

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")

-----x  
In the Matter of Arbitration between :  
: BACILIO AMORRORTU (USA), :  
: Claimant, : PCA Case No.  
: and : 2020-11  
: THE REPUBLIC OF PERU, :  
: Respondent. :  
-----x Volume 1

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

Transcript Prepared by Worldwide Reporting, LLP  
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ALSO PRESENT:

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MS. DIANA LIZÁRRAGA SÁNCHEZ  
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1 I was just going to introduce our team and to

2 confirm that we don't have any housekeeping issues, but if

3 you do have a housekeeping issue, please go ahead.

4 MR. FIGUEROA: Thank you. Yes. And good morning

5 to you, Francisco. Hope all is well.

6 We do have a small issue that just came up.

7 As the Tribunal may know, the Parties agreed to

8 exchange cross binders a few minutes before the actual

9 cross-examination commences. Obviously, that is consistent

10 with what would normally have happened in a live hearing.

11 The issue, though, that results from that is that the

12 Experts themselves will not have access to that binder, to

13 the cross binder, as normally would happen. And so, I

14 wanted to raise that issue and perhaps propose a solution,

15 which is either the Parties can agree to exchange cross

16 binders a bit earlier to be able to download that binder

17 and get it to the Experts before examination begins, or the

18 Parties be permitted to briefly enter the room to provide

19 the Experts with electronic versions of the cross binder.

20 PRESIDENT BINNIE: I would think the preferable

21 procedure is the one you mentioned first, to provide it in

22 time so that the Expert has access to all the documents at

23 the time the cross-examination begins.

24 MR. FIGUEROA: I would agree, Mr. President. If

25 Claimant is agreeable to that, we can perhaps--well, I

P R O C E E D I N G S

1 PRESIDENT BINNIE: Do we have Counsel present at

2 this point?

3 MR. RODRIGUEZ: Good morning, Mr. President. On

4 behalf of the Claimant, yes, we are.

5 (Overlapping speakers.)

6 MR. FIGUEROA: Mr. President, Members of the

7 Tribunal, good morning or good afternoon, as the case may

8 be. On behalf of the Respondent, Republic of Perú, Counsel

9 is present.

10 PRESIDENT BINNIE: Good. Welcome. Buenos días.

11 Thank you for getting up early in order to participate.

12 I don't believe there is any housekeeping we have

13 to deal with at this point.

14 I want to express to Counsel the Tribunal's

15 appreciation for having worked out a mutually satisfactory

16 timetable for this morning.

17 If there are items of housekeeping, would Counsel

18 care to raise them now? Otherwise, perhaps you could

19 introduce the other members of your team, and then the

20 Respondent commence Opening Statement.

21 MR. FIGUEROA: Mr. President, if I--

22 (Overlapping speakers)

23 MR. FIGUEROA: Oh, go ahead, Francisco.

24 MR. RODRIGUEZ: No, go ahead.

25

1 would suggest--I'm looking at my team to see how long it

2 would take us to download something like that. I guess it

3 would depend on how long the binder is, but perhaps

4 30 minutes before cross begins?

5 (Overlapping speakers.)

6 PRESIDENT BINNIE: Well, I would think--in terms

7 of the Opening Statements, there's--I wouldn't think

8 there's a lot of downside in starting the process now, so

9 that if there are hitches, they won't interfere with the

10 timetable.

11 If that's acceptable to both sides?

12 MR. RODRIGUEZ: That's perfectly acceptable to

13 Claimant, Mr. President.

14 MR. FIGUEROA: Acceptable to us as well.

15 PRESIDENT BINNIE: Very good.

16 And, Mr. Figueroa, are there other members of

17 your team?

18 MR. FIGUEROA: Yes.

19 (Overlapping speakers.)

20 MR. FIGUEROA: Francisco, go ahead.

21 MR. RODRIGUEZ: Go ahead--no, I was going to

22 introduce my colleague, Rebeca Mosquera. She's going to be

23 participating in the examination of Witnesses. Also, my

24 colleague Tracy Leal will be assisting us, and with us this

25 morning is Bacilio Amorrortu, who is the Claimant in this

1 action as well, and Dr. Anibal Quiroga, who is going to be  
2 testifying as an Expert Witness on matters of Peruvian law,  
3 together with a whole host of team that is helping us in  
4 the background to make this Hearing possible.

5 PRESIDENT BINNIE: All right. Thank you very  
6 much. While these are names familiar to us with the  
7 correspondence, we look forward to having them participate.

8 Mr. Figueroa?

9 MR. FIGUEROA: Thank you, Mr. President. Yes.  
10 With us we have, on behalf of Foley, myself and my  
11 colleague Alberto Wray, who will be conducting  
12 cross-examination today. Also here in the room with me are  
13 my colleagues José Manuel García Rebolledo and Juan Pablo  
14 Hugues. We also have Carlos Raúl Vizquerra, who is the  
15 legal expert on behalf of Peru and who will be testifying.

16 And on behalf of the Republic of Perú, we have  
17 Vanessa Rivas Plata Saldarriaga, who is President of the  
18 Special Commission that represents the Peruvian State in  
19 international investment disputes. We have Giancarlo  
20 Peralta Miranda, also of the Special Commission. We have  
21 Miguel Luis Martín Alemán Urteaga of the Ministry of  
22 Foreign Affairs, Geovanna Elizabeth Gómez Valdivia, also  
23 from the Ministry of Foreign Affairs, Nikitza Chávez  
24 Atapoma of PeruPetro, Diana Lizárraga Sánchez of PeruPetro,  
25 and I believe Roberto Guzmán Oliver of PeruPetro SA.

1 PRESIDENT BINNIE: Very good. Thank you very  
2 much.

3 Now, I think you have the Opening Presentation.

4 MR. FIGUEROA: I do, Mr. President.

5 PRESIDENT BINNIE: Perhaps, if there is nothing  
6 else we need to deal with beforehand, you could commence  
7 those submissions.

8 MR. FIGUEROA: Thank you, Mr. President.

9 Before I begin, Ms. Vanessa Rivas will be making  
10 an introductory statement on behalf of the Republic of  
11 Perú.

12 PRESIDENT BINNIE: Very good.

13 OPENING STATEMENT BY COUNSEL FOR RESPONDENT

14 MS. PLATA SALDARRIAGA: Good morning,  
15 Mr. President and Members of the Tribunal. As Mr. Figueroa  
16 has noted in the introduction, I am Vanessa Rivas Plata  
17 Saldarriaga, President of the Special Commission that  
18 represents Perú in international investment disputes.

19 As the Tribunal knows, Perú is an active  
20 participant in the Investor-State Dispute Settlement  
21 system. It has been and remains committed to the fair and  
22 efficient resolution of investment disputes brought under  
23 the various international investment agreements and  
24 treaties to which it is a party. The very existence of the  
25 Special Commission is a testament to that.

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

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

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

25 Perú has demonstrated in its submissions that

1 these claims are precisely the type of unfounded disputes  
2 that the provisions I mentioned earlier were meant to weed  
3 out of the ISDS system.

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

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

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

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

25 As Perú has demonstrated, this flatly contradicts

1 the letter and spirit of the USPTPA's waiver requirement  
2 and its condition to Perú's consent to arbitration.

3 The Tribunal need not rely solely on Perú's views  
4 on these matters. In addition to the authority and  
5 Decisions supporting Perú's position, the Non-Disputing  
6 Party's submission of the United States endorses all the  
7 arguments presented by Perú with regard to the  
8 interpretation of the USPTPA. In light of the agreement as  
9 to the scope of their treaty obligations, Perú respectfully  
10 considers that the Tribunal is bound to honor the genuine  
11 intent of the State Parties to the Treaty. That same clear  
12 agreement between the State Parties exposes Claimants'  
13 contentions that Perú is somehow weaponizing previous  
14 Arbitral Decisions, or in any way acting contrary to good  
15 faith or procedural propriety, as manifestly unfounded.

16 In light of these considerations, Perú is  
17 confident that the various safeguards that the United  
18 States and Perú implemented in the TPA will be given full  
19 effect and that Claimant will not be allowed to proceed  
20 further in this Arbitration. Perú is as confident that its  
21 trust in the Investor-State Dispute Settlement system will  
22 be justified.

23 Reiterating our respect and appreciation to the  
24 Tribunal, the attorneys of the Republic will elaborate  
25 further on Perú's Preliminary and Jurisdictional

1 And so, we see here in his Statement of Claim,  
2 Claimant asserted that: "In the absence of corruption,  
3 Amorrortu would have secured the Contract to operate  
4 Blocks III and IV. The commencement of a Direct  
5 Negotiation, in essence, guarantees the execution of a  
6 contract, particularly when the oil company has a  
7 successful track record operating blocks."

8 And: "Perú failed to comply with each of these  
9 requirements of Fair and Equitable Treatment when it  
10 implemented a corrupt scheme to deprive Amorrortu of his  
11 substantive right to resume his operations of Blocks III  
12 and IV through Direct Negotiations."

13 And as Perú has noted in its submissions,  
14 Amorrortu also tied his claim for relief to the existence  
15 of a contract, seeking damages based on Graña y Montero's  
16 historical revenues in those blocks. So, we see his  
17 comment here; his argument and basis for damages is that  
18 Amorrortu properly commenced a Direct Negotiation Process  
19 and was deprived of the opportunity to complete the Direct  
20 Negotiation and profit from the Contracts to which he was  
21 entitled. The Contracts to which he was entitled.

22 Now, in Claimants' Response to Perú's submission  
23 on preliminary objections, however, Mr. Amorrortu shifted  
24 his claim. Faced with Perú's observation that Peruvian law  
25 quite clearly indicates that a Direct Negotiation, even if

1 Objections.

2 MR. FIGUEROA: Thank you, Ms. Rivas.

3 Mr. President, Members of the Tribunal, I will  
4 proceed to address Perú's 10.20.4 objection for failure to  
5 state a claim, and then address the issue of the defective  
6 waiver.

7 Mr. Amorrortu's Claim, at first blush, appears to  
8 be fairly straightforward. Mr. Amorrortu alleges that Perú  
9 breached the Minimum Standard of Treatment under the TPA  
10 because Perú allegedly interrupted his right to a Direct  
11 Negotiation for contracts to operate Petroleum Blocks III  
12 and IV in the Talara Basin. Instead, PeruPetro, a  
13 State-owned entity, according to Mr. Amorrortu, motivated  
14 by corruption, organized a public tender, in which  
15 Mr. Amorrortu also participated, but which was allegedly  
16 rigged in favor of the company Graña y Montero.

17 Yet, when we scratch the surface, we find that  
18 the foundations of these allegations lack any legal or  
19 factual basis. The lack of merit of Mr. Amorrortu's Claim  
20 is further evidenced by the fact that Mr. Amorrortu and his  
21 Counsel have consistently shifted their arguments, creating  
22 new twists and wrinkles that ultimately also lack merit.

23 Thus, we see in his Statement of Claim--I  
24 apologize. We're having a technical difficulty. There we  
25 go.

1 actually commenced, does not guarantee a contract,  
2 Mr. Amorrortu asserted that he "never claimed that a Direct  
3 Negotiation guarantees as a matter of law the execution of  
4 the Contracts to operate Blocks III and IV."

5 Mr. Amorrortu's Claim focused, he said, instead  
6 on the allegation that "Amorrortu through Baspetro  
7 acquired all the rights appurtenant and concomitant to the  
8 Direct Negotiation Process under Peruvian law."

9 According to Amorrortu, then, on this next  
10 submission, Perú violated the TPA's requirement of the  
11 Minimum Standard of Treatment by interfering with this  
12 alleged bundle of rights, which is not--which, by the way,  
13 does not include a contract. And we'll get to that later.

14 Now, in his Rejoinder, Amorrortu shifted his  
15 argument yet again, now attempting to refocus these  
16 preliminary proceedings on the issue of corruption.  
17 Amorrortu argues that: "Perú's exercise of its power to  
18 contract in furtherance of corruption to the detriment of a  
19 protected investor is a violation of the FET protections of  
20 the USPTPA, irrespective of whether the Direct Negotiation  
21 Process commenced."

22 I'd like to take a moment now to discuss this  
23 latest formulation of Mr. Amorrortu's Claim because of its  
24 shockingly extreme breadth and its blatant attempt to avoid  
25 an Article 10.20.4 dismissal by focusing on an element of

1 Claimant's Claim that is intrinsically fact-driven, that of  
2 corruption. But this attempted end-run to introduce  
3 factual issues can be easily dismissed.

4 Now, certainly, corruption is a bane of our  
5 modern society, and rightfully has been denounced by the  
6 international community and the majority of States,  
7 including Perú. The breadth and extent of corruption  
8 discovered through investigations such as Lava Jato has  
9 affected all of Latin America. And we know that corruption  
10 infects all countries, not just Perú, but also here in the  
11 United States, where I am, and in Europe as well.

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

19 What Mr. Amorrortu is doing with this Arbitration  
20 is attempting to take advantage of Perú's good faith and  
21 forceful efforts against corruption in general, including  
22 those in other unrelated economic sectors, in order to  
23 create a claim out of thin air.

24 Furthermore, his position, as articulated in his  
25 final submission, would effectively open the floodgates for

1 baseless claims whenever there is any indication or  
2 evidence of corruption in any State.

3 Let's take a closer look at his argument again.  
4 This is from Paragraph 18 of his Rejoinder on the  
5 submission on preliminary objections.

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

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

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

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

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

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

19 Thus, Amorrortu's latest gambit to expand the  
20 nature of his Claim should be disregarded. Mr. Amorrortu's  
21 Claim, to survive Perú's Article 10.20.4 objection, must  
22 be--in order for him to survive that objection, Amorrortu  
23 must be able to sustain that he had a vested right which  
24 was violated by means of alleged corruption. And we'll get  
25 to that next.

1 But before I move to that topic, let me be  
2 perfectly clear: The Republic of Perú denies  
3 Mr. Amorrortu's allegations concerning alleged corruption  
4 with respect to Blocks III and IV. Amorrortu has presented  
5 no credible evidence in that regard and rests his entire  
6 case on press reports about corruption in other unrelated  
7 sectors, but, as I've noted, the issue of corruption is not  
8 relevant to the questions presented in this preliminary  
9 objection.

10 For now, pursuant to the standards applicable to  
11 objections under Article 10.20.4 of the USPTPA, and solely  
12 for purposes of this objection, we will assume that  
13 Mr. Amorrortu's factual allegations are true.

14 But even--

15 PRESIDENT BINNIE: Can I ask you a question on  
16 that?

17 MR. FIGUEROA: Of course.

18 PRESIDENT BINNIE: Because one of his factual  
19 allegations in Paragraph 258 of the Memorial is that there  
20 were actual meetings between the Graña y Montero Company  
21 and Nadine Heredia to discuss Blocks III and IV. So, it's  
22 more than a general allegation of corruption against the  
23 Government of Perú. He is identifying specific  
24 interactions which he says gives rise to this claim of the  
25 whole process being rigged against him.

1 So, first, it may not be late-flowering, in the  
2 sense that it is already in the Memorial, and he actually  
3 pleads that as a part of his cause of action in  
4 Paragraph 341 of the Memorial.

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

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

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

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

25 Now, my point, though, and the point of Perú, is

1 that that is irrelevant, and, really, what Mr. Amorrortu is  
2 trying to do is create a smokescreen where the Tribunal  
3 feels that they need to address these factual issues when  
4 they don't.

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

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

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

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

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

9 In his answer to our submission on preliminary  
10 objections, he was very emphatic that his issue was with  
11 respect to the Direct Negotiation and a--it was the  
12 interruption of the Direct Negotiation that violated FET.  
13 And so, respectfully, I think that's his Claim; right?  
14 Otherwise, we're reading in and creating claims that he  
15 hasn't really, truly asserted.

16 Mr. Amorrortu has clearly asserted that the  
17 violation of FET was the interruption of the Direct  
18 Negotiation. All right? And he says--he says, though,  
19 that the motivation behind that interruption was corruption  
20 which may have been involved, allegedly, with respect to  
21 the bidding process, and ultimately award to Graña y  
22 Montero, but, again, that talks about the means or the  
23 means by which it was--or motivation by which there was an  
24 alleged violation. His Claim as to the actual violation,  
25 stated and restated, including in his most recent

1 submission, is that it was the interruption of the Direct  
2 Negotiation that violated FET, and that's the Claim, and  
3 that's the Claim that there is no legal basis to support.

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

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

20 The issue before the Tribunal right now is  
21 whether or not he has asserted a claim, as asserted, that  
22 for which an award in his favor can be issued. And his  
23 claim, as asserted, is that FET--the FET violation was  
24 caused by the interruption of the Direct Negotiation  
25 Process. So, then, the issue is: Did he have a right to

1 the Direct Negotiation Process? And did the Direct  
2 Negotiation Process--did that come with any rights involved  
3 with it, the so-called "bundle of rights" he asserts?  
4 That's his claim. And if that claim falls, his claim falls  
5 as well.

6 I hope I answered that question, Mr. President,  
7 but I'm happy to continue.

8 PRESIDENT BINNIE: Well, I just think that the--I  
9 mean I understand what your point is and why you are making  
10 the point. But as to your statement, well, he didn't  
11 qualify under the terms of the public tender, the  
12 allegation that he makes is that the rules of the public  
13 tender were manipulated to exclude all of the prospective  
14 contractors apart from the company favored by corruption.  
15 So, all I'm suggesting is that there are a number of  
16 threads running through his claim on corruption, and a lot  
17 of them relate to the bidding process, but you, yourself,  
18 lay great stress on--because you say, well, that opened up  
19 a new phase, and the fact he participated in it is  
20 inconsistent with his argument on the Direct Negotiations.

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

25 MR. FIGUEROA: Understood, Mr. President.

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

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

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

25 So what happens--the factual allegations with

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

9 But, with the President's permission, I will  
10 continue on with precisely--because this is relevant to  
11 this topic, which is just a recap of the  
12 standards--right?--of Article 10.20.4.

13 And basically, what I want to stress is that even  
14 under the scenario where we assume these facts to be  
15 true--so we assume that these meetings occur, we assume the  
16 alleged manipulation, all of that be true--Amorrortu's  
17 claim still fails because his claim is that the  
18 interruption of Direct Negotiation was the violation of  
19 FET. And, first, the Direct Negotiation Process never  
20 commenced as a matter of law. Second, even if it had  
21 commenced, Amorrortu never acquired the so-called "bundle  
22 of rights" he claims. And, third, even if some limited  
23 rights were to have been obtained, the conceded fact that  
24 no contract was guaranteed is fatal to his claim. That's  
25 because of the specific language of the USPTPA. And I'll

1 get to each of these in turn.

2 But before discussing those issues in depth, I  
3 think it is worth recapping quickly the applicable standard  
4 under 10.20.4. And as Ms. Rivas noted, Article 10.20.4  
5 grants the Tribunal special authority to decide on the  
6 merits of a claim as a matter of law, where, as is the case  
7 here, the Claim submitted is not a claim for which an award  
8 in favor of Claimant may be rendered under the terms of the  
9 Treaty.

10 In making this decision, the Tribunal must assume  
11 as true Claimants' factual allegations in the Notice of  
12 Arbitration and Statement of Claim and any relevant fact  
13 not in dispute.

14 Now, as the United States has pointed out, in its  
15 Non-disputing Party submission, these factual allegations  
16 must be sufficient to show, assuming they are true, that a  
17 claim satisfies all legal requirements under the Treaty.

18 Now, care should be taken that not all  
19 allegations be deemed as true, and this, I think, is the  
20 topic we were just discussing.

21 Mere conclusions unsupported by relevant factual  
22 allegations and any legal conclusions disguised as a  
23 factual allegation need not be considered as true and may  
24 be contested. Accordingly, allegations contradicted by  
25 Claimant's exhibits need not be taken as true.

1 Thus, in this case, whether Direct Negotiation  
2 commenced and what rights, if any, are concomitant to the  
3 Direct Negotiation Process are legal issues that may, and  
4 have been, contested, and which can properly be ruled upon  
5 by this Tribunal.

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

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

22 Now, I turn to Amorrortu's substantive claim,  
23 which ultimately rests on his allegation that he received a  
24 bundle of rights when he submitted his Proposal of Direct  
25 Negotiation on May 28, 2014. His claim fails, first and

1 foremost, because, as a matter of law, a Direct Negotiation  
2 Process was never commenced. There are a couple of points  
3 concerning PeruPetro's contracting that should be  
4 highlighted and that are fundamental to this issue.

