

**IN THE ARBITRATION UNDER THE 2013 RULES OF THE UNITED NATIONS
COMMISSION ON INTERNATIONAL TRADE LAW AND THE UNITED
STATES – PERU TRADE PROMOTION AGREEMENT**

PCA Case No. 2023-22

BACILIO AMORRORTU

CLAIMANT,

v.

THE REPUBLIC OF PERU

RESPONDENT.

CLAIMANT’S REJOINDER MEMORIAL ON JURISDICTION - ENG

Reed Smith LLP
200 South Biscayne Boulevard
Suite 2600
Miami, FL 33131
Phone: +1 (786) 747-0200
Fax: +1 (786) 747-0299

Counsel for Claimant

August 18, 2026

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. PERU’S JURISDICTIONAL ARGUMENTS ARE UNAVAILING	5
A. Amorrortu’s claims are not time-barred	5
i. Peru’s conduct judicially estops Peru’s time-bar argument.....	6
ii. <i>Amorrortu I</i> satisfied the limitations period.....	7
iii. Amorrortu’s knowledge of Peru’s corruption.....	12
a. Amorrortu’s claim is based on corruption and could not have been filed in the absence of corruption	12
b. Peru’s constructive knowledge argument likewise fails	18
c. Peru’s fraudulent concealment.....	19
B. Amorrortu was Dominantly and Effectively an American national	25
C. Amorrortu had a Protected Investment	34
D. The Disputed Measures are Attributable to Peru	48
i. The ILC Articles are applicable	49
ii. PeruPetro is a <i>De Facto</i> State Organ	49
iii. PeruPetro exercises governmental authority under ARSIWA Article 5....	49
iv. PeruPetro’s licensing function is not commercial	53
E. The causal connection between Peru’s Treaty Breach and Amorrortu’s damages.....	56
F. Amorrortu complied with Treaty requirements	60

I. Introduction¹

In its Rejoinder and Reply on Jurisdiction filed on July 14, 2026 (the “Rejoinder”), Peru argues that Graña y Montero won the contracts to operate Lots III and IV in a bidding process “conducted transparently, in strict compliance with the applicable legal framework, and under the supervision of independent oversight bodies – including PeruPetro’s Institutional Control Organ.”

This statement is false, and Peru knows it.

Peru knows that by order of the First Lady (i) the direct negotiation process with Amorrortu was aborted, (ii) all bidders were disqualified for failure to meet the bidding requirements, and (iii) the bidding requirements were then relaxed for Graña y Montero. Unfortunately, this type of false and deceitful statement is only one of several misrepresentations and baseless accusations that plague Peru’s entire Rejoinder.

Neither Amorrortu nor his counsel will descend to Peru’s level of deceitful statements, personal attacks, and unsupported innuendos. Instead, this Rejoinder on Jurisdiction will rebut, in a professional and respectful manner, the jurisdictional arguments that Peru regurgitates in its Reply on Jurisdiction. In its Rejoinder, Peru repeats its six jurisdictional arguments without rebutting any of Amorrortu’s arguments, as shown below.

1. **Limitations Period.** Peru insists that this action is barred by the applicable limitations period. But Peru ignores that this claim—same parties and same facts—was submitted to arbitration in *Amorrortu I*, which was timely commenced within three years from the date in which Amorrortu learned that Graña y Montero had obtained the contracts for Lots III and IV through corruption in violation of the Treaty’s Fair and Equitable guarantees.

¹ While this Rejoinder focuses only on jurisdictional issues in line with Procedural Order No. 14, issued on June 1, 2026, a lack of response to any of Peru’s claims should not be interpreted as acquiescence and will be dutifully addressed at the final hearing in January of 2027. Claimant hereby incorporates all exhibits and legal authorities referenced in his respective indexes.

The submission in *Amorrortu I* satisfies the prescription period, particularly as *Amorrortu I* is still a pending action.

It is similarly baffling that Peru still insists that the contracts for Lots III and IV were obtained in a transparent bidding process, and on the other hand, that Amorrortu should have known that the subject contracts were procured by corruption outside of the prescription period.

Recognizing this clear contradiction, Peru tries to reconstruct Amorrortu's claims and argues that Amorrortu could have presented his claims before he acquired knowledge of the corruption. How? Peru does not say.

Respectfully, this argument is nonsensical.

Obviously, Peru is the Respondent and its reconstruction of Amorrortu's claims is of no moment here. Second, this case is about corruption. Peru breached the Treaty when it exercised its contractual discretion through corrupt means. Therefore, Amorrortu could not have possibly acquired knowledge of the breach until it discovered the corruption. And Peru cannot argue that the claims are time barred while it denies the corruption.

2. **Dominant and effective nationality.** Peru argues that Amorrortu's dominant and effective nationality was Peruvian at all relevant times. In so doing, Peru asks this Tribunal to be the first tribunal to hold that an investor's dominant nationality is the nationality of a country in which he did not reside when he made the investment, when the Treaty was breached, or when the action was commenced. There is simply no legal support for this argument. The undisputed fact that has remained a constant throughout *Amorrortu I* and *Amorrortu II* is that at all relevant times, Amorrortu resided, had his family, and paid taxes in the United States.

The facts on this point are undisputed. Amorrortu fled Peru in 1999, sought and obtained political asylum in the U.S. in 2001, and became a naturalized U.S. citizen in 2010—four years

before any dispute arose—and has lived, voted, paid taxes, and conducted his personal life exclusively as an American ever since.

3. **Protected investment.** Peru's argument is belied by the Treaty's definition of investment. Baspetrol is an enterprise controlled by Amorrortu—a covered investment under Article 10.28(a) of the Treaty in which Amorrortu contributed his experience, expertise, and know-how about the Talara oil fields.

Peru cannot seriously dispute Amorrortu's extensive experience and know-how in the petroleum industry. After all, Amorrortu had more than twenty years of experience in the operation of oil blocks in the Talara region and personally operated Block III of Talara from 1993 to 1995, directing an increase in production of more than 100 barrels per day.² Additionally, Amorrortu served as personal advisor to James C. Storm, owner of Marine Drilling Company, one of the world's largest offshore drilling corporations,³ and maintained professional relationships with senior executives at Halliburton, FMC Technologies, and other major international petroleum services companies.⁴

Further, Amorrortu had an outstanding multi-million dollar claim for account receivables against Peru, which he offered to release to obtain the contracts to operate Blocks III and IV.⁵

Peru tries to draw a line between the rights that belong to the corporation under Peruvian law and the rights of the shareholders. This distinction has little bearing in the analysis of a protected investment under the Treaty. As the controlling shareholder of Baspetrol, Amorrortu has the right to sue for the harm caused by Peru's violation of the Treaty. The tribunals in *Tokios*

² See CWS-1 [Amorrortu], ¶¶ 17, 21; also see CWS-2 [Amorrortu], ¶ 13; CWS-3 [Amorrortu], ¶¶ 4-5.

³ See CWS-1 [Amorrortu], ¶ 11; also see CWS-2 [Amorrortu], ¶ 11.

⁴ See CWS-1 [Amorrortu], ¶¶ 73-74; also see CWS-3 [Amorrortu], ¶ 16.

⁵ See (C-313), Senate Testimony; (C-189), Swiss Bank correspondence regarding recovery of claims against PetroPeru.

Tokelés v. Ukraine, Siemens A.G. v. Argentine, Ioannis Kardassopoulos v. Georgia, Tza Yap Shum v. Peru, Mobil Corporation et al v. Venezuela, Cemex Caracas Investments B.V. et al v. Venezuela, Anglo American PLC al v. Venezuela, and Vestey Group Limited v. Bolivarian Republic of Venezuela so held.

4. **Attribution.** Peru claims that the disputed measures are not attributable to it because PeruPetro’s conduct was commercial. This ignores that the corruption was directed by the Head of State and First Lady—*de jure* organs of Peru whose conduct is automatically attributable under customary international law—and that PeruPetro exercises delegated governmental authority in granting hydrocarbon licenses over constitutionally designated national patrimony.

5. **Causation.** Peru claims there is no causal connection between its breach and Amorrortu’s damages. This is a question of the merits improperly elevated to jurisdiction. But more importantly, the evidence confirms that, but for the corruption Baspetro would have received the contracts to operate Blocks III and IV either through the direct negotiation process or a transparent bidding. No other company had the experience and expertise that Amorrortu had and Baspetro’s financial terms were far superior than any of the other terms contemplated.

6. **Consultation.** Peru claims Amorrortu failed to comply with the Treaty procedural prerequisites. This is another frivolous argument. Amorrortu served a Notice of Intent in September 2019, engaged in consultation and negotiation with Peru’s Special Commission in December 2019, and the claims in this arbitration are the same claims that were the subject of those consultations.

This Jurisdictional Rejoinder addresses each objection in turn.⁶

⁶ A lack of response to any of Peru’s merits arguments should not be interpreted as acquiescence; those arguments will be addressed at the hearing on the merits. To the extent necessary, Claimant reasserts his arguments as previously submitted in his Statement of Claim dated August 21, 2023, and Reply dated December 22, 2025.

II. Peru's Jurisdictional Arguments are Unavailing

In its Rejoinder, Peru raises six jurisdictional objections, each addressed below: (A) prescription; (B) nationality; (C) protected investment; (D) attribution; (E) causal connection; and (F) procedural prerequisites. As set forth in more detail below, each and every jurisdictional objection fails factually and legally.

A. Amorrortu's claims are not time-barred

Peru's prescription objection is fundamentally inconsistent: Peru simultaneously argues that (1) there is no corruption related to Blocks III and IV (its merits defense relying on the Lava Jato Special Team findings),⁷ yet (2) Amorrortu should have known about corruption related to Blocks III and IV years before it was publicly confirmed (its limitation defense).⁸ This internal contradiction demonstrates that Peru's time-bar objection is not only legally flawed but factually untenable.⁹

Peru's arguments that Amorrortu's claim is time-barred fail for three independent reasons: (i) Peru is estopped from arguing that the claim is time-barred based on its conduct in *Amorrortu I* and because of *res judicata*; (ii) the filing of *Amorrortu I* satisfied the statute of limitations period; and (iii) Amorrortu did not acquire actual or constructive knowledge of the corruption—which is itself an independent Treaty breach—until August 31, 2020, when the First Lady's diaries linking Blocks III and IV to the corruption scheme became publicly available.¹⁰

⁷ See Respondent's Rejoinder and Reply on Jurisdiction, 14 July 2026, ¶¶ 233, 253.

⁸ See Respondent's Rejoinder and Reply on Jurisdiction, 14 July 2026, ¶¶ 315, 339.

⁹ See Peru's Statement of Defense, ¶ 208.

¹⁰ See Claimant's Reply, ¶¶ 336-338.

i. Peru's conduct judicially estops Peru's time-bar argument

To the extent there has been any delay in the filing of this Arbitration, the delay was driven by Peru.¹¹ In *Amorrortu I*, Peru raised six preliminary objections on December 9, 2020, including Objection 5 asserting that Claimant's claims were "time-barred" under Article 10.18.1 of the Treaty.¹² Critically, Peru simultaneously refused to consent to Claimant's attempt to cure an alleged waiver defect—on December 22, 2020, Peru declined Claimant's good-faith request to amend his Notice of Arbitration.¹³ Claimant characterized this refusal as part of Peru's broader strategy "to derail this arbitration and deny Amorrortu the opportunity to present his case," noting that Peru "insists that Amorrortu must commence a new arbitration" rather than allow a simple procedural amendment.¹⁴ Claimant argued that forcing a refiling "only delays procedures and will provoke additional costs to both parties," citing the *Renco I* refiling as precedent for this inefficient outcome.¹⁵

In addition, in Peru's Submission on Preliminary Objection in *Amorrortu I*, Peru successfully persuaded the Tribunal to determine whether Amorrortu stated a claim under the Treaty because Amorrortu had already indicated that if the Tribunal found that his waiver was defective, then he would refile. Peru's argument is reproduced below, *verbatim*:¹⁶

¹¹ See (C-329), *Amorrortu I*, Amorrortu's Letter dated 12.22.2020; (C-330), *Amorrortu I*, Peru's Response dated 1.15.2021 to Amorrortu's Letter dated 12.22.2020; (CLA-118), *Amorrortu I*, Procedural Order no. 3, 21 January 2021.

¹² See (CLA-118), *Amorrortu I*, Procedural Order no. 3, 21 January 2021, ¶ 2.

¹³ See (C-330), *Amorrortu I*, Peru's Response dated 1.15.2021 to Amorrortu's Letter dated 12.22.2020, p. 2.

¹⁴ See (C-329), *Amorrortu I*, Amorrortu's Letter dated 12.22.2020; (C-330), pp. 1, 2.

¹⁵ See (C-329), *Amorrortu I*, Amorrortu's Letter dated 12.22.2020; (C-330), p. 7.

¹⁶ See *Amorrortu I*, Peru's Submission on Preliminary Objections, filed on March 15, 2021, ¶¶ 110.

110. This is particularly important in this case. Claimant has already declared that, should the Tribunal uphold Peru's jurisdictional objection he will "seek the same outcome as *Renco I*, that is, an immediate refiling of the claim."¹⁷⁵ This will require Peru to expend further public funds in defending against Mr. Amorrortu's unmeritorious claim for a second time.¹⁷⁶ It will require future arbitrators and arbitral institutions to expend time resources to attend to the same defective claim. If Mr. Amorrortu's claim lacks legal merit, it should be so found in the present arbitration, as specifically mandated by Article 10.20.4 of the USPTPA, and thereby avoid the unnecessary costs, time and burden of a new proceeding.

Never did Peru indicate to the Tribunal that a second claim would be time barred. Instead, Peru led the Tribunal in *Amorrortu I* to believe that if the defective waiver argument was accepted by the Tribunal, Amorrortu would refile his claims and Peru would have to dispute the claims on their merits.¹⁷

Having urged the *Amorrortu I* tribunal to rule upon whether Amorrortu's claim (the same claim that is raised in this Arbitration) is a claim for which an award in favor of Claimant may be made under the Treaty pursuant to the Treaty's Article 10.20.4 given the eventuality that Amorrortu would refile and Peru would have to defend the claims on the merits, Peru cannot now argue that the refiling it anticipated and acknowledged is time-barred.¹⁸

ii. *Amorrortu I* satisfied the limitations period

Peru contends that Article 10.18.1 is a "clear and rigid" requirement not subject to any suspension, prolongation, or tolling¹⁹ Peru further argues that even if tolling were permitted, it

¹⁷ *Id.*

¹⁸ See (CLA-253) Amorrortu I, Respondent's Reply To Claimant's Answer On Peru's Submission On Preliminary Objections, 24 May, 2021, ¶¶ 5-58.

¹⁹ See Respondent's Rejoinder and Reply on Jurisdiction, 14 July 2026, ¶¶ 319-325. The Treaty's Article 10.18.1 establishes a three-year limitation period but is **silent on whether that period is suspended (tolled) during the pendency of a prior arbitration involving the same claim**. The Treaty does not expressly say "the limitation period is suspended if a prior arbitration is pending," nor does it say "the limitation period continues to run regardless." This silence creates a gap in the treaty's procedural framework. The Article 38(1)(c) gap-filling argument responds: silence is not prohibition—it is a gap, and general principles of law provide the rule to fill it. The alternative reading (that silence means the clock runs regardless) would produce the absurd result that a respondent State could benefit from engineering a dismissal on procedural grounds (as Peru did with the defective waiver in *Amorrortu I*) while simultaneously letting the limitation clock expire—effectively using its own procedural victory to extinguish the claimant's substantive rights. See (CLA-254), Article 38(1)(c) of the ICJ Statute.

would not help Amorrortu because the *Amorrortu I* proceeding was never validly submitted due to the defective waiver, and Amorrortu’s claim was already time-barred by the time he submitted the Statement of Claim in *Amorrortu I*.²⁰

However, Peru does not cite any case in which a prior identical filing was timely made. Instead, Peru relies on *Grand River* and *Corona Materials* – both of which involve the application of the limitations period in the first instance. In *Grand River*, the tribunal addressed a situation where the claimant had simply not filed within the limitations period and had not commenced any prior proceeding.²¹ In *Corona Materials*, raised by Peru when addressing the improper notion that Amorrortu’s claim was time-barred when he submitted it to the *Amorrortu I* tribunal, the tribunal similarly addressed a straightforward limitations question without the essential factor of a prior arbitral proceeding.²²

Here, by contrast, Amorrortu filed *Amorrortu I* within the limitations period.

