**PCA Case No. 2023-22**

**IN THE MATTER OF AN ARBITRATION UNDER THE UNITED STATES – PERU TRADE PROMOTION AGREEMENT,**

**ENTERED INTO FORCE ON 1 FEBRUARY 2009**

**— and —**

**THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW, AS REVISED IN 2013 (THE "UNCITRAL RULES")**

**— between —**

**BACILIO AMORRORTU**

*Claimant,*

v.

**THE REPUBLIC OF PERU,**

*Respondent.*

---

# RESPONDENT'S STATEMENT OF DEFENSE AND OBJECTIONS TO JURISDICTION

---

29 April 2024


Vanessa Rivas Plata Saldarriaga
Jhans Panihuara Aragón

La Comisión Especial que Representa el Estado en Controversias Internacionales de Inversión

**MINISTERIO DE ECONOMÍA Y FINANZAS**
Jr. Lampa No. 274, Piso 2, Cercado de Lima
Lima, Perú

Ricardo Puccio S.
**ESTUDIO NAVARRO & PAZOS ABOGADOS**
Av. Del Parque 195 – San Isidro
Lima, Perú

Kenneth J. Figueroa
Ofilio J. Mayorga
Alberto Wray
Eva Paloma Treves
Ivana Mariles Toledo
Juan Pablo Hugues
Baldomero Casado
Irene Whelan Vita

**FOLEY HOAG LLP**
1717 K Street, N.W.
Washington, DC, 20006, USA

## Table of Contents

I. Introduction ........................................................................ 1

II. Statement of Facts ........................................................................ 5

A. The Context of Amorrortu's Claim ........................................................................ 5

1. Peru's oil industry and its participants ........................................................................ 5

2. Amorrortu's first activities in Peru ........................................................................ 6

3. Amorrortu's attempts to sue the Republic in various *fora* ........................................................................ 7

4. Amorrortu founded Baspetrol assuming that he would resume operations over the Talara Blocks ........................................................................ 9

B. Amorrortu Failed to Conduct Proper Due Diligence to be Awarded the Blocks in the Talara Basin ........................................................................ 11

1. Perupetro's direct negotiation process does not automatically bestow rights on an interested party ........................................................................ 12

2. By 2012, Perupetro was no longer awarding contracts through direct negotiations ........................................................................ 15

C. The Blocks Were Adjudicated Pursuant to the Applicable Legal Framework ...... 18

1. Baspetrol never commenced a direct negotiation with Perupetro ............ 19

2. The temporary contracts with Interoil were necessary to ensure the Blocks' continuity of operation while the ICC Arbitration concluded and the Bidding Processes were carried out ........................................................................ 29

3. The Bidding Processes complied with the applicable legal framework .... 32

D. Amorrortu Has Failed To Prove That The Blocks Were Adjudicated To Graña y Montero Through Corruption ........................................................................ 63

1. The majority of the evidence Amorrortu proffers in support of the alleged corruption scheme affecting the Blocks' adjudication bears no relation to the facts of this case ........................................................................ 63

2. The scant "evidence" presented by Amorrortu that bears any relation to the facts of this case also fails to prove that the Blocks were adjudicated as the byproduct of corruption ........................................................................ 66

3. The *Lava Jato* Special Team has found no evidence of corruption with respect to the Blocks or the Bidding Processes ................................76

III. Amorrortu's Claim Is Outside the Jurisdiction of the Tribunal ........................................80

A. Amorrortu's Claim was Already Time-Barred When He Submitted it To Arbitration On 21 August 2023 ................................................................................80

1. The applicable legal standard....................................................................81

2. Amorrortu knew of the alleged breach and of the loss before the critical date ..........................................................................................84

B. Amorrortu Is Not Entitled To The Protections Of The USPTPA Because His Peruvian Nationality Was His Dominant And Effective Nationality At The Time Of The Alleged Breach....................................................................90

1. The applicable legal standard....................................................................90

2. Amorrortu's effective and dominant nationality was Peruvian when the alleged breach occurred ......................................................................92

3. Amorrortu's renunciation of his Peruvian nationality when a dispute with Peru was foreseeable constitutes an abuse of process requiring the dismissal of his claim ..........................................................................98

C. The Tribunal Lacks Jurisdiction *Ratione Materiae* Because Amorrortu Did Not Have A Protected Investment ......................................................................101

1. Baspetrol's alleged proposal did not start direct negotiations with perupetro ...................................................................................................101

2. Direct negotiations or appurtenant rights are not covered investments...108

3. Claimant's Alleged Investment In Baspetrol Is Not Protected By The USPTPA...................................................................................................111

D. The Tribunal Lacks Jurisdiction *Ratione Materiae* Because The Disputed Measures Are Not Attributable To Peru .............................................................114

1. Perupetro has no delegated governmental authority ...............................115

2. In any case, the measures challenged were not governmental................117

3. Consequently, the Tribunal has no jurisdiction *ratione materiae* over the case ....................................................................................................119

E. The Tribunal Lacks Jurisdiction Because There Is No Connection between the Purported Treaty Breach and The Damages Amorrortu Claims....................120

F. The Tribunal Lacks Jurisdiction *Ratione Voluntatis* because Amorrortu Did Not Comply with the Procedural Prerequisites for Submitting a Claim to Arbitration......................................................................................124

1. Amorrortu failed to comply with the mandatory consultation and negotiation requirement before initiating this arbitration, pursuant to Article 10.15 ..........................................................................125

2. Amorrortu failed to submit a Notice of Intent as required under Article 10.16.2 of the Treaty...................................................134

IV. Amorrortu's Claim is Meritless ..........................................................142

A. There Is No Internationally Wrongful Act Because the Disputed Measures Are Not Attributable to Peru.....................................................142

1. The impugned measures were not committed by organs of Peru (Article 4 of the ILC Articles) ..............................................142

2. In any event, Perupetro's measures were not of *puissance publique* (Article 5 of the ILC Articles) ..............................................144

3. Perupetro was not acting under the direction or control of Peru (Article 8 of the ILC Articles) ..............................................149

B. Even if Perupetro's Conduct Is Attributable to Peru, This Case Should be Dismissed on the Merits Because Amorrortu Has Failed to Demonstrate He Suffered Any Violation of the Treaty ..............................................152

1. Amorrortu has misconstrued the MST standard of the Treaty ................152

2. Even if the Tribunal were to examine the merits of the dispute on the basis of Claimant's incorrect formulation of the MST, it would not find any breach of Peru's obligations under Article 10.5 of the Treaty ..157

3. Amorrortu has not demonstrated that protection against corruption, as alleged in this case, has crystallized as part of customary international law for purposes of the Minimum Standard of Treatment.......................171

V. Amorrortu Is Not Entitled to the Damages He Seeks .....................................178

A. There Is No Causal Link Between Amorrortu's Purported Damages and Peru's Impugned Measures.........................................................178

1. International law requires Amorrortu to establish causation ..................178

2. Peru's impugned measures are not the cause of Amorrortu's alleged damages ........ 182

B. Amorrortu Fails to Prove his Damages Claim ........ 199

1. Amorrortu's use of the Fair Market Value standard is misplaced, as Peru's purported breach is not expropriatory in nature ........ 200

2. In any event, Amorrortu has not met his burden of proving his damages with a minimum degree of certainty ........ 202

C. Amorrortu's Interest Claim Must Be Rejected ........ 217

D. Amorrortu's Request for Non-Taxable Compensation Must Be Rejected ........ 219

VI. Request for Relief ........ 220

## DEFINED TERMS

| | |
|---|---|
| Arbitration Rules of the United Nations Commission on International Trade Law, as revised in 2013 | UNCITRAL Rules |
| BASPETROL S.A.C. | Baspetrol |
| Claimant Bacilio Amorrortu's Opposition to Respondent Peru's Request for Bifurcation (19 December 2023) | Claimant's Opposition to Bifurcation |
| Claimant Bacilio Amorrortu's Rejoinder in Opposition to Respondent Peru's Request for Bifurcation (10 January 2024) | Claimant's Rejoinder in Opposition to Bifurcation |
| Claimant's Notice of Arbitration (16 August 2022) | NoA |
| Claimant's Statement of Claim (21 August 2023) | SoC |
| Commission in charge of conducting the Bidding Processes | Commission |
| Comptroller General of the Republic of Peru (*i.e.*, *Contraloría General de la República del Perú*) | Comptroller General |
| Directory Agreement No. 034-2014 (20 March 2014) and Directory Agreement No. 035-2014 (20 March 2014) approving temporary agreements with Interoil | Temporary Contracts |
| Graña y Montero Petrolera S.A. | GMP |
| Graña y Montero S.A.A. | GyM |
| International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts | ILC Articles |
| International public bidding processes No. PERUPETRO-001-2014 and No. PERUPETRO-002-2014 | Bidding Processes |
| Interoil Peru S.A. | Interoil |

| | |
|---|---|
| *Interoil, Perú S.A.c. Perupetro S.A.*, ICC Case No. 18783/CA/ASM | ICC Arbitration |
| Law No. 30130, Declaring of Public Necessity and National Interest the Priority Execution of the Modernization of the Talara Refinery to Ensure the Preservation of Air Quality and Public Health and Adopts Measures to Strengthen the Corporate Governance of Petroleums o Peru - Petroperu S.A. | Law No. 30130 |
| Memorandum No. GGRL-025-2014 (22 April 2014) (*Bases de Licitación*) | Bidding Rules |
| Mercantile Peru Oil and Gas, S.A. | Mercantile |
| Ministry of Economy and Finance | MEF |
| National Coalition of Petroperu's Unions (*i.e.*, *la Coalición Nacional de Sindicatos de Petroperú*) | CNSP |
| Odebrecht S.A. | Odebrecht |
| Perenco S.A. | Perenco |
| Peru's Ministry of Energy and Mines | MINEM |
| Peru's Ministry of Transport and Communications | MTC |
| Peru's Notification of Intention to Request Bifurcation (29 September 2023) | NoI to Bifurcate |
| Peru's Organic Hydrocarbons Law No. 26221 of 1993 | Organic Hydrocarbons Law |
| Peru's Request for Bifurcation (14 November 2023) | RfB |
| PeruPetro Procedure GFCN-8, Contracting Through Direct Negotiation | Procedure No. 8 |
| Perupetro S.A. | Perupetro |
| Perupetro's Institutional Control Organ (*i.e., el Órgano de Control Institucional*) | OCI |
| Petróleos del Perú - Petroperú, S.A. | PETROPERU |

| | |
|---|---|
| Promociones Petroleras Talara, S.A. | Propetsa |
| Propetsa-Visisa Serpet Asociados | Provisa |
| Proyecto del Gasoducto del Sur | South Pipeline Project |
| Reply Statement to Claimant's Opposition to Republic of Peru's Request for Bifurcation (29 December 2023) | Reply to Claimant's Opposition to Bifurcation |
| Task force of prosecutors appointed in Dec. 2016 to investigate the Lava Jato scandal (*i.e., el Equipo Especial de Fiscales*) | *Lava Jato* Special Team |
| United States and Peru Trade and Promotion Agreement Investment Chapter (12 April 2006) | USPTPA Investment Chapter |
| Vienna Convention on the Law of Treaties (1969) | VCLT |
| Procedimiento e Indicadores para para Calificación de Empresas aprobado mediante Acuerdo de Directorio de Perupetro No. 04-2014 del 15 de abril de 2010 | Qualification Procedure |
| Decreto Supremo No. 030-2004-EM, Reglamento de Calificación de Empresas Petroleras | Regulation |

# I. INTRODUCTION

In accordance with Procedural Order No. 2 of 18 March 2024 and the procedural calendar set forth in Procedural Order No. 3 of 18 April 2024, the Republic of Peru ("**Peru**", the "**Republic**", or "**Respondent**") hereby presents its Statement of Defense.

1. This case is about a Peruvian citizen —Bacilio Amorrortu ("**Claimant**" or "**Amorrortu**") — who developed an obsession with returning to Peru after many years of exile to recover what he claims are his rights over an oil block in Talara, Peru, which he allegedly was forced to sell during the rule of President Alberto Fujimori in the 1990s.

2. Reduced to its essence, Amorrortu's claim is that PeruPetro S.A. ("**Perupetro**"), a state-owned company of Peru, arbitrarily deprived him of his right to "resume" the operation of two oil blocks in the Talara region in Peru in violation of the United States-Peru Trade Promotion Agreement (the "**USTPA**" or the "**Treaty**"). Specifically, Amorrortu argues that his company, Baspetrol, was deprived of the right to complete a direct negotiation of the contracts to operate Blocks III and IV (the "**Blocks**"), which Baspetrol would have obtained in 2014 had it not been for a "corrupt bid" that, allegedly, Perupetro specifically designed to benefit another company.

3. At its heart this claim is based on Amorrortu's unfounded belief that his company, Baspetrol, started a direct negotiation by simply sending a letter to Perupetro expressing an interest in the Blocks. This belief is not based on any provisions of Peruvian law or the representations of Perupetro's officials. Rather, this belief can be traced back to Amorrortu's claim that in 1995 the regime of Alberto Fujimori forced him to sell his shares in a company that was operating Block III. Since then, "resuming"[1] operations in Block III has become Amorrortu's *raison d'être*.

4. Even though Amorrortu moved to the United States in 2000, he opportunistically reappeared in Peru in 2012 — a year before the expiration of the contract under which the oil company Interoil was operating Block III. He approached Luis Ortigas, the then President of the Directory of Perupetro, who explained to him in writing that Block III was not available for direct

---

[1] *See* Claimant's Statement of Claim (21 Aug. 2023) ("**SoC**"), ¶¶ 4, 156, 311.

negotiation.[2] Several months later, in April 2014, Perupetro publicly announced that the Blocks would be adjudicated by a public bid. This should have ended the aspirations of any reasonable person. But not Amorrortu.

5. Instead of preparing to compete in an eventual bid, in May 2014 Amorrortu sent Perupetro a "proposal" to hold direct negotiations over Blocks III and IV. This "proposal", according to Amorrortu, set in motion a negotiation process that entitled Baspetrol to a contract for the operation of both blocks.

6. Peru will demonstrate in this submission that Baspetrol could have never obtained a contract through direct negotiation because:

i. Blocks III and IV were still under contract and, upon expiration of that contract, reserved for an international public bidding process and thus unavailable for direct negotiation;
ii. Baspetrol lacked a certification that it was a Qualified Oil Company; and
iii. Baspetrol's alleged proposal did not meet the legal requirements to trigger such a direct negotiation process.

7. Under these circumstances, Amorrotu's unfounded allegations of a corruption scheme simply cannot be the cause that Baspetrol did not obtain the contracts through direct negotiations. In addition to the fact that Amorrortu has failed to provide any evidence of corruption in this case, his claim that Perupetro "aborted" the direct negotiation with Baspetrol to launch a corrupt international public bidding process has no logic. If Perupetro was involved in a corruption scheme to benefit another company, it could have simply awarded the company the contracts through a process of direct negotiation, away from the public eye and from the scrutiny of institutional watchdogs.

8. The factual background of this case, including the overwhelming evidence that proves that Amorrortu did not have a right to a direct negotiation with Perupetro, will be elaborated further in **Part II** of this Statement of Defense. While this factual background indisputably

[2] Alleged Proposal from Baspetrol SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (**C-11**).

contradicts Amorrortu's asserted breaches of the Minimum Standard of Treatment standard of the Treaty, even as improperly understood and applied by him, the Tribunal need not even get that far. This is because it must first determine the open question of its jurisdiction. Peru insists that jurisdiction here is manifestly lacking because: (1) Amorrortu's claim was already time-barred when he submitted his claim to arbitration on 21 August 2023; (2) Amorrortu does not satisfy the nationality requirements of the Treaty because his dominant and effective nationality was his Peruvian nationality at the time of the alleged breach; (3) Amorrortu's alleged right to a direct negotiation, as well as his contributions to Baspetrol, cannot be considered protected investments under the Treaty; (4) the disputed measures cannot be attributed to Peru because Perupetro did not exercise governmental authority in connection with the adjudication of the Blocks; (5) Amorrortu has failed to establish any link between the purported breach of the Treaty and his alleged damages; and (6) Amorrortu did not comply with the mandatory consultation requirement before initiating this arbitration, and did not submit a Notice of Intent as required by the Treaty. These objections are set out in **Part III**. **Part IV** demonstrates that Peru did not breach the Minimum Standard of Treatment standard of Article 10.5 of the Treaty. In **Part V**, and only out of abundance of caution, Peru will show that Amorrortu's claim for damages is baseless because *inter alia* Baspetrol would have never generated any profits even if it had been awarded the Blocks.

9. The Statement of Defense is accompanied by the witness statements and expert reports from the following individuals:

- Witness Statement of Mr. Roberto Carlos Guzmán Oliver (Guzmán Witness Statement (**RWS-01**));
- Witness Statement of Mr. Isabel Mercedes Tafur Marín (Tafur Witness Statement (**RWS-02**));
- Witness Statement of Mr. Rafael Ernesto Vela Barba (Vela Witness Statement (**RWS-03**));
- Expert Report of Mr. Kurt G. Strunk (NERA) (NERA Expert Report (**RER-01**));
- Expert Report of Dr. Carlos Raúl José Vizquerra Pérez Albela (Vizquerra Expert Report (**RER-02**)).

10. Also submitted with this Statement of Defense are Peru's new factual exhibits numbered **R-13 – R-68** and legal authorities numbered **RLA-55 – RLA-191**.

11. In light of the above, and as explained in detail in the pages of this Statement of Defense, the Republic of Peru requests that Claimant's claims be dismissed in their entirety, and that Peru be awarded all of its costs and attorneys' fees, together with interest thereon. The Republic of Peru reserves all of its rights, including, without limitation to, the right to modify, expand or complete its requests for relief, as it deems appropriate, and waives none.

# II. STATEMENT OF FACTS

## A. The Context of Amorrortu's Claim

### 1. Peru's oil industry and its participants

12. The setting in which the present arbitration takes place is Peru's oil and gas sector.

13. The Republic of Peru has a long history of hydrocarbons exploration and exploitation, having produced oil and gas for over 100 years. Today, the Peruvian oil and gas sector is open to private investment. Its liberalization process culminated in 1993, with the enactment of Peru's Organic Hydrocarbons Law No. 26221 of 1993 ("**Organic Hydrocarbons Law**") and the end of the monopoly held until then by Petróleos del Perú S.A. ("**PETROPERU**"), Peru's state-owned petroleum company.

14. Peru's Organic Hydrocarbons Law thus allowed both local and foreign private investment in the sector and sought to stimulate its economic and operational growth on the basis of free competition and free access to all activities that make up the oil and gas value chain. This includes, of course, oil and gas exploration and production activities (also known as upstream activities).

15. To that end, Peru's Organic Hydrocarbons Law created Perupetro, also a state-owned company headquartered in Lima and whose operations began in November 1993.[3] By law, Perupetro is entrusted (amongst other things) with (i) promoting investment in hydrocarbon activities in Peru; (ii) negotiating and entering into contracts for the exploration and production of oil and gas (including the so-called "license contracts") with companies operating in Peru's upstream sector, and monitoring those contracts; and (iii) collecting the royalties owed under those contracts and depositing them in Peru's Public Treasury. Importantly, Perupetro does not carry out oil and gas exploration and production activities in Peru; that role is reserved to the companies that sign contracts with Perupetro.[4]

---

[3] Perupetro, "About us" (last accessed 28 April 2024) (**R-68**).

[4] Organic Hydrocarbons Law, 1993 (Act No. 26221 of 1993) (13 August 1993) (**CLA-45**), Art. 6.

16. As explained in greater detail below, exploration and production contracts in Peru can be awarded to companies through two main channels: direct negotiation and bidding processes, also referred to as public tenders. Thus, Perupetro, as the entity in charge of negotiating and signing such contracts, is also tasked with launching, coordinating, and completing these two processes.

17. For its part, PETROPERU's core business is the transportation, refining, distribution, and commercialization of oil, gas, and by-products in Peru. Currently, PETROPERU also carries out upstream activities in certain oil blocks in Peru, acting as a counterpart of Perupetro. PETROPERU and Perupetro are thus completely different entities, both from the point of view of their functions (Perupetro's primary role is limited to awarding contracts, whereas PETROPERU performs activities in the sector) and from a corporate point of view (both companies, and their organs, are structurally independent from each other).

18. Since 1993, Peru's oil and gas sector has attracted several well-known international petroleum companies. Recent examples include Spain's CEPSA and Repsol, Texas' Olympic Oil & Gas Corporation, the United Kingdom's PERENCO, and China's state-owned CNPC.[5] As in any other oil producing jurisdiction, the processes and systems involved in oil and gas production in Peru are capital-intensive, highly complex, and require state-of-the-art technology. Moreover, the exploitation of hydrocarbons represents a constant source of income for Peru (and thus the Peruvian people). This obliges Perupetro to be extremely diligent in the selection of potential oil companies for the award of exploration and production contracts in the country. To this end, as explained in greater detail below, Perupetro has a series of criteria that ensure that any company selected has the technology, know-how, and financial muscle necessary to operate an oil block in accordance with the highest industry standards.

### 2. Amorrortu's first activities in Peru

19. In his Statement of Claim, Amorrortu recalls that he was born and raised in Peru,[6] that the first company he ever founded, Promociones Petroleras Talara, S.A. ("**Propetsa**")—

[5] Perupetro,"Contracts in Operation as of 03.31.2024" (31 March 2024) (**R-63**).

[6] SoC, ¶¶ 26-28.

neither the investor nor the investment in these proceedings – was founded and registered in Peru,[7] and that in the 1990s, "the Talara Basin was divided into 14 oil and gas blocks, which were offered to local and foreign investors through either Direct Negotiations or public bidding."[8] It was in this context that Amorrortu formed a consortium, Propetsa-Visisa Serpet Asociados ("**Provisa**"), which submitted a proposal to exploit and operate Talara's Block III for 20 years.[9] Provisa was awarded this concession on 4 March 1993.[10]

20. However, as Amorrortu recalls, in 1995, "[a]s a result of the economic difficulties that [Propetsa] was facing," Amorrortu transferred his shares in Provisa to Mercantile Peru Oil and Gas, S.A. ("**Mercantile**" later known as "**Interoil**").[11] The complete transfer of these shares was concluded on 13 August 1997 through Supreme Decree No. 015-97-EM.[12] Through this transfer, Amorrortu's "participation in Lot III ended."[13]

### 3. Amorrortu's attempts to sue the Republic in various *fora*

21. Despite the fact that Amorrortu willingly transferred his shares in Propetsa, he has, since that day, tried his best to turn back time and regain Block III and/or compensation from the Republic for perceived, but unsubstantiated grievances.

22. Indeed, a few years after he was granted asylum in the United States, in December of 2006, Amorrortu filed a lawsuit against Peru in the United States District Court for Southern Texas. According to Amorrortu, "Propetsa, [was] allegedly […] owed a debt of six million dollars (US) by PetroPeru."[14] Amorrortu claimed in those proceedings (and reiterates in his witness statement) that "the Comptroller of the Peruvian State in the Ministry of Energy and Mines of

---

[7] SoC, ¶ 32.

[8] SoC, ¶ 38.

[9] SoC, ¶ 38.

[10] SoC, ¶ 38.

[11] Witness Statement of Bacilio Amorrortu (18 August 2023) ("**Amorrortu Witness Statement**") (**CWS-01**), ¶ 24.

[12] SoC, ¶ 46.

[13] Amorrortu Witness Statement (**CWS-01**), ¶ 26.

[14] *Amorrortu v. Republic of Peru*, 570 F. Supp. 2d 916 (S.D. Tex. 2008) (31 July 2008) (**RLA-102**).

Peru, the Inspector General, by means of a Special Review, […] recognized a millionaire debt that Petroperu maintained to Propetsa."[15]

23. However, as is often the case with Amorrortu's telling of the facts, this is a distorted view of reality. The Comptroller never "recognized a millionaire debt." On the contrary, the referenced report by the Comptroller only *recommended* that the Minister of Energy and Mines ("**MINEM**") "proceed to commence the necessary legal and administrative actions <u>if responsibility is found</u>."[16] Amorrortu's claim was thus groundless.

24. Hence, it is not surprising that the District Court dismissed Amorrortu's action pursuant to the Foreign Sovereign Immunities Act and declared "the origins of this debt [were] not clearly explained in the Complaint."[17]

25. Clearly, this result frustrated Amorrortu as he appealed the District Court's decision before the U.S. Court of Appeals, Fifth Circuit. Once again, the Court of Appeals rejected Amorrortu's claims for lack of jurisdiction.[18] And once again, as Amorrortu narrates, in September 2011, he filed another lawsuit against Peru before the United States District Court, S.D. Texas, Houston Division. Once again, the court dismissed Amorrortu's claim.

26. In parallel, Amorrortu even tried to "suspend the implementation of the United States-Peru Trade Promotion Agreement"[19]—the very instrument under which he now seeks recourse. On 29 June 2006, Amorrortu appeared before the Senate's Finance Committee and argued that the USPTPA should not be implemented until his alleged rights were made whole.[20]

---

[15] Amorrortu Witness Statement (**CWS-01**), ¶ 35.

[16] Special Examination on Petroperu's Debt in Propetsa's Favor (18 June 1992) (**C-2**), p. 14 (translation provided by Counsel. In the original Spanish: "promueva en caso de encontrar responsabilidad, las acciones administrativas y legales que hubiere lugar.") (emphasis added).

[17] *Amorrortu v. Republic of Peru*, 570 F. Supp. 2d 916 (S.D. Tex. 2008) (31 July 2008) (**RLA-102**), p. 1.

[18] Amorrortu Witness Statement (**CWS-01**), ¶ 43.

[19] United States House of Representatives, *Hearing before the Committee on Ways and Means on the Implementation of the United States-Peru Trade Promotion Agreement*, Serial No. 109-86 (12 July 2006) (**R-14**), p. 110.

[20] Amorrortu Witness Statement (**CWS-01**), ¶ 31. *See also* Testimony of Bacilio A. Amorrortu, Hearing on the Implementation of the Peru-USA Trade Promotion Agreement, USA (29 June 2006) (**C-55**).

These rights related to the alleged debt that "the Peruvian Government owed to [Propetsa]."[21] Notably, the U.S. House of Representatives ignored Amorrortu's unfounded claims and approved the USPTPA.

27. In 2012, Amorrortu returned to Peru and, for a few years, did not institute any legal action against the country. However, in 2015, Amorrortu tried to "resume [his] claim for civil reparation for violations of [his] human rights before the Peruvian Government."[22] As the actions promoted in the United States, this alleged proceeding was unrelated to Baspetrol or any of the facts of the present arbitration proceedings.

28. Once this attempt failed,[23] Amorrortu was "prompted [...] to seek the vindication of [his] rights as a US investor, through an investment arbitration forum."[24]

29. The arbitration proceedings are thus simply Amorrortu's latest attempt, in a long line of animosity towards Peru, to obtain any type of compensation for perceived injustices. It is telling that every single one of his attempted claims have failed. For the reasons explained below, his claims in this arbitration lack any merit, and thus also must fail.

#### 4. Amorrortu founded Baspetrol assuming that he would resume operations over the Talara Blocks

30. Faced with the disappointing results of his legal battles in the U.S. Courts, Amorrortu tried his luck once again in Peru.

31. On 17 October 2012, together with his sons, Bacilio Cesar and Sebastián, Amorrortu incorporated Baspetrol under the laws of Peru, retaining 800 shares for himself and allocating 600 shares to each son for a total of 2000 shares. The subscribed shares were only paid

[21] United States House of Representatives, *Hearing before the Committee on Ways and Means on the Implementation of the United States-Peru Trade Promotion Agreement*, Serial No. 109-86 (12 July 2006) (**R-14**), p.110; *Amorrortu v. Republic of Peru*, 570 F. Supp. 2d 916 (S.D. Tex. 2008) (31 July 2008) (**RLA-102**). Amorrotu's characterization of course improperly imputes upon the Republic of Peru the actions of the downstream entity Petroperu, which is a separate and autonomous entity under Peruvian law. *See* §§ III.D and IV.A.

[22] Amorrortu Witness Statement (**CWS-01**), ¶ 45.

[23] *See* Amorrortu Witness Statement (**CWS-01**), ¶¶ 45-55.

[24] Amorrortu Witness Statement (**CWS-01**), ¶ 55.

in 25% of their amount.[25] Amorrortu thus only owned 40% of Baspetrol. Amorrortu founded Baspetrol "with the expectation to […] recover the contractual rights to operate Block III of the Talara Basin."[26]

32. Nonetheless, Amorrortu allegedly engaged in several activities to "prepare[] Baspetrol to become the best entity to operate Blocks III and IV"[27] and, in April 2014, organized "the structure of all the executive, operational, administrative and logistical staff of Baspetrol to operate the lots III and IV of Talara."[28] However, there is no proof that this structure was effectively in place. No documents support this claim, and it is based solely on Amorrortu's self-interested witness statement.[29] The "projects" in which Amorrortu alleges Baspetrol engaged consist of various meetings by Amorrortu with executives in Texas, and other oil companies, ostensibly to organize Baspetrol's corporate, administrative, and logistical structure. However, according to Amorrortu's own allegations, no projects or operations were ever actually conducted.[30]

33. Consequently, whatever its structure, it is uncontroverted that Baspetrol had no history of operations whatsoever. It is apparent, therefore, that Amorrortu believed that to be viewed as a serious contender for either a direct negotiation or a tender process, he had to show that Baspetrol would partner with and be supported by international companies.[31] Yet, nothing in the record demonstrates that such a company was ever willing to collaborate with Baspetrol. Amorrortu references a series of conversations with international companies but offers no documentary evidence that these alleged conversations resulted in an effective collaboration.[32]

---

[25] Certificate of Incorporation of Baspetrol S.A.C. (17 October 2012) (**C-24**), pp. 4-5,

[26] SoC, ¶ 53.

[27] SoC, ¶ 66.

[28] Amorrortu Witness Statement (**CWS-01**), ¶ 71.

[29] *See* SoC, ¶ 63; Amorrortu Witness Statement (**CWS-01**), ¶¶ 71-72.

[30] SoC, ¶¶ 8, 53, 66, 156.

[31] SoC, ¶ 65.

[32] *See*, SoC, ¶ 63; Amorrortu Witness Statement (**CWS-01**), ¶¶ 71-72.

34. The only document Amorrortu presents to prove that he "enlist[ed] the support of international companies"[33] is a letter from Mr. Andrés Berán of Flour Enterprises. However, this letter does not prove Flour's interest in cooperating with Baspetrol. Quite the opposite. Mr. Berán clearly states that "it is understood that we have no commitment or obligation to you [Baspetrol / Amorrortu]."[34]

35. Thus, contrary to Amorrortu's allegations, all evidence indicates that Baspetrol was not prepared to operate the Talara blocks.[35] For example, in Baspetrol's alleged proposal, Amorrortu states that Baspetrol *would have entered* into a consortium agreement with a "well-known international petroleum company."[36] Yet there is no evidence that such an agreement was ever in place. Likewise, in Baspetrol's Form 1, presented during the Bidding Process, Amorrortu presents Baspetrol as "a petroleum company that still has not realized any operations."[37]

36. Consequently, when it was time for Perupetro to evaluate Baspetrol, it could only see that it was a newly formed company with no track record and no consortium to back it up.[38]

### B. Amorrortu Failed to Conduct Proper Due Diligence to be Awarded the Blocks in the Talara Basin

37. Claimant maintains that he performed a number of activities "[i]n preparation for the negotiations with PeruPetro," including, *inter alia*, legal research, meeting with Peruvian officials, technical and financial analyses, and travelling to Peru to check "on-site" needs.[39]

---

[33] SoC, ¶ 59.

[34] Letter from A. Beran (Fluor Enterprises) to B. Amorrortu (Baspetrol) (2 January 2013) (**C-41**) (emphasis added).

[35] Expert Witness Report of Mr. Kurt G. Strunk (NERA) (29 April 2024) ("**NERA Expert Report**") (**RER-01**), ¶¶ 47-53.

[36] Alleged Proposal from Baspetrol SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (**C-11**), pp. 1, 18 [PDF] (translation provided by Counsel. In the original Spanish: "una conocida Empresa Petrolera Internacional.").

[37] Baspetrol, *Formal Presentation of Forms 1, 2, and 3* (31 October 2014) (**R-35**), p. 5 [PDF] ("BASPETROL SAC es una EP que no ha realizado operaciones aún.") (emphasis added).

[38] NERA Expert Report (**RER-01**), ¶¶ 4, 54, 57, 59.

[39] SoC, ¶ 56 *citing* Amorrortu Witness Statement (**CWS-01**), ¶ 62.

However, as proved above, Amorrortu fails to particularize the results of his efforts, let alone provide documents proving they were undertaken or the outcomes they yielded.

38. Conducting proper due diligence would have, in fact, informed Amorrortu of the requirements and processes underlying a direct negotiation with Perupetro (**Subsection 1**); and that, by the time he set his eyes on the Blocks, Perupetro had adopted a policy to no longer engage in direct negotiations for operative blocks, like Blocks III and IV (**Subsection 2**).

### 1. Perupetro's direct negotiation process does not automatically bestow rights on an interested party

39. As Dr. Vizquerra clearly sets out in his expert report, applicable Peruvian law and regulations establish several preconditions for a direct negotiation of a contract for the exploration and/or exploitation of an oil block.

40. *First*, article 11 of Peru's Organic Hydrocarbons Law expressly provides Perupetro with the discretion of selecting direct negotiation as one of two modalities to celebrate contracts with qualifying oil companies (the other being a public tender).[40] Assuming that other preconditions for a direct negotiation are met, Perupetro formally confirms its discretionary decision to engage in a direct negation by sending a written communication to the interested company setting forth the commencement date of negotiations and requesting that the interested

[40] Organic Hydrocarbons Law, 1993 (Act No. 26221 of 1993) (13 August 1993) (**CLA-45**), Art. 11; *see also* Perupetro's Board of Directors, *Agreement No. 029-2017, Direct Negotiation and Competitive Bidding Process Contracting Policy* (10 April 2017) (**R-51**), Art. 2.2; Expert Report of Aníbal Quiroga León (18 August 2023) ("**Quiroga Expert Report**") (**CER-01**), ¶ 101 ("Article 11 of the Organic Hydrocarbons Law, mining exploitation contracts may be entered into, at the discretion of PERUPETRO S.A., after direct negotiation or by call for bids. Specifically, with regard to direct negotiations, the interested company must previously obtain a qualification from the aforementioned state-owned company.") (translation provided by Counsel. In the original Spanish: "el artículo 11° del TUO de la Ley Orgánica de Hidrocarburos, los contratos de explotación minera pueden celebrarse, a criterio de PERUPETRO S.A., previa negociación directa o por convocatoria. Específicamente, en lo que concierne a las negociaciones directas, la empresa interesada debe obtener previamente una calificación de la precitada empresa estatal."). *See* relatedly, recognizing Perupetro's control over the negotiation and conclusion of contracts, *id.*, ¶ 100 ("PERUPETRO S.A. is in charge of the negotiation, execution and supervision of the license agreements for the exploitation of hydrocarbons.") (translation provided by Counsel. In the original Spanish: "La negociación, celebración y supervisión de los contratos de licencia para la explotación de hidrocarburos se encuentra a cargo de PERUPETRO S.A.").

company designate the representatives who will participate in the negotiation.[41] Without such a formal determination, the direct negotiation process does not commence.

41. *Second*, as set forth in Perupetro's Rules and Procedure, before any direct negotiation can commence, a determination must be made as to whether the relevant oil block is available for such procedure.[42] As Dr. Vizquerra, states, an area is unavailable if it is already under contract or if Perupetro has already decided to subject the relevant block to a public tender.[43]

42. Amorrortu knew that he had to conduct this type of due diligence. As will be explained in Sections II.C.1 and II.C.2 below, Amorrortu was well aware that the relevant blocks were not available for direct negotiation since they had been awarded to Interoil while the tender processes for those blocks were being carried out as the result of the ICC arbitration between Interoil and Perupetro that had just concluded.[44]

43. *Third*, even if Perupetro formally decides to conduct direct negotiations, and the relevant area is available for such procedure, both the Regulation on the Qualification of Petroleum Companies and Perupetro's Rules and Procedure require that the company requesting the negotiation must obtain a certification that it is a qualified oil company (a "certification of qualification").[45] These regulations are mandatory and publicly available on Perupetro's website. In the case of a company without previous experience in exploration and exploitation, such as Baspetrol, an application for a certification of qualification must be accompanied by the following:

---

[41] Expert Witness Report of Carlos Raúl José Vizquerra Pérez Albela (29 April 2024) ("**Vizquerra Expert Report**") (**RER-02**), ¶ 62.

[42] Perupetro Procedure GFCN-8, Contracting Through Direct Negotiation (13 August 2012) (**CLA-44**), pp. 5-10, ¶ 8, p. 5.

[43] Vizquerra Expert Report (**RER-02**), ¶¶ 17-20.

[44] *See infra* §§ II.C.2 and II.C.3.

[45] Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (**CLA-3**), Art. 2 ("All Oil Companies must be duly qualified by PERUPETRO S.A. to start the negotiation of a Contract. The granting of Qualification shall not generate any right over the Contract area.") (translation provided by Counsel. In the original Spanish: "Toda Empresa Petrolera deberá estar debidamente calificada, por PERUPETRO S.A., para iniciar la negociación de un Contrato. El otorgamiento de Calificación no generará derecho alguno sobre el área de Contrato."); Perupetro Procedure GFCN-8, Contracting Through Direct Negotiation (13 August 2012) (**CLA-44**), pp. 5-10.

- proof of the entity's existence;
- sworn statement of not being in bankruptcy, or similar status, nor having any legal impediment to contract with the State;
- sworn statement and documentation proving that the entity will have qualified staff to conduct exploration and exploitation activities;
- financial statements for the last three years;
- information regarding the entity's exploitation and exploration activities for the prior three years, if any;
- a sworn statement to comply with applicable provisions on environmental protection;
- documentation that demonstrates that the entity has the economic and financial capacity to develop the related activities; and
- commitment to engage a technically capable operator to conduct the exploration and exploitation activities.[46]

44. Only if a company has made a proper application, with all relevant documentation, and is deemed to have the relevant qualifications, can it be issued a certification and proceed to direct negotiation.[47]

45. *Fourth*, even if the above-referenced conditions are met and actual negotiations commence, Peruvian law and regulations do not guarantee or confer a right to an eventual contract. The Regulation on Qualification expressly provides that the granting of a qualification certification

---

[46] Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (**CLA-3**), arts. 5-6; *see also*, Vizquerra Expert Report (**RER-02**), ¶ 73, note 34. *See also* Quiroga Expert Report (**CER-01**), ¶¶ 105-106.

[47] Quiroga Expert Report (**CER-01**), ¶ 101 ("Article 11 of the Organic Hydrocarbons Law, mining exploitation contracts may be entered into, at the discretion of PERUPETRO S.A., after direct negotiation or by call for bids. Specifically, with regard to direct negotiations, <u>the interested company must previously obtain a qualification from the aforementioned state-owned company</u>.") (translation provided by Counsel. In the original Spanish: "el artículo 11° del TUO de la Ley Orgánica de Hidrocarburos, los contratos de explotación minera pueden celebrarse, a criterio de PERUPETRO S.A., previa negociación directa o por convocatoria. Específicamente, en lo que concierne a las negociaciones directas, <u>la empresa interesada debe obtener previamente una calificación de la precitada empresa estatal</u>.") (emphasis added).

(a prerequisite for direct negotiation) does not "generate any right whatsoever" with respect to a contract.[48]

46. Furthermore, Perupetro's Rules and Procedure establish at least two situations where a direct negotiation is terminated without a contract. The first is the requirement of a 30-day period in which other companies have an opportunity to express interest in the blocks that are the subject of direct negotiation. If other companies express interest in such blocks, the negotiation is terminated, and a tender is conducted.[49] The second is the establishment of a 60-day period to conclude a contract once the formal commencement of a negotiation begins.[50] If no contract is finalized within this timeframe, the direct negotiation is terminated.

47. Had Amorrortu conducted any level of due diligence as he claims to have done,[51] he would have known the specific requirements to commence a direct negotiation process. As will be proved below, he clearly did not perform any due diligence.

### 2. By 2012, Perupetro was no longer awarding contracts through direct negotiations

48. Had Amorrortu conducted reasonable due diligence he would have discovered that, by 2012, Perupetro had adopted as a policy that contracts should be awarded by competitive bidding processes whenever possible and that direct negotiations would only be used in exceptional circumstances.

49. In 2012, as in the present day, Perupetro's online public portal makes available its Board of Directors Agreements (*Acuerdos de Directorio*), which announce the decisions the Board takes with respect to blocks, contracting, and bidding processes. Among the Board of Directors

---

[48] Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (**CLA-3**), Art. 2 ("The granting of Qualification will not generate any right whatsoever over the Contract area.") (translation provided by Counsel. In the original Spanish: "El otorgamiento de Calificación no generará derecho alguno sobre el área de Contrato.") (emphasis added); Vizquerra Expert Report (**RER-02**), ¶¶ 15, 38.

[49] *See* Perupetro Procedure GFCN-8, Contracting Through Direct Negotiation (13 August 2012) (**CLA-44**), p. 13.

[50] *See* Perupetro Procedure GFCN-8, Contracting Through Direct Negotiation (13 August 2012) (**CLA-44**), pp. 8, 15.

[51] Amorrortu Witness Statement (**CWS-01**), ¶ 68.

Agreements available at the time Amorrortu tried to secure Blocks III and IV were the *Acuerdos de Directorio* of 2010 and 2012, which established that "PERUPETRO S.A. would conduct a selection process, <u>by tender</u>, for the allocation of the new contracts for the exploitation of [oil blocks]."[52]

50. As Ms. Isabel Tafur Marín, former General Manager and President of Perupetro, explains in her witness statement,

> Exploitation projects attract the interest oil companies significantly because they have high returns and do not require a significant investment at the start of the project. <u>Consequently, in those cases, it does not make sense to start processes of direct negotiation</u>.[53]

51. On the contrary, Perupetro usually engaged in direct negotiation for non-operative, exploratory blocks that would require a significant upfront investment without a guarantee of reserves that could be exploited. As Ms. Tafur illustrates, "offshore exploration contracts that require substantial capital investment usually do not attract the interest of many companies. If this type of contract was offered through a public tender, we would have no bidders."[54] Similarly, Dr. Vizquerra explains that "the direct negotiation processes have been used by Perupetro to celebrate contracts for exploration and exploitation of hydrocarbons, *i.e.*, for those contracts requiring an intense exploration activity and there is no certainty as to whether hydrocarbons will be found."[55]

---

[52] Perupetro´s Board of Directors, *Agreement No. 100-2010*, *Perupetro S.A. is required to carry out a selection process to enter into new contracts for hydrocarbons in lots in the Northwest, whose contracts are close to expire.* (14 July 2010) (**R-15**), p. 3 (translation provided by Counsel. In the original Spanish: "Disponer que PERUPETRO S.A. realice un Proceso de Selección, por convocatoria, para el otorgamiento de los nuevos contratos de explotación por los Lotes […]."); Perupetro´s Board of Directors, *Agreement No. 002-2012*, *Approving that in all cases of expiration of the term of Hydrocarbon contracts, these shall be subject to new selection processes* (12 January 2012) (**R-17**), p. 2 (emphasis added).

[53] Witness Statement of Isabel Mercedes Tafur Marín (29 April 2024) ("**Tafur Witness Statement**") (**RWS-02**), ¶ 21 (translation provided by Counsel. In the original Spanish: "[L]os proyectos de explotación atraen mucho interés de empresas petroleras porque tienen una rentabilidad muy alta y no requieren una inversión significativa al comienzo del proyecto. <u>Por lo tanto, en esos casos, no tiene sentido iniciar procesos de negociación directa</u>.") (emphasis added).

[54] Tafur Witness Statement (**RWS-02**), ¶ 19 (translation provided by Counsel. In the original Spanish: "contratos de exploración *off-shore* que requieren una inversión de capital sustancial no suelen atraer interés de muchas empresas. Si este tipo de contratos se ofrecieran por licitación, no tendríamos postores.").

[55] Vizquerra Expert Report (**RER-02**), ¶ 46 (translation provided by Counsel. In the original Spanish: "Los procesos de negociacion directa han sido utilizados por Perupetro para la celebracion de contratos de licencia de exploracion y

52. The examples of direct negotiation provided by Amorrortu confirm this reality.[56] For example, Amorrortu references the 2017 contract with Anadarko and the 2020 contract with Tullow, both of which were adjudicated through direct negotiation. What Amorrortu avoids mentioning is that the Anadarko contract was for the area of Cuenca Trujillo,[57] an offshore area, which required a substantial upfront capital investment. Similarly, the Tullow contract was for the off-shore block Z-67, which would require a steep capital investment before any operations could commence.[58] Both of these direct negotiations are consistent with Perupetro's policy.

53. Amorrortu also references Block 192, a block in the Peruvian jungle,[59] in which a contract was awarded in 2015 to Pacific Rubiales through direct negotiation.[60] Again, this was an exceptional circumstance where no bidders participated.[61] Perupetro had to ensure that the block did not remain idle and thus opted for a direct negotiation.[62] Yet even this step was taken only after a bidding process failed because no bidders participated.

54. The Talara Blocks III and IV cannot be compared to the abovementioned examples. The Blocks had already been in operation for more than 20 years, the contract in question would

---

explotacion de hidrocarburos, es decir, para aquellos contratos donde se requiere actividad exploratoria intensa y no se tiene certeza que se hallara hidrocarburos").

[56] *See* Amorrortu Witness Statement (**CWS-01**), note 49.

[57] Perupetro, *Operations Report, Executive Summary* (May 2017) (**R-52**); Ministry of Energy and Mines of Peru, *Supreme Decree No. 016-2020-EM, License Agreement Approval for Exploration and Exploitaition of Hydrocarbons in Lot Z-67* (2 July 2020) (**R-60**).

[58] Perupetro, *Press Release: Investment In Exploration And Exploitation For Sustainable Development of Hydrocarbons In Peru Reactivated* (1 May 2019) (**R-53**).

[59] *See* Amorrortu Witness Statement (**CWS-01**), note 49.

[60] T. Cespedes & M. Taj, "Peru gives Canadian firm two-year contract for biggest oil block," *Reuters* (21 August 2015) (**R-47**).

[61] T. Céspedes, "Perú declara desierta licitación pública de mayor lote petrolero del país por falta de postores," *Reuters* (4 August 2015) (**R-46**). *See also* Perupetro, *Press Release: Perupetro Calls for International Bidding to Award License Contract for Lot 192* (14 May 2015) (**R-45**).

[62] T. Céspedes, "Perú declara desierta licitación pública de mayor lote petrolero del país por falta de postores," *Reuters* (4 August 2015) (**R-46**).

be for a fully operational block which would not require significant upfront investment and, thus, would attract many bidders.[63]

55. In any event, even beyond the specific circumstances of each supposed direct negotiation, which are distinguishable from Amorrortu's proposal, the existence of only three recent directly negotiated contracts in "over 30 years of experience"[64] hardly supports the conclusory blanket statement that the direct negotiation "guarantees" the execution of a contract.

***

56. Amorrortu seeks to shift the blame for his failure to secure the agreements for the operation of the Blocks onto Peru by pushing a narrative of corruption, which, as will be demonstrated below, did not occur for these specific blocks.[65] Yet it is Amorrortu and Baspetrol who either lacked the knowledge of or ignore the applicable regulatory environment. Instead of investigating what process Perupetro was carrying out to allocate blocks, Amorrortu relied on the knowledge he had from almost thirty years prior, when Perupetro assigned blocks more freely through direct negotiation. Amorrortu and Baspetrol failed to conduct proper due diligence into the requirements and procedure of a direct negotiation and Perupetro's policies applicable in 2013. Had Claimant done so, he would have known that securing the Blocks' operations would require more than a few displays of interest and submission of a "proposal" that contained only general assertions.

### C. The Blocks Were Adjudicated Pursuant to the Applicable Legal Framework

57. Peru showed in Section II.B above that a reasonable investor should have known that a request for direct negotiation with Perupetro with respect to the Blocks would have led nowhere. Amorrortu, however, was not a reasonable investor. Perhaps Amorrortu did not conduct proper due diligence on the legal framework and existing practices governing the adjudication of blocks by Perupetro. Perhaps he simply ignored them because he was aware Baspetrol did not

---

[63] Tafur Witness Statement (**RWS-02**), ¶ 21.

[64] Amorrortu Witness Statement (**CWS-01**), ¶ 86.

[65] *See* § II.D.

stand a chance to obtain the Blocks in a competitive process. Either way, Peru cannot be held liable.

58. The reason Perupetro did not engage in direct negotiations with Baspetrol has nothing to do with an alleged corruption scheme to benefit Graña y Montero S.A.A. ("**GyM**"). Amorrortu's allegations of corruption are just a distraction. Perupetro did not engage in direct negotiations with Baspetrol for two reasons: (i) Baspetrol's alleged proposal of 28 May 2014 (the "**Alleged Proposal**") did not trigger a direct negotiation with Perupetro (**Subsection 1**) and (ii) before the Alleged Proposal, Perupetro had already decided to award the Blocks through a competitive bidding process (**Subsection 2**). In the end, the public tenders that resulted in the adjudication of the Blocks to GyM—International Public Bidding Processes Nos. PERUPETRO-001-2014 and PERUPETRO-002-2014 (the "**Bidding Processes**"[66])—were diligently carried out and complied with the applicable legal framework in every respect (**Subsection 3**).

### 1. Baspetrol never commenced a direct negotiation with Perupetro

59. Amorrortu maintains that "Baspetrol commence[d] Direct Negotiations with PeruPetro" over the Blocks and that he had a "legitimate right to Direct Negotiation for Blocks III & IV" which was violated by Perupetro's decision to commence the Bidding Processes.[67] Neither the evidence cited by Amorrortu, nor a proper interpretation of the underlying facts and applicable legal framework support his assertion. To the contrary, the evidence shows that Baspetrol and Perupetro never engaged in a direct negotiation, let alone completed one. As a result, Baspetrol could have never acquired any rights over the Blocks.

60. Dr. Vizquerra, Peru's legal expert in this case, explains that a direct negotiation process can only start after a series of steps and preconditions have been met.[68] Amorrortu glosses

---

[66] Where the singular is used, *i.e.*, "Bidding Process," Peru refers to either No. PERUPETRO-001-2014, which concerned Block III, or International Public Bidding Processes PERUPETRO-002-2014, which concerned Block IV, as the case may be. Generally, however, Peru refers to International Public Bidding Processes Nos. PERUPETRO-001-2014 concerning Block III given that Amorrortu, through Baspetrol, only participated in that process.

[67] SoC, §§ II.E.3-5.

[68] *See* Expert Witness Report of Carlos Raúl José Vizquerra Pérez Albela (29 April 2024) (**RER-02**) ("**Vizquerra Expert Report**"), §§ V.B-V.C.

over these steps and mischaracterizes a few interactions between him and Perupetro's officials as a direct negotiation within the meaning of Article 11 of Peru's Organic Hydrocarbons Law and Perupetro's Rules and Procedures.[69] But nothing in the record supports the conclusion that a direct negotiation for Blocks III and IV ever started.

61. Amorrortu's account of the purported direct negotiation begins with Baspetrol's letter of 31 July 2013, delivered to Perupetro on 8 August 2013.[70] Amorrortu asserts that he made this initial contact with Perupetro because he was "[a]ware that in 2013 the original contract to operate Block III would end."[71] Had Amorrortu conducted proper due diligence, he would have known that (i) Perupetro's existing practice was to adjudicate license contracts for operational blocks through a competitive tender process rather than direct negotiation, and (ii) the contracts with Interoil for the Blocks were subject to pending arbitration regarding their expiration date. As a result, his allegation that the contract to operate Block III would end is inapposite.

62. In any event, as Amorrortu himself admits, his initial letter simply "expressed his interest to take over the exploration and exploitation of Block III."[72] Amorrortu says that this letter "expressed the different factual and legal grounds which invited a direct negotiation process to take place in Lot III."[73] But this description of this letter is misleading.[74] The letter consists of three short paragraphs which, apart from expressing an *interest* in Block III, set out *Amorrortu's* personal trajectory and briefly reference his operation of Block III in the 1990s. The letter makes no mention of a direct negotiation let alone invoke the applicable "legal grounds," that is, Article 11 of Peru's Organic Hydrocarbons Law and Perupetro's Procedure No. 8.

---

[69] SoC, § II.E.3.

[70] *See* SoC, ¶ 67.

[71] SoC, ¶ 67 citing Letter from B. Amorrortu (Baspetrol) to L. Ortigas (Perupetro) (31 July 2013) (**C-31**).

[72] SoC, ¶ 67. *See also* Letter from B. Amorrortu (Baspetrol) to L. Ortigas (Perupetro) (31 July 2013) (**C-31**), p. 1 ("I hereby formally communicate to you and PeruPetro S.A., the interest of my oil company BASPETROL S.A.C, established in the city of Talara, to operate Block III.") (translation provided by Counsel. In the original Spanish: "formalmente le comunico a Ud., y a PeruPetro S.A., el interés de mi Empresa Petrolera BASPETROL S.A.C, establecida en la ciudad de Talara, de operar el Lote III").

[73] Witness Statement of Bacilio Amorrortu (18 Aug. 2023) (**CWS-01**) ("**Amorrortu Witness Statement**"), ¶ 75.

[74] *See* Letter from B. Amorrortu (Baspetrol) to L. Ortigas (Perupetro) (31 July 2013) (**C-31**).

63. More importantly, on 12 August 2013, the President of Perupetro's Board at the time, Luis Ortigas, responded to this initial communication, expressly stating that:

> In relation to the interest of the company you represent to operate Block III […] we must inform that the mentioned Block is not an area currently available for direct negotiation. On the other hand, in the event that PERUPETRO S.A. decides to carry out a public tender that includes the current Block III, the respective publications w[ould] be made.[75]

64. The inquiry should stop here.

65. Mr. Ortigas' letter to Amorrortu could not have been clearer. Indeed, Mr. Ortigas was unequivocal in informing Amorrortu of the procedures through which Block III would be eventually adjudicated (*i.e.*, a public tender) and those through which it would not (*i.e.*, direct negotiation). Given this explicit instruction, Amorrortu could hardly have held any further, reasonable expectation that Baspetrol could go on to secure the operation of Block III by way of a direct negotiation. To the extent that he did, such a belief was unrealistic.

66. Despite the unambiguous contents of Mr. Ortiga's response, Amorrortu persisted with new attempts to express his desire to operate Block III.

67. In particular, he emailed Ms. Maria Angelica Cobena, Mr. Ortigas' assistant, on 16 January and 20 March 2014.[76] What such efforts were intended to accomplish is not clear given Perupetro's letter of 12 August 2013. They were, in any event, as futile as Claimant's initial letter given that they merely "reiterate[d Amorrortu's] interest in operating Block III" and availability

---

[75] Letter from L. Ortigas (Perupetro) to B. Amorrortu (Baspetrol) (12 August 2013) (**C-6**), p. 1 (translation provided by Counsel. In the original Spanish: "En relación al interés de su representada de operar el Lote III […] debemos informar que el mencionado Lote no es un área actualmente disponible para negociación directa. De otra parte, en caso de que PERUPETRO S.A. decida la realización de una licitación pública que incluya al actual Lote III, se efectuarán, en su oportunidad, las publicaciones respectivas.") (emphasis added).

[76] *See* Email from B. Amorrortu (Baspetrol) to M. A. Cobena (Perupetro) (16 January 2014) (**C-7**); Email from B. Amorrortu (Baspetrol) to M. A. Cobena (Perupetro) (20 March 2014) (**C-74**).

to do so.[77] Indeed, they included no mention of or request to engage in a direct negotiation, let alone provide the requisite substantive information and documentation for one to take place.

68. On Claimant's own case, the concept of a direct negotiation as such was not raised until his meeting with Mr. Ortigas on 22 May 2014 when, according to Amorrortu, "Ortigas instructed [him] to prepare a Proposal for Direct Negotiation […] for the operation of Blocks III and IV."[78] Amorrortu's account is not credible.

69. By this time, not only is there proof that Mr. Ortigas had explicitly informed Amorrortu that direct negotiation would not be an option,[79] but there was also publicly available information indicating that the Blocks would be adjudicated through public tenders. As Dr. Vizquerra explains:

> [T]he Block III and IV areas were not available for direct negotiation on the date that Baspetrol's Proposal was submitted, a situation that must be presumed to be known by all and that should have been known by Amorrortu. The recitals of Supreme Decree No. 012-2014-EM and Supreme Decree No. 013-2014-EM, published in the Official Gazette "El Peruano" on 5 April 2014, justified the need to issue a temporary license for Blocks III and IV, respectively, for a period that would allow to carry out a selection process for the execution of new License Contracts for the Exploitation of Hydrocarbons. That is to say, on 5 April 2014 and through the publication of the aforementioned Supreme Decrees, knowledge of Perupetro's Board of Directors' decision to carry out a selection process to award Block III and Block IV was made public and irrefutable.[80]

---

[77] Email from B. Amorrortu (Baspetrol) to M. A. Cobena (Perupetro) (16 January 2014) (**C-7**), p. 1 (translation provided by Counsel. In the original Spanish: "[…] reitero mi interes en operar el lote III") (emphasis added). *See also* Email from B. Amorrortu (Baspetrol) to M. A. Cobena (Perupetro) (20 March 2014) (**C-74**), p.1. Claimant maintains that the Ministry of Energy and Mines was copied in his email of 20 March 2014. SoC, ¶ 70. However, this is not supported by Exhibit C-74.

[78] SoC, ¶ 73.

[79] *See* Letter from L. Ortigas (Perupetro) to B. Amorrortu (Baspetrol) (12 August 2013) (**C-6**).

[80] Vizquerra Expert Report (29 April 2024) (**RER-02**), ¶ 17 (translation provided by Counsel, In the original Spanish: "las áreas de los Lotes III y IV no estaban disponibles para negociación directa en la fecha de presentación de la Propuesta de Baspetrol, situación que debe presumirse conocida por todos y que debió ser conocida por Amorrortu. Los considerandos del Decreto Supremo No. 012-2014-EM y Decreto Supremo No. 013-2014-EM, publicados en el Diario Oficial "El Peruano" el 5 de abril de 2014, justificaban la necesidad de expedir una licencia temporal sobre los

70. In fact, Amorrortu appears to have been aware of this by the time he met with Mr. Ortigas on 22 May 2014,[81] but certainly when he submitted the Alleged Proposal six days later given that *he explicitly cited Supreme Decrees Nos. 012-2014-EM and 013-2014-EM and their approval of the temporary contracts with Interoil*.[82]

71. In light of the above, there is simply no basis on which to accept Amorrortu's statement that Mr. Ortigas "instructed Amorrortu to prepare a Proposal for Direct Negotiation […] for the operation of Blocks III and IV."[83]

72. What is a far more likely explanation of why Amorrortu felt justified in submitting Baspetrol's Alleged Proposal for direct negotiation a few days after his meeting with Mr. Ortigas is that this was Amorrortu's *modus operandi*. The record shows that both before 28 May 2014—when Amorrortu submitted the Alleged Proposal[84]—and thereafter, Amorrortu had a habit of sending unsolicited communications to Perupetro's officials that ignored established procedures and applicable legal frameworks.[85] Neither would this be the only instance in which Amorrortu misrepresents a conversation with Perupetro's officials.[86]

---

Lotes III y IV, respectivamente, por un período que permita llevar a cabo un proceso de selección para la celebración de nuevos Contratos de Licencia para la Explotación de Hidrocarburos. Es decir, el 5 de abril de 2014 y mediante la publicación de los aludidos Decretos Supremos, se hizo público e irrefutable el conocimiento de la decisión del directorio de Perupetro de llevar a cabo un proceso de selección para adjudicar el Lote III y el Lote IV.") (emphasis added).

[81] SoC, ¶ 72 ("Ortigas agreed to meet with Amorrortu on May 22, 2014, shortly after PeruPetro approved the temporary operation contracts for Blocks III and IV in favor of Interoil.") (emphasis added).

[82] Alleged Proposal from Baspetrol SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (**C-11**), p. 13 [PDF].

[83] SoC, ¶ 73 (emphasis added).

[84] SoC, ¶ 74.

[85] For example, as Ms. Tafur explains and is detailed below, Amorrortu sent several communications to Ms. Tafur after the bidding processes for the Blocks had successfully completed despite her explicit instruction that he should proceed only through Perupetro's formal channels and procedures. *See* Witness Statement of Isabel Mercedes Tafur Marín (29 April 2024) (**RWS-02**) ("**Tafur Witness Statement**"), ¶¶ 37-41. *See also* Tafur Witness Statement (**RWS-02**), ¶¶ 33, 35, 37 (noting that Amorrortu was a very insistent person.).

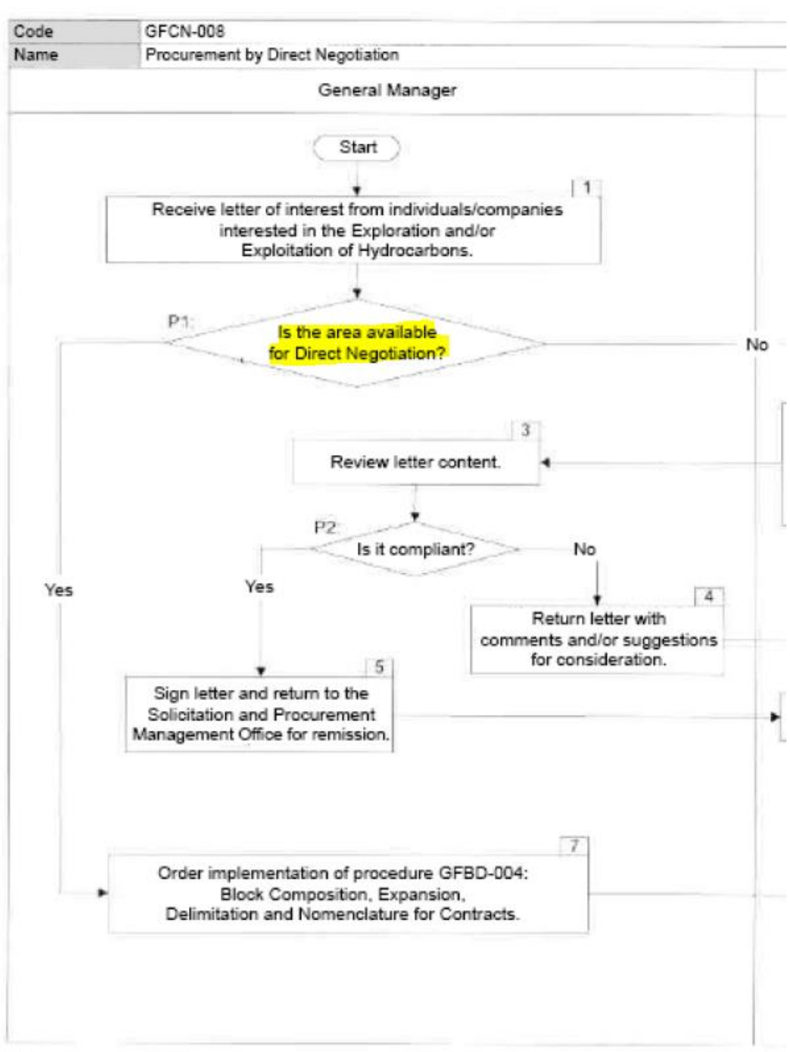
[86] As detailed below, Ms. Tafur explains that, contrary to Amorrortu's statement in this arbitration, she did not ask him to send her Baspetrol's alleged proposal for direct negotiation at their meeting on 16 July 2014. Rather, she instructed him to submit a proposal *in the public bidding process* that had recently been announced. *See* Tafur Witness Statement (**RWS-02**), ¶¶ 32-34.

73. The fact is that Amorrortu had no reasonable basis to believe that a direct negotiation for the Blocks was possible. And by submitting his Alleged Proposal on 28 May 2014, Amorrortu put the cart before the horse.

74. If he had conducted proper due diligence or hired an advisor with knowledge of the applicable legal framework, he would have known that "request[ing] PERUPETRO S.A. to initiate direct negotiations to operate Blocks III and IV"[87] in May 2014 was futile because, even if Baspetrol's Alleged Proposal were otherwise sufficient to trigger a direct negotiation procedure

[87] Alleged Proposal from Baspetrol SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (**C-11**), p. 1 [PDF] (translation provided by Counsel. In the original Spanish: "solicita a PERUPETRO iniciar negociaciones directas, para alcanzar los mejores Términos de Contrato, la firma del mismo y una transferencia ordenada y oportuna de los Lotes III y IV").

(*quod non*),[88] the Blocks were unavailable for direct negotiation, and this was the first determinative question in Perupetro's Direct Negotiation Procedure, *i.e.*, Procedure No. 8:[89]




[88] As Dr. Vizquerra explains in detail and Peru summarizes below, the first step to trigger Procedure No. 8 is that a letter of interest be received. The letter of interest itself is subject to certain requirements that Baspetrol's alleged proposal did not meet, thereby rendering all subsequent steps more adept for discussion under the framework of a "but-for" world where Baspetrol's letter of interest would have been sufficient to trigger Procedure No. 8. *See* Vizquerra Expert Report (**RER-02**), § V.B.

[89] Perupetro Procedure GFCN-8, Contracting Through Direct Negotiation (13 August 2012) (**CLA-44**), p. 11 [PDF] (emphasis added).

75. Assuming, *arguendo*, that Mr. Ortigas had instructed Amorrortu to submit a proposal for direct negotiation and that the Blocks could be adjudicated through this mechanism, the Alleged Proposal would still have failed. The Statement of Claim makes much of the Alleged Proposal's characteristics and content,[90] and categorically declares that it "complied with all the requirements."[91] In reality, it was deficient in significant respects. Nowhere in Amorrortu's description of the Alleged Proposal does he address how it satisfied the applicable legal requirements.[92] This is both illustrative of Amorrortu's deep misunderstanding of the applicable legal framework and telling of the defective nature of the Alleged Proposal.

76. As detailed above,[93] a company seeking to engage in a direct negotiation with Perupetro must submit a Letter of Interest to obtain a certification as a Qualified Oil Company. This is a step that involves a "comprehensive evaluation of the legal, technical, economic and financial capacity" of the company "to determine whether [it] will be able to comply with the obligations that may eventually arise from a future Contract."[94] It is also a step that could not be—and indeed was not—completed by Baspetrol's Alleged Proposal.