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

17 Second, and in keeping with the importance of  
18 natural resources with which it deals, Peruvian law endows  
19 PeruPetro with a significant degree of discretion. Perú's  
20 activities and contracting is governed by Perú's  
21 Hydrocarbons Law and applicable regulations, such as the  
22 Regulation on Qualification. In accordance with in Perú's  
23 Hydrocarbons Law, PeruPetro is empowered to enter into  
24 contracts via two processes: Through a process of  
25 selection, in other words, via public tender; or through

1 Direct Negotiation. And we see that here on this slide.  
2 That's the first item highlighted.

3 The decision as to which process will be used is  
4 expressly, and in the broadest terms, left to Perú's  
5 discretion, upon contractor's discretion. Notably, both  
6 Mr. Amorrortu and his Expert, Dr. Quiroga, recognize this  
7 critical point. This discretion remains with Perú  
8 throughout, and they may ultimately decline to enter into a  
9 contract.

10 And so, thus, as we have seen and as Amorrortu  
11 admits--and these are the second and third items  
12 highlighted here--the Regulation on Qualification clearly  
13 establishes that, even for qualified oil companies, an oil  
14 contract does not--I'm sorry--the qualification for an oil  
15 contract does not guarantee a contract.

16 So I'd like to pause here to note, as we did in  
17 our submission, Claimants' own factual allegations and  
18 exhibits demonstrate, if anything, that PeruPetro had, in  
19 its discretion, decided to submit Blocks III and IV to  
20 public tender, making them unavailable for Direct  
21 Negotiations.

22 On August 12, 2013, nearly a year  
23 before Mr. Amorrortu submitted his proposal for a Direct  
24 Negotiation, and in response to Mr. Amorrortu's initial  
25 expression of interest, Mr. Ortigas, PeruPetro's

1 then-President of the Board of Directors, informed  
2 Mr. Amorrortu of PeruPetro's intention of carrying out a  
3 public tender for Block III.

4 Furthermore, on March 20, 2014, two months before  
5 Mr. Amorrortu's proposal, Directory Agreements 032014EM and  
6 0122014EM were published. These Directory Agreements  
7 reflected the one-year extension of InterOil's license over  
8 Blocks III and IV and clearly indicate that the Temporary  
9 License Agreement was being celebrated for a period that  
10 allows PeruPetro to organize and carry out a selection  
11 process, that is, a public tender. And here we are.  
12 Sorry.

13 So the first one, again, is PeruPetro responding  
14 specifically to Mr. Amorrortu indicating that there would  
15 be a public tender for those lots.

16 The second one is these Temporary License  
17 Agreements published, made publicly available, which  
18 clearly indicated that the reason for their existence was  
19 to provide PeruPetro time for a selection process, that is,  
20 a public tender. And it's important to note that these  
21 were published in El Peruano, which is Perú's official  
22 register of laws and regulations, and their knowledge is,  
23 thus, imputable upon Mr. Amorrortu as a matter of law.

24 It is no surprise, therefore, that on August 20,  
25 2014, PeruPetro formally called the public tender for



1 Blocks III and IV. This was entirely consistent with the  
2 Company's previous announcement.

3 So, even assuming it's true that--Mr. Amorrortu's  
4 allegation that Mr. Ortigas invited him to submit a  
5 proposal for Direct Negotiation, assuming that's true, the  
6 fact of the matter is, as a matter of law, Mr. Ortigas  
7 should have known that such a proposal would be subjected  
8 first to a verification that the areas were available for  
9 Direct Negotiations, and, in light of the indications that  
10 these Blocks would be subject to public tender, that it  
11 would be highly likely that his Application for Direct  
12 Negotiation would be rejected.

13 Now, in any event, Amorrortu's position is that  
14 he was invited to submit a proposal for Direct Negotiation,  
15 and Claimant and his Expert argue that when Amorrortu  
16 submitted his proposal for Direct Negotiation, he commenced  
17 the Direct Negotiation Process; he triggered it, and  
18 PeruPetro was, thus, compelled to follow that process  
19 through the very end.

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

1 presentation "the Procedures for Direct Negotiation" or  
2 "the Procedures."

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

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

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

17 Now, as the Tribunal can see, the procedure is a  
18 long list of tasks, of items, and it identifies the  
19 relevant office or agency within PeruPetro which was  
20 responsible for a particular task. So, we see on the  
21 left-hand side, you know, certain tasks are for the general  
22 management; certain are for the solicitation and  
23 procurement management office; another one for the  
24 exploration management. And it even provides a format for  
25 particular communications or documents where it's

1 applicable. And you see that, for example, in Item 2, it  
2 says that if the area is not available for Direct  
3 Negotiation, a letter should be drafted saying that it's  
4 ineligible, and the Procedure itself provides a formatted  
5 letter.

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

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

19 Thus, for example, if we look at this checklist,  
20 and we see that upon receipt of the letter--that is--

21 If you could move it a little over. That is  
22 Number 1.

23 Upon receipt of the Letter of Interest of Direct  
24 Negotiation, the first step to be taken is a determination  
25 of whether the area is available for a Direct Negotiation

1 Process. And that's to ensure that the area is not already  
2 subject to a long-term contract or otherwise designated to  
3 be contracted via public tender.

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

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

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

23 And then there are several steps--several  
24 internal steps, right, which we can see here, of review of  
25 the letter, revisions of the letter, sending it back. And

1 what's important here is that these are internal steps;  
2 they're not expressed in the regulation or in the law.  
3 They are internal logistical steps that are relevant for  
4 the officials. So, this--again, those are not in the law  
5 or in the regulation.

6 And this is reflected in the diagrams that  
7 Mr. Amorrortu included in his Statement of Claim and in his  
8 other submissions, and those diagrams merely reflect or are  
9 a visual indication of this chart, and so that's just an  
10 important point. And an important aside, which was  
11 discussed in our submissions, is that those diagrams in no  
12 way designate discrete phases required under the law; they  
13 are simply diagrams meant to facilitate this long list of  
14 action items and, basically, decision-tree tasks.

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

20 They do not create rights or liabilities to third  
21 parties, independent of what is already established in the  
22 Hydrocarbon Law or Regulations. Furthermore, the  
23 Hydrocarbon Law and Regulations have supremacy over the  
24 procedures and, thus, to the extent there is any apparent  
25 conflict between the two instruments, the procedures or the

1 law, the law or the regulations would control.

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

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

17 And this is also reflected in the Procedures.  
18 Turn back to C-44--and we've highlighted it here for easy  
19 reading. Item 13 of the checklist indicates "evaluate  
20 company in accordance with the 'Qualifications of Oil  
21 Companies' procedure." And then there are additional  
22 several steps, if the tribunal were to look at CLA-44--  
23 ,there are additional steps including, as I will note  
24 earlier, publication of the availability of the oil Blocks  
25 and possible consideration of competing bids in a public

1 tender.

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

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

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

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

12 The procedure, thus, is not the process, and  
13 that's a fundamental error in Mr. Amorrortu's claim. For,  
14 as we saw, the negotiation process only begins, really, at  
15 Step 34, or even--if you wanted to try to make the  
16 case--that it could arguably begin, at the earliest, at  
17 Step 22. But to the extent--notably, both of those steps,  
18 however, occur only after a company has requested a  
19 Certification for Qualification that has been evaluated.  
20 So, to the extent any concomitant rights exist with a  
21 Direct Negotiation--with respect to a Direct Negotiation,  
22 any of these bundle of rights, they only become vested at  
23 one of these points--either Step 22 or Step 34--both of  
24 which occur after a Request for Qualification. And this is  
25 critical because Mr. Amorrortu never reached these steps

1 because Mr. Amorrortu never submitted a compliant Request  
 2 for Qualification and never received a Certification of  
 3 Qualification. So he simply never got to the beginning of  
 4 the Direct Negotiation Process.

5 Now, Amorrortu cannot--

6 PRESIDENT BINNIE: Can I just ask a question?

7 MR. FIGUEROA: Yes, Mr. President.

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

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

19 MR. FIGUEROA: I'd probably prefer to let the  
 20 Expert answer that question.

21 (Audio interference.)

22 (Stenographer clarification.) Interruption  
 23 regarding microphone feedback

24 MR. FIGUEROA: Thank you.

25 I'll let the Expert, I think, answer that

1 question, with all due respect, Mr. President, and with  
 2 your permission. Perhaps the Expert will be best placed to  
 3 answer that.

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

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

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

24 PRESIDENT BINNIE: Thank you.

25 MR. FIGUEROA: Now, Amorrortu cannot deny, and

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

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

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

1 this type of implied qualification.

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

10 If we go to Article 5, right, which incidentally  
 11 describes the requirements for qualification of experienced  
 12 oil companies, right, Mr. Amorrortu claimed that Baspetro  
 13 was an experienced oil company, so Article 5 would be an  
 14 applicable provision. There is also Article 6, which  
 15 refers to requirements for oil companies without  
 16 experience. But, again, Amorrortu claims Baspetro was an  
 17 experienced company. We'll take that allegation as true,  
 18 and so Article 5 would be applicable; right.

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

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

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

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

1 Negotiation.

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

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

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

25 And its lack of response, thus, it has no legal

1 impact. Moreover, as Dr. Vizquerra notes in his response,  
 2 the notion of implied consent or positive administrative  
 3 silence is inapplicable here. Even if, assuming arguendo  
 4 administrative silence were to apply, Dr. Vizquerra says  
 5 that in light of the importance of the natural resources  
 6 involved, the implication would be the opposite. It would  
 7 be a negative one. That is, the silence of PeruPetro would  
 8 mean that, in fact, they denied qualification for Amorrortu  
 9 or for Baspetro.

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

20 And, given the importance of the natural  
 21 resources involved, if there were to be implied  
 22 qualifications, that would have to be expressly stated, and  
 23 it is not. Here, the penalties are very limited to  
 24 responsibility for the specific official involved in not  
 25 issuing the qualification.

1 Thus, no matter how one looks at the issue, the  
 2 inescapable conclusion is that Amorrortu never obtained the  
 3 Certification of Qualification that, under the regulations,  
 4 is necessary--is a necessary prerequisite to commence the  
 5 Direct Negotiation Process. And since the Direct  
 6 Negotiation Process never began, Amorrortu cannot claim any  
 7 alleged rights appurtenant or concomitant to it.

8 Now, the Tribunal's analysis could end right  
 9 there. On this ground alone Amorrortu's Claim lacks any  
 10 merit as a matter of law. However, even if we were to  
 11 assume for the sake of argument that Amorrortu and  
 12 Dr. Quiroga's misinterpretation of the procedure for Direct  
 13 Negotiation were correct, that is that a Direct Negotiation  
 14 Process was commenced on the date Mr. Amorrortu presented  
 15 the Baspetro Proposal, the result would still be the same.

16 And this is because the "bundle of rights"  
 17 alleged by Amorrortu as concomitant with the Direct  
 18 Negotiation Process simply do not exist.

19 Recall that Amorrortu alleged that the allegedly  
 20 valuable bundle of rights to which a Direct Negotiation  
 21 Process was entitled--entitled him to--were the right of an  
 22 exclusive analysis, an exclusive technical evaluation and  
 23 community analysis.

24 However, none of these alleged rights exist under  
 25 applicable Hydrocarbons Law regulation or even the

1 procedures for Direct Negotiations. So, let's deal with  
2 the community analysis first. This appears in Steps 9  
3 and 10 of the checklist in the procedures for Direct  
4 Negotiation. We're going to highlight those for the  
5 Tribunal now.

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

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

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

25 Moreover, as can be seen in the checklist and

1 decision tree diagram, the instruction to implement these  
2 procedures implies that the task indicated in those  
3 procedures will simply commence with an eye to completing  
4 those later in the future. They are to implement them at  
5 this stage, but each relevant procedure has various steps.  
6 And I invite the Tribunal to look at those procedures.  
7 They are in Spanish, but one can see the number of steps  
8 that are involved.

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

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

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

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

20 Now, Mr. Amorrortu's alleged right to exclusivity  
21 upon which Amorrortu places more emphasis is likewise a  
22 falsehood. As Perú observed in its Reply Submission,  
23 according to the procedures for Direct Negotiation, once a  
24 company has submitted a compliant request for  
25 qualification, and that is eligible for a certification of

1 qualification, the very next step instructs PeruPetro to  
2 post the Block's availability to the web for 30 calendar  
3 days, thus, inviting other companies to show interest.

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

9 So, contrary to Amorrortu's assertion had  
10 he--assuming for the sake of argument--assuming that the  
11 sake of argument that Amorrortu somehow impliedly received  
12 qualification, the very next step, according to the  
13 procedures, is that the availability of the blocks would be  
14 made public and other competitors would be invited to  
15 submit competing bids. Thus, there is no right to  
16 exclusivity.

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

23 And another independent reason why  
24 Mr. Amorrortu's claim fails, even assuming arguendo a  
25 Direct Negotiation Process had begun, is that he waived any

1 and all rights, as we indicated, when he decided to  
 2 participate in the public tender.

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

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

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

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

1 standard under Section A, and the Claimant must show that  
 2 he has incurred loss or damage by reason of, or arising  
 3 from that breach. Notably, Article 10.26 also specifically  
 4 requires the Tribunal to award monetary damages, including  
 5 in lieu of restitution.

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

12 ARBITRATOR LANDAU: Can I ask a question at that  
 13 point?

14 MR. FIGUEROA: Sure. Of course.

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

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

23 MR. FIGUEROA: Yes. Correct. That would be our  
 24 position. The Treaty fairly clearly--certain treaties  
 25 certainly permit that. The language is pretty broad. This

1 critically important.

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

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

20 As PeruPetro has noted--I'm sorry, as Perú has  
 21 noted, this is fatal to Amorrortu's Claim because of the  
 22 specific requirement of the USPTPA.

23 Article 10.16 of the USPTPA established that the  
 24 elements for a recognizable claim under the Treaty, and  
 25 specifically a Claimant must demonstrate a breach of a

1 Treaty very specifically requires a demonstration of loss  
 2 in order to assert a claim. And so, I think the State  
 3 Parties very clearly intended for claims here, the claims  
 4 to be asserted to be claims for damages and not mere  
 5 declaratory requests.

6 ARBITRATOR LANDAU: Thank you.

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

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

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

23 That would be a factual issue to be determined in  
 24 a damages phase in this Arbitration. Rather, what's at  
 25 issue here is the very legal premise of the damages

1 claimed. The only loss he is asserting is one that can  
2 only occur if he had a right to the Contracts, and he  
3 doesn't. And here, again, is where we turn to the  
4 discretion that Peruvian law grants PeruPetro.

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

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

22 But secondly and, more importantly, the number of  
23 successful Direct Negotiations in the past does not and  
24 cannot eliminate the legal right and discretion of  
25 PeruPetro to enter or not enter into contracts. As long as

1 PeruPetro's discretion to deny a contract existed as a  
2 matter of law, Amorrortu cannot claim an entitlement to the  
3 Contract or damages derived therefrom, and therefore, his  
4 Claim fails.

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

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

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

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

24 As the Tribunal is aware, the USPTPA very clearly  
25 establishes as a condition to Perú's consent to arbitration

1 the submission of a valid and timely waiver, and the waiver  
2 must be unconditional in order to be effective, and the  
3 language of the Treaty specifically says that it must  
4 accompany the Notice of Arbitration, and Claimant himself  
5 must sign it. It must be accompanied, and that's very  
6 important. I'll skip through here just to reserve some  
7 time for later.

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

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

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

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

20 I've covered these points.

21 And again, this is--the position by the U.S. in  
22 this proceeding is the same as that submitted in Renco I,  
23 that very clearly decided that the issue of the waiver is a  
24 consensual issue for which the Tribunal cannot permit to  
25 cure later on.

1 I want to quickly address, before I conclude,  
2 Claimants' arguments with respect to the warning language.

3 And--I apologize.

4 So, with respect to the warning language, the  
5 main issue there is that--and this relates to the cure.

6 There.

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

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

19 But consent to arbitration is a special  
20 jurisdiction provided by the State, and, therefore, is not  
21 broad like other jurisdiction. The investor may very well  
22 bring--is free to bring Claims elsewhere if he wants to, if  
23 he has any doubts with respect to jurisdiction. The  
24 language is very clear. It does not need a warning. And  
25 again, this further supports the need for a separate

1 document signed by the Claimant because it makes that  
2 weight that much more apparent.

3 And, finally, with respect to the estoppel  
4 argument, the U.S. in its Non-Disputing Party submission  
5 very clearly indicated, and that it is an agreement with  
6 Perú, that the mere--a request for preliminary measures by  
7 the Tribunal does not waive jurisdictional objections that  
8 are reserved and that are raised on a timely basis. Perú  
9 reserved its jurisdictional objections at the very  
10 beginning with its Answer, and clearly reserved an  
11 objection on a *ratione voluntatis* basis. And, thus, there  
12 can be no estoppel.

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

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

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

1 deficient waiver, is it not the case that Perú consented to  
2 the Tribunal making an order against the Claimant for this  
3 Third-party Funding information, that Perú asked the  
4 Tribunal to make? And how can you ask a nonexistent  
5 Tribunal to make an order, which then imposes an obligation  
6 on the other side?

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

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

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

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

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

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

23 And there are various different issues for which  
24 a State may need to request a Tribunal to act, and the  
25 Tribunal has competence up until it has decided that it has



1 no competence to decide those issues. And there are  
2 various procedural issues that might occur.

3           There may be a preliminary measure that has to be  
4 issued, something very important that has to be protected  
5 lest a right be violated on an irreparable basis. A State  
6 cannot have its hands tied to be able to do that, if it's  
7 reserved its right for a jurisdictional objection and  
8 submits it on a timely basis.

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

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

25           And that position is, quite frankly, absurd, nor

1 is it right or true that Perú obtained any particular  
2 benefit from the disclosure of the Third-party Funder.  
3 It's a benefit that was for the entire process. It was a  
4 benefit to the Tribunal to be able to know that it is  
5 legitimately in place and that there is no risk of  
6 conflicts.

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

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

17           In other words, it accomplishes nothing other  
18 than to say to the Tribunal: "You are constituted. You  
19 have the authority to make these orders. You made the  
20 Order," and now you say, "well, the Order that you made was  
21 made by a Tribunal that didn't exist," according to Renco.  
22 The Arbitration Agreement never comes into existence  
23 because there was never any consent, because there was no  
24 waiver.

25           It just seems to me there's some complexities in

1 here that have to be addressed.

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

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

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

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

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

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

17           PRESIDENT BINNIE: Okay. Thank you very much.

18           Would either of my colleagues has any questions?

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

21           PRESIDENT BINNIE: Mr. Hanotiau?

22           MR. HANOTIAU: None here.

23           PRESIDENT BINNIE: Okay. Thank you very much.

24           Counsel. I think now we go straight in to the  
25 Claimant's Opening Statement. Is that the order of

1 business agreed to?

2 MR. RODRIGUEZ: Correct, Mr. President. But with

3 the Tribunal's indulgence, in the schedule we had a

4 15-minute break scheduled for 8:00 a.m. So, with the

5 Tribunal's indulgence, and if my colleagues agree, what I

6 would suggest is that we take a five-minute break now,

7 instead of a 15-minute break after the--my Opening. We

8 reduce that break to 10 minutes. We've been going for

9 almost a couple of hours, and we do need a two-to-five

10 minute break, if that is okay.

11 MR. FIGUEROA: I have no objection to that,

12 Mr. President.

13 PRESIDENT BINNIE: Okay. Well, it sounds like a

14 sensible recommendation. So, we will break for five

15 minutes.

16 MR. RODRIGUEZ: Thank you.

17 (Brief recess.)

18 PRESIDENT BINNIE: All right.

19 PRESIDENT BINNIE: Okay. Thank you very much.

20 We will resume with the Claimant's Opening

21 Statement.

22 MR. RODRIGUEZ: Thank you, Mr. President.

23 Can you hear me?

24 PRESIDENT BINNIE: Yes.

25 OPENING STATEMENT BY COUNSEL FOR CLAIMANT

1 the corruption extended to the Direct Negotiation process,

2 but also extended to the public bidding and tainted the

3 entire process. We made clear that the proposal submitted

4 by Bacilio Amorrortu was treated by Perú, abandoned,

5 shelved away, denied in an untimely manner, but, more

6 importantly, in a corrupt, arbitrary, and capricious

7 manner. And by definition, under every Decision that we

8 have cited in our Briefs, that constitutes a breach of the

9 Fair and Equitable Treatment obligations of Perú.

10 Now, in their Reply and in today's argument, Perú

11 makes clear that what it's arguing, it is not that we do

12 not state a claim under the Treaty. That, they must admit.

13 They cannot dispute our factual allegations. They cannot

14 dispute that corruption violates Fair and Equitable

15 Treatment. What Perú is really saying is that Amorrortu is

16 not entitled to the damages he seeks because he did not

17 commence a process of Direct Negotiation.

