanish is on the right; English is on my left.

A. Yes, but the problem is that the images do not allow me to see full text. The image is cut off. Could you please just move the Spanish a little bit to the left.

Q. We are going to overlap both versions now, according to Counsel’s instructions.

Is that better?

A. Thank you. Very well.

Q. So, in Paragraph 40 of your Report, you take issue with Dr. Quiroga’s Opinion that the conduct of PeruPetro violated the principles of good faith and personal conduct--I’m sorry--good faith and procedural conduct and infringed the basic guarantees of due process.

Now, if you assume that the decision to shelve away Baspetrol’s proposal was influenced by corruption, then you are in agreement with Dr. Quiroga. That is not a good-faith process; correct?

A. No. As a matter of fact, you have misinterpreted the information I have. But, once again, if you knew Peruvian legislation or how one has to behave in Perú, having conversations regarding a potential investment program with the President or his wife in that case does not necessarily entail corruption. That, in itself, is not corruption.

Q. Okay. Is there a legal reason for the First Lady to be discussing business about Blocks III and IV with the executives of Graña y Montero?

A. It would be quite long to explain the context of the President and the First Lady during the Administration, but the First Lady did participate in some of the activities of those days.

Q. Again, all I want you is to understand where we are. We are in agreement that, if the process was tainted by corruption, if it was directed by--if PeruPetro received the directives from the First Lady and the President to award the Contract to Graña y Montero, that process would be in bad faith; correct?
Q. Mr. Vizquerra, I'm asking you to assume--I'm asking you to assume that these factual allegations are true at this point.
A. Okay.

(Questioning continues.)

Q. Well, the instructions by Mr. Ortigas is one of instructions of Mr. Ortigas, but yes.
A. I don't know if this was done under the procedure of Direct Negotiation, pursuant or consistent with instructions he had received from President Ortigas; correct?
Q. If I may finish my question, please, so that there is translation.
A. Correct.

(Questioning continues.)

Q. Okay. Now, in Paragraph 34 of your Declaration, you referred to the procedure for Direct Negotiation of Contract. And, again, we are going to do the same thing so you can read it--
A. I can read it fine.
Q. So, do we have the English as well, so that we can have it, and the Tribunal can follow as well? 36--34. I'm sorry.

(Questioning continues.)

Q. You referred to GFCN-008 as a Procedure for Contracting by Direct Negotiation; correct?
A. Correct.
Q. I understand you've taken issue with respect to whether the rights of third parties are impacted by GFCN-008 in your Report. However, this procedure is a public procedure--in other words, it's been published in PeruPetro's website; correct?
A. Correct.
Q. And this is the procedure that PeruPetro is supposed to follow, or was supposed to follow in 2014, to consider a Direct Negotiation proposal; correct?
A. Correct.
Q. Okay. Now, let me show you the procedures, GFCN-008, which is CLA-44 in English and CV-4 in Spanish. It's in Spanish on my right and English on my left.
A. Do you see it?
Q. Okay. So, this process starts with the first step--the first step in the process is the receipt of a letter of interest from individuals or companies interested in exploration and/or exploitation of hydrocarbons; correct?
A. Correct.
Q. You do not dispute that this process was--that this step was satisfied here; correct?
A. I just wanted to clarify something, and I want to be clear. So, we don't want anyone to be confused. A procedure--a negotiation procedure, a Direct Negotiation procedure, is one thing. A Direct Negotiation Process is a different thing. Two different things. One is the consequence of the other.

Now, relying on this, I could say that that communication started the procedure of Direct Negotiation.
Q. So, we are in agreement, sir, that on May 28, 2014, Bacilio Amorrortu, through Baspetrol, commenced the procedure of Direct Negotiation pursuant or consistent with instructions he had received from President Ortigas; correct?
A. I don't know if this was done under the instructions of Mr. Ortigas, but yes.
Q. Well, the instructions by Mr. Ortigas is one of the assumptions that you are assuming in this case, per your Report; correct?
A. Correct. Yes.
work committee in coordination with the legal solicitation.

Do you see that?

A. Yes, right.

Q. And then "create"--

(Overlapping interpretation and speakers.)

Q. And then "create"--

(Overlapping interpretation and speakers.)

A. Correct.

Q. Okay. And then if we can--and we're going to go back to this, because obviously it's an important point in your Report, but I want to show that--the flowchart first as a whole. We can go back to the next page--yes, of the slide--the next flowchart, yes.

And then assuming that it is available for--and then let me just wait for the English and the Spanish.

And then, assuming that the area is available for Direct Negotiation--and I know you take a contrary position to that, but assuming that it is for a second, then you continue with this flowchart, you go to Flowchart Number 9, Step 9, order implementation of procedure to consult with the citizenship, the community; correct?

A. Correct.

Q. And once that is done, then there is an "appoint

on to the next page. And then there are a number of implementation procedures, including posting the availability of the Block for oil procurement in the web portal for 30 days.

I think you referred to that; right?

A. Correct.

Q. And, ultimately, the Contract is negotiated and signed; correct?

A. Yes. After the publication, there are other steps that need to be taken and that would start the negotiation process, and this has to be in the terms of negotiation by PeruPetro. They have to be approved by the Board of Directors, and certain formalities have to be established and then the negotiation process will start.

Q. If we can go back to the prior page, please, Danny, to the prior page.

Now, I want to go back to the certification process, because you spent a lot of time talking about certification process.

The certification process is subsumed within the GFCN-008; correct?

A. Qualification process, you mean?

Q. Yeah. Qualification or certification process,

yeah.

A. Yes, that's correct.

Q. This is one of the steps that needs to be satisfied after a number of steps--indeed, about 11 other steps--are completed; correct?

A. Correct.

Q. Now, as you said in your Report and in your presentation today, the qualification or certification process itself has its own flowchart; correct?

A. Correct.

Q. Okay. And that is GFCN-006; correct?

A. Correct.

MR. RODRIGUEZ: And if we can bring that up, Danny, I believe that is Dr. Quiroga's 15, the 006.