Therefore, the prescription period is satisfied as the tribunal explained in *Renco II*. The tribunal, in *Renco II* found that the prescription period is suspended once a claim is “submitted to arbitration.”²³ More specifically, the *Renco II* tribunal squarely held—in a case under the Treaty at issue here—that “the Claimant’s notice of arbitration and statement of claim in *Renco I*

²⁰ See Respondent’s Rejoinder and Reply on Jurisdiction, 14 July 2026, ¶¶ 330–341. It is worth noting that this represents a shift from Peru’s position in this Arbitration on this very issue. As confirmed by Procedural Order No. 2, issued on March 18, 2024, Peru has previously acknowledged—and even affirmatively argued in its Request for Bifurcation—that the **Treaty’s silence** on the suspension of the time limit has led the United States and other tribunals to interpret similar provisions as being “clear and rigid,” and not subject to any suspension of other qualification. See (CLA-215), Procedural Order No. 2, issued on March 18, 2024, ¶ 23; (CLA-118), Request for Bifurcation, ¶ 12.

²¹ See (RLA-8), *Grand River Enterprises Six Nations, Ltd. et al. v. United States of America*, UNCITRAL, Decision on Objections to Jurisdiction (20 July 2006), ¶¶ 29-35.

²² See (RLA-28), *Corona Materials LLC v. Dominican Republic*, ICSID Case No. ARB(AF)/14/3, Award on the Respondent Expedited Preliminary Objections in Accordance with Article 10.20.5 of the DR-CAFTA (31 May 2016), ¶¶ 188-190, 270.

²³ See (CLA-156) *The Renco Group, Inc. v. Republic of Peru*, PCA Case No. 2019-46, Decision on Expedited Preliminary Objections, ¶¶ 241,249.

suspended the prescription period of Article 10.18.1.”²⁴ The tribunal’s reasoning rested on two steps: (1) **suspension of limitation periods during arbitral proceedings is a general principle of law** recognized under international law, supported by the municipal laws of Peru, Argentina, France, Germany, Portugal, Spain, the UK, and the United States;²⁵ and (2) **the Treaty’s Article 10.16.4 deems a claim “submitted to arbitration” once a notice of arbitration and statement of claim conforming to the UNCITRAL Rules is received**, with “the necessary consequence that the prescription period under Article 10.18.1 ceases to run as of this point in time.”²⁶

Peru tries to circumvent this principle of international law by arguing tolling is not available under the Treaty. But this argument puts form over substance. Irrespective of whether the principle is described as “tolling” or “suspension” or any other terminology deemed appropriate, the reality is that when an investor files a claim within the limitations period (as was the case in *Amorrortu I*) and then refiles the same, exact claim (with privity of parties, issues of law, and applicable law), the limitations period is **satisfied** at the moment that the first claim is filed. That is the case under the laws of the United States.²⁷ And that is the case under Peruvian law.²⁸ Peru’s interpretation of the prescription period must therefore be rejected as contrary to the laws of the two state parties to the treaty.

²⁴ *Id.* at ¶ 249.

²⁵ See Claimant’s Reply, ¶ 340.

²⁶ See Claimant’s Reply, ¶ 342.

²⁷ See **(CLA-260)** *Rodriguez v. Suzuki Motor Corp.*, 570 F.3d 402, 407-09 (1st Cir. 2009) (applying Puerto Rico’s Civil Code, which allowed for equitable tolling by filing a subsequent action is satisfied if: the claims asserted in the subsequent action (1) “must seek the same form of relief” as the first action; (2) “must be based on the same substantive claims”; and (3) “provided that other Puerto Rico tolling statutes do not rescue the claims on other grounds ... must be asserted against the same defendants in the same capacities; new defendants should not be added;” **(CLA-271)** *In re Copper Antitrust Litig.*, 436 F.3d 782, 787 (7th Cir. 2006) (“In order to benefit from the tolling rule for plaintiffs covered by a class action announced in the Supreme Court’s decision in *American Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 94 S. Ct. 756, 38 L. Ed. 2d 713 (1974), the court ruled, identical legal theories must be involved in both cases”); **(CLA-272)** *Xanthopoulos v. United States DOL*, 991 F.3d 823, 833 (7th Cir. 2021) (“In determining whether there is a “complete identity of the causes of action” for equitable tolling, we therefore ask: Are “the remedies available” for the earlier, timely filed claim “separate, distinct, and independent” from those of the belated claim? If the answer to that question is yes, then the statute of limitations is not tolled.”) (internal citations omitted).

²⁸ See **CER-3 [Quiroga]** Anibal Quiroga’s Third Declaration, ¶¶ 1.2, II.10, II.11, III.51-III.56.

As the *Renco II* tribunal reasoned “once a notice of arbitration and statement of claim conforming with the formal filing requirements of the UNCITRAL Rules is submitted, Article 10.16.4 requires the [t]ribunal to treat the claim as having been ‘submitted to arbitration’, with the necessary consequence that the prescription period under Article 10.18.1 ceases to run as of this point in time.”²⁹ The tribunal emphasized that to hold otherwise “would not only create perverse incentives for a respondent State to elicit grounds for setting aside, it would frustrate a claimant’s due process rights.”³⁰ This rationale applies with equal force here, where Peru successfully obtained a dismissal on, *inter alia*, waiver grounds in *Amorrortu I* and now seeks to benefit from that delay by arguing time bar. And, this goes against the object and purpose of the Treaty under Article 31(1) of the Vienna Convention on the Law of Treaties.³¹

The *Renco II* tribunal further held that “the existence and length of such suspension can be easily and clearly established by reference to the dates of the notice of arbitration and the final award (or termination order), thus not calling into question legal predictability.”³² Importantly, this same tribunal noted: “if an arbitration is filed within the prescription period, this will prompt a diligent respondent State to find and secure evidence, such that sufficient evidence will be available to it even if a second arbitration is filed after the conclusion of the first one.”³³ This addresses any prejudice argument Peru might claim.³⁴

²⁹ See Reply, ¶ 342; **(CLA-156)** *The Renco Group, Inc. v. Republic of Peru*, PCA Case No. 2019-46, ¶223.

³⁰ See **(CLA-156)** *The Renco Group, Inc. v. Republic of Peru*, PCA Case No. 2019- ¶¶ 69, 227, 233.

³¹ See **(CLA-255)**, Article 31(1) of the Vienna Convention on the Law of Treaties.

³² See **(CLA-156)**, *The Renco Group, Inc. v. Republic of Peru*, PCA Case No. 2019-46, Decision on Expedited Preliminary Objections, ¶ 227.

³³ *Id.*

³⁴ Where treaties contain limitation periods tied to when a claimant “first acquired knowledge,” tribunals must still grapple with the interaction between tolling doctrines and the Treaty text. See **(CLA-156)** *The Renco Group, Inc. v. Republic of Peru*, PCA Case No. 2019-46; **(CLA-254)** Article 38(1)(c) of the ICJ Statute. The general principle that limitation periods are suspended during pending proceedings—recognized across civil law and common law systems—provides a gap-filling function under Article 38(1)(c) of the ICJ Statute. See **(CLA-231)**, August Reinisch, “Temporal Issues Relating to BIT Dispute Resolution,” *ICSID Review – Foreign Investment Law Journal*, Vol. 37, No. 1-2 (2022), pp. 51 *et seq.* The *Renco II* tribunal noted that there is “no clear treaty or customary international law

Lastly, on the issue of tolling, Peru argues that even if *Amorrortu I* tolled the limitation period, the tolling ended when the Partial Award on Jurisdiction was rendered in that case on August 5, 2022, not when the annulment proceedings conclude. This argument fails for three independent reasons. First, the claim in this Arbitration was filed on August 16, 2022 through the Notice of Arbitration, and the Statement of Claim on August 21, 2023, both after *Amorrortu I* was still technically pending (given the annulment). Second, even if tolling ended at the *Amorrortu I* award on August 5, 2022, the limitation period only *resumed* from that point. If the clock was suspended from September 19, 2019, through August 5, 2022 (approximately 2 years, 10.5 months), then the remaining time on the three-year clock would have been ample for Claimant to refile. Third, and more fundamentally, even *without* tolling, Peru continues to conceal and deny the corruption, therefore, Peru cannot argue that Amorrortu acquired knowledge of the corruption in any specific date.

Peru claims that *Renco II* and the “...*desire to avoid what is regarded to be a manifestly unreasonable result as a consequence of that claim’s dismissal*”³⁵ that drove the majority’s decision is not present here.³⁶ That is a difficult argument to understand. In *Amorrortu I*, Amorrortu asked for an expedited resolution of the defective waiver question. But the Tribunal agreed with Peru and decided to determine whether Amorrortu stated a claim under the Treaty.

obligation to suspend the prescription period during arbitration, nor a clear inference from the Treaty’s silence.” See (CLA-156) *Renco II*, (at pp. 61–62). This establishes the *lacuna*. The tribunal held that “rules generally accepted by municipal legal systems’ may be invoked in order that the ultimate result not ‘lose touch with reality’” and that “[t]his gap-filling capacity is enumerated by Article 38(1)(C) of the ICJ Statute.” See (CLA-156) *Renco II*, (at pp. 61–62). The tribunal then surveyed the domestic laws of Peru, Argentina, France, Germany, Portugal, Spain, the United Kingdom, and the United States to demonstrate that suspension of limitation periods during pending proceedings is a general principle recognized across legal systems. See (CLA-156) *Renco II*, (at pp. 61–62).

The *Renco II* tribunal, based on this analysis, concluded that “the [c]laimant’s notice of arbitration and statement of claim in *Renco I*, suspended the prescription period of Article 10.18.1.” See (CLA-156) *Renco II*, ¶249. In analyzing the very Treaty at issue here, *Renco II* squarely held that Article 38(1)(c)’s general principles of law fill the gap on tolling/suspension of the limitation period during a prior arbitration. See (CLA-156) *Renco II*, ¶214. See also CER-3[Quiroga] Anibal Quiroga’s Third Declaration.

³⁵ See (RLA-235) *Renco II*, Dissenting Opinion, ¶ 16.

³⁶ See Rejoinder, ¶ 328.

Therefore, the same manifest unreasonable result referenced by the tribunal in *Renco* is present here.

iii. Amorrortu's knowledge of Peru's corruption

Peru argues that Amorrortu's claim is time-barred under Article 10.18.1 of the Treaty because he first acquired knowledge of the alleged breach no later than June 2019 (per his own Statement of Claim), before the Critical Date of 21 August 2020.³⁷ Peru further contends that Amorrortu knew of the underlying measures (the public bidding process and failure to engage in direct negotiations) as early as July 2014 and complained of "irregularities," "illegalities," and "discrimination" by 2015—well before the critical date of August 21, 2020.³⁸ Peru argues that the discovery of corruption merely confirmed the "motivation" behind already-known measures and does not restart the clock.³⁹ As set forth below, these arguments fail.

a. Amorrortu's claim is based on corruption and could not have been filed in the absence of corruption

Peru is trying to restructure Amorrortu's claim and argues that the same could have been filed in the absence of corruption.⁴⁰ This case is about corruption, and Peru's argument ignores this.⁴¹ To be sure, Amorrortu's claim is that Peru engaged in corruption at two instances: (i) in the

³⁷ See Respondent's Rejoinder and Reply on Jurisdiction, 14 July 2026, ¶¶ 314–316.

³⁸ See Statement of Defense, ¶¶ 219, 228 (i), (iii) (c) and (v), 232.

³⁹ See Respondent's Rejoinder and Reply on Jurisdiction, 14 July 2026, ¶¶ 338–340.

⁴⁰ See Respondent's Rejoinder and Reply on Jurisdiction, 14 July 2026 ¶¶ 340–341.

⁴¹ Here, the corruption is not invoked as an individual Chapter 19 violation—it is invoked as evidence of how the State exercised its sovereign functions in a manner that shocks juridical propriety, and is part of the Treaty breaches committed by Peru in its failure to afford Amorrortu the FET standard provided for in the Treaty. See Claimant's Reply, ¶¶ 355–357. See (CLA-4), *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award, 8 October 2009, ¶ 221 (characterizing corruption as a substantive breach, not merely as evidence of a respondent's mental state); I. Devendra, *State Responsibility for Corruption in International Arbitration*, Journal of International Dispute Settlement (2019), p. 248 (CLA-68); ICC Award 1110, ¶¶ 16, 20, 23 (CLA-60); *World Duty Free Company Limited v. Republic of Kenya*, ICSID Case No. ARB/00/7, Award, 4 October 2006, ¶¶ 149–150 (CLA-65); *Inceysa Vallisoletana, S.L. v. Republic of El Salvador*, ICSID Case No. ARB/03/26, Award, 2 August 2006, ¶¶ 256–257 (CLA-69); *Plama Consortium Limited v. Republic of Bulgaria*, ICSID Case No. ARB/03/24, Award, 27 August 2008, ¶¶ 139–146 (CLA-70); *Metal-Tech v. Uzbekistan*, ¶ 422 (CLA-62); *Yukos Universal Limited (Isle of Man) v. The Russian Federation*, UNCITRAL, PCA Case No. 2005-04/AA227, Award, 18 July 2014 (CLA-72); *Teco Guatemala Holdings LLC v The Republic of Guatemala*, ICSID Case No. ARB/10/17, Award, 19 December 2013, ¶ 456 (CLA-78);

Direct Negotiation Process by corruptly aborting the process once it had begun; and (ii) during the International Bidding Process (following the same *modus operandi* from its conduct in the Direct Negotiation phase, by establishing requirements no company could meet; then disqualifying the companies; and lowering the standard to benefit GyM).

Because corruption is an independent factual pattern that gives rise to a violation of the fair and equitable guarantees (separate from the arbitrary/discriminatory conduct and frustrated legitimate expectations), knowledge of this specific breach only crystallized when evidence emerged linking Blocks III and IV to the pay-to-play scheme.⁴²

Peru argued that the non-corruption claims (arbitrary conduct, discrimination, lack of transparency) were known by 2014-2015 and are independently time-barred regardless of when corruption was discovered.⁴³ Such an assertion ignores that all of Amorrortu's claims arise from the *same factual matrix*—the corrupt diversion of Blocks III and IV to GyM. The corruption is not merely “added” to otherwise independent claims but is the *root cause* and unifying thread of all Treaty breaches. Indeed, where as here, multiple manifestations of wrongdoing flow from a single corrupt scheme, the limitation period for the entire claim begins when the investor acquired knowledge of the scheme as a whole, not piecemeal for each manifestation. Indeed, the *Berkowitz* tribunal itself recognized that “[i]t is the first appreciation of loss or damage in consequence of a breach that starts the limitation clock ticking.”⁴⁴ Here, the *breach* is not merely the administrative decision but Peru's corrupt manipulation of the entire process.⁴⁵

Tecnicas Medioambientales Tecmed S.A. v The United Mexican States, Case No. ARB (AF)/00/2, Award, 29 May 2003, ¶ 153 (CLA-73).

⁴² See Claimant's Reply, ¶¶ 355, 356, 359.

⁴³ See Respondent's Rejoinder and Reply on Jurisdiction, 14 July 2026, ¶ 335.

⁴⁴ See (RLA-33), *Spence International Investments, Aaron C. Berkowitz, Brett E. Berkowitz and Trevor B. Berkowitz v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award, ¶ 213.

⁴⁵ See CWS-3 [Amorrortu] ¶ 32.

If the case is as Peru argues it, that there is no evidence of corruption to date, the limitations period cannot have run. If, on the other hand, there is evidence of corruption—and there is—then Amorrortu’s objective “knowledge” of the same (not suspicion) must be the key question.