18 The problem with that is that we allege in our

19 Statement of Claim that in the absence of corruption, in

20 the absence of corruption, in a good faith process, as

21 Amorrortu was entitled, he would have obtained the

22 Contract. And that, Members of the Tribunal, is a

23 fact-intensive inquiry. It is a fact-intensive inquiry

24 that is going to provide to the Tribunal evidence showing

25 the experience, the successful experience, of Amorrortu in

1 MR. RODRIGUEZ: Mr. President, Distinguished

2 Members of the Tribunal, I want to start by thanking you

3 for the attention that you have devoted to this case and

4 for setting this Hearing on an expedited basis, which is

5 obviously very important for us.

6 Bacilio Amorrortu commenced this arbitration to

7 denounce the pervasive corruption that frustrated his

8 investment in Perú. That corruption was rampant and was

9 orchestrated from the highest spheres of power of the

10 Peruvian Government. In the Statement of Claim, we made

11 clear that the President of Perú, that the First Lady of

12 Perú, as PeruPetro was orchestrating and organizing the

13 presumptive or the purported international public bidding

14 process, was meeting with Graña y Montero, talking about

15 business and specifically talking about Blocks III and IV

16 of the Talara Basin.

17 Based on that pervasive corruption, the Contracts

18 were ultimately awarded to Graña y Montero as the only

19 qualified bidder. Not surprised, just as it was planned

20 from the beginning. And in our Statement of Claim, we made

21 that clear.

22 Now, in Objection 1, Perú argues that somehow we

23 have failed to state a viable claim under the Treaty. That

24 objection is very difficult to understand, in that we have

25 made clear, in Paragraphs 75 and 88 and 157 and 164, that

1 the Talara Basin. It is a fact-intensive inquiry that is

2 going to show to the Tribunal that Amorrortu's proposal far

3 surpasses the rigged proposal accepted by Graña y Montero,

4 and it is a fact-intensive inquiry that requires this

5 Tribunal to delve into the facts, and that it cannot be the

6 subject of a preliminary objection. Amorrortu has the

7 procedural right to present evidence to this Tribunal that,

8 in the absence of corruption, he would have obtained the

9 Contract.

10 Now, my esteemed colleague on the other side

11 argues that we are opening a Pandora box because then

12 anybody who is tangentially impacted by corruption can file

13 a claim. Not so. Mr. Amorrortu is not anybody.

14 Mr. Amorrortu is somebody who managed, operated, invested

15 successfully in the Talara Basin. Mr. Amorrortu is

16 somebody who submitted a proposal for Direct Negotiation at

17 the request of PeruPetro. Mr. Amorrortu is somebody who

18 submitted a request at the public bidding process, and all

19 those three processes were rigged with corruption, and

20 that's what gives rise to this claim. And that's why

21 Objection 1 should be rejected: Because it is not a proper

22 objection.

23 Now, Objection 4 is equally frivolous. This case

24 is not Renco. This case is not Renco because, in Renco,

25 Perú did not do--even though Perú did a number of

1 outrageous acts and abused the process, as the Tribunal  
2 acknowledged in Renco I, what Perú did not do in Renco I  
3 was submitting in availing itself of the jurisdiction of  
4 the Tribunal to the point it requested substantive relief  
5 from the Tribunal.

6 This case is not Renco because, unlike the  
7 investor in Renco, Mr. Amorrortu gave the Tribunal the  
8 power to control the filing of the Statement of Claim, and,  
9 as such, the moment in which the Arbitration Agreement is  
10 created under the Treaty, and this case is not Renco  
11 because, shortly after Mr. Amorrortu filed its Statement of  
12 Claim, it told Perú that it was willing to provide the  
13 purportedly required waiver to move this case along. And,  
14 in fact, Mr. Amorrortu had done so. And nothing here  
15 prevents this Tribunal, who has the power, the inherent  
16 power, to set the date for the filing of the Statement of  
17 Claim from modifying and allowing Mr. Amorrortu to  
18 supplement or modify his Statement of Claim pursuant to the  
19 UNCITRAL Rules.

20 Now, before I delve into these objections and the  
21 nuances of these objections, I want to present a PowerPoint  
22 to the Tribunal and go over the factual framework of the  
23 case. I believe the PowerPoint is already up, and we are  
24 going to go over a number of issues and we are going to  
25 start taking a step back and talking about the investment.

1 an investment under the Treaty.

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

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

1 Again, in these preliminary objections, we do not  
2 have the question of the investment at issue. But I do  
3 want to talk about the investment because it provides some  
4 of the background to understand Objection 1.

5 Who is Bacilio Amorrortu? As we allege in the  
6 Statement of Claim, Mr. Amorrortu had--is one of the most  
7 successful entrepreneurs in the business--in the oil  
8 industry in the Talara Basin. For more than 20 years, for  
9 more than 20 years, Mr. Amorrortu worked in the Talara  
10 Basin, to the point that a company controlled by him and  
11 operated by him had the right to operate and optimize the  
12 very same Block III that is the subject of this  
13 Arbitration, and did so successfully.

14 Unfortunately, during the Fujimori dictatorship,  
15 Mr. Amorrortu was expropriated and lost everything he had  
16 and had to take asylum here in the United States. But,  
17 knowing his ability and his knowledge in the oil industry,  
18 he became a U.S. citizen and continued to be involved in  
19 the area to the point that he was a promoter of the USPTPA  
20 and participated in the negotiation processes and the  
21 Hearings in Congress, talking about the anticorruption  
22 requirement of this Treaty. After all, he had been a  
23 victim of that corruption, of the dictatorship, in the  
24 1990s. And, eventually, when the Treaty was enacted, he  
25 founded Baspetro, an enterprise which, by definition, is

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

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

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

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

24 Now, this is not an allegation, even though those  
25 allegations have to be assumed to be true. Graña y Montero

1 has admitted that this was the case. Graña y Montero has  
 2 admitted in Perú that it, in fact, paid bribes to the  
 3 Humala and Nadine Heredia, the First Lady, to get lucrative  
 4 Government contracts under the appearance of transparent  
 5 public bidding processes. That was the modus operandi that  
 6 Graña y Montero was displaying, and that is exactly what we  
 7 allege in our Statement of Claim.

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

18 The Direct Negotiation Process, as we will  
 19 explain in a second and we have explained in our filings,  
 20 is critical to and is an important component to our theory  
 21 of damages because, at the end of day, we will have to  
 22 prove as a factual matter that in the absence of  
 23 corruption, Mr. Amorrtortu, Baspetro, would have obtained  
 24 the Contract. But it has nothing to do with the Claim.  
 25 The Claim involves not only Direct Negotiation, but it

1 involves the public bidding process in its entirety.  
 2 Graña y Montero paid millions of dollars in  
 3 bribes to obtain any Government contract it requested. The  
 4 vast majority of contracts awarded during this period were  
 5 awarded consistent with this Corruption Scheme: A facially  
 6 legitimate public bidding process where all competitors of  
 7 Graña y Montero failed to qualify and Graña y Montero was  
 8 the only qualified bidder.

9 That, Members of the Tribunal, is exactly what  
 10 happened here: A facially legitimate public bidding  
 11 process where PeruPetro purportedly complied with all the  
 12 requirements of transparency, with all its internal  
 13 procedures, but at the end of the day, all competitors of  
 14 Graña y Montero failed to qualify, and Graña y Montero was  
 15 the only qualified bidder. That's what happened here.  
 16 That's how Graña y Montero obtained Blocks III and IV, the  
 17 only qualified bidder for both lots.

18 We have demonstrated that Baspetro commenced the  
 19 Direct Negotiation Process before the public bidding had  
 20 even been announced or decided. And we have alleged and  
 21 demonstrated that PeruPetro, contrary to its own practices  
 22 and procedures, decided to open Blocks III and IV for  
 23 International Public Bidding Process without evaluating the  
 24 Baspetro Proposal.

25 Members of the Tribunal, the Baspetro Proposal

1 was shelved away. It was not timely responded. It was  
 2 ignored. Why? Because Graña y Montero was the chosen  
 3 winner. Graña y Montero had paid the bribe. The two other  
 4 companies interested in participating in the international  
 5 bidding process were disqualified. It was not only  
 6 Baspetro. And that is a corruption. And to make it even  
 7 worse, Graña y Montero did not even comply with its own  
 8 qualification requirements of the public bidding process.

9 In our Statement of Claim, not only we allege  
 10 that the Direct Negotiation Process was tainted with  
 11 corruption, not only we allege that the public bidding  
 12 process was tainted with corruption, but we allege that the  
 13 requirements of the public bidding process were designed to  
 14 favor Graña y Montero. And if you really delve into those  
 15 requirements and Graña y Montero's purported compliance  
 16 with those requirements, you will see that they didn't  
 17 comply.

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

24 Indeed, indeed, the qualification requirements  
 25 were amended--and we allege that in the Statement of

1 Claim--were amended at the request of Graña y Montero to  
 2 allow Graña y Montero to qualify, and PeruPetro went as far  
 3 as relinquishing its 25 percent ownership interest in the  
 4 Blocks in favor of Graña y Montero. Economically, that  
 5 proposal made no sense, other than it was designed; Graña y  
 6 Montero had paid the bribe and it was the chosen winner.  
 7 And that's exactly what happened.

8 If we can click--  
 9 (Overlapping speakers.)

10 PRESIDENT BINNIE: Before you leave all that, and  
 11 taking what you've said at face value, there is still the  
 12 problem that the submission which you say the Claimant was  
 13 asked to submit, a 16-page document that we've looked at  
 14 that clearly does not attach documents listed in Article 5  
 15 of the Regulation, on the face of it would appear to be a  
 16 noncompliant proposal. And this is a point much made by  
 17 Perú.

18 What is your response to that?

19 MR. RODRIGUEZ: Our response to that is--it has  
 20 two parts, Mr. President. Number one, under the process  
 21 designed by PeruPetro--and we are going to go over that  
 22 process in a second--you will see that the initial proposal  
 23 that Baspetro submitted did not have to include any of  
 24 these requirements. It really only had to explain and  
 25 express an interest in the Blocks, and that's exactly what

1 Baspetro did, and that's exactly what Baspetro did  
2 pursuant to its conversation with Ortigas.

3           Number two, under Peruvian administrative law and  
4 PeruPetro's own procedures and regulations, you cannot just  
5 reject a proposal because it's not compliant, because it  
6 does not have enough information. You have an  
7 obligation--and we'll see the flowchart that shows that--to  
8 communicate to Baspetro: You're missing document one,  
9 two, and three. And then at that point Baspetro will come  
10 back and submit those documentations.

11           What, really, Perú is saying--it is actually very  
12 interesting. What Perú is saying: Well, if you implement  
13 a Corruption Scheme at the early inception of the process,  
14 so that Baspetro is not allowed to go through the entire  
15 process, then that Corruption Scheme is fine because you  
16 did not comply with the other processes. And, of course,  
17 as we will show later in the slides and the presentation  
18 that we have, you cannot--you cannot rely on your failure  
19 to comply with your own regulations to frustrate  
20 Baspetro's own rights. Perú cannot rely on PeruPetro's  
21 failure to abide by its own procedures to defeat  
22 Baspetro's Claims.

23           If this proposal was not sufficient and they  
24 cannot--it is sufficient to start to get you on point one,  
25 and we will see the process. It is more sufficient to get

1 you on point one and start the process. But the process  
2 itself is designed to allow for dialogue, dialogue in good  
3 faith, because at the end of the day, PeruPetro wants to  
4 pick and wants to negotiate a contract with this entity.  
5 Obviously, that did not happen, because the directive was  
6 received from the Presidency of Perú to continue with the  
7 facade of a corrupt public bidding process to benefit  
8 Graña y Montero. And that's our answer: Perú cannot  
9 benefit itself from that issue.

10           And, actually, we have it right here. Look at  
11 the flowchart. And we are going to spend a lot of time on  
12 this flowchart. There's a back-and-forth. There's a  
13 procedure, the very first path.

14           And, by the way, we all refer to this process as  
15 a Direct Negotiation Process. There's a significant  
16 dispute between our Experts as to when the Direct  
17 Negotiation Process commences, but there's no dispute that  
18 this internal procedure--which is published by PeruPetro;  
19 it is published to the public; the public knows about this  
20 internal procedure--that this internal procedure had  
21 commenced, and there is no dispute that this internal  
22 procedure was not followed. If you look at the different  
23 steps--and we are going to go through our Experts--you will  
24 see that there are review letters, that there are  
25 determinations made as to whether this proposal was

1 compliant, and that PeruPetro had the obligation to go back  
2 and discuss these points with Perú--with Baspetro, and  
3 that it didn't do that. Instead, it shelved away the  
4 proposal.

5           How do we know that? Because after the public  
6 bidding process was commenced, Mr. Amorrortu went back to  
7 PeruPetro and talked with the executives of PeruPetro, and  
8 they had no idea about Baspetro's proposal. Baspetro's  
9 proposal was never submitted to this process. Baspetro's  
10 proposal, after receiving the directives from the  
11 Government of Peru, was shelved away and simply ignored.  
12 And, basically, Mr. Amorrortu was asked to follow the flow  
13 with the process and to join the full public bidding  
14 process.

15           Again, this answers your question, Mr. President.  
16 Perú cannot rely on PeruPetro's failure to comply with its  
17 own procedure to defeat Amorrortu's Claim. If there was  
18 any issue with Amorrortu, if Amorrortu--now, granted, and  
19 let's keep in mind, Amorrortu had the experience that no  
20 other company had. Amorrortu had a plan to benefit the  
21 community of the Talara Basin and the approval of the  
22 community of Talara that no other proposal had. Amorrortu  
23 had a participation for Perú in the profits that no other  
24 proposal had.

25           But even if--even if PeruPetro had any issue with

1 Mr. Amorrortu's proposal, they had the obligation to ask in  
2 writing, communicate that, and then--and even if they had  
3 made the decision, then that triggers a process under which  
4 Mr. Amorrortu could appeal that decision, and yet that was  
5 not done.

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

8           Now, Amorrortu's treaty claims are very clear.  
9 Perú does not dispute that corruption is an international  
10 evil, that it is contrary to good morals and to  
11 international public policy. This was said in an ICC Award  
12 in 1963, and I think we all agree with that. Perú does not  
13 dispute that, as the Tribunal in EDF held: "Corruption  
14 itself is a violation of the Fair and Equitable Treatment  
15 obligation owed to the Claimant pursuant to the BIT, as  
16 well as a violation of international public policy."

17           For whatever reason, in Objection 1, Perú has  
18 focused on the Direct Negotiation Process. And that's an  
19 important aspect of the case in our claim for damages,  
20 again, and our ability to prove that, in the absence of  
21 corruption, Amorrortu was entitled and would have received  
22 the Contract. But the Treaty violation arises out of this  
23 Treaty violation, out of the violation of the Fair and  
24 Equitable Treatment, because corruption in itself is a  
25 violation and has caused damages.

1 This is so important, Members of the Tribunal,  
2 because, at the end, this is the essence of Mr. Amorrortu's  
3 Claim: A State that uses its discretion to contract in  
4 furtherance of a Corruption Scheme violates the Fair and  
5 Equitable Treatment obligations. And a corrupt, arbitrary,  
6 and capricious violation of domestic law, of internal  
7 procedures, to the prejudice of protected investors, which  
8 Amorrortu is, is a violation of the Fair and Equitable  
9 Treatment. That--these two principles, Perú does not  
10 dispute, and these two principles require, require the  
11 denial of Objection 1.

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

14 MR. RODRIGUEZ: Absolutely.

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

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

25 Their Expert said that the Direct Negotiation

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

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

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

1 the Contract.

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

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

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

25 At the end of the day, that dispute is very

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

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

17 Now, going back to Objection 1--if we can go back  
18 to the PowerPoint, please--there's another problem with  
19 Objection 1. Objection 1, as it will be very obvious to  
20 the Tribunal and as we have indicated in our Brief, it is  
21 rife with factual disputes. If you look at the objections  
22 that Perú has submitted, one of the seminal points that  
23 they make is that there was never a formal determination by  
24 PeruPetro to commence Direct Negotiations as required by  
25 law.

1 The problem with this is that it disputes, it  
2 assumes, it ignores, that Mr. Ortigas, the President of  
3 PeruPetro, told Amorrortu, told Mr. Amorrortu, that he had  
4 to file his Direct Negotiation proposal within seven days.

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

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

24 (Overlapping speakers.)

25 MR. RODRIGUEZ: Yes, Mr. President.

1 PRESIDENT BINNIE: There was a Decision by the  
2 PeruPetro Board that it would go to a public tender, and  
3 this was gazetted publicly in April, so almost a couple of  
4 months before your client made his submission. So,  
5 it's--you know, you may say that this was a product of  
6 corruption, but, nevertheless, it was out in the public  
7 domain before Ortigas made the invitation you referred to.

8 MR. RODRIGUEZ: Yes, Mr. President. There's an  
9 allegation with respect to that. And I want to make that  
10 clear, because it is a very important point.

11 The decision there--the decision there is to  
12 commence a process for the selection of a company, and that  
13 process definitely could be either Direct Negotiation or a  
14 public bidding process. As Perú admits, the Direct  
15 Negotiation Process in itself has a window after all this  
16 analysis--after all the proposal has been considered for a  
17 public bidding process. So, that Decision in April is not  
18 inconsistent with the Ortigas representation and request to  
19 submit the Direct Negotiation proposal in May of 2008.

20 What is clear, Mr. President, is this: That  
21 public bidding process had not commenced prior to his  
22 proposal. The requirement of that public bidding process  
23 had not been announced or even determined, or even  
24 determined, because the requirements for that public  
25 bidding process were decided in June/July as well, after

1 his proposal. And the only thing that Perú can point to at  
2 this specific point in time is just a statement that  
3 suggests that a commission is going to be created to decide  
4 the process for the selection, for the selection, of the  
5 company that is going to be awarded these Contracts.

6 That document is not inconsistent with President  
7 Ortigas' statement. On the contrary, it is quite  
8 consistent, because here's what Ortigas tells Amorrortu,  
9 Mr. Amorrortu. President Ortigas tells Amorrortu: "You  
10 have to send me your direct proposal within seven days."  
11 Why are those seven days' proposal? "Go back to Houston  
12 and present that proposal within seven days." It is  
13 because the following month, the requirements for this  
14 public bidding process are going to be decided and  
15 approved.

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

22 This Tribunal has to look at Ortigas' statement.  
23 This Tribunal has to look at the chronology. What is it  
24 that PeruPetro did in Perú? What is the statement made in  
25 PeruPetro--by PeruPetro in Perú in April of 2014? What is

1 it that Ortigas told Mr. Amorrortu? How do these two  
2 statements can be reconciled? What happened in  
3 June/July 2014 when the international--the public bidding  
4 requirements were announced, and what happened when the  
5 public bidding was actually commenced?

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

13 With respect to the certification, that  
14 certification--and I think my colleague admitted this in  
15 his presentation. The certification is subsumed in the  
16 PeruPetro procedure. And this process was aborted before  
17 Mr. Amorrortu was able to complete the entire process.  
18 This Tribunal cannot award PeruPetro, Perú, for corrupting  
19 the process at the early stages. Whether the corruption  
20 impacted the early stages of the process, whether the  
21 corruption impacted the middle stages of process, whether  
22 the corruption impacted the final stages of the process,  
23 the reality is that the process was corrupt, the process  
24 was arbitrary, and the process was capricious, and that  
25 constitutes a breach of the Treaty.

1 Now, here's another confusion. Beyond the right  
2 to Direct Negotiation, Mr. Amorrortu never had a right to a  
3 contract. This is a distortion of his Claim. He presented  
4 a proposal. He presented a proposal, not only in the  
5 Direct Negotiation, but in the public bidding process, and  
6 it's a factual analysis to determine this. He has a right  
7 to present evidence to this Tribunal that, in the absence  
8 of corruption, he would have been able to obtain this  
9 Contract.

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

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

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1 PeruPetro cannot prove that. And we are going to  
2 prove that, consistent with PeruPetro's own practices and  
3 procedures, that would have been the case here. That's why  
4 this is a factual dispute as well.

5 They claim that expectations are not protected by  
6 the Treaty. Now, granted, in the investment arbitration  
7 world there are a lot of discussions as to whether an  
8 investor that relies on the legal framework of a country  
9 has a claim for breach of their reasonable expectations--in  
10 other words, the reasonable expectations that Perú and  
11 PeruPetro would abide by its internal procedures and would  
12 abide by its anticorruption commitment--or whether that  
13 Claimant, that investor, has a claim for actual violation,  
14 arbitrary, capricious, and, in this case, corrupt violation  
15 of that particular regulation of that particular aspect of  
16 domestic law.