(Comments off microphone.)

MR. RODRIGUEZ: It's Quiroga Exhibit 15.

Yes.

We're going to go to Page 5 of the--Page 17, 6 of the 17. Let me just show him the first page.

BY MR. RODRIGUEZ:

Q. This is the process for the qualification, which is subsumed in GFCN-008; correct?

A. Correct.

Q. Okay. And now let me direct your attention to Page 6 of this flowchart.

No, it's actually CV-5. It's this one.

I think it's the next one.
Now we're going to try to make it bigger so that you see it.

The qualification process itself has its own flowchart, as we have discussed; correct?

A. Correct.

Q. Okay. And it starts with a receipt of the document or documents necessary for the qualification; correct?

A. Correct.

Q. Okay. And then if I continue--because I'm a little bit pressed for time--to Step 6, there comes a point in time in which PeruPetro has to determine whether the information received--and I'm talking about the "diamond" below, actually--whether the information received satisfies the requirements; correct?

A. The information received, indeed, is the information provided for in Articles 5 or 6, as the case may be, of the Regulations. We have to see whether those documents are in compliance.

(Interuption.)

(Stenographer clarification.)

Q. And I understand that your position is that the information that--provided by Baspetrol was not sufficient; correct?

A. What I said is not that it was not sufficient.

It's that it was not considered by PeruPetro, and all of the documents under Article 5 were not submitted. The documents were not submitted. All of the documents were not submitted.

Q. But what is clear is that the documents required for the certification or qualification were not being presented by Baspetrol to PeruPetro; correct?

A. Correct.

Q. Now, under PeruPetro's own procedure, in the event that the documents are not presented, the response from PeruPetro is not to reject the qualification; correct?

A. If PeruPetro fails to respond, that does not mean that there was a rejection of a Application.

(Interuption.)

(Stenographer clarification.)

Q. Let's assume for a second that you are correct and that the documentation presented by Baspetrol did not comply with their requirements. That Baspetrol did not attach the required documentation.

PeruPetro, according to its own procedures of regulations, does not have the right to simply reject the certification requests at that point; correct?

A. Correct.

Q. PeruPetro has to send a letter to Baspetrol giving Baspetrol 30 days to provide the requested documentation, as we see in Step Number 8 of the diagram; correct?

A. No. That is the wrong interpretation of Claimants. If all of the documents have been attached, if and only if that has happened, then PeruPetro opens the period of time to make sure that everything is in compliance. Now, if those documents submitted have errors, or if supplementary information is required, or if additional information is required, well, that is one thing, but it doesn't have to rule on the lack of documentation under Article 5.

If I fail to attach to my request all of the documents under Article 5, the 10-day period does not start running and then Baspetrol would not have 30 days to cure that. No, it would have to submit a new Application with all those requirements.

Q. Now, I want you to follow it with me. Okay?

The first step in that flowchart is receive a letter from the oil company interested in signing, modifying the Contract and the attached documentation detailing the Regulations for the qualification; correct?

A. Correct.

Q. Okay. Then, revise first letter and attach documentation to the procurement management office; correct?

That is Step Number 2?

A. Yes. That's right.

Q. And then receives and reviews the letter, the documentation sent by the oil company; correct?

A. Correct.

Q. And then review the documentation sent by oil company and verifies that a legal-technical, economic, financial--(Comments off microphone.)

Q. Reviews the documentation sent by oil company and verifies that the legal, technical, economic and financial documentation is in accordance with the regulations for the qualification.

Do you see that?

A. Correct.

Q. Okay. Now, the Baspetrol Proposal had technical,
those documents were not attached, I do not have any period
of time to prepare a response.

Q. Sir, we are not talking about the 10 days. We are
asking about—yes—yes—yes, you are right. If all the
documentation is available there, then you are absolutely
right. The 10-day period is triggered.

A. Umm—hm.

Q. But I’m assuming that you are right, and we’re
talking about the answer no. If the answer is no in that
following box, there is nothing about the 10 days. We’re
talking about how PeruPetro has to give the opportunity for
the Company to provide the documentations within 30 days.

You see that in front of you?

A. I do read that in front of me, and I don’t know
if you see that, but it says here that it is the missing
documentation or supplement documentation that was supposed
to be sent.

Q. Was there any letter sent by PeruPetro to
Baspertol asking for any information with respect—that it
was missing with respect to the Baspertol Proposal?

Have you seen any letter?

A. Related to the qualification and considering that
this is not an application, no, there was no ruling in
connection with the qualification, specifically speaking.

Q. Let’s go back to GFCH-008. Again, this process
is the Direct Negotiation procedure that you have, that we
were reviewing earlier.

You see that?

A. I do see it, yes.

Q. And you have confirmed that the certification or
qualification process that we just saw is subsumed within
this procedure; correct?

A. Yes. Procedure 6 is within this procedure, yes.

Q. And the first question here is, is the area
available for direct negotiation; correct?

A. Correct.

Q. Okay. Now, you would agree that at the time
Baspertol submitted its Direct Negotiation proposal, this
lot was not under contract for the period beginning in
April 2015; correct?

A. That is correct. PeruPetro had already
previously decided to conduct a selection of the Blocks.

Q. —my question yet. And please, just flow with me
because my clock is really ticking.

All I’m asking is, with respect to an actual
contract, these Blocks were not subject to any contract for
the period commencing in April 2015; correct?

A. Not necessarily.
Q. I'm sorry, it is either yes or no.

Let me repeat it, because maybe we're having a translation issue.

These Blocks were not subject to any contract for the period commencing in April 2015, after the expiration of the InterOil Contract; right?

A. They did not have a License Agreement after the exhaustion of the InterOil term.

Q. With respect to the public bidding process, you would agree with me that the public bidding process had not been announced to the public—had not commenced. Had not commenced. How about that?

Right? Yes or no, sir.

A. Correct. Correct.

Q. Because that public bidding process commenced when?

A. The public ceremony, well, the public ceremony started when the terms are published and the lots are tendered for negotiation.

