

International Centre for Settlement of Investment Disputes
ICSID Case No. ARB/20/08

FREEPORT-MCMORAN INC.
on its Own Behalf and on Behalf of
SOCIEDAD MINERA CERRO VERDE S.A.A.

Responding Party on Interpretation

— v. —

REPUBLIC OF PERU

Applicant on Interpretation

FREEPORT'S REJOINDER
ON THE APPLICATION FOR INTERPRETATION

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ABBREVIATED TERMS

Award	Award dated 17 May 2024
Committee	Ad Hoc Committee constituted on Application for Partial Annulment
Counter-Memorial	Freeport’s Counter-Memorial on the Application for Interpretation dated 3 June 2026
Freeport	Freeport-McMoRan Inc.
ICSID	International Centre for Settlement of Investment Disputes
ICSID Convention	Convention on the Settlement of Investment Disputes between States and Nationals of Other States
Peru	Republic of Peru
Reply	Peru’s Reply on the Application for Interpretation of the Award dated 24 June 2026
Request or Request for Interpretation	Peru’s Request for Interpretation of the Award dated 18 March 2026
Royalty Assessments	Mining royalty assessments issued by SUNAT against SMCV in relation to its 2006–2013 operations at Cerro Verde
SMCV	Sociedad Minera Cerro Verde S.A.A.
SUNAT	Peru’s National Superintendence of Customs and Tax Administration
Tax Assessments	Tax assessments issued by SUNAT against SMCV in relation to its 2006–2013 operations at Cerro Verde
TPA	United States-Peru Trade Promotion Agreement

1. Responding Party Freeport-McMoRan Inc. (“Freeport”), on its own behalf and on behalf of Sociedad Minera Cerro Verde S.A.A. (“SMCV”), submits this Rejoinder in response to the 24 June 2026 Reply on the Application for Interpretation of the Award (“Reply”) submitted by Applicant, the Republic of Peru (“Peru”), and in further support of Freeport’s 3 June 2026 Counter-Memorial on the Application for Interpretation (the “Counter-Memorial”) in regard to Peru’s 18 March 2026 Request for Interpretation of the Award (“Request” or “Request for Interpretation”), which concerns the Award issued by the Tribunal on 17 May 2024 (“Award”).

I. INTRODUCTION

2. Peru’s Reply confirms what its Request for Interpretation already revealed: Peru does not seek to interpret the Award but to rewrite it. Unable to identify any ambiguity in the *dispositif*—which states in unequivocal terms that “[t]he Tribunal has jurisdiction over the Claimant’s claims except for the Claimant’s claims based on the disputed Tax Assessments’ penalties and interest”—Peru asks the Tribunal to declare that this language of the *dispositif* means the opposite of what it says. That is not interpretation. It is revision by another name, and it is inadmissible under Article 50 of the ICSID Convention.

3. In its Reply, Peru concedes that it never raised a jurisdictional objection to Freeport’s claims concerning penalties and interest on the Royalty Assessments under Article 22.3.1 of the U.S.-Peru Trade Promotion Agreement (“TPA”) but nonetheless contends that the Tribunal “squarely engaged” with and resolved that nonexistent objection. But the parties never argued any Article 22.3.1 issue as to penalties and interest on Royalty Assessments; the Tribunal never gave notice to the parties that it intended to raise that issue *proprio motu* so that the parties would have an opportunity to address it; the Award never even hinted that the Tribunal was deciding an issue *proprio motu* that the parties had not briefed; and the Award contains no discussion or reasoning addressing whether Article 22.3.1 should apply to jurisdiction over penalties and interest on Royalty Assessments in addition to Tax Assessments, much less “squarely engag[ing]” with it. By itself, this completely disposes of the argument in Peru’s Reply and requires dismissal of Peru’s Request for Interpretation.

4. Peru’s Reply further confirms that its Request is inadmissible under each of the three requirements set out in *Wena Hotels*, any one of which suffices to dismiss the Request:

- a. First, there is no genuine dispute as to the Award’s meaning or scope. Peru concedes the *dispositif* is clear, and both parties read the Award the same way until Peru saw tactical advantage in reframing the pending annulment dispute as a question of “interpretation.”

- b. Second, Peru's Request lacks any legitimate interpretive purpose. It asks the Tribunal to pronounce on a jurisdictional ruling that appears nowhere in the Award—a form of relief that falls, if at all, within the scope of supplementation or correction under Article 49(2), not interpretation under Article 50. Peru itself appears to have recognized this point. In its Reply, it abandoned its original request that the Tribunal determine that the *dispositif* contains “an inadvertent omission, or a mere typographical error”—a request that plainly sought correction rather than interpretation. But Peru cannot alter the true nature of its application by simply relabeling the relief it seeks. Peru continues to seek a modification of the Award rather than the interpretation of an ambiguous term or provision. Its Request is therefore inadmissible.
- c. Finally, Peru's Request has no practical relevance to the Award's implementation. Peru concedes it would never have filed the Request absent Freeport's annulment application; and granting the relief Peru seeks would not save the Award from annulment but would instead expose it to annulment on additional grounds, including contradictory reasoning, failure to state reasons, serious departure from a fundamental rule of procedure, and manifest excess of the Tribunal's powers.

5. For each of these reasons, the Tribunal should dismiss the Request as inadmissible in its entirety. But if the Tribunal were to reach the merits, it should conclude that the Award means precisely what it says in regard to jurisdiction. The function of interpretation is to clarify what the words of the Award mean, not to explain what the Award would have said if the Tribunal had reached a different or additional conclusion. The Award is susceptible of only one meaning: The Tribunal retained jurisdiction over all of Freeport's claims except those based on penalties and interest on the Tax Assessments, and Freeport's claims concerning penalties and interest on the Royalty Assessments are within that jurisdiction.

6. Because Peru's Request lacks merit, Peru should bear the full costs of this interpretation proceeding under the principle that the costs follow the event. Peru's efforts to blame Freeport for causing the costs of the proceeding, by suggesting that Freeport itself should have filed this proceeding at an earlier stage instead of seeking annulment, are baseless. There was no reason for Freeport to file an interpretation request because the Award is clear and both parties understood and accepted its meaning. Such a request would therefore have been inadmissible regardless of who filed it, and filing it two years earlier would simply have produced the same unnecessary proceeding.

II. THE REPLY’S NEW THEORY THAT THE TRIBUNAL CONSIDERED AND DECLINED JURISDICTION BASED ON ARGUMENTS THAT THE PARTIES NEVER RAISED HAS NO SUPPORT IN THE AWARD

7. Apparently recognizing that the parties’ submissions in the arbitration foreclose Peru’s case on interpretation as stated in its Request, Peru instead devotes the opening pages of its Reply to a new procedural narrative. While Peru “does not contest” that it “raised a jurisdictional objection [under TPA Article 22.3.1] with respect to penalties and interest associated with the Tax Assessments but not in relation to the Royalty Assessments,”¹ Peru nonetheless argues that the Tribunal “squarely engaged” with, heard argument on, and resolved that nonexistent objection in favor of excluding jurisdiction.² This argument cannot withstand scrutiny.

A. Peru’s Argument on Reply Is Inconsistent with the *Dispositif* of the Award, Which Makes Clear That the Tribunal Rejected Jurisdiction Only Over Claims Concerning Penalties and Interest on Tax Assessments.

8. The Award’s plain text is explicit that the Tribunal rejected jurisdiction over *only* the claims for penalties and interest on the Tax Assessments and upheld jurisdiction as to everything else, stating: “The Tribunal *has jurisdiction* over the Claimant’s claims *except for* the Claimant’s claims based on the disputed Tax Assessments’ penalties and interest.”³ Thus, the Award directly contradicts Peru’s contention in its Reply that the Tribunal “expressly ruled on” jurisdiction over “Claimant’s claims relating to penalties and interest arising from both the Tax and Royalty Assessments,” and dismissed them on that ground.⁴

9. It is significant that the Tribunal’s conclusion appears in the operative part of the Award, while the provisions that Peru quotes in support of its position do not. The Tribunal undoubtedly devoted careful attention to the *dispositif*, as it is binding on the parties and determines the fate of their claims and defenses.⁵ It cannot be simply dismissed as a mistake, as Peru would like to do. Moreover, as Freeport explained in its Counter-Memorial, a request for interpretation under Article 50 of the ICSID Convention is admissible only to address a dispute over the meaning and scope of the operative part of the Award, not

¹ Reply, ¶ 15.

² *Id.*, ¶¶ 16, 25-26.

³ **CI-12**, *Freeport-McMoRan Inc. v. Republic of Peru*, ICSID Case No. ARB/20/8, Award, 17 May 2024 (“Award”), ¶ 1047(a) (emphasis added).

⁴ Reply, ¶ 22.

⁵ **CLAI-3**, *Case concerning the delimitation of continental shelf between the United Kingdom of Great Britain and Northern Ireland, and the French Republic, Decision*, 14 March 1978 (“*Continental Shelf Decision*”), ¶ 28 (“the subject of a request for interpretation must genuinely be directed to the question of what it is that has been settled with binding force in the decision, that is in the *dispositif*.”).

to correct a mistake or amplify the Tribunal’s reasoning.⁶ Here, the *dispositif* is entirely clear, and there is nothing in it that requires interpretation. By itself, that should end Peru’s Request at the threshold.

B. Peru’s Argument on Reply Is Inconsistent with the Remainder of the Award, Which Also Makes Clear That the Tribunal Rejected Jurisdiction Only Over Claims for Penalties and Interest on Tax Assessments.

10. In any event, Peru’s arguments on Reply cannot be squared with the Award’s reasoning. The consistency of the *dispositif* with the reasoning on jurisdiction in the Award confirms that the *dispositif* means exactly what it says. Paragraph 456 of the Award summarizes the Tribunal’s findings and plainly states that “the Claimant’s claims are within the jurisdiction of the Tribunal, *save for* the Claimant’s claims based on penalties and interest assessed on *Tax Assessments*, which the majority finds to be outside the Tribunal’s jurisdiction” per the TPA’s “taxation measures” carve-out.⁷ Had the Tribunal meant to include all penalties and interest claims, as Peru now asserts, it would have mentioned Royalty Assessments or, at a very minimum, would not have used the words “on *Tax Assessments*.”

11. The limitation to *Tax Assessments* in paragraph 456 also appears elsewhere in the Award. For example, the Tribunal affirmed the same limitation at the outset of its analysis of Article 22.3.1 of the TPA, identifying the sole issue as whether the TPA’s tax carve-out barred claims arising from Peru’s failure to waive penalties and interest *on the Tax Assessments*, and concluding that those tax-related claims fell outside its jurisdiction:

The issue for the Tribunal to determine is whether Article 22.3.1 of the TPA bars the Claimant’s TPA Article 10.5 claims for the Respondent’s alleged failure to waive penalties and interest *on the Tax Assessments*. In what follows, the Tribunal sets out its analysis of this issue and reaches by majority the conclusion that the disputed penalties and interest *on the Tax Assessments* fall outside of the Tribunal’s jurisdiction.⁸

12. The Tribunal reiterated this same limitation at the end of its Article 22.3.1 analysis, concluding that “the Claimant’s claims based on Article 10.5 of the TPA for the *Tax Assessments*’ penalties and interest assessed against SMCV are not within the jurisdiction of the Tribunal as they constitute ‘taxation measures’ excluded by Article 22.3.1 of the TPA.”⁹ Again, the Tribunal would have mentioned Royalty Assessments or, at a very minimum, would not have included the words “the *Tax Assessments*” if it had been referring to all penalties and interest claims.

⁶ Counter-Memorial § III; **RLAI-13**, ICSID Convention, Article 50.

⁷ **CI-12**, Award, ¶ 456 (emphasis added).

⁸ *Id.*, ¶ 540 (emphasis added).

⁹ *Id.*, ¶ 553 (emphasis added).