77. To be certified as a Qualified Oil Company, Baspetrol not only needed to formally and manifestly request the certification, which it plainly did not do,[95] but also submit certain documents to enable Perupetro to conduct a proper evaluation. The documentation required is explicitly set out in Articles 5 and 6 of Supreme Decree No. 030-2004-EM and included, *inter alia*, (i) the company's articles of incorporation or public deeds, (ii) a sworn affidavit regarding specific aspects of the company's financial health, (iii) the company's financial statements for the

---

[90] *See* SoC, § II.E.4.

[91] SoC, ¶ 74.

[92] *See* SoC, § II.E.4.

[93] *See* §, II.B.1.

[94] Vizquerra Expert Report (**RER-02**), ¶ 71 (translation provided by Counsel. In the original Spanish: "evaluación integral de la capacidad de dicha Empresa Petrolera en materia legal, técnica, económica y financiera […] para determinar si la compañía relevante estará en posibilidad de dar cumplimiento a las obligaciones que eventualmente surjan de un futuro Contrato.").

[95] *See* Alleged Proposal from Baspetrol SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (**C-11**).

last three years, and (iv) a partnership with a technically qualified operator or a contract with an experienced petroleum company to carry out the relevant activities and services.[96]

78. Baspetrol's Alleged Proposal was an 18-page narrative that failed to annex any of the requisite documentation to be certified as a Qualified Oil Company.[97]

79. Neither did the Alleged Proposal constitute a Letter of Interest that could formally trigger a direct negotiation pursuant to Procedure No. 8. In addition to the flaws described above—which are equally applicable to the Alleged Proposal's ability to trigger Procedure No. 8[98]—Baspetrol "failed to accredit its legal representatives before Perupetro by submitting the letter according to the model that is part of the Qualification Procedure as Annex I, attaching a legalized copy of their identity document and indicating their domicile in Peru."[99]

80. According to Peru's legal expert, Dr. Vizquerra, "there is no argument that could maintain that such proposal was a Letter of Interest that initiated the direct negotiation procedure."[100]

81. Ms. Tafur, Perupetro's General Manager at the time, recalls that Mr. Ortigas had asked her to attend to Amorrortu, which resulted in their meeting on 16 July 2014.[101] After Amorrortu had explained (and insisted) that he was entitled to Block III based on his prior ownership, Ms. Tafur "told him that a public bidding had just been announced for Blocks III and

---

[96] *See* Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (**CLA-3**), Arts. 5, 6.

[97] *See* Alleged Proposal from Baspetrol SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (**C-11**).

[98] *See* Vizquerra Expert Report (**RER-02**), ¶ 32.

[99] Vizquerra Expert Report (**RER-02**), ¶ 34 (translation provided by Counsel. In the original Spanish: "Baspetrol no cumplió con acreditar a sus representantes legales ante Perupetro mediante la presentación de la carta según modelo que forma parte del Procedimiento de Calificación como Anexo I, adjuntando copia legalizada de su documento de identidad y señalando domicilio en el Perú.").

[100] Vizquerra Expert Report (**RER-02**), ¶ 35 (translation provided by Counsel. In the original Spanish: "no hay argumento alguno que pueda sostener que dicha propuesta era una Carta de Interés que dio inicio al procedimiento de negociación directa.").

[101] *See* Tafur Witness Statement (**RWS-02**), ¶ 31.

IV, and that if he was interested in participating, he could do so by submitting a proposal in that process."[102] Instead, Amorrortu sent Ms. Tafur the Alleged Proposal. Ms. Tafur notes she:

> was very surprised because in it he asked to initiate a direct negotiation for the subscription of the contracts for Blocks III and IV. Aside from the intention behind this document, for me this document did not comply with the requirements and formalities that a letter of interest should have. From my perspective, what Mr. Amorrortu sent did not correspond to anything that could have legal effect — it did not comply with any formality. Despite this, I responded to Mr. Amorrortu with a letter dated 20 August 2014 to clarify to him that Blocks III and IV were not available for direct negotiation, but for adjudication through the ongoing bidding process. In that same letter, I again extended the invitation to submit his proposal within the bidding process that was already underway.[103]

82. Ms. Tafur further notes that, although Perupetro does not generally send out invitations for bidding processes, "given the interest and insistence that Mr. Amorrortu had shown in the Blocks, it seemed appropriate to respond to him in writing."[104] Accordingly, she invited Amorrortu to participate in the tenders on 20 August 2014.[105]

83. Finally, even in a hypothetical scenario where (i) Baspetrol's Alleged Proposal of May 2014 had cured all the defects described above and (ii) the Blocks were available for direct negotiation, Baspetrol would have never secured license contracts for the Blocks through direct

---

[102] Tafur Witness Statement (**RWS-02**), ¶ 33 (translation provided by Counsel. In the original Spanish: "dije que se acababa de convocar una licitación pública para los Lotes III y IV, y que, si estaba interesado en participar, podía hacerlo presentando una propuesta en ese proceso.").

[103] Tafur Witness Statement (**RWS-02**), ¶ 34 (translation provided by Counsel. In the original Spanish: "me sorprendió mucho porque en él pedía iniciar una negociación directa para la suscripción de los contratos de los Lotes III y IV. Más allá de la intención detrás de este documento, para mí este documento no cumplía con los requisitos y formalidades que debe tener una carta de interés. Desde mi perspectiva, lo que mandó el Señor Amorrortu no correspondía a nada que pudiera tener efecto jurídico—no cumplía con ninguna formalidad. A pesar de ello, respondí al Sr. Amorrortu con una carta de fecha 20 de agosto de 2014 aclarándole que los Lotes III y IV no estaban disponibles para negociación directa, sino para adjudicación a través de la licitación en curso. En esa misma carta, extendí de nuevo la invitación a que presentara su propuesta dentro del proceso de licitación que ya estaba en curso.").

[104] Tafur Witness Statement (**RWS-02**), ¶ 35 (translation provided by Counsel. In the original Spanish: "dado el interés y la insistencia que el Señor Amorrortu había mostrado en los Lotes, me pareció procedente responderle por escrito.") (emphasis added).

[105] *See* Letter from I. Tafur Marín (Perupetro) to B. Amorrortu (Baspetrol) (20 August 2014) (**C-13**).

negotiation.[106] This is because Perupetro would have been required to post the Blocks' availability "for procurement to the online portal for 30 calendar days"[107] so that other interested parties could express interest, in which case the Blocks would have nevertheless been adjudicated via a tender process. Thus, Baspetrol would have been in the same position it ended up in in 2014: participating in the Bidding Processes. And as the facts from the 2014 Bidding Process confirm,[108] Baspetrol would have quickly been left out of the race.

84. In sum, Amorrortu fails to provide any grounds on which he could reasonably conclude that he "commenced a Direct Negotiation Process, that Baspetrol had been qualified, and that [he] was entitled to have the Baspetrol proposal evaluated through this exclusive process."[109] That Baspetrol never began this process is confirmed by Amorrortu's failure to provide any contemporaneous document by his advisors indicating as much. Indeed, his efforts were no more than *displays of interest* that could never have given rise to a direct negotiation or other form of entitlement.

85. But if any doubts remained concerning Amorrortu's contemporaneous understanding that there was no direct negotiation in place by July 2014, these were quickly dispelled when he, through Baspetrol, freely participated in the Bidding Process for Block III.

### 2. The temporary contracts with Interoil were necessary to ensure the Blocks' continuity of operation while the ICC Arbitration concluded and the Bidding Processes were carried out

86. By March 2014, the Blocks were under the operation of Interoil and had been since 2008.[110] These contracts were set to expire on 5 March 2013 for Block III and 4 March 2013 for

---

[106] *See* § V.A.2.

[107] Perupetro Procedure GFCN-8, Contracting Through Direct Negotiation (13 August 2012) (**CLA-44**), p. 13.

[108] *See* § II.C.3.

[109] SoC, ¶ 85.

[110] The Blocks were previously operated by Mercantile Peru Oil since 1995. In 2008, Mercantile Peru Oil and Compañía Petrolera Rio Bravo S.A. merged to create Interoil who continued operating the Blocks. Perupetro´s Board of Directors, *Agreement No. 034-2014, Approval of Temporary License Draft Contract for Exploitation of Block III* (20 March 2014) (**C-3**), pp. 8-9 [PDF]; Perupetro´s Board of Directors, *Agreement No. 035-2014, Approval of Temporary License Draft Contract for Exploitation of Block IV* (20 March 2014) (**R-18**), p. 2 [PDF].

Block IV.[111] However, on 25 June 2012, Interoil instituted an arbitral proceeding against Perupetro before the International Chamber of Commerce Court of Arbitration in which it maintained that the contracts' expiration dates should be extended ("**ICC Arbitration**").[112] Perupetro's position was that such an extension was unjustified, and the contracts should expire on their original date.[113] The ICC Arbitration took place during the remainder of 2012, throughout 2013, and a decision remained pending through early 2014.[114] Thus, while Interoil operated the Blocks in early 2014, whether its contracts were in force was undetermined and could only be resolved by the ICC Arbitration tribunal.

87. It is against this backdrop that, on 20 March 2014, Perupetro approved new, temporary agreements with Interoil lasting only 12 months (the "**Temporary Contracts**").[115]

88. Amorrortu contests Perupetro's decision to execute the Temporary Contracts, describing the surrounding circumstances as "very controversial"[116] and maintaining that he "later learned that the purported extension to Interoil was nothing more than a smoke screen to cover the rigged public bidding process in favor of Graña y Montero."[117] In doing so, he ignores the exceptional context in which the Temporary Contracts were approved and provides no evidence or even concrete theory to explain how they would have aided the allegedly "rigged"[118] tenders.

---

[111] *See Interoil Peru S.A. v. Perupetro S.A.*, ICC Case No. 18783/CA/ASM, Final Award (20 March 2014) (**RLA-135**), ¶¶ 69, 88.

[112] *See Interoil Peru S.A. v. Perupetro S.A.*, ICC Case No. 18783/CA/ASM, Final Award (20 March 2014) (**RLA-135**), ¶¶ 38, 42.

[113] *See Interoil Peru S.A. v. Perupetro S.A.*, ICC Case No. 18783/CA/ASM, Final Award (20 March 2014) (**RLA-135**).

[114] *See Interoil Peru S.A. v. Perupetro S.A.*, ICC Case No. 18783/CA/ASM, Final Award (20 March 2014) (**RLA-135**), ¶¶ 60-61.

[115] *See* Perupetro´s Board of Directors, *Agreement No. 034-2014, Approval of Temporary License Draft Contract for Exploitation of Block III* (20 March 2014) (**C-3**), pp. 2, 8-9 [PDF]; *Interoil Peru S.A. v. Perupetro S.A.*, ICC Case No. 18783/CA/ASM, Final Award (20 March 2014) (**RLA-135**).

[116] SoC, ¶ 71.

[117] SoC, note 95. Peru notes, however, that this is not contained in Amorrortu's witness statement, and that no other particularization is provided regarding this allegation.

[118] SoC, note 95.

89. Amorrortu's failure to account for the unique circumstances underlying the Temporary Contracts is particularly unjustified given that they can be gleaned from his own evidence. Indeed, the Board Agreement approving the Temporary Contract for Block III—cited in the Statement of Claim—explicitly states that Perupetro's Board of Directors approved the contract "provided that the Award issued by the Arbitral Tribunal of the [ICC Arbitration] is favorable to PERUPETRO."[119] In other words, the approval was contingent upon the previous contracts with Interoil having, in fact, expired on their original expiration dates (this being Perupetro's position in the ICC Arbitration). The Temporary Contracts would thus be required to ensure the continuity of the Blocks' operations and were not upended abruptly and to allow Perupetro to engage in the various formal and bureaucratic processes required to organize and commence public tenders for the new, long-term license contracts.[120] Indeed, Ms. Tafur, Perupetro's General Manager at the time, explains Perupetro's reasoning as follows:

> While the arbitration was being resolved, it was important that production from the Blocks continue, so as not to impact hydrocarbon production in the region […] and royalties associated with them [....] At the same time, Perupetro could not hand over the Blocks to another company before the tribunal ruled on the validity of the Interoil Contracts. Therefore, the most convenient and reasonable from a technical and economic point of view was to enter Temporary License Agreements with Interoil by way of direct negotiation for a period of twelve months from the issuance of the Award. This also allowed Perupetro to gain additional time to carry out a selection process for the execution of new, long-term License Agreements.[121]

---

[119] Perupetro´s Board of Directors, *Agreement No. 034-2014, Approval of Temporary License Draft Contract for Exploitation of Block III* (20 March 2014) (**C-3**), p. 2 (translation provided by Counsel. In the original Spanish: "[…] siempre que el Laudo que emita el Tribunal Arbitral de la Cámara de Comercio Internacional […] sea a favorable a PERUPETRO S.A.") (emphasis added). Claimant only exhibited the Board Agreement corresponding to the approval of the temporary contract for Block III. However, the Board Agreement for Block IV contains an identical analysis and qualifying language. *See* Perupetro´s Board of Directors, *Agreement No. 035-2014, Approval of Temporary License Draft Contract for Exploitation of Block IV* (20 March 2014) (**R-18**), pp. 2-3 [PDF].

[120] *See* Perupetro´s Board of Directors, *Agreement No. 034-2014, Approval of Temporary License Draft Contract for Exploitation of Block III* (20 March 2014) (**C-3**), p. 1 [PDF]; Perupetro´s Board of Directors, *Agreement No. 035-2014, Approval of Temporary License Draft Contract for Exploitation of Block IV* (20 March 2014) (**R-18**), p. 2 [PDF].

[121] Tafur Witness Statement (**RWS-02**), ¶¶ 25-26 (translation provided by Counsel. In the original Spanish: "Mientras se resolvía el arbitraje, era importante que la producción de los Lotes continuara. Detener la producción de los Lotes habría generado un impacto negativo importante a la producción de hidrocarburos en la región […] las regalías y los

90. On 20 March 2014, the ICC Arbitration tribunal issued an award in Perupetro's favor.[122] With this newfound certainty regarding the status of the previous Interoil contracts, "Perupetro could officially commence public bidding processes to secure long-term contracts for the Blocks."[123]

### 3. The Bidding Processes complied with the applicable legal framework

91. Over the next nine months, Perupetro set up and carried out the Bidding Processes for the Blocks. Perupetro could not have initiated the Bidding Processes before this time—let alone formally announce them—because doing so would have risked having to walk back those efforts and/or announcements if the ICC Arbitration tribunal determined that Interoil's contracts had not yet expired. This does not mean, however, that Perupetro's decision to adjudicate the Blocks through public tenders was not known to the public and, more specifically, Amorrortu.

92. As detailed above, Perupetro's decision was public knowledge as of, at least, 5 April 2014,[124] and actually known by Amorrortu when he submitted the Alleged Proposal on 28 May 2014.[125]

---

impuestos asociados […] A la vez, Perupetro no podía proceder a entregar los Lotes a otra empresa a través de una licitación antes de que el tribunal se pronunciara sobre la validez de los Contratos de Licencia con Interoil. Por ello, lo más conveniente y razonable desde un punto de vista técnico y económico era suscribir por negociación directa Contratos de Licencia Temporal con Interoil por un periodo de doce meses a partir de la emisión del laudo en el arbitraje CCI. Esto aseguraba la continuidad de los Lotes y, al mismo tiempo, permitía a Perupetro contar con el tiempo necesario para llevar a cabo un proceso de selección para la celebración de nuevos Contratos de Licencia a largo plazo.").

[122] *See Interoil Peru S.A. v. Perupetro S.A.*, ICC Case No. 18783/CA/ASM, Final Award (20 March 2014) (**RLA-135**).

[123] Tafur Witness Statement (**RWS-02**), ¶ 27 (translation provided by Counsel. In the original Spanish: "Perupetro podía iniciar los procesos de licitación pública para adjudicar los nuevos Contratos de Licencia a largo plazo para la operación de los Lotes.").

[124] *See* Ministry of Energy and Mines of Peru, *Supreme Decree No. 012-2014-EM, Temporary License Agreement Approval for the Exploitation of Hydrocarbons in Hydrocarbons in Block III, and Supreme Decree No. 013-2014-EM, Temporary License Agreement Approval for the Exploitation of Hydrocarbons in Hydrocarbons in Block IV* (5 April 2014) (**CLA-59**).

[125] *See* § II.C.1.

93. Nevertheless, Amorrortu characterizes Perupetro's decision to initiate the Bidding Processes as "arbitrary"[126] and "a highly unusual [one] given that Baspetrol had expressed an interest in Direct Negotiation, and PeruPetro had a practice of commencing the Direct Negotiation Process at the request of any oil company interested in an oil block."[127] Putting aside his failure to particularize which specific practices and guidelines were purportedly violated, Amorrortu's claim is grossly misleading.

94. As demonstrated above,[128] Perupetro did not have an established practice of engaging in direct negotiations simply because a company—much less "<u>any</u> oil company"[129]—showed some form of interest. Rather, there was a formal procedure that needed to be strictly followed, which Amorrortu never initiated, and for which Baspetrol never even obtained qualification.[130]

95. On the contrary, Perupetro was no longer adjudicating contracts for operational blocks through this mechanism generally—absent exceptional circumstances like the Temporary Contracts with Interoil—and Amorrortu had received direct and explicit instruction from Perupetro (via Mr. Ortigas) that Block III was not available for adjudication by way of direct negotiation.[131] For this same reason, it is simply wrong to argue, as Amorrortu does, that Perupetro's decision to commence the Bidding Processes was "[i]n direct contradiction to Ortigas' statements to Amorrortu."[132]

96. As the remainder of this Section shows, the Bidding Processes were a legitimate exercise of Perupetro's authority because they complied with the applicable legal framework. In particular, the Bidding Processes were governed by neutral bidding rules that were both technically

---

[126] SoC, ¶ 89.

[127] SoC, note 102.

[128] *See* § II.B.2.

[129] SoC, note 102 (emphasis added).

[130] *See* § II.B.1; Vizquerra Expert Report (**RER-02**), § V.A.

[131] *See* § II.C.1; Letter from L. Ortigas (Perupetro) to B. Amorrortu (Baspetrol) (12 August 2013) (**C-6**).

[132] SoC, ¶ 82.

and legally adequate (**Subsection a**). Moreover, the selection process resulting in the adjudication of Block III to GyM was carried out diligently and pursuant to the Bidding Rules (**Subsection b**).[133]

### a. The Bidding Processes were governed by neutral bidding rules that were both technically and legally adequate

97. On 22 April 2014, and "[t]aking into account that PERUPETRO S.A. ha[d] signed the Temporary License Contract for the Exploitation of Hydrocarbons in Block III, with a term of one (01) year," Perupetro created a working group in charge of drafting the rules that would govern the Bidding Process (the "**Bidding Rules**").[134] The Bidding Rules set out, *inter alia*, (i) the schedule that the Bidding Process would follow;[135] (ii) the criteria and general conditions for an

---

[133] As noted above and detailed below, Amorrortu (through Baspetrol) only participated in the Bidding Process for Block III. Peru's factual account of the Bidding Processes therefore focuses on that process. However, Peru reserves the right to supplement its factual account with similar details for the Bidding Process for Block IV and submit the corresponding documents. In any event, the two processes followed the same timeline and series of events such that the description of the selection process for Block III provided in Section II.C.3(b) below is largely applicable to Block IV as well. For example, the working group in charge of drafting the governing rules for the Block IV Bidding Process was created on the same date and made up of the same individuals as that of Block III. *Cf* Memorandum No. GGRL-025-2014 (22 April 2014) (**R-19**); Memorandum No. GGRL-026-2014 (22 April 2014) (**R-20**).

[134] *See* Memorandum No. GGRL-025-2014 (22 April 2014) (**R-19**) (translation provided by Counsel. In the original Spanish: "[t]eniendo en cuenta que PERUPETRO S.A. ha suscrito el Contrato de Licencia Temporal para la Explotación de Hidrocarburos en el Lote III, con vigencia por un (01) año.").

[135] *See* Perupetro's Board of Directors, *Agreement No. 071-2014*, *Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**), ¶ 2, Annex 1. Claimant has submitted what appear to be incomplete versions of Board Agreement Nos. 071-2014 and 072-2014. *See* Perupetro's Board of Directors, *Agreement No. 071-2014*, *Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (30 June 2014) (**C-36**); Perupetro's Board of Directors, *Agreement No. 072- 2014, Approval of Rules for International Public Tender No. PERUPETRO-002-2014* (30 June 2014) (**C-43**). These exhibits appear to be incomplete because they do not include the Bidding Rules which were "attached [t]hereto and form[] an integral part of th[e] Agreement." Perupetro's Board of Directors, *Agreement No. 071-2014*, *Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (30 June 2014) (**C-36**); Perupetro's Board of Directors, *Agreement No. 072- 2014, Approval of Rules for International Public Tender No. PERUPETRO-002-2014* (30 June 2014) (**C-43**), p. 2 (translation provided by Counsel. In the original Spanish: "cuyo texto se adjunta al presente Acuerdo y forma parte integrante del mismo"). Respondent therefore submits complete versions of Board Agreement Nos. 071-2014 and 072-2014, *i.e.*, with the respective Bidding Rules as exhibits Perupetro's Board of Directors, *Agreement No. 071-2014*, *Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**) and Perupetro's Board of Directors, *Agreement No. 072- 2014, Approval of Rules for International Public Tender No. PERUPETRO-002-2014* (Full text) (30 June 2014) (**R-23**), respectively.

interested party to qualify;[136] (iii) a model of the license contract that would be executed;[137] (iv) a description of the various phases of the Bidding Process leading up to the adjudication or *Buena Pro* and what an interested party could and should do in each one;[138] and (v) the standard forms that an interested party would need to submit throughout the various phases.[139]

98. Thus, while Amorrortu argues that there is "no evidence that the interested companies received any document stating the requirements they needed to comply with in order to qualify as bidders,"[140] the opposite is true. The Bidding Rules—which were available to the public on Perupetro's website as Amorrortu had been informed would be the case since 2013[141]—specifically set out what was required of an interested party in order to qualify, as well as when and how this information needed to be presented. Perupetro's online portal for the Bidding Processes even included a simulator to aid interested parties in making a preliminary determination of whether they met the Minimum Indicators, *i.e.*, the technical parameters that determined whether an interested party was eligible to participate in the Bidding Process and qualify to submit a bid.[142]

99. Elsewhere, Amorrortu admits that "the Bidding Rules were ostensibly neutral" yet argues that they "were in fact meant to favor Graña y Montero."[143] Amorrortu provides no evidence to support this assertion. Indeed, the Bidding Rules were not only neutral but, more importantly, they complied with the relevant legal and technical framework. On 26 June 2014, the Bidding

---

[136] *See* Perupetro's Board of Directors, *Agreement No. 071-2014*, *Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**), ¶¶ 4, 6, Annex 3.

[137] *See* Perupetro's Board of Directors, *Agreement No. 071-2014*, *Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**), ¶ 5, Annex 5.

[138] *See* Perupetro's Board of Directors, *Agreement No. 071-2014*, *Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**), ¶ 7.

[139] *See* Perupetro's Board of Directors, *Agreement No. 071-2014*, *Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**), Forms No. 1 – 13.

[140] SoC, ¶ 159 citing Expert Report of Mónica Yaya (18 August 2023) (**CER-02**) ("**Yaya Expert Report**"), ¶ 22.

[141] *See* Letter from L. Ortigas (Perupetro) to B. Amorrortu (Baspetrol) (12 August 2013) (**C-6**).

[142] *See* Perupetro's Board of Directors, *Agreement No. 071-2014*, *Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**), ¶¶ 4, 7.2.

[143] SoC, ¶ 158. *See also* SoC, ¶ 157 ("[T]here were evident irregularities with respect to (a) the Bidding Rules […]").

Rules were reviewed from a legal and technical perspective by the head of Perupetro's various subdivisions—namely, the Offices of Exploration Management, Contract Supervision Management, Hydrocarbon Revenue Collection Management, Contracting Management, Environmental Protection and Community Relations Management, and Legal Management—and it was deemed that:

> The Bidding Rules for the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III, contain the technical requirements, evaluation methodology, procedures and other conditions to select the Petroleum Company (PE) or Consortium, which submits the best proposal (Technical Offer and Economic Offer), in order to enter into the respective License Contract.
>
> The Bidding Rules comply with the provisions of the Single Ordered Text of Law No. 26221- Organic Hydrocarbons Law, approved by Supreme Decree No. 042-2005-EM, the Regulations for the Qualification of Oil Companies, approved by Supreme Decree No. 030-2004-EM and its amendments; and with the requirements for hydrocarbons contracting.[144]

100. Consequently, the Bidding Rules were approved by Perupetro's Board of Directors on 30 June 2014[145] and published on Perupetro's website when the Bidding Processes themselves were announced.[146]

101. Amorrortu maintains "there were evident irregularities with respect to […] the modification of the Bidding Rules."[147] These modifications, he argues, are "[e]vidence of

---

[144] Legal-technical Report No. CONT-075-2014 (26 June 2014) (**R-21**), ¶ 8 (emphasis added) (translation provided by Counsel. In the original Spanish: "Las Bases para la Licitacion Publica Internacional para otorgar el Contrato de Licencia para la Explotacion de Hidrocarburos en el Lote III, contienen los requerimientos técnicos, metodología de evaluación, procedimientos y demás condiciones para seleccionar a la Empresa Petrolera (EP) o Consorcio, que presente la mejor propuesta (Oferta Técnica y Oferta Económica), a efectos de celebrar el respectivo Contrato de Licencia. [Las Bases] cumplen con las disposiciones del Texto Único Ordenado de la Ley No.26221- Ley Orgánica de Hidrocarburos, aprobado por Decreto Supremo No.042-2005-EM, del Reglamento de Calificación de Empresas Petroleras, aprobado por Decreto Supremo No. 030-2004-EM y su modificatoria; y con los requisitos exigidos para la contratación por hidrocarburos.").

[145] *See* Perupetro's Board of Directors, *Agreement No. 071-2014*, *Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**).

[146] *See* Perupetro S.A., Press Release (14 July 2014) (**C-12**).

[147] SoC, ¶ 157.

corruption in the 2014 Block III & IV tender."[148] Amorrortu's argument does not withstand scrutiny.

102. The first time that the Bidding Rules were, according to Amorrortu, "unlawfully modified"[149] was on 12 September 2014.[150] In reality, the Bidding Rules were not modified at all. Rather, an update—not modification—of the Block's proven hydrocarbon reserves was notified so that these would be in line with the Ministry of Energy and Mines's reporting as of 31 December 2013.[151] That this consisted of a mere update is further confirmed by Newsletter No. 2 issued in the Bidding Process, which Dr. Yaya herself references,[152] whereby the commission in charge of carrying out the Bidding Process (the "**Commission**"):[153]

> Inform[ed] the participating oil companies that the value of the reserves of the Minimum Indicators of this Bidding has been updated, according to the Annual Book of Hydrocarbon Reserves - 2013 published by the General Directorate of Hydrocarbons of the Ministry of Energy and Mines.[154]

103. As the Commission's Coordinator, Mr. Guzmán, explains, "[u]pdating the value of the reserves of a block subject to bidding was necessary so that the interested parties could prepare their proposals based on correct and updated information and also so that PERUPETRO could correctly evaluate the companies, as established by Board Agreement No. 048-2010."[155] Thus, far

---

[148] SoC, p. 56 [PDF].

[149] SoC, p. 58 [PDF].

[150] SoC, ¶ 160 citing Memorandum No. CONT-0107-2014 (12 September 2014) (**C-50**).

[151] *See* Memorandum No. CONT-0107-2014 (12 September 2014) (**C-50**).

[152] See Yaya Expert Repot (**CER-02**), ¶ 232.

[153] The Commission was appointed on 8 July 2014 to carry out both Bidding Processes and consisted of four primary members and four alternates. *See* Memorandum No. GGRL-CONT-081-2014 (8 July 2014) (**R-24**).

[154] Perupetro, *Circular No. 2 of the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (23 September 2014) (**R-29**) (translation provided by Counsel. In the original Spanish: "[…] informa a las Empresas Petroleras participantes que se ha actualizado el valor de las reservas de los Indicadores Mínimos de dicha Licitación, de acuerdo al Libro Anual de Reservas de Hidrocarburos — 2013 publicado por la Dirección General de Hidrocarburos del Ministerio de Energía y Minas.").

[155] Witness Statement of Roberto Carlos Guzmán Oliver (29 April 2024) (**RWS-01**) ("**Guzman Witness Statement**"), ¶ 20 (translation provided provided by Counsel. In the original Spanish: "[l]a actualización del valor de las reservas de un lote objeto de licitación era necesaria para que las partes interesadas pudieran preparar sus propuestas con base

from constituting a modification to the Bidding Rules, let alone an unlawful one, the update to the Block's proven reserves was best practice and aimed at ensuring transparency of all available information.

104. But the flaws in Amorrortu's arguments against this purported modification do not end there.

105. Amorrortu also maintains, again relying on Dr. Yaya, that the "change was requested by Graña y Montero" such that "it obviously favored Graña y Montero, because it allowed it to qualify as a bidder in the International Public Bidding Process."[156] However, a simple review of the record shows that this argument is completely unsubstantiated.

106. At the outset, the alleged request by Graña y Montero S.A.A. ("**GyM**") which purportedly led to the "modification" is actually a consultation, not a request for a modification.[157] The Bidding Rules provided for two periods during which, as part of the Bidding Process, consultations and requests for clarification concerning the Bidding Rules themselves could be submitted to the Commission.[158] The Commission, in turn, was required to review and absolve all consultations and requests for clarification, and submit both the questions and/or requests, along with the answers on the its online portal.[159]

107. There was simply no "change [] requested by Graña y Montero" that Perupetro could have allegedly agreed to.

---

en información correcta y actualizada y también para que PERUPETRO pudiera evaluar correctamente a las empresas, conforme a lo establecido por el Acuerdo de Directorio No. 048-2010".).

[156] SoC, ¶ 160 citing Yaya Expert Report (**CER-02**), ¶¶ 188-195, 231-235.

[157] *See* Perupetro, *Sheet answering questions and clarification requests regarding the Biding Rules* (17 November 2014) (**YAYA-30**), p. 1, point 1.

[158] Perupetro's Board of Directors, *Agreement No. 071-2014*, *Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**), ¶ 7.3, Annex 1.

[159] Perupetro's Board of Directors, *Agreement No. 071-2014*, *Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**), ¶ 7.4.

108. More importantly, as the Statement of Claim, Dr. Yaya's report, and Dr. Yaya's own evidence show, GyM's consultation was submitted on 2 October 2014,[160] that is, *after the update was implemented and communicated to the public*.[161] How could GyM's consultation in October have prompted an alleged modification that took place and was notified in September? Neither Claimant nor Dr. Yaya explain this puzzling aspect of their argument. The fact is there can be no such explanation because no consultations or requests for clarification were received from GyM or anyone else for that matter before 2 October 2014.[162] It is plainly wrong to argue, therefore, that GyM requested the update to the Blocks' proven reserves which took place on 12 September 2014 and that Perupetro obliged.[163]

109. Moreover, Amorrortu provides no explanation, expert testimony, or documentary proof on how the update to the Block's proven reserves "obviously favored Graña y Montero, because it allowed it to qualify as a bidder."[164] The fact is that the argument fails on its merits because GyM satisfied the Minimum Indicator concerning proven reserves with or without the update on 12 September 2014.[165]

---

[160] *See* SoC, ¶ 160 ("This change was requested by Graña y Montero on October 2, 2014,"); Yaya Expert Report (**CER-02**), ¶¶ 188-195, 231-235; Perupetro, *Sheet answering questions and clarification requests regarding the Biding Rules* (17 November 2014) (**YAYA-30**), p. 1 (listing the consults by GyM as "received on 02.10.2014.") (translation provided by Counsel. In the original Spanish: "[…] recibidas con fecha 02.10.2014".).

[161] As noted above, the update was implemented on 12 September 2014. The update was communicated on 23 September 2014. *See* Perupetro, *Circular No. 2 of the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (23 September 2014) (**R-29**).

[162] No consultation or requests for clarification were submitted during the first period. It was only in October 2014 and thereafter that the Commission received and resolved consultations and requests for clarification. Perupetro, *Minutes No. 5 of the Commission in charge of conducting the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (5 September 2014) (**R-26**); Perupetro, *Circular No. 1 of the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (5 September 2014) (**R-27**); Perupetro, *Minutes No. 18 of the Commission in charge of conducting the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (17 November 2014) (**R-38**); Perupetro, *Circular No. 5 of the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (17 November 2014) (**R-39**).

[163] SoC, ¶ 160.

[164] SoC, ¶ 160.

[165] The Minimum Indicator regarding proven reserves was initially 20.05. *See* Memorandum No. CONT-083-2014 (14 July 2014) (**R-25**). As a result of the update implemented on 12 September 2014, the relevant figure with which an interested party needed to comply became 18.27. *See* Memorandum No. CONT-0107-2014 (12 September 2014) (**C-50**); Perupetro, *Circular No. 2 of the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (23 September 2014) (**R-29**). GyM declared 22.6 as its proven reserves

110. Neither does Claimant explain how the update would have benefitted GyM but no other participants. The consultations and requests for clarification, along with the Commission's responses, were published on Perupetro's website such that anyone could have benefited from them to the extent there was an advantage to be gained (*quod non*);[166] a fact that Amorrortu and his expert plainly omit. Notably, Mr. Guzmán notes that he:

> do[es] not recall that the Commission or PERUPETRO's Management received any complaints in this regard, much less that it was challenged as an unjustified modification to the Bidding Rules. Regarding the latter, it would have been unjustified in any case since the update notified through Newsletter No. 02 did not modify the Bidding Rules, but simply updated the information of the Minimum Indicators relating to Block III.[167]

111. There is thus no basis on which to give Amorrortu's first argument against the Bidding Rules any weight.

112. Amorrortu also contests one of the modifications to the Bidding Rules implemented on 20 October 2014.[168] This argument is equally flawed.

113. On 20 October 2014, Perupetro's Board of Directors approved a set of modifications and clarifications to the Bidding Rules.[169]

114. Amorrortu takes issue, in particular, with a change made to Form 1 of the Letter of Interest which contained a sworn declaration regarding the Minimum Indicators that an interested

---

since 5 September 2014 and accredited this amount, thereby surpassing the minimum required both before and after the update on 12 September 2014. *See* SoC, ¶ 162 (including "snapshots" of GyM"s Form 1 submission); Report No. LPI-PERUPETRO-001-2014/IE/002 (27 November 2014) (**R-40**).

[166] *See* Perupetro, *Circular No. 5 of the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (17 November 2014) (**R-39**).

[167] Guzman Witness Statement (**RWS-01**), ¶ 22 (translation provided by Counsel. In the original Spanish: "[n]o recuerdo que la Comisión o la Gerencia de PERUPETRO hayan recibido quejas al respecto, ni mucho menos que se haya impugnado como una modificación injustificada a las Bases de Licitación. Con respecto a esto último, habría sido improcedente en cualquier caso dado que la actualización notificada a través el Circular No. 02 no modificó las Bases de Licitación, sino que simplemente actualizó la información de los Indicadores Mínimos sobre el Lote III objeto de la Licitación.").

[168] *See* SoC, ¶ 161.

[169] Perupetro's Board of Directors, *Agreement No. 108-2014, Approval of ammendments to the Bidding Rules of the International Public Tender No. PERUPETRO-001-2014* (20 October 2014) (**R-34**).

party had to satisfy.[170] He and Dr. Yaya argue that the modification resulted in "the approval of new Bidding Rules,"[171] but this is misleading. The Bidding Rules remained the same with only certain components being modified. Moreover, as Mr. Guzmán explains:

> the modification did not affect the results of the evaluation of the Letters of Interest communicated by the Commission up to 3 November 2014.[172]

115. This was also communicated to the public when the Commission announced the modifications themselves.[173]

116. This is fatal to Amorrortu's claim. As Peru details below,[174] Baspetrol was eliminated from the Bidding Process due to his noncompliant Letter of Interest *which was unaffected by the modifications*. Indeed, any change to Form 1 did not affect Baspetrol's outcome in the Bidding Process; the answer to whether Baspetrol could have, but-for the modifications, moved on to the next step and eventually win the adjudication of Block III is still "No."[175]

---

[170] *See* SoC, ¶ 161. *See also*, § II.C.3(b) (describing the various steps in the Bidding Process).

[171] SoC, ¶ 164; Yaya Expert Report (**CER-02**), ¶¶ 188, 232 (translation provided by Counsel. In the original Spanish "se aprobaron nuevas Bases del Concurso Público.").

[172] Guzman Witness Statement (**RWS-01**), ¶ 26 (translation provided by Counsel. In the original Spanish "[…] la modificación no afectó los resultados de las evaluaciones de las Cartas de Interés comunicados por la Comisión hasta el 03 de noviembre de 2014.").

[173] *See* Perupetro, *Minutes No. 13 of the Commission in charge of conducting the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (3 November 2014) (**R-36**); Perupetro, *Circular No. 4 of the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (3 November 2014) (**R-37**).

[174] *See* § II.C.3. *See also* Perupetro, *Minutes No. 13 of the Commission in charge of conducting the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (3 November 2014) (**R-36**).

[175] *See* § II.C.3. (demonstrating that Baspetrol's disqualification during the first step of the Bidding Process would have occurred regardless of the modifications to the Bidding Rules because the Form 1 it submitted was entirely deficient).

117. Notably, the modifications adopted were announced and made publicly available from 3 November 2014,[176] that is, *before the deadline to submit Form 1*.[177] Any interested party that thought that its strategy was affected by the modifications could have submitted a subsequent Form 1 reflecting any necessary changes. Thus, none of the companies that had successfully completed the first step in the Bidding Process—which did not include Baspetrol—were put at a disadvantage by the modifications.

118. Nevertheless, Amorrortu maintains that the modification to Form 1 "is of significance because it reveals that Graña y Montero did not qualify as a bidder."[178] He specifically argues that:

> [T]he review of the entire communication process between Graña y Montero and PeruPetro, demonstrates that in the first letter of interest to qualify for Block III, Graña y Montero exceeded the minimum required, while when the same Format is submitted with supporting information, the amount is reduced to values that do not reach the minimum required.[179]

119. This argument is flawed for three reasons.[180]

---

[176] *See* Perupetro, *Minutes No. 13 of the Commission in charge of conducting the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (3 November 2014) (**R-36**); Perupetro, *Circular No. 4 of the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (3 November 2014) (**R-37**).

[177] The deadline to submit Form 1 was originally 31 October 2014, and was later extended to 14 November 2014. *See* Perupetro's Board of Directors, *Agreement No. 071-2014*, *Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**), Annex 1, as modified by Perupetro's Board of Directors, *Agreement No. 098-2014, Approval of schedule ammendments for Biddings No. PERUPETRO-001-2014 and PERUPETRO-002-2014* (2 October 2014) (**R-30**); Perupetro, *Minutes No. 9 of the Commission in charge of conducting the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (6 October 2014) (**R-32**); Perupetro, *Circular No. 3 of the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (6 October 2014) (**R-33**); Perupetro, *Release No. 1 of the International Public Bidding No. PERUPETRO-001-2014-Block III* (3 October 2014) (**R-31**); Perupetro, *Release No. 2 of the International Public Bidding No. PERUPETRO-001-2014-Block III* (31 October 2014) (**QUIROGA-31**).

[178] SoC, ¶ 162.

[179] SoC, ¶ 162.

[180] Given that Respondent cannot properly engage with Amorrortu's argument due to missing information and, plainly, the unclear nature of the argument itself, Respondent reserves the right to supplement or modify its argument as necessary, in keeping with its general reservation of rights noted below.

120. *First*, Amorrortu does not explain what the "entire communication process" refers to, let alone provide it so that Peru may properly engage with it.

121. *Second*, the alleged support for Amorrortu's argument consists of "snapshots" of the first Letter of Interest submitted by GyM on 21 August 2014 and the second Letter of Interest submitted on 5 September 2014.[181] However, Amorrortu fails to explain how these two letters and the information reported therein allegedly benefitted from the modifications adopted more than a month and a half later, on 20 October 2014.

122. Certainly, it cannot be, as Amorrortu argues, that the purported benefit is that "when [GyM's second Letter of Interest] is submitted with supporting information, the amount is reduced to values that do not reach the minimum required."[182] This is because, as Amorrortu himself indicates, both submissions were Letters of Interest required by as the first step in the Bidding Process, meaning they were not accompanied by any supporting documentation—this being a task that had to be completed at a later point in the Bidding Processes, as detailed in the proceeding section. Put differently, GyM did not need to substantiate the information contained in these letters when it submitted them such that this could explain the difference in the amounts reported. In any event, when the time came for GyM to submit the supporting documentation, it accredited an average annual production of 3,246 as initially declared in its Letter of Interest of 21 August 2014,[183] an amount which, according to Amorrortu himself, "exceeded the minimum required."[184]

123. *Third*, Amorrortu maintains that "the amount that enabled Graña y Montero to exceed the minimum required includes a production of LGN that does not correspond to Block III, but to the Cryogenic Plant that Graña y Montero has in the District of Pariñas."[185] It is unclear why Amorrortu suggests that the information reported in Form 1 should have been based on Block III. After all, none of the interested parties could have held operations in Block III with which to

---

[181] SoC, ¶ 162. Amorrortu again fails to provide a source or underlying document for the "snapshots."

[182] SoC, ¶ 162.

[183] Report No. LPI-PERUPETRO-001-2014/IE/002 (27 November 2014) (**R-40**), p. 4 [PDF].

[184] SoC, ¶ 162.

[185] SoC, ¶ 162.

qualify in the Bidding Process given that their participation in said process was to secure Block III's operation in the first place.

124. Finally, contrary to Claimant's and Dr. Yaya's position[186] the change to Form 1 was legally justified. As Peru explained above, the modifications and clarifications were subjected to the technical and legal analyses, the conclusions of which were set out in a formal report which concluded that the Bidding Rules, as modified:

> contain[ed] the technical requirements, evaluation methodology, procedures and other conditions to select the Petroleum Company (PE) or Consortium that submits the best proposal (Technical Offer and Economic Offer), in order to enter into the respective License Contract [and] comply with the provisions of [Peru's Organic Hydrocarbons Law], Supreme Decree No. 030-2004-EM as modified; and with the requirements for hydrocarbon contracting.[187]

125. Neither has Amorrortu proven, in aid of his argument regarding the modification's purported illegality, that it "resulted from the suggestions submitted by Oscar Miro-Quesada Rivera," or that, even if they did, "he was not authorized" to make such suggestions.[188]

126. The only evidence on which Dr. Yaya relies for her position—the technical-legal report described above—merely states that the Office of Contract and Promotion Management submitted "a set of issues and suggestions that were the subject of the meetings for the presentation of the Bidding Rules to the petroleum companies that could be potential participant" in the Bidding Process.[189] The report does not indicate, or even suggest for that matter, that the "issues and

---

[186] SoC, ¶ 161 ("This modification had no legal motivation.") (citing Yaya Expert Report (**CER-02**), ¶¶ 188-189).

[187] Legal-technical Report No. CONT-0128-2014 (17 October 2014) (**YAYA-31**), ¶ 4 (translation provided by Counsel. In the original Spanish: "[…] contienen los requerimientos técnicos, metodología de evaluación, procedimientos y demás condiciones para seleccionar a la Empresa Petrolera (EP) o Consorcio, que presente la mejor propuesta (Oferta Técnica y Oferta Económica), a efectos de celebrar el respectivo Contrato de Licencia [y] cumpl[ir] con las disposiciones [de la Ley Orgánica de Hidrocarburos, el] Decreto No. 030-2004-EM y su modificatoria; y con los requisitos exigidos para la contratación por hidrocarburos.").

[188] SoC, ¶ 163 citing Yaya Expert Report (**CER-02**), ¶¶ 191-192.

[189] Legal-technical Report No. CONT-0128-2014 (17 October 2014) (**YAYA-31**), ¶ 1.3 (translation provided by Counsel. In the original Spanish: "[…] un conjunto de temas y sugerencias que fueron motivo de las reuniones de presentación de Bases, realizadas a las empresas petroleras que pudieran ser potencias participantes.").

suggestions"[190] were Mr. Miro's personally. More importantly, the report, in the same paragraph cited by Dr. Yaya, expressly indicates that these were properly examined.[191] Thus, to the extent that any of the modifications were the result of "issues and suggestions"[192] discussed in the context of "the meetings for the presentation of the Bidding Rules to the petroleum companies," they were duly reviewed from a technical and legal perspective, and Amorrortu provides no reason or evidence on which the sufficiency of said review should be questioned.

127. For these reasons, Amorrortu's argument that the Bidding Rules "were unlawfully modified at least twice"[193] is baseless and fails to support his theory that the Bidding Processes were "staged and plagued with corruption to benefit Graña y Montero."[194]

128. In this regard, it is telling that Amorrortu ignores another modification to the Bidding Rules altogether. Under the original schedule, interested parties had to submit their Letters of Interest by 31 October 2014.[195] However, the Commission subsequently extended this deadline to 14 November 2014.[196] As a result of this modification, four additional companies were able to submit Letters of Interest and participate in the next step of the Bidding Process.[197]

129. If the Bidding Processes were "rigged […] in favor of Graña y Montero," as Amorrortu maintains,[198] why would the Commission extend the deadline by which interested parties had to submit Form 1, thereby opening the door to increased competition for GyM?

---

[190] Legal-technical Report No. CONT-0128-2014 (17 October 2014) (**YAYA-31**), ¶ 1.3 (translation provided by Counsel. In the original Spanish: "temas y sugerencias.").

[191] *See* Legal-technical Report No. CONT-0128-2014 (17 October 2014) (**YAYA-31**), ¶ 1.3.

[192] Legal-technical Report No. CONT-0128-2014 (17 October 2014) (**YAYA-31**), ¶ 1.3 (translation provided by Counsel. In the original Spanish: "temas y sugerencias.").

[193] SoC, p. 58 [PDF].

[194] SoC, ¶ 157.

[195] *See* Perupetro's Board of Directors, *Agreement No. 071-2014*, *Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**), ¶ 2, Annex 1.

[196] *See* Perupetro, *Release No. 2 of the International Public Bidding No. PERUPETRO-001-2014-Block III* (31 October 2014) (**QUIROGA-31**).

[197] Perupetro, *List of companies which submitted letters of interest for the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (2014) (**R-41**).

[198] SoC, note 95.

Moreover, why would the Commission do so, given that, at the time of the modification to the schedule, GyM had already submitted its Letter of Interest and been authorized to proceed to the next step such that it did not require the extension in order to compete? Plainly, the modification to the schedule made it *harder* for GyM to win, and that is precisely why Amorrortu has chosen to gloss over this particular fact.

130. In sum, the Bidding Rules and modifications were not only neutral, but also technically and legally sufficient. As Mr. Guzmán explains:

> [t]he Commission's main objective was always to ensure the competitiveness and transparency of the Bidding Process, within the framework of the Bidding Rules and the applicable regulations, in order to award Block III to the best qualified bidder. In addition to the regulations in force, this principle guided all our decisions, including those relating to the application of the Bidding Rules to the selection process.[199]

131. Indeed, as Peru will now show, the Commission diligently applied the Bidding Rules and applicable legal norms to the selection process, thereby ensuring the integrity of its result.

**b. The selection process resulting in the adjudication to GyM was carried out diligently and pursuant to the Bidding Rules**

132. From 14 July 2014, the date on which the Bidding Processes were formally announced,[200] until 12 December 2014, the date on which Block III was adjudicated,[201] the Commission carried out the selection process pursuant to the following schedule:[202]

[199] Guzman Witness Statement (**RWS-01**), ¶ 27 (translation provided by Counsel. In the original Spanish: "[e]l objetivo principal de la Comisión siempre fue asegurar la competitividad y transparencia de la Licitación, dentro del marco de las Bases y la normativa aplicable, para así poder adjudicar el Lote III al postor mejor calificado. Además de las regulaciones vigentes, este principio era lo que guiaba todas nuestras decisiones, incluidas aquellas relacionadas a la aplicación de las Bases de la Licitación al proceso de selección.").

[200] *See* Perupetro S.A., Press Release (14 July 2014) (**C-12**).

[201] *See* Petroperu, S.A.'s Release (6 April 2015) (**C-75**).

[202] Perupetro, *Release No. 2 of the International Public Bidding No. PERUPETRO-001-2014-Block III* (31 October 2014) (**QUIROGA-31**) (translation provided by Counsel.).

| ACTIVITY | START | END |
|---|---|---|
| Announcement: Publication of Bidding Rules, Schedule and Model Contract | 14 July 2014 | |
| Submission of letters of interest | 30 July 2014 | 14 November 2014 |
| Submission of consultations and requests for clarification to the Bidding Rules | 30 July 2014 | 10 November 2014 |
| First absolution of consultations and requests for clarification to the Bidding Rules * | 5 September 2014 | |
| Second absolution of consultations and requests for clarification to the Bidding Rules** | 17 November 2014 | |
| Public Act: Presentation of Proposals and Opening of Envelope No. 1 | 10 December 2014<br>9:00 am | |
| Public Act: Opening of Envelope No. 2, Evaluation of Proposals and Granting of Bid. | 12 December 2013,<br>9:00 am | |
| *Received between 30.07.2014 and 09.08.2014 inclusive<br>**Received between 30.08.2014 and 10.11.2014 inclusive | | |

133. According to Section 7.2 of the Bidding Rules, the first step in the selection process called for interested parties to submit their respective Letters of Interest comprising Forms 1, 2 and 3.[203] As shown above, the deadline by which to do so was 14 November 2014.[204]

134. Twelve companies completed this first step although two of them did so extemporaneously thereby leaving them out of the running at the very outset:[205]

| Table No. 13<br>COMPANIES THAT SUBMITTED A LETER OF INTEREST WITHIN THE ESTABLISHED TIME PERIOD[6] – Block III |
|---|
| **Name of Bidder** |
| 1) Graña y Montero S.A.A.<br>2) Perenco S.A. |

[203] *See* Perupetro's Board of Directors, *Agreement No. 071-2014*, *Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**), ¶ 7.2.

[204] *See* Perupetro, *Release No. 2 of the International Public Bidding No. PERUPETRO-001-2014-Block III* (31 October 2014) (**QUIROGA-31**).

[205] Report No. 006-2014-OCI-PERUPETRO (30 December 2014) (**R-43**), pp. 18, 20 [PDF] (translation provided by Counsel.).

| 3) Olympic Perú Inc., Sucursal del Perú<br>4) Omega Energy International S.A.<br>5) Pacifica Rubiales Energy Corp.<br>6) Baspetrol SAC<br>7) Upland Oil & Gas LLC, Sucursal del Perú<br>8) Petronas Carigali SDN BHD<br>9) BPZ Exploración & Producción SRL<br>10) Staatsolie Maatschappij Suriname NV |
|---|
| **Note:**<br>The following companies presented their letter of interest in an extemporaneous manner:<br>1) THX Oil and Gas, Sucursal del Perú<br>2) China National Petroleum Group Limited |
| **Source:** Commission in Charge of Bidding Processes<br>**Creation**: OCI of Perupetro S.A. |

135. As is also evident from the table above, Amorrortu, through Baspetrol, decided to participate in the Bidding Process for Block III. Indeed, Baspetrol submitted its Letter of Interest on 31 October 2014—the very last day to do so under the original schedule.[206] However, Amorrortu and Baspetrol chose not to participate in the Bidding Process for Block IV.

136. Once an interested party had submitted its Letter of Interest, the Commission would, according to the Bidding Rules, review the submission pursuant to the Regulations for the Qualification of Petroleum Companies, Supreme Decree No. 030-2004-EM, and the Procedure and Indicators for the Qualification of Petroleum Companies approved by Board Agreement No. 048-2010.[207] In particular, the Commission was tasked with verifying compliance "with two (2) technical indicators […] and [] a contracting capacity equal to or higher than the minimum contracting capacity in the economic-financial aspect."[208] The specific Minimum Indicators (Technical and Financial) applicable to the Bidding Processes were determined by Board

[206] *See* Baspetrol, *Formal Presentation of Forms 1, 2, and 3* (31 October 2014) (**R-35**); Perupetro's Board of Directors, *Agreement No. 071-2014*, *Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**), Annex 1.

[207] *See* Perupetro's Board of Directors, *Agreement No. 071-2014*, *Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**), ¶ 7.2.

[208] PeruPetro's Board of Directors, *Agreement No. 048-2010, Procedure and Indicators for the Qualification of Oil Companies* (15 April 2010) (**QUIROGA 10**), p. 5 [PDF] (translation provided by Counsel. In the original Spanish: "con dos (2) indicadores técnicos [y] una capacidad de contratación igual o superior a la capacidad mínima de contratación en el aspecto económico-financiero.").

Agreement No. 048-2010 and specifically communicated to the Commission in Memorandum No. CONT-083-2014, as updated by Newsletter No. 2,[209] which is replicated in relevant part below:[210]

| **Minimum Indicators – Blocks III and IV<br>According to Board of Directors Agreement No. 048-2010** | | |
|---|---|---|
| | **Block III** | **Block IV** |
| **Reserves[1] (MMBL):** | 20.05 | 6.55 |
| **Production[2] (MBLD)** | 2.89 | 0.89 |
| **Development Wells[3]** | 90 | 50 |
| **CC (MMUS$)[4]** | 202.50 | 63.75 |

137. As Mr. Guzmán, Coordinator of the Commission, explains, "[t]he Commission evaluated the Letters of Interest submitted on a rolling basis and determined whether the companies complied with the Minimum Indicators," notifying the relevant company accordingly.[211] In particular, Form 1 required the company to provide certain technical and economic data, including (i) average annual oil production, (ii) number of exploratory wells drilled, (iii) number of development wells drilled, (iv) proven hydrocarbon reserves, (v) the company's net worth, (vi) the company's current assets and (vii) the company's operating cash flow.[212] Mr. Guzmán further notes that "[e]ach point needed a specific and accurate response."[213]

---

[209] As detailed above, the proven hydrocarbon reserves were updated on 12 September 2014 such that the relevant amount pertaining to the first Technical Indicator was 18.27 rather than 20.05. *See* Perupetro, *Circular No. 2 of the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (23 September 2014) (**R-29**).

[210] Memorandum No. CONT-083-2014 (14 July 2014) (**R-25**) (translation provided by Counsel.).

[211] Guzman Witness Statement (**RWS-01**), ¶ 17 (translation provided by Counsel. In the original Spanish: "[…] la Comisión evaluaba de forma continua las Cartas de Interés presentadas y determinaba si las empresas cumplían con los Indicadores Mínimos").

[212] *See* Perupetro's Board of Directors, *Agreement No. 071-2014*, *Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**), Form 1.

[213] Guzman Witness Statement (**RWS-01**), ¶ 29 (translation provided by Counsel. In the original Spanish: "[c]ada punto necesitaba una respuesta puntual y precisa.").

138. In Baspetrol's case, the Commission met on 3 November 2014 to review its submission and concluded that it "did not meet any of the Technical Indicators for the Bidding Process," and had also failed to "indicate the information on [Baspetrol's] net worth, current assets and operating cash flows."[214] Indeed, Mr. Guzmán's recollection reveals that the Form 1 submitted by Baspetrol was deficient, just as the Alleged Proposal had been. In particular, it:

> consisted of a single paragraph for each of the two general categories (Technical Indicator and Economic Indicator) but did not respond to the information requested. Rather, most of the narrative concerned Mr. Amorrortu's personal experience, his future plans to work with unidentified individuals, and a reference to a document submitted to PERUPETRO on 28 May 2014. None of this was relevant to the determination the Commission was tasked with making, which concerned the specific data [] detailed above. In fact, Baspetrol's Form 1 indicated that Baspetrol "ha[d] not yet conducted operations.[215]

139. The unresponsive nature of Baspetrol's Form 1 submission is evidenced below:[216]

| **TECHNICAL INDICATOR** | |
|---|---|
| Average annual oil production | BASPETROL SAC is a PE that has not yet carried out operations; however, as mentioned above, Bacilio Amorrortu has vast experience in oil production and will be accompanied by a large team of Peruvian and foreign petroleum engineers and petroleum geologists of recognized trajectory. BASPETROL SAC is a PE that will operate Block III with the support of a recognized international oil company, through an oil contract, as indicated |
| Exploratory wells drilled | |
| Recorded 2D seismic lines | |
| Recorded 3D seismic lines | |
| Development wells drilled | |

[214] Perupetro, *Minutes No. 13 of the Commission in charge of conducting the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (3 November 2014) (**R-36**) (translation provided by Counsel. In the original Spanish: "[…] no cumple con ninguno de los Indicadores Técnicos para la presente Licitación […] no indica la información del Patrimonio Neto, Activo Corriente y Flujo de Caja operativo.").

[215] Guzman Witness Statement (**RWS-01**), ¶ 30 (translation provided by Counsel. In the original Spanish: "consistía en un solo párrafo para cada una de las dos categorías generales (Indicador Técnico e Indicador Económico) pero que no respondía a la información solicitada. Más bien, la mayor parte de la narración se refería a la experiencia personal del Señor Amorrortu, sus planes futuros de trabajar con personas no identificadas y una referencia a un documento presentado a PERUPETRO el 28 de mayo de 2014. Nada de esto era relevante a la determinación que se le encargó a la Comisión, que se refería a los datos específicos que detallé anteriormente. De hecho, el Formato 1 de Baspetrol indicó que 'no ha[bía] realizado operaciones aún.'").

[216] Baspetrol, *Formal Presentation of Forms 1, 2, and 3* (31 October 2014) (**R-35**), p. 5 [PDF] (translation provided by Counsel.). *See also* Guzman Witness Statement (**RWS-1**), ¶¶ 29-31.

| | |
|---|---|
| Proven hydrocarbon reserves | in the "BACKGROUND" section of the "Proposal of BASPETROL SAC to PERUPETRO S.A." to operate oil Blocks III and IV of Northwestern Peru" submitted to PERUPETRO on May 28, 2014. |

<table>
<tr><td>ECONOMIC INDICATOR</td><td></td></tr>
<tr><td>Net Worth</td><td rowspan="3">BASPETROLSAC is an active oil company with more than two years of legal existence, incorporated with an initial capital stock of S/. 200,000 nuevos soles. Previously, Bacilio Amorrortu was the president and shareholder of the experienced PE that won the International Public Bidding of this same Block III in the year 1992 and operated Block III in the period of the years 1993-1995, as indicated in the "BACKGROUND" section of the "Proposal of BASPETROL SAC to PERUPETRO S.A." to operate the oil Blocks III and IV of North-West Peru" submitted to PERUPETRO on 28 May 2014.</td></tr>
<tr><td>Current Assets</td></tr>
<tr><td>Operating Cash Flows</td></tr>
<tr><td colspan="2">Sincerely,<br>[Signature]<br>Bacilio Amorrortu<br>President<br>BASPETROL SAC</td></tr>
</table>

140. The deficiency of Baspetrol's Form 1 is all the more evident when compared with that submitted by other companies who successfully completed this first step such as Perenco S.A. ("**Perenco**"):[217]

| **TECHNICAL INDICATOR (*)** | |
|---|---|
| Average annual oil production (1) | 47,087 bopd |
| Exploratory wells drilled (2) | 24 |
| Recorded 2D seismic lines (2) | 2237 km |
| Recorded 3D seismic lines (2) (3) | 931 km2 |

[217] Perenco S.A., *Letter of interest to participate in the International Public Tender No. PERUPETRO-001-2014* (5 September 2014) (**R-28**), pp. 2-3 [PDF] (translation provided by Counsel.).

| Development wells drilled (2) | 287 |
| --- | --- |
| Proven hydrocarbon reserves (in millions of barrels of oil equivalent, MMBOE (4) (5) | 220 MMboe |

| **ECONOMIC INDICATOR** | **2013** | **2012** | **Average of the last two (2) years** |
| --- | --- | --- | --- |
| Net Worth | 7,108 MMUS$ | 6,513 MMUS$ | 6,811 MMUS$ |
| Current Assets | 3,669 MMUS$ | 3,082 MMUS$ | 3,376 MMUS$ |
| Operating cash flows | 2,541 MMUS$ | 2,582 MMUS$ | 2,562 MMUS$ |
| Sincerely yours,<br>[Signature]<br>.....................................................................<br>Name: Louis Hannecart<br>Alien Registration Card: 001116828<br>Position: Proxy<br>Perenco S.A. | | | |

141. The Commission's decision regarding Baspetrol's non-compliance with the Minimum Indicators was communicated to Amorrortu that same day.[218] A second company—Olympic Peru INC—also failed to clear this first hurdle, as illustrated below, leaving eight companies in the running:[219]

| **TABLE No. 14**<br><br>**COMPANIES THAT COMPLIED WITH MINIMUM BIDDING INDICATORS ACCORDING TO THE SWORN DECLARATION SWORN STATEMENT - BLOCK III** |
| --- |
| **Name of Bidder** |
| 1) Graña y Montero S.A.A.<br>2) Parenco S.A.<br>3) Omega Energy International S.A. |

[218] Letter from R. Guzman (Perupetro) to B. Amorrortu (Baspetrol) (3 November 2014) (**C-15**); Perupetro, *Minutes No. 13 of the Commission in charge of conducting the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (3 November 2014) (**R-36**).

[219] Report No. 006-2014-OCI-PERUPETRO (30 December 2014) (**R-43**), p. 18 [PDF].

| |
|---|
| 4) Pacific Rubiales Energy Corp.<br>5) Upland Oil & Gas LLC Cell Branch Peru<br>6) Petronas Carigali SDN BHD<br>7) BPZ Exporacion & Produccion SRL<br>8) Staatsolie Maatschappij Surname NV |
| Note:<br>1) The companies listed, in accordance with the Bidding Rules, were considered to be habilitated and documentation was requested for their qualification and evaluation in the bidding process.<br>2) Olympic Peru INC, Peruvian Branch did not meet the minimum indicator regarding contracting capacity (Economic-Financial) according to the information declared.<br>3) Baspetrol SAC did not comply with any of the technical indicators nor did it provide information to evaluate the minimum capacity indicator (Economic-Financial) |
| **Source:** Commission in Charge of Bidding Processes<br>**Creation**: OCI of Perupetro S.A. |

142. According to the Bidding Rules, the next step called for these eight companies to submit the supporting documentation set out in Annex 3 of the Bidding Rules to substantiate their sworn statements in Form 1.[220] As before, the Commission met periodically to review and decide on this second round of submissions and issued letters to the relevant parties informing them of its decision.[221]

143. Only two companies—GyM and Perenco—cleared this second step:[222]

| **TABLE No. 15**<br><br>**FIRMS QUALIFIED TO SUBMIT PROPOSALS AFTER DOCUMENTARY EVALUATION – BLOCK III** |
|---|
| **Name of Bidder** |
| 1) Graña y Montero S.A.A.<br>2) Perenco S.A. |
| **<u>Note:</u>**<br>1) Omega Energy International S.A. did not substantiate the information stated in its Letter of Interest and did not comply with two minimum technical indicators. According to its financial statements, it did not comply with the required contracting capacity. |

[220] *See* Perupetro's Board of Directors, *Agreement No. 071-2014*, *Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**), ¶ 7.2, Annex 3.

[221] *See* Guzman Witness Statement (**RWS-01**), ¶ 23.

[222] Report No. 006-2014-OCI-PERUPETRO (30 December 2014) (**R-43**), p. 19 [PDF] (translation provided by Counsel.).

| |
|---|
| 2) Pacific Rubiales Energy Corp. did not submit the required qualification documentation.<br>3) Upland Oil & Gas LLC, Peruvian Branch did not support the information stated in its Letter of Interest and did not comply with the minimum technical indicators (it did not demonstrate indirect control over Interoil Peru S.A. as of the date of presentation of its Letter of Interest in order to take the technical experience of the latter into account). According to its Financial Statements, it did not meet the required contracting capacity.<br>4) Petronas Carigali SDN BHD did not submit the required documentation for qualification.<br>5) BPZ Exploración y Producción SRL according to its financial statements did not comply with the required contracting capacity.<br>6) Staatsolie Maalschappij Suriname NV submitted incomplete documentation within the established deadline in the Bidding Rules (omitted affidavits and translation). |
| **Source**: Commission in Charge of Bidding Rules<br>**Prepared by**: OCI of Perupetro S.A. |

144. This meant that only GyM and Perenco were entitled to submit technical and economic bids, that is, Envelope No. 2.[223] According to the schedule, the deadline to submit Envelopes Nos. 1[224] and 2 was 10 December 2014 at a public ceremony attended by, *inter alia*, the Commission, a notary, and representatives of the participating petroleum companies ("**Public Act No. 1**").[225] As part of Public Act No. 1, all Envelopes Nos. 1 would be opened, while Envelopes Nos. 2 would be given to and held by the notary to be kept in custody until they were opened at second ceremony on 12 December 2014 ("**Public Act No. 2** ").[226]

145. On 3 December 2014, the Commission issued a newsletter in the Bidding Process indicating that Public Act No. 1 and Public Act No. 2 would "be held on the dates and at the times

[223] *See* Perupetro's Board of Directors, *Agreement No. 071-2014*, *Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**), ¶ 7.5 as modified by Perupetro's Board of Directors, *Agreement No. 108-2014, Approval of ammendments to the Bidding Rules of the International Public Tender No. PERUPETRO-001-2014* (20 October 2014) (**R-34**).

[224] Envelope No. 1 contained the admissibility documents of the participating company. *See* Perupetro's Board of Directors, *Agreement No. 108-2014, Approval of ammendments to the Bidding Rules of the International Public Tender No. PERUPETRO-001-2014* (20 October 2014) (**R-34**), ¶ 7.5.

[225] *See* Perupetro's Board of Directors, *Agreement No. 071-2014*, *Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**), ¶ 7.6, Annex 1 as modified by Perupetro, *Release No. 2 of the International Public Bidding No. PERUPETRO-001-2014-Block III* (31 October 2014) (**QUIROGA-31**).