Q. Requirements for the public bidding process had not even been approved by PeruPetro yet; correct?

A. But that does not entail that PeruPetro—well, let's see. For a tender process to begin, PeruPetro has to make the decision before. What cannot happen is that once the decision is made to conduct a selection process, I

Q. And your understanding of the word "selection process" is that the word "selection process" excludes Direct Negotiation.

A. That is correct. Yes. When we talk about a Direct Negotiation proposal within seven days; correct?

Q. Okay. Now, despite all of this, you claim that these Blocks were not available for Direct Negotiation because in April of 2014, PeruPetro has said that it was going to initiate a selection process; correct?

A. Correct.

Q. That's all PeruPetro said in April, "a selection process," that it was going commence a selection process; correct?

A. Correct.
Q.   In April of 2014.  It had not decided the basis for the public bidding process; correct?
A.   They had decided it, and they had decided it even before because if you think of the way the hydrocarbons world works, the fact that a contract is temporarily awarded—that is to say, a License Contract to InterOil for only one year is only justified on the fact that PeruPetro was already designing all of the necessary steps to put those lots up for a public bid process. So, there is no other assumption, any other assumption to grant a one-year Contract License, License Contract. PeruPetro’s decision had already been made.
Q.   Sir, you’re speculating as to the intentions of PeruPetro in extending the InterOil Contract. You don’t have any document from PeruPetro from either March of 2014 or April of 2014 saying PeruPetro will commence a public bidding process? You don’t have that; correct?
A.   Correct, it is a selection process.
Q.   The document you have is a document that says InterOil Contract will be extended and the selection process—and I’m using quotation marks—“will be commenced”; correct? That’s all you have?
A.   Correct.

The one at the bottom. So, that’s where you can see it. At Article 10, says the following: "If PeruPetro detected any error or omission in the documents referred to in Documents 5 or 6, or if it considered that the information is insufficient based on the provisions of Article 7 of these regulations, it shall serve notice to the oil company, so that within 30 days as of the date of acceptance of the notification, the proper documentation is presented."
Q.   That is, according to that document, mistakes or omission detected need to be seen in the documents presented. These are not mistakes or omissions in the documents; correct?
A.   What you’re saying is correct.
Q.   Which of the two?
A.   It is in the documents of Article 5. Not because of the lack of documents under Article 5.
Q.   So, that, if all of the documentation has not been provided within 30 days as stated in that chart, that 30-day period will not run?
A.   Correct.
Q.   As to the last question, you mentioned that PeruPetro had decided to offer Blocks III and IV as part of the public bidding process. When that decision was made public, or for that decision to be made public, the Board of Directors decided that those Blocks are not going to be available because they are going to be used for the public call for bids, and this is a decision that should have been made before; correct?
A.   Yes. The Board of Directors’ decision was made before.

Mr. Rodriguez: Oh, if my colleague is done, it’s fine. I would just ask kindly to—not to have leading questions in redirect. But if he’s done, I will withdraw my objection.
Mr. Wray: That’s all, Mr. President. I have no further questions.
President Binnie: All right. Thank you very much, and thank you very much, Mr. Vizquerra, for the very helpful evidence illuminating something of a tangled administrative procedure. It’s been very useful to hear from you. And we do appreciate it.

(Witness steps down.)
President Binnie: We now have the examination of the Claimant’s Expert. I notice that it is now 10 minutes—maybe 7 minutes to the hour. According to the agreed timetable, there is an hour and 7 minutes to cover about 220 minutes’ worth of anticipated evidence and submissions.
I don’t know if the PCA, Mr. Cardiel, can explain
how much time has been used by the Claimant and how much by

MR. ARAGÓN: Yes, Mr. Chairman, I can provide an
account by email shortly. I can tell you right now that
the Claimant has used, by my count, 1 hour and 34 minutes;
the Respondent has used 1 hour and 37 minutes.
That would be excluding technical interruptions
and other contingencies that have occurred during the
Hearing.

PRESIDENT BINNIE: All right. Well, does that
include the Opening Statements or just the evidence?

MR. ARAGÓN: It does include the Opening
Statements, Mr. Chairman.

PRESIDENT BINNIE: All right. I don't know
whether Counsel have had a discussion as to how to deal
with an apparent shortage of time.

MR. RODRIGUEZ: Mr. President, what I suggest is
that, if you give us two minutes, we may discuss a way and
we would shorten—obviously, we want to have Closing
Arguments, and we would try to shorten Dr. Quiroga's
presentation on direct. We know that the Tribunal has
already read his Report, and then expedite the process for
direct examination and gain a few minutes like that. But
if you give us two minutes, so that we can consult with
him, I think we can get that done.

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All right. Can we then proceed with the direct?

MR. RODRIGUEZ: Thank you, Mr. President.

Ms. Rebeca Mosquera is going to lead the
examination of Dr. Quiroga.

PRESIDENT BINNIE: All right. Thank you.

DIRECT EXAMINATION

BY MS. MOSQUERA:

Q. Good afternoon, esteemed Members of the Arbitral
Tribunal. Good afternoon, Mr. Quiroga.

A. Good afternoon.

Q. Could you please confirm where you are presenting
evidence from today?

A. I am in Miami at the Akerman legal firm's
offices.

Q. Are you alone in the room?

A. Yes, I am.

Q. I understand that you have before you the three
Reports that you have presented in this case?

A. Yes, that is correct. The two—and also the two
Reports by Mr. Vizquerra.

Q. Could you please confirm whether you have any
annotations or any additional information?

A. No, I do not. I only have some yellow
highlighting.

Q. Could you please confirm whether you confirm the
three Reports? Do you have any additions or change?

A. I completely ratify the contents of my Report, in
particular, after what I heard today.

Q. And I understand that you have a presentation for
the Arbitral Tribunal today?

A. Yes. I will attempt—I will endeavor to be as
brief as possible.

MS. MOSQUERA: With the indulgence of the
Tribunal, I will give the floor to Mr. Quiroga to proceed
with the presentation.