17 In this particular case, as interesting as that  
18 debate is, it is irrelevant because, at the end of day,  
19 whether you do it through the rubric of reasonable  
20 expectations that Perú would follow its procedures, that  
21 Perú would act in good faith, that Perú would abide by its  
22 anticorruption commitments, at the end of the day,  
23 Mr. Amorrortu's proposal was denied, abandoned,  
24 rejected--and I keep repeating because this is a constant  
25 in this case--in a corrupt, arbitrary, and capricious

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

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

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

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

22 Number one, number one here in this particular  
23 case, Perú has availed itself of the existence of this  
24 Tribunal without making any reservation--without making any  
25 objection to the existence of a Tribunal. And it is very

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1 important to distinguish jurisdictional objections from  
2 consent objections because a consent objections go to the  
3 existence of the Tribunal, whereas most jurisdictional  
4 objections go to the viability of the claim or the ability  
5 of a claim to be covered by the Treaty itself. Here, Perú  
6 consented to the existence of this Tribunal by asking  
7 relief.

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

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

19 Danny, please.

20 See, under Article 17 of the Treaty,  
21 Article 10.17 is very clear. It says that the acceptance  
22 of Perú's offer to arbitrate is perfected upon the  
23 submission of the case to arbitration. The filing of a  
24 Notice of Intent to Arbitrate does not, does not constitute  
25 an acceptance of the offer to arbitrate. The filing of the

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1 Notice of Arbitration by itself does not constitute an  
2 acceptance.

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

9 Article 10.17 is clear on that particular point.  
10 Now, Article 10.16.4 makes a very clear  
11 distinction between an arbitration that is commenced under  
12 the ICSID Rules of Arbitration and the UNCITRAL Rules of  
13 Arbitration.

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

22 In other words, when you have a process under  
23 ICSID, the moment in time in which the investor  
24 accepts--Perú, Perú's offer of arbitration--is when the  
25 Notice of Arbitration is filed. Not so, under the UNCITRAL

1 Rules. Not so, under the UNCITRAL Rules. And 4(c) makes  
2 that clear, and it's in front of you right here.

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

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

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

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

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

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

17 Why did it do that? Maybe there are several  
18 strategic reasons, maybe concerns with the statute of  
19 limitations, and, therefore, when the Tribunal was  
20 constituted, when the Tribunal in Renco was impaneled, at  
21 that point there was already a defective acceptance in  
22 place, and the Tribunal--the Renco investor divested the  
23 Tribunal of the ability to determine the time and control  
24 the filing of the Statement of Claim. Not so, here. Not  
25 so, here.

1 Mr. Amorrortu filed his Notice of Arbitration in  
2 February. This Tribunal was constituted, and then this  
3 Tribunal, using its inherent powers under the Treaty, set  
4 the date for Mr. Amorrortu to file his Statement of Claim.

5 And again, the power this Tribunal has to set the  
6 date for Statement of Claim, which is the key date under  
7 Article 10.17 for the acceptance of Perú's offer to  
8 arbitrate is the date in which it includes the power to  
9 allow Amorrortu to supplement, amend the Statement of  
10 Claim, to forgo and move from this issue and expedite those  
11 proceedings.

12 ARBITRATOR LANDAU: Can I just--sorry.

13 MR. RODRIGUEZ: Yeah.

14 ARBITRATOR LANDAU: You were referring to 10.17.

15 Can you point to the wording in 10.17 that you  
16 say supports you?

17 MR. RODRIGUEZ: Absolutely. Specifically,  
18 consent of each Party to arbitration. "Each Party consents  
19 to the submission of a claim to arbitration under this  
20 section in accordance to this Agreement. The consent under  
21 Paragraph 1 and the submission of a claim to arbitration  
22 under this section, so satisfy the requirement of," and  
23 then you have the requirements of consent, the requirements  
24 of an agreement to arbitrate, and the requirements under  
25 the New York Convention and the requirements under the

1 Inter-American Convention.

2 So, that's why we say that the existence, the  
3 perfection of the Agreement to arbitrate does not take  
4 place until the Claim is submitted to arbitration.

5 By the way, this is something that is admitted by  
6 Perú. If you look at the submissions from Perú--and I  
7 believe that my colleague mentioned that as well  
8 today--they acknowledge that, in this particular instance,  
9 the action is not submitted to arbitration, and the offer  
10 to arbitrate is not actually accepted. That is not  
11 perfected until this, the Statement of Claim is submitted.

12 ARBITRATOR LANDAU: So, just to--sorry to  
13 interrupt, but just so I understand this, is it right that  
14 you are reading Article 10.17(1) to the effect that the  
15 submission of a claim to arbitration equals the filing of a  
16 Statement of Claim? Is that your case?

17 MR. RODRIGUEZ: No. No. I'll tell you,  
18 because--no. Article 17 talks in terms of submission of a  
19 Statement of Claim; right? It doesn't talk in terms--I'm  
20 sorry, submission to arbitration.

21 (Overlapping speakers.)

22 MR. RODRIGUEZ: I apologize. Article 17 talks in  
23 terms of submission to arbitration. You got to go to  
24 Article 16 to understand what "submission to arbitration"  
25 means, and when is that moment in time. And

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

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

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

11 And again, Perú admits this in its Briefs, and  
12 acknowledges that there's a significant distinction between  
13 an action filed under the Statement of Claim under the  
14 UNCITRAL Rules and an action filed under the ICSID Rule.  
15 That distinction--it was not present in Renco because  
16 Renco, the Renco investor merged both of them.

17 And what you're going to see is that in Renco, in  
18 2011, in 2011 the investor filed both, he filed the Notice  
19 of Arbitration, together with the Statement of Claim, as he  
20 was allowed to do under the UNCITRAL Rules because UNCITRAL  
21 Rules allow you to give you the option.

22 Mr. Amorrortu took a different route.  
23 Mr. Amorrortu decided to file the Notice of Arbitration, to  
24 impanel the Tribunal, and then to officially and formally  
25 accept the invitation to arbitrate. And as the master of

1 its acceptance, gave control to this Tribunal to determine  
2 the date when that was going to happen, and that power,  
3 obviously, includes the power to allow the amendment.

4 (Overlapping speakers.)

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

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

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

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

1 this Tribunal has the power to adjudicate Objection 1,  
2 irrespective of Objection 4, and the existence of  
3 Objection 4. It is that inherent power.

4 Under the Treaty, the Constitution of this  
5 Tribunal is not illegal. It is not inappropriate because  
6 the Treaty itself contemplates that the Tribunal will be  
7 impaneled, will be constituted prior to the perfection of  
8 the Arbitral Agreement. So, it is the existence of the  
9 Treaty. I know it is a--

10 (Overlapping speakers.)

11 ARBITRATOR LANDAU: When you say "perfection of  
12 the Arbitration Agreement," what you're saying is that this  
13 can all happen before there is in existence an Arbitration  
14 Agreement, at all. On your case, there is no Arbitration  
15 Agreement, actually--

16 (Overlapping speakers.)

17 MR. RODRIGUEZ: That is correct.

18 ARBITRATOR LANDAU: Right.

19 (Overlapping speakers.)

20 (Interruption.)

21 ARBITRATOR LANDAU: Actually in existence until  
22 the moment of the Statement of Claim.

23 (Interruption.)

24 MR. RODRIGUEZ: That is correct. And I apologize  
25 for interrupting you, Mr. Landau. There's a little bit of

1 a lag in our end. That was not intentional.

2 But, yes, you are correct. Under the Treaty, the  
3 Arbitration Agreement is perfected in--here, was perfected  
4 here on September 11, 2020, when we submitted. Everything  
5 that happened before, including the Constitution of this  
6 Tribunal, was part of a pre-arbitration agreement processes  
7 that the Tribunal has inherent power to conduct, pursuant  
8 to the Treaty.

9 It is a unique nuance and, again, I believe that  
10 the United States missed that in its submission completely,  
11 but it is very clear here, and Perú acknowledges that,  
12 because Perú, in its Brief--and in today's presentation  
13 acknowledged that until the perfection, the submission of  
14 the Statement of Claim, we had the right, purportedly,  
15 according to them, to file a compliant waiver. And that is  
16 critical.

17 And again, that issue was not present in Renco  
18 because in Renco the investor took away that discretion for  
19 the Tribunal. In Renco the Tribunal said, no, Tribunal,  
20 you are not going to determine when I accept the invitation  
21 of Perú to arbitrate. I'm going to file my Notice of  
22 Arbitration, together with the Statement of Claim; and, at  
23 that point, because the Notice of Claim was defective--I  
24 mean, the Notice of Arbitration was defective, then there  
25 was an issue.

1 Here, it is a different situation because  
2 Mr. Amorrortu gave the power, the inherent power to this  
3 Tribunal, as provided under the Treaty to set the time and  
4 control the perfection of this Arbitration Agreement, if  
5 you will, and the Tribunal took that time, took that  
6 inherent power when he set a timeframe for that.

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

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

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

24 Again, the--and Perú, it recognizes this issue.  
25 Perú recognizes this inherent authority granted to this

1 Tribunal because Perú maintains, number one, it  
2 acknowledges that the Arbitration Agreement is not  
3 perfected and so, the submission of a Statement of Claim.

4 And, number two, Perú acknowledges that this  
5 Tribunal has the inherent authority to decide its  
6 Objection Number 4. I'm sorry, its Objection Number 1,  
7 under 10.20.4.

8 So, Perú acknowledges that, prior to the moment  
9 in time in which the Arbitration Agreement is accepted,  
10 this Tribunal is vested with inherent authority to act, and  
11 it is the same--Perú cannot say that somehow this Tribunal  
12 has inherent authority to entertain Objection 1, but that  
13 that inherent authority--and that this Tribunal has the  
14 inherent authority to set the time and date for the  
15 submission of a Statement of Claim, whether that inherent  
16 authority does not extend to allow and accept the Amendment  
17 Offer by Mr. Amorrortu. That is not consistent.

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

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

5 After the Agreement to arbitrate was perfected,  
6 Perú did not make or even reference any, any issue with  
7 this Tribunal's authority or existence until he got the  
8 relief that he wanted. So, at that point, Perú is either  
9 estopped under the doctrine of estoppel, doctrine of abuse  
10 of process, doctrine of good faith, look here--and  
11 Perú--and I implore this Tribunal, I implore this Tribunal  
12 not to adopt a rule that allows a State to benefit from the  
13 existence of a Tribunal, and then turn around and challenge  
14 the very existence of a Tribunal that benefited.

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

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

25 And the Tribunal in Renco I was bothered by what

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

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

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

22 Now, there was a question with respect to the  
23 ability to award declaratory relief in this particular case  
24 that I believe, Mr. Landau, you asked. And I just want to  
25 make clear, that in this particular action, our Claim for

1 Declaratory Relief is a part of our Claim for Damages. And  
2 what we ask is, yes, we ask Perú to be declared in breach  
3 of the Fair and Equitable Treatment obligations but also to  
4 be condemned in damages, to pay damages, and there's an  
5 "and" there. There is no independent action for  
6 declaratory relief, and that's very important.

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

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

24 I'm open to answer any questions that the  
25 Tribunal may have, but that concludes our initial

1 presentation. Thank you for your attention.

2 PRESIDENT BINNIE: Thank you, Mr. Rodriguez.  
3 Do either of my colleagues have questions before  
4 we go to the break?

5 ARBITRATOR LANDAU: No, thank you.

6 PRESIDENT BINNIE: All right. Professor  
7 Hanotiau?

8 MR. HANOTIAU: No.

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

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

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

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

1 Expert.

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

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

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

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

10 (Brief recess.)

11 PRESIDENT BINNIE: Are the Parties present?

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

14 (Discussion off the record.)

15 CARLOS RAÚL JOSÉ VIZQUERRA PÉREZ ALBELA,  
16 RESPONDENT'S WITNESS, CALLED

17 PRESIDENT BINNIE: All right. Is the Witness  
18 available?

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

22 Before we begin, with your indulgence, I'm afraid  
23 we still have not received--oh, we did? Just now?

24 (Comments off microphone.)

25 MR. FIGUEROA: I'm afraid we just received the

1 cross-examination binder. So, with your indulgence,  
2 Mr. President, I think the Expert can begin his  
3 presentation, but if we could have just authorization to  
4 briefly take a two-minute break, we will download  
5 everything while he speaks and then be able to bring it to  
6 him in his isolated office.

7 PRESIDENT BINNIE: All right. That's fine.

8 So, what we should do is to have the witness make  
9 the usual declarations, which I think will be put up on the  
10 screen.

11 We have verified that Mr. Vizquerra is alone in  
12 the Witness room and Counsel are satisfied that the  
13 protocol is being followed?

14 Can you confirm that, Mr. Figueroa?

15 MR. FIGUEROA: Yes. Dr. Vizquerra is alone in  
16 the conference room, and no one else there is with him.

17 PRESIDENT BINNIE: All right. Well, then, I  
18 would ask Mr. Vizquerra to read the Declaration of an  
19 Expert that is up on his screen.

20 THE WITNESS: I solemnly declare upon my honor  
21 and conscience that my statement shall be in accordance  
22 with my sincere belief.

23 PRESIDENT BINNIE: Thank you very much.

24 Now, Mr. Vizquerra, do you have access to the  
25 documents that will be provided? First of all, do you have

1 your Witness Statement, both Witness Statements, and do you  
2 yet have access to the cross-examination documents  
3 electronically?

4 THE WITNESS: I have not had access to the  
5 cross-examination document binder.

6 MR. FIGUEROA: Yes. Mr. President, that was my  
7 comment earlier. We just received those.

8 PRESIDENT BINNIE: Yes.

9 MR. FIGUEROA: And so, we are downloading it now.  
10 And so, with the President's indulgence, perhaps--I don't  
11 think this prevents Dr. Vizquerra to give his Opening  
12 presentation. While he does that, we will download  
13 everything and get him the binder.

14 MR. RODRIGUEZ: And just, Mr. President, so that  
15 we're clear: They have been uploaded also in the Box,  
16 consistent with the protocol, and so they are available to  
17 Mr. Vizquerra electronically. But obviously, if Counsel  
18 needs time to print them out, and that's his preference, we  
19 don't have any problem with that.

20 PRESIDENT BINNIE: All right. You both seem to  
21 have the situation under control, so why don't we begin  
22 with the presentation in brief by Mr. Vizquerra?

23 MR. FIGUEROA: I'll pass the word to Dr. Wray, my  
24 colleague who will introduce the Expert.

25 PRESIDENT BINNIE: Thank you.

1 MR. WRAY: Thank you very much, Mr. President.

2 DIRECT EXAMINATION

3 BY MR. WRAY:

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

5 I would like to confirm to you--rather, confirm  
6 with you whether you submitted two Expert Reports in this  
7 Arbitration.

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

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

13 (Comments off microphone.)

14 THE INTERPRETER: We can hear you now, sir.

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

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

19 (Comments off microphone.)

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

23 (Comments off microphone.)

24 MR. FIGUEROA: I think perhaps, just to move this  
25 along, if I might, I'll just ask the remainder of the

1 questions to Dr. Vizquerra, and then he can proceed.

2 PRESIDENT BINNIE: All right. Thank you.

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

5 BY MR. FIGUEROA:

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

9 A. Yes, I do, both of them.

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

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

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

16 THE WITNESS: Yes. Thank you very much.

17 I'm going to begin my presentation.

18 DIRECT PRESENTATION

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

23 My name is Carlos Raúl Vizquerra. I was  
24 introduced. I am a lawyer. My specialty is hydrocarbons.  
25 I have experience in the conduction of contract negotiation

1 procedures and in the procedures for the qualification of  
2 oil companies.

3 From what I've read and from what I've heard, it  
4 appears that there is a confusion between Procedure 6, the  
5 procedure for the qualification of oil companies, and  
6 Procedure 8, which is a procedure that specifically has to  
7 do with the contracting via Direct Negotiation. It is  
8 clear that there is no confusion. These are different  
9 procedures, and these are management procedures related to  
10 the activities carried out by PeruPetro and PeruPetro's  
11 management offices and all of the other aspects related to  
12 internal control.

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

23 The question we need to pose to ourselves is:  
24 When does Procedure 8 begin, the Direct Negotiation  
25 contracting procedure? According to Step 1 in that

1 procedure, the procedure starts with the presentation of a  
2 letter of interest from the person interested in conducting  
3 exploration and exploitation activities, or the  
4 exploitation of hydrocarbons within a given surface area in  
5 Perú.

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

18 Article 2 of the Regulations for the  
19 Qualification of Oil Companies is very clear, and there is  
20 no doubt about any of these things.

21 I'm going to read it. It says here in its  
22 Article 2, first paragraph: "Qualification of oil company:  
23 Every oil company must be duly qualified by PeruPetro S.A.  
24 to initiate the negotiation of a contract. The granting of  
25 a qualification will not create any right over the contract

1 area."

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

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

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

25 PeruPetro has to appoint a working committee in

1 charge of the procedure. And something that is interesting  
2 is that, if there are third parties--because PeruPetro has  
3 to publish for 30 consecutive days the availability of this  
4 Block, now, if there are third parties that are interested  
5 in contracting this Block, PeruPetro is obligated to  
6 calling a selection procedure and to assess the future  
7 contracting of the Block.

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

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

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

1 negotiation.

2 Procedure 6 is independent from Procedure 8. It

3 is also applied in other cases. For example, a company may

4 be qualified when it wants to incorporate itself to an

5 already existing contract, a License Contract. So,

6 PeruPetro will establish the technical, financial, legal,

7 and economic capacity of the company that wants to be

8 included in the other contract.

9 The second case in which the qualification of an

10 oil company is implemented is in a selection process.

11 PeruPetro has to determine the minimum tentative work

12 program related to the oil block subject matter of the

13 selection process and to establish the indicators that will

14 allow it to determine whether all of the bidders are--

15 THE INTERPRETER: Excuse me, we can't hear,

16 Mr.--Mr. President, we cannot hear.

17 (Comments off microphone.)

18 PRESIDENT BINNIE: Can the Respondent organize

19 communication to see what the problem is?

20 MR. FIGUEROA: Yes, Mr. President. We are on

21 that right now. We are getting a technician over there.

22 (Comments off microphone.)

23 MR. FIGUEROA: I apologize, Members of the

24 Tribunal, Mr. President. We'll try to get this fixed as

25 quickly as possible.

1 an oil company? Our law is very clear in this regard.

2 Article 4 of the Regulations for the Qualification of Oil

3 Companies establishes that the qualification procedure

4 starts with the submission of an application, accompanied

5 by the documents provided for in Article 5 of the

6 Regulations, and also there has to be a statement of the

7 intention to negotiate a contract.

8 Under Article 4 of the Regulations, Procedure 6

9 states that the qualification application has to be

10 accompanied by all of the documents established in the

11 Regulations for the Qualification of Oil Companies. Any

12 communication that contains good intentions or allusions

13 cannot be considered a request for the qualification of an

14 oil company. We're talking about natural resources here,

15 and we are talking about the possibility for a private

16 party or a State-owned company to have access to natural

17 resources that belong to the Peruvian State.

18 That is why Article 5 indicates the documents

19 that need to be attached: First, an uncertified copy of

20 the document of incorporation of the oil company; also,

21 there has to be a sworn statement indicating that the oil

22 company is not in bankruptcy, insolvency, or has some kind

23 of impediment to enter into contracts with the State of

24 Perú; the oil company has to attach to the application a

25 sworn statement indicating that it has managerial,

1 (Comments off microphone.)

2 THE INTERPRETER: Mr. President, this is the

3 interpreter. If you're listening to us, he's going to have

4 to go back. He's asking to continue.

5 PRESIDENT BINNIE: That's fine.

6 THE WITNESS: As I was saying a moment ago, the

7 qualification process within a selection process is only

8 granted to the oil company that has been awarded the Block.

9 It is not granted to every single one of the bidders. And

10 the third case in which Procedure 6 applies, qualification

11 of an oil company, has to do with a Direct Negotiation

12 Process if and only if PeruPetro has delimited and defined

13 the Block or the available area, the available area that is

14 the subject matter of the expression of interest. Also,

15 the minimum tentative working program has to be

16 established. Without that, one cannot establish the

17 indicators that the Company has to abide by and that will

18 show that it has the legal, technical, economic and

19 financial capabilities to participate in the Direct

20 Negotiation Process.

21 If the Block is not available and if the minimum

22 working program has not been determined, then it would be

23 impossible for an oil company to become qualified in the

24 context of Procedure 8.

25 Now, how can we begin a qualification process of

1 professional, and specialized staff in the field of

2 hydrocarbons. Also, the Company has to attach the

3 financial statements of the Company for the last

4 three years, showing the economic and financial

5 capabilities. How else it is going to show its condition?

6 And last, but not least, it has to show its

7 experience by showing information in connection with the

8 experience it has related to the carrying out of

9 hydrocarbon activities. The experience has to date back

10 three years--only the last three years; right? It doesn't

11 matter what it did before that. And it also has to detail

12 every year's works of exploration, the number and type of

13 wells, oil wells, drilled, what is the production level and

14 the proven crude reserves, natural gas, investments.

