

**IN THE ARBITRATION UNDER THE RULES OF THE UNITED NATIONS COMMISSION ON  
INTERNATIONAL TRADE LAW AND THE UNITED STATES – PERU TRADE PROMOTION  
AGREEMENT**

**BACILIO AMORRORTU**

*CLAIMANT,*

v.

**THE REPUBLIC OF PERU**

*RESPONDENT*

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**NOTICE OF ARBITRATION**

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## I. INTRODUCTION

Bacilio Amorrortu (**Amorrortu**), a citizen of the United States of America, hereby requests the institution of arbitration proceedings against the Republic of Peru (**Peru**) in accordance with Article 3 of the Arbitration Rules of the United Nations Commission on International Trade Law (**UNCITRAL Arbitration Rules**).

This notice of arbitration (the **Notice**) is submitted pursuant to Chapter 10 of the United States-Peru Trade Promotion Agreement (**USPTPA**),<sup>1</sup> which was ratified by Peru in June 2006 and signed by the United States on December 14, 2007. The USPTPA entered into force on February 1, 2009.

The USPTPA seeks "to promote transparency and prevent and combat corruption, including bribery, in international trade and investment."<sup>2</sup> However, Amorrortu's investments and legitimate expectations were frustrated precisely by a corrupt scheme designed to benefit a local company that bribed the government of Peru to obtain a government contract that Amorrortu was negotiating through a process of "direct negotiation."

This case arises out of Amorrortu's investment in Peru with the expectation to obtain a contract to resume the oil drilling and extraction operations in two oil blocks located in the Talara Basin in the Province of Talara, Piura Region, Peru. The Talara Basin is one of the most important reserves of crude oil in Peru, having produced more than 1.68 billion barrels of oil.<sup>3</sup>

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<sup>1</sup> USPTPA Investment Chapter (**CL-001**).

<sup>2</sup> USPTPA Preamble (**CL-002**).

<sup>3</sup> See D. Higley, *The Talara Basin Province of Northwestern Peru: Cretaceous-Tertiary Total Petroleum System*, August 2004, available at <https://pubs.usgs.gov/bul/2206/A/> (6 February 2020), p. 1.

Since 1976, Amorrortu has been involved in drilling and extraction operations in the Talara Basin. Indeed, Block III of the Talara Basin is popularly known in the industry as the "Amorrortu" oil block because it has been successfully serviced and operated by the Amorrortu family company for more than twelve years.

In 1995, Amorrortu had to surrender the contractual rights to operate Block III due to the fierce political persecution launched by the dictatorial government of President Alberto Fujimori. This political persecution led Amorrortu to seek asylum in the United States, which he obtained from the United States Department of Justice on April 26, 2000.<sup>4</sup>

In the United States, Amorrortu continued his involvement in the oil industry together with his wife - a high executive in the industry, and in 2010, he became a citizen of the United States. Amorrortu has since officially renounced his Peruvian citizenship and is not a citizen of any other country.

In 2012, after the return of democracy in Peru, Amorrortu formed Baspetro S.A.C. (**Baspetro**) with the expectation to seek - and indeed recover - the contractual rights to operate Block III of the Talara Basin. To this end, Amorrortu approached "Perúpetro, S.A." (**PeruPetro**) - the Peruvian governmental entity responsible for the operation of the oil blocks - to negotiate an agreement to operate Block III. After various presentations to PeruPetro about his successful history operating Block III, the persecution leading to his asylum, and his proposal to benefit the community of Talara through the investment of foreign capital, Amorrortu was

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<sup>4</sup> See Letter from the U.S. Department of Justice, Immigration and Naturalization Service, 29 January 2001 (**C-001**).

invited to submit a direct negotiation proposal for Block III and for the adjacent Block IV, which he did on May 28, 2014.

Under Peruvian law, the presentation of a direct negotiation proposal commences a process of direct negotiation unless the proposal is formally rejected within ten days.<sup>5</sup> When a direct negotiation proposal is presented by invitation, the ten-day period is a formality that officially confirms the commencement of the direct negotiation phase. In any event, it is undisputed that the ten-day period expired, giving Amorrortu the right and the legitimate expectation to complete the direct negotiation of the agreement, consistent with Amorrortu's conversations with the President of PeruPetro. At this point, Amorrortu was willing, ready, and able to complete the direct negotiation process with PeruPetro.

Notwithstanding, in violation of Amorrortu's acquired rights to direct negotiation and his legitimate expectations, PeruPetro initiated a public bidding process for the license to operate Blocks III and IV. This public bidding process was clearly designed to benefit the local company Graña y Montero, S.A.A. (***Graña y Montero***), as the request for proposal issued by PeruPetro included a series of arbitrary requirements that only Graña y Montero could satisfy.

For years, Amorrortu has been claiming that PeruPetro had violated Peruvian law and that the public bidding process was unfairly designed and rigged to benefit Graña y Montero. However, as of March 2017, the government of Peru and Graña y Montero denied any participation in any corruption scheme, and Amorrortu did not have any information corroborating his claims.

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<sup>5</sup> See Regulation on the Qualification of Petroleum Companies approved through Supreme Decree No. 030-2004-EM (**CL-003**), Art. 9.

The evidence of corruption began to surface in June 2019 when Graña y Montero admitted that the company had in fact bribed the government of Peru to obtain several government projects. Today, there is undisputed evidence that in 2011, during Peru's Presidential campaign, Graña y Montero, together with Odebrecht, paid USD \$3,000,000.00 to Ollanta Humala (**President Humala**) and his wife Nadine Heredia (**Mrs. Heredia**). Then, during President Humala's presidency (2011-2016), Graña y Montero paid in excess of USD \$3,700,000.00 in bribes to members of President Humala's government, in order to be adjudicated government contracts. As a result of these payments, and other payments of bribes currently under investigation, Graña y Montero was favored with numerous contracts by President Humala's government, including the contracts for the operation of oil Blocks III and IV granted in 2014-2015.

It is by now well established that a host state breaches its fair and equitable treatment obligations under a bilateral treaty when it corruptly exercises its discretion to assign government contracts in which foreign investors have acquired interests.<sup>6</sup> That is exactly what happened in this dispute. Peru breached its obligations under the USPTPA by aborting the direct negotiation process with Baspetro to favor Graña y Montero.

There are usually two significant challenges in these types of cases: (1) proving that the bidding process was in fact influenced by corruption, and (2) establishing that in the absence of corruption, the investor would have been awarded the contract.

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<sup>6</sup> See, e.g., *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award, 8 October 2009 (**CL-004**), ¶ 221.

This case, however, is unique in that both challenges can be easily overcome. First, the evidence of corruption is overwhelming. Indeed, this is one of several cases in which Graña y Montero was handpicked by the office of President Humala to receive a government contract in exchange for illegitimate payments. Second, Peru cannot seriously dispute that Baspetro had been qualified to participate in a direct negotiation process. This process guaranteed the contract to Baspetro if it could satisfy the good faith requirements for the drilling and extraction project. The President of PeruPetro had confirmed Baspetro's offer satisfied these conditions. Therefore, there is no dispute that Amorrortu's direct negotiation with PeruPetro was aborted by the corrupt relationship between Graña y Montero and the government of Peru and that in the absence of corruption, the contract to conduct the oil drilling and extraction operations in Blocks III and IV would have been given to Baspetro.