PRESIDENT BINNIE: All right. Thank you very
much.

DIRECT PRESENTATION

THE WITNESS: Thank you very much, Mr. President.
I would also like to thank the Arbitral Tribunal.

My name is Aníbal Quiroga León. I graduated from
the Catholic University in 1983 in Perú. I have been a
professor for over 36 years at the School of Law, where I
have been the main—the Chair since 1987. I have also
worked in the Office of the General—Comptroller General
of Perú. I have also been an alternate judge, and I have over
40 years of professional experience.

So, I would like now to move on to my
presentation.

PRESIDENT BINNIE: Please go ahead.
THE WITNESS: Thank you.

The next page—I will read this. I have it printed.

Mr. Amorrortu, through Baspetrol, clearly began a Direct Negotiation proposal on May 28, 2014 by presenting its Direct Negotiation proposal directed to the Company. It doesn’t say whether he was directed to Ms. Tafur or Mr. Ortigas. It doesn’t matter. It was directed to the Company; therefore, the company is in a position to receive this communication, and also address it.

And also, in accordance with the process established in the program that we have set, the qualification of the oil company is given within the Direct Negotiation Process. There are two types of access to the Contract. One is through Direct Negotiation and another through public bids. So, both of them are provided for under the law. We shouldn’t delve too much into one or the other. We cannot say that one is better than the other. Both are provided under the law for some reason, and not necessarily this is a problem. The call for public call for bids is more transparent than the Direct Negotiation.

And we are talking about Direct. This is a word that we use in Perú when someone from up high in the administration is directing the process. Upon passing the period of time established in the applicable Regulations and in the absence of any communication from the Authority, whether there was any deficiency in Baspetrol’s proposal, the authority is mandated to grant the qualification based on the constructive approval.

Well, I have also heard different comments, and also, I think that there are some incorrect legal statements. I teach process, the proceedings, and this has—no one can say that someone initiated a proceeding, but not the process. It is an absurd concept. So, when one initiates the proceedings for a Direct Negotiation, it is triggered, and at least the citizen, the Company, the businessperson, requires a response from the authority. There was no answer from the authority.

It is said that it is an absurd because there was no answer because they did not provide the documentation under Article 5. But how can we know that the documentation was provided correctly or not if it was not communicated or qualified by the authority?

It could be only when one complies with all of the requirements that the authority will communicate, but when there is noncompliance, there is no communication. It makes no sense.

Amorrortu never gave up the Direct Negotiation Process. Therefore, there is no legal ground to assert that his participation in the bidding process for Lots III and IV evidenced that Direct Negotiation was not triggered. Based on my experience, I consider that by participating in this negotiation, he ratified his interest to have access to the bids or to the Concession for Lots III and IV, which they had already handled in the past with experience in the sector, the recital—that is to say, the declaratory portion of the Decree in the Official Gazette may not put to the investor—serve a notice to the investor about something that is not available.

So, the Direct Negotiation Process is a unique and specific way to make the investor know what is available. So, it cannot be said that because of a recital, there is something that is stated—is not something that the person served the notice does not have access to. So, it was just enough to send an email and, in
In the private world, there is a discretionary right. I can sell my house or not. I may be offered $3 million and not sell it because I have a discretionary right over that property, but the authority as representative of the State is limited. Limited by what?

The law. The law is the one that provides when something has to be done, how and when, again, because the law replaces the discretionary right that the authority does not have.

So, the Constitutional court has developed a very important concept, and that--it has to do with the protection against arbitrary measures, so the administration is not the owner. It is just a proxy. It is the one that has the rights to make the best decisions in the benefit of the State. And this is not something that is just in their conscience. This is something that is provided under the law. That's why the chart shows what the procedure is for the authority to internally follow the path and reach a conclusion that protects the interest of the nation.

So, it is not principle for a proposal for Direct Negotiation. It is highly beneficial for the country. It is discarded because--for public call for bids because it was less beneficial and it was directed, as I said before. I don't know if you understand what I mean when I

From the offer—that is to say, the Direct Negotiation, the procedure, and then the conclusion, there is a principle that applies: Pacta sunt servanda. This is a universal principle that governs contracts, and it is enshrined in Article 1362 of the Civil Code. It says that contracts must be negotiated, performed, and signed according to the rules of good faith and common intention of the Parties.

And the Law on General Administrative Procedure indicates that the Contracts are governed by general administrative procedures, and these procedures have to follow the rules of administrative due process. And this is an extension of the due process of law principle.

Both the International Court on Human Rights and the Constitutional Court have established that this is a cross-cutting right. This means that, even when one initiates Direct Negotiation proceeding, that procedure shall be governed by the principle of rationality and nonarbitrariness of due process. If I bring an action, then the authority has to respond. I shouldn't be given the Contract, necessarily, but I should be given a response.

If they say yes, we should go ahead. If they say no, why not? So, I can challenge that denial. I can, perhaps, also complete the requirements that I'm missing. Now, the procedure for the qualification of oil companies and the Direct Negotiation contracting procedure are developed at the same time as part of a contractual agreement, not successively. They are not excluding or exclusive of each other. They are two different elements that the law provides to arrive at the same object, whether it be a Direct Negotiation or a call for bids.

So, we shouldn't be speculating. We shouldn't really say that qualification is better than Direct Negotiation. If it were so, it would be provided for in the law. The deadline to grant qualification is a 10-day period of time.

So, they said that qualification was not something that Mr. Amorortu was given. So, should we put the cart before the horse or the other way around?

Now, first, do I request and then obtain a qualification, or the other way around? Mr. Vizquerra says it's the other way around—that is to say, that you have to be qualified and then provide a request. But that's not what the law says, or the Regulations say.

So, on the basis of the documentation that I bring, whether it be complete or incomplete accommodation, I'm going to get a qualification. Qualification is Step 2. Step 1 is communicating via Direct Negotiations. So, they are asking for the application of Phase 2 when I'm on Phase 1.
The administrative authority has the obligation to evaluate and to rule on the qualification request. It is an obligation. It's not merely intentional.