[226] *See* Perupetro's Board of Directors, *Agreement No. 071-2014*, *Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**), ¶ 7.6, Annex 1 as modified by Perupetro, *Release No. 2 of the International Public Bidding No. PERUPETRO-001-2014-Block III* (31 October 2014) (**QUIROGA-31**).

indicated in the Schedule, in the Paracas Room of the Swissotel hotel, located at Av. Santo Toribio 173 - Via Central 50, Centro Empresarial Real - San Isidro, Lima."[227]

146. One week later, the Commission gathered at the cited location and proceeded with Public Act No. 1.[228] The Commission began the ceremony by informing attendees that the companies would be called to present their Envelopes Nos. 1 and 2 in the order in which their respective Letters of Interest were received, in keeping with the Bidding Rules.[229] Then, the Commission "announced that the Petroleum Companies qualified for [the Bidding Process], in order of their presentation of letters of interest" were GyM and Perenco, and invited them to present their Envelopes Nos. 1 and 2.[230]

147. Only GyM performed this final step,[231] thereby rendering GyM the sole qualified bidder in the Bidding Process for Block III. However, as Mr. Guzmán explains:

> This did not mean that Graña y Montero had won the adjudication. The Commission still had to verify that Graña y Montero's Envelope No. 1 complied with the requirements and, if so, hold Public Event No. 2 in which Envelope No. 2, containing Graña y Montero's Technical-Economic Proposal, would be opened and evaluated. If Graña y Montero's Envelope No. 2 did not comply with the provisions of the Bidding Rules, the Bidding Process would be declared deserted and no one would win the adjudication.[232]

---

[227] Perupetro, *Circular No. 6 of the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (3 December 2014) (**R-42**) (translation provided by Counsel. In the original Spanish: "[…] se realizarán en las fechas y horas indicadas en el Cronograma, en la Sala Paracas del hotel Swissotel, ubicado en la Av. Santo Toribio 173 - Via Central 50, Centro Empresarial Real - San Isidro, Lima.").

[228] Perupetro, *Minutes of the public presentation of proposals and envelope No.1 opening* (10 Dec. 2014) (**QUIROGA-33**), p. 1.

[229] *See* Perupetro, *Minutes of the public presentation of proposals and envelope No.1 opening* (10 Dec. 2014) (**QUIROGA-33**), p. 1; Perupetro's Board of Directors, *Agreement No. 071-2014*, *Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**), ¶ 7.6.

[230] Perupetro, *Minutes of the public presentation of proposals and envelope No.1 opening* (10 Dec. 2014) (**QUIROGA-33**), p. 1 (translation provided by Counsel. In the original Spanish: "[…] comunicó que las Empresas Petroleras habilitadas para la presente Licitación, en orden de presentación de su carta de interés.").

[231] Perupetro, *Minutes of the public presentation of proposals and envelope No.1 opening* (10 Dec. 2014) (**QUIROGA-33**), p. 1.

[232] Guzman Witness Statement (**RWS-01**), ¶ 35 (translation provided by Counsel. In the original Spanish: "Esto tampoco significaba que Graña y Montero había ganado la adjudicación. La Comisión aún tenía que comprobar que

148. GyM's Envelope No. 2 was therefore given to the notary to hold in custody until 12 December 2014.[233]

149. At Public Event No. 2—the final milestone of the Bidding Process—the Commission began by summarizing the results of Public Event No. 1 and verifying that the box containing GyM's Envelope No. 2 remained sealed.[234] The Commission subsequently opened GyM's Envelope No. 2 and, after reviewing its contents and determining its overall score, announced GyM as the winner of the Bidding Process for Block III[235]

150. Despite the Commission's evident adherence to the Bidding Rules and applicable procedures, Amorrortu maintains "there were evident irregularities with respect to […] the selection of Graña y Montero."[236] In particular, he makes three arguments in an attempt to impugn the integrity of the Bidding Process. Peru addresses these in turn.

151. *First*, Amorrortu maintains that the Commission's decision to adjudicate the Blocks to Graña y Montero Petrolera S.A.'s ("**GMP**"), a subsidiary of GyM, was "irregular[]" given that it was GyM who participated in the Bidding Process.[237] It is simply inaccurate to argue, as Amorrortu does, that "[GMP was] granted the *buena pro*."[238] The Blocks were adjudicated to GyM, not GMP.

---

el Sobre No. 1 de Graña y Montero cumplía con los requisitos y, de ser así, celebrar el Acto Público No. 2 en el que se abriría y evaluaría el Sobre No. 2, conteniendo la Propuesta Técnica - Económica de Graña y Montero. Si el Sobre No. 2 de Graña y Montero no se ajustaba a lo establecido en las Bases, la Licitación se declararía desierta y nadie ganaría la adjudicación").

[233] Perupetro, *Minutes of the public presentation of proposals and envelope No.1 opening* (10 Dec. 2014) (**QUIROGA-33**), p. 2.

[234] Perupetro, *Minutes of the public opening of envelope No.2, proposal evaluation, and granting of buena pro* (12 Dec. 2014) (**QUIROGA-35**), p. 1.

[235] Perupetro, *Minutes of the public opening of envelope No.2, proposal evaluation, and granting of buena pro* (12 Dec. 2014) (**QUIROGA-35**), p. 2. *See also* Petroperu, S.A.'s Release (6 April 2015) (**C-75**).

[236] SoC, ¶ 157.

[237] SoC, ¶ 166.

[238] SoC, ¶ 166.

152. The Bidding Rules explicitly state that "[t]he grant of the *Buena Pro* will be performed at [Public Act No. 2]. The Commission will proceed to grant the *Buena Pro* to the winning proposal."[239] The Minutes of Public Act No. 2, detailed above, show that the *Buena Pro* was, in fact, granted to GyM:[240]

| Immediately afterward, the *Buena Pro* was granted to the winning proposal of the company Graña y Montero S.A.A.: | | | | |
|---|---|---|---|---|
| **Company** | **Technical Score** | **Economic Score** | **Total Score** | **Result** |
| Graña y Montero S.A.A. | 14 | 00.03 | 701.5 | Winning Proposal |

153. There can be no doubt, therefore, that GMP was not granted the *Buena Pro*, as Amorrortu alleges, since it was GyM who participated and won.[241] Once having been selected, GyM was free, pursuant to applicable law and general practice in the sector, to execute the license contract through a subsidiary and remain a guarantor that is jointly and severally liable.

154. *Second*, according to Amorrortu and his expert, Dr. Yaya, "GMP was illegally favored by the loose interpretation of Article 3 of Supreme Decree No. 030-2004-EM because PeruPetro's Committee authorized GMP to qualify by using financial information from its Peruvian parent company: Graña y Montero S.A.A."[242] Amorrortu is wrong.

155. Article 3 of Supreme Decree No. 030-2004-EM provides that the qualification of a foreign oil company can be granted to its parent company who will remain jointly and severally

[239] Perupetro's Board of Directors, *Agreement No. 071-2014*, *Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**), ¶ 7.9 (translation provided by Counsel. In the original Spanish: "[e]l otorgamiento de la Buena Pro se realizará en el mismo acto de Apertura del Sobre No. 2 […]. La Comisión procederá a otorgar la Buena Pro a la propuesta ganadora.").

[240] Perupetro, *Minutes of the public opening of envelope No.2, proposal evaluation, and granting of buena pro* (12 Dec. 2014) (**QUIROGA-35**), p. 2 (translation provided by Counsel.).

[241] *See also* Vizquerra Expert Report (**RER-02**), ¶ 105 (noting that Graña y Montera S.A.A. was the company that qualified during the Bidding Processes).

[242] SoC, ¶ 165.

liable for its subsidiary.[243] As Peru just explained, however, it was GyM who was qualified—based on its own financial information—and won. As such, whether Perupetro's interpretation of Article 3 of Supreme Decree No. 030-2004-EM was correct is irrelevant because GyM was not qualified in the Bidding Process on the basis of its parent company's financial information, but rather on its own financial information.

156. Nor is it consequential that GMP would go on to sign and execute the License Contract for Block III. As Dr. Vizquerra explains, "[t]his is not an unusual situation since GRAÑA Y MONTERO S.A.A., as a qualified company, participated in the execution of the License Contracts for the Exploitation of Hydrocarbons in Blocks III and IV as Corporate Guarantor and was jointly and severally liable at all times for the legal, technical, economic and financial capacity of the Contractor."[244] Indeed, such an arrangement was accounted for from the very outset of the Bidding Process in the Bidding Rules themselves. In particular, the model contract contained in the Bidding Rules included a sample corporate guarantee as Annex that the parties could use to implement this arrangement into their contractual relationship.[245]

157. *Finally*, according to Amorrortu, GMP did not satisfy the Minimum Indicators.[246] However, as with some of Amorrortu's other arguments addressed above, no sources are provided to support his statement and, in some instances, the requisite particularization is missing as well.[247]

---

[243] Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (**CLA-3**), Art. 3.

[244] Vizquerra Expert Report (**RER-02**), ¶ 105 (translation provided by Counsel. In the original Spanish: "no se trata de una situación inusual en tanto GRANA Y MONTERO S.A.A. como empresa calificada participó en la suscripción de los Contratos de Licencia para la Explotación de Hidrocarburos en los Lotes III y IV como Garante Corporativo y se obligó a responder solidariamente en todo momento por la capacidad legal, técnica, económica y financiera del Contratista.").

[245] *See* Perupetro's Board of Directors, *Agreement No. 071-2014*, *Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**), p. 101 [PDF].

[246] SoC, ¶ 164.

[247] Amorrortu specifically maintains that "[a]ccording to official information from the MEM and PeruPetro, Graña y Montero Petrolera, S.A. (***GMP***) did not satisfy these requirements. Specifically, GMP relied on its production in Block I (oil and gas) and Block V (oil), which was below the required minimum — producing only 2,200 barrels per day in 2012 and 2519 in 2013. GMP did not reach the minimum number of developed wells in its blocks either. And GMP used its equipment service contracts to fulfill the drilling requirements." SoC, ¶ 164. However, Amorrortu provides no particulars with respect his statements, let alone proof with which Peru could engage with. Peru therefore reserves

This is crucial because the only evidence that Amorrortu does provide—the "snapshots"[248] of GyM's Form 1 submissions—proves the opposite.

158. Indeed, the "snapshots" show that GyM declared (i) "22.6" as the proven hydrocarbon reserves which, even Amorrortu admits, would meet the requirement that "bidders had to have proven reserves of 18.27 thousand barrels;"[249] and (ii) 119 development wells drilled, which clearly surpass the 90 that were required by Amorrortu's own admission.[250] This was sufficient for GyM's Letter of Interest to be accepted given that, as detailed above, only two of the three Technical Minimum Indicators needed to be met according to Board Agreement No. 048-2010; another fact that Amorrortu plainly ignores.

159. Moreover, with respect to the third Minimum Indicator regarding average annual production, GyM accredited an amount equal to 3.24 (as originally declared in its first Letter of Interest) during the second step of Bidding Process, which clearly surpassed the requisite "production of 2.89 MB."[251] Thus, even if all three Technical Minimum Indicators were required for adjudication (*quod non*) GyM would have nevertheless been compliant. Indeed, when the Commission reviewed GyM's Annex 3 submission, "it [wa]s verified that it complie[d] with the three (3) [] technical indicators:"[252]

| In line with the table above, the required indicators for this evaluation are the following: |
|---|
| **TABLE No. 2**<br><br>**MINIMUM TECHNICAL CAPACITY FOR HYDROCARBONS EXPLOITATION CONTRACTS** |

---

the right to respond if and when Amorrortu clarifies his position and provides the documents on which his position is based.

[248] SoC, ¶ 162.

[249] SoC, ¶ 164.

[250] SoC, ¶ 164.

[251] SoC, ¶ 164.

[252] Report No. LPI-PERUPETRO-001-2014/IE/002 (27 November 2014) (**R-40**), p. 4 [PDF] (translation provided by Counsel. In the original Spanish: "se verifica que cumple con los tres (3) de los indicadores técnicos.") (translation provided by Counsel).

| INDICATOR | MINIMUM INDICATOR* | ACCREDITED INFORMATION** |
|---|---|---|
| Production (MBOED) | 2.89 | 3.24 |
| Development Wells drilled | 90 | 117 |
| Proven hydrocarbon reserves (MMBOE) | 1827 | 22.6 |
| (*) The Minimum Indicators values for this Bidding were given to the Commission through Memoranda No. CONT-083.2014 and No. CONT-107 2014.<br><br>(**) Information is supported in the documents provided by the Oil Company. | | |

160. In light of the above, it is indisputable that the Commission conducted the Bidding Processes in accordance with the Bidding Rules and applicable legal norms.

161. Any remaining doubt, however, is ultimately and definitively dispelled by the fact that Perupetro's Institutional Control Organ (the "**OCI**" per its acronym in Spanish) independently concluded as much on at least two occasions.[253]

162. The OCI forms part of the Comptroller General of the Republic of Peru (the "**Comptroller General**") or *Contraloría* as it is referred to in Spanish and is tasked with "supervis[ing] and verify[ing] the correct application of public policies and the use of State resources and assets."[254] It is an independent entity to Perupetro that oversees various aspects of its operations, including public tenders. For the Bidding Processes, the OCI appointed Mr. Alfredo Flores Borja to act as the observer (*veedor*) of the Bidding Processes.[255] Mr. Flores Borjas in fact oversaw the Bidding Processes and attended all the relevant events before submitting his final

[253] *See* Report No. 006-2014-OCI-PERUPETRO (30 December 2014) (**R-43**); Perupetro, *Report evaluating complaint re alleged irregularities during the granting of the Blocks' Licence Agreements No. 2-4654-2015-010* (22 June 2016) (**R-49**), p. 12.

[254] *See* Comptroller General of the Republic, *What do we do?* (last accessed 28 April 2024) (**R-66**) (translation provided by Counsel. In the original Spanish: "[s]upervisamos y verificamos la correcta aplicación de las políticas públicas y el uso de los recursos y bienes del Estado").

[255] *See* Report No. 006-2014-OCI-PERUPETRO (30 December 2014) (**R-43**), p. 23 [PDF].

report where he not only documented the Bidding Processes, but also analyzed the manner in which they were carried out, ultimately concluding that:

> No situations were detected that, in [his] opinion, constitute risks that could affect the transparency, probity, compliance with the corresponding regulations, compliance with the objectives of Perupetro S.A., or attempts of corruption.[256]

163. Two years later, in 2016, another OCI report confirmed that the Commission's evaluation of GyM's compliance with the Minimum Indicators and adjudication of the Blocks as a result thereof was adequate, thereby eliminating any doubt regarding the accuracy and integrity of the Commission's decisions.[257] In fact, this report addressed some of the same arguments that Amorrortu has presented in this arbitration and concluded that they were "unsubstantiated."[258]

164. For these reasons, Amorrortu's claim that the Bidding Processes were somehow rigged or improperly conducted fails.

165. To the extent he considered this to be the case, he could have denounced the alleged irregularities through the proper procedures, that is, before the Commission and/or competent authorities. Instead, Amorrortu sought out Ms. Tafur once again in what she describes as a "furious" and "aggressive" state in which he "exclaim[ed]" that GyM had been favored and even threatened arbitration.[259] Ms. Tafur, uncomfortable by the confrontation, informed Amorrortu that he "could exercise his rights to challenge [the Bidding Process] if he wished, but that this would

---

[256] Report No. 006-2014-OCI-PERUPETRO (30 December 2014) (**R-43**), p. 23 [PDF] (translation provided by Counsel. In the original Spanish: "[n]o se apreciaron situaciones que a juicio del suscrito, constituyan riesgos que podrían afectar la transparencia, la probidad, el cumplimiento de la normativa correspondiente, el cumplimiento de los objetivos de Perupetro S.A., así como intentos de corrupción.").

[257] Perupetro, *Report evaluating complaint re alleged irregularities during the granting of the Blocks' Licence Agreements No. 2-4654-2015-010* (22 June 2016) (**R-49**), pp. 30-31 [PDF]. The context of this second OCI report is detailed in the proceeding Section.

[258] Perupetro, *Report evaluating complaint re alleged irregularities during the granting of the Blocks' Licence Agreements No. 2-4654-2015-010* (22 June 2016) (**R-49**), ¶ 6.7.

[259] Tafur Witness Statement (**RWS-02**), ¶ 37 (translation provided by Counsel. In the original Spanish: "Recuerdo que, alrededor de, o posterior a la adjudicación de los Lotes, el Señor Amorrortu se volvió a presentar en mi oficina. Esta vez, el tono del Señor Amorrortu era de una insistencia agresiva. Estaba furioso de que Graña y Montero había quedado como el último postor. Exclamaba que Graña y Montero había sido favorecida, y amenazó con iniciar un arbitraje.").

have to be done through the proper channels and procedures."[260] Rather than heed this advice, Amorrortu, in keeping with his previous practice of submitting informal communications that fell outside the scope of the systems in place, sent two more letters to Ms. Tafur shortly thereafter indicating his disagreement with the results and requesting that Baspetrol be granted the license contracts for the Blocks.[261]

166. As Ms. Tafur explains, "[t]his request was clearly extra-legal."[262] She notes that it was unclear what these communications aimed to achieve seeing as she "had already informed him [that] any complaint he had in relation to the [Bidding Processes] should have been registered through the appropriate procedures."[263] In any event, proceeding in this manner rather than through the established mechanisms at his disposal was ultimately Amorrortu's decision, and Peru is not responsible for it.

***

167. There were a multitude of indications—both direct and indirect—available to Amorrortu that should have made it clear to him that the Blocks would not be adjudicated by way of a direct negotiation. Amorrortu cannot blame Peru for his unyielding but baseless insistence that the Blocks be assigned to Baspetrol, a company with no prior experience, based on his own misconceptions about how such a procedure works under Peruvian law. This is particularly the case when Claimant himself participated in the Bidding Process for Block III thereafter, which he

---

[260] Tafur Witness Statement (**RWS-02**), ¶ 38 (translation provided by Counsel. In the original Spanish: "podía ejercer sus derechos de impugnación si lo deseaba, pero que lo tendría que hacer por los canales y procedimientos adecuados.").

[261] *See* Letter from B. Amorrortu (Baspetrol) to I. Tafur Marín (Perupetro) (5 February 2015) (**C-16**); Letter from B. Amorrortu (Baspetrol) to I. Tafur Marín (Perupetro) (15 December 2014) (**C-17**).

[262] Tafur Witness Statement (**RWS-02**), ¶ 40 (translation provided by Counsel. In the original Spanish: "[e]sta solicitud claramente era extralegal.").

[263] Tafur Witness Statement (**RWS-02**), ¶ 41 (translation provided by Counsel. In the original Spanish: "[n]o me era del todo claro qué pretendía conseguir el Sr. Amorrortu enviándome estas cartas porque, como ya le había informado, cualquier queja que tuviera en relación con la licitación debía haberla registrado a través de los procedimientos adecuados.").

has failed to prove was anything other than a legitimate and proper exercise of Perupetro's authority.

### D. Amorrortu Has Failed To Prove That The Blocks Were Adjudicated To Graña y Montero Through Corruption

168. The Statement of Claim spills considerable ink describing "Graña y Montero's Corruption Scheme."[264] In Amorrortu's mind, the fact that GyM has been implicated in corruption in unrelated projects in Peru is proof that Perupetro adjudicated the Blocks to GyM as part of a corruption scheme. His efforts and conjectures are to no avail.

169. As detailed above, Amorrortu's arguments regarding the alleged defects in the Bidding Processes are without merit; this being the thrust of his "[e]vidence of corruption in the 2014 Block[s] III & IV tender."[265] As this Section will demonstrate, Amorrortu's remaining arguments and purported evidence aiming to show "that corruption drove the decision to abort Amorrortu's Direct Negotiation Process for Blocks III and IV, in favor of the rigged International Public Bidding designed to favor Graña y Montero" are similarly futile because they either bear no relation to the facts of this case (**Subsection 1**) or fail to prove that the Blocks were adjudicated as the byproduct of corruption (**Subsection 2**), which is consistent with the findings of the *Lava Jato* Special Team (**Subsection 3**). Thus, Amorrortu's fanciful theory is entirely unsupported and must be rejected.

#### 1. The majority of the evidence Amorrortu proffers in support of the alleged corruption scheme affecting the Blocks' adjudication bears no relation to the facts of this case

170. The better part of Section III of the Statement of Claim is devoted to describing GyM,[266] its "great social presence,"[267] and its association, in the context of the *Lava Jato* scandal,

---

[264] SoC, § III.

[265] SoC, § III.C.2.

[266] *See* SoC, § III.A.

[267] SoC, ¶ 103. *See also* SoC, §§ III.A-B.1.

with Odebrecht S.A. ("**Odebrecht**"),[268] certain government officials,[269] and a handful of construction projects in Peru.[270] Amorrortu relies on numerous newspaper articles in support of his account of different aspects of "[t]he [c]orruption [s]cheme,"[271] yet none of them relate to the facts underlying his claim. With a few exceptions, none of the projects discussed below *even mention* the Blocks or the Bidding Processes. Rather, the purported evidence relates to allegations of corruption concerning GyM and Odebrecht with respect to *other projects*.

171. In particular, Amorrortu describes allegations of corruption relating to GyM's involvement in the following public projects:

- The construction of Line 1 of Lima's metro railway by the Ministry of Transport and Communications (the "**MTC**").[272]
- The construction, operation, and maintenance of Sections 2 and 3 of the interoceanic highway—*IIRSA Sur*—by the MTC.[273]
- The construction and operation of a gas pipeline in southern Peru—*Gasoducto del Sur*—by the Ministry of Energy and Mines (the "**MINEM**" per its acronym in Spanish) (the "**South Pipeline Project**").[274]

172. These three projects that Amorrortu has focused on concern the construction of large infrastructure projects and, therefore, by virtue of being in the construction sector, share certain "features that make [them] particularly prone to corruption."[275] [redacted]

[redacted]:

---

[268] *See* SoC, §§ III.A, III.B.2-4.

[269] *See* SoC, § III.B.2.

[270] *See* SoC, § III.B.4.

[271] SoC, § III.B.

[272] *See* SoC, § III.B.4(A).

[273] *See* SoC, § III.B.4(B).

[274] *See* SoC, § III.B.4(D).

[275] [redacted]

173. Another common element to these three projects is that neither the projects themselves nor the allegations of corruption surrounding them bear any relation to this case.

174. Amorrortu's narrative of the issues summarized above, including the three construction projects, spans 19 pages yet tellingly fails to mention, much less prove, that any of the allegations of corruption described therein extend to Peru's petroleum industry, Perupetro, the Blocks, or the Bidding Processes. It is also telling that, despite offering detailed accounts of the allegations of corruption underlying those projects and exhibiting various sources in support of those allegations, Amorrortu's account as it relates to the Blocks and the Bidding Processes is skeletal and unsupported.

175. Moreover, Claimant's efforts to connect the *Lava Jato* scandal to the adjudication of the Blocks fail. This is because Peru does not dispute GyM's involvement in the *Lava Jato* scandal or that the company has admitted to certain acts of corruption, as detailed below. Rather, Peru contests the relevance that Amorrortu attributes to this evidence because the only relevant questions the Tribunal must answer to resolve Amorrortu's claim is whether his evidence proves

[276]

that (i) Baspetrol commenced a direct negotiation process for the Blocks (ii) which was thwarted in favor of adjudicating the Blocks through corruption.

176. Given that GyM's involvement in the *Lava Jato* scandal has no bearing on these two questions, the answer is, necessarily, "No."[277]

**2. The scant "evidence" presented by Amorrortu that bears any relation to the facts of this case also fails to prove that the Blocks were adjudicated as the byproduct of corruption**

177. If one sets aside Amorrortu's allegations of corruption that plainly bear no relation to this case, Claimant is left with a single argument (without supporting proof) and two pieces of purported evidence as the *sole* basis of his claim on corruption. Peru addresses these in turn.

**a. PETROPERU's refusal to participate in the operation of the Blocks is not proof of a corruption scheme**

178. The only concrete argument presented by Amorrortu that attempts to connect "Graña y Montero's Corruption Scheme"[278] with the Blocks—and could therefore be remotely relevant to Amorrortu's claim in this arbitration—is that GyM "sought and obtained the removal of PETROPERU from the [Blocks'] operation."[279] However, a cursory review of the facts that explain why PETROPERU decided not to participate in the operation of the Blocks proves that Amorrortu's argument is hopeless.

179. According to the Bidding Rules, PETROPERU "ha[d] the right to participate with up to 25.0% in the License Agreement[s]" for the operation of the Blocks.[280] It was

---

[277] *See* § II.C.1 (proving that Baspetrol never commenced a direct negotiation with Perupetro).

[278] SoC, § III.

[279] SoC, § III.C.2(D). The Bidding Rules established that PETROPERU "ha[d] the right to participate with up to 25.0% in the License Agreement." Perupetro's Board of Directors, *Agreement No. 071-2014*, *Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**), ¶ 1, p. 6 [PDF] (translation provided by Counsel. In the original Spanish: "t[uvo] el derecho de participación de hasta el 25.0% en el Contrato de Licencia.").

[280] Perupetro's Board of Directors, *Agreement No. 071-2014*, *Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**), ¶ 1, p. 6 [PDF] (translation provided by Counsel. In the original Spanish: "t[uvo] el derecho de participación de hasta el 25.0% en el Contrato de Licencia.").

PETROPERU's decision whether to exercise this right and, although it initially indicated that it would do so on 4 February 2014, it ultimately concluded it was precluded from doing so on 25 March 2015, as Peru details below.

180. At the outset, PETROPERU's decision not to participate in the Blocks is a fact that took place *after the Bidding Processes had concluded*, rendering it irrelevant to the adjudication of the Blocks. Plainly, there is no causal link between what Amorrortu maintains is evidence of corruption (*i.e.*, PETROPERU's decision in March 2015) and the conduct that Amorrortu complains of (*i.e.*, Perupetro's adjudication of the Blocks in 2014). Amorrortu certainly has not attempted to establish such a causal link, despite it being his burden to do so.[281] He provides no explanation as to how PETROPERU's decision not to participate in the Blocks relates to Amorrortu's claims that (i) Baspetrol initiated a direct negotiation with a different entity (*i.e.*, Perupetro) and (ii) Perupetro mishandled the Bidding Processes. Evidently, no such relationship exists.

181. Moreover, Amorrortu's argument ultimately consists of an unproven allegation that is contradicted by the record. To support his theory that GyM "sought and obtained the removal of PetroPeru from the [Blocks'] operation,"[282] Amorrortu maintains—in one short paragraph[283]—that, in February 2015, PETROPERU "had the intention to exercise [its] right" to participate in the Blocks' operation but, following a change in its Board of Directors—namely, a new president—ultimately decided not to do so.[284] Amorrortu provides no proof that GyM was involved in or the cause behind PETROPERU's decision not to participate in the Blocks. He does not even explain, let alone prove, how GyM's influence would have allegedly been exerted to bring about the change in PETROPERU's presidency or PETROPERU's final decision. Thus, like the rest of his case, Amorrortu's argument is pure speculation.

---

[281] *See* § V.A.1.

[282] SoC, § III.C.2(D).

[283] *See* SoC, ¶ 167.

[284] SoC, ¶ 167.

182. The evidence that Amorrortu cites in support of his position—a single newspaper article reporting that "Petroperu change[d] its president"[285]—shows that his allegation is baseless. PETROPERU's decision not to participate in the Blocks was not based on improper influence by GyM, as Amorrortu maintains, but rather on a potential conflict with Law No. 30130, Declaring of Public Necessity and National Interest the Priority Execution of the Modernization of the Talara Refinery to Ensure the Preservation of Air Quality and Public Health and Adopting Measures to Strengthen the Corporate Governance of Petroleums o Peru - Petroperu S.A. ("**Law No. 30130**").[286]

183. Article 6 of Law No. 30130 establishes, in relevant part, that:

> PETROPERU may carry out investment activities and projects as long as they do not generate firm or contingent liabilities, present or future, do not affect the guarantees of the PMRT[287] and do not require resources from the Public Treasury.[288]

184. Thus, PETROPERU was precluded from participating in the Blocks unless and until it had determined that all three conditions set out above were met; a fact that the Statement of Claim tellingly omits.

---

[285] "Petroperú cambia de presidente: sale Pedro Touzzet y entra Germán Velásquez," *Gestión* (20 March 2015) (**C-150**), p. 1 (translation provided by Counsel. In the original Spanish: "Petroperú cambia de presidente.").

[286] *See* "Petroperú cambia de presidente: sale Pedro Touzzet y entra Germán Velásquez," *Gestión* (20 March 2015) (**C-150**), p. 2 ("A week ago, the Minister of Energy and Mines, Rosa Maria Ortiz, informed that Petroperu's Board of Directors would re-evaluate Petroperu's participation in blocks III and IV because it collides with Law 30130 which establishes that the state oil company must focus its resources on the Modernization of the Talara Refinery.") (translation provided by Counsel. In the original Spanish: "Hace una semana, la ministra de Energía y Minas, Rosa María Ortíz, informó que el directorio de Petroperú reevaluaría la participación de Petroperú en los lotes III y IV, debido a que colisiona con la Ley 30130 que establece que la petrolera estatal debe enfocar sus recursos en la Modernización de la Refinería de Talara.") (emphasis added).

[287] PMRT stands for Talara Refinery Modernization Project according to its acronym in Spanish. *See* Law Declaring of Public Need and National Interest the Modernization of the Talara Refinery to Ensure Air Quality and Public Health and Adopting Measures to Strengthen Perupetro's Corporate Governance (Law No. 30130 of 2013) (**RLA-132**), Art. 2.

[288] Law Declaring of Public Need and National Interest the Modernization of the Talara Refinery to Ensure Air Quality and Public Health and Adopting Measures to Strengthen Perupetro's Corporate Governance (Law No. 30130 of 2013) (**RLA-132**), Art. 6 (translation provided by Counsel. In the original Spanish: "PETROPERU puede realizar actividades y proyectos de inversión, siempre y cuando no generen a la empresa pasivos firmes o contingentes, presentes o futuros, no afecten las garantías del PMRT y no demanden recursos al Tesoro Público.") (emphasis added).

185. Throughout the first quarter of 2015, that is, *after the Blocks had been properly adjudicated*, PETROPERU undertook the necessary analyses and coordination to determine whether it could exercise its right to participate in the Blocks' operation.[289]

186. An initial review conducted in January 2015 suggested it would be possible for PETROPERU to participate in the Blocks.[290] This, in turn, led the Board of Directors to authorize PETROPERU's Administration to notify the relevant parties on 4 February 2015, including Perupetro, Peru's Securities Market Superintendency, and GyM.[291] This—and, more specifically, the notification to Peru's Securities Market Superintendency[292]—is what Amorrortu relies on to argue that "as of February 2015, PETROPERU had the intention to exercise [its] right" to participate in the Blocks. However, this decision was still subject to further analyses.

187. Indeed, though the Board of Directors authorized PETROPERU's Administration to notify GyM of its preliminary decision, this was only so that the parties could begin negotiating the terms of the Joint Operation Agreement (JOA) that would govern the operation of the Blocks.[293] However, the Board of Directors also explicitly set out that the JOA could be executed so long as "the Agreements to be adopted in the Joint Operating Agreement (JOA) [with GyM] do not affect the PMRT and its guarantees, and are in accordance with the regulations in force, particularly with the provisions of Law No. 30130."[294] Thus, as things stood in February 2015, PETROPERU still needed to ensure compliance with Law No. 30130.

---

[289] *See* PETROPERU's Board of Directors, *Agreement No. 016-2015-PP, Rejection of PETROPERU's participation in the Blocks' Licence Agreements* (25 March 2015) (**R-44**), pp. 3-7 [PDF].

[290] *See* PETROPERU's Board of Directors, *Agreement No. 016-2015-PP, Rejection of PETROPERU's participation in the Blocks' Licence Agreements* (25 March 2015) (**R-44**), pp. 3-4 [PDF].

[291] *See* PETROPERU's Board of Directors, *Agreement No. 016-2015-PP, Rejection of PETROPERU's participation in the Blocks' Licence Agreements* (25 March 2015) (**R-44**), pp. 3-4 [PDF].

[292] *See* SoC, ¶ 167 relying on Letter from R. H. Vidal Rojo (Petroperu) to the Peruvian Securities Exchange Superintendence (4 February 2015) (**C-52**).

[293] PETROPERU's Board of Directors, *Agreement No. 016-2015-PP, Rejection of PETROPERU's participation in the Blocks' Licence Agreements* (25 March 2015) (**R-44**), p. 4 [PDF].

[294] PETROPERU's Board of Directors, *Agreement No. 016-2015-PP, Rejection of PETROPERU's participation in the Blocks' Licence Agreements* (25 March 2015) (**R-44**), p. 4 [PDF] (translation provided by Counsel. In the original Spanish: "[…] los Acuerdos a ser adoptados en el Acuerdo de Operación (JOA – Joint Operation Agreement) no

188. On 5 March 2015, the Board of Directors requested that PETROPERU's Administration submit the relevant legal and technical reports regarding the requisite compliance with Law No. 30130.[295] By 23 March 2015, however, the technical report had not been submitted yet.[296] It also became evident soon thereafter that the cash outlays that PETROPERU would be required to make in order to participate in the Blocks were not considered in the reports issued by the Office of Corporate Management and the external consultants that PETROPERU had hired.[297] This, in turn, "distorted the results of the analysis to quantify the contingent liabilities" such that compliance with Law No. 30130 could not be confirmed.[298]

189. The Board of Directors therefore decided on 25 March 2015 that it could not approve PETROPERU's participation in the Blocks in light of the incomplete analysis.[299] This decision was not only appropriate given that compliance with Law No. 30130 remained uncertain, but also reasonable from a commercial perspective. It would have been reckless for the Board of Directors to approve PETROPERU's participation in the Blocks without knowing the complete and precise financial implications that doing so would have on the company.

190. In sum, the notion that GyM "sought and obtained the removal of PetroPeru from the [Blocks'] operation"[300] including by "abruptly chang[ing] PetroPeru's Board of Directors" as Amorrortu suggests[301] is pure conjecture. On the contrary, the facts show that PETROPERU's

---

afecten el PMRT y sus garantías, y sea conforme a la normatividad vigente, en particular con lo establecido en la Ley No. 31030.") (emphasis added).

[295] *See* PETROPERU's Board of Directors, *Agreement No. 016-2015-PP, Rejection of PETROPERU's participation in the Blocks' Licence Agreements* (25 March 2015) (**R-44**), pp. 4-5 [PDF].

[296] *See* PETROPERU's Board of Directors, *Agreement No. 016-2015-PP, Rejection of PETROPERU's participation in the Blocks' Licence Agreements* (25 March 2015) (**R-44**), p. 5 [PDF].

[297] *See* PETROPERU's Board of Directors, *Agreement No. 016-2015-PP, Rejection of PETROPERU's participation in the Blocks' Licence Agreements* (25 March 2015) (**R-44**), pp. 5-6 [PDF].

[298] PETROPERU's Board of Directors, *Agreement No. 016-2015-PP, Rejection of PETROPERU's participation in the Blocks' Licence Agreements* (25 March 2015) (**R-44**), p. 7 [PDF] (translation provided by Counsel. In the original Spanish: "habría distorsionado los resultados de la evaluación para cuantificar los pasivos contingentes".).

[299] PETROPERU's Board of Directors, *Agreement No. 016-2015-PP, Rejection of PETROPERU's participation in the Blocks' Licence Agreements* (25 March 2015) (**R-44**), p. 8 [PDF].

[300] SoC, § III.C.2(D).

[301] SoC, ¶ 167.

decision was grounded in concern for adherence with the applicable law, and that this concern was shared by the Board of Directors in place prior to the "abrupt" change as well as by the one after. As explained above, the Board of Directors prior to the change in PETROPERU's presidency made participation in the Blocks conditional on compliance with Law No. 30130 and requested the relevant reports in early March 2015. The Board of Directors in place after the change in PETROPERU's presidency ensured that this plan was strictly observed.

191. Therefore, Amorrortu's argument that that GyM "sought and obtained the removal of PetroPeru from the [Blocks'] operation"[302] is unfounded.

**b. The two news articles that at least mention or have a reference to the Blocks also fail to prove a corruption scheme**

192. The only documents submitted with the Statement of Claim that could purport to show "[e]vidence of corruption in the 2014 Block III & IV tender,"[303] inasmuch as they at least mention the Blocks, consists of two articles, neither of which actually support Amorrortu's theory.

193. The *first* one is a magazine article by *ProActivo*,[304] which Amorrortu cites to in support of the proposition that:

> [t]he criminal investigation of the former [President Ollanta Humala and First Lady Nadine Heredia] has generated a vast amount of material and has confirmed that Graña y Montero paid numerous bribes to the Humala administration in exchange for any government contract the company desired, including granting contracts to exploit the Blocks III and IV.[305]

194. However, a simple review of the article reveals that Amorrortu significantly misrepresents its content.

---

[302] SoC, § III.C.2(D).

[303] SoC, p. 56 [PDF].

[304] *See* M. Belling, "Humala ya conoce de la mala adjudicación a Graña y Montero de lote III en Talara" *Proactivo* (20 July 2015) (**C-146**).

[305] SoC, ¶ 147 (emphasis added).

195. The article describes a complaint filed by the National Coalition of PETROPERU's Unions (the "**CNSP**" per its acronym in Spanish) regarding the Bidding Process for Block III.[306] It does not, contrary to Amorrortu's suggestion, (i) "confirm"[307]—or even mention for that matter—that GyM paid bribes to the Humala administration in exchange for the adjudication of the Blocks; (ii) reference or rely on any "criminal investigation of the former presidential couple;"[308] or (iii) discuss the adjudication of Block IV in any respect.

196. But perhaps the most fatal (and telling) flaw in Amorrortu's use of this article is that he fails to provide any explanation, context, or update on what it does report on: the CNSP's complaint.[309] The CNSP is a coalition of labor unions associated with PETROPERU which, on 25 June 2015, made a request before the Peruvian Congress that an investigation into the Bidding Process for Block III be opened to determine whether GyM met two of the three Minimum Indicators required for the adjudication.[310]

197. As a coalition of labor unions, the CNSP's *raison d'être* is, presumably, to protect the interests of PETROPERU's employees. It is therefore unsurprising that, in achieving this objective, it monitors and questions decisions by or affecting PETROPERU. Its decision to seek intervention by the Peruvian Congress is thus consistent with its perceived mission. What is more relevant is the outcome of the resulting intervention, which Amorrortu conveniently ignores. This is because the CNSP complaint was investigated and deemed unsubstantiated.

198. As the *ProActivo* article itself indicates, "as of the date of publication, it was learned that […] the Comptroller General of the Republic would soon be initiating a special control

---

[306] *See* M. Belling, "Humala ya conoce de la mala adjudicación a Graña y Montero de lote III en Talara" *Proactivo* (20 July 2015) (**C-146**).

[307] SoC, ¶ 147.

[308] SoC, ¶ 147.

[309] In his witness statement, Amorrortu only indicates that "the National Coalition of Petroperu Trade Unions called on different levels of the Peruvian government, including the presidency, to take part in the contracts to review and declare the nullity of the Lot III award because Graña y Montero Petrolera (*GMP),* the subsidiary of GyM participating in the bidding, submitted as its own, drilled wells from third parties." Amorrortu Witness Statement (**CWS-01**), ¶ 98.

[310] Perupetro, *Report evaluating complaint re alleged irregularities during the granting of the Blocks' Licence Agreements No. 2-4654-2015-010* (22 June 2016) (**R-49**), p. 13.

action."[311] Indeed, Perupetro's OCI issued a report which analyzed the CNSP's arguments from a factual and legal perspective before concluding that the Bidding Process had complied with the applicable legal framework[312] and that:

> It has been verified that the [CNSP's] complaint questioning the evaluation of the Production and Drilling Indicators of development wells is unsubstantiated and therefore does not merit the development of a subsequent control service.[313]

199. The *second* piece of "evidence" relied on by Amorrortu consists of an article by the newspaper *El Comercio* which reports on criminal investigations into the South Pipeline Project.[314] According to Amorrortu, the article would "confirm that Amorrortu's Direct Negotiation Process was aborted by order of Nadine Heredia because Blocks III and IV had been requested by Graña y Montero."[315] This is plainly wrong. The article does not purport to make any such connection. The focus of this article is the investigation into the corruption that plagued the South Pipeline Project, which is wholly unrelated to the Blocks and the Bidding Processes.

---

[311] M. Belling, "Humala ya conoce de la mala adjudicación a Graña y Montero de lote III en Talara" *Proactivo* (20 July 2015) (**C-146**), p. 4 [PDF] (translation provided by Counsel. In the original Spanish: "[a]l cierre de esta nota se conoció [...] la Contraloría General de la República estaría iniciando en breve una acción de control especial.").

[312] Perupetro, *Report evaluating complaint re alleged irregularities during the granting of the Blocks' Licence Agreements No. 2-4654-2015-010* (22 June 2016) (**R-49**), ¶ 6.1 ("Perupetro SA fulfilled the objective of selecting and awarding the Good Pro of the Public Bids PERUPETRO 001-2014 and PERUPETRO-002-2014 for the adjudication of the License Contract for the Exploitation of Hydrocarbons in Blocks III and IV, respectively, within the framework of the applicable procedures and regulations, awarding them to Graña y Montero SAA, a company that complied with the indicators and requirements established in the Rules of the aforementioned processes.") (translation provided by Counsel. In the original Spanish: "Perupetro SA cumplió con el objetivo de seleccionar y otorgar la Buena pro de las Licitaciones Públicas Internaciones PERUPETRO 001-2014 y PERUPETRO-002-2014 para el otorgamiento del Contrato de Licencia para la Explotación de Hidrocarburos en los Lotes lll y IV, respectivamente, en el marco de la los procedimientos y normativa aplicable, adjudicándolos a Graña y Montero SAA, empresa que cumplió con los indicadores y requisitos establecidos en las Bases de los precitados procesos.").

[313] Perupetro, *Report evaluating complaint re alleged irregularities during the granting of the Blocks' Licence Agreements No. 2-4654-2015-010* (22 June 2016) (**R-49**), ¶ 6.7 (translation provided by Counsel. In the original Spanish: "Se ha verificado que la denuncia que cuestiona la evaluación de los Indicadores de Producción y Perforación de pozos de desarrollo, carece de sustento y por tanto no amerita el desarrollo de un servicio de control posterior.") (emphasis added).

[314] *See* SoC, ¶ 148 citing G. Castañeda Palomino, "Gasoducto del Sur case: the prosecutor's office has an agenda with the meetings of José Graña, Jorge Barata and Nadine Heredia," *El Comercio* (31 August 2020) (**C-34**), which is an English translation of the original article in: G. Castañeda Palomino, Gasoducto del Sur case: the prosecutor's office has an agenda with the meetings of José Graña, Jorge Barata and Nadine Heredia (31 August 2020) (**C-29**).

[315] SoC, ¶ 148.

200. Amorrortu focuses on the article's report that the agenda of José Graña, turned over to a team of special prosecutors,[316] showed that he met with former First Lady Nadine Heredia on (i) 28 April 2014 to discuss "business" and (ii) 10 February 2015 to discuss the Blocks.[317] Amorrortu's reliance on and use of this article is misplaced.

201. The article indicates that the "business" discussed at the meeting on 28 April 2014 referred to the Government Palace's[318] "veto" against GyM's participation in the South Pipeline Project, not Perupetro, the Blocks, or the Bidding Processes.[319]

202. Indeed, the article explains that Mr. Graña and Ms. Heredia had a strained relationship at that time, not one of collaboration or collusion. In particular, the news article details that, in mid-2013, Ms. Heredia "expressed her discomfort [to Jorge Barata[320]] over the articles in the newspaper El Comercio" and therefore wanted to meet with José Graña.[321] The article goes on to describe that Ms. Heredia thereafter met Mr. Graña in a first meeting where she presented him "with a file with many clippings of articles from *El Comercio* that she considered [were] against the government" to which Mr. Graña responded by indicating that he had no control over the

---

[316] As Peru explains below, this same team of special prosecutors has investigated Nadine Heredia, Jose Graña, and GyM, and failed to find any evidence relating to the Blocks or the Bidding Processes.

[317] *See* SoC, ¶ 148. *See also* G. Castañeda Palomino, "Gasoducto del Sur case: the prosecutor's office has an agenda with the meetings of José Graña, Jorge Barata and Nadine Heredia," *El Comercio* (31 August 2020) (**C-34**), pp. 4-6.

[318] The Government Palace or *Palacio de Gobierno*, per its name in Spanish, is the seat of Peru's Executive Branch and the official residence of the President.

[319] G. Castañeda Palomino, "Gasoducto del Sur case: the prosecutor's office has an agenda with the meetings of José Graña, Jorge Barata and Nadine Heredia," *El Comercio* (31 August 2020) (**C-34**), pp. 4-5 ("The [28 April 2014] meeting with Heredia was, he said, to talk about the 'veto.' […] 'We talk about the Gas Pipeline. I asked her if she had told Odebrecht that Graña y Montero could not participate in the consortium.") (emphasis omitted). *See also* G. Castañeda Palomino, "Gasoducto del Sur case: the prosecutor's office has an agenda with the meetings of José Graña, Jorge Barata and Nadine Heredia," *El Comercio* (31 August 2020) (**C-34**), p. 3 ("the alleged veto from the Government Palace to the construction company so that it does not participate together with Odebrecht.").

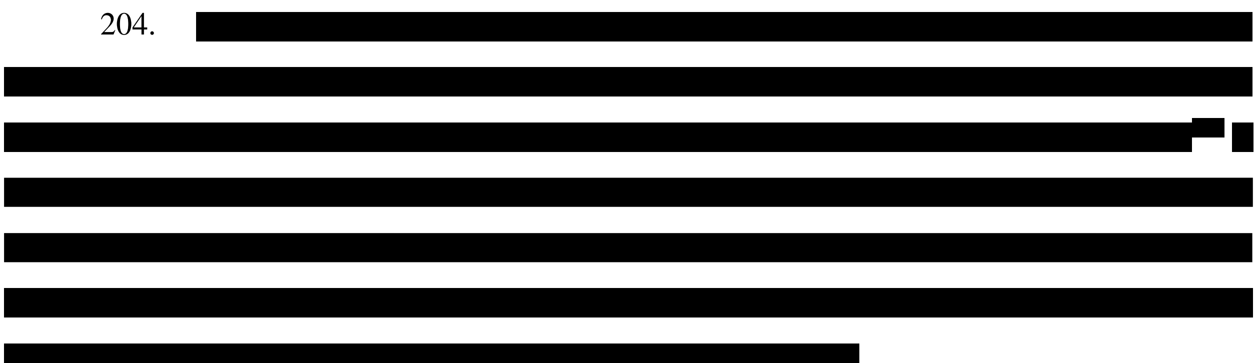
[320] Jorge Barata is the "former head of Odebrecht in Peru." *See* G. Castañeda Palomino, "Gasoducto del Sur case: the prosecutor's office has an agenda with the meetings of José Graña, Jorge Barata and Nadine Heredia," *El Comercio* (31 August 2020) (**C-34**), p. 2.

[321] *See* G. Castañeda Palomino, "Gasoducto del Sur case: the prosecutor's office has an agenda with the meetings of José Graña, Jorge Barata and Nadine Heredia," *El Comercio* (31 August 2020) (**C-34**), p. 3.

publications.[322] The article further explains that this dynamic continued in a second meeting in November 2013[323] and thereafter until Ms. Heredia's grudge against GyM ultimately led her to "veto" the company's participation in the South Pipeline Project unless GyM "help[ed] her with the El Comercio issue."[324]

203. Given Ms. Heredia's refusal to let GyM participate in the South Pipeline Project, the article explains, GyM and Odebrecht signed a "parallel agreement" whereby the latter would transfer 20% of its shareholding to the former within 60 days, although this did not happen within the timeframe agreed because Ms. Heredia was "still very annoyed."[325]

204.



205. The article's report of a meeting between Ms. Heredia and Mr. Graña on 10 February 2015 is similarly unavailing to Amorrortu's claim because there is no suggestion, let alone proof, that the topic or purpose of the meeting was to engage in illicit activity. More importantly, the meeting took place *after the Blocks had been properly adjudicated through the Bidding Processes*. Therefore, the causal link between what Amorrortu maintains is evidence of

---

[322] *See* G. Castañeda Palomino, Gasoducto del Sur case: the prosecutor's office has an agenda with the meetings of José Graña, Jorge Barata and Nadine Heredia (31 August 2020) (**C-29**), p. 3 (translation provided by Counsel because Claimant's translation of this sentence in C-34 contains an error by referring to Ms. Heredia as "he").

[323] *See* G. Castañeda Palomino, "Gasoducto del Sur case: the prosecutor's office has an agenda with the meetings of José Graña, Jorge Barata and Nadine Heredia," *El Comercio* (31 August 2020) (**C-34**), p. 4.

[324] *See* G. Castañeda Palomino, "Gasoducto del Sur case: the prosecutor's office has an agenda with the meetings of José Graña, Jorge Barata and Nadine Heredia," *El Comercio* (31 August 2020) (**C-34**), pp. 4-5.

[325] *See* G. Castañeda Palomino, "Gasoducto del Sur case: the prosecutor's office has an agenda with the meetings of José Graña, Jorge Barata and Nadine Heredia," *El Comercio* (31 August 2020) (**C-34**), pp. 4-5.

[326] SoC, ¶ 152 (emphasis omitted).

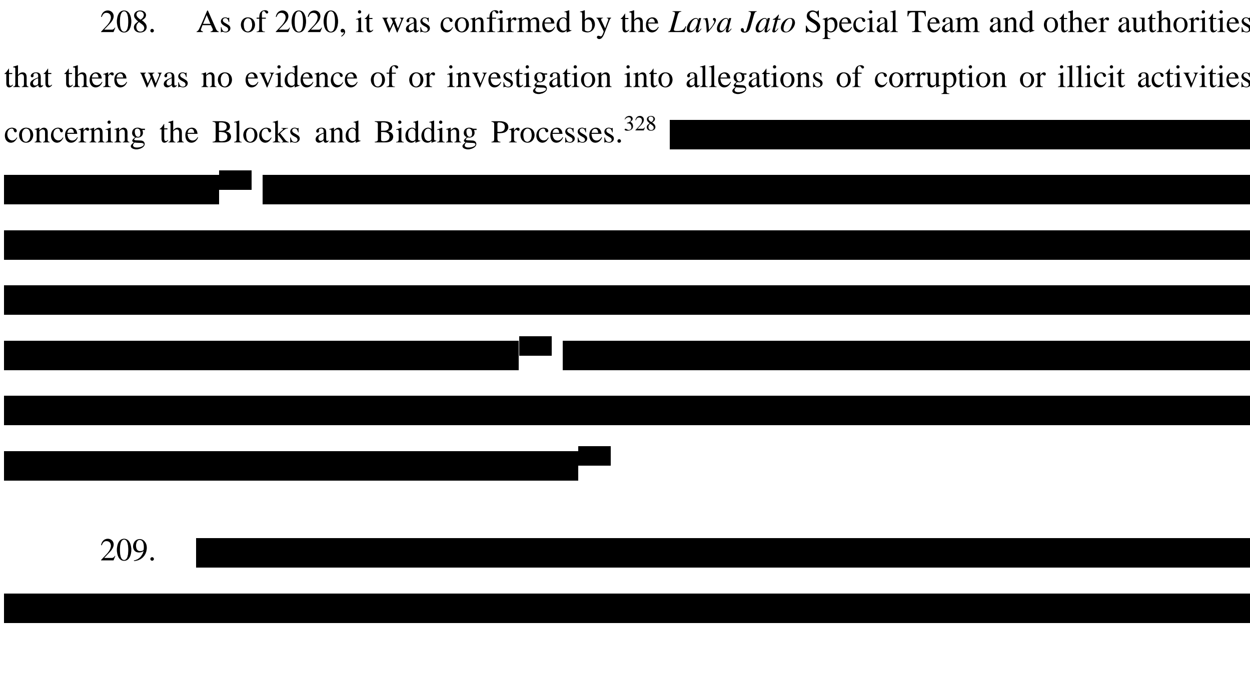
corruption (a meeting in 2015) and the conduct that Amorrortu complains of (Perupetro's adjudication of the Blocks in 2014) is, once again, missing.

206. In sum, a single argument (without supporting evidence) and two newspaper articles are simply insufficient for Amorrortu to meet his burden of proving the corruption he alleges.

#### 3. The *Lava Jato* Special Team has found no evidence of corruption with respect to the Blocks or the Bidding Processes

207. In December 2016, a task force of special prosecutors—called *Equipo Especial de Fiscales*—was created to investigate the allegations of corruption underlying the *Lava Jato* scandal in Peru (the "***Lava Jato* Special Team**").[327]

208. As of 2020, it was confirmed by the *Lava Jato* Special Team and other authorities that there was no evidence of or investigation into allegations of corruption or illicit activities concerning the Blocks and Bidding Processes.[328]



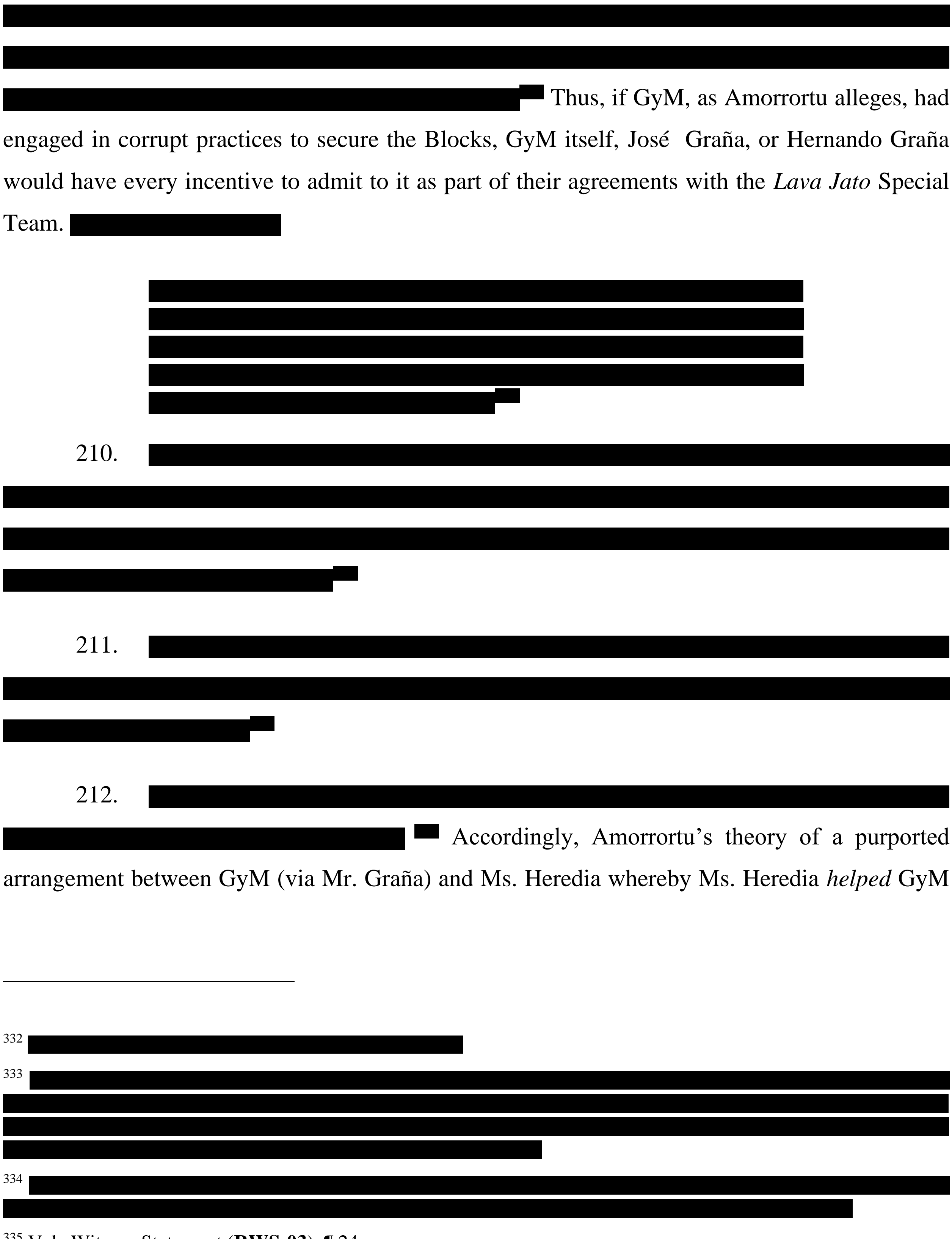
[327] *See* National Prosecutor's Office, *Resolution No. 5050-2016-MP-FN* (26 December 2016) (**R-50**).

[328] Oficio No. s/n-2020-FSCEE-MP-FN (11 June 2020) (**R-59**); Oficio No. 274-2020-JUS/PPAH-ODEBRECHT (9 June 2020) (**R-57**); Compilation of letters dated 8 July 2020 to 7 August 2020 (**R-61**); Oficio No. 1199-2020-IN/PELAD/D (1 May 2020) (**R-55**); Oficio No. 003013-2020-MP-FN-SEGFIN (17 September 2020) (**R-62**).

[329] *See* Vela Witness Statement (**RWS-03**), ¶ 24.

[330] *See* Vela Witness Statement (**RWS-03**), ¶ 22.

[331] *See* Vela Witness Statement (**RWS-03**), ¶ 24.



Thus, if GyM, as Amorrortu alleges, had engaged in corrupt practices to secure the Blocks, GyM itself, José Graña, or Hernando Graña would have every incentive to admit to it as part of their agreements with the *Lava Jato* Special Team.

210.

211.

212. Accordingly, Amorrortu's theory of a purported arrangement between GyM (via Mr. Graña) and Ms. Heredia whereby Ms. Heredia *helped* GyM

[332]

[333]

[334]

[335] Vela Witness Statement (**RWS-03**), ¶ 24.

[336] Vela Witness Statement (**RWS-03**), ¶¶ 25-28.

secure the Blocks is inconsistent with the broadly reported evidence suggesting that, during the relevant period, GyM did not curry any favor with Ms. Heredia.

213. [redacted]

***

214. Ultimately, the weakness of Claimant's corruption allegation is laid bare by one simple question. If Amorrortu believed that the Bidding Processes were vitiated by corruption as he now claims to have eventually learned "after conducting a thorough investigation,"[337] why did he never file a formal complaint before the Peruvian authorities, including the *Lava Jato* Special Team?[338] Amorrortu certainly knew that the individuals he now maintains were involved in the corruption scheme were under investigation and that some had even "confessed to having participated in the payment of bribes."[339] He could have presented his theory to the authorities for further investigation. In keeping with his behavior in the context of the Bidding Processes,[340] Amorrortu chose not to exercise any those rights.

215. Instead, just as he had told Ms. Tafur,[341] he instituted arbitral proceedings requesting that a tribunal condemn the Republic of Peru for grave accusations involving its

[337] Amorrortu Witness Statement (**CWS-01**), ¶ 99. *See also* SoC, note 95.

[338] [redacted]

[339] Amorrortu Witness Statement (**CWS-01**), ¶ 99.

[340] *See* § II.C.3.

[341] Tafur Witness Statement (**RWS-02**), ¶ 37 ("I remember that, around the time of or after the adjudication of the Blocks, Amorrortu came to my office again. This time, Amorrortu's tone was of aggressive insistence. He was furious that Graña y Montero had been the last remaining bidder. He exclaimed that Graña y Montero had been favored and threatened to initiate arbitration.") (translation provided by Counsel. In the original Spanish: "Recuerdo que, alrededor de, o posterior a la adjudicación de los Lotes, el Señor Amorrortu se volvió a presentar en mi oficina. Esta vez, el tono del Señor Amorrortu era de una insistencia agresiva. Estaba furioso de que Graña y Montero había quedado como el

international responsibility on the basis of no real evidence whatsoever. Such blatant abuse of the investment arbitration system must be rejected and, with it, Amorrortu's claims in this proceeding.

último postor. Exclamaba que Graña y Montero había sido favorecida, y amenazó con iniciar un arbitraje.") (emphasis added).

## III. AMORRORTU'S CLAIM IS OUTSIDE THE JURISDICTION OF THE TRIBUNAL

### A. Amorrortu's Claim was Already Time-Barred When He Submitted it To Arbitration On 21 August 2023

216. Amorrortu's claim is premised on his allegation that certain measures taken by Perupetro (namely, failing to engage in direct negotiations with Amorrortu's company, Baspetrol, submitting the contracts for Blocks III and IV to public tender, and awarding them to GyM)[342] breached Peru's Minimum Standard of Treatment obligation under Article 10.5 of the Treaty in four ways: (i) violation of customary principles of international law that prohibit corruption;[343] (ii) violation of his legitimate expectations;[344] (iii) alleged arbitrary and discriminatory conduct;[345] and (iv) lack of transparency.[346] In short, Amorrortu submits that "Peru breached the minimum standard of treatment […] because it aborted the direct negotiation process with Baspetrol to give the contract to Graña y Montero based on corrupt motives."[347]

217. This breach, according to Amorrortu, occurred on 14 July 2014, when "Perupetro commenced a public bidding process and invited oil companies interested in the exploitation of hydrocarbons to participate in International Public Bidding Process No. PERUPETRO-001-2014-LOT III and International Public Bidding Process No. PERUPETRO-002-2014-LOT IV…"[348] Amorrortu says that he "immediately" traveled to Peru when he learned about this "unusual development."[349] This means that Amorrortu knew of the alleged Treaty breach as soon as the impugned measure was adopted on 14 July 2014.

218. This is fatal to Amorrortu's case because Article 10.18.1 of the Treaty imposes a three-year limitation period for the submission of any claims to arbitration that starts to run from

---

[342] SoC, ¶¶ 265-266, 280-281.

[343] SoC, § V.C.1.

[344] SoC, § V.C.2.

[345] SoC, § V.C.3.

[346] SoC, § V.C.4.

[347] NoA, ¶ 90.

[348] SoC, ¶ 82.

[349] SoC, ¶ 82.

the moment the claimant "first acquired knowledge" of the alleged breach and the loss. Because this claim is deemed to have been submitted on the date Peru received the Statement of Claim, *i.e.*, on 21 August 2023, the earliest possible date on which Amorrortu would be permitted to have acquired knowledge of the alleged Treaty breach for purposes of the limitation period of Article 10.18.1 is 21 August 2020 (the "**Critical Date**") (**Subsection 1**).

219. Although in the Statement of Claim Amorrortu claimed that he first acquired knowledge of the breach and the loss in June 2019,[350] he was forced to alter this position in the bifurcation phase, after Peru demonstrated that his claim was already time-barred.[351] To salvage his case, Amorrortu now claims that the date on which he first acquired knowledge of the breach and the loss is 31 August 2020.[352] Although this change of position may have helped Amorrortu avert the bifurcation of Peru's time bar objection, the conclusion that the limitation period had already expired when Amorrortu submitted his Statement of Claim on 21 August 2023 is irrefutable. The evidence on which Amorrortu himself relies in support of his claim shows that he knew the facts supporting his claim far earlier than 21 August 2020 (**Subsection 2**).

### 1. The applicable legal standard

220. Article 10.18.1 of the USPTPA establishes a three-year limitation period for the submission of a claim to arbitration:

> No claim may be submitted to arbitration under this Section if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 10.16.1 and knowledge that the claimant (for claims brought under Article 10.16.1(a)) or the enterprise (for

---

[350] SoC, ¶¶ 258-259 ("such conduct was in breach of the USPTPA was unknown and unknowable to Amorrortu until June 2019 when Graña y Montero finally acknowledged its involvement in the Corruption Scheme undertaken together with Odebrecht in various megaprojects in Peru"; "Amorrortu did not become aware of the fact that Peru's prior conduct was unlawful under the USPTPA until June 2019 and could not have learned such information earlier with any amount of due diligence") (emphasis added).

[351] *See* NoI to Bifurcate, § II.A; Request for Bifurcation, § I.A; Reply to Claimant's Opposition to Bifurcation, § II.A.

[352] Claimant's Opposition to Bifurcation, ¶ 48 ("Tellingly, in June of 2019, there was no publicly available information that explicitly implicated Lots III and IV in the corruption scheme. The diaries showing that the First Lady met with Graña y Montero's executives to discuss Lots III and IV before the direct negotiation process was aborted, before Graña y Montero was awarded the underlying contracts, and before the contracts were signed, did not become available until August 31, 2020.") (emphasis added).

claims brought under Article 10.16.1(b)) has incurred loss or damage.[353]

221. It is beyond dispute that Peru's consent to submit this claim to arbitration in accordance with the Treaty is contingent on strict compliance with this limitation period of three years.[354] Article 10.18.1 is the first of several provision of Article 10.18, which is expressly titled "Conditions and Limitations on Consent of Each Party." Moreover, in the words of the tribunal in *Aaron Berkowitz v. Costa Rica*, provisions such as Article 10.18.1 of the USPTPA constitute "legitimate legal mechanism[s] to limit the proliferation of historic claims, with all the attendant legal and policy challenges and uncertainties that they bring."[355] Arbitral tribunals that have interpreted similar clauses—such as Articles 1116(2) and 1117(2) of NAFTA and Article 10.18.1 of CAFTA[356]—have stressed that limitation periods introduce "a clear and rigid limitation defence—not subject to any suspension, prolongation or other qualification."[357]

---

[353] United States and Peru Trade and Promotion Agreement Investment Chapter ("**USPTPA Investment Chapter**") (12 April 2006) (**CLA-1**), Art. 10.18.1 (**CLA-1**) (emphasis added).

[354] *Corona Materials LLC v. Dominican Republic*, ICSID Case No. ARB(AF)/14/3, Award on the Respondent Expedited Preliminary Objections in Accordance with Article 10.20.5 of the DR-CAFTA (31 May 2016) (**RLA-28**), ¶ 189.

[355] *Aaron C. Berkowitz, Brett E. Berkowitz and Trevor B. Berkowitz (formerly Spence International Investments and others) v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award (Corrected) (30 May 2017) (**RLA-33**), ¶ 208.

[356] North American Free Trade Agreement, Chapter 11: Investment [Excerpt] (1 January 1994) (**RLA-70**), Arts. 1116(2), 1117(2) ("Article 1116: […] 2. An investor may not make a claim if more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage. Article 1117: […] 2. An investor may not make a claim on behalf of an enterprise described in paragraph 1 if more than three years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage."); Free Trade Agreement between Central America, the Dominican Republic and the United States of America, Chapter 10: Investment [Excerpt] (1 January 2009) (**RLA-104**), Art. 10.18.1 ("Article 10.18: Conditions and Limitations on Consent of Each Party 1. No claim may be submitted to arbitration under this Section if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 10.16.1 and knowledge that the claimant (for claims brought under Article 10.16.1(a)) or the enterprise (for claims brought under Article 10.16.1(b)) has incurred loss or damage.").