13. It bears repeating that this represents the sole analysis of Article 22.3.1 in the Award. The remainder of the Award is devoted to other issues. It is not surprising that the Award’s Article 22.3.1 analysis discusses only penalties and interest on Tax Assessments, because that is the only Article 22.3.1 objection that Peru raised.¹⁰

14. Professor Tawil’s dissenting opinion also confirms that the Tribunal majority rejected jurisdiction under Article 22.3.1 only as it relates to penalties and interest on Tax Assessments, not Royalty Assessments. In summarizing the Tribunal’s ruling, Professor Tawil stated that the Tribunal majority “affirm[ed] its jurisdiction over Claimant’s claims except for those claims based on the disputed *Tax Assessments’* penalties and interest.”¹¹ He then described the majority’s Article 22.3.1 ruling as one “concerning the disputed *Tax Assessments’* penalties and interest,” and based on “penalties and interest imposed on SMCV for its failure to pay *taxes* assessed in SUNAT’s *Tax Assessments*.”¹² Had the Tribunal made a similar finding about Freeport’s penalties and interest claims on Royalty Assessments, Professor Tawil’s dissent would have stated that he either agreed or disagreed with that finding and explained the reasons why. But like the majority, the dissent says nothing about that issue at all.¹³

15. Peru is wrong in claiming that the Tribunal concluded that penalties and interest constitute “taxation measures” under Article 22.3.1 “as a general matter.”¹⁴ The Tribunal made no such finding. In arguing otherwise, Peru identifies only two passages in the entire Award that mention “penalties and interest” without expressly linking them to the Tax Assessments. But neither of those passages considers or denies jurisdiction over Freeport’s claims concerning penalties and interest on Royalty Assessments.

16. The first of the passages Peru relies on is paragraph 986 in the merits section of the Award.¹⁵ But that paragraph merely cross-references and summarizes the jurisdictional section, which (as discussed) only makes findings about penalties and interest on Tax Assessments:

The Tribunal *has found* that penalties and interest constitute “taxation measures” within the meaning of Article 22.3.1 of the TPA (see above, paras. 540 *et seq.*). The Tribunal has therefore no jurisdiction to decide on the merits of the Claimant’s claim based on the Respondent’s alleged

¹⁰ Reply, ¶ 15 (conceding that “Peru raised a jurisdictional objection with respect to interest and penalties associated with the Tax Assessments but not in relation to the Royalty Assessments”); *id.*, ¶ 74 (conceding that Peru did not raise an Article 22.3.1 objection “as to penalties and interest on the Royalty Assessments.”).

¹¹ **CI-12**, Award, Dissenting Opinion of Arbitrator Tawil, ¶ 1 (emphasis added).

¹² *Id.*, ¶ 3 (emphasis added).

¹³ *Id.*, ¶ 5 (“However, the TPA’s Tax exclusion under Article 22.3.1 should not bar Claimant’s Article 10.5 claims for Peru’s failure to waive penalties and interest on the Tax Assessments as the challenged measures did not impose or enforce taxes, and penalties and interest are not taxes under Peruvian law.”) (emphasis added).

¹⁴ Reply, ¶¶ 16, 49.

¹⁵ *Id.*, ¶ 25.

violation of Article 10.5 of the TPA in relation to the Respondent's assessment of penalties and interest. During the Hearing, evidence was taken with regard to Article 170 of the Peruvian Tax Code and the waiver requirements. However, this was done without prejudice to the Tribunal's decision on jurisdiction.¹⁶

Paragraph 986, however, does not contain a new jurisdictional finding, nor does it mean the Tribunal was careless when drafting its *dispositif*. It does no more than cross-reference “paras. 540 *et seq.*,” which are the paragraphs that addressed only Freeport's penalties and interest claims on the Tax Assessments and found that the Tribunal had jurisdiction over *all* other claims. Peru misreads the Award by understanding this cross-reference to expand the referenced analysis beyond its own scope and to sweep in, without explanation, royalty-related claims that the referenced analysis never touched.

17. Nor does the footnote reference to the hearing transcript in paragraph 986 of the Award “confirm” that the Tribunal extended Peru's Article 22.3.1 objection to the royalty-related penalties and interest claims.¹⁷ The footnote cites only to the President's general statement, made before the tax expert questioning began, that the Tribunal's questions were “without prejudice” to its jurisdictional decision—exactly what the last sentence of paragraph 986 states.¹⁸ The ensuing exchange neither addressed the application of Article 22.3.1 to penalties and interest on Royalty Assessments nor suggested in any way that the Tribunal was raising the issue *proprio motu*.

18. The second of the passages Peru relies on is paragraph 455(b), part of an introductory paragraph that lists one of the five jurisdictional issues before the Tribunal as: “Are the Claimant's claims based on penalties and interest outside of the Tribunal's jurisdiction because they constitute ‘taxation measures’ which are excluded from the scope of the TPA under Article 22.3.1 of the TPA?” Peru now asserts that to answer that question, the Tribunal undertook a general analysis of penalties and interest “regardless of whether they arise from the Tax or Royalty Assessments.”¹⁹ But the *very next paragraph* of the Award, paragraph 456, contradicts Peru's reading. There, the Tribunal says: “The Parties *have briefed the Tribunal* on these issues and the NDP on some of them. In what follows, the Tribunal will set out its analysis of these five issues.”²⁰ Peru concedes that the parties never briefed the Tribunal on any supposed

¹⁶ CI-12, Award, ¶ 986 (emphasis added).

¹⁷ Cf. Reply, ¶ 72.

¹⁸ CI-12, Award, fn. 1601 (citing CI-9, “Hearing Transcript, Day 9, p. 2592, lines 6-9” “HANEFELD: And when we ask questions as the Tribunal, they are certainly without prejudice to our Decision, whether we have jurisdiction or not on certain aspects.”).

¹⁹ Reply, ¶¶ 10, 25, 47-48.

²⁰ CI-12, Award, ¶ 456 (emphasis added). *See also id.*, ¶ 454 (noting that “In this [jurisdiction] section of the Award, the Tribunal *will deal with* the Respondent's objections regarding jurisdiction” and no reference to the Tribunal raising any issue *proprio motu*) (emphasis added).

Article 22.3.1 issue related to Royalty Assessments,²¹ nor does the following discussion contain any analysis of any such issue.²² This confirms that the issue referenced in paragraph 455(b) concerns penalties and interest on Tax Assessments only. In any event, the final sentence of paragraph 456 of the Award leaves no doubt as to the scope of the Tribunal’s conclusion, where the Tribunal says as follows:

The Tribunal reaches the conclusion that the Claimant’s claims are within the jurisdiction of the Tribunal, *save for* the Claimant’s claims based on penalties and interest assessed on *Tax Assessments*, which the majority finds to be outside the Tribunal’s jurisdiction.²³

Thus, even if the Tribunal’s statement of the issue in paragraph 455(b) could apply “generally” to all penalties and interest as Peru asserts,²⁴ paragraph 456 made clear that the outcome was that the Tribunal rejected jurisdiction only as to “penalties and interest assessed on Tax Assessments” and concluded that all other claims “are within the jurisdiction of the Tribunal.”²⁵

C. Peru’s Argument on Reply that the Tribunal Considered and Rejected Jurisdiction over Claims Concerning Penalties and Interest on Royalty Assessments is Inconsistent with the Reasoning of the Award’s Jurisdictional Section.

19. Moreover, the Tribunal’s actual analysis of the Article 22.3.1 issue does not and cannot apply “generally” to *all* penalties and interest claims as Peru now claims, both by the express words that the Tribunal used and by the logic of the Tribunal’s analysis.

20. As an initial matter, the Tribunal’s analysis repeatedly states that it is addressing penalties and interest on the *Tax Assessments* and makes no mention of Royalty Assessments. As noted above, the introductory and concluding paragraphs of the analysis (paragraphs 540 and 553) both confine the analysis to “penalties and interest on the *Tax Assessments*.”²⁶ Paragraph 543 likewise considers only whether penalties and interest “on the *Tax Assessments*” constitute “taxation measures” and concludes that “SUNAT’s imposition of penalties and interest on the *Tax Assessments* cannot be treated differently than SUNAT’s failure to waive such penalties.”²⁷ Paragraphs 551 and 552 reiterate that penalties and interest on *tax assessments* fall within the “domestic tax regime” and that the Tribunal’s exclusion applies solely to

²¹ Reply, ¶ 15.

²² CI-12, Award, ¶¶ 540-553.

²³ *Id.*, ¶ 456 (emphasis added).

²⁴ Reply, ¶¶ 3, 10, 25, 47, 113.

²⁵ CI-12, Award, ¶ 456.

²⁶ *Id.*, ¶ 540 (emphasis added); *id.*, ¶ 553.

²⁷ *Id.*, ¶ 543 (emphasis added).

the “Tax Assessments.”²⁸ And the remaining references to “the domestic *tax* regime” or “enforcement of *taxes*” reinforce this narrow scope.²⁹ There is not a single reference to royalties in the entire Article 22.3.1 analysis—an omission that alone defeats Peru’s attempt to generalize the reasoning.³⁰

21. Further, the Tribunal’s analysis is logically not applicable to claims involving penalties and interest on Royalty Assessments and cannot simply be transposed to cover them. The Tribunal’s analysis rests on the premise that the penalties and interest on Tax Assessments enforce a *tax*—a premise that does not apply to penalties and interest on Royalty Assessments, as Peru’s own experts acknowledged.³¹ The Tribunal’s reasoning was based on the understanding that “‘taxation measures’ include measures that are part of the regime for the imposition and enforcement of a *tax*.”³² In reaching this conclusion, the Tribunal repeatedly emphasized that “the enforcement or failure to enforce a tax constitute ‘practice(s)’ related to ‘taxation’” and that penalties and interest on the Tax Assessments are “tax enforcement measures” or “enforcement of taxation measures.”³³ The Tribunal further “agreed” with the *Murphy v. Ecuador* tribunal that the key question is whether the measure “comes within the State’s domestic tax regime”³⁴ and then concluded that “imposition of penalties and interest on tax assessments and the refusal to waive them fall under the Peruvian tax regime.”³⁵ The Tribunal also cited with approval Peru’s experts’ testimony that “penalties and interest related to tax assessments are considered ‘tax debt’” and thus “any measure related

²⁸ *Id.*, ¶ 551 (“the Tribunal is of the view that the imposition of penalties and interest on *tax* assessments and the refusal to waive them fall under the Peruvian *tax* regime”); *id.*, ¶ 552 (“Accordingly, the Tribunal concludes that the penalties and interest on the *Tax Assessments* (and SUNAT’s failure to waive them) constitute measures that fall within the State’s domestic *tax* regime.”) (emphases added).

²⁹ *Id.*, ¶¶ 548–549, 552.

³⁰ *Id.*, ¶¶ 540–553.

³¹ **CI-9**, *Freeport-McMoRan Inc. v. Republic of Peru*, ICSID Case No. ARB/20/8, Hearing on Jurisdiction, Merits, and Quantum, Hearing Transcript (Day 9) (Bravo and Picón) p. 2690:4–13 (agreeing that “If Royalties are not taxes, penalties neither could be taxes.”); *id.*, (Kunsman), p. 2848:22–2849:5 (explaining that “under Article 10.5 of the Treaty, Claimant cannot claim for . . . the Penalties and Interest associated with those Tax Assessments, [but] they can claim for Royalties and the Penalties and Interest associated with the Royalties”); **CI-6**, *Freeport-McMoRan Inc. v. Republic of Peru*, ICSID Case No. ARB/20/8, Expert Report of Prof. Bravo and Prof. Picon, 3 November 2022 (“Second Expert Report of Prof. Bravo and Prof. Picon”), ¶¶ 255–257 (noting they “are in full agreement with Claimant’s tax law expert” that “neither delinquent interest nor penalties are taxes *per se*” and recognizing that “tax measures” only “alludes to State decisions that may be handed down through established legal or regulatory provisions, procedures or requirements in tax matters.”).

³² **CI-12**, Award, ¶ 548.

³³ *Id.*, ¶¶ 548–549.

³⁴ *Id.*, ¶ 550 (citing **CLAI-23**, *Murphy Exploration & Production Company – International v. The Republic of Ecuador*, PCA Case No. 2012-16, Partial Final Award, 6 May 2016, ¶ 165).