A request by a citizen cannot be shelved off, or it cannot be laid dormant, and the citizen should always be provided with a response. When the system changed in Peru in the 1990s, the State became an administrative entity, and it regulated private activities. And the citizens should be provided with a response so that the investments can go ahead.

Let's assume that I want to open a supermarket around the corner and I need a license, and I meet all the requirements. I submit my request, and I never get a response. So, I don't have a response, the investment disappears, the company also cannot be established, and everybody suffers. So, the public official needs to respond, yes or no.

If they say yes, I will start my economic activity. If they say no, well, either I do something else or I go ahead and challenge that denial. But if they do not respond, well, they can say, "Okay, fine, Mr. Amorrortu came here, left a document, but my colleagues said that these just mere intentions, illusions." But that would be actually derogatory for somebody who has started a procedure in due time and form.

Hydrocarbons, as natural resources, can be granted in exploration and/or exploitation. The Concession is an Administrative Contract. It is, of course, related to license and services. The Concession, which is an administrative act, can be granted by Direct Negotiation or by a call for bids.

The law does not provide any difference between the two systems, ubi lex non distinguit, nec nos distinguere debemus (We can say that you should not draw a distinction where the law does not make a distinction). So, I cannot accept the interpretation of the other Expert saying that one is better than the other. These two are ways to get to the same thing. They are both lawful and they are regulated by the law.

As of 28 May 2014, Blocks III and IV were not subject to a Tender. Okay, there was public interest, there was an internal agreement, but that does not mean that the lots couldn't have been offered via Direct Negotiation. Mr. Ortigas offered this to Mr. Amorrortu and gave him 10 days to submit a negotiation proposal, but there was never an answer, and that is the problem.

That is the problem that needs to be solved in this case. We have to see whether that has or does not have legal consequences.

And then, on July 14, 2014, there was an answer: No. Because what is the legal sequence of this? And also, what are the consequences of the May 28, 2014 request?

In 2014 on May 28, an application was submitted, and that application was never addressed. At no time did Amorrortu renounce the Direct Negotiation procedure started on May 28.

They say that he participated in the July call for bids. But in administrative law, waivers have to be expressed. They cannot be constructed--right?--because that's what the law says.

And also, I wanted to end by saying that Law 29,060, which is the law on lack of response by Government agencies, well, that law was passed to enable businesspersons to have investments and for the Government to have a regulatory role, and for the inaction of the public agency--that is to say, the administrative silence by the public agencies--should not be an obstacle for the development of the country.

So, the authorities have the obligation to respond because we cannot say that, if the authority fails to respond, then I have to assume a denial. So, the administrative silence by the authorities does not apply in connection with public interests, health matters, environmental matters, national defense, financial systems,
A. No, but I don't practice my profession in the criminal matter. But I have seen what the public opinion has said, and especially what had transpired since 2014 until 2021, or, rather—okay, from 2011 to 2016, rather, when Mr. Humala was President, and it was said that the First Lady participated in public negotiations in connection with the interests that the State had, and I could tell you and the Arbitral Tribunal that we don't have in the organic law of the Executive Branch of Government, nor in the Constitution, the concept of the First Lady. So, constitutionally and legally, the First Lady has nothing—no participation in connection with the acts of the State. But we have seen how she has had direct impact in connection with some instances. There was an indirect or a prior bribe, and this was a concept that existed at the time—for example, in connection with contributions made by the company Odebrecht for the political campaign; and then once they were in power, once they became public officials, they gave them, for example, awards of contracts, for example, in gas plants or in the case of Talara, as well, in Gasoducto Sur Peruano. 

Q. Thank you, sir. Let's look at this case. Did you look at the document submitted by Baspetrol on 28 May 2014, and did you verify its content?

A. Yes, I did.

Q. What is specifically requested in that document?

A. It was sent by email, and then it was also sent on paper, and it says that Luis Ortigas, the President of PeruPetro, should be given the response of my company to operate Blocks III and IV on northeast Peru, and I committed to providing this information at 9:00 a.m. on 28 May 2014. And then at 8:20 a.m., I also include a—

PRESIDENT BINNIE: Sir, you need to slow down while you're reading, both for the Interpreters and the Transcribers.

THE WITNESS: "I ask you to please give to Luis Ortigas, the President of PeruPetro, the proposal of Baspetrol, my company, that is attached hereto for the operation of Lots III and IV in the northeast area of Peru, and I committed to submitting this information at 9:00 a.m. on 28 May 2014, and I have also sent an email at 8:20, and I attach to this note a presentation note and then two documents, 17 pages in total. Then we are going to also send a copy of this proposal. Please confirm receipt and that you have received all this information. Thank you very much for your attention. Greetings, Mr. Amorrortu."

BY MR. WRAY:

Q. The request included in the attached document

Arbitration. I'm going to ask a few questions of you for purposes of clarifying your presentation on the content of your Reports and to supplement them. I have looked at your very lengthy CV, and I do have a few questions.

A. Not specifically by PeruPetro, but I have been consulted by PeruPetro in connection with administrative and legal matters, and I am qualified to provide an opinion in connection with general administrative processes, and contracting processes, in particular.

Q. You have not participated directly in a Direct Negotiation of License Agreements for the exploitation and exploration of hydrocarbons in Peru?

A. Not in particular, but that does not mean that I am unable to adequately interpret administrative law and administrative procedures in this case. I have the Chief Justice—I have been the Chairman, rather, of a Controller's Court, and also I have seen what happened when there were issues with noncompliance with the law in PeruPetro.

Q. In your report you make some mentions to the theme of corruption in Peru. In your lengthy professional career in Peru, have you been involved in any of the processes related to corruption?
A. Well, they don't necessarily have to do that because the next step after the Intent to Negotiate a Contract via Direct Negotiation, well, that is the consequence of qualification.