[357] *Grand River Enterprises Six Nations, Ltd. et al. v. United States of America*, UNCITRAL, Decision on Objections to Jurisdiction (20 July 2006) (**RLA-8**), ¶ 29. *See also Marvin Roy Feldman Karpa v. United Mexican States*, ICSID Case No. ARB(AF)/99/I, Award (16 December 2002) (**RLA-4**), ¶ 63; *Apotex Inc. v. The Government of the United States of America*, UNCITRAL, Award on Jurisdiction and Admissibility (14 June 2013) (**RLA-129**), ¶ 304; *Corona Materials LLC v. Dominican Republic*, ICSID Case No. ARB(AF)/14/3, Award on the Respondent Expedited Preliminary Objections in Accordance with Article 10.20.5 of the DR-CAFTA (31 May 2016) (**RLA-28**), ¶ 192; *Aaron C. Berkowitz, Brett E. Berkowitz and Trevor B. Berkowitz (formerly Spence International Investments and*

222. Based on the text of the Treaty and the UNCITRAL Rules, the relevant date for determining whether a claim falls within the three-year limitation period of Article 10.18.1 is determined by counting back from the date on which the claimant filed his Statement of Claim, *i.e.*, "when the claimant's notice of or request for arbitration ('notice of arbitration') […] referred to in Article 3 of the UNCITRAL Arbitration Rules, together with the statement of claim referred to in Article 18 of the UNCITRAL Arbitration Rules [*i.e.*, Article 20 of the 2013 UNCITRAL Rules], are received by the respondent."[358] As mentioned above, since Amorrortu filed his Statement of Claim on 21 August 2023, the critical date in this case for the purposes of applying the three-year limitation period is 21 August 2020.[359]

223. The limitation period begins to run from the date on which the claimant, for the first time, had or should have had knowledge of the alleged breach of the Treaty and that it incurred damage as a result of such breach. Since the Treaty requires that the claimant, "acquired, or should have first acquired, knowledge"[360] of the alleged breach and that it incurred damage as a result of such breach, the knowledge can be actual or constructive. The requirement of actual or constructive knowledge is widely considered by tribunals interpreting similar clauses to be "an objective

---

*others) v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award (Corrected) (30 May 2017) (**RLA-33**), ¶ 63.

[358] USPTPA Investment Chapter (**CLA-1**), Art. 10.16.4 (emphasis added). *See also Michael Ballantine and Lisa Ballantine v. Dominican Republic*, PCA Case No. 2016-17, Submission of the United States of America (6 July 2018) (**RLA-159**), ¶ 3 ("In accordance with Article 10.16(4), in a proceeding under the UNCITRAL Arbitration Rules, a claim is 'deemed submitted to arbitration' when the claimant's notice of arbitration and statement of claim are received by the respondent.") (emphasis added).

[359] To be sure, the *Amorrortu I* arbitration is irrelevant to Peru's time bar objection. It is indisputable that limitation periods introduce "a clear and rigid limitation defense which, as such, is not subject to any suspension, prolongation or other qualification." Accordingly, the *Amorrortu I* proceedings did not suspend the limitation period. But even if the Tribunal were to conclude (quod non) that this arbitration commenced on 11 September 2020, *i.e.,* the date of Amorrortu's Statement of Claim in the *Amorrortu I* arbitration, the evidence on the record shows that all the relevant facts supporting Amorrortu's claim were known or should have been known to him before 11 September 2017, which is the critical date arrived to by counting back from 11 September 2020. In relation to the rigid limitation period, *see*, *Aaron C. Berkowitz, Brett E. Berkowitz and Trevor B. Berkowitz (formerly Spence International Investments and others) v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award (Corrected) (30 May 2017) (**RLA-33**), ¶ 29; *Marvin Roy Feldman Karpa v. United Mexican States*, ICSID Case No. ARB(AF)/99/I, Award (16 December 2002) (**RLA-4**), ¶ 63; *Apotex Inc. v. The Government of the United States of America*, UNCITRAL, Award on Jurisdiction and Admissibility (14 June 2013) (**RLA-129**), ¶ 304; *Corona Materials LLC v. Dominican Republic*, ICSID Case No. ARB(AF)/14/3, Award on the Respondent Expedited Preliminary Objections in Accordance with Article 10.20.5 of the DR-CAFTA (31 May 2016) (**RLA-28**), ¶ 192.

[360] USPTPA Investment Chapter (**CLA-1**), Art. 10.18.

standard; what a prudent claimant should have known or must reasonably be deemed to have known […] [if it had] 'exercise[d] […] reasonable care or diligence'."[361]

224. Finally, knowledge of damage need not be precisely quantified for purposes of determining the three-year limitation period of the USPTPA. The *Corona Materials* tribunal, for example, concluded that "it is not necessary that a claimant be in a position to fully particularize its legal claims […]."[362] Additionally, as the tribunal in *Aaron Berkowitz v. Costa Rica* explained, "[i]t is the first appreciation of loss or damage in consequence of a breach that starts the limitation clock ticking."[363]

225. In view of the above, if the date on which Amorrortu first acquired actual or constructive knowledge of the alleged breach and of the resulting damage precedes the Critical Date, the Tribunal would have to conclude that Amorrortu submitted this claim after the limitation period had expired.

### 2. Amorrortu knew of the alleged breach and of the loss before the critical date

226. The bedrock for Amorrortu's claim is that his company, Baspetrol, was deprived of the right to obtain the Block III and IV contracts through direct negotiation.[364] Instead of engaging in a direct negotiation process with Baspetrol, Amorrortu argues that Perupetro issued an international call for tenders that was allegedly designed to award the contracts to GyM.[365] Amorrortu submits that "Peru breached the minimum standard of treatment […] because it aborted

---

[361] *Aaron C. Berkowitz, Brett E. Berkowitz and Trevor B. Berkowitz (formerly Spence International Investments and others) v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award (Corrected) (30 May 2017) (**RLA-33**), ¶ 209 (citing *Grand River v. USA*, Decision on Jurisdiction (**RLA-8**), ¶ 59).

[362] *Corona Materials LLC v. Dominican Republic*, ICSID Case No. ARB(AF)/14/3, Award on the Respondent Expedited Preliminary Objections in Accordance with Article 10.20.5 of the DR-CAFTA (31 May 2016) (**RLA-28**), ¶ 194.

[363] *Aaron C. Berkowitz, Brett E. Berkowitz and Trevor B. Berkowitz (formerly Spence International Investments and others) v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award (Corrected) (30 May 2017) (**RLA-33**), ¶ 213.

[364] SoC, ¶¶ 25, 82-88.

[365] SoC, ¶¶ 82, 89.

the direct negotiation process with Baspetrol to give the contract to Graña y Montero based on corrupt motives."[366]

227. The limitation period of Article 10.18.1 cannot be evaded by basing a claim on the alleged motives behind the impugned measures. As the tribunal in *Vivendi v. Argentina* observed, "[t]here is extensive authority for the proposition that the state's intent, or its subjective motives are at most a secondary consideration."[367] Indeed, a breach of the treaty is "unrelated to whether the Respondent has had any deliberate intention or bad faith in adopting the measures in question."[368]

228. In the present case, Amorrortu was well-aware of the alleged breach years before the Critical Date, *i.e.*, 21 August 2020. In fact, he complained about "irregularities," "illegalities," and "discrimination," as soon as the alleged breach occurred as demonstrated by Amorrortu's own statement's, as well as the evidence from 2014 and 2015, upon which Amorrortu relies, including:

i. **14 July 2014**: Amorrortu alleges that "the breach of Amorrortu's rights under the USPTPA [occurred] on July 14, 2014, when Peru arbitrarily decided to open the International Public Bidding Process for Blocks III and IV."[369] Already on 16 July 2014, Amorrortu considered that this fact "completely ignore[ed] the law and the implications of a Direct Negotiation."[370]

ii. **20 August 2014**: Amorrortu is invited to participate to the public tender.[371] On this date, he claims that "[his] expectations of receiving a proper response, analyzing the viability of my proposal, were completely frustrated at this point."[372]

---

[366] NoA, ¶ 90.

[367] *Compañia de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Award (20 August 2007) (**CLA-37**), ¶ 7.5.20.

[368] *RSM Production Corporation and others v. Grenada*, ICSID Case No. ARB/10/6, Award (10 December 2010) (**RLA-114**), ¶ 7.2.24.

[369] SoC, ¶ 89.

[370] SoC, ¶ 85.

[371] Letter from I. Tafur Marín (Perupetro) to B. Amorrortu (Baspetrol) (20 August 2014) (**C-13**).

[372] Amorrortu Witness Statement (**CWS-01**), ¶ 91.

iii. **3 November 2014**: Baspetrol could not go forward in the bidding process.[373] According to Amorrortu, "the process was purposely designed to exclude Baspetrol and award the contract to Graña y Montero."[374] Indeed, he argued that there were irregularities in the bidding process:

a. 2 October 2014: Modification to the bidding rules. According to Amorrortu "[t]his change was requested by Graña y Montero on October 2, 2014, and it obviously favored Graña y Montero."[375] The modifications were published on 3 November 2014.[376]

b. 20 October 2014: Modification pertaining to Form 1 publicly available from 3 November 2014.[377] Claimant and Dr. Yaya argue that the modification resulted in "the approval of new Bidding Rules."[378]

c. 5 February 2015: Amorrortu objects to these supposed irregularities in his letter to Ms. Tafur claiming that Perupetro's decision to award the Blocks to Graña y Montero was illegal.[379]

iv. **12 December 2014**: GyM is announced as the winning bidder for Blocks III and IV[380] and Amorrortu complains about this result in a letter to Ms. Tafur

---

[373] SoC, ¶ 87. *See also* Letter from R. Guzman (Perupetro) to B. Amorrortu (Baspetrol) (3 November 2014) (**C-15**); Amorrortu Witness Statement (**CWS-01**), ¶ 93.

[374] SoC, ¶ 87.

[375] SoC, ¶ 160.

[376] *See* Perupetro, *Minutes No. 13 of the Commission in charge of conducting the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (3 November 2014) (**R-36**); Perupetro, *Circular No. 4 of the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (3 November 2014) (**R-37**).

[377] *See* Perupetro, *Minutes No. 13 of the Commission in charge of conducting the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (3 November 2014) (**R-36**); Perupetro, *Circular No. 4 of the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (3 November 2014) (**R-37**).

[378] SoC, ¶ 161; Yaya Expert Report (**CER-02**), ¶¶ 188, 232. *See* Perupetro's Board of Directors, *Agreement No. 071-2014*, *Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (30 June 2014) (**C-36**).

[379] Letter from B. Amorrortu (Baspetrol) to I. Tafur Marín (Perupetro) (5 February 2015) (**C-16**).

[380] Petroperu, S.A.'s Release (6 April 2015) (**C-75**).

dated 15 December 2014 alleging irregularities, "indicating how the process was discriminatory against Baspetrol,"[381] and threatening arbitration.[382]

v. **5 February 2015**: In a letter to Ms. Tafur, Amorrortu reiterates that Baspetrol has been unjustly discriminated during the tender process: "that PERUPETRO, up until today, has not accepted our Proposal to operate Block III is illegal and affects us, because we consider it a clear discrimination carried out by Perupetro."[383] According to Amorrortu "the situation that had developed so far only demonstrated discrimination by Perupetro against me and in that of Baspetrol."[384]

229. It is beyond dispute that the date of the breach is "the one on which the State adopts the disputed measure."[385] That is the moment when "the rights of the claimants [are] allegedly affected."[386] In the context of limitation periods, the *Resolute Forest v. Canada* tribunal concluded that "[FET] [b]reaches […] occur when the governmental conduct complained of occurs"[387] and that is "when the State act is first perfected and can be definitively characterized as a breach of the relevant obligation."[388]

---

[381] SoC, ¶ 88. *See also* Letter from B. Amorrortu (Baspetrol) to I. Tafur Marín (Perupetro) (15 December 2014) (**C-17**); Letter from B. Amorrortu (Baspetrol) to I. Tafur Marín (Perupetro) (5 February 2015) (**C-16**).

[382] Tafur Witness Statement (**RWS-02**), ¶ 37. *See also* Letter from B. Amorrortu (Baspetrol) to I. Tafur Marín (Perupetro) (15 December 2014) (**C-17**).

[383] Letter from B. Amorrortu (Baspetrol) to I. Tafur Marín (Perupetro) (5 February 2015) (**C-16**), p. 2 (translation provided by Counsel. In the original Spanish: "El que PERUPETRO, hasta el día de hoy, no haya aceptado nuestra Propuesta para operar el Lote III es ilegal y nos afecta, porque lo consideramos una clara discriminación ejecutada por PERUPETRO.") (emphasis added).

[384] Amorrortu Witness Statement (**CWS-01**), ¶ 96 (emphasis added).

[385] *Philip Morris Asia Limited v. Australia*, PCA Case No. 2012-12, Award on Jurisdiction and Admissibility (17 December 2015) (**RLA-140**), ¶ 530 (*citing Renée Rose Levy and Gremcitel S.A. v. Republic of Peru*, ICSID Case No. ARB/11/17, Award (9 January 2015) (**RLA-136**), ¶ 149).

[386] *Philip Morris Asia Limited v. Australia*, PCA Case No. 2012-12, Award on Jurisdiction and Admissibility (17 December 2015) (**RLA-140**), ¶ 531.

[387] *Resolute Forest Products Inc. v. Government of Canada*, PCA Case No. 2016-13, Decision on Jurisdiction and Admissibility (30 January 2018) (**RLA-156**), ¶ 154.

[388] *Resolute Forest Products Inc. v. Government of Canada*, PCA Case No. 2016-13, Decision on Jurisdiction and Admissibility (30 January 2018) (**RLA-156**), ¶ 158. *See also Seo Jin Hae v. Republic of Korea*, HKIAC Case No. HKIAC/18117, Concurring Opinion of Dr. Benny Lo (21 September 2019) (**RLA-37**), ¶ 37 ("[f]or a 'breach' to have occurred, there must have been in existence, at that point in time, sufficient (alleged) facts to constitute a cause of action enabling the [investor] to bring a claim.") (*citing Aaron C. Berkowitz, Brett E. Berkowitz and Trevor B.*

230. Based on the evidence provided above, there is no doubt that Amorrortu knew of the alleged breach long before the Critical Date. This is further confirmed by the fact that on 6 February 2015, Amorrortu sent the U.S. State Department a letter illustrating the alleged irregularities in the bidding process.[389]

231. Amorrortu's allegation that he only discovered confirmation of corrupt or irregular acts on 31 August 2020[390] does not change the fact that he was aware, or should have been aware, of the core of the alleged measures in 2014 and 2015, as demonstrated by the evidence proffered by Amorrortu himself. Notably, the alleged new discoveries of corruption in no way change the underlying understanding of circumstances as they existed around the time GyM signed the contracts in 2015.

232. Even assuming *arguendo* that the alleged new discoveries of corruption on 31 August 2020 actually changed the underlying circumstances as they existed when Graña y Montero signed the contracts in 2015, this change of circumstances only goes to the confirmation of what Amorrortu already suspected was the *motivation* behind the impugned measures, not the measures themselves. As explained above, Amorrortu alleges that the same measures breached the Treaty in four separate and concurrent manners, including, but not limited to, corruption.[391] In framing his claim as such, Amorrortu has effectively relegated the discovery of alleged corruption to an unnecessary and irrelevant element of his claim, for purposes of prescription. The discovery of what Amorrortu alleges may have been the true motivation or reason behind certain measures does not change the fact that Amorrortu knew about those measures and considered them to be wrongful and harmful to his putative investment by 2015.

---

*Berkowitz (formerly Spence International Investments and others) v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award (Corrected) (30 May 2017) (**RLA-33**), ¶ 210).

[389] *See* Amorrortu Witness Statement (**CWS-01**), ¶ 97; SoC, ¶ 88.

[390] Opposition to Bifurcation, ¶ 48.

[391] Peru observes that Amorrortu has not demonstrated that protection against corruption, as alleged in this case, has crystallized as part of customary international law for purposes of the Minimum Standard of Treatment. Peru will demonstrate in § IV.B below that the cases cited by Claimant are distinguishable and do not constitute a reflection of customary international law.

233. In that regard, the alleged arbitrary or discriminatory measures as well as the alleged lack of transparency became known to Amorrortu for the first time many years before the Critical Date. Amorrortu claims that the alleged breaches resulted from instructions and information received by PeruPetro that frustrated his alleged rights to initiate a direct negotiation to operate Blocks III and IV with Baspetrol,[392] which, by his own account, became known to him for the first time in 2014, when Blocks III and IV were placed for public tender and ultimately awarded to GyM. Indeed, Amorrortu complained about supposed "irregularities" of the public bidding and of the awarding of Blocks III and IV contracts to GyM[393] making untenable any assertion that he acquired knowledge later in time. Thus, regardless of the date on which he may have acquired knowledge of the alleged corruption, Amorrortu already considered Peru to have acted in breach of its international obligations by the time Graña y Montero received the *Buena Pro*.

234. Amorrortu also acquired knowledge of his alleged damages before the critical date as he maintains that the appropriate date for the valuation of his damages is 14 July 2014, the date Perupetro announced that Blocks III and IV would be put up for public tender.[394] Amorrortu admits that he had knowledge of the alleged loss at that date when it supposedly occurred, which would trigger the initiation of the limitation period. In any respect, all the complained violations occurred more than three years after he commenced this arbitration.

***

235. Even by his own account, more than three years have elapsed since Amorrortu first acquired knowledge or should first have acquired knowledge of the facts supporting his claims. Therefore, his claims are time-barred under the USPTPA.

---

[392] SoC, ¶¶ 354-355.

[393] SoC, ¶ 348.

[394] SoC, ¶ 384.

### B. Amorrortu Is Not Entitled To The Protections Of The USPTPA Because His Peruvian Nationality Was His Dominant And Effective Nationality At The Time Of The Alleged Breach

236. Peru has not consented to arbitration with Amorrortu because he fails to meet the nationality requirements under USPTPA (**Subsection 1**). It is beyond dispute that Amorrortu was a dual citizen of Peru and the United States when the alleged breach occurred, *i.e.*, 14 July 2014.[395] Because Amorrortu's Peruvian nationality was dominant and effective at the time of the purported breach, Peru did not owe him any obligations under the USPTPA and, therefore, his claim falls outside the Tribunal's jurisdiction (**Subsection 2**). Moreover, Amorrortu was not entitled to submit this claim because he purported to renounce his nationality when a dispute with Peru was foreseeable. As a result, Amorrortu's renunciation of his Peruvian nationality was a manifest abuse of process requiring the dismissal of his claim (**Subsection 3**).

#### 1. The applicable legal standard

237. The USPTPA offers protected status to investors with the nationality of one State party that invest in the territory of the other State party. It does not, however, allow claims of an investor seeking Treaty protection against the State of his own nationality. This prohibition against claims by nationals of the respondent State derives from Art. 10.1 of the Treaty, which establishes that investment protections "appl[y] to measures adopted or maintained by a Party relating to: (a) investors of another Party."[396] The term "investor of a Party" is in turn defined in Art. 10.28 of the USPTPA:

> **investor of a Party** means a Party or state enterprise thereof, or a national or an enterprise of a Party, that attempts through concrete action to make, is making, or has made an investment in the territory of another Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality.[397]

[395] SoC, ¶ 89 ("the breach of Amorrortu's rights under the USPTPA [occurred] on July 14, 2014, when Peru arbitrarily decided to open the International Public Bidding Process for Blocks III and IV.").

[396] USPTPA Investment Chapter (**CLA-1**), Art. 10.1.

[397] USPTPA Investment Chapter (**CLA-1**), Art. 10.28 (underline added; bold in original).

238. Article 10.28 also provides that in the event that the alleged investor seeking Treaty protection is a dual national, as is the case here, his "dominant and effective nationality" shall be dispositive as to the applicability of Treaty protections.[398] The purpose of this test is to "determine whether the investor is truly a foreigner or the investor enjoys the same degree of personal connection to the host State that any other of its nationals enjoys."[399]

239. As a general principle, State action can only be deemed a breach of an international obligation if "the State is bound by the obligation in question at the time the act occurs."[400] This principle is codified in Article 10.16.1 of the USPTPA, which establishes that claims submitted to arbitration must necessarily involve a breach of an obligation by the respondent State. Moreover, the "Scope and Coverage" section of the USPTPA (Article 10.1) establishes that the Investment Chapter of the USPTPA applies to "measures adopted or maintained by a Party relating to investors of another Party."[401] This language demonstrates that a critical time for assessing the nationality of a claim is when the measures in question were "adopted or maintained." Amorrortu claims that the Treaty breaches occurred on 14 July 2014, when Perupetro "arbitrarily decided to open the International Public Bidding Process for Blocks III and IV."[402] At that point, Amorrortu was a dual national of Peru and the United States. While Amorrortu avers that "the United States is his dominant and exclusive nationality,"[403] he nevertheless has provided no evidence substantiating this assertion.

---

[398] USPTPA Investment Chapter (**CLA-1**), Art. 10.28 ("a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality").

[399] *David R. Aven and others v. Republic of Costa Rica*, ICSID Case No. UNCT/15/3, Final Award (18 September 2018) (**RLA-163**), ¶ 215.

[400] International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries* (2001) (**CLA-33**), Art. 13 ("An act of a State does not constitute a breach of an international obligation unless the State is bound by the obligation in question at the time the act occurs."). *See also Michael Ballantine and Lisa Ballantine v. Dominican Republic*, PCA Case No. 2016-17, Submission of the United States of America (6 July 2018) (**RLA-159**), ¶ 4 ("Thus, in order for the dispute to come within the scope of Chapter Ten, the investor must be 'an investor of another Party', *i.e.*, a Party other than the respondent Party, at the time of the purported breach.") (emphasis omitted).

[401] USPTPA Investment Chapter (**CLA-1**), Art. 10.1.

[402] SoC, ¶ 89.

[403] SoC, ¶ 176.

### 2. Amorrortu's effective and dominant nationality was Peruvian when the alleged breach occurred

240. To determine which nationality is dominant and effective, tribunals consider a range of factors, including: (i) the State of habitual residence, (ii) the circumstances in which second nationality was acquired, (iii) the individual's personal attachment to a particular country, and (iv) the center of a person's economic, social, and family life.[404]

241. The evidence attached to the Statement of Claim, as well as publicly available information, shows that the center of Amorrortu's economic, social, and family life at the time of the breach was Peru. For example:

a. Amorrortu constituted Baspetrol in Talara, Peru in 2012, only two years after he became an American citizen.[405]

b. Amorrortu opened "bank accounts for Baspetrol in Talara both for U.S. Dollars and national currency."[406]

c. Amorrortu hired staff and registered the company with the Peruvian tax authority SUNAT and with the State Procurement Supervisory Agency ("**OSCE**");[407] "Amorrortu organized the structure of all the executive, operational, administrative, and logistical personnel of Baspetrol to operate in Talara."[408] During these years, he always maintained his Peruvian citizenship.

d. Amorrortu claims to have invested at least US$ 80,000.00 in Baspetrol plus at least US$ 500,000.00 in organizational expenses.[409] Baspetrol was allegedly active from October 2012 to May 2015, including in technical petroleum consulting, as well as

---

[404] *Reza Said Malek v. Iran*, IUSCT Case No. 193, Interlocutory Award (23 June 1988) (**RLA-68**), ¶ 14. *See also Fernando Fraiz Trapote v. Bolivarian Republic of Venezuela*, PCA Case No. 2019-11, Award (31 January 2022) (**RLA-182**), ¶¶ 407-410; *Dawood Rawat v. Republic of Mauritius*, PCA Case No. 2016-20, Award on Jurisdiction (6 April 2018) (**RLA-157**), ¶ 166; *Michael Ballantine and Lisa Ballantine v. Dominican Republic*, PCA Case No. 2016-17, Final Award (3 September 2019) (**RLA-169**), ¶¶ 548-550. *See Enrique Heemsen and Jorge Heemsen v. Bolivarian Republic of Venezuela*, PCA Case No. 2017-18, Award on Jurisdiction (29 October 2019) (**RLA-170**), ¶ 441.

[405] Amorrortu became a US citizen in 2010 and was issued his first United States passport on 1 March 2010. *See* SoC, ¶ 174.

[406] SoC, ¶ 58.

[407] SoC, ¶ 58.

[408] SoC, ¶ 62.

[409] SoC, ¶¶ 53, 186-188.

in the development of infrastructure, both in Lima and in Talara.[410] Amorrortu claims he was involved in all these activities.

e. At the time of Baspetrol's incorporation, Amorrortu declared to be domiciled Lima.[411]

PIURA Y TUMBES; COMPARECEN: DON BACILIO ANTONIO AMORRORTU TORRES, QUIEN MANIFIESTA SER INGENIERO, PROCEDE POR SU PROPIO DERECHO Y EN REPRESENTACION DE SU ESPOSA DOÑA JANE COLE AMORRORTU, SEGÚN PODER ESPECIAL OTORGADO POR ANTE EL CONSUL GENERAL DEL PERU EN HOUSTON, TEXAS, ESTADOS UNIDOS DE AMERICA SU FECHA 02 DE OCTUBRE DE 2012, IDENTIFICADO CON DOCUMENTO NACIONAL DE IDENTIDAD N° 03848173 EL CUAL PRESENTA EN ESTE ACTO Y, ASIMISMO, EN REPRESENTACION DE DON SEBASTIAN AMORRORTU MONTENEGRO, CON DNI N° 40439149 SEGÚN PODER OTORGADO POR ANTE EL CONSUL GENERAL DEL PERU EN HOUSTON, TEXAS, ESTADOS UNIDOS DE AMERICA SU FECHA 03 DE OCTUBRE DE 2012, SEÑALA DOMICILIO EN LA AVENIDA LA FLORESTA 369, DPTO. 302, SURCO, LIMA, DE TRANSITO EN ESTA CIUDAD DE TALARA, DISTRITO DE PARIÑAS, PROVINCIA DE TALARA, DEPARTAMENTO DE PIURA Y;==========================================

**Appear:** Mr. Bacilio Antonio Amorrortu Torres, [....] he signals he is domiciled in Avenida La La Floresta 369, Dpto. 302, Surco, Lima, transiting in this city of Talara, Pariñas District, Province of Talara, Department of Piura.

f. On multiple occasions since 2010 and as recently as 2017, he identified himself as a Peruvian national when giving powers of attorney.[412]

---

[410] SoC, ¶¶ 57-58, 186-188.

[411] Certificate of Incorporation of Baspetrol S.A.C. (17 October 2012) (**C-24**), p. 3 ("domicilio en la Avenida La Floresta 369, Dpto. 302, Surco, Lima").

[412] Oficio No. 4587-2020-SUNARP-Z.R.N°IX/PUB.EXON (28 May 2020) (**R-56**), p. 96-101.

**PODERDANTE:**
BACILIO ANTONIO AMORRORTU TORRES, de nacionalidad peruana, estado civil casado(a) e identificado con D.N.I Nº 03848173.

**APODERADO:**
CARLOS FERNANDO ZAMALLOA CHAVEZ VELANDO e identificado con D.N.I Nº 10789098.

**DOCUMENTO:**
POR ESCRITURA PÚBLICA DE FECHA 10/02/2017 OTORGADO ANTE NOTARIO PÚBLICO RICARDO JOSE BARBA CASTRO, EN LA CIUDAD DE LIMA.

> **GRANTOR OF THE POWER OF ATTORNEY**:
> BACILIO ANTONIO AMORRORTU TORRES, of Peruvian nationality, married and identified with ID No. 0384173.
>
> **AUTHORIZED PERSON**:
> CARLOS FERNANDO ZAMALLOA CHAVEZ VELANDO identified with ID No. 10789098.
>
> **DOCUMENT**:
> BY THE PUBLIC DEED OF 10/02/2017 GRANTED BEFORE THE PUBLIC NOTARY RICARDO JOSE BARBA CASTRO, IN THE CITY OF LIMA.

g. In his alleged proposal for Baspetrol to operate Blocks III and IV, Amorrortu describes himself as an "successful oil businessman Peruvian from Talara."[413] He never identified himself as a U.S. national.

[413] Alleged Proposal from Baspetrol SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (**C-11**), pp. 8, 13 [PDF] (translation provided by Counsel. In the original Spanish: "exitoso empresario petrolero talareño, peruano") (emphasis added).

Mediante la presente propuesta, BASPETROL SAC liderada por el ingeniero de petróleo y empresario petrolero Talareño, Bacilio Antonio Amorrortu Torres ("Amorrortu"), solicita a PERUPETRO S.A. iniciar negociaciones directas para operar los lotes petroleros III y IV del Nor-Oeste del Perú. Esta solicitud está amparada legalmente por los precedentes en materia de contratación

Por los antecedentes antes descritos, queda claro que Amorrortu, es un conocido empresario petrolero Talareño y Peruano exitoso, que conoce muy bien lo que ha pasado en el sector en materia de

internacional ha tomado nota de estos hechos, por lo sucedido a un exitoso empresario petrolero talareño, peruano. Luego de 14 años de permanecer en el exilio, Amorrortu retorna en Agosto del 2012 a Talara y funda una nueva empresa petrolera privada local, reiterando su capacidad emprendedora.

h. Amorrortu continued to vote in Peruvian elections, and in fact voted in the regional elections of 2014.[414]

i. According to a website, Amorrortu is also a manager in another Peruvian company: COMPAÑIA PESQUERA PUNTA RESTIN S.A.[415] Records show that at least until 2020 he was affiliated to seven Peruvian companies.[416]

**j.** Peruvian family ties: Amorrortu's daughter, Fiorella Amorrortu, is also a Peruvian national based on a Power of Attorney granted to her in 2011 to sell his property in Peru.[417] Additionally, Amorrortu's sons are both Peruvian[418] and one was domiciled in Peru at the time of Baspetrol's incorporation.[419]

242. In contrast, Amorrortu's ties with the United States do not seem as dominant as he claims. Based on the evidence on the record and his social media presence, Amorrortu was not a

---

[414] Oficio No. 000667-2020-SG/ONPE (11 June 2020) (**R-58**), p. 27.

[415] *See* Company Information of Compañia Pesquera Punta Restin S.A. (**R-65**).

[416] Oficio No. 4587-2020-SUNARP-Z.R.N°IX/PUB.EXON (28 May 2020) (**R-56**), p. 19. *See Enrique Heemsen and Jorge Heemsen v. Bolivarian Republic of Venezuela*, PCA Case No. 2017-18, Award on Jurisdiction (29 October 2019) (**RLA-170**), ¶ 441 (when assessing effective nationality, the tribunal considered as relevant factors that the investors operated and constituted companies in the host state as nationals of the host state).

[417] Public Deed No. 171 on Renunciation of Nationality (17 August 2019) (**R-54**), pp. 8-9.

[418] Certificate of Incorporation of Baspetrol S.A.C. (17 October 2012) (**C-24**), p. 3 ("Los comparecientes son peruanos.").

[419] Certificate of Incorporation of Baspetrol S.A.C. (17 October 2012) (**C-24**), p. 3 ("domicilio en la Avenida La Floresta 369, Dpto. 302, Surco, Lima").

habitual resident of the United States at the time of the alleged breach. In fact, his Facebook page indicates that he resides in Beaulieu-Sur-Mer, France.[420]

**Intro**

Former President at Baspetrol SAC

Studied Petroleum engineering at Universidad Nacional de Ingenieria Lima Peru

Studied Petroleum Engineering. Graduated 1975-2. at Universidad Nacional de Ingenieria Lima Peru

Studied Investment Management at **Houston Community College District**

Went to San Miguel, Piura, Peru

Lives in **Beaulieu-sur-Mer**

From **Puerto Talara, Piura, Peru**

Notably, this is the address he also listed in several letters to Perupetro in 2014 and 2015.[421]

243. According to the *Ballantine* tribunal, a nationality is not "effective" if "it has never been exercised; if the individual has never presented himself or herself as a national of that country."[422] Likewise, a nationality is not effective if "he or she holds no personal or professional connection to that country; or if he or she has never complied with obligations or exercised rights as a national of that country."[423]

---

[420] Facebook Profile of Bacilio Amorrortu (**R-64**) (*available at* https://www.facebook.com/carrizo100) (last accessed: 26 April 2024).

[421] Letter from B. Amorrortu (Baspetrol) to "Comisión de la Licitación Pública Internacional No. PERUPETRO-1-2014" (31 October 2014) (**C-14**); Letter from B. Amorrortu (Baspetrol) to I. Tafur Marín (Perupetro) (5 February 2015) (**C-16**); Letter from B. Amorrortu (Baspetrol) to I. Tafur Marín (Perupetro) (15 December 2014) (**C-17**).

[422] *Michael Ballantine and Lisa Ballantine v. Dominican Republic*, PCA Case No. 2016-17, Final Award (3 September 2019) (**RLA-169**), ¶ 539.

[423] *Michael Ballantine and Lisa Ballantine v. Dominican Republic*, PCA Case No. 2016-17, Final Award (3 September 2019) (**RLA-169**), ¶ 539.

244. As demonstrated by the evidence discussed above, Amorrortu fails this test: he has exercised his Peruvian nationality, he has presented himself as a Peruvian national, he has personal and professional connections to Peru, and he has exercised his rights as a Peruvian national.

245. Similarly, in *Heemsen v. Venezuela*, the tribunal considered that the following factors would have qualified claimants as investors with dominant and effective nationality of Venezuela:

> Claimants are Venezuelan from birth; they are domiciled in Valencia, State of Carabobo, Venezuela; they have had their descendents in the Republic; they have constituted companies as Venezuelans; they have acted in the commercial companies related to La Salina only as nationals of the Republic; they have not enrolled their participation in those commercial companies nor in La Salina before the Superintendency of Foreign Investments as an international investment; and they have not enrolled in the Superintendency of Foreign Investments as foreign investors.[424]

246. Amorrortu meets this test of effective nationality. He was born in Peru, at the time of the alleged breach he was domiciled in Peru, he has operated Peruvian companies and acted as a Peruvian national.

247. Amorrortu should not be allowed to take advantage of his Peruvian nationality when making the investment but rejecting it when applying for the protections of the USPTPA. Amorrortu cannot have his cake and eat it too. In the words of the tribunal in *Ballantine*:

> The Tribunal finds trouble reconciling the fact that the Claimants' desire was to be viewed as Dominicans for purposes of bolstering their investment and yet, regarding the application of the protections

---

[424] *Enrique Heemsen and Jorge Heemsen v. Bolivarian Republic of Venezuela*, PCA Case No. 2017-18, Award on Jurisdiction (29 October 2019) (**RLA-170**), ¶ 441 (translation provided by Counsel. In the Spanish original: "Los Demandantes son venezolanos de nacimiento; están domiciliados en Valencia, estado Carabobo, Venezuela; han tenido su descendencia en la República; han constituido sociedades como venezolanos; han actuado en las sociedades comerciales vinculadas con La Salina como nacionales de la República únicamente; no han inscrito su participación en las referidas sociedades comerciales ni en La Salina ante la Superintendencia de Inversiones Extranjeras como una inversión internacional; y no se han inscrito ante la Superintendencia de Inversiones Extranjeras como inversionistas extranjeros").

designed for foreign investors, they contend such nationality is not as important.[425]

248. Based on the evidence discussed above, it is clear that Amorrortu's Peruvian nationality took precedence over his United States' nationality when the alleged breach occurred. Therefore, Amorrortu does not qualify as an investor of a Contracting Party in accordance with the definition set forth in Articles 10.16.1 and 10.28 of the USPTPA.

#### 3. Amorrortu's renunciation of his Peruvian nationality when a dispute with Peru was foreseeable constitutes an abuse of process requiring the dismissal of his claim

249. Amorrortu renounced his Peruvian nationality in a Public Deed before Peru's consulate in Houston, Texas.[426] In the Public Deed, Amorrortu did not explain the reasons he was giving up his Peruvian citizenship. He simply stated that he was doing it for personal reasons.[427]

250. Amorrortu submitted his renunciation of his Peruvian nationality three days before giving Peru notice of the existence of a dispute,[428] at which point the dispute was not only foreseeable, but also Amorrortu had already retained counsel and begun preparing an investment treaty case against Peru.

251. The circumstances surrounding Amorrortu's renunciation of his Peruvian nationality further support the conclusion that his dominant and effective nationality is that of Peru and that he gave up his Peruvian nationality so as not to be considered a dual national on the date he submitted his claim to arbitration.

252. This attempt to manufacture jurisdiction alone requires the dismissal of the claim. Arbitral tribunals have the duty to protect the integrity of the international arbitration system and

---

[425] *Michael Ballantine and Lisa Ballantine v. Dominican Republic*, PCA Case No. 2016-17, Final Award (3 September 2019) (**RLA-169**), ¶ 584.

[426] Public Deed No. 171 on Renunciation of Nationality (17 August 2019) (**R-54**).

[427] Public Deed No. 171 on Renunciation of Nationality (17 August 2019) (**R-54**), p. 3.

[428] Amorrortu went to the Peruvian Consulate in Houston to renounce his Peruvian nationality on 16 September 2019. Three days later, on 19 September 2019, Amorrortu filed his Notice of Intent in *Amorrortu I*. *See* Bacilio Amorrortu's Notice of Intent to Arbitrate Against Peru (19 September 2019) (**C-23**).

ensure the proper administration of justice. In fact, "[a] court must enjoy such powers in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of its process."[429] The doctrine of abuse of process exists to protect parties from the misuse of the international arbitration system.

253. Consistent with their duty to protect the integrity of the system of international arbitration, arbitral tribunals have held that "an international investor <u>cannot modify downstream the protection granted to its investment by the host State, once the acts which the investor considers are causing damages to its investment have already been committed.</u>"[430] The same is true with nationality. The *Mihaljevic v. Croatia* tribunal was "troubled by the Claimant's conduct" because the "sole reason for the Claimant's application to relinquish his citizenship was so that he could pursue arbitration against the Respondent."[431] This is exactly what Amorrortu did here. He relinquished his Peruvian nationality days before issuing a Notice of Dispute against Peru in an attempt to evade the nationality requirement of the USPTPA.

254. The distinction between abuse of process and a legitimate change of nationality depends on whether the change "was made in good faith <u>before the occurrence of any event or measure giving rise to a later dispute</u>."[432] When an investor "changes its nationality in order to gain [...] jurisdiction at a moment when things have started to deteriorate so that a dispute is highly probable, it can be considered an abuse of process."[433]

---

[429] *See* C. Brown, "The Inherent Powers of International Courts and Tribunals," 76 *British Yearbook of International Law* 1 (2006) (**RLA-93**), p. 205.

[430] *Phoenix Action, Ltd. v. The Czech Republic*, ICSID Case No. ARB/06/5, Award (15 April 2009) (**RLA-105**), ¶ 95 (emphasis added).

[431] *Marko Mihaljevic v. Republic of Croatia*, ICSID Case No. ARB/19/35, Award (19 May 2023) (**RLA-187**), ¶ 137.

[432] *Pac Rim Cayman LLC v. Republic of El Salvador*, ICSID Case No. ARB/09/12, Decision on the Respondent's Jurisdictional Objections (1 June 2012) (**RLA-121**), ¶ 2.47 (emphasis added).

[433] *Lao Holdings N.V. v. Lao People's Democratic Republic*, ICSID Case No. ARB(AF)/12/6, Decision on Jurisdiction (21 February 2014) (**RLA-134**), ¶ 76 (emphasis omitted).

255. In *Mobil v. Venezuela* the tribunal observed that if the claimants had tried to change nationality through a corporate restructuring to assert jurisdiction over a dispute that arose prior to the change, it would have constituted an abuse of process:

> With respect to pre-existing disputes […] the Tribunal considers that to restructure investments only in order to gain jurisdiction under a BIT for such disputes would constitute, to take the words of the Phoenix Tribunal, 'an abusive manipulation of the system of international investment protection under […] the BITs.'[434]

256. Arbitral tribunals have also found abuse of process when the change occurs at a point in which a dispute was foreseeable,[435] *i.e.*, "when there is a reasonable prospect that a measure that may give rise to a treaty claim will materialise."[436] In this case, Amorrortu remained a dominantly Peruvian national when he was aware that he would be presenting his Notice of Dispute, and this is why he decided to renounce his Peruvian nationality immediately prior to presenting a Notice of Dispute against Peru.

257. Amorrortu, therefore, should not be considered a national of the United States at the date of commencement of the arbitration due to abuse of process.

***

258. Amorrortu is thus not a protected investor under the USPTPA. The evidence demonstrates that Amorrortu's effective nationality was that of Peru. Indeed, his center of interest was Peru and he always presented himself as Peruvian. Additionally, Amorrortu should not be

---

[434] *Venezuela Holdings, B.V., et al. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/27, Decision on Jurisdiction (10 June 2010) (**RLA-112**), ¶ 205.

[435] *Philip Morris Asia Limited v. Australia*, PCA Case No. 2012-12, Award on Jurisdiction and Admissibility (17 December 2015) (**RLA-140**), ¶ 585; *Lao Holdings N.V. v. Lao People's Democratic Republic*, ICSID Case No. ARB(AF)/12/6, Decision on Jurisdiction (21 February 2014) (**RLA-134**), ¶ 76; *Pac Rim Cayman LLC v. Republic of El Salvador*, ICSID Case No. ARB/09/12, Decision on the Respondent's Jurisdictional Objections (1 June 2012) (**RLA-121**), ¶ 2.47.

[436] *Philip Morris Asia Limited v. Australia*, PCA Case No. 2012-12, Award on Jurisdiction and Admissibility (17 December 2015) (**RLA-140**), ¶ 585.

entitled to submit this claim because he purported to renounce his nationality when a dispute with Peru was foreseeable.

### C. The Tribunal Lacks Jurisdiction *Ratione Materiae* Because Amorrortu Did Not Have A Protected Investment

259. Under Article 10.16 of the USPTPA, Claimant may submit to arbitration only "an investment dispute."[437] Amorrortu argues that his "investment[s]" are rights "appurtenant" to direct negotiations with Perupetro for the operation of the Blocks, and his alleged contributions to his company, Baspetrol.[438] The dispute, however, does not concern an "investment" as required by Article 10.16 of the USPTPA for at least three reasons. *First*, under Peruvian law Baspetrol did not have a right to a direct negotiation with Perupetro. (**Subsection 1**). *Second*, even if (without conceding) Baspetrol's supposed proposal required Perupetro to start a direct negotiation, Baspetrol's alleged rights did not qualify as an "investment" under the USPTPA (**Subsection 2**). *Third*, even if (without conceding) Amorrortu proves that he made contributions to Baspetrol, such contributions rose only to the level of pre-investment and, as such, do not qualify as covered investments under the USPTPA. (**Subsection 3**).

#### 1. Baspetrol's alleged proposal did not start direct negotiations with perupetro

260. Claimant argues that Baspetrol's supposed proposal "commence[d] an exclusive Direct Negotiation Process with Perupetro to operate Blocks III and IV and acquired the appurtenant rights under Peruvian law."[439] Baspetrol's alleged proposal, however, did not produce any of the effects Amorrortu attributes to it.

261. *First*, Amorrortu's claim that Baspetrol's supposed proposal commenced direct negotiations is baseless. Amorrortu argues that this letter initiated Perupetro Procedure GFCN-008

---

[437] United States and Peru Trade and Promotion Agreement Investment Chapter ("**USPTPA Investment Chapter**") (12 April 2006) (**CLA-1**) ("**USPTPA Investment Chapter**"), Art. 10.16. *See also Latam Hydro LLC and CH Mamacocha S.R.L. v. Republic of Peru*, ICSID Case No. ARB/19/28, Award (20 December 2023) (**RLA-189**), ¶ 533.

[438] *See* SoC, ¶ 177 ("Amorrortu's investment in Peru is comprised of a bundle of rights that arise out of his investment in the Baspetrol enterprise and the rights that under Peruvian law this enterprise acquired almost two years after its incorporation to recover, through Direct Negotiation, the right to operate Block III (and IV)"). *See also Id.*, ¶ 185.

[439] SoC, ¶ 191.

(“**Procedure 8**”) which, according to him, is the “First Phase” of direct negotiations.[440] To be sure, Procedure 8 is an internal control directive of Perupetro that must be read in accordance with the provisions of Peru’s Hydrocarbon Law and its Rules.[441] Under these Rules, only a company that has been qualified by Perupetro may start direct negotiations.[442] Contrary to Amorrortu’s assertions, direct negotiations do not start with an expression of interest.

262. Peru’s legal expert, Dr. Raul Vizquerra, also notes that Baspetrol’s supposed proposal could not possibly have triggered a right to direct negotiation because it did not comply with the formalities that trigger Procedure 8, let alone actual direct negotiations under Peruvian law.[443] These formalities included (i) manifest consent to participate in the direct negotiation process; (ii) manifest consent to the Process for Qualification, and (iii) submission of the documents required by Law for Perupetro to assess if the company can be qualified.[444] A cursory review of Baspetrol’s “proposal” reveals that it lacked these basic requirements. The supposed proposal consists of a brief of 16 pages, with no specific data about the company’s operations or economic capabilities, no technical proposal or business plan, no specific identification of alleged international business partners, and purely aspirational descriptions of what the company hoped to do with the Blocks.[445]

263. *Second*, assuming *quod non* that Baspetrol’s alleged proposal triggered Procedure 8, he acquired no “appurtenant” rights. Dr. Vizquerra explains that Procedure 8 creates no rights; it is signed by Perupetro’s Director General, who has no authority to create rights in favor of any

---

[440] SoC, ¶¶ 196-197.

[441] Expert Report of Vizquerra (29 Apr. 2024) (**RER-02**) (“**Vizquerra Expert Report**”), ¶¶ 7, 14, note 5.

[442] Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (**CLA-3**), Art. 2 (“All Oil Companies must be duly qualified by PERUPETRO S.A. to start the negotiation of a Contract. The granting of Qualification does not generate any right over the Contract area.”) (translation provided by Counsel. In the original Spanish: “Toda Empresa Petrolera deberá estar debidamente calificada, por PERUPETRO S.A., para iniciar la negociación de un Contrato. El otorgamiento de Calificación no generará derecho alguno sobre el área de Contrato.”).

[443] Vizquerra Expert Report (**RER-02**), ¶¶ 6, 30-37.

[444] Vizquerra Expert Report (**RER-02**), ¶¶ 30, 35.

[445] *See* Alleged Proposal from Baspetrol SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (**C-11**).

person or company.[446] Indeed, as shown in Amorrortu's Statement of Claim,[447] this Procedure is a flowchart that simply assigns work within different departments in Perupetro and establishes steps that could eventually lead Perupetro to begin direct negotiations. Procedure 8 is only applicable to Perupetro.[448] Arbitral tribunals have observed that "[i]nternational law can only provide protection for rights recognized by domestic law."[449] Thus, even if Baspetrol's "proposal" commenced Procedure 8 (*quod non*), Claimant did not acquire any right under Peruvian law that could be covered under the USPTPA.

264. *Third*, Baspetrol's alleged proposal could not have resulted in direct negotiations, let alone a contract, because the Blocks were simply not available for direct negotiations. In practice, direct negotiations over oil producing blocks are exceptional.[450] Moreover, Perupetro will not engage in direct negotiations over oil blocks under existing contracts or that will be subject to a bidding process.[451] When Amorrortu submitted the Baspetrol "proposal" on 28 May 2014, the Blocks were under a contract with Interoil.[452] But even before Amorrortu sent the Baspetrol's "proposal," Perupetro had already announced publicly that after the expiration of the Interoil

---

[446] Vizquerra Expert Report (**RER-02**), ¶¶ 12-13.

[447] SoC, ¶¶ 197, 203, 207, p. 73.

[448] Vizquerra Expert Report (**RER-02**), ¶ 13.

[449] *Venezuela Holdings, B.V. et al. v Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/27, Decision on Annulment (9 March 2017) (**RLA-152**), ¶ 44 (emphasis added).

[450] Tafur Witness Statement (**RWS-02**), ¶¶ 24-26; Vizquerra Expert Report (**RER-02**), ¶ 46, note 23; Guzmán Witness Statement (**RWS-01**), ¶ 8.

[451] *See* Perupetro Procedure GFCN-8, Contracting Through Direct Negotiation (13 August 2012) (**CLA-44**), pp. 5, 11 (P1); SoC, ¶ 197. *See also* Expert Report of Anibal Quiroga León (18 Aug. 2023) (**CER-01**) ("**Quiroga Expert Report**"), ¶ 124(iii) ("In order to determine if the Request or Letter of Response of the oil company is adequate […] PERUPETRO S.A. must verify the availability of the requested area") (translation provided by Counsel. In the original Spanish: "Para determinar si la Solicitud o la Carta de Respuesta de la empresa petrolera es conforme […] PERUPETRO S.A. debe verificar la disponibilidad del área solicitada."); Vizquerra Expert Report (**RER-02**), ¶¶ 17, 49, 51.

[452] Perupetro´s Board of Directors, *Agreement No. 034-2014, Approval of Temporary License Draft Contract for Exploitation of Block III* (20 March 2014) (**C-3**), p. 1 ("the selection [bidding] process is conducted to celebrate the License Contract for the Exploitation of Hydrocarbons in Block III.") (translation provided by Counsel. In the original Spanish: "[…] se lleve a cabo el proceso de selección para la celebración del nuevo Contrato de Licencia para la Explotación de Hidrocarburos en el Lote III […].") (emphasis added).

Temporary Contracts, the Blocks would be adjudicated on the basis of a competitive bidding process, not direct negotiations.[453]

265. Moreover, Baspetrol never had the qualification certification necessary to start direct negotiations with Perupetro.[454] Baspetrol did not even apply for it.[455] Assuming *arguendo* that Baspetrol's alleged proposal was a request for this certification (despite containing no such request),[456] the "proposal" did not include the information and documentation required by law for consideration.[457] Thus, contrary to Claimant's assertions,[458] Perupetro had no duty to consider Baspetrol for qualification nor to respond to the supposed "proposal." Ultimately, Perupetro's alleged lack of response implied a rejection of the request,[459] not an approval.

---

[453] Ministry of Energy and Mines of Peru, *Supreme Decree No. 012-2014-EM, Temporary License Agreement Approval for the Exploitation of Hydrocarbons in Hydrocarbons in Block III, and Supreme Decree No. 013-2014-EM, Temporary License Agreement Approval for the Exploitation of Hydrocarbons in Hydrocarbons in Block IV* (5 April 2014) (**CLA-59**), pp. 1-2.

[454] Vizquerra Expert Report (**RER-02**), ¶¶ 6, 10.

[455] Vizquerra Expert Report (**RER-02**), ¶¶ 10, 86, 88.

[456] SoC, ¶ 286.

[457] Specifically, a company without prior experience like Baspetrol must provide (i) proof of the entity's existence; (ii) sworn statement of not being in bankruptcy, or similar status, nor having any legal impediment to contract; (iii) sworn statement that the entity has qualified staff to conduct exploration and exploitation activities; (iv) financial statements for the last 3 years; (v) information regarding the entity's exploitation and exploration activities for the prior 3 years, if any; (vi) sworn statement to comply with applicable provisions on environmental protection; (vii) documentation that demonstrates that the entity has the economic and financial capacity to develop the related activities, and (viii) commitment to engage a technically capable operator to conduct the exploration and exploitation. *See* Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (**CLA-3**), Arts. 5, 6. *See also* Vizquerra Expert Report (**RER-02**), ¶ 86. *See also* Quiroga Expert Report (**CER-01**), ¶¶ 105(i)-(ii).

[458] SoC, ¶ 196. *See also id.*, ¶ 203.

[459] Vizquerra Expert Report (**RER-02**), ¶¶ 9, 94; Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (**CLA-3**), Art. 14 ("PERUPETRO S.A. must grant the qualification to an Oil Company, within ten (10) business days of receiving the request [that meets the requirements of] articles 5 or 6 [...] as long as the Oil Company presents the documents required by said Articles in full." In the original Spanish: "PERUPETRO S.A. se encuentra obligada a otorgar la calificación a una Empresa Petrolera, dentro de los diez (10) días hábiles de recibida la solicitud [que cumpla con los requisitos de] los artículos 5 o 6] […] siempre y cuando la Empresa Petrolera presente los documentos mencionados en dichos Artículos de manera completa.") (emphasis added). Dr. Vizquerra explains that Claimant could have challenged this rejection in the following 5 business days, but he did not avail himself of this option. *See* Vizquerra Expert Report (**RER-02**), ¶ 96.

266. Finally, even if the Blocks were available and Baspetrol qualified (*quod non*), Claimant agrees that Perupetro has *discretion* to start direct negotiations.[460] Amorrortu further concedes that, since August 12, 2013, Mr. Ortigas had indicated that Block III would be subject to a public tender, *not to direct negotiation*.[461] More importantly, on 5 April 2014, Peru's Official Gazzette published Supreme Decrees 012-2014-EM and 013-2014-EM, confirming Perupetro's intention to subject the Blocks to bidding, *not direct negotiation*.[462] Thus, Perupetro's decision *not* to award the Blocks through direct negotiation was final and known even before Claimant submitted Baspetrol's alleged proposal.

267. In sum, Baspetrol's alleged proposal did not, and could not, start direct negotiations or vested "appurtenant" rights.

**a. In any event, Claimant waived his alleged "appurtenant" rights**

268. Even if Claimant commenced direct negotiations (*quod non*), he abandoned that process. On 14 July 2014, Perupetro published an invitation to participate in the public tenders over the Blocks[463] and he did not formally allege before the competent authorities that the invitation was invalid because there were ongoing direct negotiation over both Blocks.[464] In fact,

---

[460] Organic Hydrocarbons Law, 1993 (Act No. 26221 of 1993) (13 August 1993) (**CLA-45**), Art. 11. *See also* Perupetro's Board of Directors, *Agreement No. 029-2017, Direct Negotiation and Competitive Bidding Process Contracting Policy* (10 April 2017) (**R-51**), Art. 2.2. *See also* Quiroga Expert Report (**CER-01**), ¶ 101 ("Article 11 of the Organic Hydrocarbons Law provides that hydrocarbon exploitation contracts may be entered into, at Perupetro's discretion, after direct negotiation or by call for bids.") (translation provided by Counsel. In the original Spanish: "el Artículo 11° del TUO de la Ley Orgánica de Hidrocarburos [dispone que] los contratos de explotación [de hidrocarburos] pueden celebrarse, a criterio de PERUPETRO, previa negociación directa o por convocatoria.") (emphasis added).

[461] SoC, ¶ 68; Letter from L. Ortigas (Perupetro) to B. Amorrortu (Baspetrol) (12 August 2013) (**C-6**) (specifically, Mr. Ortigas indicated "should Perupetro decide to conduct a public tender that includes Lot III, the respective notices would be made." It never mentioned direct negotiation) (translation provided by Counsel. In the original Spanish: "en caso de que PERUPETRO S.A. decida la realizacion de una licitacion publica que incluya al actual Lote III, se efectuaran, en su oportunidad, las publicaciones respectivas […]").

[462] Ministry of Energy and Mines of Peru, *Supreme Decree No. 012-2014-EM, Temporary License Agreement Approval for the Exploitation of Hydrocarbons in Hydrocarbons in Block III, and Supreme Decree No. 013-2014-EM, Temporary License Agreement Approval for the Exploitation of Hydrocarbons in Hydrocarbons in Block IV* (5 April 2014) (**CLA-59**), pp. 1-2.

[463] Perupetro S.A., Press Release (14 July 2014) (**C-12**); SoC, ¶ 82.

[464] Mr. Quiroga argues that Claimant did not abandon the alleged direct negotiation because he asked Perupetro to suspend the bidding process (Quiroga Expert Report (**CER-01**), ¶ 215(ii)). However, Amorrortu never claimed that the bidding process was unlawful or inapplicable because there was an ongoing direct negotiation, as he now claims.

on 31 October 31, Claimant even willingly submitted a Letter of Interest on Block II pursuant to the Bidding Rules.[465] As a result, Claimant abandoned his alleged right to a direct negotiation.[466]

269. Claimant alleges that he participated in the Bidding Process "to prevent Perupetro from using the pretext of non-participation [to] deny" Baspetrol's alleged proposal.[467] But he never informed this to Perupetro and he made no reservation to any ongoing direct negotiation, or a right or expectation to it—although, under Peruvian law, a bidding process clearly excludes a direct negotiation.[468]

270. Finally, had Amorrortu commenced a direct negotiation or acquired "appurtenant" rights, he could and should have challenged the Bidding Process.[469] He did not. After receiving notice that his Letter of Interest did not meet the Minimum Indicators to proceed to the next step of the Bidding Process,[470] he informally complained to Perupetro's officials about the bidding's resolution, alleging discrimination[471] and described it as a negative result for Peru.[472] He did not challenge Perupetro's decision in any court or administrative body.

271. In sum, assuming *arguendo* that Claimant commenced direct negotiations or acquired "appurtenant rights," he willingly waived those rights.

---

In fact, in the communication cited by Dr. Quiroga, Amorrortu asks for the approval of Baspetrol's "proposal." This shows his knowledge that the Proposal had not been approved and thus that no direct negotiation had started. *See* Email from B. Amorrortu (Baspetrol) to L. Huayama (Member of Peru's Congress) (28 August 2014) (**C-72**), p. 2.

[465] Letter from B. Amorrortu (Baspetrol) to "Comisión de la Licitación Pública Internacional No. PERUPETRO-1-2014" (31 October 2014) (**C-14**); SoC, ¶ 86.

[466] Vizquerra Expert Report (**RER-02**), ¶ 66, note 29.

[467] SoC, ¶ 86.

[468] *See* SoC, ¶ 56 ("Amorrortu: (i) searched and reviewed the laws in force in Peru regarding commercial entities based in Peru").

[469] Vizquerra Expert Report (**RER-02**), ¶ 34.

[470] *See* Letter from R. Guzman (Perupetro) to B. Amorrortu (Baspetrol) (3 November 2014) (**C-15**); SoC, ¶ 87.

[471] Letter from B. Amorrortu (Baspetrol) to I. Tafur Marín (Perupetro) (5 February 2015) (**C-16**); SoC, ¶ 88.

[472] Letter from B. Amorrortu (Baspetrol) to I. Tafur Marín (Perupetro) (15 December 2014) (**C-17**); SoC, ¶ 88.

### b. Finally, any right was vested on Baspetrol, not Claimant

272. Even if a direct negotiation began, the "appurtenant rights" belonged to Baspetrol, not to Claimant. For instance, the *Axos v. Kosovo* tribunal observed that claimant "cannot avail itself of the rights" of the consortium of which it was a party, and that won a bidding process.[473] Subsequently, it found that claimant had no covered investment. [474]

273. The same situation arises here. Dr. Vizquerra confirms that, assuming *quod non* that Baspetrol's alleged proposal created any rights, those were vested in Baspetrol, not in Claimant.[475] Amorrortu concurs. He argues that the alleged "bundle of rights that arise out of his investment [are vested] in the Baspetrol enterprise."[476]

274. Moreover, there is no evidence that Baspetrol transferred such rights to Claimant. He argues that "the USPTPA [protection] includes the right to direct negotiation for Blocks III & IV acquired by Amorrortu <u>through Baspetrol</u>,"[477] but provides no support for such contention. In fact, Dr. Vizquerra explains that Baspetrol's alleged right to a direct negotiation is non-transferable.[478]

---

[473] *ACP Axos Capital GmbH v. Republic of Kosovo*, ICSID Case No. ARB/15/22, Award (3 May 2018) (**RLA-158**), ¶ 195.

[474] *ACP Axos Capital GmbH v. Republic of Kosovo*, ICSID Case No. ARB/15/22, Award (3 May 2018) (**RLA-158**), ¶ 245.

[475] Vizquerra Expert Report (**RER-02**), ¶ 21. Indeed, Amorrortu bases his right on Perupetro's alleged failure to respond to Baspetrol's "proposal" within ten days. *See* SoC, ¶ 202. Peruvian law establishes that such failure obliges Perupetro to provide the qualification certification to the *oil company*, not its shareholders. *See* Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (**CLA-3**), Art. 14 ("PERUPETRO S.A. must grant a Certificate of Qualification of Petroleum Company […] provided that the Petroleum Company submits the documents listed in said Articles in a complete manner and that no observations, errors, omissions are not found or that the additional information referred in Article 7 is not requested.") (translation provided by Counsel. In the original Spanish: "PERUPETRO S.A. se encuentra obligada a otorgar la Calificación de la <u>Empresa Petrolera</u> […] siempre y cuando la Empresa Petrolera presente los documentos mencionados en dichos Artículos de manera completa y si luego de efectuarse la evaluación correspondiente no se encontraran observaciones, errores u omisiones o no se solicitara la información adicional referida en el Artículo 7"); Quiroga Expert Report (**CER-01**), ¶ 99.

[476] SoC, ¶ 177.

[477] *See* SoC, § IV.B.3 (emphasis added), ¶¶ 225-226, 364.

[478] Vizquerra Expert Report (**RER-02**), ¶ 21.

275. Notably, Amorrortu has commenced this arbitration on his own behalf and not on behalf of Baspetrol. Thus, even if "appurtenant rights" were vested and were not waived, they vested to Baspetrol, not to Amorrortu. Thus, Amorrortu, as Claimant, has no protected investment.

### 2. Direct negotiations or appurtenant rights are not covered investments

#### a. Claimant did not have and could not have a contract with Perupetro

276. Even if Claimant commenced direct negotiations and acquired "appurtenant rights," he must demonstrate a legally binding agreement with Perupetro that grants a right to exploit the Blocks. Claimant did not have such a right.

277. For instance, in *Mihaly v. Sri Lanka*, the parties failed to conclude a contract for the construction and operation of a power plant, although (contrary to this case), they did engage in extensive negotiations. Claimant sought to recover costs incurred during these negotiations. The tribunal rejected jurisdiction because the negotiations alone, without contract, were not protected.[479]

---

[479] *Mihaly International Corporation v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/00/2, Award (15 March 2002) (**RLA-80**), ¶¶ 47, 61. This has been applied even when the parties have signed agreements confirming its intent to conclude a binding agreement. *See, e.g.*, *ST-AD GmbH (Germany) v. Republic of Bulgaria*, PCA Case No. 2011-06, Award on Jurisdiction (18 July 2013) (**RLA-131**), ¶ 273; *William Nagel v. The Czech Republic*, SCC Case No. 049/2002, Final Award (9 September 2003) (**RLA-83**), ¶¶ 320, 328–329; *Generation Ukraine, Inc. v. Ukraine*, ICSID Case No. ARB/00/9, Award (16 September 2003) (**RLA-84**), ¶ 18.9; *Christian Doutremepuich and Antoine Doutremepuich v. Republic of Mauritius*, PCA Case No. 2018-37, Award on Jurisdiction (23 August 2019) (**RLA-168**), ¶¶ 149–155; *Thomas Gosling et al. v. Republic of Mauritius*, ICSID Case No. ARB/16/32, Award (18 February 2020) (**RLA-173**), ¶¶ 99, 144–146, 230–242.

Similarly, in *Nagel v. Czech Republic*, claimant sought to reverse a bidding for a Global Systems Mobile license that allegedly breached the State's agreement with claimant to "seek to obtain" that same license. The tribunal held that such agreement was not an "investment" as it did not entail the license as such. *William Nagel v. The Czech Republic*, SCC Case No. 049/2002, Final Award (9 September 2003) (**RLA-83**), ¶¶ 1, 8-9, 76, 137, 140-141, 327, 329.

Also, in *Petrobart v. Kyrgyz Republic*, the tribunal held that the agreed-upon "possibility" to extend a gas-supply contract was not a protected investment because it was not legally binding. *Petrobart Limited v. The Kyrgyz Republic*, SCC Case No. 126/2003, Arbitral Award (29 March 2005) (**RLA-89**), pp. 68-72.

278. In *F-W Oil v. Trinidad & Tobago*, claimant even prevailed in a tender for the exploitation of oil blocks but failed to ultimately agree on a final contract. Thus, the tribunal concluded that there was no covered investment and dismissed the case for lack of jurisdiction.[480]

279. Here, it is undisputed that Claimant did not have a legally binding agreement with Perupetro. Amorrortu nonetheless argues that, in "practically all cases," direct negotiations "concludes with the execution of the contract."[481] Amorrortu is wrong. In fact, Peruvian law clearly establishes that having a certificate of qualification, and thus being able to engage in direct negotiations, grants no right over an oil block.[482]

280. Claimant's position is also absurd. It means that the simple expression of interest in negotiating, "practically" entails securing a contract to exploit oil blocks. This is unreasonable. In fact, even if direct negotiations begin, Perupetro must publish the availability of the blocks for procurement.[483] If any third party expresses interest, Perupetro must finish the direct negotiation and open a public tender[484] where, as we know, Baspetrol did not win. Amorrortu would thus have been in the same position had the direct negotiation commenced. Even if no other entity expressed interest or Baspetrol prevailed in the bidding process (*quod non*), the Ministry of Energy and Mines ("**MINEM**") would still need to approve the draft contract for its conclusion, and that approval could be withheld.[485]

---

[480] *F-W Oil Interests, Inc. v. Republic of Trinidad and Tobago*, ICSID Case No. ARB/01/14, Award (3 March 2006) (**RLA-95**), ¶¶ 183, 213.

[481] SoC, ¶ 193.

[482] Vizquerra Expert Report (**RER-02**), ¶ 15; Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (**CLA-3**), Art. 2.

[483] Perupetro Procedure GFCN-8, Contracting Through Direct Negotiation (13 August 2012) (**CLA-44**), pp. 3, 6 (activities Nos. 19-21), 12 (step 10, F), 13 (step B, 19-21, K (finishing with "[o]rder implementation of procedure GFCN-002: Conduct of Selection Process-Invitation to Tender" which excludes direct negotiations); Vizquerra Expert Report (**RER-02**), ¶ 20.

[484] Perupetro Procedure GFCN-8, Contracting Through Direct Negotiation (13 August 2012) (**CLA-44**), p. 3; Vizquerra Expert Report (**RER-02**), ¶ 20. Only if no third party expresses interest, or if the company presents the winning bid, may the direct negotiation continue to the evaluation of the proposal from the interested party.

[485] Vizquerra Expert Report (**RER-01**), ¶ 16.

281. In sum, even if started, direct negotiations do not guarantee a contract. Thus, Claimant did not have and could not have a legally binding agreement entitled to protection.