In this Notice, Amorrortu will establish the jurisdictional and substantive bases of his treaty claim. Specifically, Amorrortu will show that:

(a) Peru breached its obligations under the USPTPA by aborting the direct negotiation process with Amorrortu with the corrupt intent to benefit Graña y Montero, a local company that had a corrupt relationship with the government of Peru (**Section V** below)

(b) Amorrortu is an investor of the United States with investments in Peru protected by the USPTPA (**Section IV** below); and

(c) Amorrortu has the right to initiate this arbitration because both Peru and Amorrortu have consented to UNCITRAL arbitration and all the conditions precedent to bringing this demand have been performed or have occurred (**Section VII** below).

## **II. PARTIES**

1. Amorrortu is a U.S. investor with more than thirty years of experience in the industry of exploration and exploitation of oil and gas.

2. All correspondence and notices relating to this case should be addressed to:

Francisco A. Rodriguez  
Luis A. Perez  
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3. Peru is a party to the USPTPA. Pursuant to Annex 10-C of the USPTPA, Peru shall be notified of claims arising under the USPTPA at the following address:

Direccion General de Asuntos de Economia Internacional  
Competencia e Inversion Privada  
Ministerio de Economia y Finanzas  
Jiron Lampa 277, piso 5  
Lima, Peru.

## **III. BACKGROUND**

### **A. Amorrortu's Leadership In The Talara Basin Since 1976**

4. Talara is a province in the Northwestern Region of Piura, Peru and is home to the Talara Basin, one of the most important reserves of crude oil in Peru. Amorrortu was born in Talara and became a successful petroleum engineer in the

region, building on his family tradition and experience of more than 100 years in the oil industry in Peru.

5. In 1978, Amorrortu's first oil company, "Promociones Petroleras Talara, S.A." (**Propetsa**), began operations to furnish well services and workover services using their own oil rigs and equipment to the oil industry in Talara, Peru. Amorrortu was responsible for overseeing the day to day operations of Propetsa.

6. Initially, Propetsa's primary client was the U.S. oil company Occidental Petroleum Corporation (OXY) in the Talara Basin. Later, in June 1982, Propetsa was additionally retained by "Petróleos del Perú, S.A." (**PetroPeru**), the state-owned petroleum company responsible for managing and administrating the oil industry in Peru, to maintain oil wells in Talara.<sup>7</sup> Because of his work ethics and his knowledge of the Talara Basin, Amorrortu became one of the most recognizable names in the industry.

7. In 1991, the government of Peru initiated a process to privatize the oil drilling and extraction operations in the country to attract foreign investment and make the industry more modern and efficient. As part of this process, the Talara Basin was divided into approximately 14 oil and gas blocks. These blocks were offered to local and foreign investors through direct negotiations or public bidding processes.

8. In October of 1991, PetroPeru issued a request for proposal for a contract to conduct the drilling and extraction operations in Block III.<sup>8</sup> This Block

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<sup>7</sup> See Special Examination on PetroPeru's debt in Propetsa's favor, 18 June 1992 (**C-002**).

<sup>8</sup> See Supreme Decree No. 177-92-EF, 28 October 1992 (**CL-005**).

was recognized for its potential with confirmed crude oil reserves of more than 10 million oil barrels and potential production of more than 2000 oil barrels per day.

9. To take advantage of this opportunity, Propetsa, under the leadership of Amorrortu, presented a proposal. Another company presented a similar complementary proposal, resulting in the formation of a 50/50 consortium. The consortium was called PROVISA.<sup>9</sup> Amorrortu was the head of the consortium and responsible for its operations. PROVISA's proposal was approved on October 28, 1992 and was ultimately awarded the contract, which was signed on March 4, 1993.<sup>10</sup>

10. Under the contract, PROVISA had the right to conduct the drilling and extraction operations in Block III for twenty years, from April 1993 until April 2013.

11. Given Amorrortu's familiarity with the Talara Basin, PROVISA was able to immediately begin its operations. After taking over the drilling and extraction operations of Block III, PROVISA was able to increase the production of the Block and the benefits received by the Talara local community.

12. Block III became known as the "Amorrortu" oil block, and Amorrortu became one of the most recognized figures in the oil industry in Talara, in the Piura Region, and in Peru, particularly after he received the support of more than two hundred thirty thousand citizen signatures to be the leader of a new national political alternative party headquartered in the Piura Region.

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<sup>9</sup> See Directory Agreement No. 034-2014, 20 March 2014 (**C-003**).

<sup>10</sup> Hydrocarbons Exploitation Services Contract signed between PetroPeru and PROVISA, 4 March 1993 (**C-004**).

## **B. Amorrortu Becomes A Citizen Of The United States**

13. Unfortunately, the business and political success of Amorrortu was perceived as a threat to the repressive regime headed by Alberto Fujimori. Motivated by political bias, President Fujimori launched a plan to financially bankrupt Amorrortu. As part of this plan, the state-owned PetroPeru abruptly and arbitrarily denied Propetsa its payment for services rendered prior to the company's operation of Block III. This situation later translated into a lack of liquidity that rendered Propetsa insolvent. Propetsa had no choice but to transfer its valuable rights over Block III to the Canadian oil company, Mercantile Oil & Gas (***Mercantile***) on October 26, 1995.<sup>11</sup>

14. Amorrortu was forced to flee Peru and seek asylum in the United States. The U.S. Department of Justice granted Amorrortu's asylum petition on April 26, 2000. He moved to Houston, Texas where he remained active in the oil industry.

## **C. Amorrortu Commences Direct Negotiation For Blocks III and IV**

15. By 2012, Peru had held three democratic presidential elections and the contract to operate Block III that was transferred by PROVISA to Mercantile (later to be known as Interoil Peru S.A. (***Interoil***)) was near expiration.

16. Aware of the expiration of the contract, Amorrortu saw an opportunity to finish what he had started prior to the political persecution against him and hoped to operate Block III once again.

17. To this end, in 2012, Amorrortu formed Baspetro, a company organized under the laws of Peru. Amorrortu invested millions of dollars to put Baspetro in a position to directly negotiate the contract to conduct the oil drilling and extraction in

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<sup>11</sup> See Licensing Contract for Hydrocarbon Exploitation entered between PeruPetro and Mercantile, 19 December 1995 (**C-005**).

Block III. At the time, the Talara Basin was under the control of PeruPetro, the state-owned entity created by the government of Peru to further facilitate the privatization of the oil industry.

18. On August 8, 2013, Amorrortu delivered a letter to Luis Ortigas (**Ortigas**), the president of PeruPetro, stating Baspetro's interest and ability to immediately operate Block III. In his letter, Amorrortu explained his past success leading his company's operation of Block III.