Q. So, this document is not a Request for Qualification; right?

A. It shouldn't be. Nobody has said that this is not a Qualification Request. So what I have said is that qualification is a subsequent act. It comes after.

Q. If this is not a Request for Qualification, how can we apply Articles 9, 10, and 14 of the Regulations for the Qualification of Oil Companies, if these are only applicable to Requests for Qualification?

A. Again, this is a process that starts with the Request for Direct Negotiation. The consequence of that is de-qualification or the denial of a qualification.

Q. The Regulations for the Qualification of Oil Companies—I'm going to read from the document:

I'm going to read some of the Articles in connection with my question. For example, Article 4 of the Regulations for Qualification, it says: "Qualifications Process: The qualification process shall begin with the submission of an application by the oil company."

How is it that the qualification process started in the context of the Articles that you have indicated, if

Q. How can a negotiation request be assessed if there are no preestablished parameters for that? There is a simple manifestation of an intent, or of a wish, but then you say that qualification comes after. You're talking about the qualification of a company that has not asked for qualification.

A. No. I haven't said that it is implicit. I said that this is the next step. Again, I am not stating, like you are, that at the beginning the qualification needs to be requested.

Q. So, when a Direct Negotiation Application is submitted, according to you, this implicitly means that you are also requesting further qualification?

A. No. The Regulations do not say that the qualification needs to be requested. When you have a Block, you have two roads that you made reference to, well, that is a document that, in your understanding, is a document that constitutes the Direct Negotiation proposal; right?

A. Yes.

Q. So, this is a Direct Negotiation proposal. You have qualified it as such; correct?

A. Yes.

Q. However, in your Reports and in different sections of your Reports, you talk about Articles 9, 10, and 14 of the Regulations for the Qualification of Oil Companies?

A. Yes.

Q. So, are you saying that this proposal is also a request for a qualification?

A. No. What I've said in my Reports, and I've said a moment ago as well, is that this letter undoubtedly starts the Direct Negotiation Process. The answer to this gives rise to observations in connection with the letter and the qualification of a company.

Qualification is Step 2. It is not Step 1. A Direct Negotiation doesn't require prior qualification. The qualification is the consequence of the request for Direct Negotiation.

Q. But in the documents submitted, the qualification is not expressly requested; correct?

A. Not. That is not what the Regulations say. It says that the qualification process starts. I didn't say—or it doesn't say—that you need a qualification request. The first step is to ask for Direct Negotiation, and then they look at the application, and they look at the documentation, et cetera.

So, in Arbitration, you have a Statement of Claimant, and then you're going to get the Statement of Defense. And when a Direct Negotiation is requested, well, one is also asking for the qualification to happen later on. But the Regulations do not say that the qualification needs to be requested.

Q. So, when a Direct Negotiation Application is submitted, according to you, this implicitly means that you are also requesting further qualification?

A. No. I haven't said that it is implicit. I said that this is the next step. Again, I am not stating, like you are, that at the beginning the qualification needs to be requested. No. The qualification is the other step, the next step. First, you ask for Direct Negotiation, and then you get your qualification. We were saying that—what should go first, the cart or the horse? Well, first, you have the horse, and then, of course, first, you have the Direct Negotiation, and then Qualification.

Q. How can a negotiation request be assessed if there are no preestablished parameters for that? There is a simple manifestation of an intent, or of a wish, but then you say that qualification comes after. You're talking about the qualification of a company that has not asked for qualification.

Is that what you're saying?

A. Again, when you have a Block, you have two roads
Q. 63.  A. 73 is different. 73? Is that what you said?
Q. I am talking about the Statement of Claim by Amorrortu.
A. I am referring to the Certification of Intent. 73.
Q. No, we are talking about a different document. I don't have it here at hand. Could we show it on the screen? Paragraph 73, 7-3, from the Statement of Claim.
This is in English.
And here it says, during this meeting, Ortigas instructed Amorrortu to prepare a proposal for Direct Negotiation for the operation of Blocks III and IV.
Ortigas further told Amorrortu that the Baspetrol Proposal would be subject to a legal-technical-economic analysis by PeruPetro's administration and that it would be discussed by PeruPetro's Board of Directors.
But where you say in your Report that Mr. Ortigas indicated the terms of the proposal in connection with technical aspects, royalties—so I just wanted to know where you obtained that information, because from the Statement of Claim we do not see this.
A. Well, basically, it says that this has to do with what I was told to prepare my Report.
Q. Yes. I understand, Dr. Quiroga. At any rate, you can take: Direct Negotiation or call for bids. If you choose for Direct Negotiation, you're saying you're going to move to the next step; right? You're not going to start something just to do that and stop there. It is not something that is constructive or not constructive. It's the next step. For example, when you submit a Statement of Claim, well, for example, you can say, okay, what about the Statement of Defense? Well, the Statement of Defense is the next step; right?
So, if I move ahead with a qualification, then other things will come after—your request was ridiculous, absurd, illusionary and only full of good intents and without any kind of legal importance and outside the law—then why didn't they tell Mr. Amorrortu, well, we are not interested, your request is a mere illusion, it is incomplete, we are going to close the door to you?
According to administrative law, if that had been the response by the agency, Mr. Amorrortu would have had the right to challenge that. So, if he didn't start a direct qualification process because he didn't meet the requirements, et cetera, or because the documents were incomplete, why wasn't he told so? It was very simple.
They should have sent a two-line email telling him that.
Q. Let us move on to something else. Perhaps we can delve into it later on.

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They should have sent a two-line email telling him that.
Q. Let us move on to something else. Perhaps we can delve into it later on.
we withdraw the--I have the law here. There is a reversal of this presumption.

In the '90s, the economic activity was characterized by bureaucracy and red tape. So, the State is withdrawing in its subsidiary role and supervisory role and arbitral role. And according to the law, this has been reversed so as to avoid the economic stagnation. So, the question is whether the administrative proceeding there that was applied to this Direct Negotiation Process merited an answer, and it did merit an answer, and this is constructive approval, and this is a law that has been ratified whereby we establish even that. Here we say the object of the goal, the pre-assessment processes are subject to positive approval in one of these conditions. So, the law expressly reverses the presumption. If your authority is not going to reply in the deadline to us, or as it should have replied, I am going to act as if the answer had been "yes."