³⁵ *Id.*, ¶ 551.

to the assessment [] of tax-related penalties and interest is a taxation measure.”³⁶ On that basis, the Tribunal recognized that tax-related penalties and interest “are part of the government’s administration of *taxes*.”³⁷

22. Peru does not dispute that Royalty Assessments themselves are not taxes and that the Tribunal concluded that it had jurisdiction over claims for Royalty Assessments.³⁸ Given that conclusion, Peru cannot explain any basis on which the reasoning in the Tribunal’s Award, which is tied to the relationship between penalties and interest on Tax Assessments and the Tax Assessments themselves, would in any way imply that penalties and interest on *Royalty* Assessments are also linked to those Tax Assessments rather than the Royalty Assessments. If the Tribunal had wanted to reach such an unintuitive conclusion, which neither party was advocating, it would have had to explain its basis for doing so. Instead, the Award is silent on the matter—which should not be surprising, because the parties were in agreement that Article 22.3.1 did not exclude jurisdiction over penalties and interest claims on Royalty Assessments.³⁹

D. The Colloquy Between the Tribunal and Peru’s Tax Law Experts, on Which Peru Relies in Its Reply, Did Not Concern Royalty Assessments and Could Not Expand Peru’s Article 22.3.1 Objections.

23. The Reply’s reliance on the Tribunal’s questions to the tax-law experts at the hearing, which Peru contends expanded the scope of Peru’s Article 22.3.1 objection, is misplaced.⁴⁰ That exchange concerned Peruvian tax-law concepts, such as whether penalties and interest are treated as part of “tax debt” and whether that treatment is a legal fiction or legislative technique.⁴¹ Those questions were relevant to determining whether tax-related penalties and interest—which Peru’s tax-law experts confirmed were not “taxes *per se*”⁴²—should be treated as separate from, or linked to, the underlying taxes under Peruvian law. Freeport argued that tax-related penalties and interest should not be linked to the underlying tax-enforcement regime so as to constitute taxation measures;⁴³ Peru argued the opposite.⁴⁴ In its Award, the

³⁶ *Id.*, ¶ 530.

³⁷ *Id.*, ¶¶ 530, 551-552 (emphasis added).

³⁸ See Reply, ¶ 20 (conceding that “Mr. Bravo explained that royalties are not taxes as such”); *id.*, ¶ 112 (recognizing that “[t]he Tribunal concluded that penalties and interest [are] not taxes under Peruvian law”).

³⁹ *Id.*, ¶ 15.

⁴⁰ *Id.*, ¶¶ 16-21.

⁴¹ See e.g., **CI-9**, *Freeport-McMoRan Inc. v. Republic of Peru*, ICSID Case No. ARB/20/8, Hearing on Jurisdiction, Merits, and Quantum, Hearing Transcript (Day 9) (President Hanefeld) pp. 2592:10-2593:8.

⁴² **CI-6**, Second Expert Report of Prof. Bravo and Prof. Picon, ¶¶ 255–257 (noting they “are in full agreement with Claimant’s tax law expert” that “neither delinquent interest nor penalties are taxes *per se*” and recognizing that “tax measures” only “alludes to State decisions that may be handed down through established legal or regulatory provisions, procedures or requirements in tax matters.”).

⁴³ **CI-12**, Award, ¶¶ 532-537.

⁴⁴ *Id.*, ¶ 529 (“According to the Respondent, it is clear that penalties and interest imposed because of a taxpayer’s failure to pay its *taxes* are ‘*taxation measures*’ because the imposition of penalties and interest (i) constitutes a

Tribunal accepted Peru's position, reasoning that tax-related penalties and interest formed part of the "regime for the imposition and enforcement of a tax" and therefore constituted "taxation measures" under Article 22.3.1.⁴⁵ Against that backdrop, the Tribunal's general questions about the legal nature of penalties and interest under Peruvian law say nothing about penalties and interest on royalties. If royalties are not taxes, as Peru concedes,⁴⁶ then penalties and interest on royalties cannot become measures for the "imposition and enforcement of a tax."⁴⁷

24. Peru's own conduct at and after the hearing demonstrates Peru's understanding that the Tribunal's questions to the tax-law experts did not create an Article 22.3.1 objection for royalty-related penalties and interest claims. At closing arguments following the hearing, Peru's counsel expressly reaffirmed that Peru's Article 22.3.1 objection concerned penalties and interest on Tax Assessments *only* and did not reach penalties and interest on Royalty Assessments:

[T]o be clear, everything I said so far relates to the tax assessments and the penalties and interest relating to those tax assessments. Peru submits that the Tribunal has no jurisdiction either over penalties and interest on the royalty assessment, but that's for a different reason, because those claims fall outside of the statutory limitations.⁴⁸

Peru's closing slides made the same point: "the Tribunal also has no jurisdiction over penalties and interest on Royalty Assessments, but for a different reason: because the claims fall outside the 3-year limitations period under the TPA."⁴⁹ If the Tribunal's questions to the experts had transformed the case into one

measure for the enforcement of *taxes*, (ii) is a practice related to taxation, and (iii) is a measure related to taxation." (emphases added).

⁴⁵ *Id.*, ¶¶ 543, 548, 551.

⁴⁶ *Id.*, ¶ 551 (noting that "the Respondent's experts Mr. Bravo and Mr. Picón agree that penalties and interest are not taxes under Peruvian law"); Reply, ¶ 20 (noting that "Mr. Bravo explained that royalties are not taxes"); **CI-9**, *Freeport-McMoRan Inc. v. Republic of Peru*, ICSID Case No. ARB/20/8, Hearing on Jurisdiction, Merits, and Quantum, Hearing Transcript (Day 9) (Bravo and Picón), pp. 2664:22–2665:3 (noting that "Mining Royalties are not a tax"); *id.*, p. 2670:10–12 (asserting that "as we clarified a moment ago, Royalties are not a tax"); *id.*, p. 2687:1–21 (reiterating that "Royalties [] are not taxes. That's true. They're not taxes."); Counter-Memorial, ¶ 35.

⁴⁷ **CI-9**, *Freeport-McMoRan Inc. v. Republic of Peru*, ICSID Case No. ARB/20/8, Hearing on Jurisdiction, Merits, and Quantum, Hearing Transcript (Day 9) (Bravo and Picón) 2690:4–13 (agreeing that "If Royalties are not taxes, penalties neither could be taxes."); **CI-6**, Second Expert Report of Prof. Bravo and Prof. Picon, ¶¶ 255–257 (noting they "are in full agreement with Claimant's tax law expert" that "neither delinquent interest nor penalties are taxes *per se*" and recognizing that "tax measures" only "alludes to State decisions that may be handed down through established legal or regulatory provisions, procedures or requirements in tax matters.").

⁴⁸ **CI-10**, *Freeport-McMoRan Inc. v. Republic of Peru*, ICSID Case No. ARB/20/8, Hearing on Jurisdiction, Merits, and Quantum, Hearing Transcript (Day 10) (Resp. Closing), 3042:18–3043:4.

⁴⁹ **CI-11**, *Freeport-McMoRan Inc. v. Republic of Peru*, ICSID Case No. ARB/20/8, Hearing on Jurisdiction, Merits, and Quantum, Peru's Closing Presentation, 12 May 2023 ("Peru's Closing Presentation"), p. 83 (emphasis in original). The Tribunal rejected Peru's timeliness objection concerning the Royalty Assessments (see **CI-12**, Award, ¶¶ 521–524).

involving an Article 22.3.1 objection to royalty-related penalties and interest, Peru would not have told the Tribunal at closing that its jurisdictional objection to those claims was “for a different reason.”⁵⁰ Freeport has already pointed this out in its Counter-Memorial,⁵¹ and Peru has no answer to it.

25. The same point disposes of Peru’s assertion that Freeport had an “ample opportunity” to address the issue in closing and post-hearing submissions. Freeport had no reason to brief an objection Peru had expressly disclaimed and the Tribunal never identified. When the Tribunal ordered post-hearing briefs, it did not ask the parties to address whether penalties and interest on Royalty Assessments were taxation measures—despite Freeport’s express request to the Tribunal to identify “specific questions or concerns” that would be useful for its deliberations.⁵² Indeed, Peru’s post-hearing brief again framed its Article 22.3.1 objection as an assertion that “penalties and interest on the *Tax Assessments* are ‘taxation measures,’” confirming that the objection still did not extend to penalties and interest on Royalty Assessments.⁵³ If the Tribunal intended to decide *proprio motu* a dispositive jurisdictional question that no party had raised, fundamental fairness required it to say so and give the parties an opportunity to be heard. But the Tribunal did neither. It never invited submissions on such an issue, nor did it state anywhere in the Award that it was raising and deciding, *proprio motu*, a jurisdictional objection that Peru itself had expressly ruled out.

* * *

26. Peru’s new narrative thus collapses on its own terms. The Award’s Article 22.3.1 analysis and conclusions address Freeport’s penalties and interest claims on Tax Assessments only. Paragraph 986 of the Award incorporates that limited analysis. The *dispositif* accurately states the result of that analysis. The hearing and the post-hearing submissions confirm that Peru’s Article 22.3.1 objection was limited to penalties and interest on Tax Assessments, not Royalty Assessments. And paragraph 456 of the Award confirms that the Tribunal was only deciding the issues that the parties had briefed.

⁵⁰ See also **CI-9**, *Freeport-McMoRan Inc. v. Republic of Peru*, ICSID Case No. ARB/20/8, Hearing on Jurisdiction, Merits, and Quantum, Hearing Transcript (Day 9) (Kunzman), pp. 2848:22-2849:11 (explaining that “under Article 10.5 of the Treaty, Claimant ... can claim for Royalties and the Penalties and Interest associated with the Royalties” and accepting that she was not “asked to perform any adjustment based on the application of Article 22.3.1 to Article 10.5 Claims for Royalties or Penalties and Interest on Royalties.”).

⁵¹ Counter-Memorial, ¶¶ 14, 25, 34, 42.

⁵² **CI-10**, *Freeport-McMoRan Inc. v. Republic of Peru*, ICSID Case No. ARB/20/8, Hearing on Jurisdiction, Merits, and Quantum, Hearing Transcript (Day 10) (Closing), p. 3050:5-17 (“We would obviously appreciate any questions that the Tribunal has[.] We believe it’s very helpful, obviously, for the Parties to address specific questions or concerns of the Tribunal in the Post-Hearing Submissions. And, obviously, the primary focus of the Post-Hearing Submissions ... would be to answer the Tribunal’s questions. So, if you have any questions, we would very much encourage those, so that we can specifically address what is on the mind of Tribunal.”).

⁵³ **CI-20**, *Freeport-McMoRan Inc. v. Republic of Peru*, ICSID Case No. ARB/20/8, Respondent’s Post-Hearing Brief, 14 July 2023 (“Peru Post-Hearing Brief”), ¶¶ 285–287.

27. In sum, the arguments in Peru's Reply confirm what was already clear from its Request for Interpretation: Peru is asking the Tribunal not to interpret a ruling it already made but to make a new ruling now. As even Peru would concede, that is not the proper function of a request for interpretation.

III. PERU'S REPLY CONFIRMS THAT ITS REQUEST FOR INTERPRETATION IS INADMISSIBLE.

28. As Freeport has explained in its Counter-Memorial, Peru's Request for Interpretation fails to meet the admissibility requirements set out in *Wena Hotels*, which the parties agree are applicable: The Request fails to identify any genuine dispute over the Award's meaning and scope, seeks to revise rather than interpret the Award, and would not affect implementation of the Award.⁵⁴ Peru's arguments in its Reply only confirm this.

A. The Reply Confirms the Absence of a Genuine Dispute as to the Award's Meaning or Scope.

29. In its Counter-Memorial, Freeport explained that Peru does not identify any obscurity in the Award's text or any disagreement about what the words in the *dispositif* mean.⁵⁵ Having failed to articulate any precise point requiring interpretation, there is no genuine dispute concerning the meaning or scope of the Award and Peru's Reply fails at the outset. In its Reply, Peru concedes that the *dispositif* contains no ambiguity. However, it advances four new arguments to try to rehabilitate its Request: (i) that Article 50 does not require "linguistic ambiguity"; (ii) that a dispute exists because the parties "hold opposing views" as to "what the Tribunal decided," as reflected in their annulment briefs; (iii) that the parties' pleadings in the underlying arbitration are irrelevant to whether such a dispute exists; and (iv) that Freeport "mischaracterizes" Peru's Request "by focusing solely on the *dispositif*" rather than treating it as a dispute about the meaning of the Award "as a whole." Peru's arguments are baseless.