19. On August 12, 2013, PeruPetro replied stating that Block III would not be open to direct negotiation.<sup>12</sup> Instead, PeruPetro approved temporary operation contracts in favor of InterOil for Blocks III and IV.<sup>13</sup>

20. On January 16, 2014, Amorrortu sent a letter to PeruPetro expressing his disagreement with the decision of extending InterOil's contract on Block III.<sup>14</sup> In the same letter, Amorrortu reiterated Baspetro's willingness and ability to immediately operate Block III.

21. On February 6, 2014, Amorrortu had a phone conference with Ortigas. During the call, Amorrortu gave Ortigas more details about his plan to modernize the oil industry in the Talara Basin.

22. On March 20, 2014, Amorrortu, through Baspetro, reiterated to PeruPetro—this time copying the Ministry of Energy and Mines (**MEM**)— Baspetro's immediate availability to operate Block III.

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<sup>12</sup> See Letter from Luis Ortigas to Bacilio Amorrortu, 12 August 2013 (**C-006**). It is worth noting that on April 17, 2008, through Supreme Decree No. 024-2008-EM, Block III's Hydrocarbons Operations Contract's modification was approved given that Mercantile changed its social denomination to InterOil. This change was elevated to Public Deed on May 20, 2008.

<sup>13</sup> See Directory Agreement No. 034-2014, 20 March 2014 (**C-003**).

<sup>14</sup> See Email from Bacilio Amorrortu to Maria Angelica Cobena, 16 January 2014 (**C-007**).

23. Ortigas agreed to meet with Amorrortu on May 22, 2014, shortly after PeruPetro approved temporary operation contracts for Blocks III and IV in favor of Interoil.<sup>15</sup> In the meeting with Ortigas,<sup>16</sup> Amorrortu once again went over his professional background in the oil industry in Talara, the abuses committed by the government of Peru against his property, the political persecution he suffered, and how this persecution had ultimately resulted in the U.S. Department of Justice granting him political asylum. Before the end of the meeting, Ortigas instructed Amorrortu to prepare a proposal for direct negotiation (the **Baspetro Proposal** or the **Proposal**) to operate Blocks III and IV. Ortigas further represented to Amorrortu that the Baspetro Proposal would be subject to a legal-technical analysis by PeruPetro and that it would be discussed by PeruPetro's board.

24. As instructed by Ortigas, Amorrortu sent via email the Baspetro Proposal to PeruPetro on May 28, 2014.<sup>17</sup> A hard copy of the Proposal was also submitted to PeruPetro at their offices in Lima, Peru.<sup>18</sup> The Proposal complied with all the requirements instructed by Ortigas, including the additional proposal to operate Talara's Block IV.<sup>19</sup>

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<sup>15</sup> See Directory Agreement No. 034-2014, 20 March 2014 (**C-003**).

<sup>16</sup> See Email exchange between Bacilio Amorrortu, Maria Angelica Cobena, and Magali Hernandez, May 2014 (**C-008**).

<sup>17</sup> Email from Bacilio Amorrortu to Maria Angelica Cobena, 28 May 2014 (**C-009**).

<sup>18</sup> See Receipt of Baspetro Proposal Stamped by PeruPetro, 28 May 2014 (**C-010**).

<sup>19</sup> Proposal from Baspetro SAC to PeruPetro to operate Blocks III and IV of the Peruvian North-West, 27 May 2014 (**C-011**).

**D. PeruPetro Terminates Its Negotiations With Amorrortu To Benefit Graña y Montero**

25. Peruvian law makes clear that a party that presents a proposal for direct negotiation is certified to start the direct negotiation of an agreement if the government of Peru or the corresponding agency does not reject the proposal within ten days.<sup>20</sup> When the direct negotiation proposal is presented by invitation, the ten-day period is a formality that officially confirms the commencement of the direct negotiation phase. In any event, it is undisputed that the ten-day review period expired and that PeruPetro did not reject Amorrortu's direct negotiation Proposal. Therefore, as of June 28, 2014, Amorrortu had an acquired interest in the "direct negotiation" of a contract to conduct the drilling and extraction operations in Blocks III and IV.

26. However, on July 14, 2014, to Amorrortu's surprise, and again contrary to the representations made by Ortigas, PeruPetro opened an international bidding process for the operation of Blocks III and IV.<sup>21</sup>

27. Shortly thereafter, in response to the July 14, 2014 announcement, Amorrortu traveled to Peru and met with Ortigas on July 16, 2014. Ortigas told Amorrortu that the PeruPetro board had rejected the Baspetro Proposal and started the international bidding process.

28. After the July 16, 2014 meeting with Ortigas—where Ortigas told Amorrortu that the Baspetro Proposal had been rejected by PeruPetro's board of directors— Amorrortu went directly to the office of Isabel Tafur (***Mrs. Tafur***),

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<sup>20</sup> See Regulation on the Qualification of Petroleum Companies approved through Supreme Decree No. 030-2004-EM (**CL-003**), Art. 9.

<sup>21</sup> See PeruPetro S.A., Press Release, 14 July 2014 (**C-012**).

PeruPetro's General Manager, who told Amorrortu that the board was never informed of the Baspetro Proposal, and that the Proposal was, therefore, never submitted for the legal-technical analysis mentioned by Ortigas. Subsequently, in a communication to Mrs. Tafur, Amorrortu complained that the international bidding process for Blocks III and IV had been a charade with the only purpose of benefitting Graña y Montero. PeruPetro rejected Amorrortu's claims and took the position that it had legitimately awarded Graña y Montero the operation contracts to exploit Blocks III and IV.

29. At the time, Amorrortu did not have any evidence confirming his claim that Graña y Montero had in fact obtained the contracts for Blocks III and IV through corrupt means.

30. Without any formal letter explaining why the Proposal was rejected, on August 20, 2014, PeruPetro sent a letter to Baspetro inviting the company to present a proposal for Block III's international public bidding process, "in line with the Proposal that [Baspetro] presented [to PeruPetro on May 28, 2014]."<sup>22</sup>

31. On October 31, 2014, Amorrortu submitted, through Baspetro, the documents required to participate in the international bidding process.<sup>23</sup> Amorrortu's Proposal allocated 5% of the project's earnings to the development of the local community, following the standards of current international practice.<sup>24</sup>

32. On November 3, 2014, PeruPetro informed Amorrortu that Baspetro did not fulfill the technical standards set forth in the bidding process.<sup>25</sup> These technical

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<sup>22</sup> Letter from PeruPetro, S.A. to Bacilio Amorrortu, 20 August 2014 (**C-013**).

<sup>23</sup> See Letter from Bacilio Amorrortu to "Comisión de la Licitación Pública Internacional No. PERUPETRO-001-2014", 31 October 2014 (**C-014**).

<sup>24</sup> Proposal from Baspetro SAC to PeruPetro to operate Blocks III and IV of the Peruvian North-West, 27 May 2014 (**C-011**), p. 13.

<sup>25</sup> See Letter from Roberto Guzman to Bacilio Amorrortu, 3 November 2014 (**C-015**).

requirements were purposefully designed to exclude Baspetro and award the contract to Graña y Montero.