The *Berkowitz v. Costa Rica* tribunal—relied upon by both parties—explains that the standard is “what a prudent claimant should have known or must reasonably be deemed to have known” through “exercise of reasonable care or diligence.”⁴⁶ Peru relies on this passage to argue that Amorrortu “should have known” of the breach by 2014-2015. But this reading conflates two analytically separate questions: Step 1 requires identifying what the “breach alleged” is, and Step 2 requires application of the objective knowledge test to that identified breach.

Concerning Step 1, Article 10.18.1 of the Treaty ties the limitation period to knowledge of “the breach alleged under Article 10.16.1”—not merely knowledge of *facts, events, or measures*. The limitation clock does not start when the investor learns *something happened*; it starts when the investor acquires knowledge that what happened constitutes *a breach of a specific Treaty obligation*.⁴⁷ Concerning Step 2, only after identifying the relevant breach does the *Berkowitz* constructive knowledge standard (“what a prudent claimant should have known”) become operative.⁴⁸

A “suspicion” that something is wrong does not—and cannot—constitute “knowledge” of a breach for limitation purposes. There is a critical difference between: (a) knowing that unfavorable administrative decisions were made, and (b) knowing that those decisions resulted from corruption—i.e., a deliberate, concealed criminal scheme by the Head of State’s spouse in coordination with the winning bidder. Peru’s approach skips Step 1 by conflating Amorrortu’s

⁴⁶ *Id.* at ¶ 209.

⁴⁷ See Treaty, Article 10.18.1; *also see* Statement of Defense, ¶¶ 220, fn 350.

⁴⁸ See Statement of Defense, ¶¶ 225.

knowledge of *administrative decisions* with knowledge of a *Treaty breach*.⁴⁹ But Amorrortu alleges corruption as a *freestanding* violation of the Treaty’s FET standard—not merely as circumstantial evidence of why the bidding process was unfair.⁵⁰ The corruption claim has its own elements distinct from the discrimination or arbitrary-conduct claims: the corruption claim requires proof that the State exercised its discretion based on bribe payments, violating FET⁵¹ and Chapter 19’s anti-corruption commitments. As the *EDF v. Romania* tribunal held, corruption “is a violation of the [FET] obligation owed to the Claimant pursuant to the BIT, as well as a violation of international public policy”⁵²—a distinct species of FET violation with distinct elements.

The *Berkowitz* standard thus operates *within* the corruption claim as follows: the Tribunal must ask whether a **prudent claimant exercising reasonable diligence** should have known that Peru violated FET *through corruption in the adjudication of Blocks III and IV specifically*.

The *Corona Materials* tribunal held “it is not necessary that a claimant be in a position to fully particularize its legal claims,” but the converse principle is that a claimant must at least have knowledge of facts sufficient to constitute a *cause of action*—not merely facts giving rise to *unhappiness* with a decision.⁵³

Critically here, GyM itself *denied* any wrongdoing until 2019, and the specific evidence linking Blocks III and IV to the corruption scheme (the Heredia diaries) did not become public until August 31, 2020. No amount of reasonable diligence could have uncovered deliberately concealed criminal conduct by the First Lady. Indeed, until Peru produced the Confidential Documents during this very Arbitration, Amorrortu did not know that [REDACTED]

⁴⁹ See Respondent’s Rejoinder and Reply on Jurisdiction, 14 July 2026, ¶¶ 133 n. 511-512, 339-340.

⁵⁰ See Claimant’s Reply, ¶¶ 355, 356, 357, 359.

⁵¹ See (CLA-4), *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award, October 8, 2009, ¶ 221; Claimant’s Reply, 492.

⁵² See (CLA-4), *EDF (Services) Limited v. Romania*, ICSID Case No. ARB/05/13, Award, October 8, 2009, ¶ 221.

⁵³ See Peru’s Statement of Defense, ¶¶ 224, 227.

Moreover, Peru argues that Amorrortu’s complaints of “irregularities,” “illegalities,” and “discrimination” in 2014-2015 demonstrate knowledge of the breach.⁵⁵ But this conflates different species of FET violation:

- (i) Knowing that an *administrative process appears procedurally unfair* gives rise to knowledge of a potential arbitrary-conduct or discrimination breach.
- (ii) Knowing that *the Head of State’s spouse accepted bribes from the winning bidder in exchange for steering the contract* gives rise to knowledge of a corruption breach.

These are legally distinct causes of action with different factual predicates. The *Berkowitz* objective test asks what a “prudent claimant” exercising “reasonable care or diligence” would have known—not what a claimant *suspected*.⁵⁶ A prudent claimant observing procedural irregularities in 2014 might reasonably suspect unfairness but could not *know* (actually or constructively) that bribery caused the outcome without access to evidence of the bribery itself. As Claimant’s Reply notes, there is “a significant difference between the date when Mr. Amorrortu’s suspicions reached a critical level and he ‘launched his investigation’ and the date when he ‘acquired knowledge’ of [the] corruption.”⁵⁷

As set forth above, the *Berkowitz* tribunal further stated: “[i]t is the first appreciation of

⁵⁴ See [REDACTED]

⁵⁵ See Respondent’s Rejoinder and Reply on Jurisdiction, 14 July 2026, ¶¶ 315, 316 n. 512, 340.

⁵⁶ See Peru’s Statement of Defense, ¶¶ 223, 227.

⁵⁷ See Claimant’s Reply, ¶ 350.

loss or damage *in consequence of a breach* that starts the limitation clock ticking.”⁵⁸ The formulation is “in consequence of a breach”—i.e., the *specific* breach alleged. If the alleged breach is corruption (as a standalone FET violation), then the clock starts when the claimant first appreciates damage *in consequence of corruption*, not when the claimant first appreciates damage in consequence of some *other* form of FET violation (such as arbitrary treatment or discrimination).

Then, Article 10.18.1 creates a *claim-specific* limitation period. It does not impose a single undifferentiated bar running from the first date any wrongful act became known. The text says “knowledge of **the breach alleged**”⁵⁹—the definite article and singular noun indicate that the relevant knowledge must correspond to the *particular* breach that the claimant actually alleges in its claim.

Peru invokes *Vivendi v. Argentina* for the proposition that “the state’s intent, or its subjective motives are at most a secondary consideration” and that a breach is “unrelated to whether the Respondent has had any deliberate intention or bad faith.”⁶⁰ Peru uses this to argue that corruption is merely a “motive” behind already-known measures.⁶¹ This argument falls short.

The *Vivendi* principle means that an FET breach *can* exist *without* proving corrupt intent—i.e., arbitrary or discriminatory conduct breaches FET regardless of motive. It does *not* mean that corruption, when proven, is merely a motive rather than an independent breach. To the contrary, if corruption is *just* motive, it has no independent legal significance—yet Peru itself devotes an entire section of its defense (Section IV.B.3) to arguing that corruption has not

⁵⁸ See (RLA-33) *Spence International Investments, Aaron C. Berkowitz, Brett E. Berkowitz and Trevor B. Berkowitz v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award, ¶ 213.

⁵⁹ See Treaty, Article 10.18.1.

⁶⁰ See Statement of Defense, ¶ 227.

⁶¹ See Statement of Defense, ¶ 232.

“crystallized as part of customary international law for purposes of the Minimum Standard of Treatment.” This demonstrates that Peru treats corruption as a *legally operative* category, not a mere motive.

Indeed, the Treaty’s Chapter 19 imposes *specific* obligations regarding corruption that go beyond subjective motivation.⁶² A violation of these obligations is a standalone breach—not the “motive” behind another breach.

b. Peru’s constructive knowledge argument likewise fails

Peru argues that even if Amorrortu did not have *actual* knowledge, he should have had *constructive* knowledge earlier through reasonable diligence, given: the Lava Jato scandal was public by 2016-2017;⁶³ GyM’s involvement in corruption was reported in 2017-2018;⁶⁴ Odebrecht’s confessions named GyM in 2018.⁶⁵ This argument is without merit for the following reasons.

There is a crucial distinction between knowing that Peru and GyM were involved in corruption *generally* (in construction projects) and knowing that Blocks III and IV *specifically* were part of the corruption scheme. The Lava Jato Special Team itself found no evidence linking corruption to the Blocks or Bidding Processes as of 2020.⁶⁶

Peru’s own witness, Dr. Vela (Coordinator of the Lava Jato Special Team), confirmed that “there was no evidence of or investigation into allegations of corruption or illicit activities concerning the Blocks and Bidding Processes” as of 2020.⁶⁷ If Peru’s own prosecutorial team found no such link, no amount of “reasonable diligence” by a private investor could have

⁶² See Claimant’s Reply, ¶¶ 486, 487, 488.

⁶³ See Respondent’s Rejoinder and Reply on Jurisdiction, 14 July 2026, ¶ 256.

⁶⁴ See Respondent’s Rejoinder and Reply on Jurisdiction, 14 July 2026, ¶ 315 n. 510.

⁶⁵ See Respondent’s Rejoinder and Reply on Jurisdiction, 14 July 2026, ¶ 196.

⁶⁶ See Respondent’s Rejoinder and Reply on Jurisdiction, 14 July 2026, ¶¶ 190, 196, 277, 280.

⁶⁷ See (RWS-06) Second Witness Statement of Rafael Ernesto Vela Barba ¶¶ 22, 31.

discovered what the State’s investigators could not.

This is a powerful factual point: Peru cannot simultaneously argue that (a) there is no evidence of corruption regarding the Blocks (its merits defense) and (b) Amorrortu should have known about corruption regarding the Blocks before August 2020 (its limitation defense). These positions are fundamentally inconsistent.

c. Peru’s fraudulent concealment

Many legal systems recognize that deliberate concealment of wrongdoing tolls limitation periods.⁶⁸ Peru cannot benefit from its own concealment of the corruption. The corruption was deliberately hidden through [REDACTED]

[REDACTED]⁶⁹

[REDACTED]⁷⁰ A respondent State should not be permitted to invoke a limitation defense when the breach was concealed through the very corruption that constitutes the breach. This principle is recognized in investment arbitration: in *Metal-Tech v. Uzbekistan*, the tribunal acknowledged that “corruption is by essence difficult to establish” precisely because of its

⁶⁸ See (CLA- 250) *Edmonson v. Eagle National Bank*, 922 F.3d 535, 549 (4th Cir. 2019) (The purpose of fraudulent concealment doctrine is to “ensur[e] that wrongdoers are not permitted, or encouraged, to take advantage of the limitations period to commit secret illegal conduct without penalty. Under this doctrine, because of the defendant’s wrongful acts of concealment, the plaintiff is not aware of the facts giving rise to his claim within the limitations period he first equitable doctrine that provides for tolling of a limitations period—referred to most commonly as “fraudulent concealment”—“prevents a defendant from ‘concealing a fraud, or ... committing a fraud in a manner that it concealed itself until’ the defendant ‘could plead the statute of limitations to protect it.’”); (CLA-251), *Hexcel Corp. v. Ineos Polymers, Inc.*, 618 F.3d 1055, 1060 (9th Cir. 2012).

⁶⁹ See [REDACTED].

⁷⁰ [REDACTED]

concealed nature.⁷¹

As set forth below, Amorrortu had suspicions of Peru's corruption in 2014 and 2015, which were not corroborated until 2019 and 2020. All of this is, however, a red herring raised by Peru as Peru continues to actively conceal this corruption to date. Indeed, we remain in a period of active concealment which prevents an SOL period from beginning to run.

- a. **2014-2015** – Amorrortu *suspected* Peru's corruption. But Peru denied it, and GyM denied it. Based on their denial, Amorrortu could not have known of the corruption (and the SOL period could not have started to run).
- b. **2019** – Amorrortu first initially corroborated his suspicions (to a limited degree) as this is when the first evidence of corruption appears. In June of 2019 is when Graña y Montero finally acknowledged (after categorically denying it) its involvement in the Corruption Scheme undertaken together with Odebrecht in various megaprojects in Peru.⁷² As a result, by August 2019, Graña y Montero's former executives were collaborating with the Peruvian Prosecutor's Office on several investigations: (i) the Lima Metro Project, (ii) the IIRSA South Project, (iii) the IIRSA North Project and (iv) the Construction Club, and the South Peruvian Gas Pipeline.⁷³
- c. **2020** – Amorrortu's 2014 and 2015 suspicions are further corroborated on August 31, 2020, the date upon which information became available reflecting the diaries showing that the First Lady Nadine Heredia met with Graña y Montero's executives to discuss Lots III and IV before the Direct Negotiation process was aborted; before Graña y Montero was

⁷¹ See Claimant's Reply, 178; (CLA-62) Metal-Tech LTD. v. The Republic of Uzbekistan, ICSID Case No. ARB/10/3, *Award*, 4 October 2013.

⁷² See (CLA-256) SoC in *Amorrortu I*, ¶ 96,119; SOC in *Amorrortu II*, 258.

⁷³ See SoC in *Amorrortu I*, ¶ 119.

awarded the underlying contracts; and before the contracts were signed.⁷⁴

In any event, as referenced above, the fact is that Peru still denies this corruption and we remain in a period of active concealment.

Concerning the burden of proof on issues of corruption, per Article 24(1) of UNCITRAL Rules: “[e]ach party shall have the burden of proving the facts relied on to support his claim or defense.”⁷⁵ UNCITRAL tribunals have found that the power to institute burden shifting is discretionary. Such discretion depends upon the circumstances of each case, being possible when, for example, there is a near impossibility to prove illegal acts like corruption or money laundering.⁷⁶

In *Getma International and others v. Republic of Guinea*, the tribunal concluded that:

“This Arbitral Tribunal concludes that there is no valid precedent to support, as the Claimants contend, that the degree of proof required must be higher for corruption than for other facts. It will therefore verify below whether the evidence submitted by the Respondent is clear and convincing and whether it can provide this Tribunal with a reasonable certainty that the Concession Agreement was obtained by the active corruption of Getma International.”⁷⁷

It is accepted that proof of corrupt acts can be established “*by a body of evidence whose accumulation makes it possible to deduce their existence*” in arbitral practice.⁷⁸ Regarding the sufficiency, the red flags only need to reach a “basic evidentiary threshold” and explain how the evidence on which Amorrortu relies falls within the categories of red flags.⁷⁹

⁷⁴ See Claimant’s Opposition to Bifurcation, ¶ 48.

⁷⁵ See (CLA-257) Article 24(1) of UNCITRAL Rules.

⁷⁶ See (CLA-206), *Fynerdale Holdings v. Czech Republic*, PCA Case No. 2018-18, Award, 29 April 2021, ¶¶ 568-572.

⁷⁷ See (CLA-175) *Getma International and others v. Republic of Guinea*, ICSID Case No ARB/11/29, Award, 16 August 2016, ¶ 184.

⁷⁸ See (CLA-207), *Commisimpex v. Congo (II)*, ICC Case No. 16257/EC/ND/MCP/AZO/SP, Award on Admissibility and Application for Revision, 5 October 2023, ¶ 123 (citing E. Gaillard, “*La corruption saisie par les arbitres du commerce international*”, Rev. Arb. 2017, p. 805).

⁷⁹ See (CLA-208), *Garsu Pasaulis v. Kyrgyzstan*, PCA Case No. 2020-59, Award, 8 April 2024, ¶ 201.

The red flag categories stated in the 2010 ICC Guidelines on Agents, Intermediaries and Other Third Parties and the Basel Institute on Governance 2019 toolkit (that here would apply to the State and GyM), include: the operation takes place in a country known for corrupt payments, the third party had a close personal or family relationship, or business relationship, with a public official or relative of an official, due diligence reveals the third party is a shell company or has some other non-transparent corporate structure prevalence of corruptive behavior in the country revealed by international organizations or NGOs, criminal investigations carried out prior to the arbitration proceedings or in the meantime by domestic authorities, the company has already been convicted of such offences and does not provide any indication it fixed the issue.⁸⁰

In sum, the standard is that of “sufficiently clear and convincing.”⁸¹ There is “no convincing reason why, *outside the field of criminal law*, a heightened standard of proof should apply to allegations of illegality.”⁸² Clear and convincing evidence must “point clearly” to the allegation.⁸³

Here, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Of course, as the record shows, some of these corruption-proving documents are in the public forum.⁸⁴ Corruption, as to these specific acts underlying Claimant’s

⁸⁰ *Id.* at ¶ 185. See also **(CLA-15)** *Biwater Gauff (Tanzania) Ltd. v. United Republic of Tanzania*, ICSID Case No. ARB/05/22; **(CLA-245)** *Antin Infrastructure Services Luxembourg v. The Kingdom of Spain* ICSID Case No. ARB/13/31, Award 15 June 2018.