Q. But that also assumes a request that has not been addressed, and the effect of the administrative silence would be to consider that the request has been granted if the term has elapsed. Is that what you're referring to as the Government administrative silence?

A. Yes. But we are accepting something that was requested; correct?
Q. But this is an outcome that is not part of the request?
A. But once again, if you would present a claim, then you are going to have a response, even if it is not stated, because this is already provided for under the proceeding, and this is part of PeruPetro’s flowchart.

This is the next step. So, you request Step 1 and you move on to Step 1. After that, you have Step 2.

Q. Mr. Morón Urbina at 06 of Exhibit 45 says that “Nobody can by virtue of silence obtain something to obtain which he did not fulfill the legal demands or if he did not submit to the authority valid documents which substantiate it. Passivity by the Administration cannot cloak in legality that which is unlawful or obviate misconduct by the subject party.”

So, I’m asking you once again: It says—-it’s referring to not submitting the documents which substantiated, and in your thesis, that by requesting Direct Negotiation as a result of positive administrative silence, what—-constructive administrative silence, are you going to be quality—if you are qualified as an oil company to—able to exploit those Blocks, wouldn’t you be going against the Regulations, because the documentation under Articles 5 and 6 of the Regulations for Qualification have not been presented?

Q. Do you agree with this statement?
A. Yes. I am very familiar with Mr. Morón.

Do you recall this provision?
A. Yes. I am very familiar with Mr. Morón.
Q. Do you agree with this statement?
A. Completely, because it indicates that I am right.

According to the constructive approval, the requestor has the right for the law to assume that what has been requested is correct. In this case, because of the Government’s administrative silence, you cannot include other items.

I go back to the Claim. The Claim has a Request for Relief. But he is asking first for Direct Negotiation, and Direct Negotiation to be triggered; and third, to move on to the next stage, that was Qualification. So, it was just natural. If I legally initiate Direct Negotiation and my request is approved, I move on to qualification. And this is what my Report states, and I ratify, and what Mr. Morón is saying. Whatever he requested—that is to say, he was asked to be considered a candidate, and for the request for Direct Negotiation be approved. And since it was approved, and given the way that PeruPetro had regulated this, Qualification was the next step.

A. You would be, with due respect, fully right if they had been told that, if they had been told, “Your request is incomplete. You are missing this or that document.” But my question is: Who told Amorrortu that the documents were incomplete? Who told Amorrortu that some documents were missing, or who told Amorrortu that they did not have documents? What was the authority that told them that the request was incomplete, or that it was just good intent or homage—paying homage to the flag?

So, you’re assuming that the application is incomplete. This is what Peru’s Expert is assuming, but when did the authority reply that this was incomplete? When? When did the legal affairs management, the management in general, the person who is in charge of security at PeruPetro, when did they say, “Okay. Your request is not according to the law”? No one can do something that is beyond the law in something that is incomplete.

So, when was Mr. Amorrortu told that the request was not in accordance with the law or that it was incomplete?
Q. I apologize, Doctor Quiroga, if there would have been a response then it would not have been necessary to refer to the chart on the administrative silence.
A. Of course if you allow me to explain, Government not responding, you understand, is an assumption, iuris tantum, and it is a fiction of the law that was introduced in the legal—in the Peruvian legal system to facilitate the economic activities in Perú. So, what is the meaning of this government’s administrative silence? It is a legal concept, something that did not happen.

So, if you are going to request your driver’s license, if you’re approved with 9.9 points, the authority doesn’t give you the driver’s license and doesn’t respond to you. But if you have not complied with the requirements under this administrative process, you have to know why you are being told no. And this is a legal concept that goes against the inaction and the administrative silence by the Government, and it is stated like that under the legal system, but—

MS. MOSQUERA: Mr. President, I think that—excuse me. May I, Mr. President?

PRESIDENT BINNIE: Yes.

MS. MOSQUERA: I think that the Expert has—

(Interuption.)

(Stenographer clarification.)

MS. MOSQUERA: I was stating that the question that the Expert is being asked has been asked and answered at least four times. I was wondering if we could move on to the next one.
Thank you, Mr. President. Sorry to interrupt.

PRESIDENT BINNIE: Well, I think there's some slight variation in the questions, but I agree that you have probably got as much benefit out of this particular line of questions as we're going to get.

MR. WRAY: Yes, Mr. President.

BY MR. WRAY:

Q. I would like to confirm with Mr. Quiroga that--if it is clear we are talking about two different requests.

We are talking about, on the one hand, the request for Direct Negotiation—that is the one that, according to you, Mr. Quiroga was not responded to; correct?

A. Yes.

Q. And, on the other hand, the result of this administrative silence is to grant qualification; correct?

A. Yes, because this is under PeruPetro's flowchart, so qualification is granted, but it turns out that that qualification could not be in accordance with the requirements demanded of the Company under the qualification regulations. If that was the case, this should have been stated in writing. Since it was not stated, the law assumes that all of the requirements were met and that they moved on to the next qualifications stage.

I could request is to obtain the concession for the restaurant that is inside the park or some other internal concession within the park, and for that concession process to be linked to the due administrative process.

So, in the first provision, we cannot say--I cannot say, "Okay, give me 200 miles within the ocean to exploit the fishing resources." But certainly procedures are applied for the concession, and that is where the law authorizes the concession of some—for some natural resources.

Not all of the natural resources are under a concession. These are general concepts, and this has already been contemplated. You can see that this has already been included for insurance. Natural resources, national defense—

SPANISH REALTIME STENOGRAPHER: Could you please slow down? Please slow down.