33. On December 12, 2014, Graña y Montero was announced as the winner of the bidding process as sole bidder for Block III and Block IV.

34. In light of this irregular bidding process, Amorrortu suspected that the bidding process had been illegitimate. In a letter to PeruPetro, Amorrortu described how this irregular bidding process was evidently discriminatory towards him and Baspetro.<sup>26</sup> Similarly, in another letter sent to PeruPetro, Amorrortu described how this irregular bidding process would affect the communities of Talara and the Vichayal District.<sup>27</sup>

35. Baspetro sent a compilation of these letters to the MEM, the Peruvian Congress (Piura Congressman, Leonidas Huayama), and the U.S. State Department (this last letter specifically sent on February 6, 2015).

**E. The Truth Is Revealed: Graña y Montero Paid Millions Of Dollars In Bribes To President Humala**

36. Amorrortu has since discovered that at the same time that he was negotiating the agreement for the drilling and extraction operations in Blocks III and IV, Graña y Montero was exerting its corrupt influence on President Humala and on Mrs. Heredia to seize two major contracts that were being adjudicated by the government of Peru: (1) the Contract for Blocks III and IV and (2) the Contract to develop a gas pipeline in the Southern part of Peru (**GSP Project**). Both public work

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<sup>26</sup> Letter from Bacilio Amorrortu to Mrs. Isabel Tafur, 5 February 2015 (**C-016**).

<sup>27</sup> Letter from Bacilio Amorrortu to Mrs. Isabel Tafur, 15 December 2014 (**C-017**).

contracts were assigned in 2014 to Graña y Montero and their affiliates under conditions that were highly prejudicial to the government of Peru.

37. In the GSP Project, for example, Graña y Montero, together with Odebrecht and another company, were awarded the agreement to maintain and develop the gas pipeline in a public bidding process in which their only competitor was arbitrarily disqualified before the bidding proceedings had commenced. The disqualification of Graña y Montero's competitor was inexplicable as their proposal was USD \$150,000,000.00 below the proposal of Graña y Montero and its affiliates.<sup>28</sup>

38. On June 7, 2019, Graña y Montero acknowledged that it paid USD \$3,700,000.00 to obtain government contracts during President Humala's presidency and signed an agreement with the office of the Attorney General in Peru to collaborate in the investigation of corrupt payments to President Humala and Mrs. Heredia regarding several government projects.<sup>29</sup>

39. Further, Jose Alejandro Graña Miroquesada (**Jose Graña**) and Hernando Graña Acuña (**Hernando Graña**), respectively, President and CEO of Graña y Montero 2014-2017, and Executive Director of Graña y Montero 2014-2017, have pled guilty for money laundering and have agreed to collaborate with the Peruvian prosecutors in connection with the allegations of corruption involving a series of construction contracts and infrastructure cases.

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<sup>28</sup> See A. Aguirre, *Gasoducto: Hunden a Humala, Heredia y a sus exfuncionarios*, 8 December 2019, <https://peru21.pe/politica/gasoducto-hunden-a-humala-heredia-y-a-sus-exfuncionarios-noticia/?ref=p21r> (24 January 2020).

<sup>29</sup> See Agencia EFE, *Constructora admite un soborno por 3,7 millones de dolares en el Gobierno de Humala*, 7 June 2019, <https://www.efe.com/efe/america/politica/constructora-admite-un-soborno-por-3-7-millones-de-dolares-en-el-gobierno-humala/20000035-3995567> (4 February 2020).

40. In 2017, Jose Graña was separated from his role as a member of Graña y Montero's Board of Directors. Graña y Montero's new president, Augusto Baertl (**Mr. Baertl**) is collaborating with the Peruvian authorities in the investigation connected to bribes paid in connection to various government contracts and infrastructure projects. Additionally, on November 20, 2019, Judge Richard Concepcion Carhuancho issued an order restraining Jose Graña and Hernando Graña from leaving the country for 36 months.

41. Jose and Hernando Graña have confirmed and acknowledged the existence of an agreement between Mrs. Heredia and Jorge Barata (**Mr. Barata**)—Odebrecht's Executive Director in Peru from 2001 through 2016—where the office of President Humala would guarantee Odebrecht's success in the GSP Project bidding process, evidently favoring Graña y Montero as well.

42. After the confession of Graña y Montero and its former executives, and having conducted an exhaustive investigation, Amorrortu has been able to confirm that the bidding of Blocks III and IV was also designed, in the mold of the bidding for the GSP Project, to favor Graña y Montero. Further, Amorrortu has established that at the time the operations of Blocks III and IV were awarded to Graña y Montero, Ortigas was following direct orders from the offices of Humala and Heredia to ensure that Graña y Montero was awarded the contracts.<sup>30</sup>

43. In a corruption scheme like the one acknowledged by key participants in the GSP Project, President Humala and Mrs. Heredia instructed PeruPetro to abort the direct negotiation process that Ortigas had initiated with Amorrortu and to initiate

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<sup>30</sup> Luis Ortigas has been formally implicated by the Peruvian Attorney General's Office in corrupt activities related to the GSP Project.

a rigged bidding process designed to grant the contracts for Blocks III and IV to Graña y Montero.

44. Mrs. Heredia exercised great influence over the former Minister of Economy and Finances, Luis Miguel Castilla (**Mr. Castilla**), and the former Minister of Energy and Mines, Eleodoro Mayorga (**Engr. Mayorga**),<sup>31</sup> and she was behind the awarding of the Blocks to Graña y Montero. The awarding of the operation of the Blocks to Graña y Montero benefited President Humala and Mrs. Heredia. Indeed, President Humala and Mrs. Heredia had a significant interest in gaining political influence in the Talara region and benefitting Graña y Montero with the operation of the Blocks supported this goal.

45. To date, Graña y Montero Petrolera (**GyMP**), the Graña y Montero subsidiary that signed the operation contracts for Blocks III and IV, has failed to fulfill its contractual obligations with PeruPetro. GyMP committed itself to drill 23 oil wells annually for Block III and 33 oil wells annually for Block IV, starting on 2016.<sup>32</sup> However, GyMP has not drilled a single oil well in Block III, citing a very questionable *force majeure* excuse.<sup>33</sup>

46. Due to GyMP's breach of its contractual obligations, the government of Peru had the right to execute the respective warranty bond as contained in the

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<sup>31</sup> The Minister of Economy and Finances and the Minister of Energy and Mines are shareholders of PeruPetro.

<sup>32</sup> See Licensing Contract for Hydrocarbon Exploitation in Block III celebrated between PeruPetro and Graña y Montero Petrolera, S.A., 1 April 2015 (**C-018**); see *also* Licensing Contract for Hydrocabron Exploitation in Block IV celebrated between PeruPetro and Graña y Montero Petrolera, S.A., 1 April 2015 (**C-019**).