⁸¹ See **(CLA-209)**, *Penwell Business v. Kyrgyz Republic*, PCA Case No. 2017-31, Final Award, 8 October 2021, ¶ 333.

⁸² *Id.* at ¶ 334 (emphasis in original).

⁸³ See **(CLA-210)**, *Sanum Investments v. Laos*, PCA Case No. 2013-13, Award, 6 August 2019, ¶ 108.

⁸⁴ See **(C-102)** Aliados/as, Ojo Público, *Lava Jato: ex Graña y Montero confesó corrupción en 16 proyectos de infraestructura*; **(C-141)** Instituto de Defensa Legal, *Contraloría: Odebrecht fue favorecida con el Gasoducto del Sur (La República)*; **(C-142)** G. Villasis Rojas et. al, *Odebrecht sabía que iba a ganar licitación del gasoducto sur peruano cinco días antes, El Comercio*; **(C-148)** El Comercio, *Exdirectivo de Odebrecht: Graña y Montero salió del proyecto Gasoducto por pedido de Nadine Heredia*; **(C-152)** Peruvian Times, *Top Graña y Montero Executives Resign to Save Company*.

claims for Treaty breaches by Peru in this Arbitration, has been sufficiently alleged to satisfy the clear and convincing evidentiary burden.

This standard has been reinforced in *ELA USA, Inc. v. Republic of Estonia*:

“In conclusion, the Tribunal considers that there is no clear and convincing evidence in support of the alleged attempt to solicit corrupt payments by individuals whose conduct would be attributable to Estonia and therefore rejects the Claimant’s FET claim based on corruption.”⁸⁵

Indeed, the *BSG Resources* tribunal found that “[b]ecause corruption is a matter of international public policy and because the activity involving corruption is difficult to prove by nature, the Tribunal deems it reasonable not to resort to a heightened standard. It will thus resort to *in-time conviction* or reasonable certainty. In other words, the Tribunal will only make a finding of corruption if, on the basis of the record, it is reasonably certain that acts of corruption have been committed.”⁸⁶ That same tribunal, in assessing whether corruption existed in claimants’ transactions in Guinea, found that red flags such as the ones in the 2010 ICC Guidelines on Agents, Intermediaries and Other Third Parties should be “[borne] in mind, knowing that not all of them need to be present for a pattern of corruption to emerge and that some may carry more weight than others. In the end, what will matter is that the Tribunal is convinced or reasonably certain that corruption has occurred on the basis of an overall assessment of the record.”⁸⁷ The red flag analysis

⁸⁵ See (CLA-211) *ELA USA, Inc. v. Republic of Estonia*, PCA Case No. 2018-42, Award, 21 February 2025, ¶ 946.

⁸⁶ See (RLA-238), *BSG Resources Limited (in administration), BSG Resources (Guinea) Limited and BSG Resources (Guinea) SARL v. Republic of Guinea (I)*, ICSID Case No. ARB/14/22, Award, 18 May 2022, ¶ 494.

⁸⁷ *Id.*, ¶ 498. “[T]he third party’s flawed background or reputation or the flawed background or reputation of an individual or enterprise represented by the third party;

The operation takes place in a country known for corrupt payments; The third party is suggested by a public official, particularly one with discretionary authority over the business at issue; The third party objects to representations regarding compliance with anti-corruption laws or other applicable laws; The third party has a close personal or family relationship, or business relationship, with a public official or relative of an official; The third party does not reside or have a significant business presence in the country where the customer or project is located; The third party is a shell company or has some other non-transparent corporate structure; The only qualification the third party brings to the venture is influence over public officials, or the third party claims that he can help secure a contract because he knows the right people; The need for the third party arises just before or after a contract is to be awarded;

The third party requires that his or her identity or, if the third party is an enterprise, the identity of the enterprise’s owners, principals or employees, not be disclosed;

was performed by the *BSG Resources* tribunal as “tribunals are increasingly relying on so-called red flags, i.e. facts which do not prove corruption in and of themselves but signal conduct of potential concern. A combination of facts of the same nature or, in other terms a cumulation of red flags may constitute evidence of corruption. Some tribunals have also referred to this approach as ‘connecting the dots.’”⁸⁸

Similarly, the *Methanex* tribunal found that “sufficient circumstantial evidence to justify inferring” the existence of corruption would be enough.⁸⁹

The *Niko Resources* tribunal relied on Aloysius Llamzon’s teachings that “[b]ecause corruption is a serious charge with serious consequences attached, the degree of confidence a tribunal should have in the evidence of that corruption must be high. However, this does not mean that the standard of proof itself should necessarily be higher, or that circumstantial evidence, inferences, or presumptions and indicators of possible corruption (such as ‘red flags’) cannot come to the aid of the fact-finder. Tribunals are given the freedom and burden of choice, which they should not abdicate by rote reference to an abstract ‘heightened standard of proof.’”⁹⁰

In sum, to the extent the Tribunal finds any delay here, the same was caused by Peru; Peru’s

The third party’s commission or fee seems disproportionate in relation to the services to be rendered;
The third party requires payment of a commission, or a significant portion thereof, before or immediately upon the award of a contract;
The third party requests an increase in an agreed commission in order for the third party to “take care” of some people or cut some red tape; or
The third party requests unusual contract terms or payment arrangements that raise local law issues, payments in cash, advance payments, payment in another country’s currency, payment to an individual or entity that is not the contracting individual/entity, payment to a numbered bank account or a bank account not held by the contracting individual/entity, or payment into a country that is not the contracting individual/entity’s country of registration or the country where the services are performed.” (2010 ICC Guidelines on Agents, Intermediaries and Other Third Parties, available at <https://iccwbo.org/news-publications/policies-reports/icc-guidelines-agents-intermediaries-third-parties-2010/>).

⁸⁸ *Id.*, ¶ 496.

⁸⁹ See (RLA-90), *Methanex Corporation v. United States of America*, NAFTA/UNCITRAL, Final Award of the Tribunal on Jurisdiction and Merits, 3 August 5, Part III, Chapter B, ¶ 38.

⁹⁰ See (CLA-212), *Niko Resources (Bangladesh) Ltd. v. Bangladesh Petroleum Exploration & Production Company Limited (Bapex)*, ICSID Case No. ARB/10/11, Decision on the Corruption Claim, 25 February 2019, ¶ 806 (citing Aloysius P. Llamzon, *Corruption in International Investment Arbitration*, 2014, ¶ 9.26).

conduct in *Amorrortu I* estops it from arguing its time-bar objection, and in any event, because we are in a period of active concealment, no prescription could have lapsed.

B. Amorrortu was Dominantly and Effectively an American national

In its Rejoinder, Peru argues that Amorrortu's dominant and effective nationality was Peruvian at the time of the alleged breach (14 July, 2014), relying on his ties to Peru including decades of business activity, family connections, voting in the 2014 regional elections (and others), notarial documents identifying him as 'Peruvian,' and the fact that he maintained his Peruvian nationality until three days before filing the Notice of Intent in *Amorrortu I*.⁹¹ Peru further argues that Amorrortu's renunciation constitutes an abuse of process.⁹² Peru's arguments fail on multiple grounds.

At the outset, the relevant inquiry under the Treaty is whether Amorrortu's dominant and effective nationality was American at the time of: (i) the investment; (ii) the breach; and (iii) the filing of *Amorrortu I*.⁹³ The evidence in the record establishes that it was. Applying this analysis to Amorrortu's nationality, it is clear his dominant and effective nationality at each of these time periods was American.

Since obtaining U.S. citizenship on February 3, 2010 (through the time of his investment in Baspetrol in 2012,⁹⁴ through the time of the breach in 2014,⁹⁵ and through the time of the filing of the arbitration in *Amorrortu I* in 2019 and 2020;⁹⁶ Amorrortu has: (i) paid taxes in the United

⁹¹ See Respondent's Rejoinder and Reply on Jurisdiction, 14 July 2026, ¶¶ 342–365.

⁹² See Respondent's Rejoinder and Reply on Jurisdiction, 14 July 2026, ¶¶ 366–382.

⁹³ See (CLA-258) *Serafin García Armas and Karina García Gruber v. Venezuela (I)*, PCA Case No. 2013-3, Decision on Jurisdiction, 15 December 2014, para 214-215; (CLA-259) *Bozo v. Panama*, PCA Case No. 2019-40, Final Award, 8 Nov. 2022, para 252; (CLA-236) *Pugachev v. Russia*, Award on Jurisdiction, 18 Jun 2020, para 417-435; See (CLA-237) *Raimundo J. Santamarta Devis v. República Bolivariana de Venezuela*, PCA Case No 2020-56, Laudo sobre Jurisdicción Ratione Personae, 28 de Julio de 2023; (CLA-238) *Fernando Fraiz Trapote v. The Bolivarian Republic of Venezuela*, PCA Case No. 2019-11, Final Report, 31 January 2022.

⁹⁴ See (C-24) Certificate of Incorporation of Baspetrol, S.A.C.

⁹⁵ See Respondent's Rejoinder and Reply on Jurisdiction, 14 July 2026, ¶ 382.

⁹⁶ See (C-23) Notice of Intent in *Amorrortu I* and (CLA-256) Statement of Claim in *Amorrortu I*.

States every year from 2010 through 2020 (and indeed through the present);⁹⁷ (ii) voted in United States elections;⁹⁸ (iii) traveled exclusively with his United States passport, including all trips to Peru for Baspetrol business;⁹⁹ (iv) obtained medical care in the United States;¹⁰⁰ (v) maintained car insurance and personal affairs in the United States;¹⁰¹ and (vi) married his second wife, an American citizen, in the United States on May 5, 2010.¹⁰² Amorrortu's residence in France during parts of 2014–2018 is irrelevant to the dominant-and-effective-nationality analysis, which under the Treaty requires assessment of whether Amorrortu was dominantly and effectively American or Peruvian. The French residence confirms that Amorrortu was not living in Peru—and French authorities registered him as an American national.¹⁰³ The question before this Tribunal is not whether Amorrortu resided in the United States continuously, but whether his dominant nationality was American rather than Peruvian at the three key times raised *supra*.¹⁰⁴

On every relevant factor—habitual residence/domicile outside Peru, exclusive use of a U.S. passport, continuous and exclusive U.S. tax obligations, U.S. voting, U.S.-based family—the answer is clear: Claimant is unequivocally, dominantly and effectively American.

⁹⁷ See CWS-2 [Amorrortu], ¶ 37; (C-198-C-207).

⁹⁸ See CWS-2 [Amorrortu], ¶ 38; (C-213; C-214).

⁹⁹ See CWS-2 [Amorrortu], ¶¶ 31–32; (C-25), (C-26), (C-171), (C-172).

¹⁰⁰ See CWS-2 [Amorrortu], ¶ 38; (C-212).

¹⁰¹ See CWS-2 [Amorrortu], ¶ 38; (C-211).

¹⁰² See CWS-2 [Amorrortu], ¶ 36.

¹⁰³ See (C-175), (C-191).

¹⁰⁴ See (CLA-237) *Raimundo J. Santamarta Devis v. República Bolivariana de Venezuela*, PCA Case No 2020-56, Laudo sobre Jurisdicción Ratione Personae, 28 de Julio de 2023; see also (CLA-238) *Fernando Fraiz Trapote v. The Bolivarian Republic of Venezuela*, PCA Case No. 2019-11, Final Report, 31 January 2022.

Figure 1: Bacilio’s Dominant and Effective U.S. Nationality¹⁰⁵

Category	USA	PERU
Residence	2010–2018 – Resided in Houston, Texas ¹⁰⁶ 2018–Present –Moved and purchased a home in St. Petersburg, Florida ¹⁰⁷	1999–2020 – Mr. Amorrortu did not reside in Peru since 1999 when he fled and seeks political asylum ¹⁰⁸
Tax	2010–2020 – Filed joint U.S. federal income tax returns ¹⁰⁹	2010–2020 – Did not file taxes in Peru
Personal Ties	2010 – Both sons that participate in Baspetrol naturalized as American citizens. They continue to live in the U.S. 2010 – Remarried to Jane Cole in Lanai, Hawaii ¹¹⁰ 2013 – Medical appointments in Houston, Texas ¹¹¹ 2013 – Farmers Life Insurance Correspondence ¹¹² 2014 – State Farm Insurance renewed ¹¹³ 2018 – Purchased a home in St. Petersburg, Florida ¹¹⁴ 2020 – Continued living in St. Petersburg and being an integral part of his community	2010–2020 – No medical appointments, or insurance 2010–2020 – my daughter, which does not participate in Baspetrol, continues living in Peru

¹⁰⁵ See CWS-1 [Amorrortu]; CWS-2 [Amorrortu]; CWS-3 [Amorrortu].

¹⁰⁶ See (C-197), (C-198) Amorrortu lived in Texas and moved temporarily to France, but he kept his house in Sugar Land, Texas. (C-202); (C-211); (C-191) Correspondence in France while retaining his American citizenship; (C-203-C-205) Joint tax returns with Amorrortu’s wife for the years 2015–2017, listing the Sugar Land, Texas address.

¹⁰⁷ See (C-309) Property Appraisal for Property of Bacilio Amorrortu in St. Petersburg, Florida.

¹⁰⁸ See (R-56) Oficio No. 4587-2020-SUNARP-Z.R.N°IX/PUB.EXON (28 May 2020).

¹⁰⁹ See (C-198-C-207) Tax Returns of Bacilio Amorrortu and Jane Cole; Account Transcript of the IRS; (C-317) Tax Returns of Bacilio Amorrortu and Jane Cole.

¹¹⁰ See (C-197) License and Certificate of Marriage of Bacilio Amorrortu and Jane Cole.

¹¹¹ See (C-212) Correspondence Greg A. Linney D.D.S., Inc. Dentist of Bacilio Amorrortu.

¹¹² See (C-210) Farmers Life Insurance correspondence to Bacilio Amorrortu.

¹¹³ See (C-211) State Farm Renewal Certificate.

¹¹⁴ See (C-309) Property Appraisal for Property of Bacilio Amorrortu in St. Petersburg, Florida.

Peru relies on *Carrizosa and others v. Republic of Colombia*,¹¹⁵ *Alicia Grace et al. v. United Mexican States*,¹¹⁶ and *Barst and Rodríguez v. Ecuador*.¹¹⁷ In contrast from the investors in those cases, Amorrortu sought political asylum in the United States more than a decade before the dispute arose, was granted U.S. citizenship in 2010, paid taxes in the United States, attended medical appointments in the United States, and even formally renounced his Peruvian citizenship in 2019.

Concerning Amorrortu's formal renunciation of his Peruvian nationality on 16 September 2019—just three days before filing his Notice of Intent—Peru argues this constitutes an abuse of process, as it was a purportedly calculated legal maneuver executed on the eve of litigation rather than a genuine shift in allegiance to gain a forum advantage.¹¹⁸ This is yet another red herring raised by Peru.

Amorrortu's renunciation in 2019 is legally irrelevant because (a) the Treaty allows for dual nationals and Amorrortu was not required to renounce his Peruvian nationality in order to receive Treaty protections; (b) the substantive nationality change occurred in 2000-2010 (many years before the instant dispute was foreseeable), not in 2019; and (c) Amorrortu's U.S. nationality was already dominant and effective (and had been for well over a decade).