(1) "Interpretation" Under Article 50 of the ICSID Convention Requires Ambiguity in the Operative Part of the Award.

30. Peru's argument that Article 50 does not require "linguistic ambiguity" is wrong.⁵⁶ The fact that Peru even needs to advance this argument confirms yet again that the Award's text—including its *dispositif*—admits of no objective disagreement at all. Unable to identify any obscurity in the operative language, Peru devotes an entire section of its Reply to the argument that a Request for Interpretation is

⁵⁴ See Counter-Memorial, § III.

⁵⁵ *Id.*, § III.A.

⁵⁶ See Reply, § III.A.2 ("Article 50 of the ICSID Convention Does Not Require Linguistic Ambiguity").

proper even when the plain text of the Award is clear and unambiguous.⁵⁷ That argument is the linchpin of Peru's case, and it is wrong: every Tribunal to have considered the question has concluded that interpretation proceedings require ambiguous operative language, and where the *dispositif* is clear, as it is here, there is nothing to interpret.⁵⁸

31. For example, the *Wena Hotels* tribunal held that an interpretation request “must be directed towards clarifying an ambiguity” “of what has been decided with binding force” and noted that this remedy presupposes operative language so ambiguous that the parties may disagree about its meaning or scope.⁵⁹ The U.S.-Iran Claims Tribunal has also repeatedly stressed that interpretation proceedings are “intended to apply only where an award contains language which is ambiguous” in its operative part and that where applicants “cannot identify any ambiguous language in the Award, . . . there is nothing to interpret.”⁶⁰ Fouchard, Gaillard, and Goldman likewise confine interpretation to awards that are obscure or ambiguous, explaining that the remedy “is only really helpful where the ruling . . . is so ambiguous that the parties could legitimately disagree as to its meaning.”⁶¹

⁵⁷ *Id.*

⁵⁸ **CLAI-22**, *Micula* Decision on Interpretation, ¶¶ 90, 92 (“The Tribunal finds nothing surprising in this finding of the *Wena Hotels* tribunal,” that “a request for interpretation ‘must be directed towards clarifying an ambiguity,’” “which is an expression and confirmation of the well-known maxim of law ‘*In claris non fit interpretatio*’ or ‘*In claris non est locus conjecturis*.’”).

⁵⁹ **CLAI-11**, *Wena Hotels Limited v. Egypt*, ICSID Case No. ARB/98/4, Decision on the Application by *Wena Hotels Ltd.* for Interpretation of the Arbitral Award, 31 October 2005 (“*Wena Hotels* Decision on Interpretation”), ¶ 85; *id.*, ¶ 82 (“the dispute must relate to the meaning or scope of what has been decided with binding force, thus in principle to the award’s operative section, a condition well adhered to by international practice and confirmed by opinions of scholars”); *id.*, ¶ 89 (recording the parties’ agreement that “the application for interpretation must be directed towards clarifying an ambiguity in the dispositive section”); **CLAI-1**, *Interpretation of Judgments Nos. 7 and 8 concerning the Factory at Chorzów*, Judgment, 16 December 1927, PCIJ Series A, No. 13 (“*Chorzów* Decision on Interpretation”), p. 11 (“In order that a difference of opinion should become the subject of a request for an interpretation under Article 60 of the Statute, there must therefore exist a difference of opinion between the Parties as to those points in the judgment in question which have been decided with binding force.”); **CLAI-22**, *Micula* Decision on Interpretation, ¶ 90 (“In the Tribunal’s view, clarifying an ambiguity is the essence of interpretation proceedings”).

⁶⁰ **CLAI-6**, *Paul Donin De Rosiere v. Iran*, IUSCT Case No. 498, Decision No. DEC 57-498-1, 10 February 1987, ¶ 6; **CLAI-8**, *Norman Gabay v. Iran*, IUSCT Case No. 771, Decision No. DEC 99-771-2, 24 September 1991, ¶ 6 (“[t]he Tribunal cannot identify any ambiguous language in the Award, and the Claimant has pointed to none. Accordingly, there is nothing to interpret.”); **CLAI-5**, *PepsiCo, Inc. v. Iran*, IUSCT Case No. 18, Decision No. DEC 55-18-1, 18 December 1986, ¶ 3 (denying request for interpretation because “it fails to point to any element of the Award that is ambiguous. The *dispositif* of the Award is specific and detailed . . . Thus, there is nothing in the Award that requires interpretation.”); **CLAI 4**, *Ford Aerospace v. Iran*, IUSCT Case No. 159, Decision No. DEC 47-159-3, 2 October 1986, ¶ 2 (denying request for interpretation because it “does not identify any ambiguity in the Award”).

⁶¹ **CLAI-9**, Emmanuel Gaillard and John Savage (eds), “Part 4 : Chapter IV - The Arbitral Award,” in “Fouchard Gaillard Goldman on International Commercial Arbitration” (1999), p. 776.

32. Instead of confronting these authorities, Peru opts to ignore them and rely instead on language taken out of context from *ATA Construction* and *Micula* for the proposition that “interpretation of an award may be warranted . . . even if its terms appear clear.”⁶² But those cases in fact illustrate a distinction Peru elides. The *ATA Construction* tribunal proceeded to interpret an award whose findings it found clear only because *both* parties requested that relief.⁶³ Analyzing this issue, the *Micula* tribunal read *ATA Construction* as resting on the fact that “both parties, as opposed to just one of them, requested such a relief,” and concluded that *ATA* therefore “does not support unambiguously the proposition that a disagreement of the parties on the meaning of an award is sufficient to trigger the need for interpretation.”⁶⁴ The *Micula* tribunal further confirmed that “clarifying an ambiguity is the essence of interpretation proceedings,” that the parties must “legitimately disagree” on the award’s meaning, and that a pure subjective standard “could lead to an outcome where even frivolous requests for interpretation would be admissible.”⁶⁵ Here, in contrast, the parties agree that there is no ambiguity in the *dispositif* but disagree on the need of interpretation of language that is already clear—the precise posture that both *ATA* and *Micula* confirm falls outside Article 50.

(2) The Mere Existence of a Dispute Does Not Imply the Existence of a Dispute Concerning “Interpretation” as Required by Article 50.

33. Peru’s claim that a genuine dispute exists between the parties because they claim to “hold opposing views” as to “what the Tribunal decided”—as reflected in their annulment briefs—also is wrong.⁶⁶ Peru’s reliance on the formulations in *Mavrommatis Palestine Concessions* and *Gramercy* that a dispute is a disagreement on a point of law or fact between parties holding opposing views is entirely misplaced.⁶⁷ Those authorities define when a *dispute* exists; they say nothing about the distinct and more demanding requirement under Article 50 that the dispute must concern “interpretation” of an award already rendered.⁶⁸ By importing the general test for the existence of a dispute, Peru obscures the controlling question: not

⁶² Reply, ¶¶ 39-42.

⁶³ **CLAI-13**, *ATA Construction, Industrial and Trading Company v. Hashemite Kingdom of Jordan*, ICSID Case No. ARB/08/2, Decision on Interpretation and on the Request for Provisional Measures, 7 March 2011 (“*ATA Construction* Decision on Interpretation”), ¶ 44.

⁶⁴ **CLAI-22**, *Micula* Decision on Interpretation, ¶ 88.

⁶⁵ *Id.*, ¶ 90.

⁶⁶ Request, ¶¶ 3, 29; Reply, ¶¶ 36, 52-53.

⁶⁷ See Reply, ¶¶ 34-36.

⁶⁸ *Id.* See also e.g., **RLAI-1**, *Mavrommatis Palestine Concessions (Greece v. U.K.)*, Judgment on the Objection to the Jurisdiction of the Court Made by His Britannic Majesty’s Government, 1924 P.C.I.J. (Ser. A) No. 2, 30 August 1924, p. 11; **RLAI-12**, *Gramercy Funds Management LLC and Gramercy Peru Holdings LLC v. Peru*, ICSID Case No. UNCT/18/2, Final Award, 6 December 2022, ¶¶ 313-25.

whether the parties disagree, but whether they disagree about what the Award’s operative language means. They do not.

34. The dispute between the parties is not about what the *dispositif* says or what it covers, but about what consequences follow from the *dispositif* in the separate annulment proceeding pending before the *ad hoc* committee constituted to hear that proceeding (the “Committee”). Freeport contends that the Tribunal upheld jurisdiction over the royalty-related penalties and interest claims and left them undecided on the merits; Peru contends the Tribunal meant to dismiss them for lack of jurisdiction though it did not say so in the *dispositif*.⁶⁹ That is a disagreement about what the Committee should treat the Tribunal as having done. It is not a disagreement about the meaning of the words “except for the Claimant’s claims based on the disputed Tax Assessments’ penalties and interest,” on which the parties do not differ.

35. The point is confirmed by the parties’ shared, contemporaneous understanding of the Award at the time it was rendered. As Freeport explained in its Counter-Memorial, following issuance of the Award, Peru and its counsel publicly described the Tribunal’s jurisdictional ruling as limited to the Tax Assessments’ penalties and interest.⁷⁰ Peru’s Reply does not deny those statements; it dismisses them as mere “press releases” not intended as legal submissions.⁷¹ But their significance lies not in whether they are legally binding but in what they say about the parties’ contemporaneous understanding of the Award. It is reasonable to assume that Peru and its counsel diligently reviewed the Award and its holdings before issuing their respective releases to the public. The two press releases thus are powerful confirmation that both parties read the Award the same way before Peru saw tactical advantage in reframing the annulment dispute as a supposed question of “interpretation.”⁷² A disagreement that materialized only after, and only because of, Freeport’s annulment application is not a genuine dispute as to the meaning and scope of an award that has read the same way since the day it issued.

36. Peru’s position would also prove far too much. Peru’s reading would convert Article 50 into a roving power to revisit, under the guise of an alleged “disagreement” over “interpretation,” any award that a party believes should have said more. That would not only be contrary to the principle of finality of ICSID awards, which Peru has previously described as a “fundamental goal” that “underpins . . . the ICSID

⁶⁹ See Reply, ¶¶ 52-53.

⁷⁰ Counter-Memorial, ¶ 26. See also **CI-14**, Baker Botts News Release, “Baker Botts Secures Victory for the Republic of Peru in a U.S. \$1 Billion International Arbitration Related to Mining Sector,” 31 May 2024, p. 1; **CI-13**, Peru’s Ministry of Economy and Finance Press Release, “Victoria absoluta de Peru en arbitraje CIADI iniciado por Freeport-McMoran INC al amparo del acuerdo de promoción comercial Peru – Estados Unidos,” 20 May 2024, p. 3.

⁷¹ Reply, ¶¶ 76-77.

⁷² See Counter-Memorial, ¶ 26.

Convention” and as “an essential feature of the ICSID system;”⁷³ it also would lead—in the words of the *Micula* tribunal—“to an outcome where even frivolous requests for interpretation would be admissible: for example, the parties could be in dispute although an award does not suffer of any ambiguity.”⁷⁴ That is neither the purpose of interpretation nor what Article 50(1) requires.

(3) The Presence of Allegedly Ambiguous Language in the Award’s Reasoning Does Not Change the Meaning of Clear Language in the *Dispositif*.

37. Peru’s claim that Freeport “mischaracterizes” Peru’s Request by “focusing solely on the *dispositif*,” and that the dispute must instead be assessed from the Award “read as a whole” is misdirected and further confirmation that the parties do not disagree about the Award’s operative text.⁷⁵ Freeport focuses on the *dispositif* because that is what interpretation under Article 50 requires: the *dispositif* is binding on the parties and determines the fate of their claims, and the authorities are uniform that interpretation must be “directed to the question of what it is that has been settled with binding force in the decision, that is in the *dispositif*.”⁷⁶ Peru itself even recognizes this point, conceding that “interpretation will ordinarily concern matters settled with binding force in the decision”⁷⁷ and cites Prof. Schreuer for the proposition that “the subject of interpretation is, in principle, the determination embodied in the operative part of the decision.”⁷⁸ Where the parties agree that the operative part of the award is clear, as they do here, there is nothing to interpret.