<sup>33</sup> See J. Saldarriaga, *GYM destraba su ingreso al lote III*, Diario El Comercio, 9 December 2019 (**C-020**).

operation contract for Block III.<sup>34</sup> However, the government of Peru has decided to turn a blind eye to this situation, and GyMP has not been penalized for its failure to perform its contractual obligations.

47. Moreover, since April 2015, Peru has received only 40.5% of the revenue generated by the operation of Blocks III and IV.<sup>35</sup> If these Blocks had been operated by Baspetro under its Proposal, Peru would have received 50% of the revenues. In other words, the Graña y Montero corruption scheme has resulted in a loss to the Peruvian government of around USD \$25,930,000.00.

48. Worse yet, during this period the local communities of Talara and Vichayal/Miramar have not received any revenue from Graña y Montero for the operation of Blocks III and IV. If these Blocks had been operated by Baspetro under its Proposal, these local communities would have already received USD \$11,950,000.00 following Baspetro's offer of committing 5% of its production to these communities.<sup>36</sup>

49. On February 4, 2020, Graña y Montero launched a new marketing campaign acknowledging its participation in the corruption that plagued Peru during the Humala administration.<sup>37</sup>

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<sup>34</sup> Licensing Contract for Hydrocarbon Exploitation in Block III celebrated between PeruPetro and Graña y Montero Petrolera, S.A., 1 April 2015 (**C-018**), Clause 3.4.

<sup>35</sup> See PeruPetro Effective Royalties, November 2019 (**C-021**).

<sup>36</sup> See Proposal from Baspetro SAC to PeruPetro to operate Blocks III and IV of the Peruvian North-West, 27 May 2014 (**C-011**), p. 13.

<sup>37</sup> Graña y Montero Marketing Campaign, 4 February 2020 (**C-022**). Through this media campaign, Graña y Montero expressly communicated that it will not commit corrupt acts ever again. Along with the company's current active involvement in effective collaboration processes related to corruption in highly controversial infrastructure projects, this media campaign confirms Graña y Montero's admission of guilt with respect to the commission of corrupt acts. (Emphasis added).

**F. Amorrortu's Attempts To Resolve This Matter Through Consultation**

50. On September 24, 2019, Amorrortu served Peru with a detailed Notice of Intent to Submit Claims to Arbitration (the **Notice of Intent**) that expressly invited Peru to resolve the dispute amicably.<sup>38</sup>

51. The parties were not able to reach an amicable resolution to this dispute during the negotiation period.

**IV. JURISDICTION**

**A. Baspetro Constitutes An Investment Under The USPTPA**

52. Article 1.3 of the USPTPA defines the term "covered investment" to mean, "with respect to a Party, an investment, [..], in its territory of an investor of another Party in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter."<sup>39</sup>

53. "Investment" is defined as follows:

*[E]very asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include:*

*(a) an enterprise;*

*(b) shares, stock, and other forms of equity participation in an enterprise;*

*(c) bonds, debentures, other debt instruments, and loans;*

*(d) futures, options, and other derivatives;*

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<sup>38</sup> Bacilio Amorrortu's Notice of Intent to Arbitrate Against Peru, 19 September 2019 (**C-023**).

<sup>39</sup> USPTPA Chapter One (**CL-006**), Art. 1.3.

*(e) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;*

*(f) intellectual property rights;*

*(g) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law; and*

*(h) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges.<sup>40</sup>*

54. Amorrortu's interest in Peru qualifies as investment as defined under the USPTPA.

55. Amorrortu created Baspetro, under the laws of Peru<sup>41</sup>, with the main objective of operating Blocks III and IV located in the region of Talara. Amorrortu further holds shares/stocks, and other forms of equity participation in Baspetro. Amorrortu, a U.S. citizen, has maintained control over Baspetro since its inception.

56. Amorrortu committed capital and other resources and assumed risks in Baspetro with the expectation of profiting from its extraction and drilling operations for Block III and eventually Block IV. In October of 2012, Amorrortu opened Baspetro's offices in the area of Talara with the purpose of investing in activities related to the production and exploitation of oil and gas in Peru. From June of 2012 through May of 2015, Amorrortu invested more than USD \$5,000,000.00 in operational, technical, and legal costs in the company. This investment further required infrastructure development, travel expenses, and the recruitment of personnel to undertake Baspetro's operation both in Talara and in Lima, as well as

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<sup>40</sup> USPTPA Investment Chapter (**CL-001**), Art. 10.28.

<sup>41</sup> See Certificate of Incorporation of Baspetro S.A.C., 17 October 2012 (**C-024**).

the investment of time by Amorrortu and his partners, all well-versed professionals in the oil industry.

57. Further, since 1992, the government of Peru had recognized a debt of approximately USD \$8,000,000.00 in favor of Amorrortu, which he contributed to Baspetrol and used as an incentive for PeruPetro to start direct negotiations. This credit against the government stemmed from services rendered by Amorrortu to PetroPeru from 1988 to 1989.

## **B. Amorrortu Qualifies As An Investor Under The USPTPA**

58. Article 10.28 of the USPTPA defines "investor of a Party" as follows:

*[A] Party or state enterprise thereof, or a national or an enterprise of a Party, that attempts through concrete action to make, is making, or has made an investment in the territory of another Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality.<sup>42</sup>*

59. As required by the definition, Amorrortu (1) is national of a Party (2) who has made investments in the territory of Peru, the other Party to the USPTPA.

60. The USPTPA makes clear that the conditions of acquisition and loss of nationality are subject to national law.<sup>43</sup>

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<sup>42</sup> USPTPA Investment Chapter (**CL-001**), Art. 10.28.

<sup>43</sup> See *Champion Trading Company, Ameritrade International, Inc. v. Arab Republic of Egypt*, ICSID Case No. ARB/02/9, Decision on Jurisdiction, 21 October 2003 (**CL-007**), pp. 11-13; see also *Hussein Nuaman Soufraki v. The United Arab Emirates*, ICSID Case No. ARB/02/7, Award, 7 July 2004 (**CL-008**), ¶ 55, upheld by the ad hoc Committee, Decision on Annulment, 5 June 2007 (**CL-009**), ¶ 60; *Waguih Elie George Siag and Clorinda Vecchi v. The Arab Republic of Egypt*, ICSID Case No. ARB/05/15, Decision on Jurisdiction, 11 April 2007 (**CL-010**), ¶¶ 152, 171-72, 193; *Victor Pey Casado and President Allende Foundation v. Republic of Chile*, ICSID Case No. ARB/98/2, Award, 8 May 2008 (**CL-011**), ¶¶ 275-323; *Ioan Micula, Viorel Micula, S.C. European Food S.A, S.C. Starmill S.R.L. and S.C. Multipack S.R.L. v. Romania*, ICSID Case No. ARB/05/20, Decision on Jurisdiction, 24 September 2008 (**CL-012**), ¶ 86.