The renunciation was a personal decision, not a jurisdictional maneuver.¹¹⁹ As Amorrortu explains in further detail in his Third Declaration, he formally renounced his Peruvian nationality in 2019 for personal reasons.¹²⁰ In any event, because the Treaty does not require a dual national to renounce one of said nationalities and instead evaluates nationality based on the dominance and

¹¹⁵ See Respondent's Rejoinder and Reply on Jurisdiction, 14 July 2026, ¶ 351.

¹¹⁶ See Respondent's Rejoinder and Reply on Jurisdiction, 14 July 2026, ¶ 378.

¹¹⁷ See Respondent's Rejoinder and Reply on Jurisdiction, 14 July 2026, ¶ 376.

¹¹⁸ See Respondent's Rejoinder and Reply on Jurisdiction, 14 July 2026, ¶¶ 366–382.

¹¹⁹ See CWS-3 [Amorrortu], ¶ 22.

¹²⁰ See CWS-3 [Amorrortu].

effective test, Amorrortu had nothing to “gain” by formalizing his renunciation. Accordingly, Amorrortu’s renunciation can simply not amount to fraud.

In making its argument, Peru relies on *Mihaljevic v. Croatia*.¹²¹ *Mihaljevic* is distinguishable because that tribunal’s decision did not turn on the purpose behind the claimant’s renunciation of his Croatian nationality; rather, it examined whether the formal renunciation process had been completed—focusing on the objective legal status of the claimant.¹²² Here, there is no dispute that Amorrortu’s renunciation was validly completed. Additionally, unlike in *Mihaljevic*, Amorrortu had been living outside Peru for years, had sought political asylum and eventually obtained U.S. citizenship in 2010 (well before the 2014 breach), and his renunciation formalized a status that was already a practical reality.¹²³

Moreover, in *Mihaljevic*, the investor renounced Croatian citizenship with the “sole reason” being to pursue arbitration—evidenced by a letter withdrawing an earlier arbitration request due to dual-nationality concerns, then renouncing, then refiling.¹²⁴ Amorrortu’s situation is entirely different as detailed *infra*.

Here, *Pac Rim v. El Salvador* is instructive. The distinction between abuse and legitimate change depends on whether it “was made in good faith before the occurrence of any event or measure giving rise to a later dispute.”¹²⁵

As referenced above, Claimant’s operative nationality change (his 2010 naturalization, which began many years prior) occurred **four years before** any measure giving rise to the

¹²¹ See Respondent’s Rejoinder and Reply on Jurisdiction, 14 July 2026, ¶ 369.

¹²² See (RLA-187), *Marko Mihaljevic v. Republic of Croatia*, ICSID Case No. ARB/19/35, Award, 19 May 2023, ¶¶ 94, 107, 124.

¹²³ See CWS-3 [Amorrortu].

¹²⁴ See (RLA-187), *Marko Mihaljevic v. Republic of Croatia*, ICSID Case No. ARB/19/35, Award, 19 May 2023.

¹²⁵ See (RLA-121) *Pac Rim v. Salvador*, ICSID Case no. ARB/09/12, Decision on the Respondent’s Jurisdictional Objections, June 1, 2012, ¶ 2.47; SoD ¶ 254.

dispute.¹²⁶ **No abuse of process can attach to a nationality acquired years before a dispute becomes foreseeable.**

In sum, Peru’s objection conflates *renunciation* with *change* of nationality. Amorrortu did not “change” his nationality in 2019—he merely formalized the abandonment of a nationality he had not effectively exercised since 2000. The dominant and effective nationality test looks at *substance*, not *form*. If Amorrortu’s U.S. nationality was already dominant in 2014 (which the evidence demonstrates), then the 2019 renunciation is legally irrelevant because it adds nothing substantive.¹²⁷

Living in France as an *American national* (as French records confirm) is not evidence of Peruvian nationality.¹²⁸ Many Americans live abroad temporarily. What matters is that Amorrortu did *not* live in Peru and registered with foreign authorities as *American*—not Peruvian.¹²⁹ His continuing U.S. tax obligations, voting, insurance, and medical care during this period confirm his dominant and effective U.S. attachment.¹³⁰

Peru emphasizes that Amorrortu consistently identified himself as Peruvian in his dealings with PeruPetro and in notarial documents.¹³¹ Notwithstanding, describing oneself as “oriundo” (native) of Peru is biographical, not a declaration of nationality. Amorrortu *was* born in Peru and *is* ethnically Peruvian—this does not mean his *legal nationality* is Peruvian for Treaty purposes. The *Ballantine* formulation asks whether the investor “presented himself or herself as a

¹²⁶ See Claimant’s Reply, ¶¶ 364, 368.

¹²⁷ See Claimant’s Reply, ¶¶ 378, 380.

¹²⁸ See Claimant’s Reply, ¶¶ 370, 371, 378, (C-25), (C-26), (C-171), (C-172), (C-190), (C-191), (C-197), (C-213); (C-214); (C-307) Voter Registration of Bacilio Amorrortu for St. Petersburg Florida; (C-308) Voter Registration of Bacilio Amorrortu for Sugar Land, Texas; (C-309) Property Appraisal for Property of Bacilio Amorrortu in St. Petersburg, Florida; (C-310) renewed passport of Bacilio Amorrortu.

¹²⁹ See (C-174-C-181) Correspondence in France, (C-191) French Residence Card of Bacilio Amorrortu, (C-213) Voter Registration Certificate of Bacilio Amorrortu, (C-214) Voter Information Card of Bacilio Amorrortu.

¹³⁰ See (C-190), (C-197), (C-198-C-201), (C-203-C-207), (C-210), (C-212), (C-213), (C-214).

¹³¹ See Respondent’s Rejoinder and Reply on Jurisdiction, 14 July 2026, ¶¶ 356-361.

national of that country.” But context matters. In Peruvian administrative proceedings, one necessarily identifies through Peruvian documents (DNI). This is a practical necessity, not a declaration of dominant nationality. Amorrortu identified as American to French authorities, traveled on a U.S. passport, and paid U.S. taxes. The test must account for the reality that dual nationals necessarily interact with *both* states in various capacities.

In *Ballantine*, the investors outright state that they sought Dominican nationality for the purpose of making their investment in that country.¹³² Amorrortu’s situation is the *reverse*: he sought U.S. nationality by *fleeing* Peru, and his investment came *after* his U.S. citizenship—not the other way around.

Peru cites to *David Aven v. Costa Rica*, for the proposition that the test is to “determine whether the investor is truly a foreigner or the investor enjoys the same degree of personal connection to the host State that any other of its nationals enjoys.”¹³³ Amorrortu *does not* enjoy the same degree of personal connection to Peru as an ordinary Peruvian citizen. He is a political exile who has not lived in Peru for over 25 years, does not pay Peruvian taxes, and conducts his personal life in the United States.

Peru also relies upon *Dawood Rawat v. Mauritius*.¹³⁴ The Dawood tribunal analyzed dominant and effective nationality under a similar dual-nationality proviso. Tribunals applying this test have consistently found that *habitual residence and center of daily life* weigh most heavily—and here, those factors point overwhelmingly to the United States.¹³⁵

¹³² See (RLA-169) *Michael Ballantine and Lisa Ballantine v. Dominican Republic*, PCA Case No. 2016-17, Final Award, 3 September 2019, ¶¶ 179-182.

¹³³ See (RLA-163), *David Aven v. Costa Rica*, ICSID Case No. UNCT/15/3, Final Award, 18 September 2018, ¶ 215; Peru’s Statement of Defense.

¹³⁴ See (RLA-157), *Dawood Rawat v. Mauritius*, PCA Case No. 2016-20, Award on Jurisdiction, 6 April 2018, ¶ 166.

¹³⁵ See (C-25), (C-26), (C-171), (C-172), (C-190), (C-191), (C-197), (C-198-C-207), (C-210-C-214), and (C-310).

Amorrortu's habitual residence reflects that: Amorrortu has lived predominantly in the United States since obtaining asylum in 2000-2001—*fourteen years* before the alleged breach. Peru's evidence that Claimant was in France in 2014 (Facebook page showing Beaulieu-Sur-Mer) actually *supports* Claimant—he was registered as an *American* national by French authorities in 2014.¹³⁶ Living in France as an American is not evidence of Peruvian nationality. Moreover, Claimant's trips to Peru were business-related, not residential. Constituting a company and meeting officials does not establish habitual residence. As for his center of daily life, Amorrortu's *entire family* (wife and sons) also obtained U.S. asylum and citizenship.¹³⁷

Peru's additional precedents are distinguishable, as follows. In *Heemsen*, the claimants were “Venezuelan from birth; domiciled in Valencia, Venezuela; had their descendants in the Republic; constituted companies as *Venezuelans*; acted in commercial companies *only as nationals of the Republic*; and had not enrolled as foreign investors.”¹³⁸ Amorrortu is fundamentally different: he *fled* Peru, lived abroad for 25 years, became a U.S. citizen, obtained French residency as an American, and his entire family is U.S.-based.

Peru also alleges that Amorrortu operated Peruvian companies during the relevant time period. Notwithstanding, as Amorrortu's expert Mr. Quiroga confirmed, “Amorrortu created Baspetro as a foreign investor with the express goal of investing in the production and exploration of petroleum and gas in Peru.”¹³⁹ The Treaty explicitly protects investments made through locally incorporated enterprises—Article 10.16(1)(b) allows claims “on behalf of an enterprise of the

¹³⁶ See (C-191).

¹³⁷ See CWS-1 [Amorrortu Sebastian] ¶ 1; CWS-1 [Amorrortu Basilio Cesar] ¶ 1; Statement of Claim ¶¶ 6, 47, 72, 174-175; Claimant's reply ¶¶ 362-363, 380-385; CWS-2 [Amorrortu] ¶¶ 29, 38. *Also see* (C-192).

¹³⁸ See (RLA-170) *Enrique Heemsen and Jorge Heemsen v. Bolivarian Republic of Venezuela*, PCA Case No. 2017-18, Award on Jurisdiction, 29 October 2019, ¶ 441 (originally in Spanish).

¹³⁹ See Claimant's Reply, ¶ 394, and CER- 2 [Quiroga] Informe Pericial de Anibal Quiroga ¶ 4.22.

respondent that is a juridical person that the claimant owns or controls.”¹⁴⁰ Using a local vehicle is standard practice for foreign investors and cannot be used against them.

Even on a continuous assessment, Amorrortu’s U.S. connections only *strengthen* over time. By 2019, he had lived in the U.S. for nearly 20 years, been a citizen for 9 years, and formally renounced any remaining Peruvian tie.

In considering whether individual claimants held the nationality of the respondent state, the tribunal in *Champion Trading v. Egypt* relied upon the facts that they held Egyptian personal identity cards, applied and held those cards, carried an Egyptian passport, issued by the consulate of Egypt in the US, and that he used this passport extensively for travels to Egypt.¹⁴¹ **There is no equivalent conduct here that would lead to a finding that Amorrortu was dominantly Peruvian national.**

The shifting of the burden to Respondent on jurisdictional evidence is widely supported by the jurisprudence.¹⁴² Here, as Claimant has argued, once he establishes a *prima facie* case of U.S. nationality (U.S. citizenship certificate, passport, tax returns, voter registration, asylum history), which he has done, the burden shifts to Peru under the *Higgins* test.¹⁴³ Peru must then demonstrate *why* the Peruvian connections are so overwhelming as to make Peru the dominant nationality despite 25 years of U.S. residence, U.S. citizenship, and U.S.-centered personal life. Peru has failed to meet this burden.

Simply put, there’s not a single case where dominant nationality has been found where the investor does not have the dominant nationality at the three key times identified *infra*.

¹⁴⁰ See Treaty, Article 10.16(1)(b).

¹⁴¹ See (CLA-7), *Champion Trading Company, Ameritrade International, Inc. v. Arab Republic of Egypt*, ICSID Case No. ARB/02/9, 29 May 2002, Decision on Jurisdiction, 21 October 2003, ¶¶ 34-37.

¹⁴² See (CLA-17), *Waguih Elie George Siag and Clorinda Vecchi v. Arab Republic of Egypt*, ICSID Case No. ARB/05/15, Award, 1 June 2009, ¶ 317.

¹⁴³ See Claimant’s Reply, ¶ 171.

C. Amorrortu had a Protected Investment

Peru argues that Amorrortu lacks a covered investment in Baspetro—and the Tribunal therefore lacks jurisdiction *ratione materiae*—for four independent reasons: (i) direct negotiations or appurtenant rights are not covered investments under the Treaty; (ii) Amorrortu’s alleged contributions to Baspetro remain entirely unproven and constitute pre-investment activities that do not meet the Treaty definition; (iii) any rights purportedly acquired belonged to Baspetro as a separate legal entity, not to Amorrortu personally (who held only a 40% minority interest); and (iv) Baspetro abandoned any such rights by voluntarily participating in the Bidding Process.¹⁴⁴ Peru emphasizes that Baspetro was a newly incorporated company with no certification as a Qualified Oil Company, no prior operations, no technical staff, no binding agreements with third-party operators, and only US\$ 80,000 in paid-up capital.¹⁴⁵ Mr. Strunk, Peru’s damages expert, opines that Baspetro lacked the technical and financial qualifications to have won the Blocks III and IV License Contracts.¹⁴⁶

To be sure, Claimant’s bundle of rights arise out of his investment in the Baspetro enterprise and the rights that under Peruvian law this enterprise acquired almost two years after its incorporation to recover, through Direct Negotiation, the right to operate Block III (and IV),¹⁴⁷ and further include: (i) the substantive right to have a good faith exclusive consideration of the Baspetro Proposal, through a number of well-defined phases established in *PeruPetro’s Rules and Procedures for the Direct Negotiation of Contracts*,¹⁴⁸ (ii) protection of his contribution to Baspetro of Amorrortu’s monetary claim against Peru for violations of his human rights, including

¹⁴⁴ See Respondent’s Rejoinder and Reply on Jurisdiction, 14 July 2026 ¶¶ 383–459.

¹⁴⁵ See Respondent’s Rejoinder and Reply on Jurisdiction, 14 July 2026 ¶¶ 393–396.

¹⁴⁶ See (RER-03) Expert Rebuttal Report of Mr. Kurt G. Strunk, ¶¶ 8–18.

¹⁴⁷ See Soc, ¶¶ 177, 185, 193, 226, 19.

¹⁴⁸ See Soc, ¶ 8.

the persecution, assaults, ambushes, and kidnap attempts to which Amorrortu and his family were subjected; and (iii) the recognition in 1992 by Peru of a debt in favor of Amorrortu's previous company, Propetsa.¹⁴⁹ Amorrortu was the owner of Propetsa, and at the time, Propetsa operated and managed Lot III (with Provisa only providing local support).¹⁵⁰

Peru's arguments that Amorrortu lacks a covered investment fail on multiple grounds. First, as a threshold matter, Peru intertwines merits arguments in an attempt to defeat jurisdiction on Amorrortu's protected investment. This proves that Peru's "jurisdictional" objection on this issue is anything but. Specifically, Peru's arguments concerning Baspetro's technical qualifications, paid-up capital, and operational history¹⁵¹ go to the *quantum* of damages and the merits of Claimant's but-for case—not to the existence of a covered investment under the Treaty. The Treaty does not impose a minimum capitalization threshold or an operational-history requirement for an "enterprise" to qualify as a covered investment. Peru conflates the question of whether Baspetro is a protected investment (it is, as an enterprise controlled by a U.S. investor) with the separate question of whether Baspetro would have succeeded in obtaining the License Contracts (a merits and damages issue). These are analytically distinct inquiries, and Peru's attempt to collapse them into a single jurisdictional objection should be rejected.