15 Also, the Company has to show PeruPetro the

16 License Agreements, and also the technical evaluation

17 agreements, that it has entered into.

18 Also, it has to show the activities that it is

19 carrying out in the different areas it is exploiting and

20 the activities carried out in investments and the results,

21 as well as the participation interest that it has in each

22 one of those Blocks and whether it is an operator or not of

23 those Blocks, because the Applicant will have a different

24 qualification if it is an operator or if it is not an

25 operator.

1 And this is not by happenstance. This is  
2 specifically provided for in Article 4 of the Regulations  
3 for the Qualification of Oil Companies. Article 4 is  
4 called the qualification process. The qualification  
5 process will begin with the presentation of a request from  
6 the oil company to PeruPetro, S.A., together with the  
7 documents provided for in Article 5 of this Regulation.

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

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

25 We are not talking about omissions or errors in

1 connection with the submission of the information. We are  
2 talking about errors or omissions or observations related  
3 to the documents under Article 5.

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

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

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

25 Why? As I indicated, the Company has not

1 expressly requested its qualification, and the Company  
2 failed to submit the documents required by Article 5. It  
3 didn't submit one single document of the ones required  
4 under Article 5. So, this 28 May request for qualification  
5 cannot be deemed a qualification request under the terms of  
6 the Regulations for the Qualification of Oil Companies.

7 Did Baspetro obtain the qualification,  
8 considering that the 28 May document failed to comply with  
9 the requirements to be considered a request for  
10 qualification? Well, that situation did not start the  
11 10 days that PeruPetro has to conduct the assessment under  
12 Article 9 of the Regulations. As we have seen, a  
13 qualification can only be materialized if a Certificate for  
14 Qualification is issued, so legally Baspetro did not  
15 obtain a qualification of oil company, and it didn't  
16 acquire any kind of right to obtain such qualification, and  
17 it did not have any rights related to the area that was the  
18 subject matter of the request.

19 Now, we can ask ourselves whether Block 3 and  
20 Block 4 were available for the direct negotiation sought  
21 by Baspetro, and I am going to read Paragraph 1 of  
22 Article 11 of the Hydrocarbons Law. And it says the  
23 following: "The Contracts that Article 10 refer to may be  
24 made at the discretion of the Contracting Party before a  
25 Direct Negotiation is established or by a call for bids."

1 Clearly, this Article says that License  
2 Agreements may only be entered into at PeruPetro's  
3 discretion after Direct Negotiation or by invitation to  
4 tender.

5 So, these are two excluding things. There can be  
6 either Direct Negotiation or invitation to tender. So, let  
7 us look at the request by Baspetro.

8 The Board of Directors of PeruPetro on 20  
9 March 2014 had already decided that Blocks III and IV were  
10 going to be subjected to a selection procedure. This was  
11 decided internally by PeruPetro. PeruPetro had already  
12 decided this, and this is relevant.

13 But, also, this was made public. The Decision by  
14 the Board was made public because that Decision was  
15 included in the "whereas" clauses of Supreme Decrees 012  
16 and 013 of 2014 that were published on 5 April 2014 in the  
17 Official Gazette of Perú, El Peruano. So, in April 2014,  
18 on 5 April 2014, when those Supreme Decrees were published,  
19 well, the Decision made by the Board on 20 March 2014 was  
20 known in connection with the selection process related to  
21 Blocks III and IV. So, when the 28 May request was  
22 established, the Blocks III and IV were no longer available  
23 for Direct Negotiation, as was sought by Baspetro.

24 Therefore, the presentation of the request on  
25 May 28, 2014 triggered the Direct Negotiation Process, once



1 again considering that an oil company has to be duly  
2 prequalified by PeruPetro to initiate the negotiation of a  
3 contract, as stated under Article 2 of the Regulations, and  
4 also considering that the areas of Blocks III and IV were  
5 not available for Direct Negotiation, and considering that  
6 it was not proper, either, to conduct all of the other  
7 previous activities contained in Procedure 8, it was clear  
8 that the presentation of communication of May 28 did not  
9 start the Direct Negotiation contemplated in Activity 38 of  
10 the Procedure for Direct Negotiation.

11 Now, regarding the administrative silence by  
12 PeruPetro to the communication of May 28, it has been  
13 indicated that this lack of response or administrative  
14 silence led to the constructive approval for Baspetro to  
15 participate in Direct Negotiations, and that also--lack of  
16 response also implied that PeruPetro was compelled to grant  
17 the qualification. But given what I said before, the lack  
18 of a response by PeruPetro to the communication of May 28  
19 cannot be considered a tacit approval of the qualification  
20 or that it has led to the mandatory nature of it by  
21 PeruPetro, since that communication of May 28 did not  
22 qualify to be considered a request for qualification under  
23 the terms of the Regulations for the Qualification of Oil  
24 Companies.

25 Now, if we assumed that this case was also under

1 the administrative silence, we need to go back to the law  
2 that is applicable--that was applicable back then. If we  
3 apply that standard, it was proper to consider the  
4 constructive denial, since this case referred to public  
5 interest in the area of natural resources. So, once again,  
6 assuming--because, once again, this was not the case--that  
7 the communication presented by Baspetro and the lack of  
8 response, well, in this case governed by the agency's  
9 administrative silence, the constructive denial had to be  
10 applied, and that communication would have been considered  
11 denied.

12 Finally, and to conclude, I can state the  
13 following: That the communication of Baspetro filed on  
14 May 20, 2014 cannot be considered a request for  
15 qualification according to the terms set forth in the  
16 Regulations for the Qualification of Oil Companies.  
17 Therefore, the computation of the term of 10 business days  
18 was not triggered without PeruPetro's pronouncement on the  
19 qualification.

20 Baspetro did not obtain the qualification  
21 required by the Regulations for the Qualification of Oil  
22 Companies, and it did not have any rights to obtain it or  
23 any rights on the Contract area of interest.

24 Third, assuming that the 10 business days had  
25 elapsed as stated under Article 14 of the Regulations, no

1 constructive approval would have been applied because the  
2 constructive denial applied.

3 And, finally, as I mentioned before, at no time  
4 was there any Direct Negotiation of the License Contract.  
5 It was not initiated, since for this to take place it was  
6 necessary to have first Baspetro's qualification,  
7 Blocks III and IV be available for Direct Negotiation, and  
8 also completion of the previous activities foreseen in  
9 Procedure 8.

10 The following slides in this presentation are the  
11 legal standards that I used to support my statements.

12 Thank you very much.

13 PRESIDENT BINNIE: Thank you very much.

14 Now there's an opportunity for cross-examination.

15 You realize, Mr. Vizquerra, once  
16 cross-examination begins, you are not to discuss your  
17 evidence with anybody until you have concluded.

18 I didn't get an answer to that.

19 THE WITNESS: Sorry, I was receiving--the  
20 documents.

21 (Overlapping interpretation and speakers.)

22 PRESIDENT BINNIE: Okay. I was just indicating  
23 to you that once your cross-examination begins, you are not  
24 to discuss your testimony with anybody until it is  
25 completed.

1 THE WITNESS: Understood.

2 PRESIDENT BINNIE: And, secondly, do you now have  
3 the download of exhibits for the cross-examination  
4 available?

5 THE WITNESS: I have the electronic copy, but not  
6 the printed copy. I just need--someone needs to help me  
7 attach the electronic means.

8 (Interruption.)

9 (Stenographer clarification.)

10 MR. RODRIGUEZ: Absolutely.

11 I was just saying that I believe I have a  
12 solution for the problem. We have uploaded the exhibits in  
13 the Box, but we intend to present the exhibits in the  
14 screen in English and in Spanish for Mr. Vizquerra.

15 Obviously, to the extent that he wants to access  
16 the exhibits, he can do it in the Box or in the physical  
17 binder that he can print, but we are going to--the relevant  
18 part of the document for our questions are going to be  
19 shown on the screen in Spanish and in English for his  
20 convenience.

21 PRESIDENT BINNIE: All right. Well, we will  
22 proceed and see how it works in practice.

23 I just wanted to remind Counsel again that we do  
24 have a time issue here, that, to the extent the  
25 presentation of the Experts is essentially a repetition

1 from what's already before us in writing, you might reflect  
2 on whether that's the best use of the time. But, in any  
3 event, your agreement was that both Parties reserve the  
4 right to use time in the most appropriate way. So, within  
5 the overall envelope that we have all agreed to, it is up  
6 to Counsel, but I caution you that the clock is ticking.

7 Thank you.

8 MR. RODRIGUEZ: For sure.

9 May I proceed with the cross-examination,

10 Mr. President?

11 PRESIDENT BINNIE: Yes, please.

12 MR. HANOTIAU: I see that the Expert has put a  
13 mask--okay. He's going to withdraw it. Otherwise, we are  
14 not going to understand what he says.

15 THE WITNESS: The IT person was here. Sorry.

16 PRESIDENT BINNIE: Thank you very much.

17 CROSS-EXAMINATION

18 BY MR. RODRIGUEZ:

19 Q. I'm going to ask the questions in English,  
20 Mr. Vizquerra. I believe that you have available to you a  
21 translation to the extent it is necessary, but it seems to  
22 me that you also understand English. You can respond in  
23 Spanish if it's easier for you, and you'll just be  
24 translated and we will wait for the translation.

25 Is that understood?

Realtime Stenographer  
Dawn K. Larson, RDR-CRR  
59661688;1

Worldwide Reporting, LLP  
Info@WWReporting.com

1 You are muted, I believe.

2 A. Yes.

3 Q. Okay. Excellent.

4 Good morning, Mr. Vizquerra. My name is  
5 Francisco Rodriguez, and I'm part of a team that represents  
6 Mr. Amorrortu, the Claimant in this action.

7 Now, I have some questions for you. You have  
8 submitted two reports in this action; correct? March 15  
9 and May 24?

10 A. Correct. Yes.

11 Q. And in those--those Reports are going to be  
12 part--I'm going to ask you some questions of those Reports.

13 Let me bring up the Report that you filed on  
14 March 15.

15 This is the Report that you filed on March 15,  
16 your CV. English version on my left, and the Spanish  
17 version on the right.

18 Do you see that?

19 A. Yes.

20 Q. Okay. And you filed those Reports in support of  
21 Perú's Preliminary Objections; correct?

22 A. Correct.

23 Q. Now, let me direct your attention to Page 3 of  
24 those Reports.

25 In Paragraph 3 of the Report, you outline the

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1 issues that you've been asked to opine on.

2 Do you see that?

3 You have the English now, and the Spanish will  
4 come up in a second.

5 A. Correct.

6 Q. Okay. And the first issue is whether Amorrortu  
7 started the Direct Negotiation Process, then whether  
8 Amorrortu obtained the qualification of PeruPetro and, if  
9 Amorrortu had stated the process of Direct Negotiations  
10 with PeruPetro, would Amorrortu have the right to be  
11 awarded the License Agreement; correct?

12 A. Correct.

13 Q. Okay. You have not been asked to render an  
14 opinion as to whether the process of evaluating  
15 Mr. Amorrortu's Direct Negotiation proposal was tainted  
16 with corruption; correct?

17 A. Correct.

18 Q. Okay. You have not been asked to render an  
19 opinion as to whether the public bidding process that,  
20 according to your testimony and Opinion, started--or was  
21 somehow decided in April was, in fact, a fake process  
22 designed to give the Contracts to Graña y Montero.

23 You don't have an Opinion as to that; correct?

24 A. Correct.

25 Q. Okay. And you don't have an opinion as to

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1 whether, in the absence of corruption, Baspetro would have  
2 been able to continue the Direct Negotiation Process;  
3 correct?

4 A. Specifically that question no.

5 Q. Okay. Now, as you know, in this particular phase  
6 of the proceedings, we have to assume--Mr. Amorrortu's  
7 factual allegations are assumed to be true.

8 You're aware of that; correct?

9 A. Correct.

10 Q. And on Page 3--at the bottom of Page 3 and  
11 continuing on Page 4, you have a number of assumptions that  
12 you've made or that you've been asked to make in connection  
13 with your opinion in this case; correct?

14 A. Correct.

15 Q. Are all these the assumptions that you have  
16 relied on for this case?

17 (Audio interference.)

18 (Comments off microphone.)

19 SPANISH REALTIME STENOGRAPHER: Mr. Rodriguez,  
20 you need to pause. Otherwise, if you ask too quickly, we  
21 cannot hear the response. We cannot interpret. So, we  
22 just need a pause between question and answer.

23 MR. RODRIGUEZ: If you can, pause for a second  
24 after I make the question, I ask the question, and then  
25 I'll try to pause after you state your answer so that the

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1 simultaneous interpretation can proceed.

2 THE WITNESS: Very well, but in that case, if you  
3 wish to maintain the questions in English, I will ask you  
4 to speak slower.

5 THE INTERPRETER: Yes. We lost him, but he's not  
6 listening to the interpretation. I don't think that the  
7 Witness knows that the interpretation is available. He  
8 needs for the attorney to speak slower.

9 SPANISH REALTIME STENOGRAPHER: We cannot hear  
10 Mr. Vizquerra, and I did not receive interpretation.  
11 (Comments off microphone.)

12 THE INTERPRETER: We are just informing the  
13 Expert that there is interpretation, and he can choose the  
14 interpretation at the bottom of the screen.

15 So, we just gave the instructions if he needs to  
16 use interpretation.  
17 (Comments off microphone.)

18 THE INTERPRETER: The person is having some  
19 problems seeing the interpretation icon at the bottom of  
20 the screen. We are giving instructions through the Court  
21 Reporter, since he is not listening at this moment to the  
22 interpretation.  
23 (Comments off microphone.)

24 THE WITNESS: I'm ready.

25 BY MR. RODRIGUEZ:

1 April 2014, there was a meeting between the Executives of  
2 Graña y Montero and the First Lady, Nadine Heredia, with  
3 respect to the Blocks III and IV?

4 A. No, I was not aware of that. That was not  
5 considered in my analysis.

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

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

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

13 A. At least that is what you are saying.  
14 (Interruption.)  
15 (Stenographer clarification.)

16 Q. Now, if we continue down, we see that on May 28,  
17 2014, you have the submission of the proposal of  
18 Mr. Amorrortu to PeruPetro; right?

19 A. Correct.

20 Q. And then, again, you jump on August 20, 2014.  
21 Do you see that?

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

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

1 Q. Excellent. So, let's continue.

2 Are these all the assumptions that you made in  
3 connection with your opinions in this case?

4 A. Correct.

5 Q. Now, I note that as part of your assumptions, you  
6 have the chronology--and if we can go back--if we can go to  
7 Page 4, you have a conversation with Mr. Amorrortu  
8 and--between Mr. Amorrortu and Mr. Ortigas which started on  
9 August 12, 2013.

10 Do you see that?

11 A. Correct.

12 Q. And then you continue--and you have a chronology  
13 with respect to the other statements in conversations and  
14 exchanges alleged by Mr. Amorrortu.

15 Do you see that?

16 A. Correct.

17 Q. But I see that you jump from March 20, 2014 to  
18 May 22, 2014.

19 Do you see that?

20 A. Yes, I do see that I jump in terms of the date,  
21 but I think that because of what I was trying to include in  
22 the Report, that difference, that interval, is not  
23 relevant.

24 Q. Let me ask you a question about that.  
25 Were you aware Mr. Amorrortu alleges that in

1 inviting Baspetro to participate in the public bidding  
2 process.

3 Do you see that?

4 A. That is a gap in time that was irrelevant for my  
5 analysis.

6 Q. Well, do you know, sir, that Mr. Amorrortu  
7 alleges in his statement of Claimant that he had a  
8 conversation with Mr. Ortigas and Ms. Tafur, and that  
9 Ms. Tafur confirmed to Mr. Amorrortu that she had not  
10 received the Baspetro Proposal during that period of time?

11 A. I was not aware, because the conversations are  
12 not relevant to analyze the legal aspect.

13 Q. Again, that's a fact that you did not assume in  
14 your Opinion; correct?

15 A. Correct.

16 Q. And you do not have an assumption here with  
17 respect to Mr. Amorrortu's allegation that his proposal was  
18 shelved away at the direction of First Lady and the  
19 President to give way to the public bidding process for  
20 Graña y Montero; correct?

21 A. Correct. And I consider, once again, that it was  
22 not relevant for the purpose of analyzing this situation.

23 Q. And then if we go to Page 5, again, you have the  
24 celebration of the Agreements, the execution of the  
25 Agreements, for Graña y Montero on April 1, 2015; correct?

1 A. Correct.

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

6 A. Correct. I do not refer to that.

7 Q. Now, sir, you would agree with me that--  
8 THE INTERPRETER: The Court Reporter is not  
9 receiving the answers in Spanish because the voices are  
10 overlapping. And he's repeating.

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

13 BY MR. RODRIGUEZ:

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

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

20 Q. So, you are disputing the corruption allegations?

21 A. No. I am just making a comment.

22 Q. Now, you would agree with me--let me go back,  
23 because I'm not clear that I got the answer. And if I did,  
24 I apologize. Let me just rephrase it.

25 You would agree with me that a process tainted by

1 personal conduct--I'm sorry--good faith and procedural  
2 conduct and infringed the basic guarantees of due process.

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

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

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

25 Q. So, you would agree with me that if, in fact,

1 corruption is, by definition, not a good-faith process;  
2 correct?

3 A. Correct.

4 Q. Okay. Now, let's look at Paragraph 40 of your  
5 declaration of your First Report.

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

11 Do you see that?

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

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

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

19 Q. We are going to overlap both versions now,  
20 according to Counsel's instructions.

21 Is that better?

22 A. Thank you. Very well.

23 Q. So, in Paragraph 40 of your Report, you take  
24 issue with Dr. Quiroga's Opinion that the conduct of  
25 PeruPetro violated the principles of good faith and

1 there was a meeting between the first Lady of Perú, Nadine  
2 Heredia, and the Executives of Graña y Montero in which  
3 there was an agreement to rig the process, the negotiation  
4 process, to further and favor Graña y Montero's interest,  
5 that that is fact-based; correct?

6 A. I don't know if there was a meeting. It is not  
7 the information I have. But, once again, if you knew  
8 Peruvian legislation or how one has to behave in Perú,  
9 having conversations regarding a potential investment  
10 program with the President or his wife in that case does  
11 not necessarily entail corruption. That, in itself, is not  
12 corruption.

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

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

20 Q. Again, all I want you is to understand where we  
21 are. We are in agreement that, if the process was tainted  
22 by corruption, if it was directed by--if PeruPetro received  
23 the directives from the First Lady and the President to  
24 award the Contract to Graña y Montero, that that process  
25 would be in bad faith; correct?

1 A. But it wouldn't be feasible. It is not feasible  
2 to do that.

3 Q. Mr. Vizquerra, I'm asking you to assume--I'm  
4 asking you to assume that these factual allegations are  
5 true at this point.

6 A. Okay.  
7 (Overlapping interpretation and speakers.)

8 Q. If I may finish my question, please, so that  
9 there is translation.

10 I'm asking you to assume that the reason Graña y  
11 Montero received these contracts was because of corruption  
12 directed by the First Lady and the President. I'm asking  
13 you to assume that, at those meetings between the First  
14 Lady and the Executives of Graña y Montero, there were  
15 discussions about rigging this public bidding process. I'm  
16 asking you to assume that this public bidding process  
17 followed the same corrupt scheme that other Government  
18 contracts awarded to Graña y Montero have followed.

19 If that is the case, then that's a violation of  
20 the principles of good faith that PeruPetro is obligated to  
21 follow; correct?

22 A. Correct.

23 Q. Now, in Paragraph 34 of your Declaration, you  
24 referred to the procedure for Direct Negotiation of  
25 Contract. And, again, we are going to do the same thing so

1 that you can read it--

2 A. I can read it fine.

3 Q. So, do we have the English as well, so that we  
4 can have it, and the Tribunal can follow as well? 36--34.  
5 I'm sorry.

6 You referred to GFCN-008 as a Procedure for  
7 Contracting by Direct Negotiation; correct?

8 A. Correct.

9 Q. I understand you've taken issue with respect to  
10 whether the rights of third parties are impacted by  
11 GFCN-008 in your Report. However, this procedure is a  
12 public procedure--in other words, it's been published in  
13 PeruPetro's website; correct?

14 A. Correct.

15 Q. And this is the procedure that PeruPetro is  
16 supposed to follow, or was supposed to follow in 2014, to  
17 consider a Direct Negotiation proposal; correct?

18 A. Correct.

19 Q. Okay. Now, let me show you the procedures,  
20 GFCN-008, which is CLA-44 in English and CV-4 in Spanish.  
21 It's in Spanish on my right and English on my left.