THE WITNESS: So, this exclusion of the constructive approval for natural resources is also similar to what happens with health, the environment, natural resources, the police, the financial insurance system, the Stock Exchange, commercial defense, national defense, and also the cultural assets of the nation.

So, it should be interpreted as a general concept, but not to say that, given that the oil concession affects or has to do with a natural resource, I'm going to take just a specific provision from the general law. You would work the other way around, but not this way. The specific law prevails over the general law.

I cannot say that this is going—I can say that this has to do with natural resources, but I cannot say that a specific administration of a specific natural resource is not affected by constructive approval.

If you read the text, the text says that previous or pre-evaluation processes will be considered according to constructive approval in this situation. Whenever it has to do with a concession for the administration of preexisting assets or economic activities that entail the pre-authorization by the State, that is the principle—that is to say, that is the concept that prevails over the general provision.

PRESIDENT BINNIE: I'm going to intervene here because we seem to be dealing at immense length with some tangential issues, are relevant issues. But for the last 2.5 hours, I've been pointing out the shortness of time. We are now 10 minutes after closing time, and you haven't finished the cross-examination. We haven't started the reexamination, and there is no time left for Closing Statements.

When we began the cross-examinations, I was told...
PRESIDENT BINNIE:  All right.  Does that conclude your time?

MR. WRAY:  Thank you, sir.

PRESIDENT BINNIE:  All right.  Well, thank you very much, sir, for your testimony and expertise in addressing some of the issues we have to deal with.  It is very much, sir, for your testimony and expertise in being asked, rather than to elaborate with different examples and so on.

THE WITNESS:  Yes, Mr. President.

BY MR. WRAY:

Q.   Dr. Quiroga, in the text by Mr. Morón Urbina, we see Article 38 of the current law and it reads that the "As an exceptional matter, negative silence is applicable in those cases in which the request from the subject party may significantly affect the public interest and impinge on the following legal goods ... natural resources." So, these are two conditions—that is to say, that it is a significant affectation of the public interest, and that it has to do also with natural resources.

In this case, the Concession, or for two Blocks for oil exploitation, do you think that it really or significantly impaired public interest?

(Overlapping interpretation.)

A.  The Panel have seen the law says that public interest needs to be impaired significantly. So, one has to look at that issue. So, this is public interest, but it is not a significant impairment. And it talks about natural resources. This is said in general terms, not in specific terms.

Some natural resources can be concessioned by the Government. So, in natural resources, Concession Contracts, then the constructive approval in administrative law is applied.

MR. WRAY:  Thank you, sir.

PRESIDENT BINNIE:  All right. Does that conclude the cross-examination?

MR. WRAY:  I think so, Mr. President. Because of time constraints, I'd rather stop here.

PRESIDENT BINNIE:  All right.

MR. WRAY:  Thank you very much.

PRESIDENT BINNIE:  Is there a brief reexamination necessary?

MS. MOSQUERA:  No, Mr. President, not at this moment.

PRESIDENT BINNIE:  All right. Well, thank you very much, sir, for your testimony and expertise in addressing some of the issues we have to deal with. It is much appreciated, Mr. Quiroga, and it is time to step down from the box, and that your participation is much appreciated is at an end. Thank you.

(Witness steps down.)

POST-HEARING MATTERS

PRESIDENT BINNIE:  Now, Counsel, we have a significant problem. Whatever attempts were made to shorten down the overtime have not succeeded. It is now a quarter after the hour. The Closing Statements would have been an important part of the procedure. It is not possible for the Tribunal to continue for another 35 minutes, as called for by the schedule to hear Closing Submissions.

The Members of the Panel have had some discussion as to what to do if we found ourselves in this predicament. It would appear that some written Post-Hearing Submissions would be appropriate, and the Panel has a number of questions as we've gone on here, some of which have not been asked because of the time constraints.

And it would probably be helpful if the Panel would indicate to Counsel within the next week or so questions on which the Panel in particular would like submissions, without, of course, prejudice to Counsel's ability to make whatever submissions they consider appropriate to deal with these important procedural issues.

I would think it's in everybody's interest to have a page limit on Post-Hearing Submissions. We would need a deadline by which time these submissions would be due, and we would hold open the possibility, but not in any way definite that there might be a follow-up session with where the Panel would have the opportunity to pose oral questions to Counsel on matters that require it.

But the first step in this proposal is that the Hearing adjourn now. I appreciate the effort that has gone into putting together both the Opening Submissions and the cross-examinations. It is unfortunate that our time was not available, but we are where we are, so is the idea that we would adjourn now, that the Panel would indicate questions, some questions they would like addressed, and a deadline be set for written submissions, and do Counsel have any submissions on that.
MR. RODRIGUEZ: Yes. From our perspective, that would be acceptable.

PRESIDENT BINNIE: All right. Mr. Figueroa?

MR. FIGUEROA: Yes. Likewise, Mr. President.

PRESIDENT BINNIE: All right. So, and as to page limits, I guess it will be, to some extent, a function of what the questions are, but I don’t think the Panel would envisage anything beyond perhaps 40 pages or so.

However, we will clarify that when we get back to you, and if for some reason you feel that that is not adequate, you can say so at the time, and I do want to emphasize that, although we will be putting questions, this is not to foreclose Counsel from making the arguments which they feel necessary to present the case properly. But it is an attempt to focus the submissions around the concerns that the Tribunal has, having read the written material and heard the oral proceedings today.

So, on that basis, and with thanks to the Reporters and Translators who have performed nobly under sometimes difficult conditions, and to the staff from the PCA, all of which is appreciated.

On that basis, we will adjourn. If it is possible for the PCA to enable the Panel to carry on or to dial in by some other means, we would like to have a short discussion before breaking.

MR. RODRIGUEZ: Thank you very much. Counsel and Witnesses.

Mr. FIGUEROA: Thank you very much.

MR. RODRIGUEZ: Thank you very much.

(Whereupon, at 12:26 p.m. (EDT), the Hearing was concluded.)
CERTIFICATE OF REPORTER

I, Dawn K. Larson, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

Dawn K. Larson