Second, Amorrortu's experience and know how is second to none in the oil industry. Peru

¹⁴⁹ See Soc, ¶ 189; (C-2) Special Examination on PetroPeru's debt in Propetsa's favor, 18 June 1992. This credit against the government stemmed from services rendered by Amorrortu to PetroPeru from 1988 to 1989, and PetroPeru's failure to pay Amorrortu for the currency exchange deficiencies as agreed by the parties. The Fujimori regime forced PetroPeru to stop paying a multi-million dollar debt owed to Amorrortu's company Propetsa, even though the government records confirmed the existence and legitimacy of the debt. Due to the political persecution and PetroPeru's refusal to pay the acknowledged debt, Propetsa was forced to transfer 80% of its rights in Block III to Mercantile Peru Oil & Gas, SA. Consequently, the original consortium proceeded to own 20% of the rights in Block III and, more precisely, Propetsa only owned 10%. See SoC ¶¶ 43-44; CWS – 1 [Amorrortu], ¶ 24.

¹⁵⁰ See CWS-3 [Amorrortu] ¶ 30; (CLA-234) *UAB Garsu Pasaulis v. The Kyrgyz Republic*, PCA Case No. 2020-59, Award, 8 April 2024.

¹⁵¹ See Respondent's Rejoinder and Reply on Jurisdiction, 14 July 2026 ¶¶ 7.

concedes that know-how is a key element of a protected investment under the Treaty.¹⁵² While Peru calls Amorrortu's know-how and highly technical and substantive experience "unsubstantiated,"¹⁵³ nothing could be further from the truth.¹⁵⁴

Amorrortu has extensive experience and know-how in the petroleum industry, and he owned the company, Promociones Petroleras Talara, S.A. ("Propetsa"), that previously operated Lot III. Bacilio holds a degree in Petroleum Engineering from Peru's Universidad Nacional de Ingeniería, where he was selected from over 12,000 applicants, began his studies in 1971, and was appointed assistant professor of drilling.¹⁵⁵ His hands-on career in drilling and oil rig operations began at age 19, in 1972, when he trained in offshore drilling with Southern Marine Drilling Co., a subsidiary of Marine Drilling Company of Corpus Christi, Texas.¹⁵⁶ By 1977, at the age of 24, he became the youngest rig manager in Peru,¹⁵⁷ supervising and engineering seven offshore repair and drilling platforms.¹⁵⁸ In 1979, he founded Propetsa, a petroleum company employing over 300 workers, which owned and operated seven oil rigs and provided well services and workover operations to Occidental Petroleum Corporation and PetroPerú.¹⁵⁹ Propetsa was recognized as the most important private petroleum company in Peru throughout the 1970s, 1980s, and 1990s, having performed more well interventions and workovers than any other company in the entire Talara Basin with the highest efficiency and safety records.¹⁶⁰ Through Propetsa, Amorrortu personally operated Block III of Talara from 1993 to 1995, directing an increase in production

¹⁵² See Respondent's Rejoinder and Reply on Jurisdiction, 14 July 2026 ¶ 417.

¹⁵³ See Respondent's Rejoinder and Reply on Jurisdiction, 14 July 2026 ¶ 397.

¹⁵⁴ See Respondent's Rejoinder and Reply on Jurisdiction, 14 July 2026.

¹⁵⁵ See CWS – 1 [Amorrortu], 7.

¹⁵⁶ See CWS – 1 [Amorrortu], ¶ 8; CWS – 3 [Amorrortu] ¶ 2.

¹⁵⁷ See CWS – 1 [Amorrortu], ¶ 9.

¹⁵⁸ See CWS – 1 [Amorrortu], ¶ 9; CWS – 3 [Amorrortu].

¹⁵⁹ See CWS – 1 [Amorrortu], ¶¶ 10, 15; See CWS – 2 [Amorrortu], ¶¶ 16–19.

¹⁶⁰ See CWS – 2 [Amorrortu], ¶ 16.

from less than 100 barrels per day.¹⁶¹ His expertise extends to specialized workover services—“highly specialized petroleum services executed with large oil rigs and auxiliary equipment to restore or increase daily oil production from wells that have ceased producing”—a specialty in which Propetsa operated with unprecedented efficiency in Talara.¹⁶² Additionally, Amorrortu served as personal advisor to James C. Storm, owner of Marine Drilling Company, one of the world's largest offshore drilling corporations,¹⁶³ and maintained professional relationships with senior executives at Halliburton, FMC Technologies, and other major international petroleum services companies.¹⁶⁴

Composite Figure 2: ToolPusher Credentials and Ownership of Propetsa¹⁶⁵



¹⁶¹ See CWS – 1 [Amorrortu], ¶¶ 17, 21; See CWS – 2 [Amorrortu], ¶ 13; See CWS – 3 [Amorrortu], ¶¶ 4–5.

¹⁶² See CWS – 2 [Amorrortu], ¶ 19.

¹⁶³ See CWS – 1 [Amorrortu], ¶ 11; See CWS – 2 [Amorrortu], ¶ 11.

¹⁶⁴ See CWS – 1 [Amorrortu], ¶¶ 73–74; See CWS – 3 [Amorrortu], ¶ 16.

¹⁶⁵ See CWS – 3 [Amorrortu], ¶¶ 28, 29, 30.

NOTARIA
Javier Aspauza Gamarra
 NOTARIO - ABOGADO
 Av. LA PAZ N° 1305
 MIRAFLORES
 Telfs. 44-1616 - 44-1617
 44-1637 - 44-4274
 Fax 44-1617

CERTIFICADO No. 002 acciones 332,906

Promociones Petroleras Talara S. A.
"PROPETSA"

Sociedad Anónima, constituida en la Provincia de Talara, Departamento de Piura, ante el Notario Dr. Enrique Guerrero Fouks, el 5 de Julio de 1977, inscrita en el Asiento 1, de Fojas 53, del Tomo 28, del Libro de Sociedades del Registro Mercantil de Piura.

CAPITAL SOCIAL: S/. 1'316,384.00

Representado por 1'316,384 acciones de un valor nominal de S/. 1.00 cada una íntegramente suscritas y pagadas, según Escritura Pública ante el Notario Dr. Javier Aspauza Gamarra e inscrita en el Asiento 46 de Fojas 290 del Tomo 66, del Libro de Sociedades del Registro Mercantil de Piura.

Reconoce a don BACILIO ANTONIO AMORRORTU TORRES
 La propiedad de 332,906 acciones de un valor nominal de S/. 1.00 cada una, íntegramente suscritas y pagadas, que van del N° 347,382 al N° 680,687 inclusive.

Talara, 07 de ABRIL de 1994

Promociones Petroleras Talara S. A.
PROPETSA

B. Gamarra
 PRESIDENTE DEL DIRECTORIO

Martin Aspauza
 DIRECTOR GERENTE

Ref.: Asiento 2 del Folio 14 del Registro de Acciones

Third, Peru's argument that any rights 'belonged to Baspetrol, not Amorrortu' fundamentally misapprehends the Treaty's definition of 'investment.' Article 10.28 defines 'investment' as 'every asset that an investor owns or *controls*, directly or *indirectly*, that has the characteristics of an investment.'¹⁶⁶

The Treaty's plain language is dispositive: **the operative criterion is control, not formal legal title or majority ownership.** Amorrortu controls Baspetrol: he founded it, he serves as its President, he is its principal decision-maker, and he directed all of its operations.¹⁶⁷ Amorrortu's sons—who hold the remaining 60% of shares—are passive shareholders who have never exercised operational control over Baspetrol.¹⁶⁸ Their declarations confirm that Amorrortu alone determined

¹⁶⁶ See Treaty, Article 10.28.

¹⁶⁷ See CWS-1 [Amorrortu, Basilio Cesar], ¶ 15 ('he has ultimately controlled and owned all the assets through his decision making and supervision despite not being named as the owner of all, or even a majority, of the shares'); CWS-1 [Amorrortu, Sebastian], ¶ 15 (same).

¹⁶⁸ *Id.*

corporate policy, selected personnel, provided capital, and made all strategic decisions.¹⁶⁹ Peru's reliance on Amorrortu's 40% shareholding is therefore legally irrelevant under the Treaty's control-based definition.

The fact that Amorrortu incorporated Baspetrol does not mean that he cannot sue for the damage done to Baspetrol.¹⁷⁰ In *Ioannis Kardassopoulos v. Georgia*, the tribunal analyzed a similar treaty investment definition where investment meant every kind of asset, owned or controlled directly or indirectly by an investor and includes: a company or business enterprise, or shares, stock or other forms of equity participation in a company or business enterprise, and bonds and other debt of a company or business enterprise. There, the tribunal focused on the treaty's silence on whether the investor is required to directly own shares in a company in order to qualify as an "investment" under the treaty. Ultimately, the tribunal ruled that the *indirect* ownership of shares by Claimant constitutes an "investment" under the treaty and applicable law.

Moreover, Baspetrol itself constitutes a covered "investment" under Article 10.28(a),

¹⁶⁹ *Id.*

¹⁷⁰ **(CLA-266-ENG)**, *Tokios Tokelés v. Ukraine*, CIADI Caso No. ARB/02/18, Decisión sobre jurisdicción, 29 abril de 2004, ¶ 23 (discussing that in arbitration jurisprudence there is support for the use of a "control-test" rather than state of incorporation to define the nationality of juridical entities); **(CLA-267-ENG)**, *Siemens A.G. v. Argentine* (Decisión de Jurisdicción), Caso CIADI No. ARB/02/8 (3 de agosto, 2004), ¶¶ 136, 138 (The arguments about indirect investments revolve around two possible meanings of indirect: indirect in the sense that the shareholder of the local company controls it through another company, and indirect in the sense that a shareholder may claim damages suffered by a company in which it holds shares... the right to be compensated is based on the harm suffered by the investment directly, or indirectly through "measures" taken against the company. It is not sufficient for the company in which the investment has been made to have suffered harm. This harm must have a damaging effect on the investment itself. This effect is the cause of the State's liability under the Treaty); **(CLA-268-ENG)** *Ioannis Kardassopoulos v. Georgia* (Decision on Jurisdiction), Case ICSID No. ARB/05/18 (July 6, 2007), ¶¶ 121, 123-124 (discussing a similar treaty investment definition where investment means every kind of asset, owned or controlled directly or indirectly by an investor and includes: a company or business enterprise, or shares, stock or other forms of equity participation in a company or business enterprise, and bonds and other debt of a company or business enterprise. Focuses on the BIT's silence on whether the investor is required to directly own shares in a company in order to qualify as an "investment" under the treaty. Ultimately, rules that in that case, the indirect ownership of shares by Claimant constitutes an "investment" under the BIT and the ECT); **(CLA-269-ENG)**, *Tza Yap Shum v. Peru* (Decision on Jurisdiction), Case ICSID No. ARB/07/6 (June 19, 2007) ¶¶ 106-111, 123-124 (As has been explained previously, in the absence of express language in the BIT, it cannot simply be presumed that its intention is to exclude indirect investments of natural persons when they exercise ownership and control over them.). See also **(CLA-270)** *Aguas del Tunari v. Bolivia*, ICSID Case No. ARB/02/3, Decision on Respondent's Objections to Jurisdiction, (21 October 2005), § 321, 20 ICSID Review - Foreign Investment Law Journal – 450 (2005).

which expressly includes “an enterprise” as a form that an investment may take.¹⁷¹ Baspetrol is an enterprise constituted under the laws of Peru and controlled by Amorrortu.¹⁷²

In making its *ratione materiae* arguments, Peru relies on numerous cases that are distinguishable from the present dispute.

Peru relies on *Caratube International Oil Company v. Kazakhstan*. However, that case is distinguishable because it involved claims by a Kazakh oil company and its U.S.-national majority shareholder for the alleged expropriation of oil exploration rights under an existing, operational contract that was terminated. The tribunal assessed whether the contract termination constituted expropriation. In Amorrortu’s case, the investment was frustrated at an earlier stage—during the Direct Negotiation Process—through a proven corruption scheme. Additionally, *Caratube* involved questions about the claimant’s ownership structure and the genuineness of the investment, whereas Amorrortu’s ownership of and investment in Baspetrol is straightforward and undisputed.

Peru also relies on *Alps Finance and Trade AG v. The Slovak Republic*.¹⁷³ However, that case centered on the narrow question of whether a financial receivable qualified as a protected investment under the applicable BIT.¹⁷⁴ In Amorrortu’s case, the investment encompasses not merely a financial instrument but a fully operational enterprise (Baspetrol), significant expenditures of capital and know-how, and a bundle of substantive rights acquired under the

¹⁷¹ See Treaty, Article 10.28.

¹⁷² See **(CLA-262-ENG)**, *Mobil Corporation et al v. Venezuela* (Decision on Jurisdiction), Case ICSID No. ARB/07/27 (June 10, 2010), ¶¶162-166, 179-183; **(CLA-263-ENG)**, *Cemex Caracas Investments B.V. et al v. Venezuela* (Decision on Jurisdiction), Case ICSID No. ARB/08/15 (Dec. 10, 2010), ¶¶ 21, 146; **(CLA-264-ENG)**, *Anglo American PLC al v. Venezuela* (Award), Case ICSID No. ARB/(AF)/14/1 (Jan. 18, 2019), ¶¶ 130, 140, 174-175, 168-171, 200, 270; **(CLA-265-ENG)**, *Vestey Group Limited v. Bolivarian Republic of Venezuela*, CIADI No. Caso. ARB/06/4 ¶¶ 191-192.

¹⁷³ See Respondent’s Rejoinder and Reply on Jurisdiction, 14 July 2026¶ 395, **(RLA-16)**.

¹⁷⁴ See **(RLA 217)** *Alps Finance v. Slovak*, UNCITRAL, Award 5 March, 2019 ¶ 229.

Peruvian Direct Negotiation framework.

Peru further relies on *WeBuild S.p.A. (formerly Salini Impregilo S.p.A.) v. Argentine Republic*,¹⁷⁵ and *Kappes v. Guatemala*.¹⁷⁶ However, both cases are distinguishable because they involved standard investment disputes without corruption allegations. *WeBuild* concerned a construction company's investment in Argentine infrastructure.¹⁷⁷ *Kappes* involved a U.S. mining investor's claims where the tribunal addressed preliminary objections about covered investments.¹⁷⁸ [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]¹⁷⁹

Here, Amorrortu, among other things: (i) formed a company; (ii) identified and began working with a highly-technical team including experts; (iii) corresponded with the government; (iv) submitted a Proposal; and (v) it did so at the behest of Peru/PeruPetro.¹⁸⁰ Here, there was a

¹⁷⁵ See Respondent's Rejoinder and Reply on Jurisdiction, 14 July 2026 ¶ 327 n. 529, (**RLA-227**).

¹⁷⁶ See Respondent's Rejoinder and Reply on Jurisdiction, 14 July 2026 ¶ 508, (**RLA- 41**).

¹⁷⁷ See generally (**RLA-227**), *WeBuild S.p.A. (formerly Salini Impregilo S.p.A.) v. Argentine Republic (I)*, ICSID Case No. ARB/15/39, Decision on Jurisdiction and Admissibility, 23 February 2018.

¹⁷⁸ See generally (**RLA-41**), (**RLA-234**), *Daniel W. Kappes and Kappes, Cassidy & Associates v. Republic of Guatemala*, ICSID Case No. ARB/18/43, Decision on Respondent's Preliminary Objections, 13 March 2020.

¹⁷⁹ See ([REDACTED])

¹⁸⁰ See (**C-182-C-188**). Also see (**CLA-46**) *Luigiterzo Bosca v. Republic of Lithuania*, Award, 17 May 2013, ¶¶ 187-200 (an investor that seeks to expand its initial investment through a negotiation process protected by local law, has a protected investment interest in the negotiation process); (**CLA-183**) *Mason Capital v. Republic of Korea*, PCA Case No. 2018-55, Decision on Respondent's Preliminary Objections, December 2019, ¶ 210 (the definition of investor, which includes "attempts to make, is making, or has made an investment" extends the temporal scope of the application to the preinvestment phase. Importantly, the BIT in that case has a very similar definition in Article 10.28: "investor of a Party means a party or state enterprise thereof, or an action 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[.]" (emphasis added)); (**CLA-179**) *Sergei Paushok, CJSC Golden East Company and CJSC Vostokneftegaz Company v. The Government of Mongolia*, Award on Jurisdiction and Liability, April 2011, ¶ 202 ("a BIT would be rendered practically without effect if it were right to argue that any action taken by a State against such local companies or their

valid and binding direct negotiation initiated between Amorrortu and PeruPetro, in pursuit of obtaining a favorable result in that direct negotiation, Amorrortu spent resources, money, sweat-equity, and know-how, in assembling a team to work the lots as well as other expenses.¹⁸¹

This case is similarly distinguishable from *Kaloti v. Peru*,¹⁸² where the claimant did not establish an enterprise in Peru nor contributed any specialized known-how or expertise.