22 Do you see it?

23 A. I do.

24 Q. Okay. So, this process starts with the first  
25 step--the first step in the process is the receipt of a

1 letter of interest from individuals or companies interested  
2 in exploration and/or exploitation of hydrocarbons;  
3 correct?

4 A. Correct.

5 Q. You do not dispute that this process was--that  
6 this step was satisfied here; correct?

7 A. I just wanted to clarify something, and I want to  
8 be clear. So, we don't want anyone to be confused. A  
9 procedure--a negotiation procedure, a Direct Negotiation  
10 procedure, is one thing. A Direct Negotiation Process is a  
11 different thing. Two different things. One is the  
12 consequence of the other.

13 Now, relying on this, I could say that that  
14 communication started the procedure of Direct Negotiation.

15 Q. So, we are in agreement, sir, that on May 28,  
16 2014, Bacilio Amorrortu, through Baspetro, commenced the  
17 procedure of Direct Negotiation, pursuant or consistent  
18 with instructions he had received from President Ortigas;  
19 correct?

20 A. I don't know if this was done under the  
21 instructions of Mr. Ortigas, but yes.

22 Q. Well, the instructions by Mr. Ortigas is one of  
23 the assumptions that you are assuming in this case, per  
24 your Report; correct?

25 A. Correct. Yes.

1 Q. So, let me just ask you the question again.

2 At this procedural posture, we are in agreement  
3 that Bacilio Amorrortu, through Baspetro, commenced the  
4 procedure of Direct Negotiation pursuant to the  
5 instructions he received in his conversations with  
6 Mr. Ortigas; correct?

7 A. Not necessarily. Not necessarily. The letter  
8 could entail a commencement. However, it was not addressed  
9 to the individual that it should have been addressed to.  
10 This is a letter that should have been sent to the General  
11 Management Office of PeruPetro. So, perhaps there are  
12 doubts as to whether the procedure has commenced or not,  
13 because the letter was not addressed to the President.

14 (Interruption.)

15 (Stenographer clarification.)

16 Q. What you're saying is that there's a factual  
17 question as to who received that letter.

18 Is that what you're saying?

19 A. Correct.

20 Q. Okay. But for purposes of this procedure, I'm  
21 going to ask you to assume that this letter was, in fact,  
22 received by PeruPetro. Okay?

23 And, assuming that this letter was, in fact,  
24 received by PeruPetro, you're in agreement that this  
25 process was commenced by Baspetro; correct?

1 A. Assuming that that is the case, yes.

2 Q. And that letter triggers a process that goes

3 through this flowchart. I'm just going to go through the

4 flowchart very quickly because I know that the clock is

5 ticking.

6 There's a discussion, internal discussion, as to

7 whether the lot or the Block or the area is available for

8 Direct Negotiation; correct?

9 A. Correct.

10 Q. Okay. And then if we can--and we're going to go

11 back to this, because obviously it's an important point in

12 your Report, but I want to show that--the flowchart first

13 as a whole.

14 We can go back to the next page--yes, of the

15 slide--the next flowchart, yes.

16 And then assuming that it is available for--and

17 then let me just wait for the English and the Spanish.

18 And then, assuming that the area is available for

19 Direct Negotiation--and I know you take a contrary position

20 to that, but assuming that it is for a second, then you

21 continue with this flowchart, you go to Flowchart Number 9,

22 Step 9, order implementation of procedure to consult with

23 the citizenship, the community; correct?

24 A. Correct.

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

1 work committee in coordination with the legal

2 solicitation."

3 Do you see that?

4 A. Yes, right.

5 Q. And then "create"--

6 (Overlapping interpretation and speakers.)

7 (Interruption.)

8 (Stenographer clarification.)

9 THE WITNESS: I apologize.

10 THE INTERPRETER: Mr. President, this is the

11 interpreter. If we can ask Mr. Rodriguez to--

12 (Interruption.)

13 (Stenographer clarification.)

14 (Overlapping interpretation and speakers.)

15 BY MR. RODRIGUEZ:

16 Q. --there is an open folder to file all negotiation

17 documents; correct?

18 A. Correct.

19 Q. And then there's an evaluation of the Company in

20 accordance with the qualification of oil companies

21 procedure; correct?

22 A. Correct.

23 Q. And I understand that--let's just continue to go

24 through the flow.

25 Assume that it qualifies, we continue and we move

1 on to the next page. And then there are a number of

2 implementation procedures, including posting the

3 availability of the Block for oil procurement in the web

4 portal for 30 days.

5 I think you referred to that; right?

6 A. Correct.

7 Q. And, ultimately, the Contract is negotiated and

8 signed; correct?

9 A. Yes. After the publication, there are other

10 steps that need to be taken and that would start the

11 negotiation process, and this has to be in the terms of

12 negotiation by PeruPetro. They have to be approved by the

13 Board of Directors, and certain formalities have to be

14 established and then the negotiation process will start.

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

16 Danny, to the prior page.

17 Now, I want to go back to the certification

18 process, because you spent a lot of time talking about

19 certification process.

20 The certification process is subsumed within the

21 GFCN-008; correct?

22 A. Qualification process, you mean?

23 Q. Yeah. Qualification or certification process,

24 yeah.

25 A. Yes, that's correct.

1 Q. This is one of the steps that needs to be

2 satisfied after a number of steps--indeed, about 11 other

3 steps--are completed; correct?

4 A. Correct.

5 Q. Now, as you said in your Report and in your

6 presentation today, the qualification or certification

7 process itself has its own flowchart; correct?

8 A. Correct.

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

10 A. Correct.

11 MR. RODRIGUEZ: And if we can bring that up,

12 Danny, I believe that is Dr. Quiroga's 15, the 006.

13 (Comments off microphone.)

14 MR. RODRIGUEZ: It's Quiroga Exhibit 15.

15 Yes.

16 We're going to go to Page 5 of the--Page 17, 6 of

17 17. Let me just show him the first page.

18 BY MR. RODRIGUEZ:

19 Q. This is the process for the qualification, which

20 is subsumed in GFCN-008; correct?

21 A. Correct.

22 Q. Okay. And now let me direct your attention to

23 Page 6 of this flowchart.

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

25 I think it's the next one.

1 Check the next one, please.  
 2 There you go.  
 3 Now we're going to try to make it bigger so that  
 4 you see it.  
 5 The qualification process itself has its own  
 6 flowchart, as we have discussed; correct?  
 7 A. Correct.  
 8 Q. Okay. And it starts with a receipt of the  
 9 document or documentations necessary for the qualification;  
 10 correct?  
 11 A. Correct.  
 12 Q. Okay. And then if I continue--because I'm a  
 13 little bit pressed for time--to Step 6, there comes a point  
 14 in time in which PeruPetro has to determine whether the  
 15 information received--and I'm talking about the "diamond"  
 16 below, actually--whether the information received satisfies  
 17 the requirements; correct?  
 18 A. The information received, indeed, is the  
 19 information provided for in Articles 5 or 6, as the case  
 20 may be, of the Regulations. We have to see whether those  
 21 documents are in compliance.  
 22 (Interruption.)  
 23 (Stenographer clarification.)  
 24 Q. And I understand that your position is that the  
 25 information that--provided by Baspetro was not sufficient;

1 correct?  
 2 A. What I said is not that it was not sufficient.  
 3 It's that it was not considered by PeruPetro, and all of  
 4 the documents under Article 5 were not submitted. The  
 5 documents were not submitted. All of the documents were  
 6 not submitted.  
 7 Q. But what is clear is that the documents required  
 8 for the certification or qualification were not being  
 9 presented by Baspetro to PeruPetro; correct?  
 10 A. Correct.  
 11 Q. Now, under PeruPetro's own procedure, in the  
 12 event that the documents are not presented, the response  
 13 from PeruPetro is not to reject the qualification; correct?  
 14 A. Please repeat the question. I didn't understand  
 15 it.  
 16 Q. Absolutely.  
 17 Following PeruPetro's own procedure, which are in  
 18 front of you, if there are documents missing, if the  
 19 request presented is missing document, the Response by  
 20 PeruPetro is not the denial or rejection of the  
 21 certification; correct?  
 22 A. If PeruPetro fails to respond, that does not mean  
 23 that there was a rejection of a Application.  
 24 (Interruption.)  
 25 (Stenographer clarification.)

1 Q. Let's assume for a second that you are correct  
 2 and that the documentation presented by Baspetro did not  
 3 comply with their requirements. That Baspetro did not  
 4 attach the required documentation.  
 5 PeruPetro, according to its own procedures of  
 6 regulations, does not have the right to simply reject the  
 7 certification requests at that point; correct?  
 8 A. Correct.  
 9 Q. PeruPetro has to send a letter to Baspetro  
 10 giving Baspetro 30 days to provide the requested  
 11 documentation, as we see in Step Number 8 of the diagram;  
 12 correct?  
 13 A. No. That is the wrong interpretation of  
 14 Claimants. If all of the documents have been attached, if  
 15 and only if that has happened, then PeruPetro opens the  
 16 period of time to make sure that everything is in  
 17 compliance. Now, if those documents submitted have errors,  
 18 or if supplementary information is required, or if  
 19 additional information is required, well, that is one  
 20 thing, but it doesn't have to rule on the lack of  
 21 documentation under Article 5.  
 22 If I fail to attach to my request all of the  
 23 documents under Article 5, the 10-day period does not start  
 24 running and then Baspetro would not have 30 days to cure  
 25 that. No, it would have to submit a new Application with

1 all those requirements.  
 2 Q. Now, I want you to follow it with me. Okay?  
 3 The first step in that flowchart is receive a  
 4 letter from the oil company interested in signing,  
 5 modifying the Contract and the attached documentation  
 6 detailing the Regulations for the qualification; correct?  
 7 A. Correct.  
 8 Q. Okay. Then, revise first letter and attach  
 9 documents to the procurement management office; correct?  
 10 That is Step Number 2?  
 11 A. Yes. That's right.  
 12 Q. And then receives and reviews the letter, the  
 13 documentation sent by the oil company; correct?  
 14 A. Correct.  
 15 Q. And then review the documentation sent by oil  
 16 company and verifies that a legal-technical, economic,  
 17 financial--  
 18 (Comments off microphone.)  
 19 Q. Reviews the documentation sent by oil company and  
 20 verifies that the legal, technical, economic and financial  
 21 documentation is in accordance with the regulations for the  
 22 qualification.  
 23 Do you see that?  
 24 A. Correct.  
 25 Q. Okay. Now, the Baspetro Proposal had technical,

1 economic, and financial documentation attached to it;  
2 correct?

3 A. Correct. Excuse me, no, no. Just to clarify  
4 something. As I said during my presentation, 006 is a  
5 procedure that works in different cases. In selection  
6 processes in License Contracts, when there is an assignment  
7 of License Contracts, and in Direct Negotiations  
8 proceedings. This flowchart applies to those three  
9 instances, each one of these instances has specific  
10 characteristics, and I wanted to underscore that.

11 Q. But you recognize that the Baspetro Proposal  
12 including financial, technical, and economic information;  
13 correct?

14 A. No, I haven't concluded that. My conclusion was  
15 that the 28 May document by Baspetro does not contain any  
16 of those requirements, the requirements under Article 5.  
17 What I've seen after reading the Baspetro document, it's  
18 offers of things that the Company wants to do if the Block  
19 is awarded to it. It doesn't talk about its assets. It  
20 doesn't talk about its economic characteristics, et cetera.

21 This refers more to the fact that, well, if I am  
22 awarded this Block, these are my technical commitments.  
23 I'm going to also improve the region in which I'm going to  
24 work. I'm going to technically do this and that. But this  
25 doesn't have to do with the qualification requirement. In

1 specific terms, these are not the requirements under  
2 Article 5 of the Regulations.

3 Baspetro documentation did not include the legal  
4 documents, the technical documents. It didn't include the  
5 technical and economic documents that are required by a  
6 qualification Application.

7 Q. And then, but I understand that that's your  
8 position.

9 Now, the next step in the flowchart is for  
10 PeruPetro to ask itself whether the documentation received  
11 is compliant.

12 And according to your Opinion, the answer to that  
13 question is no; correct?

14 A. Correct.

15 Q. Okay. And if I follow the flowcharts there,  
16 after determining that the information is not compliant,  
17 then what PeruPetro has to do is prepares and sends a  
18 letter addressed to the Contractor, signed by the general  
19 management office, notifying that it has a minimum period  
20 of 30 calendar days from the date of receipt on the  
21 communication to submit the missing documentation or  
22 supplement the documentation sent; correct?

23 A. Again, I don't know if it's a question of  
24 language here, but only if the documents were attached, I,  
25 as PeruPetro, can provide an answer within 10 days. If

1 those documents were not attached, I do not have any period  
2 of time to prepare a response.

3 (Stenographer clarification.)

4 Q. Sir, we are not talking about the 10 days. We  
5 are talking about--we're assuming--if the answer is yes--if  
6 the answer is yes, you're absolutely right. If all the  
7 documentation is available there, then you are absolutely  
8 right. The 10-day period is triggered.

9 A. Umm-hmm.

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

15 You see that in front of you?

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

20 Q. Was there any letter sent by PeruPetro to  
21 Baspetro asking for any information with respect--that it  
22 was missing with respect to the Baspetro Proposal?

23 Have you seen any letter?

24 A. Related to the qualification and considering that  
25 this is not an application, no, there was no ruling in

1 connection with the qualification, specifically speaking.

2 Q. Let's go back to GFCN-008. Again, this process  
3 is the Direct Negotiation procedure that you have, that we  
4 were reviewing earlier.

5 You see that?

6 A. I do see it, yes.

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

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

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

13 A. Correct.

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

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

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

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

25 A. Not necessarily.



1 Q. I'm sorry, it is either yes or no.  
 2 Let me repeat it, because maybe we're having a  
 3 translation issue.  
 4 These Blocks were not subject to any contract for  
 5 the period commencing in April 2015, after the expiration  
 6 of the Intercoil Contract; right?  
 7 A. They did not have a License Agreement after the  
 8 exhaustion of the Intercoil term.  
 9 Q. With respect to the public bidding process, you  
 10 would agree with me that the public bidding process had not  
 11 been announced to the public--had not commenced. Had not  
 12 commenced. How about that?  
 13 Right? Yes or no, sir.  
 14 A. Correct. Correct.  
 15 Q. Because that public bidding process commenced  
 16 when?  
 17 A. The public ceremony, well, the public ceremony  
 18 started when the terms are published and the lots are  
 19 tendered for negotiation.  
 20 Q. Requirements for the public bidding process had  
 21 not even been approved by PeruPetro yet; correct?  
 22 A. But that does not entail that PeruPetro--well,  
 23 let's see. For a tender process to begin, PeruPetro has to  
 24 make the decision before. What cannot happen is that once  
 25 the decision is made to conduct a selection process, I

1 change my mind and I start a Direct Negotiation.  
 2 Q. I'm going to ask you to please try to limit your  
 3 answer to my question. My colleagues will have the  
 4 opportunity to redirect, and my question is very simple:  
 5 At the time that Baspetro submitted its proposal for  
 6 Direct Negotiation, PeruPetro had not decided the  
 7 requirement for the public bidding process; correct?  
 8 A. It had decided to open a selection, but that  
 9 process had not begun, that's correct.  
 10 Q. Let me show you Claimants' 36, sir.  
 11 Do you recognize this document? It's in English  
 12 to your left, and it's going to be in Spanish in a second  
 13 as well.  
 14 This is the document, sir, where PeruPetro  
 15 announces or decides the basis for the International Public  
 16 Bidding Process; correct?  
 17 A. Correct.  
 18 Q. Okay. And this is dated June 30, 2014, almost a  
 19 month after Baspetro presented its Direct Negotiation  
 20 proposal; correct?  
 21 A. Correct.  
 22 Q. Okay. So, what we have is we have Ortigas as the  
 23 President of PeruPetro asking Amorrortu to submit a Direct  
 24 Negotiation proposal in May of 2008 within seven days. In  
 25 fact, he asks Mr. Amorrortu to go back to Houston, send me

1 a Direct Negotiation proposal within seven days; correct?  
 2 You're aware of that allegation?  
 3 A. Correct.  
 4 Q. What we have is PeruPetro announcing and  
 5 determining the basis for the public tender 30 days after  
 6 that PeruPetro Baspetro Direct Negotiation proposal is  
 7 submitted; correct?  
 8 A. Yes. Yes, partially.  
 9 Q. And you'll have an opportunity to explain.  
 10 And that public bidding process is actually not  
 11 commenced until much later. And we can see that in C-12.  
 12 If we can bring up C-12, please.  
 13 It's in English to your right, in Spanish to the  
 14 left.  
 15 Do you see that?  
 16 A. I do.  
 17 Q. Okay. Now, despite all of this, you claim that  
 18 these Blocks were not available for Direct Negotiation  
 19 because in April of 2014, PeruPetro has said that it was  
 20 going to initiate a selection process; correct?  
 21 A. Correct.  
 22 Q. That's all PeruPetro said in April, "a selection  
 23 process," that it was going commence a selection process;  
 24 correct?  
 25 A. Correct.

1 Q. And your understanding of the word "selection  
 2 process" is that the word "selection process" excludes  
 3 Direct Negotiation.  
 4 Is that your position?  
 5 A. That is correct. Yes. When we talk about a  
 6 "selection process," we are making no mention of a Direct  
 7 Negotiation Process.  
 8 Q. And the Direct Negotiation Process includes  
 9 within its phases a process when they announce--the  
 10 Contract and negotiation is announced to the public as  
 11 well.  
 12 Isn't that a selection process, as well?  
 13 A. No, it's not. The Direct Negotiation Process  
 14 makes it known to the public that there is someone that is  
 15 interested in the Block. If there is a third party, or  
 16 more individuals interested in the Block, then the  
 17 selection for public bids process begins. The Direct  
 18 Negotiation as such is not a selection process, but if it  
 19 was made public that there was an interest in connection  
 20 with the License Agreement or that Block, well, then,  
 21 PeruPetro has to start the call for bids, the public  
 22 bidding process. That's the understanding.  
 23 Q. In April, 2016, PeruPetro had not launched the  
 24 requirements of the public bidding process; correct? Have  
 25 not established, determine the requirements of the public

1 bidding process; correct?  
 2 A. April 2015 or 2014?  
 3 Q. In April of 2014. It had not decided the basis  
 4 for the public bidding process; correct?  
 5 A. They had decided it, and they had decided it even  
 6 before because if you think of the way the hydrocarbons  
 7 world works, the fact that a contract is temporarily  
 8 awarded--that is to say, a License Contract to InterOil for  
 9 only one year is only justified on the fact that PeruPetro  
 10 was already designing all of the necessary steps to put  
 11 those lots up for a public bid process. So, there is no  
 12 other assumption, any other assumption to grant a one-year  
 13 Contract License, License Contract. PeruPetro's decision  
 14 had already been made.  
 15 Q. Sir, you're speculating as to the intentions of  
 16 PeruPetro in extending the InterOil Contract. You don't  
 17 have any document from PeruPetro from either March of 2014  
 18 or April of 2014 saying PeruPetro will commence a public  
 19 bidding process? You don't have that; correct?  
 20 A. Correct, it is a selection process.  
 21 Q. The document you have is a document that says  
 22 InterOil Contract will be extended and the selection  
 23 process--and I'm using quotation marks--"will be  
 24 commenced"; correct? That's all you have?  
 25 A. Correct.

1 The one at the bottom. So, that's where you can  
 2 see it. At Article 10, says the following: "If PeruPetro  
 3 detected any error or omission in the documents referred to  
 4 in Documents 5 or 6, or if it considered that the  
 5 information is insufficient based on the provisions of  
 6 Article 7 of these regulations, it shall serve notice to  
 7 the oil company, so that within 30 days as of the date of  
 8 acceptance of the notification, the proper documentation is  
 9 presented."  
 10 Q. That is, according to that document, mistakes or  
 11 omissions detected need to be seen in the documents  
 12 presented. These are not mistakes or omissions in the  
 13 documents; correct?  
 14 A. What you're saying is correct.  
 15 Q. Which of the two?  
 16 A. It is in the documents of Article 5. Not because  
 17 of the lack of documents under Article 5.  
 18 Q. So, that, if all of the documentation has not  
 19 been provided within 30 days as stated in that chart, that  
 20 30-day period will not run?  
 21 A. Correct.  
 22 Q. As to the last question, you mentioned that  
 23 PeruPetro had decided to offer Blocks III and IV as part of  
 24 the public bidding process. When that decision was made  
 25 public, or for that decision to be made public, the Board

1 Q. Okay.  
 2 MR. RODRIGUEZ: Mr. President, I have no further  
 3 questions. Thanks.  
 4 PRESIDENT BINNIE: All right. Thank you very  
 5 much, Mr. Rodriguez.  
 6 Any reexamination?  
 7 MR. WRAY: Yes, Mr. President, I have a few  
 8 questions, if you allow me.  
 9 PRESIDENT BINNIE: Yes, please proceed.  
 10 REDIRECT EXAMINATION  
 11 BY MR. WRAY:  
 12 Q. Dr. Vizquerra, you mentioned in one of your  
 13 answers that the 30-day period that was presented in the  
 14 chart had not--could not have been triggered. What is the  
 15 source of that deadline? Where do you read that there is  
 16 the 30-day deadline because that is not coming from the  
 17 chart?  
 18 A. Correct. That comes from the Regulations for the  
 19 Qualification of Oil Companies. That is where it is  
 20 indicated.  
 21 Q. Could you please indicate the Article referring  
 22 to that term and what it provides?  
 23 A. Certainly. Just a second. I don't know if you  
 24 can see it on the screen. So, we see the Regulations on  
 25 the screen. Very well. So, the following Article, please.