38. Peru’s contention that “Claimant conveniently ignores . . . how reasoning of a decision can be used in a request for interpretation” “to determine whether a particular issue was in fact settled by the decision” does not assist it.⁷⁹ There is no need to consult the reasoning to establish what was settled in the

⁷³ See **CI-16**, *Freeport-McMoRan Inc. v. Republic of Peru*, ICSID Case No. ARB/20/8, Respondent’s Counter-Memorial on Partial Annulment, 16 September 2025 (“Peru’s Annulment Counter-Memorial”), ¶¶ 16-17.

⁷⁴ **CLAI-22**, *Micula* Decision on Interpretation, ¶ 89.

⁷⁵ Reply, ¶ 40; *id.*, ¶¶ 58-64.

⁷⁶ See e.g., **CLAI-3**, *Continental Shelf* Decision on Interpretation, ¶ 28; **CLAI-1**, *Chorzów* Decision on Interpretation, p. 11 (“In order that a difference of opinion should become the subject of a request for an interpretation under Article 60 of the Statute, there must therefore exist a difference of opinion between the Parties as to those points in the judgment in question which have been decided with binding force.”); **CLAI-11**, *Wena Hotels* Decision on Interpretation, ¶ 82 (“the dispute must relate to the meaning or scope of what has been decided with binding force, thus in principle to the award’s operative section, a condition well adhered to by international practice and confirmed by opinions of scholars”); *id.*, ¶ 89 (recording the parties’ agreement that “the application for interpretation must be directed towards clarifying an ambiguity in the dispositive section”); **CLAI-22**, *Micula* Decision on Interpretation, ¶ 85 (“interpretation is limited to the scope and meaning of an award, specifically to those points that have been decided with binding force.”).

⁷⁷ Reply, ¶ 59.

⁷⁸ *Id.*

⁷⁹ *Id.*, ¶ 61.

dispositif where the parties agree that the operative language is clear.⁸⁰ And even where there are ambiguities in the *dispositif* of an award—although Peru concedes there is none here—the reasoning may be used only “to elucidate the meaning and scope of the *dispositif*,” never to contradict it or to “obtain[] a ruling on a point not so settled in the *dispositif*.”⁸¹ Peru’s position is backwards: it asks the Tribunal to rely on allegedly ambiguous reasoning that it believes contradicts the Award’s clear jurisdictional findings to rewrite the *dispositif*.⁸² This is precisely what interpretation cannot do.⁸³

39. For example, *Continental Shelf* allowed recourse to reasoning “to elucidate the meaning and scope of the *dispositif*” when the operative language was unclear.⁸⁴ The *Continental Shelf* tribunal held, in a passage Peru omits to quote, that “reasoning cannot therefore be invoked for the purpose of obtaining a ruling on a point not so settled in the *dispositif*,” and that a request for interpretation “must genuinely be directed to the question of what it is that has been settled with binding force in the decision, that is in the *dispositif*.”⁸⁵ *Continental Shelf* thus confirmed that interpretation must resolve a real doubt about the *dispositif*. The ability to submit an application for interpretation is not an invitation for parties to create a doubt about the *dispositif* by mining the Tribunal’s reasoning for potentially ambiguous reasoning, and it certainly does not allow passages from the Tribunal’s reasoning to supply a holding that is contrary to the Award’s operative text.

40. Peru’s retort that Freeport “cherry-picked” the Award by “ignoring paragraph 986” inverts the record.⁸⁶ Freeport’s position accounts for every jurisdictional finding in the Award, each of which upholds the Tribunal’s jurisdiction over every claim but Freeport’s tax-related penalties and interest claims; and it reads paragraph 986 in light of the jurisdictional analysis to which that paragraph refers and which it

⁸⁰ **CLAI-11**, *Wena Hotels* Decision on Interpretation, ¶ 82 (“the dispute must relate to the meaning or scope of what has been decided with binding force, thus in principle to the award’s operative section, a condition well adhered to by international practice and confirmed by opinions of scholars”); **CLAI-5**, *PepsiCo, Inc. v. Iran*, IUSCT Case No. 18, Decision No. DEC 55-18-1, 18 December 1986, ¶ 3 (denying request for interpretation because “it fails to point to any element of the Award that is ambiguous. The *dispositif* of the Award is specific and detailed ... Thus, there is nothing in the Award that requires interpretation.”).

⁸¹ **CLAI-3**, *Continental Shelf* Decision on Interpretation, ¶ 28. *See also* Reply, ¶ 60 (noting that “the ICJ, citing to the *Chorzów Factory* case, explained in the *Continental Shelf* case that [] the reasoning of a decision cannot be used to obtain a ruling on a matter not settled in the *dispositif*.”).

⁸² *Cf.* Reply, ¶¶ 10, 62.

⁸³ **CLAI-9**, Emmanuel Gaillard and John Savage (eds), “Part 4 : Chapter IV - The Arbitral Award,” in “Fouchard Gaillard Goldman on International Commercial Arbitration” (1999), p. 776 (“The interpretation of an arbitral award is only really helpful where the ruling, which is generally presented in the form of an order, is so ambiguous that the parties could legitimately disagree as to its meaning. By contrast, any obscurity or ambiguity in the grounds for the decision does not warrant a request for interpretation of the award.”).

⁸⁴ **CLAI-3**, *Continental Shelf* Decision on Interpretation, ¶ 28.

⁸⁵ *Id.*

⁸⁶ Reply, ¶¶ 56, 61.

summarizes. It is Peru that must isolate a single cross-referencing sentence in paragraph 986, sever it from the analysis it incorporates, and read it to override the *dispositif* and every reasoned jurisdictional finding in the Award.⁸⁷ Engaging the whole of the Award is not cherry-picking; building a case on one sentence read to contradict the rest is.

41. Peru's fallback argument on reading the *dispositif* "as a whole" fares no better.⁸⁸ Peru contends that, even on Freeport's reading, subparagraphs (b) and (d)—rejecting Freeport's claims "in their entirety" and rejecting "[a]ll other claims and pleas for relief"—show that the royalty-related penalties and interest claims were "conclusively disposed of."⁸⁹ But subparagraphs (b) and (d) confirm only that the Tribunal, having retained jurisdiction over claims other than those rejected in subparagraph (a), believed it had disposed of them on the merits.⁹⁰ A rejection of claims on the merits is not a dismissal for lack of jurisdiction, and Peru's entire case on interpretation depends on the latter. Peru does not explain how it can convert a residual merits rejection in subparagraphs (b) and (d) into a jurisdictional dismissal that subparagraph (a) confines to the tax-related penalties and interest claims. Such reading would not only be contrary to the Award's text but it would also render its operative provisions internally inconsistent.

(4) By Its Terms, the Award Is Limited to the Issues Addressed by the Parties.

42. Peru's contention that the parties' pleadings in the arbitration are "irrelevant for purposes of determining whether a dispute exists on the interpretation of the Award" has no basis in logic or common sense, is contrary to precedent on interpretation, and is irreconcilable with Peru's own position in other parts of its Reply.⁹¹

43. It should be obvious that the parties' pleadings are highly relevant to identify a genuine interpretative dispute, as they define what was put before the Tribunal for decision and therefore the outer limits of what the Award could have decided. In *Wena Hotels*, the tribunal rejected an interpretation request because the issue over which interpretation was sought was not raised "at any time during the

⁸⁷ See *supra*, § II.

⁸⁸ Reply, ¶ 63.

⁸⁹ *Id.*, ¶ 64.

⁹⁰ **CI-12**, Award, ¶ 1047 ("For all of the foregoing reasons, the Tribunal decides as follows: a. The Tribunal has jurisdiction over the Claimant's claims except for the Claimant's claims based on the disputed Tax Assessments' penalties and interest; b. The Claimant's claims are rejected in their entirety; c. Each Party shall bear its own costs and half of the arbitration costs; d. All other claims and pleas for relief are rejected.").

⁹¹ Reply, ¶ 65.

proceedings.”⁹² In *Asylum Case*, the ICJ dismissed the interpretation request because the “question was completely left outside the submissions of the Parties” and “[t]he judgment in no way decided it, nor could it do so” because “[i]t was for the Parties to present their respective claims on this point,” holding that “[i]n reality, the object of the questions submitted by the Colombian Government is to obtain, by the indirect means of interpretation, a decision on questions which the Court was not called upon by the Parties to answer.”⁹³ In *Temple of Preah Vihear*, the ICJ equally emphasized that “the pleadings and the record of the oral proceedings [are] relevant to the interpretation of the Judgment, as they show what evidence was, or was not, before the Court and how the issues before it were formulated by each Party.”⁹⁴ All these decisions reflect the basic principle that parties’ pleadings are relevant to a tribunal’s interpretive task under Article 50.

44. Peru does not and cannot meaningfully dispute these authorities.⁹⁵ Instead, it tries to brush them off on a premise the record does not support: that, unlike those decisions, the royalty-related penalties and interest claims were “squarely before the Tribunal” because the President allegedly questioned the parties’ tax-law experts at the hearing on whether all penalties and interest were taxation measures under Peruvian law.⁹⁶ Even if that premise were true—which, as explained in Section II, it is not—questions to experts are not a jurisdictional objection and no substitute for adversarial submissions. Peru’s own closing presentation confirmed that no such objection was in play, and the Tribunal never asked for briefing on the point from counsel.⁹⁷ In accordance with *Wena Hotels*, *Asylum Case*, and *Temple of Preah Vihear*, that is exactly the kind of silence that speaks volumes as to the lack of any genuine dispute between the parties as to an award’s meaning or scope.

⁹² **CLAI-11**, *Wena Hotels* Decision on Interpretation, ¶ 127 (concluding that Wena’s interpretation request was inadmissible because “this issue was not raised at any time during the proceedings between Wena and Egypt leading up to the Award.”).

⁹³ **CLAI-2**, *Asylum Case* Decision on Interpretation, p. 403 (“The Court can only refer to what it declared in its Judgment in perfectly definite terms: this question was completely left outside the submissions of the Parties. The Judgment in no way decided it, nor could it do so. It was for the Parties to present their respective claims on this point. The Court finds that they did nothing of the kind. The ‘gaps’ which the Colombian Government claims to have discovered in the Court’s Judgment in reality are new questions, which cannot be decided by means of interpretation. Interpretation can in no way go beyond the limits of the Judgment, fixed in advance by the Parties themselves in their submissions. In reality, the object of the questions submitted by the Colombian Government is to obtain, by the indirect means of interpretation, a decision on questions which the Court was not called upon by the Parties to answer.”).

⁹⁴ **CLAI-15**, *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand)*, Judgment of 11 November 2013, I.C.J. Reports 2013, ¶ 69.

⁹⁵ See Reply, ¶¶ 65-77.

⁹⁶ *Id.*, ¶ 73.

⁹⁷ See *supra* ¶¶ 24-25.

45. Peru's position is also internally inconsistent. Although Peru says the underlying arbitration pleadings are irrelevant for determining whether a genuine dispute exists, it nonetheless relies on the parties' post-award annulment pleadings to identify a supposed "dispute" based on their different readings of the Award.⁹⁸ That makes no sense. The pleadings that are relevant are the ones leading up to the Award because they define what was put before the Tribunal and therefore define the outer limits of what the Award could have decided.⁹⁹ The parties' later advocacy before the Committee in the annulment proceeding can shed no light on what the Tribunal meant, or what the parties understood it to mean, when it issued the Award months earlier.

46. Finally, Peru has no basis to invoke principles of *competence-competence* and *iura novit arbiter* to ignore the consequences of its decision not to raise an Article 22.3.1 objection to Freeport's royalty-related penalties and interest claims.¹⁰⁰ Those principles establish that a tribunal may assess its own jurisdiction and apply the law.¹⁰¹ They do not permit a tribunal to dismiss claims on a jurisdictional theory no party advanced, without analysis, and without affording the parties an opportunity to be heard—and they certainly do not require the Tribunal to be presumed to have done so silently.