Furthermore, as established by Claimant's expert Mr. Quiroga, the Treaty also protects as an investment any rights acquired by Amorrortu under Peruvian law, to wit: the right to a good faith Direct Negotiation process.¹⁸³ Indeed, the Treaty protects attempts through "concrete actions" to make an investment.¹⁸⁴ While Peru argues again that Baspetro was not a qualified oil company and therefore could not have started a Direct Negotiation, this argument ignores Claimant's SoC and Mr. Quiroga's expertise on the matter. Namely, that this certification process is deemed to be satisfied when a proposal for Direct Negotiation is submitted to PeruPetro, and PeruPetro does not issue any response identifying any of the limited statutory basis for denial of certification.¹⁸⁵

In addition, the tribunal in *Primesouth International Offshore S.A.L. v. Republic of Iraq* (II) found that where "sufficient contribution was made"—in that case, USD 7.7 million on

assets would not be subject to Treaty claims by a foreign investor because its investment is merely constituted of shares in that local company.”).

¹⁸¹ See (C-11) Proposal from Baspetro SAC to PeruPetro to operate Blocks III and IV of the Peruvian North-West; (C-182) Baspetro Operational Chart; (C-183) Baspetro Proposal to Operate the Oil & Gas Blocks III & IV in Talara, Northwest Peru; (C-184) Baspetro Start-up Operations Report; (C-185) Excel Sheet Detailed Business Plan Baspetro Blocks III & IV; (C-186) GMP Regalías Lotes III & IV; (C-187) Real Oil Production Incomes Blocks III IV; (C-188) Baspetro Engineer Photo.

¹⁸² See (CLA-235) *Kaloti Metals & Logistics, LLC v. Republic of Peru*, ICSID Case No. ARB/21/29, Award 14 May 2024.

¹⁸³ See SoC, ¶ 19; (CLA-6) Treaty, Ch. 1, Art. 1.3; see also (CER- 1 [Quiroga]) Anibal Quiroga First Expert Report, 18 August, 2023, ¶¶ 153-178.

¹⁸⁴ See (CLA-1) Treaty Investment Chapter, Art. 10.28.

¹⁸⁵ See CER – 1 [Quiroga], ¶¶ 115-123; (CLA-31) *Gold Reserve v. Venezuela*, ¶¶ 367-369. Indeed, PetroPeru did not respond to Claimant's Proposal for a Direct Negotiation Process, which is seen as an implicit, tacit, or constructed administrative act that grants the right to negotiate and continue the process. The Peruvian Hydrocarbons Law protects this right and must be respected by the host State. PeruPetro must also abide by it; any action against it would violate Claimant's fair and equitable treatment. See also SoC, ¶¶ 199-200.

preparations to perform the project works—, “[t]he Claimant [] took [an] investment risk”—in that case, the effort to rehabilitate a plant might have been delayed, unsuccessful, disrupted or less profitable than anticipated—and “[t]he investments of the Claimant [] had a substantial duration”—two years—, a form of the *Salini* test would be satisfied. That tribunal also reasoned that an extra element proposed by respondent in that case (“need for a contribution to the host State’s development”) would have been met as “the Project concerned the supply of electricity to the host State and its population”.¹⁸⁶ The tribunal in *PSEG v. Turkey*, found that just because an operation has not begun that is not sufficient in itself to rule out the existence of damages subject to compensation.¹⁸⁷ An investment can take many forms “before actually reaching the construction stage, including most notably the cost of negotiations and other preparatory work leading to the materialization of the Project, even in connection with pre-investment expenditures particularly when there is a valid and binding Contract between the parties.”¹⁸⁸

Lastly, *res judicata* estops Peru from arguing that a Direct Negotiation was not commence and that a covered investment does not exist. In its Rejoinder, Peru advances two arguments against *res judicata*: (1) the *Amorrortu I* tribunal was “obliged to accept Mr. Amorrortu’s factual description of events as correct” under Article 10.20.4 and therefore made only *pro tem* findings, not final determinations;¹⁸⁹ and (2) “[w]hether Bassetrol commenced a direct negotiation over the Blocks remains an open question that this Tribunal must resolve based on the Parties’ factual and legal submissions.”¹⁹⁰ Peru also argues that Claimant’s reliance on *Amorrortu I* is “hopeless” and

¹⁸⁶ See (CLA-219), *Primesouth International Offshore S.A.L. v. Republic of Iraq (II)*, PCA Case No. 2022-42, Award, 9 February 2026, ¶¶ 493-498.

¹⁸⁷ See (CLA-220), *PSEG v. Turkey*, ICSID Case No. ARB/02/5, Award, 19 January 2007, ¶ 304.

¹⁸⁸ *Id.* (emphasis added).

¹⁸⁹ See Respondent’s Rejoinder and Reply on Jurisdiction, 14 July 2026, ¶ 37.

¹⁹⁰ See Respondent’s Rejoinder and Reply on Jurisdiction, 14 July 2026, ¶ 37.

that four alternative arguments advanced in the Reply “all fail.”¹⁹¹ Peru characterizes Claimant’s *res judicata* argument as a “notable shift” designed to avoid engaging with Peru’s substantive objections.¹⁹²

Peru’s arguments on this front fail as well. The *Amorrortu I* tribunal’s finding that direct negotiation commenced was not merely a “provisional” observation incidental to Article 10.20.4—it was a **substantive** determination that was **necessary** to the tribunal’s resolution of Peru’s preliminary objection—an objection that Peru requested the tribunal to adjudicate. The tribunal found: (i) that “Mr. Amorrortu’s letter of May 28, 2014 expressed ‘an interest in conducting exploration and exploitation activities’ within Blocks III and IV;”¹⁹³ (ii) that “the refusal of PeruPetro to take these (or any) steps in a procedure which Mr. Amorrortu says PeruPetro through its President instructed him to pursue, constituted a denial of [FET];”¹⁹⁴ and (iii) that “Mr. Ortigas was PeruPetro’s ‘directing mind’ and, as such, in a position to bind the company.”¹⁹⁵ These findings were not *obiter dicta*—they were the *ratio decidendi* upon which the tribunal dismissed Peru’s Article 10.20.4 objection. Peru fully briefed and argued these issues, including through expert testimony from the same Dr. Vizquerra who appears here.¹⁹⁶ The double identity test for *res judicata* is satisfied: same parties (Amorrortu and Peru) and same object (whether direct negotiation commenced; the Treaty).¹⁹⁷ Peru cannot relitigate what it already lost.

¹⁹¹ See Respondent’s Rejoinder and Reply on Jurisdiction, 14 July 2026, ¶ 38.

¹⁹² See Respondent’s Rejoinder and Reply on Jurisdiction, 14 July 2026, ¶ 36.

¹⁹³ See (CLA-117), *Bacilio Amorrortu v. Republic of Peru (I)*, Partial Award on Jurisdiction, 5 August 2022, PCA Case No. 2020-11, ¶ 149.

¹⁹⁴ See (CLA-117), *Bacilio Amorrortu v. Republic of Peru (I)*, Partial Award on Jurisdiction, 5 August 2022, PCA Case No. 2020-11, ¶ 155.

¹⁹⁵ See (CLA-117), *Bacilio Amorrortu v. Republic of Peru (I)*, Partial Award on Jurisdiction, 5 August 2022, PCA Case No. 2020-11, ¶ 158.

¹⁹⁶ See (CLA-117), *Bacilio Amorrortu v. Republic of Peru (I)*, Partial Award on Jurisdiction, 5 August 2022, PCA Case No. 2020-11, ¶¶ 149, 155, 158.

¹⁹⁷ See (CLA-213) *Waste Management, Inc. v. United Mexican States (“Waste Management II”)*, ICSID Case No. ARB(AF)/00/3, Decision of the Tribunal on Mexico’s Preliminary Objection concerning the Previous Proceedings, 26 June 2022, ¶¶ 39-42.

Peru’s reliance in the Rejoinder on the Article 10.20.4 standard is self-defeating. Peru itself chose to raise its “no rights” objection under Article 10.20.4 in *Amorrortu I*, forcing the tribunal to rule on it. Having invoked that procedure, Peru cannot now disclaim the consequences of the ruling it provoked. The *Iberdrola v. Guatemala (II)* tribunal’s analysis is instructive. That tribunal held that a negative jurisdictional award “in principle carries *res judicata* effects,”¹⁹⁸ but identified a critical exception: *res judicata* does *not* attach when the jurisdictional dismissal was based on a *curable procedural defect*, “such as a cooling-off period or waiver”, as it is not preclusive.¹⁹⁹ By contrast, where the tribunal found that the dispute “did not fall within the subject-matter scope of the arbitration agreement,” that is a final determination carrying preclusive effect.²⁰⁰ Here, the *Amorrortu I* tribunal dismissed the case solely for a *curable* defect (the invalid waiver)—not because the claims fell outside the Treaty’s subject-matter scope. To the contrary, the tribunal *positively found* that direct negotiation had commenced and that an award in Claimant’s favor would be justifiable.”²⁰¹ Under *Iberdrola*’s framework, a dismissal on curable procedural grounds does not preclude the substantive findings made *en route* to that dismissal from carrying *res judicata* effect. Additionally, IICJ authority confirms that *res judicata* attaches to any matter “determined, expressly or by necessary implication” in a prior proceeding.²⁰² The *Amorrortu I* tribunal’s finding on direct negotiation was determined by necessary implication: without it, the

¹⁹⁸ See (CLA-198), *Iberdrola Energía, S.A. v. Republic of Guatemala*, PCA Case No. 2017-41, Final Award, 24 August 2020, ¶ 262.

¹⁹⁹ See (CLA-198), *Iberdrola Energía, S.A. v. Republic of Guatemala*, PCA Case No. 2017-41, Final Award, 24 August 2020, ¶ 267.

²⁰⁰ See (CLA-198), *Iberdrola Energía, S.A. v. Republic of Guatemala*, PCA Case No. 2017-41, Final Award, 24 August 2020, ¶¶ 268–269.

²⁰¹ See (CLA-117), *Bacilio Amorrortu v. Republic of Peru (I)*, Partial Award on Jurisdiction, 5 August 2022, PCA Case No. 2020-11, ¶¶ 149, 155.

²⁰² See (CLA-214) *Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua)*, Judgment, ICJ Reports 2018, ¶ 68 (2 February) (quoting Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), Judgment, I.C.J. Reports 2007 (I), p. 95, para. 126).

tribunal could not have dismissed the very objection Peru chose to raise pursuant to Article 10.20.4.

Finally, even if this Tribunal were to conclude that the *Amorrortu I* findings do not produce strict *res judicata* effects, they carry significant persuasive weight under the principle of comity between tribunals and the avoidance of contradictory outcomes in related proceedings. As the *Waste Management II* tribunal held, “a judicial decision is only *res judicata* if it is between the same parties and concerns the same question as that previously decided”²⁰³—a test squarely satisfied here. At minimum, the burden falls on Peru to demonstrate why a distinguished tribunal composed of Judge Ian Binnie, Professor Hanotiau, and Mr. Toby Landau—after full briefing and oral argument—reached a conclusion that should now be disregarded.

Peru argues that no direct negotiation over the Blocks ever commenced because (i) Baspétrol’s May 2014 “Alleged Proposal” did not satisfy the legal requirements for a letter of interest under the Qualification Procedure, (ii) the Blocks were already reserved for public tender pursuant to Supreme Decrees published 5 April 2014 and Board Agreements dating from 2010, and (iii) Baspétrol had not obtained—nor even applied for—petroleum qualification.²⁰⁴ Peru further argues the *Amorrortu I* Award does not constitute *res judicata* on whether direct negotiation commenced, because that tribunal was obliged to accept Claimant’s factual allegations as true under Article 10.20.4 and made only provisional findings.²⁰⁵

In conclusion, as stated by the tribunal in *Amco v. Indonesia* in an award rendered under the auspices of ICSID:

The general principle announced in numerous cases is that a right, question or fact *distinctly put in issue and distinctly determined* by a court of

²⁰³ See (CLA-213) *Waste Management, Inc. v. United Mexican States* (“*Waste Management II*”), ICSID Case No. ARB(AF)/00/3, Decision of the Tribunal on Mexico’s Preliminary Objection concerning the Previous Proceedings, 26 June 2022, ¶ 39.

²⁰⁴ See Respondent’s Rejoinder and Reply on Jurisdiction, 14 July 2026, ¶¶ 3–4, 11, 35–37.

²⁰⁵ See Respondent’s Rejoinder and Reply on Jurisdiction, 14 July 2026, ¶¶ 36–37.

competent jurisdiction as a ground of recovery, cannot be disputed.²⁰⁶

Windstream Energy v. Canada (II) provides helpful guidance: the *Windstream* tribunal determined that *res judicata* could apply when issues are not intertwined with the merits, are dispositive to the entire claims of the second arbitration, or are central to the determination of the allegedly new claims.²⁰⁷ Here, the *Amorrortu I* tribunal's finding that direct negotiation commenced is central to Claimant's current claims and was a distinct determination necessary to the tribunal's eventual analysis.

Peru's arguments that no direct negotiation commenced are unavailing. Peru's attempt to use the *Amorrortu I* Award selectively—accepting the dismissal while rejecting the substantive findings that underpinned it—is precisely the kind of “cherry-picking” that the *res judicata* doctrine is designed to prevent. As the *Iberdrola* tribunal confirmed, a party cannot disclaim the preclusive effect of findings that were integral to a jurisdictional determination it provoked.²⁰⁸ Peru raised the Article 10.20.4 objection, fully litigated it, and lost. The finding that direct negotiation commenced was the basis on which Peru lost. Peru is bound by it.

In turn, Peru merely states that “[w]hether Baspetrol commenced a direct negotiation over the Blocks remains an open question” without any additional basis.²⁰⁹

Beyond this conclusory assertion, Peru's reliance on its witnesses and experts to argue that Baspetrol's Alleged Proposal did not satisfy the legal requirements for a letter of interest under the Qualification Procedure is equally unavailing. Peru points to the Tullow Oil comparison as a model

²⁰⁶ See (CLA-213) *Waste Management, Inc. v. United Mexican States* (“*Waste Management II*”), ICSID Case No. ARB(AF)/00/3, Decision of the Tribunal on Mexico's Preliminary Objection concerning the Previous Proceedings, 26 June 2022, ¶ 40 (citing Ralston's Report, p. 244 at p. 355, quoting *Southern Pacific Railroad Co. v. United States*, 168 Sup. Ct. Rep. 355 (1897), atp. 377).

²⁰⁷ See Claimant's Reply, ¶ 217.

²⁰⁸ See (CLA-198), *Iberdrola Energía, S.A. v. Republic of Guatemala*, PCA Case No. 2017-41, 24 August 2020 ¶¶ 262, 267–269.

²⁰⁹ See Respondent's Rejoinder and Reply on Jurisdiction, 14 July 2026 ¶ 37.

of a compliant submission. However, this comparison ignores the critical factual distinction: Tullow submitted its Letter of Interest for *available* blocks that were designated for direct negotiation. Baspetro, on the other hand, submitted its Proposal at the express invitation of PeruPetro's president, Mr. Ortigas, who had instructed Amorrortu to present his proposal. Peru cannot now claim that Baspetro failed to comply with the Qualification Procedure when PeruPetro's own president invited the proposal and when the subsequent failure to adjudicate the Blocks to Baspetro was the result of corruption, not procedural deficiency.