1 of Directors decided that those Blocks are not going to be  
 2 available because they are going to be used for the public  
 3 call for bids, and this is a decision that should have been  
 4 made before; correct?  
 5 A. Yes. The Board of Directors' decision was made  
 6 before.  
 7 MR. RODRIGUEZ: Oh, if my colleague is done, it's  
 8 fine. I would just ask kindly to--not to have leading  
 9 questions in redirect. But if he's done, I will withdraw  
 10 my objection.  
 11 MR. WRAY: That's all, Mr. President. I have no  
 12 further questions.  
 13 PRESIDENT BINNIE: All right. Thank you very  
 14 much, and thank you very much, Mr. Vizquerra, for the very  
 15 helpful evidence illuminating something of a tangled  
 16 administrative procedure. It's been very useful to hear  
 17 from you. And we do appreciate it.  
 18 (Witness steps down.)  
 19 PRESIDENT BINNIE: We now have the examination of  
 20 the Claimant's Expert. I notice that it is now 10  
 21 minutes--maybe 7 minutes to the hour. According to the  
 22 agreed timetable, there is an hour and 7 minutes to cover  
 23 about 220 minutes' worth of anticipated evidence and  
 24 submissions.  
 25 I don't know if the PCA, Mr. Cardiel, can explain

1 how much time has been used by the Claimant and how much by  
2 the Respondent.

3 MR. ARAGÓN: Yes, Mr. Chairman, I can provide an  
4 account by email shortly. I can tell you right now that  
5 the Claimant has used, by my count, 1 hour and 34 minutes;  
6 the Respondent has used 1 hour and 37 minutes.

7 That would be excluding technical interruptions  
8 and other contingencies that have occurred during the  
9 Hearing.

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

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

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

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

1 PRESIDENT BINNIE: Yes. A good investment.

2 Thank you, Mr. Rodriguez.

3 (Brief recess.)

4 ANÍBAL QUIROGA, CLAIMANT'S WITNESS, CALLED

5 PRESIDENT BINNIE: Mr. Rodriguez, did you make  
6 any progress in your plan?

7 MR. RODRIGUEZ: Yes. I think we've been able to  
8 streamline his presentation. We are going to strive to use  
9 less time than the time that has been assigned to us in his  
10 Direct Presentation.

11 PRESIDENT BINNIE: All right. Well, do we have  
12 the Declaration up on the screen for the witness to affirm?

13 THE WITNESS: Expert Declaration: I solemnly  
14 declare, upon my honor and conscience, that I shall speak  
15 the truth.

16 PRESIDENT BINNIE: Thank you, Mr. Quiroga.  
17 Welcome to the proceedings, and thank you for your helpful  
18 written Reports.

19 I think you know the procedure, that you will  
20 make a short presentation and then be asked questions by  
21 the other side. It may not be a practical issue here, but  
22 once you are being asked questions by the other side, the  
23 protocol is that you do not discuss your evidence with  
24 anybody until you have completed your testimony. Given the  
25 time limits here, it would be a practical issue.

1 All right. Can we then proceed with the direct?

2 MR. RODRIGUEZ: Thank you, Mr. President.

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

5 PRESIDENT BINNIE: All right. Thank you.

6 DIRECT EXAMINATION

7 BY MS. MOSQUERA:

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

10 A. Good afternoon.

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

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

15 Q. Are you alone in the room?

16 A. Yes, I am.

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

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

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

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

25 Q. Could you please confirm whether you confirm the

1 three Reports? Do you have any additions or change?

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

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

6 A. Yes. I will attempt--I will endeavor to be as  
7 brief as possible.

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

11 PRESIDENT BINNIE: All right. Thank you very  
12 much.

13 DIRECT PRESENTATION

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

16 My name is Anibal Quiroga León. I graduated from  
17 the Catholic University in 1983 in Perú. I have been a  
18 professor for over 36 years at the School of Law, where I  
19 have been the main--the Chair since 1987. I have also  
20 worked in the Office of the General--Comptroller General of  
21 Perú. I have also been an alternate judge, and I have over  
22 40 years of professional experience.

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

25 PRESIDENT BINNIE: Please go ahead.

1 THE WITNESS: Thank you.  
 2 The next page--I will read this. I have it  
 3 printed.  
 4 Mr. Amorrortu, through Baspetrol, clearly began a  
 5 Direct Negotiation on May 28, 2014 by presenting its Direct  
 6 Negotiation proposal directed to the Company. It doesn't  
 7 say whether he was directed to Ms. Tafur or Mr. Ortigas.  
 8 It doesn't matter. It was directed to the Company;  
 9 therefore, the company is in a position to receive this  
 10 communication, and also address it.  
 11 And also, in accordance with the process  
 12 established in the program that we have set, the  
 13 qualification of the oil company is given within the Direct  
 14 Negotiation Process. There are two types of access to the  
 15 Contract. One is through Direct Negotiation and another  
 16 one through public bids. So, both of them are provided for  
 17 under the law. We shouldn't delve too much into one or the  
 18 other. We cannot say that one is better than the other  
 19 one. Both are provided under the law for some reason, and  
 20 not necessarily this is a problem. The call for--public  
 21 call for bids is more transparent than the--than Direct  
 22 Negotiation.  
 23 And we are talking about Direct. This is a word  
 24 that we use in Perú when someone from up high in the  
 25 administration is directing the process. Upon passing the

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1 period of time established in the applicable Regulations  
 2 and in the absence of any communication from the Authority,  
 3 whether there was any deficiency, Baspetrol proposed that  
 4 the authority is obliged to grant the qualification based  
 5 on the operation of positive administrative silence.  
 6 (Comments off microphone.)  
 7 THE INTERPRETER: Again, he is requested to speak  
 8 slower.  
 9 THE WITNESS: Upon passing the period of time in  
 10 the applicable regulations and in the absence of any  
 11 communication from the authority whether there was any  
 12 deficiency in Baspetrol's proposal, the authority is  
 13 mandated to grant the qualification based on the  
 14 constructive approval.  
 15 Well, I have also heard different comments, and  
 16 also, I think that there are some incorrect legal  
 17 statements. I teach process, the proceedings, and this  
 18 has--no one can say that someone initiated a proceeding,  
 19 but not the process. It is an absurd concept. So, when  
 20 one initiates the proceedings for a Direct Negotiation, it  
 21 is triggered, and at least the citizen, the Company, the  
 22 businessperson, requires a response from the authority.  
 23 There was no answer from the authority.  
 24 It is said that it is an absurd because there was  
 25 no answer because they did not provide the documentation

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1 under Article 5. But how can we know that the  
 2 documentation was provided correctly or not if it was not  
 3 communicated or qualified by the authority?  
 4 It could be only when one complies with all of  
 5 the requirements that the authority will communicate, but  
 6 when there is noncompliance, there is no communication. It  
 7 makes no sense.  
 8 Amorrortu never gave up the Direct Negotiation  
 9 Process. Therefore, there is no legal ground to assert  
 10 that his participation in the bidding process for Lots III  
 11 and IV evidenced that Direct Negotiation was not triggered.  
 12 Based on my experience, I consider that by participating in  
 13 this negotiation, he ratified his interest to have access  
 14 to the bids or to the Concession for Lots III and IV, which  
 15 they had already handled in the past with experience in the  
 16 sector, the recital--that is to say, the declaratory  
 17 portion of the Decree in the Official Gazette may not put  
 18 to the investor--serve a notice to the investor about  
 19 something that is not available.  
 20 So, the Direct Negotiation Process is a unique  
 21 and specific way to make the investor know what is  
 22 available. So, it cannot be said that because of a  
 23 recital, there is something that is stated--is not  
 24 something that the person served the notice does not have  
 25 access to. So, it was just enough to send an email and, in

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1 two lines, say: "Mr. Amorrortu, we're not interested in  
 2 your proposal. Mr. Amorrortu, your proposal is beyond the  
 3 provisions of the law. Your proposal is not consistent  
 4 with PeruPetro's interest." But there is the initiation of  
 5 a Direct Negotiation, and then we are told that it did not  
 6 exist, but that is not the case, and that did not deserve  
 7 even a response.  
 8 Now I am going to move on to how we handle  
 9 natural resources under public law.  
 10 The Constitution of Perú establishes that natural  
 11 renewable and nonrenewable resources belong to the nation  
 12 and the Peruvian State is the sovereign to determining its  
 13 use, and there is an Organic Law that determines the use of  
 14 the resources by private parties--  
 15 (Comments off microphone.)  
 16 SPANISH REALTIME REPORTER: Once again, please  
 17 slow down.  
 18 THE WITNESS: So, to that end, the law provides  
 19 for the grounds for contracting, and natural resources are  
 20 the property of the nation, and they are provided for its  
 21 economic use by the authorities in charge of the  
 22 administration of the State, and they are the ones that  
 23 represent the coordination in the State of Perú. Here it  
 24 is said that the Administration has discretion. That is  
 25 not the case.

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1 In the private world, there is a discretionary  
2 right. I can sell my house or not. I may be offered  
3 \$3 million and not sell it because I have a discretionary  
4 right over that property, but the authority as  
5 representative of the State is limited. Limited by what?  
6 The law. The law is the one that provides when something  
7 has to be done, how and when, again, because the law  
8 replaces the discretionary right that the authority does  
9 not have.

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

21 So, it is not principle for a proposal for Direct  
22 Negotiation. It is highly beneficial for the country. It  
23 is discarded because--for public call for bids because it  
24 was less beneficial and it was directed, as I said before.

25 I don't know if you understand what I mean when I

1 say that it was directed already, but if you need further  
2 explanation, I can tell you. It was pre-directed.

3 So, Article 10 of the text of the Organic Law on  
4 Hydrocarbons establishes that once the Contract is--the  
5 Contract that was entered into is the one that was entered  
6 into by PeruPetro with a Contractor, and by which there is  
7 an authorization to explore and exploit or exploit  
8 hydrocarbons in the Contract Area, and based on which  
9 PeruPetro transferred the property rights of the extracted  
10 hydrocarbons to the Contractor that must pay a royalty to  
11 the State, PeruPetro is an administrator over the natural  
12 resource. It is not the owner. It is not its money or its  
13 program. It is administering for the benefit of the State.

14 That public interest is regulated by the law. As  
15 I said, it is governed by administrative law. In  
16 connection with the granting of licenses for the  
17 exploitation and/or exploration of hydrocarbons, it is  
18 clear that, within the context of Article 66 of the  
19 Constitution, PeruPetro has an administrative function  
20 within Peruvian administrative law by express obligation of  
21 an Organic Law that grants it the express power to confer  
22 the respective concession of Administrative Order and on  
23 behalf of the State of Perú, even though the Contract may  
24 be governed by the Civil Code provisions as well.

25 Now, in connection with Concession Contracts and

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

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

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

22 If they say yes, we should go ahead. If they say  
23 no, why not? So, I can challenge that denial. I can,  
24 perhaps, also complete the requirements that I'm missing.

25 Now, the procedure for the qualification of oil

1 companies and the Direct Negotiation contracting procedure  
2 are developed at the same time as part of a contractual  
3 agreement, not successively. They are not excluding or  
4 exclusive of each other. They are two different elements  
5 that the law provides to arrive at the same object, whether  
6 it be a Direct Negotiation or a call for bids.

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

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

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

20 So, on the basis of the documentation that I  
21 bring, whether it be complete or incomplete accommodation,  
22 I'm going to get a qualification. Qualification is Step 2.  
23 Step 1 is communicating via Direct Negotiations. So, they  
24 are asking for the application of Phase 2 when I'm on  
25 Phase 1.

1 The administrative authority has the obligation  
2 to evaluate and to rule on the qualification request. It  
3 is an obligation. It's not merely intentional.

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

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

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

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

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

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

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

25 And then, on July 14, 2014, there was an

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1 international tender that called for the exploitation of  
2 Blocks III and IV, starting in 2015 when the Interoil  
3 Contract expired.

4 Now, in connection with Decrees 12 and 13, they  
5 cannot be considered a call for bids. So, we can have a  
6 Direct Negotiation or a call for bids, and they are not  
7 mutually exclusive. The Board Agreements only manifest an  
8 intention to carry out. They are cited in the considering  
9 part of these Supreme Decrees, and not in the operative  
10 section of it.

11 The document submitted by Mr. Amorrortu on  
12 May 28, 2014, by an email and on paper, is a Direct  
13 Negotiation proposal, in my opinion. Clearly, it is  
14 addressed to the Company, and it would be absurd to say  
15 that it was sent to Mr. Paris and not Mr. Smith. No. The  
16 Company deserved an answer that it never received.

17 In accordance with the principle of due  
18 administrative procedure and contractual good faith,  
19 PeruPetro, S.A. should have been in strict compliance with  
20 the rules, and it should have evaluated the compliance or  
21 noncompliance of the requirements that existed. But if  
22 there were documents that were lacking or if the documents  
23 were defective, Mr. Amorrortu should have been told this by  
24 the public administration. But there shouldn't be a lack  
25 of response, and a lack of response means that there is an

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1 answer: No. Because what is the legal sequence of this?  
2 And also, what are the consequences of the May 28, 2014  
3 request?

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

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

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

20 So, the authorities have the obligation to  
21 respond because we cannot say that, if the authority fails  
22 to respond, then I have to assume a denial. So, the  
23 administrative silence by the authorities does not apply in  
24 connection with public interests, health matters,  
25 environmental matters, national defense, financial systems,

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1 also security markets, et cetera.

2 So, I cannot say that--because of a nonresponsive  
3 Government agency, then I cannot say that I have been given  
4 a park, for example. But I do have the right for the  
5 Regulations in connection with administrative silence to be  
6 applied.

7 Nobody is saying that Mr. Amorrortu needs to be  
8 given the Blocks. What they are saying is that, within the  
9 administrative process, well, we have to go to the next  
10 step, to the step of constructive approval. That's what  
11 we're saying. Not that he has to be given the Blocks.

12 Thank you. That's all we're saying.

13 PRESIDENT BINNIE: All right. Thank you very  
14 much.

15 Does that conclude the presentation?

16 I believe so.

17 Counsel, do you wish to cross-examine?

18 MR. WRAY: Mr. President, I am ready whenever you  
19 are ready. If you deem fit, I'm ready to proceed.

20 PRESIDENT BINNIE: Yes, please proceed.

21 MR. WRAY: Thank you very much, Mr. President.

22 CROSS-EXAMINATION

23 BY MR. WRAY:

24 Q. Mr. Quiroga, good morning. My name is Alberto  
25 Wray, and I'm part of the defense team of Perú in this

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

5 As a lawyer, have you participated in any oil  
6 company qualification processes by PeruPetro?

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

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

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

22 Q. In your report you make some mentions to the  
23 theme of corruption in Peru. In your lengthy professional  
24 career in Perú, have you been involved in any of the  
25 processes related to corruption?

1 A. No, but I don't practice my profession in the  
2 criminal matter. But I have seen what the public opinion  
3 has said, and especially what had transpired since 2014  
4 until 2021, or, rather--okay, from 2011 to 2016, rather,  
5 when Mr. Humala was President, and it was said that the  
6 First Lady participated in public negotiations in  
7 connection with the interests that the State had, and I  
8 could tell you and the Arbitral Tribunal that we don't have  
9 in the organic law of the Executive Branch of Government,  
10 nor in the Constitution, the concept of the First Lady.  
11 So, constitutionally and legally, the First Lady has  
12 nothing--no participation in connection with the acts of  
13 the State. But we have seen how she has had direct impact  
14 in connection with some instances.

15 There was an indirect or a prior bribe, and this  
16 was a concept that existed at the time--for example, in  
17 connection with contributions made by the company Odebrecht  
18 for the political campaign; and then once they were in  
19 power, once they become public officials, they gave them,  
20 for example, awards of contracts, for example, in gas  
21 plants or in the case of Talara, as well, in Gasoducto Sur  
22 Peruano.

23 Q. Thank you, sir.

24 Let's look at this case. Did you look at the  
25 document submitted by Baspetro on 28 May 2014, and did you

1 verify its content?

2 A. Yes, I did.

3 Q. What is specifically requested in that document?

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

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

13 THE WITNESS: "I ask you to please give to Luis  
14 Ortigas, the President of PeruPetro, the proposal of  
15 Baspetro, my company, that is attached hereto for the  
16 operation of Lots III and IV in the northeast area of Perú,  
17 and I committed to submitting it at 9:00 a.m. on 28 May  
18 2014, and I have also sent an email at 8:20, and I attach  
19 to this note a presentation note and then two documents, 17  
20 pages in total. Then we are going to also send a copy of  
21 this proposal. Please confirm receipt and that you have  
22 received all this information. Thank you very much for  
23 your attention. Greetings, Mr. Amorrortu."

24 BY MR. WRAY:

25 Q. The request included in the attached document

1 that you made reference to, well, that is a document that,  
2 in your understanding, is a document that constitutes the  
3 Direct Negotiation proposal; right?

4 A. Yes.

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

7 A. Yes.

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

12 A. Yes.

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

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

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

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

1 A. Well, they don't necessarily have to do that  
2 because the next step after the Intent to Negotiate a  
3 Contract via Direct Negotiation, well, that is the  
4 consequence of qualification.

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

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

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

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

17 Q. The Regulations for the Qualification of Oil  
18 Companies--I'm going to read from the document.

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

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

1 the first step has not been taken--that is to say, if the  
2 request for qualification was never submitted?

3 A. Well, you were talking about this, and you're  
4 saying that the qualification procedure begins. It doesn't  
5 mean that you need to be prequalified, whether you need to  
6 ask for qualification. You say the procedure starts. The  
7 start of this procedure is the Direct Negotiation letter.  
8 And then, after that, you will have the qualification or  
9 lack of qualification. The beginning of the procedure is  
10 that.

11 And then, Step 2 is the qualification or the  
12 rejection of the qualification or the denial of the  
13 qualification, but the Company needs to receive a response  
14 in both cases.

15 Q. But you'd agree with me that, for Articles 9, 10,  
16 7--9, 10, and 14 for the Regulations of Qualifications of  
17 Companies, well, for those Articles to come into being,  
18 there has to be a Request for Qualification?

19 A. No. That is not what the Regulations say. It  
20 says that the qualification process starts. I didn't  
21 say--or it doesn't say that you need a qualification  
22 request. The first step is to ask for Direct Negotiation,  
23 and then they look at the application, and then they look  
24 at the documentation, et cetera.

25 So, in Arbitration, you have a Statement of

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

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

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

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

24 Is that what you're saying?

25 A. Again, when you have a Block, you have two roads



1 you can take: Direct Negotiation or call for bids. If you  
2 choose for Direct Negotiation, you're saying you're going  
3 to move to the next step; right? You're not going to start  
4 something just to do that and stop there. It is not  
5 something that is constructive or not constructive. It's  
6 the next step. For example, when you submit a Statement of  
7 Claim, well, for example, you can say, okay, what about the  
8 Statement of Defense? Well, the Statement of Defense is  
9 the next step; right?

10 So, if I move ahead with a qualification, then  
11 other things will come after--your request was ridiculous,  
12 absurd, illusionary and only full of good intents and  
13 without any kind of legal importance and outside the  
14 law--then why didn't they tell Mr. Amorrortu, well, we are  
15 not interested, your request is a mere illusion, it is  
16 incomplete, we are going to close the door to you?

17 According to administrative law, if that had been  
18 the response by the agency, Mr. Amorrortu would have had  
19 the right to challenge that. So, if he didn't start a  
20 direct qualification process because he didn't meet the  
21 requirements, et cetera, or because the documents were  
22 incomplete, why wasn't he told so? It was very simple.  
23 They should have sent a two-line email telling him that.

24 Q. Let us move on to something else. Perhaps we can  
25 delve into it later on.

1 At Paragraph 36 of your Third Report, you say, at  
2 the last part of that paragraph--and you're referring to  
3 the conversation between Mr. Ortigas and Mr. Amorrortu.  
4 You're saying that in this conversation Mr. Ortigas  
5 indicated the general terms and conditions that should be  
6 included in the proposal in connection with the technical  
7 side of things, the investment, the royalties, and any  
8 other term to be submitted by Baspetro.