### b. Negotiations are not protected

282. To escape this conclusion, Claimant cites to *Lemire v. Ukraine*, *Bosca v. Ukraine* and *EDF v. Romania* and argues that a simple a right to negotiate *is* an investment. [486] This is incorrect. The cases cited by Amorrortu protect the extension of *already existing* contracts and covered investments: in *Lemire v. Ukraine*, a music radio station;[487] in *Bosca v. Lithuania*, a service agreement[488] and in *EDF v. Romania*, a joint venture in duty free shops.[489]

283. Thus, there is no dispute that, in absence of a legally binding contract, the alleged direct negotiations, or Claimant's rights thereof (*quod non*) are not "covered investments," and that Claimant did not have a contract.

284. In a final attempt to salvage his case, Claimant argues that the USPTPA goes "as far as protecting 'an investor that attempts through concrete action to make, is making, or has made an investment'."[490] But this quote refers to the definition of "investor," not "investment." Furthermore, in this case, Amorrortu only claims the alleged violation of the minimum standard of treatment.[491] Under the USPTPA, this standard is only owed to an "investment", not an

---

[486] SoC, ¶ 227.

[487] SoC, ¶ 230; *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Decision on Liability (14 January 2010) (**CLA-26**), ¶ 90. The tribunal reasoned that an "investment, once made, was subsequently denied frequencies and broadcasting licenses" and thus the "claim constitutes an 'investment dispute'." (emphasis added).

[488] SoC, ¶ 237. *Luigiterzo Bosca v. Republic of Lithuania*, PCA Case No. 2011-5, Award (17 May 2013) (**CLA-46**), ¶ 84, 166. The tribunal noted that "the Claimant made an investment in Lithuania when he concluded and realized the Service Agreement [on the sparkling wine industry]" and thus concluded that that it "need not decide whether the Agreement allows it to take jurisdiction over disputes concerning activities in advance of the establishment of an investment since it finds that the Claimant had an investment."

[489] SoC, ¶ 244. *See EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award (8 October 2009) (**CLA-4**), ¶ 46 ("EDF's investment in Romania consisted of its participation in two joint venture companies with Romanian entities owned by the Romanian Government"). In fact, the quote cited by Claimant establishes "the FET standard is the parties' legitimate and reasonable expectations with respect to the investment they have made" (emphasis added). *See EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award (8 October 2009) (**CLA-4**), ¶ 216.

[490] SoC, ¶ 224.

[491] *See* SoC, § V.C.

"investor."[492] Thus, even if Claimant's negotiations or pre-investment activities render him a protected "investor" (*quod non*), he still has no protected "investment" and, in any case, cannot claim a violation of the minimum standard of treatment, that is owed only to "investments."

285. In conclusion, Claimant did not have a legally binding agreement with Perupetro, and he could not have secure one, even assuming that he started direct negotiations (*quod non*.) As a result, Claimant has no protected investment, and the Tribunal lacks *ratione materiae* jurisdiction.

### 3. Claimant's Alleged Investment In Baspetrol Is Not Protected By The USPTPA

#### a. Claimant's alleged contributions to Baspetrol are pre-investment activities at most

286. Claimant argues that the USPTPA also protect "his initial investment to form the Baspetrol enterprise,"[493] which, he claims, comprises hard costs, a human rights' claim, a debt owed to Propetsa (Claimant's previous company), and his alleged experience and know how.[494] These alleged pre-investment contributions are not protected by the USPTPA.

287. Last December, the USPTPA tribunal of *Latam Hydro v. Peru* explained that " where the transaction or activities […] do not form an integral part of an overall operation that qualifies as an investment, prior tribunals have held that there is no covered investment."[495] For instance, in *Eyre v. Sri Lanka*, claimant made several contributions to a prospective hotel project.[496] Claimant argued that the State's dredging activities constituted an expropriation of the project. However, the tribunal rejected jurisdiction because the project was only a prospect and claimant had no right to it. Thus, his contributions "remained at best aspirational" and "rose only

---

[492]USPTPA Investment Chapter (**CLA-1**), Art. 10.5 ("Each Party shall accord to covered investments treatment in accordance with customary international law […].") (emphasis added).

[493] SoC, ¶ 185.

[494] SoC, ¶¶ 188-191.

[495] *Latam Hydro LLC and CH Mamacocha S.R.L. v. Republic of Peru*, ICSID Case No. ARB/19/28, Award (20 December 2023) (**RLA-189**), ¶ 538 (emphasis added).

[496] *Raymond Charles Eyre and Montrose Developments (Private) Ltd. v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/16/25, Award (5 March 2020) (**RLA-174**), ¶¶ 167, 296.

to the pre-investment level;" they "did not face the operational risk necessary […] to qualify as a protected investment."[497]

288. In the USPTA case of *Latam Hydro v. Peru*, claimant made financial and technical contributions to an upstream project aimed to power hydroelectric plants.[498] Citing to *Eyre v. Sri Lanka*, the tribunal noted that the project "did not proceed beyond the preliminary stage."[499] Thus, claimant's contributions did not "entail the 'commitment of capital or other resources' or 'the assumption of risk' as required by" the USPTPA to be an "investment," and it declined jurisdiction *ratione materiae* over them.[500]

289. Similarly, the USPTA does not protect Claimant's alleged contributions to Baspetrol. Claimant concedes he made those contributions "with the expectation to operate oil fields in Peru."[501] As seen, Claimant did not acquire a right to such operation. Neither him nor Baspetrol obtained the contract sought or a right to it. In the words of *Eyre v. Sri Lanka*, Claimant's contributions "remained at best aspirational" and are not entitled to protection. In any event, there is no objective evidence that he made the referred pre-investment contributions.[502]

---

[497] *Raymond Charles Eyre and Montrose Developments (Private) Ltd. v. Democratic Socialist Republic of Sri Lanka*, ICSID Case No. ARB/16/25, Award (5 March 2020) (**RLA-174**), ¶ 302.

[498] *Latam Hydro LLC and CH Mamacocha S.R.L. v. Republic of Peru*, ICSID Case No. ARB/19/28, Award (20 December 2023) (**RLA-189**), ¶ 529 (Claimant "[contributed] costs relating to feasibility studies and the creation of a holding company," amounting to USD$140,000). *See id.,* ¶ 294.

[499] *Latam Hydro LLC and CH Mamacocha S.R.L. v. Republic of Peru*, ICSID Case No. ARB/19/28, Award (20 December 2023) (**RLA-189**), ¶ 552.

[500] *Latam Hydro LLC and CH Mamacocha S.R.L. v. Republic of Peru*, ICSID Case No. ARB/19/28, Award (20 December 2023) (**RLA-189**), ¶ 522.

[501] SoC, ¶ 53 (emphasis added).

[502] First, for the hard costs, Claimant argues that he "initially invested approximately US$500,000 in hard costs in rent, studies, personnel, and travel." However, Amorrortu provides no evidence in support of his allegations (SoC, ¶ 188). Second, concerning the human rights claim, Claimant does not demonstrate how this alleged claim has the characteristics of an "investment." He neither substantiate his contention with any case law or treaty interpretation, and he fails to provide evidence demonstrating the existence of the claim and how allegedly he contributing it to Baspetrol. Third, concerning the debt owed to Propetsa, there is no evidence that said company waived such debt in Baspetrol's favor. Moreover, there is evidence that such debt is not enforceable against Peru (*see, e.g., Amorrortu v. Republic of Peru*, 570 F. Supp. 2d 916 (S.D. Tex. 2008) (31 July 2008) (**RLA-102**), p. 923 (dismissing Claimant's effort to enforce this debt against Peru, stating that "by his own admissions, the alleged debt is not owed by the Republic of Peru itself, but by Petroperu. Even if the Court assumes […] that PetroPeru is an oil company wholly-owned by the Republic of Peru, its actions in a commercial market are not attributable to the Republic of Peru."). Finally, concerning "experience and know how," Claimant fails to specify (i) the specific components of this

290. In conclusion, Claimant's alleged pre-investment contributions to Baspetrol are not protected by the USPTPA.

### b. In any case, Amorrortu does not own or control Baspetrol

291. Assuming that Claimant's pre-investment contributions to Baspetrol are protected, he does not own or control Baspetrol and thus cannot bring claims for those contributions. Under the USPTPA a "covered investment" means "every asset that an investor owns or controls, […]."[503] Amorrortu does not control Baspetrol, neither under international law nor under Peruvian law.

292. In *Aguas del Tunari v. Bolivia*, the tribunal held that a "'controlling interest [is] a greater-than-50% ownership interest in an enterprise.'"[504] Therefore, a "'[c]ontrolled corporation'" is a "'corporation in which the majority of the stock is held by one individual or firm.'"[505] Similarly, under Peru's General Law of Corporations a company is controlled when one "has majority shareholding with a right to vote or the right to elect the majority" of the board.[506]

293. Claimant owned only 40% of Baspetrol. His sons, Basilio Cesar Amorrortu and Sebastián Amorrortu Montenegro held the 60% remaining, and also contributed financially to

contribution; (ii) how was this contributed to Baspetrol, if it never acquired a contract to exploit oil blocks and (iii) Claimant offers only his statement to show the existence of the "experience and know how." This is not impartial, objective or reliable.

[503] USPTPA Investment Chapter (**CLA-1**), Art. 10.28 (emphasis added).

[504] *Aguas del Tunari, S.A. v. Republic of Bolivia*, ICSID Case No. ARB/02/3, Decision on Respondent's Objections to Jurisdiction (21 October 2005) (**RLA-92**), ¶ 231 (emphasis added).

[505] *Aguas del Tunari, S.A. v. Republic of Bolivia*, ICSID Case No. ARB/02/3, Decision on Respondent's Objections to Jurisdiction (21 October 2005) (**RLA-92**), ¶ 232.

[506] General Law of Corporations (Law No. 26887 of 1997) (**RLA-74**), Art. 105 (translation provided by Counsel. In the original Spanish: "Las acciones de propiedad de una sociedad que es controlada por la sociedad emisora de tales acciones no dan a su titular derecho de voto ni se computan para formar quórum. Se entiende por sociedad controlada aquella en la que, directa o indirectamente, la propiedad de más del cincuenta por ciento de acciones con derecho a voto o el derecho a elegir a la mayoría de los miembros del directorio corresponda a la sociedad emisora de las acciones.") (emphasis added).

Baspetrol.[507] Thus, Claimant does not own or controls Baspetrol. In any case, he provides no objective evidence that his 40% stake allows him to exercise control over the company.

294. Even if the 40% share of Baspetrol is controlled by Amorrortu, investors could, at most, and only arguably, present claims for their shares.[508] However, Amorrortu seeks protection 100% of Baspetrol's.[509] Thus, his claim is inadmissible.

***

295. In conclusion, Claimant has no covered investment. He had no legally binding agreement with Perupetro and his contributions to Baspetrol are not covered by the USPTPA. Thus, the Tribunal lacks jurisdiction *ratione materiae*.

### D. The Tribunal Lacks Jurisdiction *Ratione Materiae* Because The Disputed Measures Are Not Attributable To Peru

296. The challenged measures fall outside the Tribunal's jurisdiction *ratione materiae* because they are not attributable to Peru. According to Article 10.1(2) of the Treaty, Peru's "obligations […] shall apply to a state enterprise [only] when it exercises any regulatory, administrative, or other governmental authority delegated to it" by Peru.[510]

297. This provision is jurisdictional. As Claimant correctly argues "Article 10 of the USPTPA delineates the terms and conditions under which Peru provides its general consent for the submission of a claim […] to arbitration."[511] Claimant ignores this provision in its discussion about jurisdiction. He refers to this Article elsewhere, but only in passing, and in parallel with the rules on attribution of the ILC Articles on State Responsibility for Internationally Wrongful Acts ("**ILC Articles**"). However, as noted in *Al Tamimi v. Oman*, the ILC Articles "are not directly

---

[507] Certificate of Incorporation of Baspetrol S.A.C. (17 October 2012) (**C-24**), Art. 3, p. 3.

[508] See, for instance, *Gami Investments, Inc. v. Government of the United Mexican States*, UNCITRAL, Final Award (15 November 2004) (**RLA-88**), ¶¶ 33, 37.

[509] *See, for instance*, SoC, ¶¶ 351, 357.

[510] USPTPA Investment Chapter (**CLA-1**), Art. 10.1.2.

[511] SoC, ¶ 170.

applicable."[512] Article 10.1(2) is *lex specialis* concerning attribution. While interpreting a provision similar to Article 10.1(2), the *Al Tamimi v. Oman* tribunal opined that:

> [P]arties to a treaty may, by specific provision (*lex specialis*), limit the circumstances under which the acts of an entity will be attributed to the State. To the extent that the parties have elected to do so, any broader principles of State responsibility under customary international law or as represented in the ILC Articles cannot be directly relevant.[513]

298. Thus, to demonstrate the Tribunal's jurisdiction *ratione materiae*, Claimant must have shown that Article 10.1(2) is met; specifically, that (i) Peru has delegated to Perupetro "regulatory, administrative, or other governmental authority," and that (ii) each of the measures challenged were an exercise of that delegated governmental authority.[514] Neither prong is met here.

### 1. Perupetro has no delegated governmental authority

299. Claimant does not argue, let alone show, that Perupetro has delegated "regulatory, administrative or other governmental authority," as requited by Article 10.1(2) of the Treaty. Said Article even lists examples of these governmental authority, including "authority to expropriate, grant licenses, approve commercial transactions, or impose quotas, fees, or other charges."[515] But Claimant makes no effort to show how Perupetro allegedly enjoys any of these faculties.

300. Claimant could not show that because Perupetro's activities are inherently commercial. Indeed, while interpreting a similar provision in the extinct NAFTA, the *UPS v. Canada* tribunal reasoned that, activities that "have a commercial character," *are not* delegated

---

[512] *Adel A Hamadi Al Tamimi v. Sultanate of Oman*, ICSID Case No ARB/11/33, Award (3 November 2015) (**RLA-139**), ¶ 324. *See also United Parcel Service of America Inc. v. Government of Canada*, ICSID Case No. UNCT/02/1, Award on the Merits (11 June 2007) (**RLA-101**), ¶ 59; *Mesa Power Group, LLC v. Government of Canada*, PCA Case No. 2012-17, UNCITRAL, Award (24 March 2016) (**RLA-144**), ¶¶ 361-362. In any case, the measures challenged are not attributable to Peru under the ILC Articles, either. *See infra* § IV.A.

[513] *Adel A Hamadi Al Tamimi v. Sultanate of Oman*, ICSID Case No ARB/11/33, Award (3 November 2015) (**RLA-139**), ¶ 321.

[514] USPTPA Investment Chapter (**CLA-1**), Art. 10.1.2. *See also Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Award (6 November 2008) (**CLA-18**), ¶¶ 163-171; *Gustav F W Hamester GmbH & Co KG v. Republic of Ghana*, ICSID Case No. ARB/07/24, Award (18 June 2010) (**RLA-113**), ¶ 202.

[515] USPTPA Investment Chapter (**CLA-1**), Art. 10.1.2.

governmental authority.[516] Thus, it ruled that, in the "establishment, expansion, management, conduct and operation of its overall business," Canada Post Corporation was not exercising governmental authority, although it was an "agent of Her Majesty in right of Canada."[517]

301. Perupetro was delegated with inherently commercial, non-sovereign activities. It was created to conduct the "business activities" that Article 60 allows the State to carry out.[518] Indeed, Claimant acknowledges that Perupetro was establishes to "'reformulate the State's business role.'"[519] Also, his own expert, Dr. Yaya, correctly affirms that Perupetro, "in representation of the State, promotes, negotiates, subscribes and supervises contracts."[520] As supported by firm case law, these are inherently commercial, non-governmental, activities.[521] Indeed, *any company* can promote, negotiate, subscribe and supervise contracts without the need of governmental authority.

302. The commercial, non-governmental nature of Perupetro is confirmed by its legal regime. Another legal expert of Claimant, Dr. Quiroga, confirms that Perupetro is a "state entity of private law."[522] Also, by law, and as explained by Dr. Vizquerra, Perupetro is organized as any

---

[516] *United Parcel Service of America Inc. v. Government of Canada*, ICSID Case No. UNCT/02/1, Award on the Merits (11 June 2007) (**RLA-101**), ¶ 73.

[517] *United Parcel Service of America Inc. v. Government of Canada*, ICSID Case No. UNCT/02/1, Award on the Merits (11 June 2007) (**RLA-101**), ¶¶ 50, 77.

[518] Republic of Peru's Political Constitution (31 October 1993) (**CLA-14**), Art. 60.

[519] SoC, ¶ 283 (emphasis added); Perupetro, About Us, History (**C-85**).

[520] Expert Report of Mónica Yaya (18 Aug. 2023) (**CER-02**) ("**Yaya Expert Report**"), ¶ 173 (translation provided by Counsel. In the original Spanish: "en representación del Estado peruano, se encarga de promocionar, negociar, suscribir y supervisar contratos.") (emphasis added).

[521] *See Unión Fenosa Gas, S.A. v. Arab Republic of Egypt*, ICSID Case No. ARB/14/4, Award (31 August 2018) (**RLA-162**), ¶¶ 9.100-9.102 ("EGPC's engagement in the development and exploitation of natural resources be considered as a purely governmental activity, as opposed to a commercial activity […] EGPC has the power to contract in its own name and for its own account, as a principal."); *Mr. Kristian Almås and Mr. Geir Almås v. Republic of Poland*, PCA Case No 2015-13, Award (27 June 2016) (**RLA-145**), ¶¶ 210, 214-267 ("termination was not an exercise of public power but of a purported contractual right"); *Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Award (6 November 2008) (**CLA-18**), ¶ 169 ("during the tender process, the SCA acted like any contractor trying to achieve the best price for the services it was seeking"); *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award (8 October 2009) (**CLA-4**), ¶¶ 196-198.

[522] Expert Report of Anibal Quiroga León (18 Aug. 2023) (**CER-01**) ("**Quiroga Expert Report**"), ¶ 100 (emphasis added); Perupetro's S.A. Organization and Functions Act, 1993 (Act No. 26225 of 1993) (20 August 1993) (**CLA-41**), Art. 1 (translation provided by Counsel. In the original Spanish: "PERUPETRO S.A., es una empresa estatal de

other private, commercial company.[523] Amendments to its bylaws are governed by the rules applicable to private, commercial companies.[524] The company is governed by the tax regime applicable to private entities,[525] and its employees are not public servants, but private employees.[526] Finally, the company enjoys "full economic, financial and administrative autonomy" and has its own legal personality.[527]

303. Thus, Claimant does not show that Peru has delegated governmental authority to Perupetro. He could not. Perupetro is a company of private law that conducts business activities.

### 2. In any case, the measures challenged were not governmental

304. Even if Peru delegated governmental authority to Perupetro (*quod non*), Claimant fails to demonstrate how each of the measures challenged were carried out under such governmental authority.

305. Claimant lists the following conducts "as giving rise to this dispute:"[528]

a. Alleged instruction from Mr. Ortigas to Claimant to present Baspetrol's alleged proposal.

---

derecho privado del Sector Energía y Minas, que funciona bajo la denominación de PERUPETRO S.A.") (emphasis added). *See also* Tafur Witness Statement (**RWS-02**), ¶ 15.

[523] Organic Hydrocarbons Law, 1993 (Act No. 26221 of 1993) (13 August 1993) (**CLA-45**), Art. 6 ("[This Law] [c]reates, under the name PERUPETRO S.A., the State Entity of Private Law in the Energy and Mining Sector, incorporated as a Corporation under the General Law of Corporations.") (translation provided by Counsel. In the original Spanish: "Créase bajo la denominación social de PERUPETRO S.A., la Empresa Estatal de Derecho Privado del Sector Energía y Minas, organizada como Sociedad Anónima de acuerdo a la Ley General de Sociedades") (emphasis added); Quiroga Expert Report (**CER-01**), ¶ 100. *See also* Vizquerra Expert Report (**RER-02**), note 1.

[524] Perupetro's S.A. Organization and Functions Act, 1993 (Act No. 26225 of 1993) (20 August 1993) (**CLA-41**), Temp. Art. 2.

[525] Perupetro's S.A. Organization and Functions Act, 1993 (Act No. 26225 of 1993) (20 August 1993) (**CLA-41**), Art. 23

[526] Perupetro's S.A. Organization and Functions Act, 1993 (Act No. 26225 of 1993) (20 August 1993) (**CLA-41**), Art. 24

[527] Perupetro's S.A. Organization and Functions Act, 1993 (Act No. 26225 of 1993) (20 August 1993) (**CLA-41**), Art. 4 (translation provided by Counsel. In the original Spanish: "En el ejercicio de su objeto social PERUPETRO S.A. actuará con plena autonomía económica, financiera y administrativa"). *See also* Vizquerra Expert Report (**RER-02**), note 1, ¶ 17.

[528] SoC, ¶ 286.

b. Alleged representations from Mr. Ortigas that Baspetrol's "proposal" would be subjected to legal-technical-economic analysis.

c. Alleged failure of Perupetro to respond to Baspetrol's alleged proposal in 10 days.

d. Alleged rejection of Baspetrol's "proposal."

e. Alleged failure to ensure due process during direct negotiations.

306. None of these measures need or entail governmental authority. That is self-evident. Furthermore, Claimant does not even argue how any of these measures fit within the scope of Article 10.1(2), or how they are, in any other way, governmental, non-commercial activities. They are not. Any commercial entity may perform these activities.

307. Claimant concurs: immediately after listing these alleged activities, it concludes that they "were taken as part of PeruPetro's [capacity] to negotiate and monitor contracts on behalf of Peru."[529] As seen, negotiating and monitoring contracts is inherently commercial; no governmental authority is needed. In fact, Claimant's expert, Dr. Quiroga, confirms that the alleged negotiations between Baspetrol and Perupetro that lay at the core of this case were "governed by private law," not administrative law.[530] Amorrortu concedes also that the rights "appurtenant" to the alleged direct negotiation that, he claims, were violated are all *private law obligations* that would arise in any negotiation between two equal, private, commercial entities.[531] They are *not* rights corresponding to a company allegedly negotiating with a sovereign entity that is exercising governmental authority.

308. In conclusion, Claimant fails to show that Perupetro has delegated governmental authority and that it exercised such authority in carrying out the challenged measures. Thus, the

---

[529] SoC, ¶ 286 (emphasis added).

[530] Quiroga Expert Report (**CER-01**), ¶ 178 (translation provided by Counsel. In the original Spanish: "[…] encontrándose regidas por el derecho privado.") (emphasis added).

[531] SoC, ¶ 225.

requirements of Article 10.1(2) of the Treaty are not met, and the Tribunal has no *ratione materiae* jurisdiction over Perupetro's challenged measures.

#### 3. Consequently, the Tribunal has no jurisdiction *ratione materiae* over the case

309. Amorrortu claims of a breach of the USPTPA rests primarily and essentially on conduct and measures taken by Perupetro. Thus, the demonstrated lack of jurisdiction *ratione materiae* over Perupetro's measures entails that the Tribunal has no jurisdiction over Amorrortu's case.

310. In an attempt to distract the Tribunal, Claimant seeks to attribute measures of the President, MINEM and the First Lady to Peru.[532] This is a smokescreen with no legal consequence. Amorrortu present one single legal claim: in his words, that "PeruPetro," not MINEM, the President, Ortigas nor the Vice-President, allegedly "violated Peru's" obligation to afford of the minimum standard of treatment.[533] Indeed, the four alleged bases of this violation are based on alleged measures of Perupetro, and Perupetro alone: (i) the international bidding process conducted by Perupetro;[534] (ii) the alleged corruption allegedly materialized by Perupetro;[535] (iii) the alleged "rejection" of Baspetrol's alleged proposal by Perupetro, and Perupetro's decision to submit the

---

[532] SoC, ¶ 282.

[533] SoC, § V.C.

[534] SoC, § V.C.1, ¶¶ 326, 158-168. The alleged corruption scheme is allegedly comprised of the following four elements. First, alleged irregularities of the bidding process. Claimant offers no evidence, not even allegations, of measures taken by any organ of Peru, Perupetro or the First Lady, in this respect. *See id.,* ¶¶ 158-159. Second, modifications to the bidding rules, conducted by Perupetro. *See id.*, ¶¶ 160-164; and the evidence offered in supposed support thereof, *i.e.* Memorandum No. CONT-0107-2014 (12 September 2014) (**C-50**); Yaya Expert Report (**CER-02**), ¶¶ 188-195, 231-235; and an agreement from Perupetro's Board. *See* Perupetro's Board of Directors, *Agreement No. 071-2014*, *Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (30 June 2014) (**C-36**). Third, alleged support to Graña y Montero on its economic indicators, because "PeruPetro's Committee authorized GMP to qualify by using the financial information from its Peruvian parent company" (SoC, ¶ 165 (emphasis added)), and "PeruPetro somehow justified this irregularity" (*Id.*, ¶ 166 (emphasis added)). Even Claimant's expert confirms that this alleged support to Graña y Montero came from Perupetro (SoC, ¶ 165; Yaya Expert Report (**CER-02**), ¶¶ 198, 237). Fourth, an alleged removal of Petroperu as a minority shareholder in the operation of the Blocks (SoC, ¶ 167). But this again was a decision made by another independent and autonomous entity, Petroperu, that was, in essence, commercial in nature.

[535] SoC, ¶¶ 328-342. Claimant seems to attribute his acquisition of a supposed "legitimate expectation" that no corruption would be committed to "Peru", in general. He does not establish which specific State entity created that expectation. *See id.*, ¶¶ 333-341. Above all, the violation of that expectation is ultimately attributed to Perupetro's bidding process for Lots III and IV. *See id.*, ¶ 342.

Blocks to public tender,[536] and (iv) Perupetro's alleged failure "to follow" its rules and procedures;[537] "to give Amorrortu a well-reasoned response,"[538] to "follow the [d]irect [n]egotiation [p]rocedure,"[539] and its supposedly "false representations."[540]

311. Thus, Amorrotu's claims rest primarily on Perupetro's measures. Since the Tribunal lacks jurisdiction over PeruPetro's commercial conduct, it lacks jurisdiction over the whole case.

***

312. In conclusion, there is no jurisdiction *ratione materiae* under Article 10.1(2) of the Treaty. Perupetro has no delegated sovereign authority. In any case, the measures challenged are commercial and non-governmental. Since Claimant only challenges Perupetro's measures, the Tribunal lacks jurisdiction *ratione materiae* over Amorrortu's claim.

### E. The Tribunal Lacks Jurisdiction Because There Is No Connection between the Purported Treaty Breach and The Damages Amorrortu Claims

313. Another reason why Amorrortu's claims are outside the Tribunal's jurisdiction is that, as a matter of law, Amorrortu's alleged damages cannot possibly be a consequence of Peru's purported Treaty breach. This fundamental disconnect is fatal not only to the merits of Amorrortu's claim, but also—as explained in this section—to the Tribunal's jurisdiction over it.

314. Article 10.16.1 of the Treaty expressly limits the claims that may be submitted to arbitration under the Treaty to those resulting in a "loss or damage" to the investor "by reason of, or arising out of, that breach."[541] This is also confirmed by Article 10.26, which requires final

---

[536] SoC, ¶ 348.

[537] SoC, ¶ 354.

[538] SoC, ¶ 354.

[539] SoC, ¶ 355.

[540] SoC, ¶¶ 354-355.

[541] USPTPA Investment Chapter (**CLA-1**), Art. 10.16.1(a)(ii).

awards to include a determination of monetary damages.[542] Thus, under the Treaty, claims for breach of any of its provisions that do not result in damage or loss to the investor are excluded.

315. This is consistent with the international law principle that a finding of liability requires not only a breach, but also harm. In the seminal *Factory at Chorzów* decision, for example, the Permanent Court of International Justice ("**PCIJ**") held that "[r]eparation […] is the indispensable complement of a failure to apply a convention."[543] Investment tribunals have adopted the same approach, holding that for liability to exist, both a treaty breach *and* damages are required. For example, in *Merril v. Canada*, the tribunal observed that:

> [I]n the case of conduct that is said to constitute a breach of the standards applicable to investment protection, the primary obligation is quite clearly inseparable from the existence of damage. Indeed, a finding of liability without a finding of damage would be difficult to explain in the context of investment law arbitration and would indeed be contrary to some of its fundamental tenets.[544]

316. The *Merril* tribunal ultimately dismissed the claim for breach of the minimum standard of treatment, as it found no damages that could possibly arise from the breach by the State of that standard. The tribunal observed that a claim for the breach of a substantive Treaty standard could only succeed "if there is an act in breach of an international legal obligation, attributable to the Respondent that also results in damages."[545]

---

[542] USPTPA Investment Chapter (**CLA-1**), Art. 10.26.1(a) ("Where a tribunal makes a final award against a respondent, the tribunal may award, separately or in combination, only: (a) monetary damages and any applicable interest; and (b) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest in lieu of restitution."). Amorrortu's request for relief is for monetary damages only and does not involve restitution of property (as he makes no claim for expropriation nor was any property taken from him). *See* SoC, ¶ 416.

[543] *Case Concerning The Factory at Chorzów (Germany v. Poland)*, Decision on the Merits, P.C.I.J. Rep. Series A. – No. 17, Decision on the Merits (13 September 1928) (**CLA-30**), p. 29.

[544] *Merrill & Ring Forestry L.P. v. Government of Canada*, UNCITRAL, Award (31 March 2010) (**RLA-110**), ¶ 245.

[545] *Merrill & Ring Forestry L.P. v. Government of Canada*, UNCITRAL, Award (31 March 2010) (**RLA-110**), ¶ 266 (emphasis added). Other investment tribunals have adopted similar positions. For example, in *Waste Management v. Mexico*, the tribunal draw a necessary link between breach and harm by stating that the "minimum standard of treatment of fair and equitable treatment is infringed by conduct attributable to the State and harmful to the claimant." *See Waste Management, Inc. v. United Mexican States II*, ICSID Case No. ARB(AF)/00/3, Award (30 April 2004) (**CLA-28**), ¶ 98.

317. The *PACC v. Mexico* tribunal echoed this principle in a recent award. Just like the Treaty here, the Mexico-Singapore BIT in the *PACC* case limited the claims that could be submitted to arbitration to those involving treaty breaches for which "the investor has incurred loss or damage by reason of, or arising out of, that breach."[546] The tribunal thus concluded that, for it to have jurisdiction over the investor's claims, a "legally significant connection" had to be established "between the contested measure and the loss claimed."[547] The *PACC* tribunal ultimately dismissed part of the investor's claims *on jurisdictional grounds*,[548] as the measures at stake were directed against the investor's contractual counterparty, not the investor itself, and thus the investor "[was] affected by [those] measures secondarily and indirectly, through [its counterparty], and not primarily."[549]

318. In the present case, there is no connection at all—let alone, a "legally significant connection"—between Peru's purported Treaty breach and the damages Amorrortu claims. The reason is straightforward: the legal premise on which Amorrortu bases his purported damages (*i.e.*, Baspetrol's alleged entitlement to license contracts for Blocks III and IV) is wrong as a matter of Peruvian law.

319. Indeed, Amorrortu's damages claim is premised on the alleged "revenues Baspetrol would have earned as an investor and operator of Blocks III and IV" had Perupetro not "open[ed] Blocks III and IV to public bidding without even considering the Baspetrol proposal."[550] Amorrortu claims that he "was deprived of the opportunity to […] profit from the contracts <u>to</u>

---

[546] *See* Agreement between the Government of the United Mexican States and the Government of the Republic of Singapore on the Promotion and Reciprocal Protection of Investments (12 November 2009) (**RLA-108**), Art. 11; *Cf.* USPTPA Investment Chapter (**CLA-1**), Art. 10.16 ("[T]he claimant, on its own behalf, may submit to arbitration under this Section a claim […] that the respondent has breached […] an obligation under [the Treaty] […] and […] that the claimant has incurred loss or damage by reason of, or arising out of, that breach.").

[547] *PACC Offshore Services Holdings Ltd v. United Mexican States*, ICSID Case No. UNCT/18/5, Award (11 January 2022) (**RLA-181**), ¶¶ 145-146.

[548] *PACC Offshore Services Holdings Ltd v. United Mexican States*, ICSID Case No. UNCT/18/5, Award (11 January 2022) (**RLA-181**), ¶ 150.

[549] *PACC Offshore Services Holdings Ltd v. United Mexican States*, ICSID Case No. UNCT/18/5, Award (11 January 2022) (**RLA-181**), ¶ 147.

[550] SoC, ¶ 391.

which he was entitled,"[551] and thus concludes that "the fair market value of the contracts to operate Blocks III and IV […] is the correct measure" of his damages.[552] But the premise of Amorrortu's damages claim is misplaced, since he had no right to be awarded a contract with respect to Blocks III and IV, even if (*quod non*) Baspetrol's alleged proposal is deemed to have commenced a direct negotiation.

320. Article 2 of the Qualification Regulation makes this clear, as it states that the granting of a qualification certification (which is a prerequisite for the direct negotiation that Baspetrol sought to initiate with Perupetro[553]) "does not generate any right whatsoever" with respect to a contract.[554] Amorrortu agrees with this.[555] In the same vein, Perupetro's Rules and Procedures provide that a direct negotiation terminates if no agreement is reached within 60 calendar days,[556] which also confirms that a direct negotiation does not necessarily imply the execution of a license contract. In addition, a direct negotiation process includes a period of 30 days in which other companies may show interest in the blocks under negotiation, in which case the direct negotiation also terminates and a tender is conducted.[557] And, as Dr. Vizquerra explains, even if Perupetro and the applicant company reach an agreement on the terms of the contract, that contract still needs to be reviewed and—if applicable—approved by the Ministry of Energy and Mines.[558] This too confirms that the initiation of a direct negotiation process in no way guarantees the execution of a license contract.

---

[551] SoC, ¶ 396.

[552] SoC, ¶ 395.

[553] Vizquerra Expert Report (**RER-02**), ¶ 6.

[554] Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (**CLA-3**), Art. 2 (translation provided by Counsel. In the original Spanish: "El otorgamiento de Calificación no generará derecho alguno sobre el área de Contrato.").

[555] SoC, ¶ 200 ("[A]certification of qualification does not give the qualified company the right to establish a contract with PeruPetro, which has to be negotiated by the parties.").

[556] Perupetro Procedure GFCN-8, Contracting Through Direct Negotiation (13 August 2012) (**CLA-44**), pp. 8, 15.

[557] Perupetro Procedure GFCN-8, Contracting Through Direct Negotiation (13 August 2012) (**CLA-44**), p. 13.

[558] Vizquerra Expert Report (**RER-02**), ¶ 16.

321. In sum, Amorrortu had no right to contract for Blocks III and IV in 2014. As a result, he now has no right to the damages he seeks on the basis of his alleged "entitlement" to those contracts. This is sufficient to dismiss Amorrortu's claims on jurisdictional grounds, as there is an insurmountable disconnect between Peru's purported breach of the Treaty and Amorrortu's alleged damages.[559]

### F. The Tribunal Lacks Jurisdiction *Ratione Voluntatis* because Amorrortu Did Not Comply with the Procedural Prerequisites for Submitting a Claim to Arbitration

322. A State's "consent to arbitration is foundational to jurisdiction,"[560] and any conditions attached thereto constitute a limit on the State's consent.[561] A failure to satisfy the conditions upon which the State's consent is based, negates *ratione voluntatis* jurisdiction,[562] and an investor must fulfil "the conditions shaping the State's consent to arbitration" before acquiring a right to arbitration.[563]

---

[559] Even if the Tribunal were to conclude that this objection is intertwined with the issues of fact at stake in this arbitration (which Peru respectfully suggests would be inappropriate) and decide to join its analysis thereof to that of Amorrortu's damages claim, such claims would still necessarily fail for lack of causation. As explained in Section V.A.2.a below, Amorrortu cannot prove that, as a matter of law, he had an entitlement to license contracts for Blocks III and IV, even if a direct negotiation process with Perupetro had begun. Thus, there is no causal link between Peru's impugned actions (*i.e.*, Perupetro's alleged failure to conduct a direct negotiation process with Baspetrol) and Amorrortu's alleged damages (*i.e.*, the loss derived from Baspetrol's lack of operation of Blocks III and IV).

[560] *Dawood Rawat v. Republic of Mauritius*, PCA Case No. 2016-20, Award on Jurisdiction (6 April 2018) (**RLA-157**), ¶ 158 (emphasis added). *See also ST-AD GmbH (Germany) v. Republic of Bulgaria*, PCA Case No. 2011-06, Award on Jurisdiction (18 July 2013) (**RLA-131**), ¶ 361 ("The State can shape this consent as it sees fit, by providing for the basic conditions under which it is given, or, in other words, the conditions under which the 'offer to arbitrate' is made to the foreign investors.").

[561] *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006, p. 6 (3 February 2006) (**RLA-94**) at ¶¶ 65, 88 (noting that, when consent to jurisdiction "is expressed in a compromissory clause in an international agreement, any conditions to which such consent is subject must be regarded as constituting the limits thereon[…] [T]he examination of such conditions relates to its jurisdiction and not to the admissibility of the application.").

[562] *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006, p. 6 (3 February 2006) (**RLA-94**) at ¶¶ 65, 88; *Philip Morris Brands Sàrl, Philip Morris Products S.A. and Abal Hermanos S.A. v. Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7, Decision on Jurisdiction (2 July 2013) (**RLA-23**), ¶ 33.

[563] *Impregilo S.p.A. v. Argentine Republic I*, ICSID Case No. ARB/07/17, Concurring and Dissenting Opinion of Professor Brigitte Stern (21 June 2011) (**RLA-117**), ¶ 52 ("In order to benefit from the jurisdictional protection granted by an arbitration mechanism, these same conditions have to be fulfilled, but in addition there is a condition *ratione voluntatis*: the State must have given its consent to such a procedure which allows a foreign investor to sue the State directly on the international level. […] the consent is given under certain conditions. Just as the conditions of

323. Section B of the USPTPA establishes the steps a protected investor must follow to try to resolve a dispute with the respondent State. It is composed of tiered clauses that specify a sequence of cumulative conditions that need to be satisfied before a Contracting Party's consent is perfected. These steps include the requirement that an investor initially attempt to "resolve the dispute through consultation and negotiation,"[564] as well as "deliver […] a written notice of its intention to submit the claim to arbitration ('notice of intent')."[565]

324. In this case, Amorrortu has failed to comply with the condition of negotiation and consultation (**Subsection 1**) as well as the requirement to submit a Notice of Intent (**Subsection 2**), upon both of which Peru's consent is premised, thereby negating the Tribunal's *ratione voluntatis* jurisdiction.

**1. Amorrortu failed to comply with the mandatory consultation and negotiation requirement before initiating this arbitration, pursuant to Article 10.15**

325. The Tribunal lacks jurisdiction *ratione voluntatis* because Amorrortu failed to consult or negotiate with Peru before initiating this arbitration.

326. Articles 10.15 and 10.16 of the USPTPA provide as follows:

> In the event of an investment dispute, the claimant and the respondent should initially seek to resolve the dispute through consultation and negotiation.[566]
>
> […]
>
> In the event that a disputing party considers that an investment dispute cannot be settled by consultation and negotiation […] the claimant, on its own behalf, may submit [a claim] to arbitration.[567]

---

nationality for example must be fulfilled before an investor can have access to all the rights granted by the BIT, the conditions shaping the State's consent to arbitration must be fulfilled before a right to arbitration can arise.").

[564] USPTPA Investment Chapter (**CLA-1**), Art. 10.15.

[565] USPTPA Investment Chapter (**CLA-1**), Art. 10.16.2.

[566] USPTPA Investment Chapter (**CLA-1**), Arts. 10.15.

[567] USPTPA Investment Chapter (**CLA-1**), Arts. 10.16.1.

327. Article 10.15 is the first clause in the Treaty's section on investor-state dispute settlement. It begins by requiring the Parties to initially attempt to resolve the dispute through consultation and negotiation. The term "should," in its ordinary meaning,[568] expresses a duty and is synonymous to "shall" or "must,"[569] consistently with the Spanish version of the Treaty which employs the term "*deben*."[570]

328. The tribunal in *Murphy v. Ecuador (I)* interpreted a similar clause that also employed the verb "should,"[571] and held that the treaty imposed a "fundamental requirement" to negotiate, which claimant had to "comply with, compulsorily, before submitting a request for arbitration."[572]

329. Amorrortu acknowledges that negotiation is a precondition for arbitration, and it is uncontested that his failure to satisfy the negotiation requirement would deprive the Tribunal of

---

[568] Vienna Convention on the Law of Treaties (1969) (**RLA-1**), Art. 31(1); USPTPA Investment Chapter (**CLA-1**), Art. 10.22 (according to which an arbitral tribunal must apply applicable rules of international law when deciding a dispute).

[569] Collins English Dictionary [Excerpt]: "should" (**R-13**). Further explanation of "should" in American English provides: "used to express obligation, duty".

[570] United States and Peru Trade and Promotion Agreement Investment Chapter (Spanish Original) (12 April 2006) (**RLA-97**), Art. 10.15 ("En caso de una controversia relativa a una inversión, el demandante y el demandado deben primero tratar de solucionar la controversia mediante consultas y negociación, lo que puede incluir el empleo de procedimientos de carácter no obligatorio con la participación de terceras partes.") (emphasis added). The Spanish version of the Treaty is authoritative and relevant for the interpretation of this provision pursuant to the Vienna Convention on the Law of Treaties. Vienna Convention on the Law of Treaties (1969) (**RLA-1**), Art. 33.1 ("When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language…"). This is also confirmed by Article 23.6 of the USPTPA. United States and Peru Trade and Promotion Agreement Final Provisions Chapter (12 April 2006) (**RLA-98**), Art. 23.6 ("The English and Spanish texts of this Agreement are equally authentic"). As such, if any doubt remains about the meaning of the term "should," it should be interpreted consistently with the Spanish term "*deben*," pursuant to Article 33(3) of the Vienna Convention on the Law of Treaties ("The terms of the treaty are presumed to have the same meaning in each authentic text"). Vienna Convention on the Law of Treaties (1969) (**RLA-1**), Art. 33(3).

[571] Treaty between the United States of America and the Republic of Ecuador concerning the Encouragement and Reciprocal Protection of Investment (27 August 1993) (**RLA-69**), Art. VI(2) ("In the event of an investment dispute, the parties to the dispute should initially seek a resolution through consultation and negotiation"). *See Murphy Exploration and Production Company International v. Republic of Ecuador*, ICSID Case No. ARB/08/4, Award on Jurisdiction (15 December 2010) (**RLA-14**), ¶ 95.

[572] *Murphy Exploration and Production Company International v. Republic of Ecuador*, ICSID Case No. ARB/08/4, Award on Jurisdiction (15 December 2010) (**RLA-14**), ¶ 149 (emphasis added).

jurisdiction.[573] The issue between the Parties is limited to whether Amorrortu in fact satisfied the negotiation requirement.

330. On the one hand, Amorrortu argues, unconvincingly, that his negotiation in December 2019 for *Amorrortu I* satisfies the negotiation requirement for *Amorrortu II*.[574] This reading of Articles 10.15 and 10.16.1 ignores their context, which includes the surrounding sentences and paragraphs.[575]

331. Subsequent to the negotiation requirement in Article 10.15, Article 10.16.1 states that "[i]n the event that a disputing party considers that an investment dispute cannot be settled by consultation and negotiation, […] the claimant, on its own behalf, may submit to arbitration […] a claim that the respondent has breached an obligation."[576] In providing that only if the dispute cannot be settled amicably may it be submitted to arbitration, Article 10.16 necessarily demands that the negotiation efforts contemplated by Article 10.15 have actually failed in relation to the arbitration claim to be submitted. The impossibility of amicable settlement in such circumstances can be evidenced only after those efforts have been tried and have fallen short of success.

332. The International Court of Justice ("**ICJ**") has consistently reiterated that words in a treaty ought to be given appropriate effect,[577] and that the phrase "cannot be settled" would be

---

[573] *See* Letter from Claimant to the PCA (26 August 2022) (**R-1**), p. 1 (alleging that "The Claimant has satisfied the Consultation and Negotiation requirement under Article 10.15 of the USPTPA.") (emphasis omitted; underlining added); Claimant's Opposition to Bifurcation, ¶ 60 ("To determine if this requirement has been satisfied […] After all, Article 10.15 requires consultation and negotiation.").

[574] Claimant's Opposition to Bifurcation, ¶¶ 60-61, 66-67.

[575] *Kiliç v. Turkmenistan*, ICSID Case No. ARB/10/1, Award (2 July 2013) (**RLA-130**), ¶ 5.2.6 ("Treaty terms are obviously not drafted in isolation, and their meaning can only he determined by considering the entire treaty text. The context will include the remaining terms of the sentence and of the paragraph: the entire article at issue; and the remainder of the treaty.").

[576] USPTPA Investment Chapter (**CLA-1**), Art. 10.16.1 (emphasis added).

[577] *Free Zones of Upper Savoy and the District of Gex*, Order of 19 August 1929, P.C.I.J., Series A, No. 22 (**RLA-56**), p. 13 ("in case of doubt, the clauses of a special agreement by which a dispute is referred to the Court must, if it does not involve doing violence to their terms, be construed in a manner enabling the clauses themselves to have appropriate effects"); *Corfu Channel (United Kingdom v. Albania)*, Merits, Judgment of April 9th, 1949: I.C.J. Reports 1949, p. 4 (**RLA-58**), at p. 24 ("It would indeed be incompatible with the generally accepted rules of interpretation to admit that a provision of this sort occurring in a special agreement should be devoid of purport or effect"). *See also Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, Judgment, I. C. J. Reports 1994, p. 6 (3 February 1994) (**RLA-**

devoid of any effect and usefulness if it were not interpreted as requiring an actual attempt at negotiation.[578]

333. In fact, the ICJ has frequently interpreted similar provisions as requiring States to actually engage in negotiations. For instance, in *Appeal relating to the Jurisdiction of the ICAO Council (Bahrain, Egypt, UAE v Qatar)*, the Court held that the phrase "[i]f any disagreement […] cannot be settled by negotiation" required the parties to "make a genuine attempt to negotiate."[579]

334. Similarly, in *Questions Relating to the Obligation to Extradite*, the Court held:

> The requirement that the dispute 'cannot be settled through negotiation' [can]not be understood as referring to a <u>theoretical impossibility</u> of reaching a settlement. It rather implies that […] 'no reasonable probability exists that further negotiations would lead to a settlement.'[580]

The Court noted that this reasonable probability could only be assessed if the parties had "at the very least [made] a genuine attempt […] to engage in discussions […] with a view to resolving the dispute."[581]

---

**71**), ¶ 51 (relying on the principle of effectiveness as "one of the fundamental principles of interpretation of treaties, consistently upheld by international jurisprudence.").

[578] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, I.C.J. Reports 2011, p. 70 (1 April 2011) (**RLA-116**), at pp. 125-126, ¶ 133; *Corfu Channel (United Kingdom v. Albania)*, Merits, Judgment of April 9th, 1949: I.C.J. Reports 1949, p. 4 (**RLA-58**), at p. 24; *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, I.C.J. Reports 2016, p. 3 (17 March 2016) (**RLA-143**), at p. 24, ¶ 43.

[579] *Appeal relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar)*, Judgment, I.C.J. Reports 2020, p. 81 (14 July 2020) (**RLA-178**), ¶¶ 88-90.

[580] *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012, p. 422 (20 July 2012) (**RLA-122**), at ¶ 57 (*citing South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa)*, Preliminary Objections, Judgment of 21 December 1962: I.C.J. Reports 1962, p. 319 (**RLA-60**), at p. 345) (emphasis added).

[581] *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012, p. 422 (20 July 2012) (**RLA-122**), at ¶ 57.

335. The jurisprudence of the ICJ is unequivocal on this point: under international law, a treaty provision which limits jurisdiction to disputes that cannot be settled by negotiation is only given *effet util* if interpreted as requiring the parties to have actually attempted negotiation.[582]

336. In line with this jurisprudence, Amorrortu needed to attempt negotiation before submitting his claim to arbitration and, only on that basis could he consider that the investment dispute could not be settled by negotiation. Amorrortu may have considered in 2019, before submitting his claim to arbitration in *Amorrortu I*, that, after having engaged in discussions with the appropriate and competent authority, the dispute could not be settled by negotiation. However, he did not ascertain the same before submitting his claim to arbitration in *Amorrortu II*. Yet, the landscape surrounding this case looks very different as compared to 4 years ago.

337. Amorrortu's negotiation attempt in 2019 is not determinative of the probability of settlement for *Amorrortu II* for various reasons: Over four years have passed since the Amorrortu attempted to negotiate the dispute with the Special Commission of Peru. Since then, there has been an award rendered in favor of the State, Amorrortu was ordered to bear the costs of that arbitration—an obligation that he has yet to fulfil—and there is a pending annulment proceeding before French Courts. Further, the criminal investigation of Graña y Montero is more advanced, thereby minimizing the scope for speculation regarding the legitimate means by which the company obtained the license contracts for Blocks III and IV. These new factors create a very different scenario that could alter the nature and outcome of a negotiation. As such, Amorrortu had

---

[582] *Appeal relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar)*, Judgment, I.C.J. Reports 2020, p. 81 (14 July 2020) (**RLA-178**), ¶¶ 88-90; *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Reports 2012, p. 422 (20 July 2012) (**RLA-122**), at ¶ 57 (*citing South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa)*, Preliminary Objections, Judgment of 21 December 1962: I.C.J. Reports 1962, p. 319 (**RLA-60**), at p. 345); *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, I.C.J. Reports 2011, p. 70 (1 April 2011) (**RLA-116**), at ¶¶ 133, 157, 159; *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*, Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017, p. 104 (**RLA-153**), at ¶ 44; *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 194*7, Advisory Opinion, I.C.J. Reports 1988, p. 12. (26 April 1988) (**RLA-67**), at ¶ 7; *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006, p. 6 (3 February 2006) (**RLA-94**), at ¶ 91.

no basis to consider that the dispute could not be resolved by negotiation before he submitted his claim to this arbitration.

338. Further, by relying on the negotiations carried out in 2019 to comply with the negotiation requirement in *Amorrortu II*, Amorrortu is effectively attempting to override the decision of the tribunal in *Amorrortu I*.

339. The tribunal in *Amorrortu I* held that it lacked jurisdiction *ab initio* as Amorrortu had submitted a defective waiver and, as such, no arbitration agreement existed given that the "State's offer of arbitration and [the] investor's acceptance of the same [did] not meet."[583] Because the tribunal had been constituted on the basis of an invalid arbitration agreement, claimant could not endow the tribunal with jurisdiction after its creation by submitting a new waiver.[584] It reasoned that:

> the submission of a compliant waiver is not a condition for the admissibility of claims, but a precondition for the very existence of the State's consent to arbitrate, and, by way of necessary implication, to this Tribunal's jurisdiction. [585]

As such, "if the defect in the arbitration agreement were cured, a new tribunal would have to be appointed and constituted." [586]

340. In dismissing the arbitration for lack of jurisdiction in unconditional terms, the tribunal closed the case of *Amorrortu I*. This is also evident by the fact that Amorrortu is now seeking to annul the award in French courts. Yet, by submitting a new notice of arbitration and

---

[583] *Bacilio Amorrortu v. Republic of Peru*, PCA Case No. 2020-11, Partial Award on Jurisdiction (5 August 2022) (**CLA-108**), ¶ 236.

[584] *Bacilio Amorrortu v. Republic of Peru*, PCA Case No. 2020-11, Partial Award on Jurisdiction (5 August 2022) (**CLA-108**), ¶ 237 ("The Tribunal simply fails to see how, despite having been constituted on the basis of an invalid arbitration agreement, and hence not having jurisdiction over the Parties from the beginning of these proceedings, it could purport to exercise a power to cure the Claimant's defective waiver over the objection of the Respondent, and thereby endow itself with jurisdiction.")

[585] *Bacilio Amorrortu v. Republic of Peru* [*I*], PCA Case No. 2020-11, Partial Award on Jurisdiction (5 August 2022) (**RLA-54**), ¶ 233.

[586] *Bacilio Amorrortu v. Republic of Peru* [*I*], PCA Case No. 2020-11, Partial Award on Jurisdiction (5 August 2022) (**RLA-54**), ¶ 243.

relying on the notice of intent and the negotiations of *Amorrortu I*, Amorrortu is attempting to do what the tribunal had stated he could not, *i.e.*, cure the defect in the first arbitration agreement by submitting a corrected waiver and resuming the same case.

341. Amorrortu cannot to avail himself of failed perquisite steps to Peru's consent in the previous arbitration for purposes of this new arbitration proceeding. This case is a new one which requires Claimant to comply with all jurisdictional requirements anew in order to accept the State's offer to arbitrate under the USPTPA. This includes the negotiation requirement, which is not a mere formality, but a jurisdictional hurdle "that [c]laimant must comply with, compulsorily, before submitting a request for arbitration."[587]

342. Peru's view that a new negotiation is required is consistent with the conduct of the parties in *Renco I* and *Renco II*, both of which conducted under the USPTPA.[588] The *Amorrortu I* tribunal relied on the reasoning of *Renco I*, where it was similarly held that claimant had to submit a new arbitration to overcome the defective waiver it had submitted in the first case.[589] Renco did exactly that and, when submitting its new claim to arbitration, it engaged in negotiations a second

---

[587] *Murphy Exploration and Production Company International v. Republic of Ecuador*, ICSID Case No. ARB/08/4, Award on Jurisdiction (15 December 2010) (**RLA-14**), ¶ 149. *See also Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. Argentine Republic*, ICSID Case No. ARB/09/1, Decision on Jurisdiction (21 December 2012) (**RLA-20**), ¶ 108; *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Jurisdiction (2 June 2010) (**RLA-12**), ¶ 314; *Tulip Real Estate v. Turkey*, ICSID Case No. ARB/11/28, Decision on Bifurcated Jurisdictional Issue (5 March 2013) (**RLA-127**), ¶¶ 70-71; *Enron Corporation and Ponderosa Assets L.P. v. Argentine Republic*, ICSID Case No. ARB/01/3, Decision on Jurisdiction (14 January 2004) (**RLA-87**), ¶ 88.

[588] *The Renco Group, Inc. v. Republic of Peru [I]*, ICSID Case No. UNCT/13/1; *The Renco Group, Inc. v. Republic of Peru [II]*, PCA Case No. 2019-46.

[589] *Bacilio Amorrortu v. Republic of Peru* [*I*], PCA Case No. 2020-11, Partial Award on Jurisdiction (5 August 2022) (**RLA-54**), ¶ 238 (*citing The Renco Group, Inc. v. Republic of Peru [I]*, ICSID Case No. UNCT/13/1, Partial Award on Jurisdiction (15 July 2016) (**RLA-147**), ¶¶ 152, 160) ("the jurisdictional defect (Renco's non-compliance with Article 10.18(2)(b)) remains uncured. This jurisdictional defect could only be cured (a) if Renco took the positive step of withdrawing the reservation of rights, or submitting a new waiver without the reservation of rights, and Peru consented to this by way of a variation of Article 10.18(2)(b) of the Treaty, or (b) if Renco commenced a new arbitration together with a waiver without any reservation of rights."; " the Tribunal has concluded that Renco cannot unilaterally cure its defective waiver by withdrawing the reservation of rights.") (emphasis omitted).

time.[590] There is no reason why Amorrortu should bypass the same jurisdictional requirements in the present case.

343. In fact, Amorrortu implicitly recognizes that he cannot rely on his negotiation from 2019, by now raising a negotiation that supposedly took place on 28 June 2023 with Óscar Vera, the Minister of Energy and Mining.[591] Yet, this alleged meeting does not cure Amorrortu's failure to comply with the negotiation requirement.

344. First and foremost, a negotiation with the Minister of Energy and Mines cannot satisfy the negotiation requirement under Article 10.15 USPTPA because the Ministry of Energy and Mines ("**MINEM**") does not have authority to settle investor-state disputes. Under Peruvian Law, this authority is exclusively held by the Special Commission for the Representation of the State in Investment Arbitrations (the "**Special Commission**") of the Ministry of Economy and Finance ("**MEF**").[592]

345. In *Amorrortu I*, Amorrortu submitted his Notice of Intent on 19 September 2019 to the MEF,[593] as per Annex 10-C of the USPTPA.[594] On 28 November 2019, Ricardo Ampuero, the

---

[590] *The Renco Group, Inc. v. Republic of Peru [II]*, PCA Case No. 2019-46, Claimant's Notice of Arbitration and Statement of Claim (23 October 2018) (**RLA-165**), ¶¶ 80-81; *The Renco Group, Inc. v. Republic of Peru [II]*, PCA Case No. 2019-46, Response of the Republic of Peru (14 January 2019) (**RLA-167**), ¶¶ 28-32.

[591] Claimant's Opposition to Bifurcation, ¶ 30.

[592] Law that Establishes the System of Coordination and Response of the State in International Investment Disputes (Law No. 28933 of 2006) (**R-10**), Arts. 7.1, 7.2, 8 ("The Special Commission will be attached to the Ministry of Economy and Finance and will have as its objective the representation of the State in International Investment Disputes, both in the previous stage of negotiation and in the arbitration or conciliation stage itself"; "The functions of the Special Commission […] (a) Evaluate the possibilities of negotiation in the direct deal phase and adopt a strategy to achieve it.") (translation provided by Counsel. In the original Spanish: "La Comisión Especial estará adscrita al Ministerio de Economía y Finanzas y tendrá por objeto la representación del Estado en las Controversias Internacionales de Inversión, tanto en su etapa previa de trato directo, cuanto en la propia etapa arbitral o de conciliación"; "Son funciones de la Comisión Especial […] (a) Evaluar las posibilidades de negociación en la fase de trato directo y adoptar una estrategia para lograrla.").

[593] Bacilio Amorrortu's Notice of Intent to Arbitrate Against Peru (19 September 2019) (**C-23**), p. 3 [PDF] ("De acuerdo al Anexo 10-C del APC, Perú debera ser notificado a la siguiente dirección: Dirección General de Asuntos de Economía Internacional Competencia e Inversión Privada Ministerio de Economía y Finanzas Jirón Lampa 277, piso 5 Lima, Perú").

[594] USPTPA Investment Chapter (**CLA-1**), Annex 10-C ("Notices and other documents in disputes under Section B shall be served on Peru by delivery to: Dirección General de Asuntos de Economía Internacional, Competencia e Inversión Privada Ministerio de Economía y Finanzas Jirón Lampa 277, piso 5 Lima, Perú.").

then-President of the Special Commission, responded by inviting Amorrortu to a negotiation meeting.[595] The negotiation was held on December 2019, after which Mr. Ampuero sent a letter noting that the Special Commission had not found a "viable alternative solution" to the claims raised by Amorrortu.[596]

346. Mr. Ampuero began his letter by stating: "I am pleased to address you on behalf of the Special Commission representing the State in International Investment Disputes."[597] As such, through his previous encounter with the Special Commission and his presumed knowledge of Peruvian Law, Amorrortu knew or should have known that the relevant negotiating counterparty had to be the MEF's Special Commission, and that any supposed conversation with the Minister of Energy could not satisfy the negotiation requirement under Article 10.15 USPTPA.

347. MINEM's lack of authority to negotiate a settlement in this case is also emphasized by the fact that Amorrortu provides no evidence that his meeting with Mr. Vera concerned any discussions about the settlement of this arbitration. The only evidence that Claimant presents to support its allegation is a video of Amorrortu, which Claimant describes as an "interview[] by the press," in which he provides his "summary of his meeting with the Minister", but notably does not mention any attempt to settle the arbitration dispute.[598]

348. Amorrortu presents no other evidence to support his allegations that the meeting with Minister Óscar Vera was with the purpose of settling this arbitration. For example, in contrast

---

[595] Letter from Peru's President R. Ampuero Llerena to Akerman LLP, representatives of B. Amorrortu (28 November 2019) (**C-28**).

[596] Official Letter No. 096-2019-EF/CE.32 from R. Ampuero Llerena (MEF) to F. A. Rodríguez (Akerman LLP) (24 December 2019) (**R-11**), p. 1 (translation provided by Counsel. In the original Spanish: "no se ha identificado una alternative técnica y legalmente viable [] solución").

[597] Official Letter No. 096-2019-EF/CE.32 from R. Ampuero Llerena (MEF) to F. A. Rodríguez (Akerman LLP) (24 December 2019) (**R-11**), p.1 (translation provided by Counsel. In the original Spanish: "Tengo el agrado de dirigirme a usted, en nombre y representación de la Comisión Especial que representa al Estado en Controversias Internacionales de Inversión.").

[598] Claimant's Opposition to Bifurcation, ¶ 30; Video Interview given by Claimant B. Amorrortu (**R-5**); Transcript of Video Interview given by Claimant B. Amorrortu (**R-5 bis**).

to the negotiation that occurred in December 2019, Amorrortu does not present any letters or written communications evidencing that this was in fact the content of their discussion.[599]

### 2. Amorrortu failed to submit a Notice of Intent as required under Article 10.16.2 of the Treaty

349. Even if (*quod non*) Amorrortu was not required to negotiate with Peru before commencing these proceedings, the Tribunal lacks jurisdiction *ratione voluntatis* because Amorrortu did not give Peru a written notice of his intention to submit the claim to arbitration, as required under Article 10.16.2 of the Treaty.

350. Under the Treaty, the Contracting Parties' consent to arbitration is only perfected after the claimant delivers a Notice of Intent ("**NoI**") prior to submitting a Notice of Arbitration. Because Amorrortu did not deliver a NoI, Peru's consent to arbitration has not been perfected. As a result, the tribunal lacks jurisdiction *ratione voluntatis*.

351. Article 10.16.2 states, in relevant part, that:

> At least 90 days before submitting any claim to arbitration […], a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration ("notice of intent").[600]

352. This provision, along with all others set out in the Treaty, must be interpreted in accordance with the Vienna Convention on the Law of Treaties ("**VCLT**").[601] In particular, a three-step process is required to achieve the "good faith" interpretation mandated by Article 31(1) of the VCLT. The first step is to determine the ordinary meaning of the relevant term(s).[602] Then, the

---

[599] For example, similar to Exhibit C-028 presented by Claimant to evidence his negotiation in December 2019. Letter from Peru's President R. Ampuero Llerena to Akerman LLP, representatives of B. Amorrortu (28 November 2019) (**C-28**).

[600] USPTPA Investment Chapter (**CLA-1**), Art. 10.16.2.

[601] This is an undisputed point amongst the Parties. *See* Claimant's Opposition to Bifurcation, ¶ 75 (applying the VCLT—albeit incorrectly—to Article 10.16.2 of the Treaty).

[602] Vienna Convention on the Law of Treaties (1969) (**RLA-1**), Art. 31(1) ("A treaty shall be interpreted in good faith <u>in accordance with the ordinary meaning to be given to the terms</u> of the treaty in their context and in the light of its object and purpose.") (emphasis added).

term(s) must be analyzed in proper context.[603] Finally, the object and purpose of the term(s) are identified.[604] Applying this analytical process to Article 10.16.2 leads to the conclusion that Amorrortu was required to present Peru with a fresh NoI no less than 90 days before submitting his Notice of Arbitration on 16 August 2022.

353. Pursuant to the first step of this interpretative framework, the language employed in Article 10.16.2 shows that the Treaty's NoI requirement is unequivocal and mandatory in two important respects, each of which is manifest from the terms' plain, or ordinary, meaning.

354. *First*, as Peru explained in its Request for Bifurcation, the use of the word "shall" confirms that fulfilling the NoI precondition is not optional. Indeed, it is widely accepted by investment tribunals that the term "shall" gives rise to an obligation.[605] Absent an adequate NoI,[606] the claimant wishing to accept the Contracting Party's offer to arbitrate is precluded from proceeding to the next step, *i.e.*, the start of arbitration. Investment tribunals reviewing similar provisions have confirmed this conclusion.[607]

---

603 Vienna Convention on the Law of Treaties (1969) (**RLA-1**), Art. 31(1) ("A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.") (emphases added).

604 Vienna Convention on the Law of Treaties (1969) (**RLA-1**), Art. 31(1) ("A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.") (emphases added).

605 Peru's Request for Bifurcation (14 November 2023) ("**RfB**"), ¶ 24, note 35.

606 To be "adequate," the NoI must be satisfactory both in terms of timing and content. As Article 10.16.2 expressly indicates the NoI must be submitted "[a]t least 90 days before" the commencement of arbitration. As to the latter, Article 10.6.2 provides that the NoI "shall specify: (a) the name and address of the claimant and, where a claim is submitted on behalf of an enterprise, the name, address, and place of incorporation of the enterprise; (b) for each claim, the provision of this Agreement, investment authorization, or investment agreement alleged to have been breached and any other relevant provisions; (c) the legal and factual basis for each claim; and (d) the relief sought and the approximate amount of damages claimed." *See* USPTPA Investment Chapter (**CLA-1**), Art. 10.16.2.

607 *See*, *e.g.*, *Guaracachi America et al. v. Plurinational State of Bolivia*, PCA Case No. 2011-17, Award (31 January 2014) (**RLA-133**), ¶¶ 388-390 ("The explicit wording requiring a written notification and the expiry of a period of six months from that notification leads the Tribunal to consider that the 'cooling off period' narrows the consent given by the Contracting Parties to international arbitration. It is not up to the Tribunal to evaluate the importance or effect of such a condition, but simply to acknowledge that it was agreed by the two Contracting Parties as a condition precedent to the availability of an arbitral forum which is, and must be, based on consent. The fact is that the Contracting Parties only gave their consent to arbitration subject to the existence of a *written notification of a claim* and subject to the passing of six months' time between such notification and any request of arbitration. The Tribunal thus concludes that, at least in this case, the "cooling off period" is a jurisdictional barrier conditioning the jurisdiction of the Tribunal *rationae voluntatis*, since it is not up to a claimant to decide whether and when to notify the host State of the dispute,

355. *Second,* the use of the phrase "any claim" in Article 10.16.2 dictates, according to its ordinary meaning, that *all* claims submitted to arbitration are subject to the requisite NoI set out therein. The Treaty makes no exceptions or modifications of this obligation based on the nature, timing, or any other characteristic of the claim itself.

356. The second and third steps of the VCLT analysis—examining the relevant terms in proper context and determining their object and purpose, respectively—are best carried out together here. In particular, the context in which Article 10.16.2 of the Treaty is found and drafted, together with its object and purpose, definitively show that the NoI does not merely inform the Contracting Party of the existence of a claim, but rather that the claimant "inten[ds] to submit the claim to arbitration" once the 90-day period has passed.[608]

357. This is evinced by the context of Article 10.16.2 because, were the NoI only concerned with notifying the existence of a claim (*quod non*), the repeated references to arbitration immediately following the word "claim" would be rendered meaningless.[609] Similarly, the title of Article 10.16—"Submission of a Claim to Arbitration"—confirms that the claim which the NoI notifies, and the arbitral proceeding that it will trigger are inextricably linked. Finally, the preceding provision (Article 10.15) notifies the potential respondent of the existence of a dispute. As such, Article 10.16.2 must be understood to have a different purpose; in particular, that arbitration is impending.