61. The Immigration and Nationality Act (**INA**), which was enacted in 1952, defines a "national of the United States" as "(A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States."<sup>44</sup>

62. During the repressive regime of President Alberto Fujimori, Amorrortu was persecuted<sup>45</sup> and he had to flee to the United States where he has been exiled since April 26, 2000. In 2010, Amorrortu became a naturalized citizen of the United States, and has held this nationality, without interruption, since then.<sup>46</sup> Furthermore, as required by the Peruvian Constitution,<sup>47</sup> Amorrortu expressly renounced his Peruvian nationality prior to the commencement of these proceedings. Clearly, from the moment he had to seek asylum in the United States, Amorrortu no longer held any strong connections with Peru or his Peruvian nationality. On the other hand, he has a long-standing and close connection to the United States, and has strong personal, economic, commercial, and political ties with that country.

63. As previously discussed, Amorrortu has "made an investment in the territory of another Party," namely, Peru. Therefore, Amorrortu is a national of the United States and qualifies as a protected "investor" under the USPTPA.

**C. The Investment Was In Existence As Of The Day Of Entry Into Force Of The USPTPA**

64. The USPTPA applies not only to investments "established, acquired, or expanded" after the entry into force, but also to investments "in existence as of the

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<sup>44</sup> 8 U.S.C. § 1101 (a)(22) (**CL-013**).

<sup>45</sup> Fujimori was later accused and convicted for crimes against humanity.

<sup>46</sup> See, e.g., U.S. Passport Issued to Bacilio Amorrortu, 1 March 2010 (**C-025**); see also U.S. Passport Issued to Bacilio Amorrortu, 21 March 2016 (**C-026**).

<sup>47</sup> Peru's Political Constitution, December 1993 (**CL-014**), Art. 53.

date of entry into force of [the USPTPA]."<sup>48</sup> The USPTPA entered into force on February 1, 2009.

65. The USPTPA further states that "[f]or greater certainty, this Chapter does not bind any Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement."<sup>49</sup>

66. Amorrortu's claims in this arbitration are based on acts by Peru that took place after February 1, 2009, the date of the USPTPA's entry into force.

## **V. PERU BREACHED ITS OBLIGATIONS UNDER THE USPTPA**

67. The measures outlined in Section III above have deprived Amorrortu of the value of his extensive investment in Peru.

68. These measures violate Peru's obligations under the USPTPA, namely Peru's obligation to treat U.S. investors and their investments no less favorable than it treats, in like circumstances, domestic and other foreign investors and investments.

### **A. Peru Violated Protections Afforded to Amorrortu's Investment Under Article 10.5 Of The USPTPA**

69. Article 10.5 of the USPTPA provides that Peru "shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security."<sup>50</sup> To further explain what the parties meant by their reference to "customary law" the parties agreed, in the USPTPA, as follows:

*2. For greater certainty, paragraph 1 [of Article 10.5] prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The*

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<sup>48</sup> USPTPA Chapter One (**CL-006**), Art. 1.3.

<sup>49</sup> USPTPA Investment Chapter (**CL-001**), Art. 10.1.3.

<sup>50</sup> USPTPA Investment Chapter (**CL-001**), Art. 10.5.1 and Annex 10-A.

*concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide: (a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and (b) "full protection and security" requires each Party to provide the level of police protection required under customary international law.<sup>51</sup>*

70. The treaty standard of fair and equitable treatment is no different from the minimum standard of treatment protected by customary law.<sup>52</sup>

1. **Peru Deprived Amorrortu Of His Reasonable Expectations Under The USPTA**

71. Fair and equitable treatment is a "broad requirement,"<sup>53</sup> and a "flexible"<sup>54</sup> concept.

72. Protection of an investor's legitimate expectations is one of the most commonly invoked elements of the fair and equitable treatment standard particularly where, as here, the treaty itself requires a "predictable legal and commercial

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<sup>51</sup> USPTA Investment Chapter (**CL-001**), Art. 10.5.2.

<sup>52</sup> See *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, 24 July 2008 (**CL-015**), ¶ 592 ("as found by a number of previous arbitral tribunals and commentators, . . . the actual content of the treaty standard of fair and equitable treatment is not materially different from the content of the minimum standard of treatment in customary international law."); see also *CMS Gas Transmission Company v. The Argentine Republic*, ICSID Case No. ARB/01/8, Award, 12 May 2005 (**CL-016**), ¶ 284 ("the Treaty standard of fair and equitable treatment and its connection with the required stability and predictability of the business environment, founded on solemn legal and contractual commitments, is not different from the international law minimum standard and its evolution under customary law.").

<sup>53</sup> *Waguih Elie George Siag and Clorinda Vecchi v. The Arab Republic of Egypt*, ICSID Case No. ARB/05/15, Award, 1 June 2009 (**CL-017**), ¶ 450.

<sup>54</sup> *Jan de Nul N.V. and Dredging International N.V. v. Arab Republic of Egypt*, ICSID Case No. ARB/04/13, Award, 6 November 2008 (**CL-018**), ¶ 185.

framework for business and investment."<sup>55</sup> Indeed, the protection of legitimate expectations is the primary objective of the fair and equitable standard.<sup>56</sup> "[T]he investor's legitimate expectations are usually based on (i) a specific representation made by the host state to such an investor regarding its investment or (ii) an assumption on the part of the investor that the general regulatory framework relied upon by it at the time the investment was made will remain stable."<sup>57</sup> These representations can be contained, for example, in the host state's legislation or in contractual commitments.<sup>58</sup> The investor may reasonably expect that its expectations are legitimate if they are based on specific and unambiguous state representations.<sup>59</sup>

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<sup>55</sup> USPTPA Preamble (**CL-002**).

<sup>56</sup> See *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22, Award, 24 July 2008 (**CL-015**), ¶ 602 (where the tribunal stated that "the purpose of the fair and equitable treatment standard is to provide to international investments treatment that does not affect the basic expectations that were taken into account by the foreign investor to make the investment, as long as these expectations are reasonable and legitimate and have been relied upon by the investor to make the investment."); see also *Suez, Sociedad General de Aguas de Barcelona, S.A. and Vivendi Universal, S.A. v. Argentine Republic*, ICSID Case No. ARB/03/19, Decision on Liability, 30 July 2010 (**CL-019**), ¶ 222; *AWG Group Ltd. v. The Argentine Republic*, UNCITRAL, Decision on Liability, 30 July 2010 (**CL-020**), ¶ 222 (in which it was stated that "[i]n an effort to develop an operational method for determining the existence or nonexistence of fair and equitable treatment, arbitral tribunals have increasingly taken into account the legitimate expectations that a host country has created in the investor and the extent to which conduct by the host government subsequent to the investment has frustrated those expectations.").

<sup>57</sup> Y. Levashova, *The State's Right to Regulate and the Legitimate Expectations of the Investor*, 50, *The Right of States to Regulate in International Investment Law: The Search for Balance Between Public Interest and Fair and Equitable Treatment* (**C-027**), pp. 113–114.

<sup>58</sup> See *Suez, Sociedad General de Aguas de Barcelona, S.A. and Vivendi Universal, S.A. v. Argentine Republic*, ICSID Case No. ARB/03/19, Decision on Liability, 30 July 2010 (**CL-019**), ¶ 222 (The tribunal explained that "[w]hen an investor undertakes an investment, a host government through its laws, regulations, declared policies, and statements creates in the investor certain expectations about the nature of the treatment that it may anticipate from the host State.") (Emphasis added).