47. Indeed, as noted above, the Tribunal stated in paragraph 456 of the Award that the issues it was deciding had been briefed by the parties.¹⁰² This confirms that the Tribunal was not introducing any new issues *proprio motu*. Peru's reliance on the Tribunal's theoretical power to decide an issue on its own initiative, without pointing to any paragraph in the Award where the Tribunal actually exercised that power by raising and deciding a jurisdictional issue as to penalties and interest on Royalty Assessments, confirms that Peru is not seeking the interpretation of an existing ruling but rather the creation of a new one.

* * *

48. In sum, Peru's Reply confirms what its Request already revealed: There is no genuine dispute as to the Award's meaning and scope because there is no relevant ambiguity in the Award to dispute. Peru concedes the *dispositif* is clear, that both parties read the Award the same way before Freeport commenced annulment proceedings, and that the parties' competing readings relate only to their divergent

⁹⁸ Cf. Reply, ¶¶ 7, 52 (arguing that "the Parties' own submissions" are relevant for determining the existence of a dispute) with *id.*, ¶ 66 (arguing that "the arguments that were or were not advanced during the arbitration" are irrelevant to "the existence of a dispute.").

⁹⁹ See e.g., CLAI-11, *Wena Hotels* Decision on Interpretation, ¶ 121.

¹⁰⁰ Reply, ¶¶ 67-71.

¹⁰¹ *Id.*, ¶ 69.

¹⁰² CI-12, Award, ¶ 456; see *supra* ¶ 18.

positions in the collateral annulment proceeding on what the Tribunal should be taken to have done. Thus, the first *Wena Hotels* requirement is not satisfied, and the Request should be dismissed on this ground alone.

B. Peru’s Reply Confirms That Its Request Lacks Any Legitimate Interpretative Purpose.

49. Even if the Tribunal were to find a genuine dispute as to the meaning or scope of the Award—and for the reasons set out in Section III.A, it should not—Peru’s Request would still fail the second *Wena Hotels* requirement, which demands that the purpose of a request for interpretation be to obtain a true interpretation of the Award rather than to reopen, correct, supplement, or revise it.¹⁰³ Peru’s Reply repackages its Request, now insisting that it does not seek to “revisit the merits,” “reconsider the evidence,” “supplement the Award, or make any new determination,” but only to have the Tribunal “confirm” what it already decided.¹⁰⁴ This relabeling does not survive scrutiny. Peru’s Request still asks the Tribunal to announce a jurisdictional ruling on penalties and interest claims on Royalty Assessments that appears nowhere in the Award. This is well beyond the legitimate scope of any interpretation request.

50. Peru’s relabeling of its Request as supposedly seeking “confirmation” of the Tribunal’s findings—rather than “amendment or correction of any portion of the Award”—does not change its substance.¹⁰⁵ The relief Peru seeks is that the Tribunal declare that the *dispositif* “cannot be read as negating” a jurisdictional exclusion of the penalties and interest claims on Royalty Assessments—in other words, that the operative language means the opposite of what it says.¹⁰⁶ A request that the Tribunal preserve the words of paragraph 1047(a) while reversing their *effect* is not a request for interpretation; it is a request for revision accomplished by other means. As Freeport explained in its Counter-Memorial, the Tribunal cannot plausibly conclude that its operative ruling means the opposite of what it expressly states while leaving the language formally unchanged, and doing so would be effectively a correction or amendment of the Award.¹⁰⁷ Peru has no response to that point, and its insistence that its Request touches none of the operative text only confirms that the reading it seeks is not contained in that text.

51. The Request’s characterization of the *dispositif* as “an inadvertent omission, or a mere typographical or clerical error”¹⁰⁸ remains a blunt admission that Peru’s Request still lacks any legitimate

¹⁰³ See Counter-Memorial, § III.B.

¹⁰⁴ Reply, ¶¶ 12, 28, 84.

¹⁰⁵ *Id.*, ¶ 84.

¹⁰⁶ *Id.*, ¶ 85 (“Peru’s observation that the *dispositif*’s omission of an express reference to the Royalty Assessments amounts to an “inadvertent omission” is not a request for correction” but rather a request for “confirm[ation] that the *dispositif* is to be read consistently with, not in opposition to, the Tribunal’s reasoned findings.”).

¹⁰⁷ Counter-Memorial, ¶¶ 31-32.

¹⁰⁸ Reply, ¶ 83 (quoting Request ¶¶ 44, 50(iii)). See also **CI-18**, *Freeport-McMoRan Inc. v. Peru*, ICSID Case No. ARB/20/8, Respondent’s Rejoinder on Partial Annulment, 24 February 2026 (“Peru Annulment Rejoinder”),

interpretive purpose. Confronted with the obvious problem—that supplying an omitted point or correcting a clerical error is the province of Article 49(2), not Article 50—Peru now insists in its Reply that its “observation that the *dispositif*’s omission of an express reference to the Royalty Assessments amounts to an ‘inadvertent omission’ is not a request for correction,” but rather a demonstration of “precisely why interpretation is warranted.”¹⁰⁹ The reformulation does not help Peru. To characterize the *dispositif* as having *omitted* the finding that Peru now seeks is to concede that the finding is not there.¹¹⁰ A tribunal cannot supplement an omission or cure clerical errors through interpretation; it can only address them through supplementation or rectification, as several tribunals—including in *Archer Daniels*, *ATA Construction*, and *Micula*—have confirmed.¹¹¹

52. Peru’s attempt to distinguish *Archer Daniels* fails. Peru says that case is inapposite because the applicant there “sought to change the operative language,” whereas Peru “does not ask the Tribunal to modify paragraph 1047(a).”¹¹² But *Archer Daniels* did not turn on whether or not the applicant mechanically sought to edit the words of the *dispositif*; rather, it turned on whether interpretation was the appropriate remedy to cure an inconsistency in the *dispositif* amounting to a “clerical or similar error.”¹¹³ The tribunal concluded that such error could *only* be addressed through correction, not interpretation.¹¹⁴ That is exactly the situation here: Peru alleges that the *dispositif*, which refers only to the *tax*-related penalties and interest claims, is a “clerical error” that is in tension with reasoning elsewhere in the Award,

¶ 77 (arguing that “[t]he absence of an explicit reference in the *dispositif* to the Tribunal’s lack of jurisdiction over claims concerning penalties and interest on Royalty Assessments” “does not reflect any contradiction but is a mere typographical or clerical error, not an error of substance”); **CI-16**, Peru’s Annulment Counter-Memorial, ¶ 202 (describing the *dispositif* as “a typographical or clerical error, not an error of substance”).

¹⁰⁹ Reply, ¶ 85.

¹¹⁰ *Id.*

¹¹¹ **CLAI-12**, *Archer Daniels Midland and Tate & Lyle Ingredients Americas, Inc. v. United Mexican States*, ICSID Case No. ARB(AF)/04/5, Decision on the Requests for Correction, Supplementary Decision and Interpretation, 10 July 2008 (“*Archer Daniels* Decision on Interpretation”), ¶ 10 (“These three powers address distinct potential defects in the award. The power to interpret anticipates an interpretative difference arising from the award requiring clarification. The power to correct addresses ‘clerical, arithmetical or similar errors.’ The power to supplement addresses the omission to decide ‘any question’ in the Award.”); **CLAI-22**, *Micula* Decision on Interpretation, ¶ 86 (“Moreover, interpretation cannot be used for seeking either a reconsideration of the original decision or the correction of clerical errors. Further, it is inappropriate to use interpretation proceedings to request a new decision.”); **CLAI-13**, *ATA Construction* Decision on Interpretation, ¶ 43.

¹¹² Reply, ¶ 86.

¹¹³ **CLAI-12**, *Archer Daniels* Decision on Interpretation, ¶ 10; *id.*, ¶ 23 (“The dispositive section of the Award therefore contains a clerical or similar error in failing to distinguish the successful party making the claim (that is, the Claimants) from the proper recipient of the damages in accordance with the mandatory provisions of NAFTA. On this basis, the Tribunal accepts the application by the Respondent for a correction to the Award pursuant to Article 56 AF Rules, and rejects the Claimants’ application for interpretation pursuant to Article 55 AF Rules.”).

¹¹⁴ *Id.*

which Peru reads as covering all alternative claims.¹¹⁵ Under *Archer Daniels*, the cure for such an alleged inconsistency lies in correction under Article 49(2), subject to a strict 45-day deadline that expired long ago. Peru cannot circumvent that deadline by recasting a correction request as a request for interpretation.¹¹⁶

53. The above conclusion applies with more force here given Peru’s own admission in the annulment proceeding that “any clerical, arithmetical or similar error in the award” must be addressed solely under Article 49(2) and its strict 45-day deadline.¹¹⁷ Peru thus already told the Committee exactly what Freeport tells this one: that the alleged defect Peru now claims exists in the *dispositif* is curable, if at all, only by correction within 45 days, not by interpretation under Article 50.¹¹⁸ Having taken that position when it suited its own interests, Peru cannot abandon it here to revive a correction request it allowed to lapse.

54. Tellingly, Peru has now quietly abandoned its request for an express determination that the *dispositif* contains a clerical error: whereas its Request asked the Tribunal to confirm that the *dispositif* reflects “an inadvertent omission, or a mere typographical error,” its Reply drops that language from the relief it seeks.¹¹⁹ The retreat shows that Peru understands its position is untenable.

55. Peru’s own statements in the Reply further prove the absence of any legitimate interpretive purpose. Peru’s alternative framing of the alleged relief it seeks, as “not whether the Tribunal dismissed [the royalty-related penalties and interest] claims, but *on what basis*,” asks the Tribunal to supply a new finding rather than interpret an existing one.¹²⁰ And Peru’s assertion that the Tribunal would, in any event, have found no “reasonable doubt” under Article 170 likewise invites the Tribunal to add a hypothetical merits ruling that the Award lacks.¹²¹ As Peru openly concedes, Article 50 permits neither omitted

¹¹⁵ Cf. Reply, ¶ 85; Request, ¶¶ 44, 50(iii) (describing the Tribunal’s statement in the *dispositif* as “an inadvertent omission, or a mere typographical error”).

¹¹⁶ Reply, ¶ 85.

¹¹⁷ See **CI-18**, Peru Annulment Rejoinder, ¶ 156 (arguing that “any clerical, arithmetical or similar error in the award” must be addressed under Article 49(2)).

¹¹⁸ Counter-Memorial, ¶¶ 31-32.

¹¹⁹ Cf. Request, ¶ 50(iii) (“Respondent respectfully requests that the Tribunal issue its interpretation as to the Award as follows: . . . Confirm that the Tribunal’s statement in the *dispositif* that ‘[it] [had] jurisdiction over the Claimant’s claims except for the Claimant’s claims based on the disputed Tax Assessments’ penalties and interest’ is an inadvertent omission, or a mere typographical error, and cannot be read as negating or overriding the conclusions reached in the jurisdiction and merits sections of the Award over claims concerning penalties and interest on the Royalty Assessments”) (emphasis added), *with* Reply, ¶ 119(ii) (omitting the underscored words but otherwise the same).

¹²⁰ See Reply, ¶ 80 (emphasis added) (“if Claimant is correct, then the Tribunal dismissed them on the merits. Indeed, the *dispositif* confirms that Claimant’s claims were rejected in their entirety. The question is therefore not whether the Tribunal decided—and dismissed—those claims (it did), but on what basis it did so. The question requiring interpretation is whether they were dismissed on jurisdiction (as Peru asserts) or on the merits.”).

¹²¹ *Id.*, ¶ 97.

reasoning nor an omitted ruling to be supplied through interpretation; it only allows clarification of what an existing finding means.¹²² Peru therefore seeks not to clarify the meaning of the Award, but to impermissibly insert either a jurisdictional holding or a merits rationale that the Award lacks.

C. Peru’s Reply Confirms That Its Request Has No Practical Relevance and That Granting It Would Only Multiply the Potential Grounds for Annulment.