358. Indeed, the object and purpose of the Treaty's NoI requirement is to put the relevant Contracting Party on notice of a forthcoming arbitral proceeding and its general contours, *i.e.*, the claim it will encompass. The NoI also creates a window of opportunity for the potential litigating

---

just as it is not up to such claimant to decide how long they must wait before submitting the request for arbitration.") (emphasis in original).

[608] USPTPA Investment Chapter (**CLA-1**), Art. 10.16.2.

[609] *See, e.g.*, USPTPA Investment Chapter (**CLA-1**), Article 10.16.2 ("At least 90 days before submitting any claim to arbitration under this Section, a claimant shall deliver to the respondent a written notice of its intention to submit the claim to arbitration ('notice of intent').") (emphasis added).

parties to avoid the looming arbitration (and associated costs) by reaching an amicable solution. As one tribunal held:

> [B]y imposing upon investors an obligation to voice their disagreement at least six months prior to the submission of an investment dispute to arbitration, the Treaty effectively accords host States the right to be informed about the dispute at least six months before it is submitted to arbitration. The purpose of this right is to grant the host State an opportunity to redress the problem before the investor submits the dispute to arbitration. In this case, Claimant has deprived the host State of that opportunity. That suffices to defeat jurisdiction.[610]

359. The preceding analysis and resulting conclusions dictate that Amorrortu should have submitted a NoI when he decided to start this arbitration *after* the tribunal in *Amorrortu I* had dismissed his claims,[611] so as to put Peru on notice that he intended to commence another arbitral proceeding. Because Amorrortu failed to deliver a NoI, Peru was precluded from (i) attempting to redress the problem, and (ii) preparing internally for the possibility of an impending arbitration. Such failure on Claimant's part "suffices to defeat [the Tribunal's] jurisdiction."[612]

---

[610] *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Jurisdiction (2 June 2010) (**RLA-12**), ¶ 315 (emphasis added). *See also Almasryia for Operating & Maintaining Touristic Construction Co., LLC v. State of Kuwait*, ICSID Case No. ARB/18/2, Award on the Respondent's Application under Rule 41(5) of the ICSID Arbitration Rules (1 November 2019) (**RLA-38**), ¶ 39 ("The purpose of [the negotiation and NoI provisions] of Article 10 [the BIT] is to allow the Parties in a dispute to try to reach a solution of the matter before resorting to arbitration. It seeks to prevent a dispute by giving advance notice to a State so that, if possible, a positive solution to the dispute may be achieved. This requirement is an integral part of the State's consent rather that a negligible formality. However, although the treaty does not force the parties to reach an amicable settlement, the provision does condition resort to arbitration to the fulfillment of certain requirements, among them a notification to the other party in writing. In this Tribunal's view compliance with the terms of Article 10 should be clear and unequivocal."); *Tulip Real Estate v. Turkey*, ICSID Case No. ARB/11/28, Decision on Bifurcated Jurisdictional Issue (5 March 2013) (**RLA-127**), ¶¶ 56, 62 ("A requirement for prior notice of a dispute to be given and negotiations to follow for a period before filing a claim along the lines of Article 8(2) is not an uncommon provision in investment treaties […] The Tribunal adds a fourth [function of a 'compromissory' provision of this sort], namely, that it sees that such a requirement also fulfils the policy function of conferring upon the State Party an opportunity to address a potential claimant's complaint before it becomes a respondent in an international investment dispute."); *Western NIS Enterprise Fund v. Ukraine*, ICSID Case No. ARB/04/2, Order (16 March 2006) (**RLA-96**), ¶ 5 ("Proper notice is an important element of the State's consent to arbitration, as it allows the State, acting through its competent organs, to examine and possibly resolve the dispute by negotiations.").

[611] The *Amorrortu I* Award dismissing Amorrortu's claims for lack of jurisdiction was issued on 5 August 2022. Amorrortu filed his Notice of Arbitration in this proceeding on 16 August 2022.

[612] *Burlington Resources Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Jurisdiction (2 June 2010) (**RLA-12**), ¶ 315.

360. Amorrortu does not deny that satisfying the NoI provision set out in Article 10.16.2 of the Treaty was a prerequisite to this arbitration. To the contrary, he has repeatedly acknowledged as much.[613] The potential consequence of his failure to satisfy this requirement—namely, the absence of Peru's consent to and the Tribunal's lack of jurisdiction over this arbitration—is therefore not an issue in dispute. The issue, rather, is whether Amorrortu, in fact, satisfied his obligation.

361. Amorrortu argues that he satisfied the condition set out in Article 10.16.2 because he submitted a NoI for *Amorrortu I* on 19 September 2019.[614] According to Claimant, the Treaty's NoI requirement is claim-specific rather than arbitration-specific such that, once a claimant has served the respondent with a NoI, the claim described therein may be submitted to numerous arbitrations without the need for additional NoIs.[615] Amorrortu provides no analysis or support for this conclusion but, in any event, it is unworkable and certainly does not result in a "good faith"[616] interpretation of Article 10.16.2.

362. At the outset, this arbitration and the *Amorrortu I* arbitration are entirely different proceedings. Thus, even under Claimant's proposed interpretation, Amorrortu was required to submit a new NoI before initiating a second arbitral proceeding. Moreover, as detailed above, by relying on the actions intended to satisfy the jurisdictional requirements—including the NoI—in the context of *Amorrortu I*, Claimant attempts to reverse the decision of that tribunal. In particular, Amorrortu treats the two cases as one in an effort to merely correct a deficient waiver for arbitration under the Treaty to proceed; a course of action expressly rejected by the *Amorrortu I* Award.[617]

---

[613] *See, e.g.*, SoC, ¶ 248 (describing the NoI as "mandatory"); Claimant's Opposition to Bifurcation, ¶ 71 (describing article 10.16.2 of the Treaty as a "requirement.").

[614] SoC, ¶ 248.

[615] Claimant's Opposition to Bifurcation, ¶¶ 72-73.

[616] Vienna Convention on the Law of Treaties (1969) (**RLA-1**), Art. 31(1).

[617] *Bacilio Amorrortu v. Republic of Peru*, PCA Case No. 2020-11, Partial Award on Jurisdiction (5 August 2022) (**CLA-108**), ¶ 243.

363. But even if the claim in *Amorrortu I* and here were the same (*quod non*), the Treaty nevertheless requires that a claimant submit a new NoI to put the Contracting Party on notice of the upcoming submission of a claim to arbitration. This is because the word "any" immediately precedes the word "claim" in Article 10.16.2 such that all claims submitted to arbitration require a NoI, even those that may have been subject to prior arbitral proceedings. As detailed above, the Treaty makes no exceptions.

364. That Amorrortu's interpretation is flawed and must be rejected is further confirmed by the object and purpose of the Treaty's NoI provision, which is to put the Contracting Party—in this case, Peru—on notice of impending arbitration in 90 days' time. The NoI which Amorrortu submitted in the context of *Amorrortu I* is insufficient for this precise reason. Though it put Peru on notice of a claim's submission to arbitration, that arbitration materialized and concluded with an award. Peru had no reason to presume, as Amorrortu implicitly maintains, that the NoI of 2019 was indefinite and meant to communicate the possibility of numerous arbitrations without any indication as to, *inter alia*, how many proceedings there would be or when they would take place. Adopting Claimant's interpretation would thus mean that, once a claimant has submitted a NoI indicating its intent to submit a claim to arbitration, the possibility of arbitration will always loom over the respondent even after the claim is, in fact, submitted to arbitration and the parties have litigated it to an end marked by an arbitral award. Such a result is unreasonable and in clear contradiction with the object and purpose of Article 10.16.2.

365. Amorrortu has also argued that "nothing in Article 10.16.2 requires the re-submission of the same notice of intent to commence arbitration that the claimant had sent in the event of an arbitration that is dismissed and subsequently refiled."[618] Claimant is wrong. Peru's position is not that Article 10.16.2 required Amorrortu to resubmit the same NoI from *Amorrortu I* to commence this proceeding, but that a *new* NoI was necessary because the claim and arbitral proceeding which the September 2019 NoI gave notice of had both materialized and concluded.

[618] Claimant's Rejoinder in Opposition to Bifurcation, ¶ 31.

Put differently, the objective of that NoI was achieved, rendering it ineffective for purposes of this proceeding.

366. Finally, that Peru's interpretation of Article 10.16.2 is a good faith interpretation based on the ordinary meaning of its terms is illustrated by the *Renco v. Peru* saga; a set of arbitral proceedings which Claimant clings onto.[619] There, the claimant served Peru with a NoI 96 days before submitting its Notice of Arbitration and Statement of Claim which gave rise to the *Renco II* arbitration.[620] One month after the *Renco I* award was issued, Renco decided to "refile some of those Treaty claims in a new arbitration under the Treaty in a manner that cures the technical defect that was the basis for their dismissal."[621] Thus, understanding Article 10.16.2 to require a new NoI in such circumstances, Renco served Peru with a new NoI communicating its intent and listing the claims which were the object of *Renco I* and would also be the object of the new arbitration.[622] This second NoI gave way to the ongoing *Renco II* arbitration. The *Renco v. Peru* saga is proof that a good faith interpretation of Article 10.16.2 leads a claimant to submit a second NoI even when certain claims have been notified and arbitrated in a prior proceeding. Moreover, it shows that satisfying the Treaty's jurisdictional conditions in this respect is practical and, therefore, it would not have been difficult for Amorrortu to comply in similar fashion.

367. For the reasons outlined above, a faithful interpretation of Article 10.16.2 cannot produce the result that a previous NoI can perfect a Contracting Party's consent in a subsequent arbitration. Rather, a new NoI must be submitted followed by a 90-day waiting period before arbitration is commenced. As a result, Amorrortu is precluded from invoking Peru's consent to arbitrate under the Treaty and the Tribunal lacks jurisdiction *ratione voluntatis*.

---

[619] *See, e.g.*, Claimant's Opposition to Bifurcation, ¶¶ 9, 34, 53, 56; Claimant's Rejoinder in Opposition to Bifurcation, ¶¶ 2, 11, 14.

[620] *The Renco Group, Inc. v. Republic of Peru [I]*, ICSID Case No. UNCT/13/1, Partial Award on Jurisdiction (15 July 2016) (**RLA-147**), ¶¶ 4-5.

[621] *The Renco Group, Inc. v. Republic of Peru (II)*, PCA Case No. 2019-46, Notice of Intent (15 July 2016) (**RLA-148**), p. 1.

[622] *See The Renco Group, Inc. v. Republic of Peru (II)*, PCA Case No. 2019-46, Notice of Intent (15 July 2016) (**RLA-148**).

***

368. In conclusion, the Tribunal lacks jurisdiction because Amorrortu has plainly failed to satisfy Articles 10.15 and 10.16 of the Treaty. Peru's consent to arbitration is clearly and expressly conditional upon (i) prior consultation and negotiation between the Parties and (ii) a NoI submitted at least 90 days in advance. Since Claimant made no attempt to comply with either requirement, the Tribunal lacks jurisdiction *ratione voluntatis* and must therefore dismiss Amorrortu's claim.

## IV. AMORRORTU'S CLAIM IS MERITLESS

369. Even if the Tribunal finds jurisdiction over Amorrortu's claim, there is no internationally wrongful act because the disputed measures are not attributable to Peru under international law (**Section IV.A**) and, in any event, Peru did not breach the minimum standard of treatment (**Section IV.B**).[623]

### A. There Is No Internationally Wrongful Act Because the Disputed Measures Are Not Attributable to Peru

370. As Peru demonstrated in Section III.D, Amorrortu's claim is outside the Tribunal's jurisdiction because the disputed measures do not involve the exercise of "any regulatory, administrative, or other governmental authority" by Perupetro as required under Article 10.1(2) of the Treaty. But, even if (without conceding) the requirements of Article 10.1(2) were satisfied, Amorrortu's claims fail on the merits because the disputed measures are not attributable to Peru under customary international law. Thus, there is no internationally wrongful act.[624] As explained below, none of the measures challenged were committed by organs of Peru (**Subsection 1**). In any event, Perupetro's measures were not of *puissance publique* (**Subsection 2**), or under the direction or control of Peru (**Subsection 3**).

#### 1. The impugned measures were not committed by organs of Peru (Article 4 of the ILC Articles)

371. Claimant argues that the measures of Peru's former President, its former First Lady, MINEM and Perupetro are attributable to the State under Article 4 of the ILC Articles because they are all organs of Peru.[625]

---

[623] United Nations General Assembly, Yearbook of the International Law Commission, U.N. Doc. A/CN.4/SER.4/2001/Add.1 (Part Two) (2001) (**CLA-33**), Art. 2 ("There is an internationally wrongful act of a State when conduct consisting of an action or omission: (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State.")

[624] United Nations General Assembly, Yearbook of the International Law Commission, U.N. Doc. A/CN.4/SER.4/2001/Add.1 (Part Two) (2001) (**CLA-33**), Art. 2.

[625] SoC, ¶¶ 282-283, notes 386-388; United Nations General Assembly, Yearbook of the International Law Commission, U.N. Doc. A/CN.4/SER.4/2001/Add.1 (Part Two) (2001) (**CLA-33**), Arts. 4, 5, 8.

372. Article 4 only attributes measures of *de jure* or *de facto* organs of the State.[626] A *de jure* organ "is part of" a State's "central or decentralized structure […] which means that it is […] part of the legislative, executive or judicial powers."[627] Entities with independent legal personality from the State, even if fully owned by the latter, are not *de jure* organs of a State.[628]

373. Here, the President and MINEM are organs of the State. However, as seen in Section III.D.3, none of the measures allegedly taken by them are part of Amorrortu's legal claim. Moreover, neither Peru's former First Lady nor Perupetro are part of Peru's governmental structure, and Perupetro has an independent legal personality,[629] as recognized by Amorrortu.[630] Thus, they are not *de jure* organs of Peru.

374. Nor are they *de facto* organs. An entity is a *de facto* organ of a State if it is completely dependent on it;[631] *i.e.* it (i) performs essential governmental functions; (ii) has a day-

---

[626] United Nations General Assembly, Yearbook of the International Law Commission, U.N. Doc. A/CN.4/SER.4/2001/Add.1 (Part Two) (2001) (**CLA-33**), Art. 4 ("The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State. […] An organ includes any person or entity which has that status in accordance with the internal law of the State").

[627] *Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Award (6 November 2008) (**CLA-18**), ¶ 160. *See also Gustav F W Hamester GmbH & Co KG v. Republic of Ghana*, ICSID Case No. ARB/07/24, Award (18 June 2010) (**RLA-113**), ¶ 182.

[628] *Mr. Kristian Almås and Mr. Geir Almås v. Republic of Poland*, PCA Case No 2015-13, Award (27 June 2016) (**RLA-145**), ¶¶ 208-209 ("As the Respondent notes in the Rejoinder, tribunals have determined that an entity is not a State organ according to the terms of a State's legal order when it has independent personality in that order"). *See also Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/03/29, Award (27 August 2009) (**CLA-27**), ¶ 119; *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award (8 October 2009) (**CLA-4**), ¶ 190.

[629] Organic Hydrocarbons Law, 1993 (Act No. 26221 of 1993) (13 August 1993) (**CLA-45**). Investor-state case law has systematically confirmed that an entity with an independent legal personality from that of the State, is not a *de jure* organ of it. *See Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/03/29, Award (27 August 2009) (**CLA-27**), ¶ 119; *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award (8 October 2009) (**CLA-4**), ¶ 190; *Gustav F W Hamester GmbH & Co KG v. Republic of Ghana*, ICSID Case No. ARB/07/24, Award (18 June 2010) (**RLA-113**), ¶¶ 183-185; *Mr. Kristian Almås and Mr. Geir Almås v. Republic of Poland*, PCA Case No 2015-13, Award (27 June 2016) (**RLA-145**), ¶ 209; *Unión Fenosa Gas, S.A. v. Arab Republic of Egypt*, ICSID Case No. ARB/14/4, Award (31 August 2018) (**RLA-162**), ¶ 9.98; *Ortiz Construcciones y Proyectos S.A. v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/17/1, Award (29 April 2020) (**RLA-176**), ¶ 169.

[630] SoC, ¶ 287.

[631] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Rep. 2007, p. 43 (26 February 2007) (**RLA-100**), ¶ 392

to-day subordination of the central government, and (iii) lacks any operational autonomy.[632] Claimant fails to argue, let alone show, how the listed entities are *de facto* organs of Peru. In any case, as seen, Perupetro has "economic, financial and administrative" autonomy.[633]

375. Therefore, none of the measures claimed by Amorrortu are attributable to Peru under Article 4.

### 2. In any event, Perupetro's measures were not of *puissance publique* (Article 5 of the ILC Articles)

376. As an alternative to his argument under Article 4 of the ILC Articles, Claimant alleges that the measures of Perupetro —and of Perupetro alone—were "governmental" and thus attributable to Peru under Article 5 of the ILC Articles.[634] This is incorrect.

377. Article 5 of the ILC articles establishes that:

> The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance.[635]

---

("according to the Court's jurisprudence, persons, groups of persons or entities may, for purposes of international responsibility, be equated with State organs even if that status does not follow from internal law, provided that in fact the persons, groups or entities act in 'complete dependence' on the State, of which they are ultimately merely the instrument."); *Ortiz Construcciones y Proyectos S.A. v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/17/1, Award (29 April 2020) (**RLA-176**), ¶ 167.

[632] *See Ortiz Construcciones y Proyectos S.A. v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/17/1, Award (29 April 2020) (**RLA-176**), ¶ 169; *Mr. Kristian Almås and Mr. Geir Almås v. Republic of Poland*, PCA Case No 2015-13, Award (27 June 2016) (**RLA-145**), ¶ 207.

[633] Perupetro's S.A. Organization and Functions Act, 1993 (Act No. 26225 of 1993) (20 August 1993) (**CLA-41**), Art. 4 (translation provided by Counsel. In the original Spanish: "En el ejercicio de su objeto social PERUPETRO S.A. actuará con plena autonomía económica, financiera y administrativa"). *See also* Vizquerra Expert Report (**RER-02**), note 1, ¶ 17.

[634] SoC, ¶¶ 294-310 (on United Nations General Assembly, Yearbook of the International Law Commission, U.N. Doc. A/CN.4/SER.4/2001/Add.1 (Part Two) (2001) (**CLA-33**), Art. 5).

[635] United Nations General Assembly, Yearbook of the International Law Commission, U.N. Doc. A/CN.4/SER.4/2001/Add.1 (Part Two) (2001) (**CLA-33**), Art. 5.

378. As recognized by Claimant,[636] to attribute a measure to a State under Article 5, he must show *both* (i) that the relevant entity enjoys "governmental authority" and (ii) that the measures alleged were specifically conducted under such authority.[637]

379. The *first requirement* obligates Claimant to show that the law provides the entity with *puissance publique*.[638] Claimant fails to show this. In fact, he alleges that "[t]here is no doubt that PeruPetro performs 'certain public or regulatory functions,'"[639] not "governmental authority" as strictly provided for and required by Article 5.

380. Furthermore, as demonstrated in Section III.D.1, Perupetro is a company of private law, governed by the rules of private, commercial companies, that was created to carry out *business activities* of the State, not governmental authority.[640]

381. In any event, Claimant's argument that Perupetro has "public or regulatory" functions (not "governmental authority") fails. He cites no law; he simply transcribes three different sections of *Perupetro's website*.

382. *First*, the company's mission statement, which establishes that Perupetro "contribute[s] to the sustainable development of Peru, harmonizing the interest of the State[,] the community and the investors."[641]

---

[636] *See* SoC, ¶ 297 (citing *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award (8 October 2009) (**CLA-4**), ¶ 191).

[637] *Ortiz Construcciones y Proyectos S.A. v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/17/1, Award (29 April 2020) (**RLA-176**), ¶ 169; *Noble Ventures, Inc. v Romania*, ICSID Case No. ARB/01/11, Award (12 October 2005) (**RLA-91**), ¶ 70.

[638] *Ortiz Construcciones y Proyectos S.A. v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/17/1, Award (29 April 2020) (**RLA-176**), ¶¶ 195-196.

[639] SoC, ¶ 305 (emphasis added).

[640] *See* Organic Hydrocarbons Law, 1993 (Act No. 26221 of 1993) (13 August 1993) (**CLA-45**), Art. 6; Perupetro's S.A. Organization and Functions Act, 1993 (Act No. 26225 of 1993) (20 August 1993) (**CLA-41**), Arts. 1, 4, 23, 24; Quiroga Expert Report (**CER-01**), ¶ 100, Yaya Expert Report (**CER-02**), ¶ 173.

[641] SoC, ¶ 305 (emphasis omitted).

383. This quote is not found in the evidence produced by Claimant.[642] In any event, seeking a public interest does not render an activity "governmental" *per se*. Echoing the decision in *Jan de Nul*, the *Hamester v. Ghana* tribunal noted that "'[w]hat matters'" under Article 5 "'is not the '*service public*' element, but the use of '*prérogatives de puissance publique*' or governmental authority.'"[643] Furthermore, the *Hamester* held that, to demonstrate "governmental authority," "it is well established that [it] must be shown that the [act] was […] not merely an act that could be performed by a commercial entity."[644]

384. Claimant does not show that aiming for Peru's development, and harmonizing the interests of the State, the community and investors requires *puissance publique*. In fact, *any* commercial entity seeking business success in Peru would aim for these goals. This mission is a perfect recipe for commercial prosperity, not the exercise of sovereign, governmental, authority.[645]

385. *Second*, Claimant refers to the activities listed in the "About us" section of Perupetro's website: "(i) to promote hydrocarbons investment […]; (ii) to negotiate, execute and monitor contracts […]; (iii) to assume the appropriate payment of fee, overfee and income participation; (iv) to propose to the [MINEM] other policy options related to hydrocarbon exploration and exploitation; (v) to participate in development of sector plans; (vi) to coordinate with the corresponding entities, compliance with the provisions related to environmental preservation."[646]

---

[642] Claimant cites to: Perupetro, *Mission and Vision* (**C-154**) as support for Perupetro's alleged mission (*see* SoC, note 421). C-154 does not establish this mission.

[643] *Gustav F W Hamester GmbH & Co KG v. Republic of Ghana*, ICSID Case No. ARB/07/24, Award (18 June 2010) (**RLA-113**), ¶ 202; *InterTrade Holding GmbH v. The Czech Republic*, PCA Case No. 2009-12, Final Award (29 May 2012) (**RLA-120**), ¶¶ 181-183.

[644] *Gustav F W Hamester GmbH & Co KG v. Republic of Ghana*, ICSID Case No. ARB/07/24, Award (18 June 2010) (**RLA-113**), ¶ 193 (emphasis added).

[645] Claimant argues that it is Perupetro's "responsibility" to ensure the sustainable development of Peru. That is false. Its mission does not mention this alleged "responsibility" anywhere.

[646] SoC, ¶ 307.

386. Activities (i)-(iii) above concern contractual negotiation, conclusion and compliance: these are commercial activities as demonstrated in Subsection III.D.1.[647] The same conclusion applies to activities (iv)-(vi) above. These activities concern coordination with MINEM and participating in the development of the sector. But Perupetro carries out these activities to further the State's "commercial activities," because that is Perupetro's *raison d'être*, not the exercise of "*puissance publique*."

387. *Third*, Claimant refers to Perupetro's website again, in support of its claim that the company "'negotiates, signs and monitors contracts about hydrocarbons.'"[648] Again, these are inherently commercial, non-governmental activities. Any entity can perform them. For instance, the *UPS v. Canada* tribunal found that the purchase of services by an "agent of Her Majesty in right of Canada" was a commercial activity, not attributable to the State.[649]

388. The fact that Perupetro performs these on behalf of Peru does not change this conclusion because Perupetro conducts these activities on behalf of the State's *business* capacity. As acknowledged by Claimant, Perupetro was created to conduct the State's "business activities."[650] Moreover, Claimant's legal expert concedes that Perupetro's contracts are of a non-

---

[647] *See Unión Fenosa Gas, S.A. v. Arab Republic of Egypt*, ICSID Case No. ARB/14/4, Award (31 August 2018) (**RLA-162**), ¶¶ 9.100-9.102 ("EGPC's engagement in the development and exploitation of natural resources be considered as a purely governmental activity, as opposed to a commercial activity […] EGPC has the power to contract in its own name and for its own account, as a principal"); *Mr. Kristian Almås and Mr. Geir Almås v. Republic of Poland*, PCA Case No 2015-13, Award (27 June 2016) (**RLA-145**), ¶¶ 210, 214-267 ("termination was not an exercise of public power but of a purported contractual right"); *Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Award (6 November 2008) (**CLA-18**), ¶ 169 ("during the tender process, the SCA acted like any contractor trying to achieve the best price for the services it was seeking"); *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award (8 October 2009) (**CLA-4**), ¶¶ 196-198.

[648] SoC, ¶ 309. Claimant argues that this is established under the "negotiation & contracts" section of Perupetro's website, but he does not provide a source for that statement. Moreover, in the corresponding footnote, it cites to exhibit CLA-110. Said exhibit does not relate to Perupetro or its functions. It is a book entitled "*Los Doce Apóstoles de la Economía Peruana.*" *See* F. Durand, *Los doce apóstoles de la economía peruana: Una mirada social a los grupos de poder limeños y provincianos* (2017) (**CLA-110**).

[649] *United Parcel Service of America Inc. v. Government of Canada*, ICSID Case No. UNCT/02/1, Award on the Merits (11 June 2007) (**RLA-101**), ¶¶ 50, 181-188.

[650] SoC, ¶ 299 ("PeruPetro was established under the internal laws of Peru. Specifically, Law No. 26221 states that PeruPetro was created to '*reformulate the State's business role*'"); Republic of Peru's Political Constitution (31 October 1993) (**CLA-14**), Art. 60; SoC, ¶ 283 ("PeruPetro was established to 'reformulate the State's business role.'").

administrative, private nature[651] and emphasizes that such contracts "have a[n] undisputable civil [as opposed to an administrative, public] nature."[652]

389. Thus, Claimants does not show that Perupetro has governmental authority and fails to meet the first prong of Article 5 of the ILC Articles. Consequently, it also fails to show the *second prong*: if Perupetro has no governmental authority, then logically none of its measures can be conducted under such authority.

390. In any case, assuming *quod non* that Perupetro has "governmental authority," there is no dispute that Claimant must then show that each of the disputed measures carried out this governmental authority. [653] Claimant does not even elaborate which of Perupetro's acts or measures he considers are attributable to Peru under Article 5. In any case, his only claim under the Treaty revolves around unfounded aspiration *to negotiate and secure a contract* with Perupetro. Perupetro does not require *puissance publique* to negotiate and conclude contracts. In words of the *Hamester v. Ghana* tribunal, any "commercial entity" can perform this type of activity.[654]

391. Thus, Perupetro's measures are not attributable to Peru under Article 5 of the ILC Articles.

---

[651] Quiroga Expert Report (**CER-01**), ¶ 89 (*citing to* L. Miranda and J. Amado, La seguridad jurídica en la contratación con el Estado: El contrato ley (**QUIROGA-19**), pp. 17-18).

[652] Quiroga Expert Report (**CER-01**), ¶ 81 (translation provided by Counsel. In the original Spanish: "los contratos de licencia para la explotación de hidrocarburos tienen una naturaleza indiscutiblemente civil.") (emphasis added).

[653] *See* SoC, ¶ 297 (citing *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award (8 October 2009) (**CLA-4**), ¶ 191; *Ortiz Construcciones y Proyectos S.A. v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/17/1, Award (29 April 2020) (**RLA-176**), ¶ 169; *Noble Ventures, Inc. v Romania*, ICSID Case No. ARB/01/11, Award (12 October 2005) (**RLA-91**), ¶ 70.

[654] *Gustav F W Hamester GmbH & Co KG v. Republic of Ghana*, ICSID Case No. ARB/07/24, Award (18 June 2010) (**RLA-113**), ¶ 193.

### 3. Perupetro was not acting under the direction or control of Peru (Article 8 of the ILC Articles)

392. Pursuant to Article 8 of the ILC Articles, measures taken under "the instructions of, or under the direction or control of" the State are attributable to it.[655] Claimant simply cites to article 8 of the ILC articles.[656] He does not *argue* that the disputed measures were carried out under the instructions or control of Peru. In any event, and *ad cautela*, Perupetro did not act under the instructions, direction, or control of Peru, as shown below.

393. Investment tribunals have endorsed the International Court of Justice's standard of "effective control," under article 8 of the ILC Articles. This standard requires *both* (i) a global control over the relevant entity, and (ii) a specific control over the measure in question.[657] This test "is very demanding."[658] Indeed, "tribunals assessing" its applicability "in investment treaty claims between 2010 and 2020 have invariably endorsed the high threshold of 'effective control.'"[659] To meet this standard, Claimant must show that the "State's instructions were given, in respect of each operation in which the alleged violation occurred."[660] Peru must have "directed or endorsed

---

[655] United Nations General Assembly, Yearbook of the International Law Commission, U.N. Doc. A/CN.4/SER.4/2001/Add.1 (Part Two) (2001) (**CLA-33**), Art. 8.

[656] *See* SoC, note 388.

[657] *See inter alia Ortiz Construcciones y Proyectos S.A. v. People's Democratic Republic of Algeria*, ICSID Case No. ARB/17/1, Award (29 April 2020) (**RLA-176**), ¶ 247; *Georg Gavrilovic and Gavrilovic D.O.O. v. Republic of Croatia*, ICSID Case No. ARB/12/39, Award (26 July 2018) (**RLA-160**), ¶ 828; *Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Award (6 November 2008) (**CLA-18**), ¶ 173; *Mr. Kristian Almås and Mr. Geir Almås v. Republic of Poland*, PCA Case No 2015-13, Award (27 June 2016) (**RLA-145**), ¶ 269.

[658] *Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Award (6 November 2008) (**CLA-18**), ¶ 173.

[659] E. Shirlow & K. Duggal, "Special Issue on the 20th Anniversary of ARSIWA: The ILC Artices on State Responsibility in Investment Arbitration," 37 *ICSID Review*, p. 378 (2022) (**RLA-183**), p. 384.

[660] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Rep. 2007, p. 43 (26 February 2007) (**RLA-100**), ¶ 400 (emphasis added). *See also Marfin Investment Group Holdings S.A. & Others v. Republic of Cyprus*, ICSID Case No. ARB/13/27, Award (Redacted) (26 July 2018) (**RLA-161**), ¶ 679 ("Claimants have not demonstrated with evidence that these specific acts that they challenge were directed or controlled by Respondent. The evidence put forward by Claimants attempts to show Respondent's overall control over Laiki") (emphasis omitted).

the perpetration" of every allegedly wrongful act.[661] Not even a "general control [with] a high degree of dependency" is sufficient to meet the standard of Article 8.[662]

394. As mentioned, Claimant does not even discuss, let alone demonstrate, that Perupetro acted under the "effective control" of Peru. It could not. As seen, Perupetro enjoys "plain economic, financial and administrative autonomy."[663] Moreover, and as noted, Claimant concedes that Perupetro has the *discretion*, independent of any other entity, to opt for direct negotiations or public bidding.[664] Finally, there is *no evidence* that the State instructed Perupetro to conduct any of the measures challenged by Claimant. In fact, it was the decision of Perupetro's Board alone not to subject the Blocks to direct negotiation.[665]

395. Even if the Tribunal were to find that the acts of Peru's former first lady, Nadie Heredia, are attributable to the State, Amorrortu has failed to show that Perupetro decided to issue a call for tender under the direction and control of Nadine Heredia. Again, Amorrortu does not even argue that Nadine Heredia directed and controlled the disputed measures taken by Perupetro. In any case, *first*, the only evidence Amorrortu relies on to imply that Perupetro's measures were

---

[661] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986. p. 14 (27 June 1986) (**RLA-65**), ¶ 115.

[662] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986. p. 14 (27 June 1986) (**RLA-65**), ¶ 115.

[663] Perupetro's S.A. Organization and Functions Act, 1993 (Act No. 26225 of 1993) (20 August 1993) (**CLA-41**), Art. 4 (translation provided by Counsel. In the original Spanish: "En el ejercicio de su objeto social PERUPETRO S.A. actuará con plena autonomía económica, financiera y administrativa").

[664] *See* SoC, ¶ 192; Organic Hydrocarbons Law, 1993 (Act No. 26221 of 1993) (13 August 1993) (**CLA-45**), Art. 11. *See also* Perupetro's Board of Directors, *Agreement No. 029-2017, Direct Negotiation and Competitive Bidding Process Contracting Policy* (10 April 2017) (**R-51**), ¶ 2.2. *See also* Quiroga Expert Report (**CER-01**), ¶ 101 ("Article 11 of the Organic Hydrocarbons Law provides that hydrocarbon exploitation contracts may be entered into, at PeruPetro's discretion, after direct negotiation or by call for bids.") (translation provided by Counsel. In the original Spanish: "[e]l Artículo 11° del TUO de la Ley Orgánica de Hidrocarburos dispone que los contratos de explotación de hidrocarburos pueden celebrarse, a criterio de PERUPETRO, previa negociación directa o por convocatoria") (emphasis added).

[665] Perupetro´s Board of Directors, *Agreement No. 034-2014, Approval of Temporary License Draft Contract for Exploitation of Block III* (20 March 2014) (**C-3**), p. 1 (In the original Spanish: "[…] se lleve a cabo el proceso de selección para la celebración del nuevo Contrato de Licencia para la Explotación de Hidrocarburos en el Lote III […]."); Ministry of Energy and Mines of Peru, *Supreme Decree No. 012-2014-EM, Temporary License Agreement Approval for the Exploitation of Hydrocarbons in Hydrocarbons in Block III, and Supreme Decree No. 013-2014-EM, Temporary License Agreement Approval for the Exploitation of Hydrocarbons in Hydrocarbons in Block IV* (5 April 2014) (**CLA-59**), pp. 1-2.

related to meetings between Nadine Heredia and GyM is a newspaper with the latter's agenda.[666] As held by the ICJ in the cited *Nicaragua* case, "even if [press articles] seem to meet high standards of objectivity, the Court regards them not as evidence capable of proving facts."[667] Direction and control under Article 8 of the ILC Articles cannot be established by a single newspaper report. *Second*, in any case, this report mentions that the alleged meeting concerning the Blocks happened in February 2015, months *after* the disputed measures.[668] Claimant is aware of this critical flaw. Thus, he argues that these Blocks were discussed since a previous meeting held on 28 April 2014, before Amorrortu presented Baspetrol's alleged proposal.[669] But the newspaper clearly indicated that, at that meeting, they "talk[ed] about the Gas Pipeline," *not* the Blocks.[670] Furthermore, even by the time that meeting was held, Perupetro had already decided to conduct the bidding process over the Blocks, *not* the direct negotiation with Baspetrol, or any other company.[671]

396. Thus, Peru did not exercise "effective control" over Perupetro. Accordingly, its actions are not attributable to Peru under Article 8 of the ILC Articles.

***

---

[666] SoC, ¶ 148, *citing to* G. Castañeda Palomino, "Gasoducto del Sur case: the prosecutor's office has an agenda with the meetings of José Graña, Jorge Barata and Nadine Heredia," *El Comercio* (31 August 2020) (**C-34**).

[667] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986. p. 14 (27 June 1986) (**RLA-65**), ¶ 62 (emphasis added).

[668] G. Castañeda Palomino, "Gasoducto del Sur case: the prosecutor's office has an agenda with the meetings of José Graña, Jorge Barata and Nadine Heredia," *El Comercio* (31 August 2020) (**C-34**), p. 6 ("The [meeting] was in February 2015, also in the Palace. 'I attended at the call of Heredia to deal with lots III and IV of PetroPerú,' he said") (emphasis added).

[669] SoC, ¶ 148.

[670] G. Castañeda Palomino, "Gasoducto del Sur case: the prosecutor's office has an agenda with the meetings of José Graña, Jorge Barata and Nadine Heredia," *El Comercio* (31 August 2020) (**C-34**), p. 5.

[671] The decision had been formally taken since 20 March 2014. *See* Perupetro´s Board of Directors, *Agreement No. 034-2014, Approval of Temporary License Draft Contract for Exploitation of Block III* (20 March 2014) (**C-3**), p. 1 ("the selection [bidding] process is conducted to celebrate the License Contract for the Exploitation of Hydrocarbons in Block III.") (translation provided by Counsel. In the original Spanish: "[…] se lleve a cabo el proceso de selección para la celebración del nuevo Contrato de Licencia para la Explotación de Hidrocarburos en el Lote III […].") (emphasis added). *See also supra* Subsection III.C.1; Ministry of Energy and Mines of Peru, *Supreme Decree No. 012-2014-EM, Temporary License Agreement Approval for the Exploitation of Hydrocarbons in Hydrocarbons in Block III, and Supreme Decree No. 013-2014-EM, Temporary License Agreement Approval for the Exploitation of Hydrocarbons in Hydrocarbons in Block IV* (5 April 2014) (**CLA-59**), pp. 1-2.

397. In conclusion, Perupetro's measures are not attributable to Peru under the ILC Articles. Therefore, there is no internationally wrongful act, and the Tribunal must dismiss Amorrortu's claim.

### B. Even if Perupetro's Conduct Is Attributable to Peru, This Case Should be Dismissed on the Merits Because Amorrortu Has Failed to Demonstrate He Suffered Any Violation of the Treaty

398. Amorrortu alleges that Peru violated the Minimum Standard of Treatment ("**MST**") protection contained in Article 10.5 of the USPTPA when "it implemented a corrupt scheme to deprive Amorrortu of his substantive right to resume his operation of Block III (and IV) through Direct Negotiation."[672]

399. This claim is meritless both in law and in fact. Amorrortu's formulation of the relevant legal standard is lacking in several critical respects, especially because he wrongly equates the MST of the Treaty to the more expansive autonomous fair and equitable treatment ("**FET**") standard found in other treaties (**Subsection 1**). But even applying Claimant's distorted version of the MST, Amorrortu has fallen woefully short of showing any wrongful conduct on the part of Peru (**Subsection 2**).

400. Lastly, Claimant has not shown that he has a standalone protection against acts of corruption, nor that he was a victim thereof. In any case, Baspetrol's failure to obtain the license contracts was unrelated to any alleged act of corruption (**Subsection 3**).

#### 1. Amorrortu has misconstrued the MST standard of the Treaty

401. Claimant argues that Peru violated four standards of protection included in Article 10.5 of the USPTPA, namely (i) the "customary principles of international law;"[673] (ii) legitimate

---

[672] SoC, ¶ 311.

[673] SoC, § V(C)(1).

expectations;[674] (iii) protection from arbitrary and discriminatory conduct;[675] and (iv) transparency.[676]

402. Article 10.5 of the USPTPA provides as follows:

> 1. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.
>
> 2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:
>
>> (a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and
>>
>> (b) "full protection and security" requires each Party to provide the level of police protection required under customary international law.
>
> 3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.[677]

403. The text of Article 10.5 is unequivocal. Article 10.5 limits the State's obligation to what "is required by" the "customary international law minimum standard of treatment." The MST

[674] SoC, § V(C)(2).

[675] SoC, § V(C)(3).

[676] SoC, § V(C)(4).

[677] USPTPA Investment Chapter (**CLA-1**), Art. 10.5 (emphasis added).

protected under customary international law ("**CIL**") (or, together, the "**customary minimum standard of treatment**") does not afford investors the litany of rights asserted by Amorrortu. Article 10.5 MST is "meant to serve as a floor, an absolute bottom, below which conduct is not accepted by the international community."[678] It does not impose any obligations above that floor.

404. Claimant glosses over the clear language of Article 10.5, relying instead on the much broader and autonomous definition of FET found in other investment treaties. Should Claimant wish to equate the two standards, he bears the burden to demonstrate that the four protections he seeks are part of the CIL definition of MST.[679]

405. Rather than establishing the existence of these CIL rules,[680] Claimant instead relies on arbitral decisions that applied treaties containing autonomous FET clauses.[681] None of those

---

[678] *Glamis Gold, Ltd. v. United States of America*, NAFTA/UNCITRAL, Award (8 June 2009) (**RLA-106**), ¶ 615; *See also S.D. Myers, Inc. v. Government of Canada*, NAFTA/UNCITRAL, First Partial Award (13 November 2000) (**RLA-76**), ¶ 259; *Grand River Enterprises Six Nations, Ltd., et al. v. United States of America*, NAFTA/UNCITRAL, Award (12 January 2011) (**RLA-115**), ¶214; E. Borchard, *The "Minimum Standard" of the Treatment of Aliens*, 38 Mich. L. Rev. 4 (1940) (**RLA-57**), p. 454.

[679] *Cargill, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award (18 September 2009) (**RLA-107**) ¶ 273. The *ADF, Glamis,* and *Methanex* tribunals likewise placed on the claimant the burden of establishing the content of customary international law. *See ADF Group Inc. v. United States of America*, ICSID Case No. ARB (AF)/00/1, Award (9 January 2003) (**RLA-81**), ¶ 185; *Glamis Gold, Ltd. v. United States of America*, NAFTA/UNCITRAL, Award (8 June 2009) (**RLA-106**), ¶ 601; *Methanex Corporation v. United States of America*, NAFTA/UNCITRAL, Final Award of the Tribunal on Jurisdiction and Merits (3 August 2005) (**RLA-90**), Part IV, Ch. C, ¶ 26 (citing *Asylum* for placing burden on claimant to establish the content of customary international law and finding that claimant, which "cited only one case," had not discharged its burden).

[680] The requirements for establishing CIL have been repeatedly stated by the International Court of Justice in cases including *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*, Judgment, I.C.J. Reports 2012, p. 99 (3 February 2012) (**RLA-118**), ¶ 55 ("In particular […] the existence of a rule of customary international law requires that there be 'a settled practice' together with *opinio juris*." The court also cites *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*, Judgment, I.C.J. Reports 1969, p. 3 (20 February 1969) (**RLA-61**)); *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, I.C.J. Reports 1985, p. 13 (3 June 1985) (**RLA-62**), ¶ 27 ("It is of course axiomatic that the material of customary international law is to be looked for primarily in the actual practice and *opinio juris* of States.").

[681] For instance, Claimant relies on the following cases which interpreted autonomous standards of FET: *Saluka Investments B.V. v. Czech Republic*, UNCITRAL, Partial Award (17 March 2006) (**CLA-23**) (relying on Agreement on the Encouragement and Reciprocal Protection of Investments Between the Kingdom of The Netherlands and the Czech and Slovak Federal Republic, Art. 3(1) "Each Contracting Party shall ensure fair and equitable treatment to the investments of investors of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those investors."); *Ioan Micula et al. v. Romania*, ICSID Case No. ARB/05/20, Award (11 December 2013) (**CLA-75**) (relying on the Agreement between the Government of the Kingdom of Sweden and the Government of Romania on the Promotion and Reciprocal Protection of Investments, Art. 2(2) "Each Contracting Party shall at all times ensure fair and equitable treatment of the investments by investors of the other Contracting Party and shall not impair the management,

cases can therefore constitute evidence of the customary minimum standard of treatment protected by Article 10.5.[682]

406. As noted by the *Cargill v Mexico* tribunal, there is a fundamental difference between the meaning of FET under customary international law as compared to the autonomous FET standard found in some investment treaties. Ascertaining the content of the latter is a matter of treaty interpretation, where the tribunal can "with little input from the parties, provide a legal answer"[683] by applying the rules of interpretation to the language of the treaty. On the other hand, the content of the customary FET standard involves a legal and factual analysis of determining "where custom is found in the practice of States regarded as legally required by them."[684] Notably, the *Cargill v Mexico* tribunal highlighted the well-established rule that, where a rule of custom is disputed, "it is for the party asserting the custom to establish the content of that custom."[685]

---

maintenance, use, enjoyment or disposal thereof, as well as the acquisition of goods and services or the sale of their production, through unreasonable or discriminatory measures."); *Eureko B.V. v. Republic of Poland*, Ad Hoc, Partial Award (19 August 2005) (**CLA-80**) (relying on the Agreement between the Kingdom of the Netherlands and the Republic of Poland on encouragement and reciprocal protection of Investments, Art. 3(1) "Each Contracting Party shall ensure fair and equitable treatment to the investments of investors of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those investors."); *9REN HOLDING S.A.R.L. v. Kingdom of Spain*, ICSID Case No. ARB/15/15, Award (31 May 2019) (**CLA-82**) (relying on the Energy Charter Treaty, Article 10(1) "Each Contracting Party shall, in accordance with the provisions of this Treaty, encourage and create stable, equitable, favourable and transparent conditions for Investors of other Contracting Parties to make Investments in its Area. Such conditions shall include a commitment to accord at all times to Investments of Investors of other Contracting Parties fair and equitable treatment. Such Investments shall also enjoy the most constant protection and security and no Contracting Party shall in any way impair by unreasonable or discriminatory measures their management, maintenance, use, enjoyment or disposal. In no case shall such Investments be accorded treatment less favourable than that required by international law, including treaty obligations. Each Contracting Party shall observe any obligations it has entered into with an Investor or an Investment of any other Contracting Party.").

[682] *See, e.g., Glamis Gold, Ltd. v. United States of America*, NAFTA/UNCITRAL, Award (8 June 2009) (**RLA-106**), ¶ 608 (concluding that "arbitral decisions that apply an autonomous standard provide no guidance inasmuch as the entire method of reasoning does not bear on an inquiry into custom."); *Cargill, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award (18 September 2009) (**RLA-107**), ¶ 278 (noting that arbitral "decisions are relevant to the issue presented in Article 1105(1) only if the fair and equitable treatment clause of the BIT in question was viewed by the Tribunal as involving, like Article 1105, an incorporation of the customary international law standard rather than autonomous treaty language.").

[683] *Cargill, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award (18 September 2009) (**RLA-107**), ¶ 271.

[684] *Cargill, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award (18 September 2009) (**RLA-107**), ¶ 271.

[685] *Cargill, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award (18 September 2009) (**RLA-107**), ¶ 271. This rule is well established in international law, as has been stated, for example in *Colombian-Peruvian asylum*

407. Claimant has not shown that the protections he seeks have crystallized as customary international law. This is an impossible task for Claimant. Tribunals have repeatedly found that the customary minimum standard of treatment does not include the protection of legitimate expectations,[686] a general and autonomous duty of transparency,[687] nor a general prohibition against discriminatory or arbitrary conduct as agued by Claimant.[688]

408. This position is also confirmed by the United States, the other Contracting Party to the USPTPA, in its interpretation of provisions with similar wording to that of Article 10.5 USPTPA.[689] In fact, the United States has clarified that the obligations that *have* crystallized as

---

*case*, Judgment. I.C.J. Reports 1950, p. 266. (20 November 1950) (**RLA-59**), ¶¶ 276-277 ("The Party which relies on a custom […] must prove that this custom is established in such a manner that it has become binding on the other Party."); *ADF Group Inc. v. United States of America*, ICSID Case No. ARB (AF)/00/1, Award (9 January 2003) (**RLA-81**), ¶ 185; *Glamis Gold, Ltd. v. United States of America*, NAFTA/UNCITRAL, Award (8 June 2009) (**RLA-106**), ¶ 601.

[686] *Grand River Enterprises Six Nations, Ltd. et al. v. United States of America*, NAFTA/UNCITRAL, Counter-Memorial of Respondent United States of America (22 December 2008) (**RLA-103**), p. 96; *Antonio del Valle Ruiz et al v. Kingdom of Spain*, PCA Case No. 2019-17, Final Award (13 March 2023) (**RLA-186**), ¶ 519; *Red Eagle Exploration Limited v. Republic of Colombia*, ICSID Case No. ARB/18/12, Award (28 February 2024) (**RLA-191**), ¶ 293; *Mesa Power Group, LLC v. Government of Canada*, PCA Case No. 2012-17, UNCITRAL, Award (24 March 2016) (**RLA-144**), ¶ 502; *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*, Judgment, I.C.J. Reports 2018, p. 507 (1 October 2018) (**RLA-164**), ¶ 162.

[687] *Latam Hydro LLC and CH Mamacocha S.R.L. v. Republic of Peru*, ICSID Case No. ARB/19/28, Award (20 December 2023) (**RLA-189**), ¶ 1024; *Cargill, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award (18 September 2009) (**RLA-107**), ¶ 294; *Mexico v. Metalclad Corp.*, [2001] B.C.J. No. 950 (2 May 2001) (**RLA-77**), ¶¶ 68, 72; *Merrill & Ring Forestry L.P. v. Government of Canada*, UNCITRAL, Award (31 March 2010) (**RLA-110**), ¶ 208; *Mercer International Inc. v. Canada*, ICSID Case No. ARB(AF)/12/3, Award (6 March 2018) (**RLA-35**), ¶ 7.77.

[688] The prohibition against discrimination is not a standalone right under CIL. To the extent that the customary minimum standard of treatment prohibits discrimination, it does so only in the context of other established CIL rights. *See e.g.*, *Grand River Enterprises Six Nations, Ltd., et al. v. United States of America*, NAFTA/UNCITRAL, Award (12 January 2011) (**RLA-115**) ¶¶ 208-209; *Methanex Corporation v. United States of America*, NAFTA/UNCITRAL, Final Award of the Tribunal on Jurisdiction and Merits (3 August 2005) (**RLA-90**), Part IV, Chapter C, ¶¶ 25-26. A violation of the arbitrariness standard will only be found "when the State's actions move beyond a merely inconsistent or questionable application of administrative or legal policy or procedure to the point where the action constitutes an unexpected and shocking repudiation of a policy's very purpose and goals, or otherwise grossly subverts a domestic law or policy for an ulterior motive." *See Cargill, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/05/2, Award (18 September 2009) (**RLA-107**), ¶ 293; *see also Glamis Gold, Ltd. v. United States of America*, NAFTA/UNCITRAL, Award (8 June 2009) (**RLA-106**), ¶ 626.

[689] *Mason Capital L.P. and Mason Management LLC v. Republic of Korea*, PCA Case No. 2018-55, Submission of the United States of America (1 February 2020) (**RLA-172**), ¶¶ 16-23; *Michael Ballantine and Lisa Ballantine v. Dominican Republic*, PCA Case No. 2016-17, Submission of the United States of America (6 July 2018) (**RLA-159**), ¶¶ 21-25; *Aaron C. Berkowitz, Brett E. Berkowitz and Trevor B. Berkowitz (formerly Spence International Investments and others) v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Submission of the United States of America (17 April 2015) (**RLA-137**), ¶¶ 13-14, 17-20; *Corona Materials, LLC v. Dominican Republic*, ICSID Case No.

part of the customary MST are the prohibition against denial of justice, unlawful expropriation, and full protection and security and fair and equitable treatment as required by customary international law.[690]

409. The threshold to establish a violation of the customary standard of fair and equitable treatment is high. Specifically, it "requires an act that is sufficiently egregious and shocking—a *gross* denial of justice, *manifest* arbitrariness, *blatant* unfairness, a *complete* lack of due process, *evident* discrimination, or a *manifest* lack of reasons."[691] The acts in question would need to show a "wilful neglect of duty, an insufficiency of action falling far below international standards, or even subjective bad faith."[692] None of that is present in this case.

**2. Even if the Tribunal were to examine the merits of the dispute on the basis of Claimant's incorrect formulation of the MST, it would not find any breach of Peru's obligations under Article 10.5 of the Treaty**

410. Claimant alleges that Peru breached the minimum standard of treatment clause when it "shelved" Amorrortu's so called "Proposal for Direct Negotiation" and initiated the

---

ARB(AF)/14/3, *Submission of the United States of America* (11 March 2016) (**RLA-142**), ¶¶ 12-13; *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/23, Submission of the United States of America (23 November 2012) (**RLA-125**), ¶¶ 3-5.

[690] *Michael Ballantine and Lisa Ballantine v. Dominican Republic*, PCA Case No. 2016-17, Submission of the United States of America (6 July 2018) (**RLA-159**), ¶18; *Corona Materials, LLC v. Dominican Republic*, ICSID Case No. ARB(AF)/14/3, *Submission of the United States of America* (11 March 2016) (**RLA-142**), ¶¶ 12-13; *Aaron C. Berkowitz, Brett E. Berkowitz and Trevor B. Berkowitz (formerly Spence International Investments and others) v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Submission of the United States of America (17 April 2015) (**RLA-137**), ¶¶ 13-14; *Daniel W. Kappes and Kappes, Cassiday & Associates v. Republic of Guatemala*, ICSID Case No. ARB/18/43, Submission of the United States of America (19 February 2021) (**RLA-180**), ¶¶ 12-13.

[691] *Glamis Gold, Ltd. v. United States of America*, NAFTA/UNCITRAL, Award (8 June 2009) (**RLA-106**), ¶ 627 (emphasis added). *See also Aaron C. Berkowitz, Brett E. Berkowitz and Trevor B. Berkowitz (formerly Spence International Investments and others) v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Submission of the Republic of El Salvador (17 April 2015) (**RLA-138**), ¶ 13 ("the conduct of a State must rise to the level of manifest arbitrariness, utter lack of due process, blatant unfairness, evident discrimination, or egregious denial of justice, to become a breach of CAFTA-DR Article 10.5); *TECO Guatemala Holdings, LLC v. Republic of Guatemala*, ICSID Case No. ARB/10/23, Submission of the Dominican Republic as a Non-Disputing Party (5 October 2012) (**RLA-124**), ¶¶ 6-7.

[692] *Alex Genin, Eastern Credit Limited, Inc. and A.S. Baltoil v. The Republic of Estonia*, ICSID Case No. ARB/99/2, Award (25 June 2001) (**RLA-78**), ¶ 367; *See also International Thunderbird Gaming Corporation v. United Mexican States*, NAFTA/UNCITRAL, Award (26 January 2006) (**CLA-74**), ¶ 194.

Bidding Processes that, according to Claimant, were intended to benefit GyM as part of a corruption scheme.[693]

411. In fact, the claims brought by Amorrortu are a futile attempt to conceal his own shortcomings in his obsession to secure the contracts to operate the Blocks. The reality is that Claimant's pleadings have failed to establish any impropriety by Perupetro, either in the interactions with Amorrortu or in the Bidding Processes for the Blocks.

412. Even under Amorrortu's distorted version of the Article 10.15 MST, he has failed to show that Peru breached the autonomous FET standard (**Subsection a**). As explained by Peru's legal expert, Dr. Raúl Vizquerra, Baspetrol's "proposal" did not start [a] direct negotiation.[694] Nor did Baspetrol ever acquire a right to direct negotiation with Perupetro (**Subsection b**).[695] In any case, Amorrortu did not suffer any prejudice because he willingly participated in the Bidding Process which was carried out in accordance with the governing legal framework (**Subsection c**).

#### a. Amorrortu has not shown that Peru breached the autonomous FET standard

413. Claimant relies on *Micula v Romania* to establish a breach of Amorrortu's legitimate expectations.[696] However, he fails to address the critical element in a legitimate expectations analysis: namely, that the investor's reliance on such expectations be *reasonable*.[697] Amorrortu's subjective expectations are irrelevant.[698] Instead, they must be based on "whatever information would have been revealed to [him] through appropriate due diligence."[699] The

---

[693] SoC, ¶ 266.

[694] Vizquerra Expert Report (**RER-02**), ¶ 7.

[695] Vizquerra Expert Report (**RER-02**), ¶¶ 8, 15.

[696] SoC, ¶ 330, *citing Ioan Micula et al. v. Romania*, ICSID Case No. ARB/05/20, Award (11 December 2013) (**CLA-75**), ¶ 668.

[697] *Ioan Micula et al. v. Romania*, ICSID Case No. ARB/05/20, Award (11 December 2013) (**CLA-75**), ¶ 668 (The tribunal sets out a three-pronged test, requiring Claimant to establish that "(a) [Respondent] made a promise or assurance, (b) the Claimant[] relied on that promise or assurance as a matter of fact, and (c) such reliance (and expectation) was reasonable."

[698] *Saluka Investments B.V. v. Czech Republic*, UNCITRAL, Partial Award (17 March 2006) (**CLA-23**), ¶ 304; *see also EBL and Tubo Sol v. Spain*, ICSID Case No. ARB/18/42, Award (11 January 2024) (**RLA-190**), ¶ 704.

[699] *EBL and Tubo Sol v. Spain*, ICSID Case No. ARB/18/42, Award (11 January 2024) (**RLA-190**), ¶ 704.

appropriateness of Perupetro's conduct must therefore "be assessed against the background of information that [Amorrortu] knew and should reasonable have known at the time of the investment and of the conduct of [Perupetro]."[700]

414. Amorrortu's claim that Peru did not act transparently is also untenable. The obligation of transparency is merely one of publicity, "whereby the State must make available in an accessible form the legal and administrative requirements applicable to the investor,"[701] which need only be "accessible and intelligible" to "lawyers qualified to practice in [Peru]."[702] Claimant mistakenly relies on *9Ren v Spain* to argue that Peru violated the transparency requirement because it "systematically acted without giving Amorrortu '*clear, specific, and binding representation[s].*'"[703] In fact, the tribunal in *9Ren* rejected the investor's argument that the Spanish regulation needed to be "clear, specific, and binding," noting that "[c]omplexibity is not necessarily the enemy of transparency."[704]

415. Amorrortu also cannot argue that Perupetro acted arbitrarily or discriminatorily. International investment tribunals have consistently held that the standard for demonstrating arbitrary, unreasonable, or capricious conduct is high.[705] In interpreting the meaning of arbitrariness, tribunals have followed the high standard set out in the *Elettronica Sicula S.p.A. (ELSI)* ("***ELSI***") case.[706] In *ELSI*, the ICJ held that:

---

[700] *Electrabel S.A. v. Republic of Hungary*, ICSID Case No. ARB/07/19, Decision on Jurisdiction, Applicable Law and Liability (30 November 2012) (**RLA-126**), ¶ 7.78 (emphasis added).

[701] *Orazul International España Holdings S.L. v. Argentine Republic*, ICSID Case No. ARB/19/25, Award (14 December 2023) (**RLA-188**), ¶ 725.

[702] *Mathias Kruck and others v. Kingdom of Spain*, ICSID Case No. ARB/15/23, Decision on Jurisdiction, Liability and Principles of Damages (14 September 2022) (**RLA-185**), ¶ 191.

[703] SoC, ¶ 354, *citing 9REN HOLDING S.A.R.L. v. Kingdom of Spain*, ICSID Case No. ARB/15/15, Award (31 May 2019) (**CLA-82**), ¶ 320 (emphasis in original).

[704] *9REN HOLDING S.A.R.L. v. Kingdom of Spain*, ICSID Case No. ARB/15/15, Award (31 May 2019) (**CLA-82**), ¶ 320.

[705] *See e.g., Técnicas Medioambientales Tecmed, S.A. v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award (29 May 2003) (**CLA-73**), ¶ 154; *Loewen Group, Inc. and Raymond L. Loewen v. United States of America*, ICSID Case No. ARB(AF)/98/3, Award (26 June 2003) (**RLA-82**), ¶ 131; *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award (8 October 2009) (**CLA-4**), ¶ 303.

[706] *Elettronica Sicula SpA* (*ELSI*) (*United States v. Italy*), Judgment, I.C.J. Rep. 1989, p. 15 (20 July 1989) (**CLA-79**), ¶ 128; *See Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID CASE No.

> [ar]bitrariness is not so much something opposed to a rule of law, as something opposed to the rule of law. It is a wilful disregard of due process of law, an act which shocks, or at least surprises, a sense of juridical propriety.[707]

416. A similarly high standard is involved in a finding of discrimination under FET, which "requires more than different treatment."[708] Rather, it requires that Amorrortu's case "be treated differently from similar cases *without justification*," and that Claimant show that the measure targeted his investment "specifically as [a] foreign investment[]."[709] Amorrortu has not shown that he received different treatment to any other investor, let alone that the treatment he received was based on his identity as a foreign national.

417. As will be shown below, Baspetrol's failure to obtain the license contracts for Blocks III and IV was attributable to his conduct alone, and Perupetro did not violate the autonomous FET standard.

**b. Amorrortu did not acquire any rights to a direct negotiation**

418. Amorrortu argues that he "commenced a Direct Negotiation Process" on 28 May 2014, which supposedly gave him the right "to have the Baspetrol Proposal evaluated through this

---

ARB(AF)/11/2, Award (4 April 2016) (**CLA-24**), ¶ 577; *El Paso Energy International Company v. Argentine Republic*, ICSID Case No. ARB/03/15, Award (31 October 2011) (**CLA-96**), ¶ 319; See also *Noble Ventures, Inc. v Romania*, ICSID Case No. ARB/01/11, Award (12 October 2005) (**RLA-91**), ¶ 176 (based on the judgment of the ICJ in the *ELSI* case for the definition of arbitrariness); *Azurix Corp. v. Argentine Republic*, ICSID Case No. ARB/01/12, Award (14 July 2006) (**CLA-100**), ¶ 392; *Enron Corporation and Ponderosa Assets, L.P. v. Argentine Republic*, ICSID Case No. ARB/01/3, Award (22 May 2007) (**CLA-94**), ¶ 281.

[707] *Elettronica Sicula SpA* (*ELSI*) (*United States v. Italy*), Judgment, I.C.J. Rep. 1989, p. 15 (20 July 1989) (**CLA-79**), ¶ 128 (emphasis added).

[708] *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Decision on Liability (14 January 2010) (**CLA-26**), ¶ 261.

[709] *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Decision on Liability (14 January 2010) (**CLA-26**), ¶ 261 (emphasis added) *citing Saluka Investments B.V. v. Czech Republic*, UNCITRAL, Partial Award (17 March 2006) (**CLA-23**), ¶ 313; *see also Waste Management, Inc. v. United Mexican States II*, ICSID Case No. ARB(AF)/00/3, Award (30 April 2004) (**CLA-28**), ¶ 98;; and *LG&E Energy Corp. et al. v. Argentine Republic*, ICSID Case No. ARB/02/1, Decision on Liability (3 October 2006) (**RLA-99**), ¶ 147.

exclusive process."[710] Amorrortu claims that Perupetro did not follow the "strict guidelines"[711] in Procedure No. 8, by failing to communicate its "reasons for rejecting" Baspetrol's "proposal."[712]

419. By presenting this argument, Claimant shows a fundamental misunderstanding of the applicable legal framework. To begin with, Claimant omits explaining the very nature of Procedure No. 8. In fact, as explained by Peru's legal expert, Dr. Vizquerra, Procedure No. 8 "do[es] not create or modify rights to third parties," as it is signed by the managing director of Perupetro, who "does not have [that] power."[713] Rather, procedure No. 8 is "the result of the implementation of the internal control structure by Perupetro" with the purpose of "executing its activities in an effective, predictable, uniform and transparent manner."[714]

420. Assuming, *quod non*, that Procedure No. 8 could be relevant in establishing Amorrortu's rights in this arbitration, the Procedure was never initiated because Baspetrol's alleged proposal from 28 May 2014 could not be considered a "Letter of Interest" as required in Step 1 of Procedure No. 8 (**Subsection 1**).[715] Further, Blocks III and IV were not available for direct negotiation —a necessary prerequisite to initiate a direct negotiation— given that the Blocks were under contract and Perupetro had already publicly stated that the Blocks would be assigned by tender process, once those contracts expired (**Subsection 2**).[716] In any case, Amorrortu's company, Baspetrol, did not even qualify as a company *capable* of initiating a negotiation process

---

[710] SoC, ¶ 85.

[711] SoC, ¶ 155.

[712] SoC, ¶ 151.

[713] Vizquerra Expert Report (**RER-02**), ¶ 13.

[714] Vizquerra Expert Report (**RER-02**), ¶ 12.

[715] By Claimant's own case, Amorrortu submitted his "Direct Negotiation" proposal on 28 May 2014. *See* SoC, ¶ 216. In any case, as explained *supra* (Section II.C.(1), no other communication from Amorrortu or Baspetrol could have qualified as a "Letter of Interest" under Procedure No. 8; Further, Mr. Vizquerra notes that "there is no act whatsoever that could reasonably be presumed to have started a direct negotiation between Perupetro and Amorrortu", *see* Vizquerra Expert Report (**RER-02**), ¶ 63.

[716] Vizquerra Expert Report (**RER-02**), ¶ 55-59.

(**Subsection 3**).[717] Baspetrol's supposed proposal therefore did not create any rights to a direct negotiation, nor did it trigger any rights to a direct negotiation.

#### (1) Baspetrol's supposed proposal cannot be characterized as a Letter of Interest, and did not warrant any action by Perupetro

421. As Peru's legal expert notes, "not any communication made by an oil company could be taken by Perupetro as an act that was formally and duly regulated by Procedure No. 8."[718]

422. To be considered as a formal Letter of Interest, Baspetrol's proposal needed to: "(i) declare the company's "willingness to participate in a direct negotiation to obtain a license contract"; (ii) declare that the company was submitting to the Qualification Procedure (iii) enclose with its Letter all the supporting documentation indicated in the Regulations."[719]

423. If any of these elements were missing, Baspetrol's letter could not be considered a Letter of Interest for purposes of Procedure No. 8.[720] As Dr. Vizquerra explains, the Baspetrol Proposal did not satisfy the second and third requirements as it was not accompanied by any supporting documentation nor did it expressly make reference to the Qualification Procedure.[721] As such, it could "not qualify as a proposal for direct negotiation that had to be processed by Perupetro."[722] Rather, "Baspetrol's supposed proposal was a mere expression of interest which does not bind Perupetro."[723]

424. Nevertheless, while Perupetro was under no duty to formally respond to Amorrortu's communications, Ms. Tafur nevertheless replied to Amorrortu on 20 August 2014,

---

[717] Vizquerra Expert Report (**RER-02**), ¶¶ 71, 88-89, 94.

[718] Vizquerra Expert Report (**RER-02**), ¶ 62.

[719] Vizquerra Expert Report (**RER-02**), ¶ 30.

[720] Vizquerra Expert Report (**RER-02**), ¶ 32.

[721] Vizquerra Expert Report (**RER-02**), ¶¶ 35-36.

[722] Vizquerra Expert Report (**RER-02**), ¶ 37.