<sup>59</sup> See *Total S.A. v. The Argentine Republic*, ICSID Case No. ARB/04/01, Decision on Liability, 27 December 2010 (**CL-021**), ¶ 117; see also *Duke Energy Electroquil Partners & Electroquil*

73. The "dominant element" of fair and equitable treatment is "the notion of legitimate expectations."<sup>60</sup> With this in mind, tribunals viewing provisions virtually identical to the provisions in the USPTA concerning fair and equitable treatment have held that the "legitimate expectations" inherent in any foreign investment include the expectation that the host state will act: (a) in a transparent manner; (b) in good faith; (c) in a manner that is not arbitrary, grossly unfair, unjust, idiosyncratic, or discriminatory; and (d) with respect for due process.<sup>61</sup>

74. Indeed, the Tribunal in *EDF v. Romania* established that a host state breaches its fair and equitable treatment obligations under a bilateral treaty, as well as international public policy, when it corruptly exercises its discretion to assign government contracts in which foreign investors have acquired interests.<sup>62</sup> A corrupt

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*S.A. v. Republic of Ecuador*, ICSID Case No. ARB/04/19, Award, 18 August 2008 (**CL-022**), ¶ 351.

<sup>60</sup> *Saluka Investments B.V. v. The Czech Republic*, UNCITRAL, Partial Award, 17 March 2006 (**CL-023**), ¶ 302.

<sup>61</sup> See *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, 4 April 2016 (**CL-024**), ¶¶ 540-542 (citing the decisions of the tribunals in *Rumeli v. Kazakhstan*, *Lemire v. Ukraine*, and *Bayindir v. Pakistan*). The tribunal in *Rumeli v. Kazakhstan* confirmed that "the State must respect the investor's reasonable and legitimate expectations." *Rumeli Telekom A.S. and Telsim Mobil Telekomunikasyon Hizmetleri A.S. v. Republic of Kazakhstan*, ICSID Case No. ARB/05/16, Award, 29 July 2008 (**CL-025**), ¶ 609. Similarly, the tribunal in *Lemire v. Ukraine* noted that investors have a right to expect that host States will: (a) offer a stable and predictable legal framework; (b) honor specific representations to the investor; (c) accord investors due process; (d) act in a transparent manner; and (e) refrain from acting in bad faith or in a discriminatory manner. *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Decision on Jurisdiction and Liability, 14 January 2010 (**CL-026**), ¶ 284. The *Bayindir v. Pakistan* tribunal considered the list of factors "which emerge from decisions of investment tribunals . . . compris[ing] the obligation to act transparently and grant due process, to refrain from taking arbitrary or discriminatory measures, from exercising coercion or from frustrating the investor's reasonable expectations with respect to the legal framework affecting the investment." *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan*, ICSID Case No. ARB/03/29, Award, 27 August 2009 (**CL-027**), ¶ 178; see also *Waste Management, Inc. v. United Mexican States II*, ICSID Case No. ARB(AF)/00/3, Award, 30 April 2004 (**CL-028**), ¶ 98.

<sup>62</sup> See *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award, 8 October 2009 (**CL-004**), ¶ 221.

bidding process is a violation of international public policy, and "exercising a State's discretion on the basis of corruption is a [. . .] fundamental breach of transparency and legitimate expectations."<sup>63</sup>

75. In disregard of its obligations to Amorrortu's investment under the USPTPA, Peru breached the minimum standard of treatment set forth in Article 10.5 in the sense that it aborted the direct negotiation process with Baspetro to give the contract to Graña y Montero based on corrupt motives.

76. Clearly, in addition to the representations made by Peru to Amorrortu in particular, Peru made general representations regarding its intent to provide foreign investors with a stable and transparent framework for investment in order to encourage such investments. This is clearly reflected in Peru's establishment of constitutional guarantees of nondiscriminatory treatment to foreign investors,<sup>64</sup> and the USPTPA.<sup>65</sup>

77. Relying on this framework, Amorrortu proceeded to inject further capital in Baspetro, the company created with the main purpose of operating Blocks III and IV in the region of Talara. However, with the unquestionably corrupt and unfair international bidding process, Peru diminished and destroyed the value of Baspetro and contravened the assurances and representations it made.

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<sup>63</sup> *Ibid.*

<sup>64</sup> See Peru's Political Constitution, December 1993 (**CL-014**), Art. 63.

<sup>65</sup> USPTPA Preamble (**CL-002**).

## VI. DAMAGES

### A. Customary International Law Requires Full Reparation For Damages Resulting From The Breach Of An International Obligation

78. The customary international law standard for compensation best enunciated in the *Chorzów Factory* case, *i.e.*, the “full reparation” standard for compensation should apply here.<sup>66</sup> In particular, in *Chorzów Factory*, the Permanent Court of International Justice stated that:

*The essential principle contained in the actual notion of an illegal act [. . .] is that reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it [. . .].*<sup>67</sup>

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<sup>66</sup> See, *e.g.*, *Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/12/5, Award, 22 August 2016 (**CL-029**), ¶ 640 (“[t]he compensation provided for in Article VII only covers cases of expropriation. In all other breaches, absent any specific Treaty language, damages must be calculated in accordance with the rules of international law. The relevant principle was originally formulated in the seminal judgement of the Permanent Court of International Justice in the *Chorzów* case: reparation must wipe-out the consequences of the breach and re-establish the situation as it is likely to have been absent the breach. This well-established principle complements those found in the ILC Articles, and particularly in Article 31, to make full reparation for injury caused as a consequence of a violation of international law.”); see also *Crystallex International Corporation v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/11/2, Award, 4 April 2016 (**CL-024**), ¶¶ 841-853.

<sup>67</sup> *Case Concerning The Factory at Chorzów (Germany v. Poland)*, Decision on the Merits, 13 September 1928, PCIJ Rep. Series A. – No. 17 (**CL-030**), p. 47; see *Compañía de Aguas del*

79. The "full reparation" principle is also codified in the International Law Commission Articles (**ILC Articles**), which reflect customary international law on State responsibility.<sup>68</sup> ILC Article 31 embodies *Chorzów's* holding that "[t]he responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act."<sup>69</sup> ILC Article 34 ("Forms of reparation") gives further guidance to the form that "full reparation" may take by providing that "[f]ull reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination..."<sup>70</sup> "The compensation shall cover any financially assessable damage including loss of profits insofar as it is established."<sup>71</sup>

80. The customary international law standard applies to all host State treaty breaches.<sup>72</sup> The purpose of an award of damages is the same irrespective of the

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*Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic*, ICSID Case No. ARB/97/3, Award, 20 August 2007 (**CL-037**), ¶ 8.2.7. ("[b]ased on these principles, and absent limiting terms in the relevant treaty, it is generally accepted today that, regardless of the type of investment, and regardless of the nature of the illegitimate measure, the level of damages awarded in international investment arbitration is supposed to be sufficient to compensate the affected party fully and to eliminate the consequences of the state's action."); see also *Gold Reserve Inc. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/09/1, Award, 22 September 2014 (**CL-031**), ¶¶ 678-681.