56. In its Counter-Memorial, Freeport explained that Peru’s Request also fails the third *Wena Hotels* requirement because it has no practical relevance to the Award’s implementation.¹²³ Freeport explained that neither theoretical disagreement nor the hope of tactical assistance in a collateral proceeding suffices, and that Peru could not establish practical relevance even on its own theory, because an Award read as Peru urges would not be saved from annulment but would instead be exposed to potential annulment on additional grounds.¹²⁴ In its Reply, Peru does not meaningfully rebut these statements. Instead, it argues that its Request has practical relevance because it “bears directly on the framing and scope of the annulment proceeding” and complains that Freeport’s showing that Peru’s position would carry additional annulment grounds is “speculative” because Freeport “does not know the outcome of the annulment proceeding.”¹²⁵ Peru’s arguments fail.

57. Peru’s claim that its Request “has clear and immediate practical relevance to the implementation of the Award” because it “bears directly on the framing and scope of the Annulment Proceeding” and “is at the core of Claimant’s alleged grounds for annulment” confirms that its Request is inadmissible.¹²⁶ As Peru concedes, the relevant inquiry under Article 50 is whether the requested interpretation has practical relevance to the Award’s implementation—not whether a party believes an interpretive ruling may furnish tactical assistance in a parallel proceeding.¹²⁷ Peru does not and cannot

¹²² See *id.*, ¶ 89 (“Interpretation proceedings are not a vehicle to relitigate issues, invite reconsideration, or reassess evidence; they must be confined to the four corners of the Award. As the *Asylum Case* confirms, ‘Interpretation can in no way go beyond the limits of the Judgment.’ The *Micula* tribunal similarly held that ‘the interpretative mandate of a tribunal is limited to the findings the tribunal has made in the award.’”). See also **CLAI-22**, *Micula* Decision on Interpretation, ¶ 85 (“the interpretative mandate of a tribunal is limited to the findings the tribunal has made in the award.”); **CLAI-2**, *Request for interpretation of the Judgment of November 20th, 1950, in the Asylum Case*, Judgment, November 27, 1950, ICJ Reports 1950 (“*Asylum Case* Decision on Interpretation”), p. 403 (“Interpretation can in no way go beyond the limits of the Judgment.”).

¹²³ See Counter-Memorial, § III.C.

¹²⁴ See *id.*, ¶¶ 38-43.

¹²⁵ Reply, ¶¶ 100-106.

¹²⁶ *Id.*, ¶ 101; *id.*, ¶ 8 (arguing that Peru’s request has practical relevance because “the Tribunal’s interpretation is likely to have material impact on Claimant’s annulment claims.”).

¹²⁷ *Id.*, ¶ 101 (arguing that Peru’s Request “has clear and immediate practical relevance to the implementation of the Award—in particular, its recognition and enforcement. Peru’s Request is not a tactical maneuver.”).

argue that the Award needs interpretation to be recognized or enforced.¹²⁸ To the contrary, it concedes that, absent Freeport’s annulment application, it “would have had no practical need to seek any interpretation whatsoever.”¹²⁹ Peru further asserts that its Request is relevant only because an interpretation would supposedly help Peru resist annulment, including by “largely eviscerat[ing] the grounds for Claimant’s annulment request.”¹³⁰ But assistance in a separate proceeding is the kind of tactical purpose that is insufficient to supply the practical relevance that a remedy under Article 50 requires.¹³¹ Peru’s Reply effectively concedes this point by insisting that its Request serves a practical purpose because it is supposedly not a “tactical maneuver.”¹³² The fact that the Request plainly is a tactical maneuver, as evidenced by Peru’s own admission that it was a response to the annulment request,¹³³ is a sufficient ground, by itself, for holding the Request inadmissible.

58. Peru’s defense of the timing of its Request further reinforces the conclusion that the Request has no practical relevance.¹³⁴ Freeport has never contended that Article 50 imposes a fixed deadline, and Peru’s lengthy demonstration that no such deadline exists answers an argument Freeport did not make.¹³⁵ The relevant point, drawn from *Micula*, is different: although delay is not an independent bar, it bears directly on whether a *concrete need* for interpretation genuinely exists or not.¹³⁶ Here, Peru’s own account supplies the answer: By Peru’s telling, Peru “would have had no practical need to seek any interpretation whatsoever” had Freeport not pursued annulment,¹³⁷ the asserted “need” arises entirely from, and is defined entirely by, the annulment proceeding. Peru’s Request—filed nearly two years after the Award and on the eve of the annulment hearing—is not directed at clarifying the meaning or scope of the

¹²⁸ *Id.*, ¶¶ 100-108.

¹²⁹ *Id.*, ¶ 94.

¹³⁰ *Id.*, ¶ 101.

¹³¹ **CLAI-24**, Silvia M. Marchili and Enrique Molina, “Part 3: ICSID Arbitration Rules, Chapter XI: Interpretation, Revision, and Annulment of Awards [Rules 69-74],” in Richard Happ and Stephan Wilske (eds), “ICSID Rules and Regulations 2022: Article-by-Article Commentary,” ¶ 15 (“This last requirement [practical relevance to the award’s interpretation] is . . . most likely directed at preventing the practice of lodging applications for interpretation by litigious parties for purely tactical reasons.”); **CLAI-22**, *Micula* Decision on Interpretation, ¶ 102 (finding no practical relevance, where movant was seeking to obtain an advantage in an enforcement proceeding in U.S. courts: “The Respondent does not show any concrete and actual legal interest in clarifying the Tribunal’s findings in the Award other than in connection with the US proceedings.”).

¹³² Reply, ¶ 101 (arguing, in connection with “practical relevance,” that “Peru’s Request is not a tactical maneuver”).

¹³³ *Id.*, ¶ 94.

¹³⁴ *Id.*, ¶¶ 91-95.

¹³⁵ *Id.*, ¶ 92.

¹³⁶ **CLAI-22**, *Micula* Decision on Interpretation at ¶ 102. *See also* Reply, ¶ 93 (“Second, the *Micula* passage on which Claimant relies does not establish untimeliness as an independent ground of inadmissibility. The *Micula* tribunal instead observed that delay may make it more difficult to establish a ‘concrete need’ for interpretation.”).

¹³⁷ Reply, ¶ 94.

Award for its own sake.¹³⁸ It is an eleventh-hour attempt to gain an edge in the annulment proceeding by obtaining a jurisdictional finding the Award lacks. The Committee itself recognized the significance of Peru’s delay, observing that if Peru believed the Award required interpretation, it could and should have sought that relief much earlier rather than waiting until annulment was almost complete.¹³⁹ Per the *Micula* holding, this is enough to dismiss the Request for lack of “concrete need for the interpretation sought.”¹⁴⁰

59. In any event, Peru cannot establish practical relevance even on its own theory, because the Award would remain annulable regardless of the outcome of its Request. Even if the Tribunal adopted Peru’s position and “confirmed” that it did not assert jurisdiction over Freeport’s penalties and interest claims on the Royalty Assessments, that interpretation would not save the Award from annulment—it would expose it to annulment on additional grounds.¹⁴¹

- a. First, the interpretation Peru seeks would render the Award contradictory because it is irreconcilable with the Award’s *dispositif* and jurisdictional findings.¹⁴² As Freeport explained in its Counter-Memorial, an Award read as Peru urges would be internally contradictory—extending jurisdiction in its operative section to all claims save for those based on the tax-related penalties and interest, while also denying jurisdiction over those on royalty-related penalties and interest.¹⁴³ Peru does not dispute that such decision would render the Award contradictory, that contradictory reasons are a recognized ground for annulment under Article 52(1)(e), and that committees have repeatedly annulled awards on that basis.¹⁴⁴ And Peru’s Reply would only compound the contradiction, by leaving the words of the *dispositif* unchanged, but adding language that contradicts them.¹⁴⁵ Peru’s reading would thus manufacture the very defect annulment exists to remedy. Peru provides no authority for a contrary result.

¹³⁸ See **CI-19**, Decision on Request for Suspension, ¶ 41.

¹³⁹ *Id.*

¹⁴⁰ **CLAI-22**, *Micula* Decision on Interpretation, ¶ 102.

¹⁴¹ Counter-Memorial, ¶¶ 39-43.

¹⁴² Reply, ¶ 85 (“Far from constituting an admission that the Request is somehow improper, it demonstrates precisely why interpretation is warranted: to confirm that the *dispositif* is to be read consistently with, not in opposition to, the Tribunal’s reasoned findings.”).

¹⁴³ Counter-Memorial, ¶ 40. See also **CI-15**, *Freeport-McMoRan Inc. v. Republic of Peru*, ICSID Case No. ARB/20/8, Memorial on Annulment, 23 May 2025 (“Freeport Annulment Memorial”), ¶¶ 60–61; **CI-17**, *Freeport-McMoRan Inc. v. Republic of Peru*, ICSID Case No. ARB/20/8, Reply on Annulment, 12 December 2025 (“Freeport Annulment Reply”), ¶¶ 51–55.

¹⁴⁴ *Cf. id.* with Reply, ¶¶ 100-108.

¹⁴⁵ Reply, ¶ 86.

- b. *Second*, and relatedly, nothing in the Award explains why royalty-related penalties and interest claims should be treated as “taxation measures” for Article 22.3.1 purposes. If the Award were read to dismiss those claims on that basis, it would contain a dispositive jurisdictional finding for which the Tribunal stated no reasons, supplying a further ground for annulment under Article 52(1)(e).¹⁴⁶ And the missing reasoning cannot be furnished through this proceeding: as Peru concedes, an interpretation decision must be confined to clarification and may not supplement or change the Award.¹⁴⁷ Peru is effectively just asking the Tribunal to recharacterize a cross-referenced dismissal in paragraph 986 of the Award as a broad jurisdictional dismissal, but that does not change the fact that the Award itself states no reasoning for that result.
- c. *Third*, the “interpretation” Peru seeks would rest on a jurisdictional theory no party advanced and on which Freeport was never heard. Because Peru confined its Article 22.3.1 objection throughout the arbitration to Freeport’s penalties and interest claims on Tax Assessments, Freeport had no occasion to brief, and the Tribunal no occasion to invite submissions on, whether royalty-related penalties and interest are “taxation measures.”¹⁴⁸ An Award read to dismiss those claims on such unargued grounds would confirm a serious departure from a fundamental rule of procedure—the right to be heard—and also be annulable under Article 52(1)(d).¹⁴⁹ Again, far from curing a defect, Peru’s interpretation would supply one.
- d. *Finally*, if the Tribunal were to correct, revise, or supplement the Award under the guise of interpretation, it would exceed its Article 50 mandate, creating an additional annulment ground for “manifest excess of powers.”¹⁵⁰

60. Peru’s complaint that Freeport’s identification of these risks is an “improper” attempt to “influence” the Tribunal by “threatening annulment” and that Freeport’s showing is “speculative” because

¹⁴⁶ Counter-Memorial, ¶ 41. *See also* CI-15, Freeport Annulment Memorial, ¶¶ 57-59; CI-17, Freeport Annulment Reply, ¶¶ 40-50.

¹⁴⁷ Reply, ¶ 89 (“Interpretation proceedings are not a vehicle to relitigate issues, invite reconsideration, or reassess evidence; they must be confined to the four corners of the Award. As the *Asylum Case* confirms, ‘Interpretation can in no way go beyond the limits of the Judgment.’ The *Micula* tribunal similarly held that ‘the interpretative mandate of a tribunal is limited to the findings the tribunal has made in the award.’”). *See also* CI-18, Peru Annulment Rejoinder, ¶ 156.

¹⁴⁸ *See supra*, § II.

¹⁴⁹ Counter-Memorial, ¶ 42. *See also* CI-15, Freeport Annulment Memorial, ¶¶ 65–66; CI-17, Freeport Annulment Reply, ¶¶ 65–72.