[723] Vizquerra Expert Report (**RER-02**), ¶ 37.

referencing Baspetrol's "proposal" and reiterating that the Blocks were not available for direct negotiation. As a courtesy, she invited him to participate in the Bidding Processes.[724]

**(2) Blocks III and IV were not available for direct negotiation**

425. The availability of the Blocks was a necessary prerequisite for the initiation of a direct negotiation, the determination of which was based on whether the area was subject to an existing contract and whether Perupetro had decided to submit the area to a selection process.[725]

426. Claimant alleges that "PeruPetro had a practice of commencing the Direct Negotiation Process at the request of any oil company interested in an oil block"[726] and that, "when the Baspetrol Proposal was submitted [on 28 May 2014], the Block[s] were available."[727] Both these statements are false.

427. To begin with, Perupetro had the discretion to select the modality through which it would assign the contracts for Blocks III and IV and, contrary to Claimant's assertions,[728] it had a practice of awarding contracts exclusively through public bidding processes, with a narrow exception for offshore exploration which involved very high upfront investments and therefore made it difficult to attract interest from investors, or other exceptional circumstances including where there is a risk of leaving a Block's operations abandoned.[729]

428. Dr. Vizquerra, Peru's legal expert, also confirms that "based on [his] professional experience, the most common form in which Perupetro has concluded exploitation contracts [] is through selection processes."[730] In fact, out of the 26 exploitation contracts shown on Perupetro's

---

[724] Tafur Witness Statement (**RWS-02**), ¶¶ 34-35; Vizquerra Expert Report (**RER-02**), ¶ 21.

[725] Perupetro Procedure GFCN-8, Contracting Through Direct Negotiation (13 August 2012) (**CLA-44**), § 8, p. 5 [PDF], Step P1; Vizquerra Expert Report (**RER-02**), ¶ 53.

[726] SoC, note 102.

[727] SoC, ¶ 221.

[728] SoC, note 102.

[729] Tafur Witness Statement (**RWS-02**), ¶ 19.

[730] Vizquerra Expert Report (**RER-02**), ¶ 46.

website, the majority were adjudicated by selection process, and none of the long-term exploitation contracts were assigned by direct negotiation.[731]

429. Similarly, Mr. Guzmán, a member of the Committee in charge of the Bidding Processes, notes:

> From my experience as an official of PERUPETRO, I can affirm that the general policy of this entity has been to award long-term contracts for the exploitation of hydrocarbons for lots in production […] by means of selection processes. Only in exceptional and justified cases, has PERUPETRO entered into temporary short-term contracts (typically for a maximum of 2 years) for the exploitation of hydrocarbons for lots in production. In line with this policy, PERUPETRO convened International Public Tender No. PERUPETRO-001-2014 to award the License Contract for the Exploitation of Hydrocarbons in Lot III.[732]

430. A basic due diligence would have alerted Amorrortu of this policy,[733] and his alleged ignorance of public information cannot be the basis for his grievance against Peru.[734]

431. Perupetro formally decided to adjudicate the Blocks through a selection process on 20 March 2014.[735] Accordingly, it convened a committee to prepare the Bidding Rules (*Bases de Licitación*) on 22 April 2014.[736] According to Dr. Vizquerra, "the fact that Perupetro had decided

---

[731] *See* Vizquerra Expert Report (**RER-02**), ¶ 47.

[732] Guzmán Witness Statement (**RWS-01**), ¶ 8 (translation provided by Counsel. In the original Spanish: "Por mi experiencia como funcionario de PERUPETRO, puedo afirmar que la política general de esta entidad ha sido adjudicar Contratos para la explotación de hidrocarburos por lotes en producción […] mediante procesos de selección. Solo en casos excepcionales y justificados, PERUPETRO ha celebrado Contratos temporales para la explotación de hidrocarburos por lotes en producción por plazos cortos (típicamente, 2 años). En línea con esta política, PERUPETRO convocó la Licitación Pública Internacional No. PERUPETRO-001-2014 para otorgar el Contrato de Licencia para la Explotación de Hidrocarburos en el Lote III.").

[733] *See Supra* § II.B, ¶ 412.

[734] *Hydro Energy 1 S.à r.l. and Hydroxana Sweden AB v. Kingdom of Spain*, ICSID Case No. ARB/15/42, Decision on Jurisdiction, Liability and Directions on Quantum (9 March 2020) (**RLA-175**), ¶¶ 599-601; *Georg Gavrilovic and Gavrilovic D.O.O. v. Republic of Croatia*, ICSID Case No. ARB/12/39, Award (26 July 2018) (**RLA-160**), ¶ 1012.

[735] Perupetro´s Board of Directors, *Agreement No. 034-2014, Approval of Temporary License Draft Contract for Exploitation of Block III* (20 March 2014) (**C-3**); Perupetro´s Board of Directors, *Agreement No. 035-2014, Approval of Temporary License Draft Contract for Exploitation of Block IV* (20 March 2014) (**R-18**); Vizquerra Expert Report (**RER-02**), ¶55.

[736] Memorandum No. GGRL-025-2014 (22 April 2014) (**R-19**); Memorandum No. GGRL-026-2014 (22 April 2014) (**R-20**); Perupetro's Board of Directors, *Agreement No. 071-2014*, *Approval of Rules for International Public Tender*

to conduct a public bidding process for the award of the License Contracts to Blocks III and IV excludes the possibility of carrying out a direct negotiation process in these areas." This necessarily meant that the areas were not areas available for direct negotiation.[737]

432. Contrary to Amorrortu's assertions,[738] the decision to conduct a selection process was *publicly* announced before he submitted Baspetrol's supposed Proposal on 28 May 2014. Perupetro's decision to award the Blocks through a selection process was published in the official daily newspaper of Peru, *Diario Oficial El Peruano*, on 5 April 2014.[739] At this point, it became "public and irrefutable knowledge that the Directory of Perupetro had taken the decision to conduct a selection process to adjudicate Blocks III and IV."[740] That is, over six weeks before Amorrortu's meeting with Mr. Ortigas, where he was allegedly told Amorrortu to present a proposal for direct negotiation.[741]

433. Amorrortu cannot claim ignorance. Not only was this information public, but he also was repeatedly told in person and in writing that the Blocks were not available for direct

---

*No. PERUPETRO-001-2014* (30 June 2014) (**C-36**), Perupetro's Board of Directors, *Agreement No. 071-2014, Approval of Rules for International Public Tender No. PERUPETRO-001-2014* (Full text) (30 June 2014) (**R-22**); Perupetro's Board of Directors, *Agreement No. 072- 2014, Approval of Rules for International Public Tender No. PERUPETRO-002-2014* (30 June 2014) (**C-43**).

[737] Vizquerra Expert Report (**RER-02**), ¶¶ 56, 61.

[738] SoC, note 102.

[739] Ministry of Energy and Mines of Peru, *Supreme Decree No. 012-2014-EM, Temporary License Agreement Approval for the Exploitation of Hydrocarbons in Hydrocarbons in Block III, and Supreme Decree No. 013-2014-EM, Temporary License Agreement Approval for the Exploitation of Hydrocarbons in Hydrocarbons in Block IV* (5 April 2014) (**CLA-59**).

[740] Vizquerra Expert Report (**RER-02**), ¶ 17; Further, as Dr. Vizquerra explains, a "selection process" can only be understood as "a process in which there are more than one interested company" and, by definition, is "any process different to a direct negotiation". *See* Vizquerra Expert Report (**RER-02**), note 2; He also specifies that "a selection process is a term used by Perupetro to define every process distinct from a direct negotiation and includes any public tenders, selection by call for tenders, selection by invitation; in other words, any process in which more than one interested party may participate." *See* Vizquerra Expert Report (**RER-02**), ¶ 57. Tafur confirms the same in Tafur Witness Statement (**RWS-02**), ¶ 19.

[741] The meeting where Amorrortu claims he was told to present a proposal for direct negotiation was on 22 May 2014. *See* Email exchange between B. Amorrortu (Baspetrol), M. A. Cobena (Perupetro), and M. Hernandez (Perupetro) (May 2014) (**C-8**).

negotiation because these would be assigned by public tender.[742] Thus, when Amorrortu submitted Baspetrol's alleged proposal on 28 May 2014, the Blocks were not available for direct negotiation.

#### (3) Baspetrol had not obtained the requisite qualification to engage in a negotiation process

434. A necessary requirement for any company to negotiate and conclude a contract with Perupetro is its certification by Perupetro as a Qualified Oil Company.[743]

435. Contrary to Claimant's assertion, Baspetrol was not "qualified to negotiate with PeruPetro,"[744] because it never requested – let alone, obtained – the necessary Qualification as a Peruvian petroleum company.[745]

436. Pursuant to Supreme Decree No. 030-2004, before initiating a direct negotiation, a company must submit a Request for Qualification, and be granted a certification by Perupetro.[746] Baspetrol did not submit a Request for Qualification, nor the necessary documentation to be considered for a qualification.[747] Perupetro was therefore under no obligation to negotiate with Baspetrol.

437. Claimant incorrectly argues that Perupetro's non-response within ten days automatically granted Baspetrol the required qualification.[748] As Dr. Vizquerra puts it, the mere submission of a communication "that omits the formal requirements [] does not entitle the

---

[742] Tafur Witness Statement (**RWS-02**), ¶¶ 34-35; Letter from L. Ortigas (Perupetro) to B. Amorrortu (Baspetrol) (12 August 2013) (**C-6**); Letter from I. Tafur Marín (Perupetro) to B. Amorrortu (Baspetrol) (20 August 2014) (**C-13**).

[743] Vizquerra Expert Report (**RER-02**), ¶ 71.

[744] SoC, ¶ 222.

[745] Vizquerra Expert Report (**RER-02**), ¶¶ 88-94.

[746] Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (**CLA-3**), Art. 2; Vizquerra Expert Report (**RER-02**), ¶ 68-72.

[747] Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (**CLA-3**), Art. 9.

[748] SoC, ¶ 202.

interested party to consider that the qualification procedure has been validly initiated nor, by consequence, that the Qualification has been granted after the passing of 10 working days."[749]

438. But even if Baspetrol's alleged proposal could be considered a Request for Qualification despite these fatal omissions, Perupetro's silence, if anything, would amount to a rejection, thereby granting Baspetrol a right to appeal the decision before the President of the Board of Directors of Perupetro, or even challenge the decision in accordance with Article 188.3 of Law No. 27444, neither of which he did.[750] Rather than granting Baspetrol any substantive negotiation or qualification rights,[751] the failure to respond to a Request for Qualification would merely "implicate the administrative responsibility of Perupetro's officials."[752] It would not change Baspetrol's status.

439. Finally, even if Baspetrol could show that it had obtained the requisite Qualification, *quod non*, this would not be end of the road for the company because the mere fact of being Qualified "did not represent the acquisition of a right [] to commence a direct negotiation, much less to conclude the license contracts for the [Blocks]."[753]

**c. Baspetrol participated in the Bidding Process, which was conducted in accordance with the governing legal framework**

440. Amorrortu's attempt to blame the State for his lack of understanding of the governing legal framework is particularly apparent in his misguided expectation that he would be awarded a license contract to the Blocks because "practically all cases [of direct negotiation] conclude[] with the execution of the contract."[754]

441. As shown in Section II.B, had Amorrortu carried out basic due diligence, he would have known that the contracts to the Blocks would be awarded by public tender. In any event, any

---

[749] Vizquerra Expert Report (**RER-02**), ¶ 86.

[750] Vizquerra Expert Report (**RER-02**), ¶¶ 95-98.

[751] Vizquerra Expert Report (**RER-02**), ¶ 83-84.

[752] Vizquerra Expert Report (**RER-02**), ¶ 79.

[753] Vizquerra Expert Report (**RER-02**), ¶ 15.

[754] SoC, ¶ 193.

direct negotiation process that Amorrortu could have initiated would have necessarily resulted in a public bidding process (**Subsection 1**). Subsequently, Baspetrol could not have won the Bidding Process given that the company did not even allege it satisfied the Minimum Indicators at the first step of the Bidding Process (**Subsection 2**).

#### (1) Amorrortu's direct negotiation would have become a public bidding process anyway

442. Amorrortu did not suffer any prejudice by failing to initiate a direct negotiation with Perupetro because any direct negotiation would have necessarily resulted in a public bidding process, as there were several other companies interested in the operation of Blocks III and IV.

443. Amorrortu knew or should have known on several occasions that the Blocks would ultimately be adjudicated by public tender. As Dr. Vizquerra notes, Procedure No. 8 itself makes clear that "Perupetro must make public the applicant's interest in the areas so that interested third parties can participate with the applicant and compete in a selection process."[755] As Ms. Tafur explains, "[t]his phase is another safeguard to ensure that the project is granted to the most desirable company."[756] All that was required for a direct negotiation to become a public tender was the interest from *one* other company.[757]

444. Claimant falsely states that "there was little interest in the[] Blocks from other competitors," and that the "only bidders [for Block III] were Baspetrol and Graña y Montero."[758] In reality, 12 companies submitted Letters of Interest (Form 1) to the Bidding Process for Block

[755] Vizquerra Expert Report (**RER-02**), ¶ 52. *See also* Tafur Witness Statement (**RWS-02**), ¶ 21.

[756] Tafur Witness Statement (**RWS-02**), ¶ 21 (translation provided by Counsel. In the original Spanish: "[e]sta fase es otra salvaguardia para asegurar que el proyecto se adjudique a la empresa más favorable.").

[757] Vizquerra Expert Report (**RER-02**), ¶¶ 52-54.

[758] SoC, ¶ 221.

III and 11 for Block IV.[759] This, of course, vindicates Perupetro's policy to submit exploitation contracts to a selection process given the significant commercial interest in them.[760]

445. In sum, even if a direct negotiation process could be initiated, a tender process would have had to take place in any event.[761]

#### (2) Baspetrol was left out of the bidding process because of its own shortcomings

446. It is unsurprising that Amorrortu insists so heavily on his alleged right to a direct negotiation, which he describes as an "insurmountable," "competitive advantage" to execute a contract.[762] The reason for his repeated unwillingness to participate in the Bidding Process becomes evident once Baspetrol's Letter of Interest is analysed.

447. On 31 October 2014, Baspetrol presented its Letter of Interest to the Bidding Process, notably, only for Block III.[763] The very first stage of the Bidding Process involved, *inter alia*, filling out a form (Form 1), where each company made sworn declarations on several of its technical and economic indicators (such as its average yearly production, or its operative cash flow). Baspetrol's Form 1 contained none of this information. As Mr. Guzmán accounts:

---

[759] Report No. 006-2014-OCI-PERUPETRO (30 December 2014) (**R-43**), p. 18 [PDF], cuadro No. 13, p. 20 [PDF], cuadro No. 18.

[760] Tafur Witness Statement (**RWS-02**), ¶¶ 21-23.

[761] Amorrortu also argues that Baspetrol's supposed proposal would have been "duly evaluated and approved", because "practically all cases" conclude "with the execution of the contract" (*See* SoC, ¶¶ 193, 221, 241.). In fact, the high success rates of direct negotiations is explained by the fact that they are exclusively done when Perupetro "expects that there will be very little likelihood of interest in investing in the project", such as "[f]or example, offshore exploration contracts that require substantial capital investment" (*See* Tafur Witness Statement (**RWS-02**), ¶ 19) (translation provided by Counsel. In the original Spanish: "[…] solo se adjudican contratos de largo plazo por negociación directa cuando se considera que habrá muy pocas probabilidades de interés de invertir en el proyecto."). As explained in this section, that was not the case for Blocks III and IV. Thus, even if Amorrortu had acquired a right to direct negotiation (*quod non*), it would not have given him any kind of "competitive advantage" (as he alleges in SoC, ¶ 193), given that Perupetro would have had to open the process to the other interested companies, "which would be equivalent to a bidding process". (*See* e.g., Tafur Witness Statement (**RWS-02**), ¶ 21) ((translation provided by Counsel. In the original Spanish: "[l]o cual sería equivalente a un proceso de licitación.").

[762] SoC, ¶ 193.

[763] Letter from B. Amorrortu (Baspetrol) to "Comisión de la Licitación Pública Internacional No. PERUPETRO-1-2014" (31 October 2014) (**C-14**).

> Baspetrol's Form 1 consisted of a single paragraph for each of the two general categories (Technical Indicator and Economic Indicator) but did not respond to the information requested. Rather, most of the narrative concerned Mr. Amorrortu's personal experience, his future plans to work with unidentified individuals and a reference to a document submitted to PERUPETRO on 28 May 2014. None of this was relevant to the determination that the Commission was tasked with making […]. In fact, Baspetrol's Form 1 indicated that it "ha[d] not yet carried out operations."[764]

448. Indeed, on 3 November 2014, Baspetrol was informed that it did not meet the Minimum Indicators of the Bidding Process because it "did not meet any of the Technical Indicators for the Bidding Process," and had also failed to "indicate the information on [Baspetrol's] net worth, current assets and operating cash flows."[765]

***

449. It is inconceivable how Amorrortu could have any kind of expectation—let alone a reasonable one—that a direct negotiation Process had begun between Petrupetro and Baspetrol. Given the procedural formalities and reasonableness with which Perupetro made its decisions, Amorrortu also cannot argue that Perupetro acted arbitrarily or discriminatorily. Lastly, the fact that Perupetro did not engage in direct negotiations with Baspetrol was anything but arbitrary. Not only had Perupetro already made public its decision to assign the Blocks through a competitive process, but also Baspetrol's alleged proposal failed to meet the most basic requirements necessary to trigger a direct negotiation process.

---

[764] Guzmán Witness Statement (**RWS-01**), ¶ 30 (translation provided by Counsel. In the original Spanish: "El Formato 1 de Baspetrol consistía en un solo párrafo para cada una de las dos categorías generales (Indicador Técnico e Indicador Económico) pero que no respondía a la información solicitada. Más bien, la mayor parte de la narración se refería a la experiencia personal del Señor Amorrortu, sus planes futuros de trabajar con personas no identificadas y una referencia a un documento presentado a PERUPETRO el 28 de mayo de 2014. Nada de esto era relevante a la determinación que se le encargó a la Comisión […] De hecho, el Formato 1 de Baspetrol indicó que 'no ha[bía] realizado operaciones aún.'").

[765] Perupetro, *Minutes No. 13 of the Commission in charge of conducting the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (3 November 2014) (**R-36**) (translation provided by Counsel. In the original Spanish: "[…] no cumple con ninguno de los Indicadores Técnicos para la presente Licitación […] no indica la información del Patrimonio Neto, Activo Corriente y Flujo de Caja operativo."); Letter from R. Guzman (Perupetro) to B. Amorrortu (Baspetrol) (3 November 2014) (**C-15**).

### 3. Amorrortu has not demonstrated that protection against corruption, as alleged in this case, has crystallized as part of customary international law for purposes of the Minimum Standard of Treatment

450. The allegations of a corrupt scheme to award the Blocks to GyM are just a smokescreen. Amorrortu never obtained the contracts for Block III or IV because he was simply never entitled to them. To conceal this basic fact, Amorrortu has concocted a story about a supposed corruption scheme between GyM and the former First Lady of Peru, Nadine Heredia, without any evidence to support the allegation. The problem for Amorrortu is that an act of corruption, even if proven, does not in itself constitute a breach of the MST (**Subsection a**). Amorrortu in any case has failed to meet his burden of proving his corruption allegations. (**Subsection b**). In any event, even if Blocks III and IV had been awarded through corruption, there would be no Treaty breach, as that corruption was not the cause of Baspetrol not being awarded license contracts for the Blocks (**Subsection c**).

#### a. Amorrortu does not have a standalone protection against corruption

451. According to Amorrortu, the alleged corruption scheme that resulted in the adjudication of the Blocks to GyM "in and of itself is sufficient to establish a violation of customary principles of international law" which, it claims, is part of the definition of MST under Article 10.5 USPTPA.[766]

452. Claimant alleges that "Peru's Corruption Scheme is a flagrant violation of the customary principles of international law" and asserts that "[a] government that exercises its discretion to contract based on corruption violates customary principles of international law."[767] Amorrortu does not offer any legal authority to support this argument.

---

[766] SoC, ¶¶ 312-327.

[767] SoC, ¶ 312. In the entire paragraph, Claimant cite only to the article I. Devendra, *State Responsibility for Corruption in International Investment Arbitration* (2019) (**CLA-68**). While Claimant quotes the first two sentences of the article's introduction, a closer read of the article reveals that none of the cases cited therein support Claimant's contention that an act of corruption in itself "violates customary principles of international law." (as Claimant contends in SoC, ¶ 312.). Subsequently, in SoC, ¶ 323, Claimant makes a similar statement and cites to *Yukos Universal Limited (Isle of Man) v. The Russian Federation*, UNCITRAL, PCA Case No. 2005-4/AA227, Award (18 July 2014) (**CLA-**

453. Claimant simply refers to awards in commercial arbitrations and investment treaty cases where respondents challenged jurisdiction based on investor misconduct in obtaining their investment.

454. The only case cited by Claimant where claims of corruption were raised as part of the alleged treaty breach is *EDF v Romania*.[768] The claimant in *EDF* argued that Romania's state-owned entities retaliated against the investor because it refused to pay the bribe that had been solicited by the Romanian Prime Minister. The tribunal considered that the measure could in theory amount to a violation of transparency and legitimate expectations, which were protected under the autonomous FET standard contained in the Romania-UK BIT.[769] However, the tribunal dismissed the claim, concluding that EDF had failed to meet its burden of proof.[770]

455. The *EDF v Romania* case does not help Amorrortu for two reasons. *First*, neither legitimate expectation nor transparency are rights protected by the USPTPA,[771] which in any case were not violated by Perupetro.[772] *Second*, this case does not support the proposition that an act of corruption is a violation of the MST, as alleged by Amorrortu.[773]

456. Aside from the "customary principles of international law," Claimant's also bases its argument on the preamble and Chapter 19 of the USPTPA, as well as the Inter-American Convention Against Corruption and the United Nations Convention against Corruption.[774] These sources are all irrelevant to Amorrortu's claim, because a finding of a violation of "another

---

**72**), another unsupportive authority as the tribunal in that case never resolved the FET allegation, determining that it was irrelevant due to its finding on expropriation.

[768] SoC, ¶ 322.

[769] *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award (8 October 2009) (**CLA-4**), ¶¶ 215-220. *sSee also* Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Romania for the Promotion and Reciprocal Protection of Investments (13 July 1995) (**RLA-72**), Art. 2(2).

[770] *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award (8 October 2009) (**CLA-4**), ¶ 237.

[771] *See supra* § IV.B.1.

[772] *See supra* § IV.B.2.

[773] SoC, ¶ 323.

[774] *See* SoC, ¶ 335, where Claimant cites to the Inter-American Convention Against Corruption and the United Nations Convention against Corruption.

provision" of the USPTPA "or of a separate international agreement, does not establish that there has been a breach of [the MST] Article."[775]

457. In any case, contrary to Amorrortu's claim, the USPTPA does not protect investors against *acts* of corruption, but merely requires the State Parties to "adopt or maintain the necessary legislative or other measures" to criminalise acts of corruption within their domestic legal systems.[776] Nowhere in the USPTPA do Parties guarantee that no acts of corruption will be committed in their territory or by State agents.[777]

458. Similarly, the other treaties that Claimant cites do not directly prohibit acts of corruption but rather create obligations on States to implement domestic measures to tackle corruption.[778]

459. Peru has implemented several anti-corruption measures. For instance, the OCI of Comptroller General "supervise[s] and verifie[s] the correct application of public policies and the use of the State resources."[779] It also oversees public bidding processes, including the Bidding Processes of Blocks III and IV where it concluded that "no situations [of corruption] were detected."[780]

[775] USPTPA Investment Chapter (**CLA-1**), Art. 10.5(3).

[776] United States and Peru Trade and Promotion Agreement Chapter Nineteen (12 April 2006) (**CLA-42**), Art. 19.9.

[777] As Amorrortu suggests in SoC, ¶ 341.

[778] *See e.g.*, Interamerican Treaty Against Corruption (29 March 1996) (**RLA-73**), Art. VII, VIII, IX; United Nations Convention Against Corruption (31 October 2003) (**RLA-86**), Chapters II and III.

[779] *See* Office of the Comptroller General of the Republic of Peru, "Información institucional" (last accessed 28 April 2024). (**R-67**) (translation provided by Counsel. In the original Spanish: "Supervisamos y verificamos la correcta aplicación de las políticas públicas y el uso de los recursos y bienes del Estado").

[780] *See supra* § II.C.1; *see also* Report No. 006-2014-OCI-PERUPETRO (30 December 2014) (**R-43**)., p. 23 [PDF], Conclusion 6.3.

[781] .

460. Despite the recourses at Amorrortu's disposal to denounce the alleged corruption scheme that supposedly deprived him of his rights, he has not filed any complaints against GyM, Nadine Heredia, or any Perupetro official.

461. His allegations of a corrupt scheme thus ring hollow.

**b. Claimant has not met his burden to prove that the Blocks were adjudicated through corruption**

462. Claimant recognizes that "[a]llegations of corruption are very serious, and it is by now well-established that allegations not supported by evidence and based on suppositions are not sufficient to prove corruption."[782] At the same time, he presents no concrete evidence that satisfies his own burden of proving corruption by "circumstantial evidence that establishes with 'reasonable certainty' the alleged corruption."[783]

463. Based on Claimant's own evidentiary standard, Amorrortu does not come close to proving that the Blocks were assigned to GyM based on a corruption scheme.[784] Instead, he merely casts baseless suppositions grounded on flimsy evidence that does not withstand basic scrutiny.

464. Amorrortu's corruption claim hinges on GyM's supposed relationship with Nadine Heredia. He also relies on allegations of two purportedly unlawful modifications made to the Bidding Rules, as well as on PETROPERU's decision to not participate in the Blocks. However, as shown *supra* in Sections II.C.3 and II.D the evidence Amorrortu presents simply does not support his allegations.[785]

---

[782] SoC, ¶ 267.

[783] SoC, ¶ 267.

[784] Regardless of the standard of proof applied, it is uncontentious that Claimant bears the burden of proving corruption in this case. *See e.g.*, *Metal-Tech LTD. v. Republic of Uzbekistan*, ICSID Case No. ARB/10/3, Award (4 October 2013) (**CLA-62**), ¶ 237; *Karkey Karadeniz Elektrik Uretim A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/13/1, Award (22 August 2017) (**RLA-155**), ¶ 497; *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award (8 October 2009) (**CLA-4**), ¶ 232; *ECE Projektmanagement v. Czech Republic*, UNCITRAL, PCA Case No. 2010-5, Award (19 September 2003) (**RLA-85**), ¶ 4.873.

[785] *See supra* § II.D.

c. **In any event, even if Blocks III and IV had been awarded through corruption, there would be no Treaty breach, as that corruption was not the cause of Baspetrol not being awarded license contracts for the Blocks**

465. Even assuming that the Treaty afforded Amorrortu an autonomous protection against corruption (*quod non*) and that Perupetro had awarded Blocks III and IV to GyM through corruption (*quod non*), there would still be no Treaty breach by Peru. As this Section demonstrates, the reason is that Perupetro's alleged corruption could never have been the cause of Amorrortu's alleged injury in this case (*i.e.*, that Baspetrol was not the awardee of Blocks III and IV and did not benefit from their operation).

466. Under international investment law, a causal link between the treaty breach and the investor's injury is necessary, not only for assessing entitlement to reparation,[786] but also for determining whether there has been an internationally wrongful act (in this case, a Treaty breach attributable to Peru). This principle was confirmed by the *Merril v. Canada* tribunal, which explained that "an international wrongful act will only be committed in international investment law if there is an act in breach of an international obligation, attributable to the Respondent <u>that also results in damages</u>."[787] In the same vein, the tribunal in *Waste Management v. Mexico* held that, for there to be a breach of the minimum standard of treatment, the conduct said to have caused that breach must be "attributable to the State <u>and harmful to the claimant</u>."[788]

467. The tribunal in *Scholz v. Morocco* recently adopted the same approach. It found that, while Marocco's complained of measures (its *de facto* policy not to grant export licenses) were *capable* of constituting a breach of the fair and equitable treatment standard,[789] those

---

[786] *See infra* § V.A.

[787] *Merrill & Ring Forestry L.P. v. Government of Canada*, UNCITRAL, Award (31 March 2010) (**RLA-110**), ¶ 266 (emphasis added).

[788] *Waste Management, Inc. v. United Mexican States II*, ICSID Case No. ARB(AF)/00/3, Award (30 April 2004) (**CLA-28**), ¶ 98.

[789] *Scholz Holding GmbH v. Kingdom of Morocco*, ICSID Case No. ARB/19/2, Award (1 August 2022) (**RLA-184**), ¶ 308 ("The Arbitral Tribunal considers that such a measure would be liable to be sanctioned on the grounds of fair and equitable treatment […].") (translation by Counsel. In the original French "*Le Tribunal arbitral estime qu'une telle mesure serait susceptible d'être sanctionnée au titre du traitement juste et équitable* […].").

measures would only actually amount to such a breach if they resulted in an injury to Scholz's investment.[790] Ultimately, the tribunal concluded that Morocco's measures did not amount to a breach of the BIT, as there was no causal link between the measures and the investor's alleged injury.[791]

468. In the present case, however, Peru's purported corruption scheme simply cannot be the cause of Baspetrol not being the awardee of the license contracts for Blocks III and IV, nor of Baspetrol's lack of operation thereof. Simply put, even in the absence of such purported—and non-existent—corruption, Baspetrol would never have been awarded those contracts nor would it have operated them profitably. To recap:

a. Amorrortu could have never started a direct negotiation with Perupetro, as (i) Blocks III and IV were reserved for a bidding process; (ii) Baspetrol lacked a certification that it was a qualified oil company; and (iii) Baspetrol's May 2014 proposal did not meet the legal requirements to trigger a direct negotiation.[792]

b. Even if a direct negotiation had commenced, Baspetrol could have never been awarded license contracts for Blocks III and IV, as (i) Baspetrol was not eligible for registration in Peru's Public Hydrocarbons Registry; (ii) Baspetrol was not technically and financially eligible to operate Blocks III and IV; (iii) Baspetrol would have faced competition from other interested companies that would have outbid it.[793]

c. Even if Baspetrol had been awarded Blocks III and IV, Baspetrol's operation thereof would never have produced the profits Amorrortu claims, as (i) Baspetrol lacked the technical and financial capacity to operate those blocks; (ii) the oil prices between 2014 and 2021 would have resulted in losses for Amorrortu (had he

---

[790] *Scholz Holding GmbH v. Kingdom of Morocco*, ICSID Case No. ARB/19/2, Award (1 August 2022) (**RLA-184**), ¶ 317 ("However, for this measure to […] constitute a breach of Morocco's obligation to grant fair and equitable treatment, it must have been applied to the investor.") (translation by Counsel. In the original French "*Encore faut-il cependant, pour que cette mesure puisse […] constituer une violation de l'obligation du Maroc d'accorder un traitement juste et équitable, qu'elle ait été appliquée à l'investisseur*.").

[791] *Scholz Holding GmbH v. Kingdom of Morocco*, ICSID Case No. ARB/19/2, Award (1 August 2022) (**RLA-184**), ¶ 322 ("[T]he restrictive policy did not affect [the claimant], which is therefore not entitled to criticize it under Article 2 of the BIT.") (translation by Counsel. In the original French "[*C*]*ette politique restrictive n'a pas affecté* [*l'investisseur*], *qui n'est donc pas fondée à la critiquer en application de l'article 2 du TBI*.").

[792] *See infra* § V.A.2.a.(1).

[793] *See infra* § V.A.2.a.(2).

performed his assumed drilling program and in light of his assumed decline curve); and (iii) the oil reserves in Blocks III and IV were not sufficiently high to achieve the production upon which he bases his damages.[794]

469. In sum, the above factors, all attributable to Amorrortu, break the chain of causation between Perupetro's alleged corruption and Amorrortu's purported injury, thus confirming that it was Amorrortu's own actions and omissions (and not Peru's alleged corruption) that caused any alleged injury. In light of this, Peru cannot be found to have breached the Treaty as a result of that alleged corruption.

***

470. In sum, Claimant's MST claim is hopeless as a matter of fact: because Amorrortu has failed to demonstrate that under Peruvian law Baspetrol had any right to a direct negotiation, it must be dismissed out of hand. Perupetro's decision to issue a public bid to assign the Blocks rather than initiate direct negotiations with Baspetrol was reasonable and justified. Contrary to Claimant's assertions, this decision was not owed to the intricate corruption scheme and web of conspiracies Claimant has tried to spin. But even if Amorrortu could somehow prove that that he was deprived of his right to a direct negotiation, his claim fails as a matter of law because he has not demonstrated that protection against corruption, as alleged in this case, has crystallized as part of customary international law for purposes of the Minimum Standard of Treatment.

---

[794] *See infra* § V.A.2.b.

## V. AMORRORTU IS NOT ENTITLED TO THE DAMAGES HE SEEKS

471. In the preceding sections, the Republic of Peru showed that Amorrortu's claim is outside the Tribunal's jurisdiction (Section III), and that Peru did not breach its obligations under article 10.15 of the Treaty (Section IV). The serious jurisdictional defects and the lack of merit of Amorrortu's claim means that there can be no damages here. In this section, and for the sake of completeness only, Peru responds to Amorrortu's request for monetary damages.

472. To be entitled to damages following a finding of a Treaty breach, Amorrortu must establish (i) a causal link between his purported damages and that breach; and (ii) an estimate, with reasonable certainty, of adequate compensation for those damages.[795] This section shows that, even if jurisdiction and liability were to be presumed (*quod non*), Amorrortu's compensatory claims fail because (i) there is no causal link between his purported damages and the impugned measures (**Section V.A**); and (ii) because Amorrortu has failed to prove his damages claim with the minimum degree of certainty required under international law (**Section V.B**). This section also demonstrates that Amorrortu's interest claim **(Section V.C**) and his request for non-taxable compensation (**Section V.D**) are also unsubstantiated and thus must be rejected.

### A. There Is No Causal Link Between Amorrortu's Purported Damages and Peru's Impugned Measures

#### 1. International law requires Amorrortu to establish causation

473. Customary international law requires reparation only for "injury *caused* by the [State's] internationally wrongful act[s]."[796] As the Commentary to the International Law Commission ("**ILC**") Article 31 confirms, "[t]his phrase is used to make clear that the subject matter of reparation is, globally, the injury resulting from and ascribable to the wrongful act, rather

---

[795] *Víctor Pey Casado and Foundation "Presidente Allende" v. Republic of Chile*, ICSID Case No. ARB/98/2, Award (Resubmission Proceeding) (13 September 2016) (**RLA-149**), ¶ 217.

[796] United Nations General Assembly, Yearbook of the International Law Commission, U.N. Doc. A/CN.4/SER.4/2001/Add.1 (Part Two) (2001) (**CLA-67**), Art. 31.1; *see also id.*, Art. 36.1 ("The State responsible for an internationally wrongful act is under an obligation to compensate for the damage caused thereby.") (emphasis added).

than any and all consequences flowing from an internationally wrongful act."[797] Causation is thus a key requirement for any damages claim, including in the investment treaty context. As the *Biwater Gauff v. Tanzania* tribunal confirmed, "[c]ompensation for any violation of the BIT […] will only be due if there is sufficient causal link between the actual breach of the BIT and the loss sustained."[798]

474. In his Statement of Claim, nonetheless, Amorrortu either misrepresents or overlooks the legal requirements for causation.

475. First, although Amorrortu correctly points out that it is he—as Claimant—who bears the burden of proving that Peru's conduct caused his alleged damages,[799] he then asserts that "it is Peru that must prove that [but for Peru's impugned actions,] Blocks III and IV would not have been profitable."[800] Not so. To recall, Amorrortu's alleged damages are premised on the purported revenues that, but for Peru's alleged actions, Baspetrol would have earned through the operation of Blocks III and IV.[801] Thus, Amorrortu bears the burden of proving that, but for those actions, Baspetrol's operation of Blocks III and IV would have been profitable. As the tribunal in *Pey Casado v. Chile* confirmed, "[i]t is a basic tenet of investment arbitration that a claimant must prove [that] its alleged injury was caused by the breach of its legal rights."[802]

---

[797] United Nations General Assembly, Yearbook of the International Law Commission, U.N. Doc. A/CN.4/SER.4/2001/Add.1 (Part Two) (2001) (**CLA-67**), Art. 31, Commentary 9 (emphasis added).

[798] *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award (24 July 2008) (**CLA-15**), ¶ 779.

[799] SoC, ¶ 361 ("[T]he causal link […] requires that the aggrieved party prove that an uninterrupted and proximate logical chain leads from the initial cause (in our case the wrongful acts of Peru) to the final effect (the loss in value of Baspetrol).").

[800] SoC, ¶ 377.

[801] *See, e.g.*, SoC, ¶ 391 ("By opening Blocks III and IV to public bidding without even considering the Baspetrol Proposal, PeruPetro eliminated revenues Baspetrol would have earned as an investor and operator of Blocks III and IV.").

[802] *Víctor Pey Casado and Foundation "Presidente Allende" v. Republic of Chile*, ICSID Case No. ARB/98/2, Award (Resubmission Proceeding) (13 September 2016) (**RLA-149**), ¶ 205; *see also Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Award (28 March 2011) (**CLA-34**), ¶ 155 ("[I]t is a basic principle of international law that injured claimants bear the burden of demonstrating that the [...] causal relationship is sufficiently close (*i.e.* not 'too remote')."). 

476. Amorrortu in his Statement of Claim also overlooks the standard to prove causation—perhaps because he knows that, under international law, that standard is high, requiring him to show that Peru's conduct "necessarily" caused his injury.[803] As the *Deutsche Telekom v. India* tribunal explained:

> Authorities in public international law require a high standard of factual certainty to prove a causal link between breach and injury: the alleged injury must "in all probability" have been caused by the breach (as in *Chorzów*), or a conclusion with a "sufficient degree of certainty" is required that, absent a breach, the injury would have been avoided (as in *Genocide*).[804]

477. Another matter not fully addressed in Amorrortu's Statement of Claim is the legal significance of the two sub-elements of which causation is comprised—that is, *factual* and *legal* causation. Indeed, for a claim for damages to succeed, it is not enough that the State's conduct played some role in causing the harm. As noted in the commentary to ILC Article 31:

> [C]ausality in fact is a necessary but not a sufficient condition for reparation. There is a further element, associated with the exclusion of injury that is too 'remote' or 'consequential' to the subject of reparation. In some cases, the criterion of 'directness' may be used, in others 'foreseeability' or 'proximity.'"[805]

478. Under international law, the causation inquiry is thus twofold. A claimant seeking to prove causation must both (i) show, from a *factual* perspective, that, but-for the State's wrongful act, the injury would not have occurred; and (ii) establish, as a *legal* matter, that the State's

---

[803] *See, e.g.*, *Nordzucker AG v. Republic of Poland*, UNCITRAL, Third Partial and Final Award (23 November 2009) (**RLA-109**), ¶¶ 51-52 (enquiring whether the State's conduct "necessarily" led the investor to act in ways that harmed its profitability); *Deutsche Telekom AG v. Republic of India*, PCA Case No. 2014-10, Final Award (27 May 2020) (**RLA-177**), ¶ 121 ("The second step [for the determination of damages] requires showing a causal link between the breach and the alleged injury. In this respect, the Tribunal agrees with the tribunal in *Bilcon* that '[a]uthorities in public international law require a high standard of factual certainty to prove a causal link between breach and injury: the alleged injury must 'in all probability' have been caused by the breach (as in *Chorzów*), or a conclusion with a 'sufficient degree of certainty' is required that, absent a breach, the injury would have been avoided (as in [the] *Genocide* [case decided by the ICJ])'.") (emphasis in original).

[804] *Deutsche Telekom AG v. Republic of India*, PCA Case No. 2014-10, Final Award (27 May 2020) (**RLA-177**), ¶ 121 *citing Bilcon of Delaware, Inc. et al. v. Government of Canada*, PCA Case No. 2009-04, Award on Damages (10 January 2019) (**RLA-166**), ¶ 110.

[805] United Nations General Assembly, Yearbook of the International Law Commission, U.N. Doc. A/CN.4/SER.4/2001/Add.1 (Part Two) (2001) (**CLA-33**), Art. 31, Commentary 10 (emphasis added).

wrongful conduct is the *proximate* cause of its injury, by proving that the injury is not too *remote* from that conduct. Importantly, causation cannot be established if the link to the State's conduct is too tenuous, or if the chain of causation is broken "by factors attributable to the victim, to a third party, or for which no one can be made responsible."[806] Consequently, even if the State's conduct played some role in causing the claimant's injury, the State will not automatically be required to provide compensation.

479. In sum, without causation, there is no obligation to compensate for the investor's injury. Investment tribunals have rejected investors' claims for damages for lack of causation, even in circumstances where a treaty violation had been established. The decision in *Biwater Gauff v. Tanzania* illustrates the point. There, the tribunal found that Tanzania had breached its treaty obligations by terminating a water concession between the claimant's local subsidiary, City Water, and the Tanzanian Water Authority. The investor claimed damages for up to US$ 20 million.[807] The tribunal denied all damages because it found no causal link between Tanzania's breach and the investor's alleged losses. It explained that the value of the investment was already zero when Tanzania's breach took place, due to a variety of factors unattributable to Tanzania, including City Water's poor contractual performance.[808] Thus, the *Biwater Gauff* tribunal concluded that Tanzania's violations of the BIT were not the "proximate or direct cause[] of the loss and damage for which [the investor] [sought] compensation."[809]

---

[806] *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Award (28 March 2011) (**CLA-34**), ¶ 163; *see also Ronald S. Lauder v. Czech Republic*, UNCITRAL, Final Award (3 September 2001) (**RLA-79**), ¶ 234 ("In order to come to a finding of a compensable damage it is also necessary that there existed no intervening cause for the damage. […] In other words, the Claimant has to show that the acts of [a third party] were not so unexpected and so substantial as to have to be held to have superseded the [the State's wrongful act] and therefore become the main cause of the ultimate harm.").

[807] *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award (24 July 2008) (**CLA-15**), ¶ 751.

[808] *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award (24 July 2008) (**CLA-15**), ¶ 789.

[809] *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award (24 July 2008) (**CLA-15**), ¶ 798.

### 2. Peru's impugned measures are not the cause of Amorrortu's alleged damages

480. Here, Amorrortu has failed to discharge his burden of proving that the impugned measures caused his purported damages.

481. In his Statement of Claim, Amorrortu presents one substantive claim—for Peru's alleged breach of the minimum standard of treatment of Article 10.5 of the Treaty—asserting that, but for such breach, "the Baspetrol [May 2014] Proposal for operation of Blocks III and IV would have been approved,"[810] and "Amorrortu would have operated the Blocks profitably."[811] Thus, for Amorrortu's alleged damages to be causally linked to Peru's purported breach, Amorrortu would need to demonstrate that, but for that breach, he would have been awarded the operation of Blocks III and IV, and that such operation would have produced the profits that Amorrortu claims.[812]

482. A close look at the facts, however, confirms that, even absent Peru's impugned measures, Baspetrol would never have been awarded the license contracts for Blocks III and IV (**Subsection a**); and that even if such contracts had been awarded to Baspetrol, its operation of Blocks III and IV would never have been profitable (**Subsection b**). This lack of causation is fatal to Amorrortu's damages claim.

#### a. Even in the absence of Peru's impugned measures, Baspetrol would never have been awarded Blocks III and IV

483. In a but-for world, Amorrortu would never have been able to start operations in Blocks III and IV. This is, first and foremost, because, in May 2014, Baspetrol could never have initiated a direct negotiation with Perupetro (**Subsection 1**). And even if Baspetrol had succeeded

---

[810] *See, e.g.*, SoC, ¶ 358.

[811] SoC, ¶ 377.

[812] In the *Lemire v. Ukraine* case, on which Amorrortu heavily relies, the tribunal established a similar methodology for assessing whether causation existed. There, the tribunal had found Ukraine in breach of the FET standard as a result of Ukraine preventing Mr. Lemire from participating in a tender process to acquire radio frequency licenses. To determine whether there was causation, the tribunal held that Mr. Lemire had to prove: (i) first, that, had the tender process been fairly carried out, the investment company would have received the broadcasting licenses; and (ii) second, that, had those licenses been obtained, the investment would have grown "into the broadcasting company he had planned." *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Award (28 March 2011) (**CLA-34**), ¶ 171.

at initiating such a direct negotiation (*quod non*), Baspetrol could never have been awarded license contracts for Blocks III and IV (**Subsection 2**).

**(1) Baspetrol could never have commenced a direct negotiation with Perupetro**

484. Baspetrol could never have commenced a direct negotiation process with Perupetro for three independently dispositive reasons.

485. *First*, Baspetrol could never have commenced a direct negotiation because, in May 2014, Blocks III and IV were still under contract[813] and, upon expiration of that contract, reserved for an international public bidding process and thus unavailable for direct negotiation.[814]

486. Under Peruvian law, bidding processes have priority over direct negotiation, such that if any given area is reserved for the former, the latter is excluded.[815] This is precisely what happened with Blocks III and IV, which, when Amorrortu submitted his Alleged Proposal on 28 May 2014, had already been reserved for a bidding process. Amorrortu was perfectly aware of this: as early as August 2013, Perupetro had informed Amorrortu that "Block III [was] not an area […] available for direct negotiation."[816] And in March 2014, Perupetro had decided that Blocks III and IV would be assigned to a new operator through a public tender—a decision that, as Peru's legal expert (Dr. Vizquerra) confirms, was memorialized in the recitals of Supreme Decrees Nos. 012-2014-EM and 013-2014-EM, and published in Peru's official gazette on 5 April 2014.[817] Thus, as a matter of Peruvian law, a direct negotiation for Blocks III and IV could have never started in May 2014.

---

[813] *See supra* § II.C.2.

[814] *See supra* § II.C.1.

[815] Vizquerra Expert Report (**RER-02**), ¶ 43; Amorrortu agrees with this; *see* SoC, ¶ 196 ("The first phase in the process is the determination of whether the oil block is available for Direct Negotiation […]. A block is available for Direct Negotiation when the block is not under contract and is not subject of a public bidding process that has been open to the public.").

[816] Letter from L. Ortigas (Perupetro) to B. Amorrortu (Baspetrol) (12 August 2013) (**C-6**) (translation provided by Counsel. In the original in Spanish: "[…] el Lote III […] no es un área disponible para negociación directa").

[817] Vizquerra Expert Report (**RER-02**), ¶ 43.

487. *Second*, Baspetrol could never have commenced a direct negotiation because it lacked a certification that it was a Qualified Oil Company.

488. Prior to the initiation of a direct negotiation, Peruvian law requires that the company requesting the negotiation obtain a certification that it is a Qualified Oil Company.[818] Amorrortu concedes this.[819] To obtain such a certification, petroleum companies must first submit a request for qualification to Perupetro, accompanied—in the case of companies without prior experience in petroleum operations, such as Baspetrol—by the documents listed in article 6 of the Regulation on the Qualification of Petroleum Companies.[820] Perupetro then reviews the request and approves it "only to the extent that the Oil Company presents the documents listed in [Article 6 of the Regulation] in a complete manner," and if "there are no errors or omissions or if [Perupetro] does not request additional information."[821] If all the conditions set forth in the Regulation are met,

---

[818] Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (**CLA-3**), Art. 2 ("Every Petroleum Company shall be duly qualified, by Perupetro, S.A., to commence the negotiation of a Contract.") (translation by Counsel. In the original Spanish "Toda Empresa Petrolera deberá estar debidamente calificada, por PERUPETRO S.A., para iniciar la negociación de un Contrato.").

[819] SoC, ¶ 200 ("By law, PeruPetro is only authorized to commence a Direct Negotiation Process with oil companies that have complied with the procedure for certification of qualification established in Article 11 of the Law of Hydrocarbons.").

[820] Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (**CLA-3**), Arts. 5-6. The documents that Article 6 requires that petroleum companies with no prior experience submit are listed in both Article 5 (a), (b), (d), and (f), and Article 6 of the Regulation on the Qualification of Petroleum Companies. Those documents are as follows: (i) proof of the company's existence; (ii) a sworn statement certifying that the company is not in bankruptcy or similar status, and that the company does not have any legal impediment to contract with the State; (iii) a sworn statement along with documentation proving that the company will employ permanently specialized personnel to carry out hydrocarbons exploration and exploitation operations; (iv) financial statements for the last three years; (v) information regarding the company's exploration and exploitation activities during the previous three years, if any; (vi) a sworn statement that the company will comply with the applicable provisions on environmental protection; (vii) documentation that demonstrates that the company has sufficient economic and financial capacity to develop the activities related to the project to be undertaken; and (viii) a partnership commitment with a technically qualified operator to carry out exploration and exploitation of hydrocarbons, or a contract entered into with a petroleum company with experience to carry out petroleum services.

[821] Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (**CLA-3**), Art. 14 (translation provided by Counsel. In the original Spanish: "PERUPETRO S.A. se encuentra obligada a otorgar la Calificación de la Empresa Petrolera, dentro de los diez (10) días hábiles de recibida la solicitud a que se refieren los Artículos 5 ó 6 del presente Reglamento […] siempre y cuando la Empresa Petrolera presente los documentos mencionados en dichos artículos de manera completa y si luego de efectuarse la evaluación correspondiente no se encontraran observaciones, errores u omisiones o no se solicitara la información adicional referida en el Artículo 7.").

Article 13 of that Regulation requires Perupetro to grant the qualification of oil company through the issuance of a certification of qualification.[822] Thus, contrary to Amorrortu's position, the Qualification cannot be granted by "an implicit, tacit, or constructed administrative act."[823]

489. In the present case, however, when Amorrortu submitted his Alleged Proposal on 28 May 2014,[824] Baspetrol lacked the required certification of qualification. Baspetrol had not even submitted a request for qualification to Perupetro on that date. Contrary to the position of Amorrortu and his legal expert, Dr. Quiroga, Amorrortu's Alleged Proposal did not constitute a request for qualification,[825] not only because that Proposal did not once mention the words "qualification" (*calificación*) or "qualification of oil company" (*calificación de empresa petrolera*), but also because it was not accompanied by the documents listed in article 6 of the Regulation on the Qualification of Petroleum Companies. Thus, since the certification of qualification is a prerequisite for a direct negotiation and Baspetrol never so much as requested the certification or provide the information required to obtain one, Baspetrol never could have commenced the direct negotiation process in May 2014.

490. And even if Amorrortu's Alleged Proposal constituted a request for qualification (*quod non*),[826] the conclusion would be the same: no negotiation would have ever commenced because such a request would necessarily have been rejected by Perupetro. This is because, in May

---

[822] Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (**CLA-3**), Art. 13.

[823] SoC, footnote 296.

[824] Email from B. Amorrortu (Baspetrol) to M. A. Cobena (Perupetro) (28 May 2014) (**C-9**); Receipt of Baspetrol Proposal Stamped by Perupetro (28 May 2014) (**C-10**); Alleged Proposal from Baspetrol SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (**C-11**).

[825] Amorrortu states that his Alleged Proposal "satisfied the requirements for Direct Negotiation and was therefore submitted for that purpose." *See* SoC, ¶ 217. For his part, Dr. Quiroga alleges that Amorrortu's Alleged Proposal should have triggered a process for Baspetrol's qualification as oil company. *See* Quiroga Expert Report (**CER-01**), ¶ 218. As demonstrated in this section, this is plainly not true.

[826] SoC, ¶ 217; Quiroga, ¶ 218.

2014, it would have been impossible for Amorrortu to accompany his request with the documents required by Article 6 of the Regulation.[827] To recap:

a. Article 6 requires applicant companies to submit "financial statements corresponding to the last three years, showing the results of business management such as balance sheets, statements of profits and losses, and statements of changes in equity."[828] In May 2014, however, Baspetrol could not have submitted financial statements "corresponding to the last three years," simply because Baspetrol had been incorporated for less than two years at that time.[829] That Amorrortu could not have done so is also confirmed by his failure to submit Baspetrol's net worth, current assets, and cash flow in the Bidding Process for Block III.[830]

b. Article 6 also requires applicant companies to submit "documentation that reliably demonstrates that it has sufficient economic and financial capacity to develop the activities related to the project to be undertaken."[831] This is in line with the Procedure on the Qualification of Petroleum Companies, approved by Perupetro's Board Agreement No. 048-2010, which required petroleum companies to demonstrate that their financial capacity (measured in terms of net worth, assets, or cash flow) exceed the minimum contracting capacity for the block.[832] For Blocks III and IV, the Bidding Rules set that minimum capacity in US$ 202.50 million for Block III, and US$ 63.75 million for Block IV.[833]

   In May 2014, however, Baspetrol would not have been able to demonstrate such capacity. Evidence of this—again—is that, in the Bidding Process for Block III,

---

[827] Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (**CLA-3**), Art. 6.

[828] Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (**CLA-3**), Arts. 5.d, 6 (translation provided by Counsel. In the original Spanish: "Estados Financieros correspondientes a los últimos tres (3) años, que muestren los resultados de la gestión empresarial tales como: balance general, estado de ganancias y pérdidas y estado de cambios en el patrimonio neto.").

[829] Baspetrol was incorporated on 17 October 2012; *see* Registration of Baspetrol S.A.C. in the Registry of Legal Persons of Peru (23 October 2012) (**C-65**).

[830] Letter from R. Guzman (Perupetro) to B. Amorrortu (Baspetrol) (3 November 2014) (**C-15**).

[831] Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (**CLA-3**), Art. 6.a (translation provided by Counsel. In the original Spanish: "Documentación que acredite de manera fehaciente que cuenta con capacidad económica y financiera suficiente para desarrollar las actividades relacionadas con el proyecto que asumirá.").

[832] PeruPetro's Board of Directors, *Agreement No. 048-2010, Procedure and Indicators for the Qualification of Oil Companies* (15 April 2010) (**QUIROGA 10**), p. 7 [PDF].

[833] Memorandum No. CONT-083-2014 (14 July 2014) (**R-25**), p. 2 [PDF].

Amorrortu failed to submit Baspetrol's net worth, current assets, and cash flow, and thus did not demonstrate sufficient financial capacity to operate Blocks III.[834] In his bid, he merely stated that the company's share capital was 200,000 Peruvian soles (around US$ 80,000).[835] Importantly, Amorrortu in the present arbitration has also failed to produce any evidence that, in 2014, Baspetrol had sufficient resources to operate Blocks III and IV.

c. Article 6 further requires applicant companies to submit a "partnership commitment with a technically qualified operator to carry out exploration and production or production of hydrocarbons, or a contract entered into with a petroleum company with experience to carry out petroleum services."[836] However, when Amorrortu submitted his Alleged Proposal in May 2014,[837] Amorrortu did not have any such partnership commitment or contract in place. Proof of this is Amorrortu's statement in that Alleged Proposal that such partnership commitment would be formalized around October or November 2014.[838]

d. Article 6 finally requires applicant companies to submit a "sworn affidavit and supporting documentation that reliably demonstrates that the company will have on a permanent basis specialized management and professional personnel to carry out hydrocarbons exploration and production or production operations."[839] Here too, there is simply no evidence that, when Amorrortu submitted the Alleged Proposal, Baspetrol had the necessary personnel to operate Blocks III and IV. As Amorrortu recognized in the Bidding Process for Block III, "BASPETROL [was] a company

---

[834] Letter from R. Guzman (Perupetro) to B. Amorrortu (Baspetrol) (3 November 2014) (**C-15**).

[835] Baspetrol, *Formal Presentation of Forms 1, 2, and 3* (31 October 2014) (**R-35**), p. 5 [PDF].

[836] Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (**CLA-3**), Art. 6.b (translation provided by Counsel. In the original Spanish: "Compromiso de Asociación con un operador técnicamente capacitado para llevar a cabo operaciones de exploración y explotación o explotación de Hidrocarburos o Contrato suscrito con una Empresa Petrolera con experiencia para llevar a cabo servicios petroleros.").

[837] Alleged Proposal from Baspetrol SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (**C-11**).

[838] Alleged Proposal from Baspetrol SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (**C-11**), p. 10 [PDF].

[839] Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (**CLA-3**), Art. 6.c (translation provided by Counsel. In the original Spanish: "Declaración Jurada con la documentación que sustente y demuestre fehacientemente que contará, de manera permanente, con el personal de nivel gerencial y profesional especializado para llevar a cabo operaciones de exploración y explotación o explotación de Hidrocarburos.").

that had not yet carried out any operations."[840] Moreover, although Amorrortu in his Proposal stated that all existing workers in Blocks III and IV were to be retained by Baspetrol,[841] Amorrortu has provided no evidence that Baspetrol had reached an employment agreement with those workers, or that Baspetrol otherwise had on payroll employees of its own with sufficient technical capabilities to operate the blocks. Similarly, while Amorrortu in his Alleged Proposal stated that Baspetrol would "have [had] the support of a well-known International Oil Company,"[842] Amorrortu has provided no details about that company, let alone any type of contractual document memorializing their agreement to jointly operate Blocks III and IV.

491. *Third*, Baspetrol could never have commenced a direct negotiation process because Amorrortu's Alleged Proposal did not meet the legal requirements to trigger such a process.

492. As Dr. Vizquerra explains, for a direct negotiation proposal to take effect, it must (i) express the applicant's willingness to participate in a direct negotiation with Perupetro; (ii) indicate the identity of the applicant's legal representative in the format set forth in Annex I of Perupetro's Board Agreement No. 048-2010; (iii) state the applicant's express submission to Perupetro's Qualification Procedure; and (vi) contain the documents listed in Article 6 of the Regulation on the Qualification of Petroleum Companies.[843] If any of these four requirements is not present, Perupetro, as a matter of law, cannot initiate a direct negotiation process.[844]

493. As explained above, however, Amorrortu's Alleged Proposal did not indicate the identity of Baspetrol's legal representative in the format set forth in Annex I of Perupetro's Board Agreement No. 048-2010, nor did it contain Baspetrol's express submission to Perupetro's

---

[840] Baspetrol, *Formal Presentation of Forms 1, 2, and 3* (31 October 2014) (**R-35**), p. 5 [PDF] (translation provided by Counsel. In the original Spanish: "BASPETROL SAC es una EP que no ha realizado operaciones aún.").

[841] Alleged Proposal from Baspetrol SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (**C-11**), p. 12 [PDF].

[842] Alleged Proposal from Baspetrol SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (**C-11**), p. 18 [PDF] (translation provided by Counsel. In the original Spanish: "[…] contando con el apoyo de una conocida Empresa Petrolera Internacional para garantizar técnica y económicamente una producción sostenida y creciente de los hidrocarburos en los Lotes III y IV.").

[843] Vizquerra Expert Report (**RER-02**), ¶¶ 34-36.

[844] Vizquerra Expert Report (**RER-02**), ¶ 32.

Qualification Procedure, nor did it attach the documents listed in Article 6 of the Regulation.[845] In other words, Amorrortu's Alleged Proposal was neither valid nor effective under Peruvian law, and consequently could not have triggered a direct negotiation with Perupetro.

#### (2) Baspetrol could never have been awarded license contracts for Blocks III and IV

494. Even if Amorrortu were correct and Baspetrol had initiated a direct negotiation with Perupetro (*quod non*), this alone would not have guaranteed that Baspetrol would have been the awardee of the license contracts for Blocks III and IV.

495. Indeed, under Peruvian law, the mere initiation of direct negotiation does not ensure the execution of a license contract.[846] Article 2 of the Regulation on the Qualification of Petroleum Companies makes this clear, as it states that the granting of a certification of qualification (which, as explained above, is a prerequisite for direct negotiation) "does not generate any right whatsoever" with respect to a contract.[847] This is also confirmed by Perupetro's Rules and Procedures, which establish at least two situations where a direct negotiation is terminated without a contract. The first is the requirement of a 30-day period in which other companies have an opportunity to express interest in the block(s) under negotiation. If other companies express such interest, the negotiation is terminated, and a tender is conducted.[848] The second is the establishment of a 60-day period to conclude a contract once the formal commencement of a direct negotiation begins.[849] If no contract is finalized within this timeframe, the direct negotiation is also terminated. And even if a contract is finalized within that timeframe, there is a further step, as that contract still needs to be reviewed and—if applicable—approved by the Ministry of Energy and Mines.[850]

---

[845] *See supra* § II.C.1.

[846] Vizquerra Expert Report (**RER-02**), ¶ 16.

[847] Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (**CLA-3**), Art. 2 (translation provided by Counsel. In the original Spanish: "no generará derecho alguno sobre el área de Contrato.").

[848] Perupetro Procedure GFCN-8, Contracting Through Direct Negotiation (13 August 2012) (**CLA-44**), p. 13.

[849] Perupetro Procedure GFCN-8, Contracting Through Direct Negotiation (13 August 2012) (**CLA-44**), pp. 8, 15.

[850] Vizquerra Expert Report (**RER-02**), ¶ 16.

496. Thus, a hypothetical direct negotiation between Baspetrol and Perupetro would not have guaranteed the execution of license contracts for Blocks III and IV. This alone would be sufficient to break the causal chain between Peru's impugned actions and Amorrortu's purported damages, thus dooming Amorrortu's damages claim to failure.

497. But if that were not enough, the facts of the case confirm that, had a negotiation taken place, it would have been impossible for Baspetrol to finalize license contracts for Blocks III and IV with Perupetro. This is for four equally dispositive reasons.

498. *First*, Baspetrol could never have finalized license contracts with Perupetro because Baspetrol was not eligible for registration in Peru's Public Hydrocarbons Registry.

499. As Dr. Vizquerra (Peru's legal expert) explains, article 18 of the Regulation on the Qualification of Petroleum Companies requires that oil companies pursuing license contracts with Perupetro must first register with Peru's Public Hydrocarbons Registry.[851] Importantly, only companies that have been granted a certification of qualification may be eligible to complete such registration. Article 18 is unambiguous in this regard:

> Oil Companies that have obtained the Qualification and as a result of a negotiation are in a position to enter into a hydrocarbons exploration and production or production contract with PERUPETRO S.A., must previously register in the Public Registry of Hydrocarbons.[852]

500. However, as explained above, in May 2014 Baspetrol had not obtained a certification of qualification, nor did it meet the legal requirements to do so. Thus, Baspetrol was not eligible for registration in Peru's Public Hydrocarbons Registry. Since this registration was a

---

[851] Vizquerra Expert Report (**RER-02**), ¶ 76.

[852] Ministry of Energy and Mines of Peru, *Supreme Decree No. 030-2004-EM, Regulation on the Qualification of Petroleum Companies* (18 August 2004) (**CLA-3**), Art. 18 (translation provided by Counsel. In the original Spanish: "Las Empresas Petroleras que hayan obtenido la Calificación y como resultado de una negociación estén aptas para firmar un contrato de exploración y explotación o explotación de Hidrocarburos con PERUPETRO S.A., deberán inscribirse previamente en el Registro Público de Hidrocarburos.").

prerequisite for contracting with Perupetro, in May 2014 Baspetrol was unable to conclude license contracts for Blocks III and IV.

501. *Second*, Baspetrol could never have finalized license contracts with Perupetro because Baspetrol was not technically eligible to operate Blocks III and IV.

502. To assess the technical eligibility of a company to operate an oil block in Peru, Perupetro in 2014 employed a set of technical criteria developed in its Board Agreement No. 048-2010.[853] Among other things, said criteria required companies to demonstrate (i) having produced an amount of hydrocarbons at least equal to the average production of the block under negotiation for the previous five years; (ii) having in operation at least the same amount of proven reserves as in that block; or (iii) having drilled at least the same number of development wells set forth in the minimum work program for that block.[854] In the case of companies with no prior experience, Perupetro's Board Agreement No. 048-2010 allowed them to qualify as a part of a consortium, so long as the consortium partners met these criteria.[855]

503. In 2014, however, Baspetrol did not meet any of these criteria. As Amorrortu confirmed in his Form 1 in the Bidding Process for Block III, Baspetrol was then "a company that had not yet carried out any operations,"[856] which means that Baspetrol could never have demonstrated technical eligibility to operate Blocks III and IV on its own. Moreover, Amorrortu's Alleged Proposal did not present a consortium for evaluation, nor did it identify the specific names of any associated international oil company to support Baspetrol's technical eligibility. This would inevitably have resulted in Perupetro's refusal to enter into license contracts with Baspetrol.

---

[853] PeruPetro's Board of Directors, *Agreement No. 048-2010, Procedure and Indicators for the Qualification of Oil Companies* (15 April 2010) (**QUIROGA 10**), p. 6 [PDF].

[854] PeruPetro's Board of Directors, *Agreement No. 048-2010, Procedure and Indicators for the Qualification of Oil Companies* (15 April 2010) (**QUIROGA 10**), p. 6 [PDF].

[855] PeruPetro's Board of Directors, *Agreement No. 048-2010, Procedure and Indicators for the Qualification of Oil Companies* (15 April 2010) (**QUIROGA 10**), p. 8 [PDF].

[856] Baspetrol, *Formal Presentation of Forms 1, 2, and 3* (31 October 2014) (**R-35**), p. 5 [PDF] (translation provided by Counsel. In the original Spanish: "BASPETROL SAC es una EP que no ha realizado operaciones aún.").

504. *Third*, Baspetrol could never have finalized license contracts with Perupetro because Baspetrol was not financially eligible to operate Blocks III and IV.

505. To assess the financial eligibility of a company to operate an oil block in Peru, Perupetro in 2014 employed a set of criteria also developed in its Board Agreement No. 048-2010.[857] In short, this criteria required companies to demonstrate that their financial capacity (measured in terms of net worth, assets, or cash flow) exceeded the minimum contracting capacity for the block.[858] In the case of companies with no prior experience, Perupetro's Board Agreement No. 048-2010 allowed them to qualify as a part of a consortium, so long as the each of the consortium partners, individually, were financially eligible on a pro-rata basis according to their share of participation in the consortium.[859]

506. In 2014, however, Baspetrol did not meet these minimum financial requirements. This is confirmed by Amorrortu's Form 1 in the Bidding Process for Block III. There, the Bidding Rules required companies to demonstrate financial capacity above the minimum work program for Blocks III and IV,[860] which envisaged the drilling of wells worth up to US$ 202.50 million for Block III, and US$ 63.75 million for Block IV.[861] In the Bidding Process for Block III, however, Amorrortu was unable to demonstrate sufficient financial capacity, and merely stated that the company's share capital was 200,000 Peruvian soles (around US$ 80,000).[862] Moreover, as noted above, Amorrortu's Alleged Proposal did not present a consortium for evaluation, nor did it

---

[857] PeruPetro's Board of Directors, *Agreement No. 048-2010, Procedure and Indicators for the Qualification of Oil Companies* (15 April 2010) (**QUIROGA 10**), p. 7 [PDF].