9 Where did you get this information?

10 A. That information was given to me with the  
11 background of the case. I understand that we are not  
12 discussing the facts at this stage. So, the information  
13 that I have factually, and that I have worked with, is that  
14 Mr. Ortigas met with Mr. Amorrortu. He gave him  
15 seven days. He provided the characteristics and conditions  
16 according to which he should submit his Direct Negotiation  
17 proposal.

18 Q. You have had the opportunity to read the  
19 Statement of Claim by Amorrortu presented in this  
20 proceeding; correct?

21 A. Yes.

22 Q. And there, if you look at Paragraph 73 of the  
23 Statement of Claim, there is reference to this  
24 conversation.

25 A. Did you say 73?

1 Q. 63.

2 A. 73 is different. 73? Is that what you said?

3 Q. I am talking about the Statement of Claim by  
4 Amorrortu.

5 A. I am referring to the Certification of Intent.  
6 73.

7 Q. No, we are talking about a different document. I  
8 don't have it here at hand. Could we show it on the  
9 screen? Paragraph 73, 7-3, from the Statement of Claim.  
10 This is in English.

11 And here it says, during this meeting, Ortigas  
12 instructed Amorrortu to prepare a proposal for Direct  
13 Negotiation for the operation of Blocks III and IV.  
14 Ortigas further told Amorrortu that the Baspetro Proposal  
15 would be subject to a legal-technical economic analysis by  
16 PeruPetro's administration and that it would be discussed  
17 by PeruPetro's Board of Directors.

18 But where you say in your Report that Mr. Ortigas  
19 indicated the terms of the proposal in connection with  
20 technical aspects, royalties--so I just wanted to know  
21 where you obtained that information, because from the  
22 Statement of Claim we do not see this.

23 A. Well, basically, it says that this has to do with  
24 what I was told to prepare my Report.

25 Q. Yes. I understand, Dr. Quiroga. At any rate,

1 what Mr. Ortigas may have said could modify the demands  
2 under the law and the regulations.

3 A. That is the issue. Mr. Ortigas has a Power of  
4 Attorney for the State to manage the State's resources, and  
5 he is the now the CEO of PeruPetro. PeruPetro issues an  
6 instruction. There is no authority above him that could  
7 contradict him. If you recall the communication that I  
8 read of May 28, Amorrortu says, within the time and date  
9 that you indicated--that is, Ortigas even said, you have up  
10 to May 28, by 9:00 a.m., and he said "I'm sending the  
11 communication at 8:20" so there couldn't be any more  
12 specificity. So, here it is said that--just the regulation  
13 and the laws, I am a public official. But if the public  
14 officials representing the State are representatives of the  
15 State and they commit the State in the management of the  
16 resources because they are going to interpret things one  
17 way or the other, whether they work with corporations or  
18 individuals.

19 Q. So, how is the will of the public officials  
20 conveyed? Is it conveyed on a telephone call, or is it  
21 conveyed as means of--by means of an Act?

22 A. Well, when they are regulated, Administrative  
23 Acts--when they are regulated through Administrative Acts,  
24 but in the case of companies like PeruPetro, it could be  
25 through a Board of Directors' agreement and different

1 decisions that are reached. So, how could Direct  
2 Negotiation take place other than by knowing that this  
3 Direct Negotiation has to be initiated? Two CEOs talk and  
4 they say, okay, this going to be available as of Year 15,  
5 and since you have already worked here in this area, and if  
6 you are interested, you can present your proposal, we will  
7 assess it. That is not the problem. The problem is that  
8 there was never an assessment. Whether it was Mrs. Tafur  
9 or Mr. Ortigas, whoever it was, the communication directed  
10 to PeruPetro required PeruPetro's response, whatever that  
11 could be.

12 Q. This response that you are saying that should  
13 have been given, should it have been provided within a  
14 specific deadline? Because that is not what we see at  
15 Articles 9, 10, 14 of the Regulations for the Qualification  
16 of Oil Companies; correct?

17 A. Well, let's go step by step.

18 For some reason, PeruPetro had a flowchart. For  
19 some reason, this procedural path was regulated to limit  
20 the discretionary power of the officials and establish the  
21 request, the evaluation by the administration in  
22 communication to the individual. But you're asking me when  
23 the response had to be communicated first because of the  
24 provisions under Administrative Law. So, due process  
25 requires addressing the request by a citizen. A citizen

1 that presents something and then the Administration  
2 does--is just doing nothing and not responding, that is not  
3 part of due process, and the law reversed the presumption.  
4 And if someone is not told an answer, the answer is "yes."  
5 And at the outset of the Direct Negotiation, there was a  
6 path to follow that continued with the communication to the  
7 company of the interested party. So, none was done.

8 So, the question is: Did Mr. Amorrortu have a  
9 right to be informed what evaluation or what assessment was  
10 done in connection with his request? In my 40 years of  
11 experience, I would say that he had that right. No one  
12 could say that, based on the due administrative process,  
13 the citizen or the company did not have a right to receive  
14 a clear, consistent answer that was properly reasoned and  
15 founded on the law.

16 Q. Okay. Let's move on to the administrative  
17 silence by the Government.

18 Can the positive effect of the administrative  
19 silence be applied to a request that has not been  
20 explicitly conveyed?

21 A. Yes. Yes. It proceeds to do so because I just  
22 mentioned in my general presentation the legal concepts  
23 changed from the economic model that we had in the  
24 Constitution. In our Constitution, we had an economic  
25 model, free market, and prioritizing the investor. And if

1 we withdraw the--I have the law here. There is a reversal  
2 of this presumption.

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

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

24 A. Yes. But we are accepting something that was  
25 requested; correct?

1 Q. But in this request that you are referring to,  
2 the request was to initiate Direct Negotiation, not the  
3 qualification?

4 A. But with due respect, the qualification is the  
5 next step. It is as if you told me you present the Claim  
6 but you have not requested the qualification. And  
7 according to the flowchart, after the request, there should  
8 have been evaluation and qualification. If the authority  
9 does not respond by saying you do not qualify, your  
10 qualification is futile, this is just a mere illusion, this  
11 is just paying homage to the flag. So, they couldn't have  
12 done that.

13 So, I understand that I have moved on to the next  
14 stage, the qualification. And that's why, based on the  
15 Administrative Law, something had been given constructive  
16 approval. We are talking about the second step, not the  
17 first one. What is the first one? Should we put the cart  
18 before the horses?

19 Q. So, as supporting documents for your Report, you  
20 presented a paper by Juan Carlos Morón Urbina. This author  
21 is indicating at 00--is Morón Urbina, who is saying in his  
22 document--and this is Exhibit 45. This is at Pages 005 and  
23 006 of Exhibit 45 at Tab 16 of the binder.

24 At any rate, the paragraph says: "Given the  
25 fact that administrative silence is a technique that only

1 replaces administrative action, when the subject party  
2 asserts it he can obtain only what under the laws he might  
3 obtain under his request or motion or on the strict terms  
4 requested by him."

5 Do you recall this provision?

6 A. Yes. I am very familiar with Mr. Morón.

7 Q. Do you agree with this statement?

8 A. Completely, because it indicates that I am right.

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

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

1 Q. But this is an outcome that is not part of the  
2 request?

3 A. But once again, if you would present a claim,  
4 then you are going to have a response, even if it is not  
5 stated, because this is already provided for under the  
6 proceeding, and this is part of PeruPetro's flowchart.

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

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

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

1 A. You would be, with due respect, fully right if  
2 they had been told that, if they had been told, "Your  
3 request is incomplete. You are missing this or that  
4 document." But my question is: Who told Amorrortu that  
5 the documents were incomplete? Who told Amorrortu that  
6 some documents were missing, or who told Amorrortu that  
7 they did not have documents? What was the authority that  
8 told them that the request was incomplete, or that it was  
9 just good intent or homage--paying homage to the flag?

10 So, you're assuming that the application is  
11 incomplete. This is what Perú's Expert is assuming, but  
12 when did the authority reply that this was incomplete?  
13 When? When did the legal affairs management, the  
14 management in general, the person who is in charge of  
15 security at PeruPetro, when did they say, "Okay. Your  
16 request is not according to the law"? No one can do  
17 something that is beyond the law in something that is  
18 incomplete.

19 So, when was Mr. Amorrortu told that the request  
20 was not in accordance with the law or that it was  
21 incomplete?

22 Q. I apologize, Doctor Quiroga, if there would have  
23 been a response then it would not have been necessary to  
24 refer to the chart on the administrative silence.

25 A. Of course if you allow me to explain, Government

1 not responding, you understand, is an assumption, iuris  
2 tantum, and it is a fiction of the law that was introduced  
3 in the legal--in the Peruvian legal system to facilitate  
4 the economic activities in Perú. So, what is the meaning  
5 of this government's administrative silence? It is a legal  
6 concept, something that did not happen.

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

16 MS. MOSQUERA: Mr. President, I think  
17 that--excuse me. May I, Mr. President?

18 PRESIDENT BINNIE: Yes.

19 MS. MOSQUERA: I think that the Expert has--  
20 (Interruption.)  
21 (Stenographer clarification.)

22 MS. MOSQUERA: I was stating that the question  
23 that the Expert is being asked has been asked and answered  
24 at least four times. I was wondering if we could move on  
25 to the next one.

1 Thank you, Mr. President. Sorry to interrupt.  
 2 PRESIDENT BINNIE: Well, I think there's some  
 3 slight variation in the questions, but I agree that you  
 4 have probably got as much benefit out of this particular  
 5 line of questions as we're going to get.  
 6 MR. WRAY: Yes, Mr. President.  
 7 BY MR. WRAY:  
 8 Q. I would like to confirm with Mr. Quiroga that--if  
 9 it is clear we are talking about two different requests.  
 10 We are talking about, on the one hand, the  
 11 request for Direct Negotiation--that is the one that,  
 12 according to you, Mr. Quiroga was not responded to;  
 13 correct?  
 14 A. Yes.  
 15 Q. And, on the other hand, the result of this  
 16 administrative silence is to grant qualification; correct?  
 17 A. Yes, because this is under PeruPetro's flowchart,  
 18 so qualification is granted, but it turns out that that  
 19 qualification could not be in accordance with the  
 20 requirements demanded of the Company under the  
 21 qualification regulations. If that was the case, this  
 22 should have been stated in writing. Since it was not  
 23 stated, the law assumes that all of the requirements were  
 24 met and that they moved on to the next qualifications  
 25 stage.

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1 Q. Your position is clear, Mr. Quiroga. Thank you.  
 2 You cited Law 29,060. But from your  
 3 intervention, I have the impression that you have a  
 4 specific interpretation of the provision of the law.  
 5 Do you have the text of the law?  
 6 You said that, based on this law, the  
 7 constructive effect of the administrative silence is  
 8 applied.  
 9 A. In my opinion, the answer is yes.  
 10 Q. Could you please read the first provision of the  
 11 temporary law?  
 12 A. Yes. I just read it a couple of minutes ago.  
 13 And in the law--this was a new law--it includes  
 14 administrative and constructive approval, and here it says,  
 15 with general comments, natural resources, citizenships,  
 16 security, Stock Exchange, the--also the cultural assets of  
 17 the nation, and also all of the assets in accordance with  
 18 which the State has an obligation. Here we include  
 19 securities, safety, and also the national heritage of the  
 20 nation. It means that I could not be asking the Ministry  
 21 of Culture to assign to me Machu Picchu as part of a  
 22 concession, and since I do not get a response, I assume  
 23 that it has been granted.  
 24 For example, I cannot ask the Authority  
 25 Yellowstone Park, or that it is a natural sanctuary. What

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1 I could request is to obtain the concession for the  
 2 restaurant that is inside the park or some other internal  
 3 concession within the park, and for that concession process  
 4 to be linked to the due administrative process.  
 5 So, in the first provision, we cannot say--I  
 6 cannot say, "Okay, give me 200 miles within the ocean to  
 7 exploit the fishing resources." But certainly procedures  
 8 are applied for the concession, and that is where the law  
 9 authorizes the concession of some--for some natural  
 10 resources.  
 11 Not all of the natural resources are under a  
 12 concession. These are general concepts, and this has  
 13 already been contemplated. You can see that this has  
 14 already been included for insurance. Natural resources,  
 15 national defense--  
 16 SPANISH REALTIME STENOGRAPHER: Could you please  
 17 slow down? Please slow down.  
 18 THE WITNESS: So, this exclusion of the  
 19 constructive approval for natural resources is also similar  
 20 to what happens with health, the environment, natural  
 21 resources, the police, the financial insurance system, the  
 22 Stock Exchange, commercial defense, national defense, and  
 23 also the cultural assets of the nation.  
 24 So, it should be interpreted as a general  
 25 concept, but not to say that, given that the oil concession

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1 affects or has to do or involves a natural resource, I'm  
 2 going to take just a specific provision from the general  
 3 law. You would work the other way around, but not this  
 4 way. The specific law prevails over the general law.  
 5 I cannot say that this is going--I can say that  
 6 this has to do with natural resources, but I cannot say  
 7 that a specific administration of a specific natural  
 8 resource is not affected by constructive approval.  
 9 If you read the text, the text says that previous  
 10 or pre-evaluation processes will be considered according to  
 11 constructive approval in this situation. Whenever it has  
 12 to do with a concession for the administration of  
 13 preexisting assets or economic activities that entail the  
 14 pre-authorization by the State, that is the principle--that  
 15 is to say, that is the concept that prevails over the  
 16 general provision.  
 17 PRESIDENT BINNIE: I'm going to intervene here  
 18 because we seem to be dealing at immense length with some  
 19 tangential issues, are relevant issues. But for the last  
 20 2.5 hours, I've been pointing out the shortness of time.  
 21 We are now 10 minutes after closing time, and you haven't  
 22 finished the cross-examination. We haven't started the  
 23 reexamination, and there is no time left for Closing  
 24 Statements.  
 25 When we began the cross-examinations, I was told

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1 that, well, efforts would be made to streamline the  
2 presentations, so that we could somehow accommodate this  
3 process within the agreed limits. It seems to me that  
4 we've totally lost sight of the fact that there was an  
5 agreed timetable, and that the Tribunal for its part would  
6 have found Closing Statements helpful, but it appears that,  
7 you know, that is no longer a possibility, given the time  
8 constraints that everybody has agreed to.

9 I think perhaps I'd like submissions from Counsel  
10 as to where we go from here.

11 I don't know how much longer, Mr. Wray, you had  
12 in mind for your cross-examination, and I apologize for  
13 interrupting, but the answers seem to go on at very great  
14 length.

15 MR. WRAY: I just need a very short period of  
16 time, Mr. President. If you allow me to proceed.

17 PRESIDENT BINNIE: All right. And I would ask  
18 the Witness kindly shorten your answers and focus on what's  
19 being asked, rather than to elaborate with different  
20 examples and so on.

21 THE WITNESS: Yes, Mr. President.

22 BY MR. WRAY:

23 Q. Dr. Quiroga, in the text by Mr. Morón Urbina,  
24 we see Article 38 of the current law and it reads that the  
25 "As an exceptional matter, negative silence is applicable in

1 those cases in which the request from the subject party may  
2 significantly affect the public interest and impinge on the  
3 following legal goods ... natural resources." So, these are  
4 two conditions--that is to say, that it is a significant  
5 affectation of the public interest, and that it has to do  
6 also with natural resources.

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

10 (Overlapping interpretation.)

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

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

21 MR. WRAY: Thank you, sir.

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

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

1 PRESIDENT BINNIE: All right.

2 MR. WRAY: Thank you very much.

3 PRESIDENT BINNIE: Is there a brief reexamination  
4 necessary?

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

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

13 (Witness steps down.)

14 POST-HEARING MATTERS

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

23 The Members of the Panel have had some discussion  
24 as to what to do if we found ourselves in this predicament.  
25 It would appear that some written Post-Hearing Submissions

1 would be appropriate, and the Panel has a number of  
2 questions as we've gone on here, some of which have not  
3 been asked because of the time constraints.

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

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

17 But the first step in this proposal is that the  
18 Hearing adjourn now. I appreciate the effort that has gone  
19 into putting together both the Opening Submissions and the  
20 cross-examinations. It is unfortunate that our time was  
21 not available, but we are where we are, so is the idea that  
22 we would adjourn now, that the Panel would indicate  
23 questions, some questions they would like addressed, and a  
24 deadline be set for written submissions, and do Counsel  
25 have any submissions on that.

1 First of all, Mr. Rodriguez.  
 2 (Audio distortion interruption.)  
 3 MR. RODRIGUEZ: Thank you, Mr. President, for  
 4 your suggestion and to the Members of the Tribunal for your  
 5 indulgence. We tried to streamline the presentation as  
 6 much as we could, but we failed to, and we apologize for  
 7 that.  
 8 But we welcome your suggestion in terms of  
 9 submitting Post-Hearing Briefs, based our structure around  
 10 the questions that the Panel has. Because one important  
 11 aspect of the Hearing is, obviously, for us to respond to  
 12 the questions that the Panel has and we welcome your  
 13 suggestion. And we do believe that the suggestion of  
 14 having a page limit and a time frame is important.  
 15 Obviously, there is a time component here to the  
 16 Preliminary Objections, and I know the Tribunal is aware of  
 17 that.  
 18 PRESIDENT BINNIE: All right. Thank you.  
 19 Now, the Respondent?  
 20 MR. FIGUEROA: Yes. First of all, I want to  
 21 thank you and Members of the Tribunal, and, I guess,  
 22 everyone here for their indulgence and patience in being  
 23 able to listen to these arguments and this  
 24 cross-examination in this time period.  
 25 We concur, I concur with my colleague in that we

1 are open and absolutely agree to the Tribunal's suggestion.  
 2 I think I also concur that a Post-Hearing Submission or  
 3 some type of submission answering the Tribunal's questions  
 4 would be well served and with page limitations. We would  
 5 also be open if the Tribunal so, found it convenient to  
 6 have another hearing where we can answer questions directly  
 7 to the Tribunal.  
 8 PRESIDENT BINNIE: All right. Well, it appears  
 9 that we have a plan.  
 10 Do either of my colleagues have any suggestions  
 11 or interventions at this point?  
 12 ARBITRATOR LANDAU: Nothing, for me, thank you.  
 13 MR. HANOTIAU: No. I think that Post-Hearing  
 14 Submissions will probably be more appropriate than Closing  
 15 Submissions because we have heard a lot of evidence from  
 16 the Experts, and I think that needs to be assimilated by  
 17 the Parties, and we will certainly learn a lot from the  
 18 Post-Hearing Briefs.  
 19 PRESIDENT BINNIE: Okay. Well, then, with thanks  
 20 to everybody. We will adjourn at this point, and you will  
 21 hear from the Panel, I would hope, within a week or so, but  
 22 may be delayed a little bit beyond that. And we will set,  
 23 assuming you'll get something from us within 10 days or 7  
 24 to 10 days, would a month from now be sufficient to put  
 25 together your Briefs?

1 MR. RODRIGUEZ: Yes. From our perspective, that  
 2 would be acceptable.  
 3 PRESIDENT BINNIE: All right. Mr. Figueroa?  
 4 MR. FIGUEROA: Yes. Likewise, Mr. President.  
 5 PRESIDENT BINNIE: All right. So, and as to page  
 6 limits, I guess it will be, to some extent, a function of  
 7 what the questions are, but I don't think the Panel would  
 8 envisage anything beyond perhaps 40 pages or so.  
 9 However, we will clarify that when we get back to  
 10 you, and if for some reason you feel that that is not  
 11 adequate, you can say so at the time, and I do want to  
 12 emphasize that, although we will be putting questions, this  
 13 is not to foreclose Counsel from making the arguments which  
 14 they feel necessary to present the case properly. But it  
 15 is an attempt to focus the submissions around the concerns  
 16 that the Tribunal has, having read the written material and  
 17 heard the oral proceedings today.  
 18 So, on that basis, and with thanks to the  
 19 Reporters and Translators who have performed nobly under  
 20 sometimes difficult conditions, and to the staff from the  
 21 PCA, all of which is appreciated.  
 22 On that basis, we will adjourn. If it is  
 23 possible for the PCA to enable the Panel to carry on or to  
 24 dial in by some other means, we would like to have a short  
 25 discussion before breaking.

1 So, thank you very much, Counsel and Witnesses.  
 2 MR. FIGUEROA: Thank you very much.  
 3 MR. RODRIGUEZ: Thank you very much.  
 4 (Whereupon, at 12:26 p.m. (EDT), the Hearing was  
 5 concluded.)

CERTIFICATE OF REPORTER

I, Dawn K. Larson, RDR-CRR, Court Reporter,  
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I further certify that I am neither counsel  
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