¹⁵⁰ Counter-Memorial, ¶ 43.

it “does not know the outcome of the annulment proceeding” is entirely misplaced.¹⁵¹ Freeport is not trying to introduce considerations that are not relevant to the admissibility of the Request for Interpretation, nor is it predicting how the Committee will rule on an application for annulment. Rather, Freeport is responding to *Peru’s own prediction* that the interpretation it seeks would somehow undermine Freeport’s annulment request. An Award that, as “interpreted,” contains an internal contradiction, gives no reasons for a dispositive jurisdictional dismissal, or rests on a theory on which Freeport was never heard would be vulnerable to annulment under Article 52, as would an interpretation decision that strays beyond the Tribunal’s authority.¹⁵² Those are settled categories of annulment—established by the very authorities Peru relies on and that Peru fails to engage with.¹⁵³ They confirm that Peru’s Request lacks practical relevance, because even on Peru’s theory that the annulment proceeding is relevant, they would make the Award more vulnerable to annulment, not less.

61. Thus, the question Peru puts to the Tribunal is already joined before the Committee. Article 50 does not exist to supply litigating leverage in a parallel annulment, and any finding by the Tribunal that it dismissed the royalty-related penalties and interest claims for lack of jurisdiction would expose it to new annulment grounds. Because Peru’s Request serves no practical purpose, the third *Wena Hotels* requirement is not satisfied, and the Request should be dismissed on this ground as well.

IV. ON THE MERITS, PERU’S REPLY FAILS TO ESTABLISH ANY BASIS TO DEPART FROM THE AWARD’S PLAIN MEANING.

62. For the reasons set out in Section III, Peru’s Request should be deemed inadmissible. But if the Tribunal does reach the merits of Peru’s Request, it should interpret the Award to mean precisely what it says: that “[t]he Tribunal has jurisdiction over the Claimant’s claims except for the Claimant’s claims based on the disputed *Tax Assessments’* penalties and interest.”

63. The function of interpretation is to clarify what the Award actually says, not to explain what the Award would have said if the Tribunal had made a different decision. The claims over which the Tribunal retained jurisdiction necessarily include Freeport’s claims based on penalties and interest on the Royalty Assessments, because those are not “claims based on the disputed *Tax Assessments’* penalties and interest.” As already discussed, that outcome is the only one that is consistent with Peru’s own position in the arbitration, where Peru insisted that “[m]ining royalties are not a tax”¹⁵⁴ and that it was therefore not

¹⁵¹ Reply, ¶¶ 104-108.

¹⁵² Counter-Memorial, ¶¶ 38-44.

¹⁵³ See, e.g., **RLAI-2**, *Magyar Farming Company v. Hungary*, ICSID Case No. ARB/17/27, Decision on Annulment, 16 November 2021; Counter-Memorial, ¶¶ 39-43.

¹⁵⁴ See *supra* ¶¶ 23-25.

challenging jurisdiction under Article 22.3.1 as to penalties and interest claims on Royalty Assessments.¹⁵⁵ It also is the only outcome that is consistent with the Tribunal’s reasoning in the Award, which focused on the nature of the penalties and interest *on Tax Assessments* as being part of Peru’s taxation regime.¹⁵⁶ Nothing in Peru’s Reply displaces that plain reading; to the contrary, Peru’s merits case simply rehashes the same flawed arguments that Freeport already addressed and depends on a series of positions the Tribunal rejected, that Peru itself disclaimed, or that the Award does not support.

V. BECAUSE PERU’S INTERPRETATION REQUEST IS WITHOUT MERIT, PERU’S EFFORT TO EVADE LIABILITY FOR COSTS SHOULD BE REJECTED.

64. In its Counter-Memorial, Freeport explained that if it prevails, the Tribunal should apply the “costs follow the event” principle and order Peru to bear the full costs of this proceeding, including Freeport’s professional fees and interest.¹⁵⁷ Freeport explained that this principle is well established and consistently applied by interpretation tribunals against an unsuccessful applicant, and that the misuse of an interpretation proceeding to reopen or reframe an award independently warrants an adverse costs award.¹⁵⁸ Freeport also explained that Peru—after arguing in the annulment proceeding that unsuccessful post-award applications improperly burden the opposing party and undermine the finality of ICSID awards, and asking the Committee to order Freeport to bear all costs and legal fees on that basis—cannot disclaim a costs standard it urged on the Committee.¹⁵⁹

¹⁵⁵ See, e.g., Request, ¶ 15 (conceding “that Peru raised a jurisdictional objection with respect to interest and penalties associated with the Tax Assessments but not in relation to the Royalty Assessments.”).

¹⁵⁶ See **CI-12**, Award, ¶¶ 540 *et seq.*; **CI-17**, Freeport Annulment Reply, ¶¶ 24-26; **CI-15**, Freeport Annulment Memorial, ¶ 47.

¹⁵⁷ Counter-Memorial, ¶¶ 47-50.

¹⁵⁸ *Id.*, ¶¶ 48-49. See also **CLAI-12**, *Archer Daniels* Decision on Interpretation, ¶ 67 (ordering the claimants to bear the costs and a portion of the respondent’s legal fees after finding they had sought to “open and re-argue questions that were decided in the Award,” thereby forcing the respondent to address “unjustified and on occasion reckless argumentation.”); **CLAI-22**, *Micula* Decision on Interpretation, ¶ 133 (rejecting the interpretation request and ordering the respondent to bear all costs because interpretation was “not . . . the appropriate remedy and has in fact resulted in a squandering of funds.”); **CLAI-16**, *David Minnotte* Decision on Interpretation, ¶ 15 (finding that “[b]ecause there is no genuine dispute over interpretation, it is appropriate that the Claimants, as the unsuccessful applicants, should bear all reasonable costs of this interpretation proceeding.”); **CLAI-10**, *Marvin Roy Feldman Karpa v. United Mexican States*, ICSID Case No. ARB(AF)/99/1, Correction and Interpretation of the Award, 13 June 2003 (“*Marvin Roy Feldman Karpa* Decision on Interpretation”), ¶ 15 (finding that because “the moving party (Respondent) did not prevail,” it was “reasonable to apportion the expenses” predominantly to the moving party).

¹⁵⁹ Counter-Memorial, ¶ 48. See also **CI-16**, Peru’s Annulment Counter-Memorial, ¶ 289 (requesting that Freeport be ordered to bear “all costs and legal fees incurred in these proceedings” because Freeport’s annulment application supposedly lacked merit); **CI-18**, Peru’s Annulment Rejoinder, ¶ 190 (same).

65. Peru's Reply does not contest these propositions and offers no authority to justify departing from this well-settled cost-allocation principle.¹⁶⁰ Instead, Peru argues only that it should not bear costs because its Request supposedly serves a constructive purpose, and that, in any event, Freeport should bear the costs because the proceeding was "necessitated by Claimant's own procedural choices" in seeking annulment rather than interpretation or correction.¹⁶¹ These arguments fail.

66. Peru's assertion that its Request serves a legitimate constructive purpose rests on a false premise.¹⁶² As Freeport has shown, Peru's Request is not a constructive clarification of a genuine ambiguity but an improper attempt to revise the Award by having the Tribunal "confirm" jurisdictional findings it does not contain.¹⁶³ A request of that character is precisely the kind that tribunals have consistently held warrants an adverse costs award against the applicant.¹⁶⁴

67. But even taking Peru's premise at face value, a party's belief that its unsuccessful application was well-intentioned does not exempt it from costs. Peru offers no authority in which an interpretation tribunal excused an unsuccessful applicant from costs on the ground that its request was constructive, and it does not explain how—if the Request is dismissed as improper—Peru could nonetheless escape the costs of the proceeding it forced Freeport to defend.

68. Moreover, Peru cannot evade the "costs follow the event" standard it pressed on the Committee by pointing out that, in the annulment proceeding, it also asked the Committee to charge Freeport with costs even if Freeport prevailed, on the theory that committees often decline to award costs to applicants.¹⁶⁵ The submission Peru now invokes addressed the particular circumstances of the annulment, where Peru wrongly contended that Freeport's initiation of the annulment application was an

¹⁶⁰ Reply, ¶¶ 115-118.

¹⁶¹ *Id.*, ¶¶ 115-118.

¹⁶² *Id.*, ¶ 117.

¹⁶³ *See supra*, § III.B.

¹⁶⁴ *See CLAI-12*, *Archer Daniels* Decision on Interpretation, ¶ 67 (ordering the claimants to bear the costs and a portion of the respondent's legal fees after finding they had sought to "open and re-argue questions that were decided in the Award," thereby forcing the respondent to address "unjustified and on occasion reckless argumentation."); *CLAI-22*, *Micula* Decision on Interpretation, ¶ 133 (rejecting the interpretation request and ordering the respondent to bear all costs because interpretation was "not . . . the appropriate remedy and has in fact resulted in a squandering of funds."); *CLAI-16*, *David Minnotte and Robert Lewis v. Republic of Poland*, ICSID Case No. ARB(AF)/10/1, Decision on the Request for Interpretation of the Award, 22 October 2014 ("*David Minnotte* Decision on Interpretation"), ¶ 15 (finding that "[b]ecause there is no genuine dispute over interpretation, it is appropriate that the Claimants, as the unsuccessful applicants, should bear all reasonable costs of this interpretation proceeding."); *CLAI-10*, *Marvin Roy Feldman Karpas* Decision on Interpretation, ¶ 15 (finding that because "the moving party (Respondent) did not prevail," it was "reasonable to apportion the expenses" predominantly to the moving party).

¹⁶⁵ Reply, ¶ 116 ("Indeed, in the ongoing annulment proceedings, Peru submitted that, should Claimant's application be dismissed, the ad hoc Committee should, in accordance with the 'costs-follow-the-event' principle, order Claimant to bear all costs of the proceedings, including Peru's full legal fees, expenses, and interest.").

abuse of process—a contention that has nothing to do with the allocation of costs in this separate interpretation proceeding, which Peru itself chose to commence. More fundamentally, Peru’s request to shift costs to Freeport regardless of outcome does not dilute the principle it urged; if anything, it confirms Peru’s own view that a party burdening its opponent with unnecessary post-award litigation should bear the resulting costs. Peru cannot invoke that principle against Freeport in the annulment while claiming immunity from it here, as the unsuccessful moving party in a proceeding of its own making.¹⁶⁶

69. Finally, Peru’s contention that Freeport should bear the costs because this proceeding was “necessitated by Claimant’s own procedural choices” illustrates, if anything, precisely why an award of costs against Peru is appropriate.¹⁶⁷ Nothing in the ICSID Convention requires a party to invoke Article 49(2) or Article 50 before exercising its independent right to seek annulment.¹⁶⁸ Nor did Freeport have any reason to do so here: the *dispositif* and jurisdictional reasoning are clear and both parties understood the Award to exclude only claims based on penalties and interest on Tax Assessments. Thus, Freeport could not have avoided the costs of this proceeding by bringing its own request for interpretation, which would itself have been inadmissible and would have resulted in similar costs at an earlier stage. As for Article 49(2), if anyone perceived an omission the Tribunal could cure, it was Peru. After all, Peru is the party that now contends the Award has meant something other than what its *dispositif* states, and Peru is the party that seeks to benefit by changing the *dispositif* or its effect. Had that supposed defect been real and curable under Article 49(2), Peru is the party that should have sought relief within the 45-day window.¹⁶⁹ Finally, the merits and costs of the annulment application are questions for the Committee, not for this Tribunal on a costs application in this interpretation proceeding. What matters is that Peru brought this Request, that the Request is meritless, and that Freeport was put to the expense of opposing it.

70. Accordingly, the Tribunal should order Peru to reimburse Freeport for all costs and expenses associated with this proceeding, including professional fees and disbursements, together with interest from the date of the Tribunal’s decision until full and final payment.

VI. REQUEST FOR RELIEF

71. For the foregoing reasons, Freeport respectfully requests that the Tribunal:

- a. find Peru’s Request for Interpretation to be inadmissible in its entirety;

¹⁶⁶ Counter-Memorial, ¶ 48.

¹⁶⁷ Reply, ¶ 117.

¹⁶⁸ Counter-Memorial, ¶ 50.

¹⁶⁹ *Id.*

- b. alternatively, confirm that the Award found that the Tribunal lacked jurisdiction solely with respect to Freeport's claims regarding penalties and interest on Tax Assessments and not its claims regarding penalties and interest on Royalty Assessments; and
- c. order Peru to reimburse Freeport for all costs and expenses associated with this proceeding, including professional fees and disbursements, together with interest from the date of the Tribunal's decision until full and final payment.



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