<sup>68</sup> See, e.g., *ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V. and ConocoPhillips Gulf of Paria B.V. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB/07/30, Decision on Jurisdiction and Merits, 3 September 2013 (**CL-032**), ¶ 339 (listing and concurring with several tribunals and authorities declaring the ILC Articles to codify or declare customary international law).

<sup>69</sup> Intl. Law Commission's Arts. on the Responsibility of States for Internationally Wrongful Acts (**CL-033**), Art. 31.

<sup>70</sup> *Id.* Art. 34.

<sup>71</sup> ILC Arts. On State Responsibility, Art. 36.

<sup>72</sup> See *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Award, 28 March 2011 (**CL-034**), ¶ 149 (applying *Chorzów* to breach of the fair and equitable treatment standard even where such breach "does not lead to total loss of the investment"); see also *BG Group Plc. v. The Republic of Argentina*, UNCITRAL, Final Award, 24 December 2007 (**CL-035**), ¶¶ 421-429 (applying the *Chorzów* principle as a matter of customary international law and

nature of the host State's breaches of international obligations: to fully wipe out the consequences of the stated illegal acts and to provide full reparation so as to place the claimant in the same position in which it would have been if the State had not violated the applicable treaty.

**B. Amorrortu's Initial Assessment Of Damages**

81. Amorrortu currently estimates its damages to be in excess of USD \$90,000,00.00, including USD \$64,345,351.00 that Graña y Montero has already received for its operation of Blocks III and IV in virtue of corrupt acts plus pre and post award interest.

82. Amorrortu reserves his right to quantify and modify his monetary claims at an appropriate stage of these proceedings.

**C. Amorrortu Is Entitled To Arbitration Costs And Expenses**

83. The principle of full reparation also requires that Amorrortu be made whole for the costs of the arbitration, including his legal and expert fees, translation and other related fees and expenses of this arbitration.

84. The USPTPA provides that the Tribunal "may also award costs and attorney's fees in accordance with [Section 10.26] and the applicable arbitration rules."<sup>73</sup> In turn, Article 42 of UNCITRAL Arbitration Rules provides that "[t]he costs of the arbitration shall in principle be borne by the unsuccessful party or parties."<sup>74</sup> Therefore, Amorrortu will submit a statement of his fees and costs at an appropriate time, as the Tribunal may order.

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noting that "the Arbitral Tribunal may have recourse to such methodology as it deems appropriate in order to achieve the full reparation for the injury [...]."

<sup>73</sup> USPTPA Investment Chapter (**CL-001**), Art. 10.26.

<sup>74</sup> 2013 United Nations Commission on International Trade Law Arbitration Rules (**CL-036**), Art. 42.

## **VII. AGREEMENT TO ARBITRATE**

85. The USPTPA sets out a few requirements and suggestions before an arbitration can be brought, all of which have been met here.

86. In Article 10.17 of the USPTPA, Peru "consents to the submission of a claim to arbitration under this Section in accordance with this Agreement." Under the USPTPA, a party may pursue arbitration if (a) it has provided written notice of its intention to submit the claim to arbitration at least 90 days before submitting any claim to arbitration<sup>75</sup> and (b) six months have elapsed since the events giving rise to the claim.<sup>76</sup> Moreover, to submit a claim for breach of an investment agreement, the claimant should not have submitted "the same alleged breach" to an administrative tribunal or court of the host State or to any other binding dispute settlement procedure.<sup>77</sup> In addition, the USPTPA suggests that the parties should initially seek a resolution through consultation and negotiation.<sup>78</sup>

87. Each of these requirements and suggestions has been met here. First, Peru received the Notice of Intent on September 24, 2019.<sup>79</sup> The 90-day period has thus expired. Second, as set forth above, more than six months have lapsed since the events giving rise to Amorrortu's claims. Third, Amorrortu has not submitted its claim for breaches of the USPTPA either to the courts or administrative tribunals of Peru or to any other applicable dispute settlement procedure. Finally, Amorrortu

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<sup>75</sup> USPTPA Investment Chapter (**CL-001**), Art. 10.16(2).

<sup>76</sup> USPTPA Investment Chapter (**CL-001**), Art. 10.16(3).

<sup>77</sup> USPTPA Investment Chapter (**CL-001**), Art. 10.18(4)(a).

<sup>78</sup> USPTPA Investment Chapter (**CL-001**), Art. 10.15.

<sup>79</sup> Bacilio Amorrortu's Notice of Intent to Arbitrate Against Peru, 19 September 2019 (**C-023**).

attempted to resolve the present dispute with Peru. These meetings were unsuccessful.

88. Finally, as required by Article 10.18(2) of the USPTPA, Amorrortu waives its right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 10.16, except for proceedings for interim injunctive relief, not involving payment of monetary damages, before a judicial or administrative tribunal of Peru. To the extent that the Tribunal may decline to hear any claims asserted herein on jurisdictional or admissibility grounds, Claimant reserves the right to bring such claims in another forum for resolution on the merits.

### **VIII. CONSTITUTION OF THE ARBITRAL TRIBUNAL, PLACE, AND LANGUAGE OF THE ARBITRATION**

#### **A. Constitution Of The Arbitral Tribunal**

89. In accordance with Article 10.16(2)(6)(a) of the USPTPA, Claimant hereby appoints Bernard Hanotiau, as arbitrator to hear the present dispute. Mr. Hanotiau may be contacted at [bernard.hanotiau@hvdb.com](mailto:bernard.hanotiau@hvdb.com).

#### **B. Place And Language Of The Arbitration, Administering Authority**

90. Pursuant to Article 3 of the UNCITRAL Arbitration Rules, Amorrortu proposes that the arbitral proceedings be conducted in English, and that the place of arbitration be fixed as Paris, France.

91. Furthermore, Amorrortu proposes that the Permanent Court of Arbitration serves as the administering and denominating authority.

## **IX. THE CLAIMANT'S REQUEST FOR RELIEF**

92. Based on the foregoing, and reserving his right under the UNCITRAL Arbitration Rules to modify his prayer for relief at any time in the course of the proceedings if the circumstances of the case so require, Amorrortu respectfully requests that the Arbitral Tribunal:

- (1) DECLARE that Peru has breached its obligations acquired under the USPTPA;
- (2) ORDER Peru to pay Amorrortu compensation for damage caused to him;
- (3) ORDER Peru to pay interest on all amounts awarded, at a commercially reasonable rate or such other rate determined by applicable law, from date of award until full payment of the award;
- (4) ORDER Peru to pay Amorrortu's arbitration costs, including the costs of the PCA, the Arbitral Tribunal, and the legal and other costs incurred by Amorrortu in an amount to be determined by the Tribunal; and
- (5) AWARD such other and further relief as the Tribunal may deem appropriate.

DATE: February 13, 2020

By: 

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Rebeca E. Mosquera  
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