[858] PeruPetro's Board of Directors, *Agreement No. 048-2010, Procedure and Indicators for the Qualification of Oil Companies* (15 April 2010) (**QUIROGA 10**), p. 7 [PDF].

[859] PeruPetro's Board of Directors, *Agreement No. 048-2010, Procedure and Indicators for the Qualification of Oil Companies* (15 April 2010) (**QUIROGA 10**), p. 8 [PDF] ("In case of a Consortium, each [oil company] will be evaluated individually and its contracting capacity will be weighted by the percentage of participation in the respective Consortium.") (translation provided by Counsel. In the original Spanish: "En el caso de Consorcio, cada [empresa petrolera] será evaluada individualmente y su capacidad de contratación será ponderada por el porcentaje de participación en el respectivo Consorcio.").

[860] PeruPetro's Board of Directors, *Agreement No. 048-2010, Procedure and Indicators for the Qualification of Oil Companies* (15 April 2010) (**QUIROGA 10**), p. 7 [PDF].

[861] Memorandum No. CONT-083-2014 (14 July 2014) (**R-25**), p. 2 [PDF].

[862] Baspetrol, *Formal Presentation of Forms 1, 2, and 3* (31 October 2014) (**R-35**), p. 5 [PDF].

identify the specific names of any associated international oil company to support Baspetrol's financial eligibility. This, again, would inevitably have resulted in Perupetro's refusal to enter into license contracts with Baspetrol.

507. *Fourth*, a hypothetical direct negotiation between Perupetro and Baspetrol could have never resulted in Baspetrol being the awardee of the license contracts for Bocks III and IV because it would have faced competition from other bidders that would have outbid it.

508. As Dr. Vizquerra explains, even if Amorrortu's Alleged Proposal had triggered a direct negotiation with Perupetro (*quod non*), Perupetro would have been legally required to publish on its website the availability of Blocks III and IV, and allow new interested companies to bid for those blocks and compete against Baspetrol.[863] This means that, had a direct negotiation begun in May 2014, most likely the same six companies that qualified for the international bidding of that year would have joined the process, and Baspetrol would have had to compete against them.[864] And the result would have been the same: Baspetrol would have either not qualified (because it lacked demonstrable financial and technical capacity to operate the blocks), or been outbid by its competitors (again, because it lacked the necessary technical and financial resources).[865]

509. In sum, Baspetrol could never have been awarded license contracts for Blocks III and IV. This, once more, confirms the lack of causation between Amorrortu's alleged damages and Peru's purported refusal to initiate a direct negotiation and grant Baspetrol those license contracts.

---

[863] Vizquerra Expert Report (**RER-02**), ¶ 20.

[864] The two companies that qualified for the Bidding Process for Block III were Graña y Montero S.A.A. and Perenco S.A. *See* Minutes of International Public Bidding in Lot III - Opening of Envelope No. 1 (10 December 2014) (**QUIROGA-33**), p. 1. The five companies that qualified for the Bidding Process for Block IV were Graña y Montero S.A.A., Perenco S.A., Omega Energy International S.A., Geopark Limited, BPZ Exploración & Producción S.R.L; *see* Minutes of International Public Bidding in Lot IV - Opening of Envelope No. 1 (10 December 2014) (**QUIROGA-34**), p. 1.

[865] Perupetro, *Minutes No. 13 of the Commission in charge of conducting the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (3 November 2014) (**R-36**), p. 1 (stating that Baspetrol's Form 1 in the Bidding Process for Block III did not meet the minimum technical and financial requirements to operate Block III,).

#### b. Even if Blocks III and IV had been awarded to Baspetrol, their operation by Amorrortu would never have produced the profits he claims

510. Even if the Tribunal were to find that, in a but-for world, a direct negotiation could have taken place and Baspetrol would have been awarded license contracts for Blocks III and IV (*quod non*), Amorrortu's purported damages would remain disconnected from Peru's impugned actions. As explained below, this is because Baspetrol's operation of Blocks III and IV would never have produced the profits that Amorrortu claims.

511. *First*, Baspetrol's operation of Blocks III and IV would never have been profitable because Baspetrol lacked the actual technical capacity to operate those blocks.

512. Amorrortu's May 2014 Alleged Proposal confirms this. There, he stated that he would need to resort to a "a well-known international oil company to guarantee technically and economically a sustained and growing production of hydrocarbons in Blocks III and IV."[866] Thus, in his Alleged Proposal, Amorrortu conceded that Baspetrol alone did not have the capacity to operate the Blocks on its own.

513. Moreover, Amorrortu has not proved that, in 2014, Baspetrol had the technical and human resources, and the know-how, to successfully conduct the operation of Blocks III and IV. For example:

a. Amorrortu's May 2014 Alleged Proposal stated that Baspetrol would enter into a consortium agreement with a "well-known international oil company,"[867] yet Amorrortu has not provided the specific name of that company, let alone evidence of any agreement in place to jointly operate Blocks III and IV.

---

[866] Alleged Proposal from Baspetrol SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (**C-11**), p. 18 [PDF] (translation provided by Counsel. In the original Spanish: "[…] contando con el apoyo de una conocida Empresa Petrolera Internacional para garantizar técnica y económicamente una producción sostenida y creciente de los hidrocarburos en los Lotes III y IV.").

[867] Alleged Proposal from Baspetrol SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (**C-11**), p. 18 [PDF] (translation provided by Counsel. In the original Spanish: "[…] contando con el apoyo de una conocida Empresa Petrolera Internacional para garantizar técnica y económicamente una producción sostenida y creciente de los hidrocarburos en los Lotes III y IV.").

b. Similarly, Amorrortu's Alleged Proposal assured that all existing workers in those blocks would be retained by Baspetrol,[868] yet Amorrortu has provided no evidence that Baspetrol reached any employment agreement with those workers, or that Baspetrol otherwise had on payroll employees of its own with sufficient technical capabilities to operate the blocks.

c. Moreover, Amorrortu in his Witness Statement asserts that, in April 2014, he "organized […] the structure of all the executive, operational, administrative and logistical staff of Baspetrol to operate [Blocks] III and IV of Talara,"[869] and provides an organizational chart showing that structure.[870] However, a quick glance at that chart confirms that the alleged "staff *of Baspetrol* to operate the lots III and IV of Talara" consisted of individuals affiliated not with Baspetrol, but with other petroleum companies, such as Marathon Oil and Schlumberger. Also here, Amorrortu has not provided any employment or service contracts with those individuals, thus confirming that Baspetrol in 2014 did not have on payroll "all the executive, operational, administrative and logistical staff of Baspetrol to operate [Blocks] III and IV."[871]

   And even if the individuals on Amorrortu's organizational chart were actual employees of Baspetrol (*quod non*), that would still not prove that they had the necessary skills to successfully operate Blocks III and IV. Indeed, Amorrortu has provided no evidence as to the qualifications and skills of those individuals, or whether such qualifications and skills were transferable to the operation of oil blocks in Talara (Peru).

d. Finally, Amorrortu in his Witness Statement states that "an important international manager of Halliburton […] conclud[ed] that the latter would be waiting to negotiate a service contract Baspetrol-Halliburton,"[872] yet Amorrortu confirms that that contract was actually never negotiated (let alone signed),[873] and fails to provide specifics about its scope, the type of services to be provided thereunder, and

---

[868] Alleged Proposal from Baspetrol SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (**C-11**), p. 12 [PDF].

[869] Amorrortu Witness Statement, ¶ 71.

[870] Amorrortu Witness Statement, ¶ 71, Figure 10.

[871] Amorrortu Witness Statement, ¶ 71.

[872] Amorrortu Witness Statement, ¶ 73.a.

[873] Amorrortu Witness Statement, ¶ 73.a (explaining that Halliburton was lined up to enter into a service contract with Baspetrol *only after* Baspetrol had entered into the license contracts for Blocks III and IV with Perupetro).

whether those services would cover all the activities necessary to achieve in Blocks III and IV the level of production that Amorrortu and BRG claim.

514. Baspetrol's lack of technical capacity to operate Blocks III and IV is also confirmed by Amorrortu's Form 1 in the Bidding Process for Block III. To determine whether interested companies had sufficient technical capacity to operate these blocks, the 2014 Bidding Rules required those companies to demonstrate achievement, during the previous three years, of at least two of the following milestones: (i) having in operation at least the same amount of proven reserves as in Blocks III and IV; (ii) producing at least the average annual production of Blocks III and IV; and (iii) drilling at least the same number of development wells set forth in the minimum work program for Blocks III and IV.[874] Amorrortu's Form 1, however, could prove none of that, since—in his own words—"BASPETROL [was] a company that had not yet carried out any operations."[875] As explained above, this is one of the reasons why Baspetrol's Form 1 in the Bidding Process for Block III was rejected.[876]

515. *Second*, Baspetrol's operation of Blocks III and IV would never have been profitable because Baspetrol lacked the financial capacity to operate those blocks.

516. Indeed, there is no evidence that Baspetrol's financial muscle was sufficiently robust to engage in the capital-intensive operation of Blocks III and IV.[877] In fact, there is no evidence that Baspetrol had any financial muscle at all. In his Statement of Claim, Amorrortu had the opportunity to demonstrate otherwise. Yet Amorrortu failed to submit Baspetrol's financial statements for the relevant years—let alone any proof of access to funds or financing. The same happened in the Bidding Process for Block III, where Amorrortu also failed to demonstrate

---

[874] *See* PeruPetro's Board of Directors, *Agreement No. 048-2010, Procedure and Indicators for the Qualification of Oil Companies* (15 April 2010) (**QUIROGA 10**), p. 6 [PDF]; *and* Memorandum No. CONT-083-2014 (14 July 2014) (**R-25**), p. 2 [PDF].

[875] Baspetrol, *Formal Presentation of Forms 1, 2, and 3* (31 October 2014) (**R-35**), p. 5 [PDF] (translation provided by Counsel. In the original Spanish: "BASPETROL SAC es una EP que no ha realizado operaciones aún.").

[876] *See, e.g.,* Perupetro, *Minutes No. 13 of the Commission in charge of conducting the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (3 November 2014) (**R-36**), p. 1.

[877] NERA Expert Report (**RER-01**), ¶ 50.

Baspetrol's financial capabilities by refusing to submit its net worth, current assets, and cash flow.[878]

517. *Third*, Baspetrol's operation of Blocks III and IV would never have been profitable due to the low oil prices between 2015 and 2021.

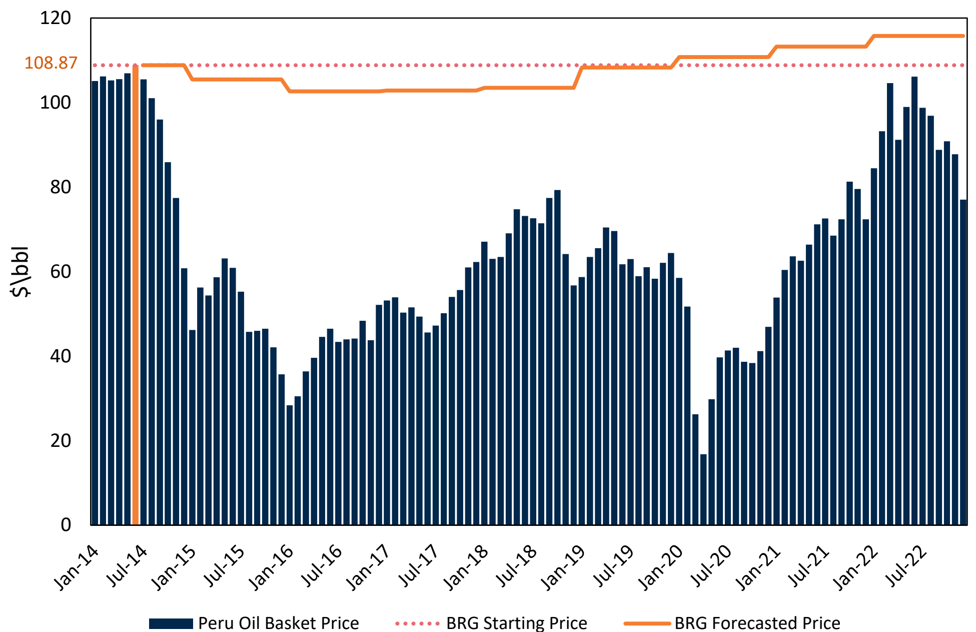
518. As Peru's quantum expert (NERA) explains, the oil market fell significantly during the first third of the period during which Baspetrol would have been lifting oil from Blocks III and IV. However, Amorrortu and his quantum expert, BRG, base their profits forecast on crude oil futures from May 2014 that ultimately ended up being much higher than actual prices.[879] This can be seen in the following figure, prepared by NERA:[880]

---

[878] *See* Baspetrol, *Formal Presentation of Forms 1, 2, and 3* (31 October 2014) (**R-35**), p. 5 [PDF]. The Bidding Rules required interested companies to demonstrate financial capacity above the minimum work program for Blocks III and IV, which envisaged the drilling of wells worth up to US$ 202.50 million for Block III, and US$ 63.75 million for Block IV. *See* Memorandum No. CONT-083-2014 (14 July 2014) (**R-25**), p. 2 [PDF]. Amorrortu, however, refused to provide any financial information about Baspetrol, merely stating that the company's share capital was 200,000 Peruvian soles (around US$ 80,000). As a result, Perupetro had no choice but not to qualify Baspetrol. *See* Perupetro, *Minutes No. 13 of the Commission in charge of conducting the International Public Bidding to award the License Contract for the Exploitation of Hydrocarbons in Block III* (3 November 2014) (**R-36**), p. 1.

[879] NERA Expert Report (**RER-01**), ¶¶ 110-111.

[880] NERA Expert Report (**RER-01**), Figure 6.




519. Had Amorrortu and BRG based their analysis on the actual oil prices that prevailed during the forecast production period, they would have concluded that Baspetrol would have experienced a loss of US$ 78 million (based on Amorrortu's assumed drilling program and decline curve assumptions).[881]

520. *Fourth* (and finally), Baspetrol's operation of Blocks III and IV would never have produced the profits that Amorrortu claims because the existing oil reserves in Blocks III and IV are not sufficient to achieve the production upon which he bases his damages.

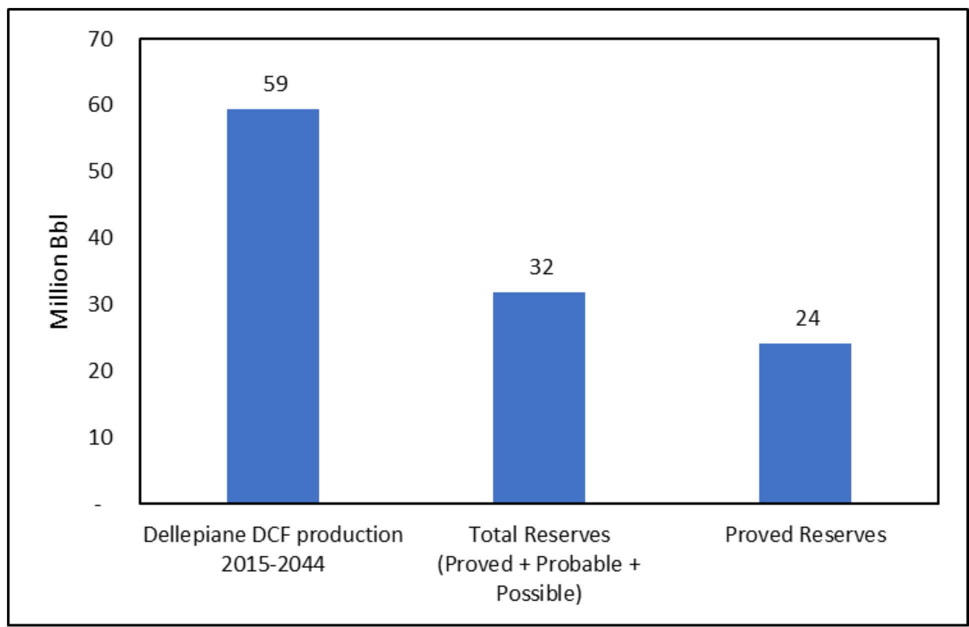
521. As NERA explains, Amorrortu and BRG assume, for the calculation of Amorrortu's but-for profits, that Baspetrol would have produced quantities of oil that (i) are more than double the size of *proven* reserves in those blocks; and (ii) exceed by 84 percent the sum of all *proven*, *probable*, and *possible* reserves in those blocks.[882] This can be observed in the following figure, prepared by NERA:[883]

---

[881] NERA Expert Report (**RER-01**), ¶ 110.

[882] NERA Expert Report (**RER-01**), ¶ 80.

[883] NERA Expert Report (**RER-01**), Figure 2.




522. In conclusion, even in the unlikely event that Amorrortu had been awarded the license contracts for Blocks III and IV, it would have been technically and financially impossible for him to operate those blocks, much less to do so as profitably as he claims. In light of this, the only possible conclusion is that Peru's impugned acts cannot have been the cause of Amorrortu's alleged damages.[884]

### B. Amorrortu Fails to Prove his Damages Claim

523. The lack of causation between Amorrortu's purported damages and Peru's impugned actions is sufficient for the Tribunal to reject Amorrortu's compensatory claim.

[884] In *Carlos Ríos v. Chile*, a similar situation arose. There, the tribunal found that the investors' but-for "cash flows would not have been sufficient to distribute dividends […] which generates a negative residual value." The tribunal thus concluded that "the economic impact of the State's [impugned] omissions on the Claimants' investments [was] nil", and that "the State's omissions […] that frustrated the Claimants' unequivocal and reasonable expectation could not have been the cause of the destruction of the Companies' value." *See Carlos Ríos et al. v. Republic of Chile*, ICSID Case No. ARB/17/16, Award (11 January 2021) (**RLA-179**), ¶ 623 (translation provided by Counsel. In the original Spanish: "[E]l impacto económico de las omisiones del Estado […] en la inversión de los Demandantes es nulo. […] los flujos de caja de las Compañías no habrían sido suficientes para distribuir dividendos […] lo que genera un valor residual de las Compañías negativo. En estas circunstancias, el Tribunal se ve forzado a concluir que las omisiones del Estado […] que frustraron las expectativas inequívocas y razonables de los Demandantes no pudieron haber sido la causa de la destrucción del valor de las Compañías.").

524. For completeness, however, in this section the Republic of Peru will demonstrate that, even if causation were to be presumed (*quod non*), Amorrortu still would still not be entitled to damages, as his valuation is speculative and suffers from insurmountable flaws. This section thus begins explaining that Amorrortu's use of the fair market value standard for the valuation of his alleged damages is misplaced because Peru's purported Treaty breach is not expropriatory in nature to justify the use of that standard (**Subsection 1**). Subsequently, it demonstrates that Amorrortu has failed to prove his damages with the legally required degree of certainty (**Subsection 2**), both because the premises of Amorrortu's damages and his valuation thereof are highly speculative, and because his damages are flawed and grossly overstated.

### 1. Amorrortu's use of the Fair Market Value standard is misplaced, as Peru's purported breach is not expropriatory in nature

525. Relying on BRG's report, Amorrortu claims entitlement to damages for a total amount of US$ 512.7 (including pre-award interest).[885] To reach this amount, Amorrortu and BRG apply the fair market value ("**FMV**") standard, using, primarily, the income-based Discounted Cash Flow method ("**DCF**"), and for confirmation, the market-based approach.[886]

526. This is Amorrortu's first fatal mistake in his valuation exercise. Indeed, it is a well-established rule in international investment arbitration that the FMV standard may be used to calculate value only when there has been an expropriatory breach or a breach with expropriatory effect, not otherwise.[887] Amorrortu does not dispute this; he states that it is when "a host state unlawfully deprives an investor of its entire investment [that] tribunals will consistently grant an award of compensation equal to the 'fair market value' […] of the investment."[888]

---

[885] SoC, ¶¶ 403-404.

[886] SoC, ¶ 397; Expert Report of Santiago Dellepiane (BRG) (21 August 2023) ("**BRG Expert Report**") (**CER-03**), ¶ 60.

[887] *Marvin Roy Feldman Karpa v. United Mexican States*, ICSID Case No. ARB(AF)/99/I, Award (16 December 2002) (**RLA-4**), ¶ 194 ("In the absence of […] expropriation or [a breach that] is tantamount to expropriation, a claimant would not be entitled to the full market value of the investment."); *see also Azurix Corp. v. Argentine Republic*, ICSID Case No. ARB/01/12, Award (14 July 2006) (**CLA-100**), ¶ 424.

[888] SoC, ¶ 383 (emphasis added).

527. A long line of investment tribunals supports this approach. In *Lemire v. Ukraine*, for example, the tribunal found that Ukraine had breached its obligation to accord fair and equitable treatment to Mr. Lemire because it prevented him from participating in a radio frequencies tender process.[889] While the treaty there established that compensation for expropriation was to be based on the FMV standard, the tribunal found that standard to be "of little use" in valuing the injury arising from Ukraine's FET violation, "because th[at] breach d[id] not amount to the total loss or deprivation of an asset."[890]

528. Another example relevant to this case is *PSEG v. Turkey*. There, the tribunal refused to adopt the FMV standard because Turkey's denial of fair and equitable treatment was not expropriatory in nature.[891] Like in the present case, the alleged measure did not relate to "investments that were at the production stage, [but] merely in planning or under negotiation."[892] As the *PSEG* tribunal acknowledged:

> While the Tribunal has found that there is […] a breach of [FET], this breach relates not to damages to productive assets but to the failure to conduct negotiations in a proper way and other forms of interference by the Respondent Government. The appropriate remedies thus do not relate to a compensation for the market value of those assets but to a different objective. […]
>
> The Tribunal accordingly finds that the fair market value shall not be retained as the measure for compensation in this case.[893]

529. Here, the FMV standard is also inappropriate, as Amorrortu does not articulate any expropriation claim, nor do any of Peru's impugned actions bear any expropriatory effect. Indeed, Amorrortu's claims are limited to Peru's alleged breach of the minimum standard of treatment

---

[889] *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Award (28 March 2011) (**CLA-34**), ¶ 30.

[890] *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Award (28 March 2011) (**CLA-34**), ¶ 148.

[891] *PSEG Global Inc. and another v. Republic of Turkey,* ICSID Case No. ARB/02/5, Award (19 January 2017) (**RLA-150**), ¶ 305.

[892] *PSEG Global Inc. and another v. Republic of Turkey,* ICSID Case No. ARB/02/5, Award (19 January 2017) (**RLA-150**), ¶ 308.

[893] *PSEG Global Inc. and another v. Republic of Turkey,* ICSID Case No. ARB/02/5, Award (19 January 2017) (**RLA-150**), ¶¶ 308-309.

standard of Article 10.5 because it did not consider Amorrortu's Alleged Proposal and subsequently launched a tender process for Blocks III and IV.[894] Needless to say, that is not an expropriation claim.

530. Moreover, the impugned measures are not expropriatory in nature. Even if Amorrortu were right and Peru had breached the Treaty's minimum standard of treatment by not pursuing a direct negotiation and instead launching a tender process (*quod non*), that breach would not entail any expropriatory effect, since, as explained in detail above, Amorrortu never acquired any rights or entitlements with respect to Blocks III and IV whose property could have been taken by Peru.[895] Thus, like in *Lemire v. Ukraine*, Peru's alleged violation of Article 10.5 here "does not amount to the total loss or deprivation of an asset,"[896] as there is simply no asset (in this case, Amorrortu's alleged right to exploit Blocks III and IV) of which Amorrortu could have been deprived of in the first instance.

531. In light of this, Amorrortu's use of the FMV standard here is simply misplaced.

### 2. In any event, Amorrortu has not met his burden of proving his damages with a minimum degree of certainty

532. Even if the Tribunal were to conclude that Amorrortu's use of the FMV standard is appropriate (*quod non*), Amorrortu would still not be entitled to damages, as his valuation is entirely speculative.

533. Under international law, compensation may only be awarded for loss that has been demonstrated with "reasonable certainty."[897] This means that "the assessment of damages cannot be based on conjecture or speculation. A persuasive factual basis for the assessment must be

---

[894] *See, e.g.,* SoC, ¶ 326.

[895] *See also* Vizquerra Expert Report (**RER-02**), ¶ 38.

[896] *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Award (28 March 2011) (**CLA-34**), ¶ 148.

[897] *Amoco International Finance Corp. v. The Government of the Islamic Republic of Iran and others*, IUSCT Case No. 56, Award No. 310-56-3 (14 July 1987) (**RLA-66**), ¶ 238 ("One of the best settled rules of the law of international responsibility of States is that no reparation for speculative or uncertain damage can be awarded."); *see also Gemplus S.A., and others v. United Mexican States*, ICSID Case No. ARB(AF)/04/3, Award (16 June 2010) (**CLA-84**), ¶ 12-56; *Mobil Investments Canada Inc. and Murphy Oil Corporation v. Government of Canada*, ICSID Case No. ARB(AF)/07/4, Decision on Liability and on Principles of Quantum (22 May 2012) (**RLA-119**), ¶¶ 437-439.

shown."[898] Importantly, it is Claimant that bears the burden of proving the quantum of its losses with that "reasonable certainty."[899] If the "loss[es] [are] found to be too uncertain or speculative or otherwise unproven, the Tribunal must reject these claims."[900]

534. In the present case, once again, Amorrortu has failed to satisfy his burden. His purported damages are anything but "reasonably certain," as it is speculative to assume that Baspetrol would have been awarded the license contracts for those blocks and operated them profitably (**Subsection a**), his use of the DCF method yields entirely speculative results (**Subsection b**), and his damages valuation is entirely flawed and grossly overstated (**Subsection c**).

#### a. It is speculative to assume that Baspetrol would have been awarded license contracts for Blocks III and IV and exploited them profitably

535. Amorrortu's damages are based on two premises: that his "Proposal for operation of Blocks II and IV would have been approved" (and thus license contracts would have been awarded to Baspetrol),[901] and that "Baspetrol would have operated the Blocks profitably."[902] Both premises are entirely speculative, thus rendering Amorrortu's damages speculative too.

536. *First*, as explained in more detail in Section V.A.2.a above, in May 2014, Blocks III and IV were reserved for public bidding, which excluded the possibility of a direct negotiation. Moreover, Baspetrol did not meet the legal requirements to initiate a direct negotiation with Perupetro, both because it lacked a certification that it was a Qualified Oil Company, and because Amorrortu's Alleged Proposal did not trigger such a negotiation as a matter of Peruvian law. Finally, Baspetrol was not eligible to operate Blocks III and IV, as it was a newly formed company

---

[898] *Mohammad Ammar Al-Bahloul v. The Republic of Tajikistan*, SCC Case No. V (064/2008), Final Award (8 June 2010) (**RLA-111**), ¶ 39.

[899] *Mobil Investments Canada Inc. and Murphy Oil Corporation v. Government of Canada*, ICSID Case No. ARB(AF)/07/4, Decision on Liability and on Principles of Quantum (22 May 2012) (**RLA-119**), ¶¶ 437-439.

[900] *Gemplus S.A., and others v. United Mexican States*, ICSID Case No. ARB(AF)/04/3, Award (16 June 2010) (**CLA-84**), ¶ 12-56.

[901] *See, e.g.*, SoC, ¶ 358.

[902] SoC, ¶ 377,

with no prior experience in upstream petroleum operations, no demonstrable financial capacity, and without a partner to support Baspetrol's technical and financial eligibility.

537. *Second*, as explained in more detail in Section V.A.2.b above, in May 2014, Baspetrol lacked the technical capacity to operate Blocks III and IV, let alone to do so profitably. Amorrortu's statement in his Alleged Proposal that he would need to resort to "a well-known international oil company to guarantee technically and economically a sustained and growing production of hydrocarbons in Blocks III and IV" demonstrates this.[903] In addition, Baspetrol in 2014 lacked the financial capacity to operate Blocks III and IV, as demonstrated by Amorrortu's failure to prove otherwise both in the Bidding Process for Block III and in the present arbitration. Finally, Baspetrol in 2014 did not have any partner to help it overcome its technical and financial deficiencies.

538. Consequently, it is pure conjecture to assume that a company like Baspetrol would have been awarded licenses contracts for Blocks III and IV, and that its operation of those blocks would have been profitable.

#### b. Amorrortu's use of the DCF method yields entirely speculative results, particularly when used for the valuation of projects that were never operative, such as Baspetrol's purported operation of Blocks III and IV

539. In addition, Amorrortu's damages are speculative because his use of the DCF valuation method yields results that are also speculative.

540. Both international investment guidelines and jurisprudence caution against the use of the DCF method, "as it can give rise to speculation."[904] This is particularly true when valuing businesses or property that are not a going concern and lack a track record of profitability. Thus,

---

[903] Alleged Proposal from Baspetrol SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (**C-11**), p. 18 [PDF] (translation provided by Counsel. In the original Spanish: "[…] *contando con el apoyo de una conocida Empresa Petrolera Internacional para garantizar técnica y económicamente una producción sostenida y creciente de los hidrocarburos en los Lotes III y IV*.").

[904] *Enron Corporation and Ponderosa Assets, L.P. v. Argentine Republic*, ICSID Case No. ARB/01/3, Award (22 May 2007) (**CLA-94**), ¶ 385.

as the World Bank Guidelines make clear, the DCF method is appropriate only "for a going concern with a proven record of profitability."[905]

541. Investment tribunals agree with this approach. In *Metalclad v. Mexico*, for example, the tribunal accepted that "the fair market value of a going concern which has a history of profitable operation may be based on an estimate of future profits subject to a discounted cash flow analysis."[906] That same tribunal, however, warned that "where the enterprise has not operated for a sufficiently long time to establish a performance record or where it was failed to make a profit, future profits cannot be used to determine […] fair market value."[907] Since the investor's project in *Metalclad* was never operative, the tribunal declined to use the DCF method, concluding that "any award based on [such method] would be wholly speculative."[908]

542. Another example is *PSEG v. Turkey*. There, the tribunal found that Turkey had not treated the investor fairly and equitably during the preparatory stage of a project for the construction of a power plant, among other reasons because Turkey had mishandled its negotiations with PSEG.[909] Ultimately, the tribunal decided not to award future profits to the investor. In support of its decision, the tribunal explained that, since the parties had finalized neither the contract for the construction of the plant nor the agreements for the sale of the electricity produced therein, the tribunal lacked a solid basis for calculating future profits.[910] Notably, the

[905] World Bank Development Committee, *Guidelines on the Treatment of Foreign Direct Investment* (**RLA-55**), § IV.6.

[906] *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award (30 August 2000) (**RLA-75**), ¶ 119.

[907] *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award (30 August 2000) (**RLA-75**), ¶ 120.

[908] *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award (30 August 2000) (**RLA-75**), ¶ 121.

[909] *PSEG Global Inc. and another v. Republic of Turkey,* ICSID Case No. ARB/02/5, Award (19 January 2017) (**RLA-150**), ¶ 252.

[910] *PSEG Global Inc. and another v. Republic of Turkey,* ICSID Case No. ARB/02/5, Award (19 January 2017) (**RLA-150**), ¶ 313.

*PSEG* tribunal refused to rely on cash flow projections submitted by the investor with its proposal, concluding that doing otherwise would result in an entirely speculative and uncertain valuation.[911]

543. A final example is *Rusoro v. Venezuela*, where the tribunal, underscoring that the DCF method is <u>not</u> appropriate in all circumstances,[912] laid out six criteria that must be met, at least in significant part, if the DCF method is to work properly and produce reasonably certain valuations:

> - The enterprise has an established historical record of financial performance;
> - There are reliable projections of its future cash flow, ideally in the form of a detailed business plan adopted *in tempore insuspecto*, prepared by the company's officers and verified by an impartial expert;
> - The price at which the enterprise will be able to sell its products or services can be determined with reasonable certainty;
> - The business plan can be financed with self-generated cash, or, if additional cash is required, there must be no uncertainty regarding the availability of financing;
> - It is possible to calculate a meaningful WACC, including a reasonable country risk premium, which fairly represents the political risk in the host country;
> - The enterprise is active in a sector with low regulatory pressure, or, if the regulatory pressure is high, its scope and effects must be predictable: it should be possible to establish the impact of regulation on future cash flows with a minimum of certainty.[913]

---

[911] *PSEG Global Inc. and another v. Republic of Turkey,* ICSID Case No. ARB/02/5, Award (19 January 2017) (**RLA-150**), ¶ 313.

[912] *Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/12/5, Award (22 August 2016) (**CLA-29**), ¶ 759.

[913] *Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/12/5, Award (22 August 2016) (**CLA-29**), ¶ 759 (emphasis in original).

544. In the present case, the use by Amorrortu of the DCF method is entirely inappropriate to assign value to Baspetrol's and Amorrortu's purported operation of Blocks III and IV. The reasons are straightforward: As in *Metalclad v. Mexico*, Baspetrol was never an operative company, nor did it derive any income. And as in *PSEG v. Turkey*, Amorrortu never entered into license contracts with Perupetro for the operation of these blocks, let alone acquired any rights or entitlements with respect thereto.[914]

545. In addition, Amorrortu's purported operation of Blocks III and IV fail to meet most of the criteria laid out by the *Rusoro* tribunal:

a. First, Baspetrol lacks an established record of financial performance. If there were one, Amorrortu would have submitted it both in the Bidding Process for Block III and in the present arbitration. But as explained above, Amorrortu did not do so for the simple reason that when Peru's impugned actions occurred in May 2014, Baspetrol was a newly formed company with no prior activity or performance track record.[915]

b. Moreover, there are no cash flow projections in the form of a detailed business plan adopted by Baspetrol *in tempore insuspecto*, prepared by Baspetrol's officers, and verified by an impartial expert which could justify the use of the DCF method. In fact, Amorrortu's Alleged Proposal,[916] which contained no cash flow projections, can hardly qualify as a "business plan."

c. In addition, the price at which Baspetrol could have sold the petroleum produced in Blocks III and IV cannot be determined with reasonable certainty. This is because oil prices are intrinsically volatile—which is something evidenced by the difference between Amorrortu's and BRG's 2014 oil price projections, on the one hand, and the actual oil prices between 2015 and 2024, on the other.[917]

---

[914] *See* Vizquerra Expert Report (**RER-02**), ¶ 38.

[915] Baspetrol, *Formal Presentation of Forms 1, 2, and 3* (31 October 2014) (**R-35**), p. 5 [PDF] ("BASPETROL is a company that had not yet carried out any operations.") (translation provided by Counsel. In the original Spanish: "BASPETROL SAC es una EP que no ha realizado operaciones aún.").

[916] Alleged Proposal from Baspetrol SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (**C-11**).

[917] *See* NERA Expert Report (**RER-01**), ¶¶ 110-111.

d. Finally, Amorrortu has provided no evidence that his purported operation of Blocks III and IV could have been financed with self-generated cash, or that he would have had access to financing. In fact, as noted above, for the last 10 years Amorrortu has failed to produce any evidence that, in 2014, Baspetrol's financial muscle was strong enough to engage in the capital-intensive operation of petroleum blocks such as Blocks III and IV.

546. In sum, Amorrortu's use of the DCF method yields results that are all but certain, and that consequently do not meet the "reasonable certainty" standard required under international law.[918] Thus, the use of such a method is simply inappropriate here.

**c. In any event, Amorrortu's damages valuation is flawed, unreliable, and grossly inflated**

547. Even if Amorrortu's use of the DCF method were to be appropriate (*quod non*), Amorrortu's damages would still necessarily fail. As this section shows, this is because the damages valuation advanced by Amorrortu and BRG is flawed and grossly inflated.

548. *First,* Amorrortu's valuation is flawed because BRG does not tie the assumptions of his DCF model to the commercial opportunities that, according to Amorrortu, should have been given to Baspetrol. Indeed, although Amorrortu claims that, but for Peru's conduct, his "Proposal […] would have been approved,"[919] BRG does not fully incorporate all the terms contained in said Proposal. As NERA explains:

[918] *Amoco International Finance Corp. v. The Government of the Islamic Republic of Iran and others*, IUSCT Case No. 56, Award No. 310-56-3 (14 July 1987) (**RLA-66**), ¶ 238 ("One of the best settled rules of the law of international responsibility of States is that no reparation for speculative or uncertain damage can be awarded."); *see also*, *Gemplus S.A., and others v. United Mexican States*, ICSID Case No. ARB(AF)/04/3, Award (16 June 2010) (**CLA-84**), ¶ 12-56; *Mobil Investments Canada Inc. and Murphy Oil Corporation v. Government of Canada*, ICSID Case No. ARB(AF)/07/4, Decision on Liability and on Principles of Quantum (22 May 2012) (**RLA-119**), ¶¶ 437-439.

[919] SoC, ¶ 358.

a. Amorrortu's Alleged Proposal contemplates the possibility of PETROPERU's participation in up to 25 percent of the license contracts for Blocks III and IV,[920] yet BRG's DCF model fails to account for such possibility.[921]

b. Moreover, Amorrortu's Alleged Proposal states that Baspetrol would have entered into a consortium agreement with a "well-known international petroleum company,"[922] yet BRG's DCF model also ignores that Baspetrol's stake in the license contracts would have been reduced by the stake of its consortium partner.[923]

c. Furthermore, Amorrortu's Alleged Proposal recognizes that the marginal petroleum resources in Blocks III and IV would have required investment in existing wells,[924] yet BRG's DCF model does not account for the capital expenditures needed for those existing wells.[925]

d. In addition, Amorrortu's Alleged Proposal includes an employee profit sharing of at least 5 percent,[926] yet BRG's DCF model does not account for it.[927]

---

[920] Alleged Proposal from Baspetrol SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (**C-11**), p. 12 [PDF]. Amorrortu alleges that "Graña y Montero sought and obtained the removal of PetroPeru from the operation of Blocks III and IV", that "[w]ith this [removal], Graña y Montero achieved 100% participation in the exploitation of Blocks III and IV", and that this was done through "corruption […] with the sole purpose of benefiting one company, Graña y Montero." *See* SoC, Section III.C.2(B), ¶¶ 167-168. This is simply not true; *see supra* § II.D. However, if Amorrortu's position in this arbitration is that that is the case, then he should have taken into account PETROPERU's 25 percent stake in the valuation of his damages. Amorrortu cannot have it both ways.

[921] NERA Expert Report (**RER-01**), Table 3.

[922] Alleged Proposal from Baspetrol SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (**C-11**), pp. 10, 18 [PDF]. As Amorrortu rightly points out, "PetroPeru had the right to participate up to 25% in the license contracts of Blocks III and IV." *See* SoC, ¶ 167.

[923] NERA Expert Report (**RER-01**), Table 3.

[924] Alleged Proposal from Baspetrol SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (**C-11**), p. 11 [PDF].

[925] NERA Expert Report (**RER-01**), Table 3.

[926] Alleged Proposal from Baspetrol SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (**C-11**), p. 16 [PDF].

[927] NERA Expert Report (**RER-01**), Table 3.

e. Finally, Amorrortu's Alleged Proposal emphasizes his intent to carry out horizontal drilling,[928] yet BRG's DCF model does not account for the higher cost of horizontal drilling.[929]

549. *Second*, Amorrortu's valuation is flawed because BRG's DCF model does not account for the fact that Amorrortu only owned 40 percent of Baspetrol's shares.[930] Indeed, Baspetrol's certificate of incorporation confirms that, out of a total of 2,000 shares, Amorrortu only owned 800. His sons, Basilio Cesar Amorrortu and Sebastián Amorrortu Montenegro, held the remaining 60 percent (1,200 shares).[931] Thus, Amorrortu would only have been apportioned a 40 percent share of the value of Blocks III and IV license contracts, had those been awarded to Baspetrol. By ignoring these facts, BRG once again significantly overstates Amorrortu's alleged damages.[932]

550. *Third*, Amorrortu's valuation is flawed because BRG's DCF model does not incorporate the actual terms of typical license contracts awarded by Perupetro. As NERA explains, BRG's DCF model does not account for obligations such as the retirement of wells, the provision of security, and the performance of environmental remediation works.[933] This, again, results in an inflation of Amorrortu's purported damages.[934]

551. *Fourth*, Amorrortu's valuation is flawed because his 14 July 2014 valuation date is inconsistent with the timeline outlined by Amorrortu in his Alleged Proposal. Indeed, in a but-for world, Perupetro would not have conducted the Bidding Processes, and instead would have finalized license contracts for Blocks III and IV with Baspetrol.[935] According to Amorrortu's

---

[928] Alleged Proposal from Baspetrol SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (**C-11**), p. 11 [PDF].

[929] NERA Expert Report (**RER-01**), Table 3.

[930] Certificate of Incorporation of Baspetrol S.A.C. (17 October 2012) (**C-24**), Art. 3, p. 6 [PDF].

[931] Certificate of Incorporation of Baspetrol S.A.C. (17 October 2012) (**C-24**), Art. 3, p. 6 [PDF].

[932] NERA Expert Report (**RER-01**), ¶ 8.

[933] NERA Expert Report (**RER-01**), ¶ 75.

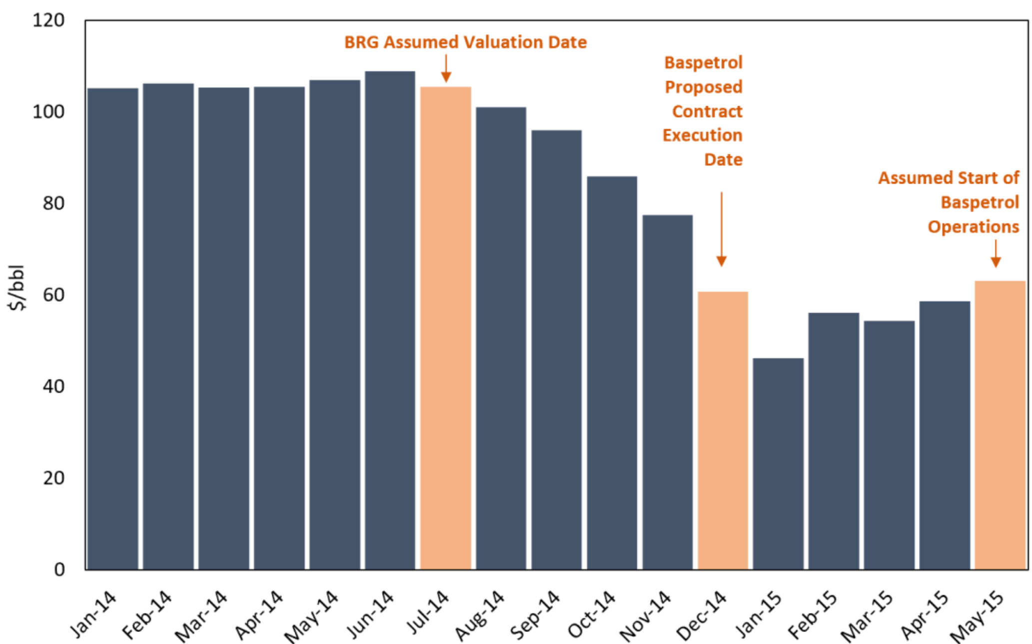
[934] NERA Expert Report (**RER-01**), ¶ 75.

[935] SoC, ¶ 358; BRG Expert Report (**CER-03**), ¶ 51.

Alleged Proposal, the signing of these contracts would not have occurred until December 2014, and production operations would not have commenced until 1 May 2015.[936]

552. This stands in stark contrast with Amorrortu's and BRG's valuation date of 14 July 2014. As NERA explains, BRG's position that, on 14 July 2014, a willing buyer would have paid US$ 266.6 million for the opportunity to invest in Blocks III and IV without having a contract, nearly one year before the start of operations, and before any material amounts of money have been invested, "belies common sense."[937]

553. *Firth*, Amorrortu's valuation is also flawed because his 14 July 2014 valuation date is blatantly opportunistic, as it reflects nearly the peak level of oil prices, as shown in the following figure prepared by NERA:[938]




[936] Alleged Proposal from Baspetrol SAC to Perupetro to operate Blocks III and IV of the Peruvian North-West (27 May 2014) (**C-11**), p. 10 [PDF].

[937] NERA Expert Report (**RER-01**), ¶ 78.

[938] NERA Expert Report (**RER-01**), Figure 1.

554. The choice of an unrealistic valuation date that corresponds to high prevailing oil prices results in an overstatement of damages. As NERA confirms, changing the starting oil price in BRG's DCF model to 1 April 2015 (which is the date on which GMP signed its license contracts) would almost completely "wipe out the value of Baspetrol's alleged opportunity in Blocks III and IV, reducing damages to zero o very close to it."[939]

555. *Sixth*, Amorrortu's valuation is grossly inflated because BRG's DCF model assumes that Baspetrol would have lifted more oil than exists in the field.

556. NERA observes that BRG's DCF model is premised on Baspetrol producing quantities of oil that (i) are more than double the size of *proven* reserves in Blocks III and IV; and (ii) exceed by 84 percent the sum of all *proven*, *probable*, and *possible* reserves for those blocks.[940] This renders BRG's DCF model extremely unreliable. And so do BRG's assumptions regarding the wells that Baspetrol would have drilled and the decline rate of these wells. As NERA explains, while the 2014 Bidding Rules mention 14 wells for the first 11 years of operation (resulting in a total of 154 wells), BRG assumes 307 wells drilled over a 30-year period. However, BRG provides no evidence (let alone any petroleum engineering analysis) to support the reasonableness of assuming twice the 154 wells foreseen by the bidding basis.[941] In addition, BRG assumes production declines by extrapolating actual average declines in Block IV from 2006 to 2010, but without examining (let alone analyzing from a petroleum engineering perspective) whether that average decline represents a reasonable assumption for all the 307 wells BRG assumes would have been drilled.[942] These flaws in BRG's analysis lead to unrealistic production assumptions.

557. *Seventh*, Amorrortu's valuation is also grossly inflated because BRG's method of forecasting oil prices results in artificially high prices. As NERA explains, starting with US$ 108.87 per barrel in June 2014, BRG adjusts this figure up or down in the subsequent years based on the average year-on-year change in the forecast of Brent and West Texas Intermediate

---

[939] NERA Expert Report (**RER-01**), ¶ 79.

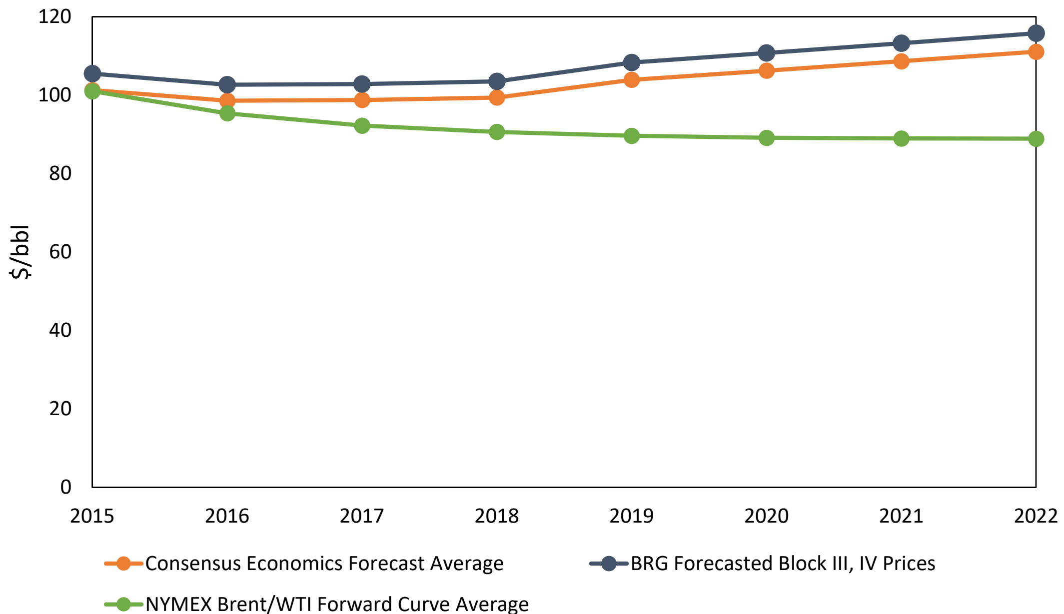
[940] NERA Expert Report (**RER-01**), ¶ 80.

[941] NERA Expert Report (**RER-01**), ¶ 81.

[942] NERA Expert Report (**RER-01**), ¶ 82.

("**WTI**") prices made by Consensus Economics, a global macroeconomics survey firm, and escalates prices at 2.25 percent inflation through 2044.[943] This results in BRG's forecasted prices actually exceeding Consensus Economics' own forecast.[944]

558. In addition, the Consensus Economics Brent and WTI forecast that BRG uses does not reflect the market-consensus, over-the-counter forward, or exchange-traded future prices. If the latter prices are taken into account, this results in an even greater difference with BRG's forecasted prices, reaching a US$ 18 per barrel difference in 2019 that continues to grow in future years.[945] This can be observed in the following figure prepared by NERA:[946]




559. *Eighth*, Amorrortu's valuation is flawed because BRG's cost assumptions are understated. As NERA explains, although the operating expenses ("**OPEX**") per barrel had a significant upward trend from 2008 to 2013, BRG uses the average OPEX from 2008 to 2013 (US$ 15.15 per barrel), which results in an understatement of OPEX per barrel by at least

---

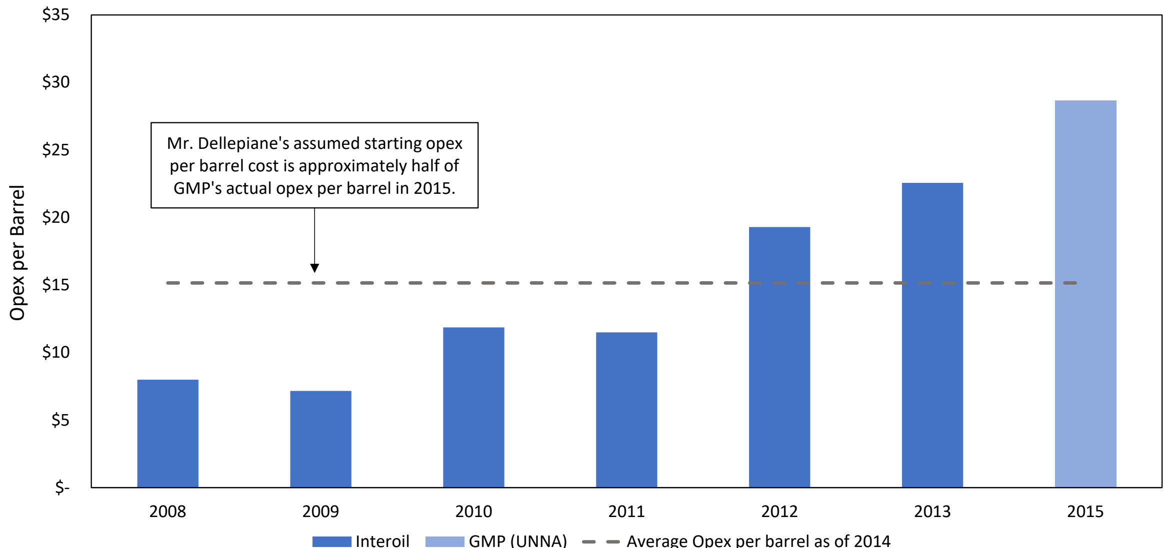
[943] NERA Expert Report (**RER-01**), ¶ 83.

[944] NERA Expert Report (**RER-01**), Figure 3.

[945] NERA Expert Report (**RER-01**), ¶ 85.

[946] NERA Expert Report (**RER-01**), Figure 3.

33 percent. The upward trend in OPEX per barrel ignored by BRG is confirmed by the actual OPEX per barrel in 2015.[947] As the following figure from NERA illustrates, those actual costs nearly double the level assumed by BRG:[948]




560. NERA explains that another reason why BRG's cost assumptions are understated is that BRG leaves out several cost items from its analysis. This includes costs such as inter-segment costs, finance costs, impairment of oil and gas assets, and the higher cost of horizontal drilling that Amorrortu offered in his Alleged Proposal.[949]

561. *Ninth*, Amorrortu's valuation is grossly inflated because BRG erroneously applies a United States inflation rate rather than a Peruvian inflation rate.[950] This is so even though a substantial portion of Baspetrol's costs would have been subject to Peruvian inflation. Had BRG taken into account the higher inflation prevailing in Peru, BRG would have anticipated higher

---

[947] NERA Expert Report (**RER-01**), ¶ 87.

[948] NERA Expert Report (**RER-01**), Figure 4.

[949] NERA Expert Report (**RER-01**), ¶ 88.

[950] NERA Expert Report (**RER-01**), ¶ 89.

OPEX and capital expenditures than those included in its DCF modeling, thus leading to lower damages.[951]

562. *Tenth*, Amorrortu's valuation is flawed because BRG's tax assumptions are incorrect. According to NERA, while BRG correctly applies a 30 percent corporate tax rate, it neglects to account for the 4.1 percent dividend tax that would apply to any reparation of profits by Amorrortu to the United States.[952] Here too, applying the correct taxes would lead to lower damages.[953]

563. *Eleventh*, Amorrortu's valuation is overstated because BRG uses a discount rate that is too low. As NERA explains, BRG's discount rate understates country risk premium, lacks marketability discount, and includes an artificially low cost of capital for Baspetrol,[954] which results in a discount rate for Baspetrol that is even below the level of discount rates reported for well established, capitalized firms in the United States (when it should be the other way around). This, too, results in a significant overstatement of Amorrortu's damages.[955]

564. *Twelfth*, Amorrortu's valuation is overstated because BRG ignores the fact that the oil market fell significantly during the period BRG assumes Baspetrol would have produced oil from Blocks III and IV. As NERA observes, not once since 2014 have actual oil prices equaled BRG's assumed price of US$ 108 per barrel.[956] To the contrary, as the following figure from NERA demonstrates, in July 2014 prices plummeted, reaching historical lows in April 2020. And even if prices have recently spiked following the Russian invasion of Ukraine, they have not reached the levels assumed by BRG:[957]

---

[951] NERA Expert Report (**RER-01**), ¶ 89.

[952] NERA Expert Report (**RER-01**), ¶ 90.

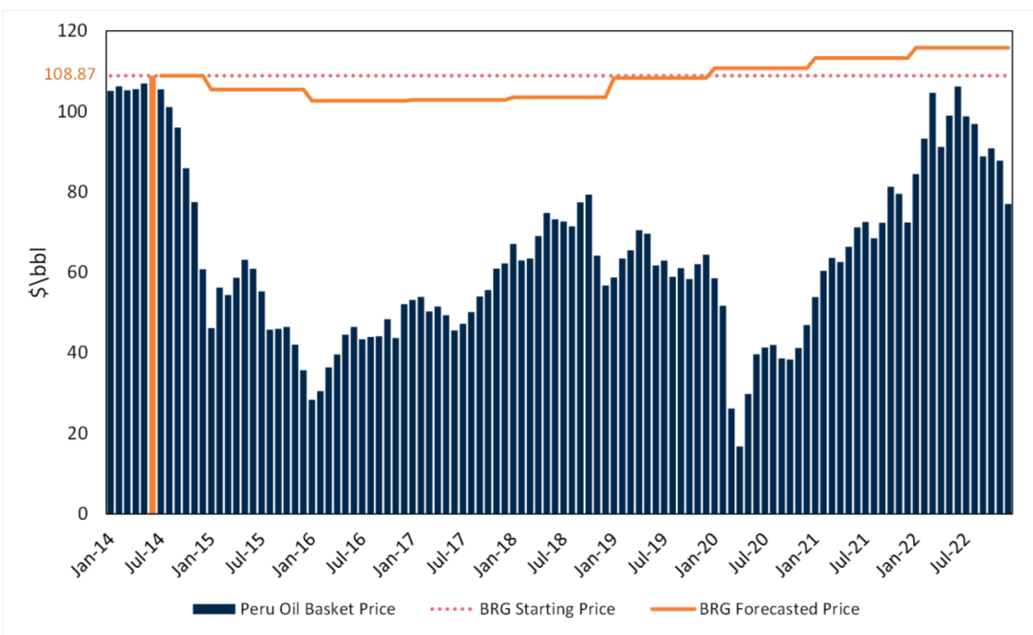
[953] NERA Expert Report (**RER-01**), ¶ 90.

[954] NERA Expert Report (**RER-01**), ¶¶ 91-109.

[955] NERA Expert Report (**RER-01**), ¶¶ 91-109.

[956] NERA Expert Report (**RER-01**), ¶¶ 110-111.

[957] NERA Expert Report (**RER-01**), Figure 6.




565. Had BRG based its analysis on the actual oil prices that prevailed during the forecast production period and today's expectations of future prices, BRG would have concluded that Baspetrol was poised to lose US$ 78 million (based on BRG's assumed drilling program and decline curve assumptions).[958]

566. *Finally*, Amorrortu's valuation is flawed because the market-based approach that BRG uses "as a confirmatory method"[959] is not based on comparable situations.[960]

567. Investment tribunals often reject the market-based approach if the companies identified are not truly apt for comparison.[961] As NERA explains, however, the market transactions

---

[958] NERA Expert Report (**RER-01**), ¶ 110.

[959] BRG Expert Report (**CER-03**), ¶ 60.

[960] NERA Expert Report (**RER-01**), ¶¶ 112-115.

[961] *See, e.g., Mohamed Abdel Raouf Bahgat v. Arab Republic of Egypt*, PCA Case No. 2012-07, Final Award (23 December 2019) (**RLA-171**), ¶ 500 ("The Tribunal is not convinced of the suitability of the valuation based on the comparable transactions method […]. The problem in using this method of comparable transactions is to identify comparable projects."); *Tenaris S.A. and Talta - Trading e Marketing Sociedade Unipessoal Lda. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/11/26, Award (29 January 2016) (**RLA-141**), ¶ 529 ("[The market multiples analysis], as applied to Matesi, does not adequately take account of the unique market circumstances of Matesi, or of Venezuela during the period in question."); *Dunkeld International Investment Limited v. Government of Belize*, PCA Case No. 2010-13, Award (28 June 2016) (**RLA-146**), ¶ 295 ("[T]he Tribunal does not believe that comparators exist to permit this analysis to produce meaningful results. To the afore-mentioned [*sic*] difficulties in selecting comparators across a range of countries and market environments, the Claimant's comparable transactions

relied upon by BRG are not comparable to Amorrortu's purported operation of Blocks III and IV. Indeed, BRG relies on "companies and assets with contractual rights to oil production,"[962] which is something that Baspetrol did not have—and, as demonstrated above, could not have had—as of BRG's 14 July 2014 valuation date.[963] Moreover, BRG's comparable analysis ignores critical criteria such as "deal location," thus focusing on transactions from less risky markets such as Australia, Canada, Denmark, the United Kingdom, and the United States.[964] This renders BRG's comparable analysis completely worthless.

568. In sum, Amorrortu's and BRG's damages valuation do not withstand scrutiny. For this reason, too, Amorrortu's damages claim must fail.

### C. Amorrortu's Interest Claim Must Be Rejected

569. As part of his damages case, Amorrortu alleges that he is entitled to pre-award interest in respect of the damages he claims. To this end, Amorrortu proposes an interest rate of 7.44 percent, which he claims is his estimated cost of debt as of his 14 July 2014 valuation date.[965] The use of this rate leads to nearly doubling Amorrortu's alleged damages, from US$ 266.7 million (without pre-award interest) to US$ 512 million (with pre-award interest).[966] Despite this increase, Amorrortu suggests the use of his chosen 7.44 percent rate without even attempting to justify his entitlement to interest, let alone the rate.

---

exercise adds the complexity of comparing transactions that occurred at widely varying points in time. […] Accordingly, the Tribunal declines to give weight to the Claimant's comparable transactions analysis.")

[962] NERA Expert Report (**RER-01**), ¶ 113.

[963] NERA Expert Report (**RER-01**), ¶ 113.

[964] NERA Expert Report (**RER-01**), ¶ 114.

[965] SoC, ¶ 410; BRG Expert Report (**CER-03**), ¶ 107.

[966] BRG Expert Report (**CER-03**), ¶ 108.

570. Under international law, interest is meant to compensate a claimant for the time value of money,[967] in line with the principle of full reparation.[968] Amorrortu's interest claim, however, is incompatible with that purpose.

571. To begin with, Amorrortu's proposed rate—based on his cost of debt—is incompatible with the principle of full reparation under international law. As the *Siemens v. Argentina* tribunal explained, "in determining the applicable interest rate, the guiding principle is to ensure 'full reparation for the injury suffered as a result of the internationally wrongful act.' The [...] rate of interest to be taken into account is not the rate associated with corporate borrowing."[969] This is also confirmed by the fact that Amorrortu's chosen interest rate compensates him for a risk (i.e., taking debt for the extraction investment during the pre-award period) that he has not faced. Applying Amorrortu's proposed rate would thus not ensure "full reparation," but rather overcompensate him.

572. In addition, using Amorrortu's cost of debt as the applicable interest rate would compromise the degree of "reasonable certainty" required for a damages award. The reason for this is that "borrowing rates vary depending on the credit rating of each particular party, not all of whom are able to borrow at the prime rate, and some whose credit standings may change during the relevant period. Also, not all parties who suffer from delayed payment actually borrow."[970]

573. In light of the above, the Republic of Peru submits that the appropriate rate to apply is a low-risk rate, which is more closely aligned with the true purpose of interest by accounting for

---

[967] *See, e.g.*, *McCollough & Co Inc. v. Ministry of Post, Telegraph and Telephone et al.*, IUSCT Case No.89, Award No. 225-89-3 (16 April 1986) (**RLA-64**), ¶ 98 (explaining that the purpose of interest is "to compensate for the delay with which the payment to the successful party is made.").

[968] *Siemens A.B. v. Argentine Republic*, ICSID Case No. ARB/02/8, Award (6 February 2017) (**RLA-151**), ¶ 396.

[969] *Siemens A.B. v. Argentine Republic*, ICSID Case No. ARB/02/8, Award (6 February 2017) (**RLA-151**), ¶ 396.

[970] *Sylvania Technica Systems, Inc. v. Islamic Republic of Iran*, IUSCT Case No. 64, Award No. 180-64-1 (27 June 1985) (**RLA-63**), ¶ 84.

the time value of money without compensating for business risks not borne, as has been routinely accepted by investment tribunals.[971]

### D. Amorrortu's Request for Non-Taxable Compensation Must Be Rejected

574. In his Statement of Claim, Amorrortu argues that his quantum expert, BRG, has calculated his damages "accounting for corporate taxes that Amorrortu would have paid in Peru had his investment been allowed to develop." For that reason, Amorrortu claims that "the Award should not be subjected to any further taxes by Peru."[972]

575. Amorrortu, however, provides no explanation as to what specific taxes—and at what rate—would apply to the Award in Peru, nor does he even attempt to justify any potential overlap between those taxes and the taxes that BRG's damages calculation has purportedly accounted for. This renders Amorrortu's request for non-taxable compensation wholly speculative and premature, and thus contrary to international law.[973] Consequently, Amorrortu's request for "the Award not to be subject to any further taxes in Peru" must be rejected.

---

[971] *See, e.g.*, *Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. Argentine Republic*, ICSID Case No. ARB/09/1, Award (21 July 2017) (**RLA-154**), ¶ 1124.

[972] SoC, ¶ 414.

[973] Investment tribunals have repeatedly rejected similar requests on these grounds. *See, e.g.*, *Abengoa S.A. et al. v. United Mexican States*, ICSID Case No. ARB(AF)/09/2, Award (18 April 2013) (**RLA-128**), ¶¶ 775-776 (rejecting claimants' request that the award be "net of taxes" because they "have not provided any evidence of possible future double taxation, and the Arbitral Tribunal cannot speculate on the tax treatment that the Mexican tax authorities might apply to the […] award. Nor can the Arbitral Tribunal decide in a general manner, as requested by the Claimants, that the award may not be subject to any tax or fiscal contribution. Indeed, the principle of full compensation only implies that the investor is placed in the same situation as if the wrongful act had not been committed, which does not necessarily mean that the investor is protected against any tax on compensation.") (translation provided by Counsel. In the original Spanish: "Las Demandantes, sin embargo, no han aportado ninguna prueba de una posible futura doble imposición, y el Tribunal Arbitral no puede especular sobre el tratamiento fiscal que las autoridades fiscales mexicanas podrían aplicar [al] laudo. Tampoco puede el Tribunal Arbitral decidir de manera general, como lo solicitan las Demandantes, que la indemnización no podrá ser sujeta a ningún impuesto o contribución fiscal. En efecto, el principio de indemnización plena solo implica que el inversor sea colocado en la misma situación que si el hecho ilícito no hubiese sido cometido, lo que no necesariamente implica que el inversor esté amparado contra cualquier imposición sabre la indemnización."); *Occidental Petroleum Corporation et al. v. Republic of Ecuador*, ICSID Case No. ARB/06/11, Award (5 October 2012) (**RLA-123**), ¶ 853 (rejecting claimants' requested declaration that Ecuador not seek to collect taxes on the amounts awarded because it was "speculative and premature."); *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID CASE No. ARB(AF)/11/2, Award (4 April 2016) (**CLA-24**), ¶ 946 (rejecting the claimant's requested declaration that Venezuela not seek to collect taxes on the amounts awarded because it was "premature").

## VI. REQUEST FOR RELIEF

576. For the reasons stated in this Statement of Defense, the Republic of Peru respectfully requests that the Tribunal render an Award that:

a. Dismisses Amorrortu's claim for lack of jurisdiction and admissibility;

b. Dismisses Amorrortu's claim for lack of merit, should the Tribunal uphold jurisdiction to address the merits of these claims;

c. Denies Amorrortu's request for damages, should the Tribunal determine the existence of State responsibility on any ground;

d. Orders Amorrortu to pay all costs related to this arbitration, including any expenses and legal or expert fees incurred by the Republic of Peru in preparation of its defense; and

e. Orders any other relief that the Tribunal determines to be appropriate.

577. The Republic of Peru reserves all its rights and presents this Statement of Defense without prejudice to any other arguments or objections regarding jurisdiction, the merits, or otherwise.

Date: 29 April 2024

Respectfully submitted,

Kenneth J. Figueroa
Ofilio J. Mayorga
Alberto Wray
Eva Paloma Treves
Ivana Mariles Toledo
Juan Pablo Hugues
Baldomero Casado
Irene Whelan Vita

**FOLEY HOAG LLP**

Ricardo Puccio S.
Renzo Esteban

**ESTUDIO NAVARRO & PAZOS ABOGADOS**