In sum, Peru is estopped from arguing a jurisdictional objection against a protected investment. In any event, Claimant has established that he has a protected investment under the Treaty, and the burden has shifted to Peru to prove otherwise (and it has failed to do so).

D. The Disputed Measures are Attributable to Peru

Peru argues that Article 10.1(2) is a jurisdictional *lex specialis* limiting Peru's Treaty obligations to state enterprise conduct only "when it exercises any regulatory, administrative, or other governmental authority delegated to it" by Peru.²¹⁰ Peru contends: (1) PeruPetro has no delegated governmental or regulatory authority;²¹¹ (2) the challenged measures are inherently commercial; and (3) corruption is a "private act" devoid of any appearance of an act of authority and here corruption is "irrelevant."²¹² Based on this argument, Peru posits that the Tribunal lacks jurisdiction *ratione materiae* over the entire case.²¹³ This is inaccurate.²¹⁴

²¹⁰ See Respondent's Rejoinder and Reply on Jurisdiction, 14 July 2026 ¶ 460.

²¹¹ See Respondent's Rejoinder and Reply on Jurisdiction, 14 July 2026 ¶¶ 464-470.

²¹² See Respondent's Rejoinder and Reply on Jurisdiction, 14 July 2026 ¶ 473.

²¹³ See Respondent's Rejoinder and Reply on Jurisdiction, 14 July 2026 ¶ 460.

²¹⁴ See CER - 3[Quiroga] Anibal Quiroga's Third Declaration, ¶¶ III.8-III.10; III.11-III.29; III.34-III.50.

i. The ILC Articles are applicable

Peru argues that, because Article 10.1(2) is a complete *lex specialis* that exclusively governs attribution, the ILC Articles are irrelevant.²¹⁵ Not so.

Article 10.1(2) addresses when Peru's obligations *apply* to a state enterprise—it does not address when *other* actors' (the President's, the First Lady's) conduct is attributable to Peru. Even under Peru's narrow reading of Article 10.1(2), Amorrortu's claims do not rest solely on PeruPetro's conduct. The corruption scheme was directed by the *Head of State*—an organ of Peru under any test. Heredia and Humala are *de jure* State organs whose conduct is *automatically* attributable under Article 4 without needing Article 10.1(2) at all. The Treaty's state-enterprise provision is irrelevant to the attribution of conduct by the President and First Lady.

ii. PeruPetro is a *De Facto* State Organ

Peru's arguments that PeruPetro's conduct is not attributable to Peru are without merit. Claimant's Reply established that PeruPetro qualifies as a *de facto* state organ regardless of its formal private-law characterization.²¹⁶ In fact, it is undisputed by the Parties that PeruPetro is a "state enterprise" within the meaning of Article 10.2(2) of the Treaty.²¹⁷

iii. PeruPetro exercises governmental authority under ARSIWA Article 5

In its Rejoinder, Peru contends that PeruPetro is a company of private law that carries out commercial business activities, and that its acts in negotiating, administering, and supervising oil contracts are ordinary *jure gestionis* acts, not exercises of *puissance publique*.²¹⁸ Peru emphasizes that Amorrortu's own expert confirmed that the negotiations between Baspetro and PeruPetro were "governed by private law," and that running a public tender does not constitute the exercise

²¹⁵ See Respondent's Rejoinder and Reply on Jurisdiction, 14 July 2026 ¶¶ 461-462.

²¹⁶ See Claimant's Reply, ¶¶ 441-446.

²¹⁷ See Respondent's Rejoinder and Reply on Jurisdiction, 14 July 2026 ¶ 464.

²¹⁸ See Respondent's Rejoinder and Reply on Jurisdiction, 14 July 2026, ¶¶ 460-475.

of governmental authority.²¹⁹

Dr. Vizquerra, Peru's expert, opines that PeruPetro is an entity of private law, governed by the rules of commercial companies, created to carry out business activities of the State rather than governmental authority. He emphasizes that PeruPetro's acts in negotiating and awarding license contracts are commercial in nature and not attributable to the State under Article 5 of the ILC Articles.²²⁰

In making this argument, Peru relies on *JCDecaux SE v. Czech Republic*.²²¹ However, this recent ICSID case is distinguishable because it involved a commercial contract dispute with a municipal entity over advertising rights—a context far removed from the systemic corruption scheme in this Arbitration. *JCDecaux SE v. Czech Republic* turned on questions of contract validity under domestic procurement law, whereas Amorrortu's case turns on proven state corruption that corrupted the entire adjudication process for the Blocks III and IV. The nature of the misconduct—documented bribes, clandestine meetings between GyM company executives and the First Lady, and a rigged public bidding process—fundamentally distinguishes this case from an ordinary contractual dispute.

Peru also relies on *Bayindir İnşaat Turizm Ticaret Ve Sanayi A.Ş. v. Islamic Republic of Pakistan*.²²² However, that case is distinguishable because it involved a large-scale public infrastructure contract that was allegedly wrongfully terminated, whereas Amorrortu's case involves the corrupt frustration of the Direct Negotiation Process *before* a contract was ever executed. Furthermore, this Arbitration is grounded in proven corruption—not merely an unfair

²¹⁹ See Respondent's Rejoinder and Reply on Jurisdiction, 14 July 2026 ¶¶ 471–472.

²²⁰ See (RER-04) Second Expert Report of Carlos Raul Jose Vizquerra Perez Albela, ¶¶ 34–39.

²²¹ See Respondent's Rejoinder and Reply on Jurisdiction, 14 July 2026 ¶ 466; (RLA-248), ¶ 261.

²²² See (RLA-208), *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Islamic Republic of Pakistan (I)*, ICSID Case No. ARB/03/29, Decision on Jurisdiction, 14 November 2005, Section III.A.

contract termination—and arises under the Treaty with its express anti-corruption commitments. The attribution analysis here must account for the fact that the corruption scheme involved not just PeruPetro but also high-level state officials, including the President and First Lady of Peru.

Here, PeruPetro's structural make-up illustrates subordination to the Executive: (i) PeruPetro's Board members are appointed by Ministerial Resolution—three by the Minister of Energy and Mines, two by the Minister of Economy and Finance;²²³ (ii) the Chairman (Ortigas) was appointed by Supreme Resolution signed by President Humala himself;²²⁴ and (iii) Ministers serve at the pleasure of the President and (as proven) Nadine Heredia controlled their appointment and tenure.²²⁵

Indeed, the ARISWA Commentary²²⁶ identifies four factors which are all satisfied here:

- (i) Governmental activity: granting licenses to exploit hydrocarbons, which are constitutionally national patrimony.²²⁷
- (ii) Manner of powers conferred: created by Law No. 26221, which is the sole authority over hydrocarbon contracts.²²⁸
- (iii) Purpose of powers: promoting investment, negotiating contracts, monitoring compliance (all public functions).²²⁹
- (iv) Accountability to State: board appointed by ministers; Chairman

²²³ See Claimant's Reply, ¶¶ 432-433; CER-2[YAYA], ¶¶ 110-111.

²²⁴ See Claimant's Reply, ¶ 433; CER-2[YAYA], ¶ 112.

²²⁵ See Claimant's Reply, ¶ 443; CER-2[YAYA], ¶ 112; see (CLA-159), *M.C.I. Power Group, L.C. and New Turbine, Inc. v. Republic of Ecuador*, ICSID Case No. ARB/03/6, Award, 31 July 2007 ¶ 225; (CLA-192), *Venezuela US v. Venezuela*, PCA Case No. 2013-34, Partial Award (Jurisdiction and Liability), 5 February 2021, ¶ 193 (Where the state restricts a company's decision-making—e.g., requiring government ratification of board decisions—that suffices for state-organ classification); (CLA-193), *CC/Devas v. India (I)* (PCA Case No. 2013-09), ¶ 270 (Even if Article 4 does not apply, state-owned company conduct "may still engage the international responsibility of the state" under Articles 5 and 8).

²²⁶ See (CLA-67).

²²⁷ See, e.g., Claimant's Reply, ¶ 438; (CLA-14) Art. 66, Peruvian Constitution; CER-3 [Quiroga].

²²⁸ See Claimant's Reply, ¶ 438; (C-195).

²²⁹ See Claimant's Reply, ¶ 440.

appointed by President; subject to State Comptroller oversight.²³⁰

Under the so-called Crawford test, the inquiry is whether “a private person can perform the function without the government's permission.”²³¹ No private entity can grant hydrocarbon exploitation licenses in Peru—only PeruPetro has that statutory authority. This alone satisfies Article 5.²³²

The ILC Articles on State Responsibility, Article 15, provide that a breach may consist of a “series of actions or omissions defined in aggregate as wrongful.”²³³ A composite breach “occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act.”²³⁴ Here, Peru’s breach is not a single instantaneous act but a *composite* wrongful act consisting of: (a) aborting the direct negotiation process; (b) tailoring the bidding rules to favor GyM; (c) awarding the contracts to GyM; and (d) the underlying corruption that motivated all of these steps. Only when the corruption component was revealed did the *composite* breach crystallize.

Under Article 15(2) of the ILC Articles, “[t]he breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions

²³⁰ See Claimant’s Reply, ¶¶ 432, 434; **CER-2-[YAYA]**, ¶ 112.

²³¹ See Claimant’s Reply, ¶¶ 449-451; **(CLA-261)**, J Crawford, *State Responsibility: The General Part* (CUP 2013) p. 130; **(CLA-231)** *Temporal Issue Relating to BIT Dispute Resolution*, ICSID Review – Foreign Investment Law Journal, Vol. 37, Issue 1-2, Winter/Spring 2022 Murphy, Sean D

²³² See **(CLA-226)**, *Glencore Finance v. Bolivia*, PCA Case No. 2016-39, Award, 8 September 2023, ¶ 200 (Article 5 encompasses “nationalizations, expropriations, and measures with equivalent effect”); **(CLA-160)**, *Windstream Energy LLC v. Government of Canada*, PCA Case No. 2013-22, Award, 27 September 2016, ¶ 233, (An entity's exercise of the discretion and governmental authority vested in him makes its acts attributable to the State); **(CLA-067)**.

²³³ See **(CLA-067)**; **(CLA-232)**, Article 15(2) of the ILC Articles.

²³⁴ See **(CLA-067)**; **(CLA-231)** *Temporal Issue Relating to BIT Dispute Resolution*, ICSID Review – Foreign Investment Law Journal, Vol. 37, Issue 1-2, Winter/Spring 2022 Murphy, Sean D., pp. 51-84 (citing ARSIWA (n 2) art 15(1); Crawford, *The International Law Commission’s Articles on State Responsibility* (n 2) 141–4; Crawford, *State Responsibility: The General Part* (n 2) 265–9; Salmon (n 172) 391–3; Rubins and Love (n 16) 485); **(CLA-232)**, Article 15(2) of the ILC Articles.

or omissions are repeated and remain not in conformity with the international obligation.”²³⁵ As commentators note, “[j]urisdiction in this context is said to extend ‘over the entire period’ from the first act until the last, even if the first act occurred before the [t]reaty’s entry into force.”²³⁶

iv. PeruPetro’s licensing function is not commercial

Peru argues that corruption is a “private act” not attributable to Peru and not causally connected to Amorrortu’s injury. It is unclear whether Peru’s argument is that Amorrortu’s interaction with PeruPetro is commercial (not a protected investment) or merely that PeruPetro shouldn’t be deemed either *de facto* or *de jure* state organ. In any event, the issue of a purely contractual nature objection is to be decided on the merits because even if a transaction of an instrumentality could be labeled as “commercial;”²³⁷ this does not rule out that attribution can be imputed to the host state when it involves *ius imperium* acts.

In making this argument, Peru relies on *EDF v. Romania* for the proposition that corruption must be shown to have been committed “on behalf and for the account of the Government authorities;”²³⁸ on *Niko Resources v. Bangladesh*²³⁹ and *Unión Fenosa Gas v. Egypt*²⁴⁰ for the

²³⁵ See (CLA-232), Article 15(2) of the ILC Articles.

²³⁶ See (CLA-233) Investment Treaty Arbitration: Jurisdiction *ratione temporis*.

²³⁷ See (CLA-273) *Eco Oro Minerals Corp. v. The Republic of Colombia*, ICSID Case No. ARB/16/41, Award (9 Sep. 2021); See (CLA-177) *Glencore International A.G. and C.I. Prodeco SA v. Republic of Colombia*, ICSID Case No. ARB/16/6, Award (27 Aug. 2019); See (CLA-274) *Phillips Petroleum Company Iran v. Islamic Republic of Iran*, Iran-US Claims Tribunal, Award No. 425-39-2 (29 June 1989); See (CLA-275) *Libyan American Oil Company (LIAMCO) v. The Government of the Libyan Arab Republic*, Award (12 April 1977); See (CLA-276) *Southern Pacific Properties (Middle East) Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/84/3, Award (20 May 1992); See (CLA-037) *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. The Argentine Republic*, ICSID Case No. ARB/97/3, Award (20 August 2007); See (CLA-277) *Eureko B.V. v. Republic of Poland*, Ad Hoc Tribunal, Partial Award (19 August 2005); See (CLA-015) *Biwater Gauff (Tanzania) v. Tanzania*, ICSID Case No. ARB/05/22, Award (24 July 2008); See (CLA-278) *Siemens A.G. v. The Argentine Republic*, ICSID Case No. ARB/02/8, Award (6 February 2007); See (CLA-089) *CME Czech Republic B.V. v. Czech Republic*, UNCITRAL, Partial Award (13 September 2001); See (CLA-279) *Wena Hotels Limited v. Arab Republic of Egypt*, ICSID Case No. ARB/98/4, Award (8 December 2000); See (CLA-280) *Southern Pacific Properties (Middle East Limited) v. Arab Republic of Egypt*, ICSID Case No. ARB/84/3, Award (20 May 1992).

²³⁸ See (RLA/CLA-4), ¶ 232; Rejoinder, ¶ 474.

²³⁹ See (RLA-219).

²⁴⁰ See (RLA-162).

requirement of a causal link between corruption and the claimant's loss;²⁴¹ and on *H&H Enterprises v. Egypt* for the same proposition.²⁴² Peru also cites *Yeager v. Iran*²⁴³ and *Gavrilovic v. Croatia*²⁴⁴ for the principle that purely private acts are not attributable to the State.²⁴⁵

Each of these cases is distinguishable. *H&H Enterprises* is inapposite because Amorrortu has not submitted his TREATY claims to any competing forum (unlike H&H, which triggered a fork-in-the-road provision), and the causal link between corruption and Amorrortu's loss is direct and well-documented—unlike the attenuated chain in H&H. Furthermore, in Amorrortu, the corruption has been admitted by Graña y Montero and confirmed through criminal convictions, whereas in H&H the corruption allegations were not sufficiently proven. *Niko Resources* and *Unión Fenosa* are distinguishable because they involved allegations of corruption by the investor (creating a “clean hands” issue), not corruption by the State directed against the investor. The “private act” cases (*Yeager*, *Gavrilovic*) are inapposite because the corruption here was not a rogue official acting for personal profit—it was the Head of State and First Lady systematically steering government contracts through clandestine meetings with GyM executives, precisely the type of conduct that engages State responsibility.

Peru also relies on *UPS v. Canada*²⁴⁶ and *Al Tamimi v. Oman*²⁴⁷ for the proposition that “commercial” activities of state enterprises are not attributable.

PeruPetro's licensing function is not commercial. Awarding exclusive rights to exploit sovereign natural resources—constitutionally designated as “national patrimony”—is

²⁴¹ See Rejoinder, ¶ 556

²⁴² See **RLA-220**; Rejoinder, ¶ 556.

²⁴³ See **RLA-204**.

²⁴⁴ See **RLA-160**.

²⁴⁵ See Rejoinder, ¶ 473.

²⁴⁶ See Statement of Defense, ¶ 297; (**RLA-101**), ¶ 59.

²⁴⁷ See Statement of Defense, ¶ 297; (**RLA-139**), ¶ 324.

quintessentially a sovereign act (*acta jure imperii*), not a commercial transaction. The fact that the license *contract* is governed by private law does **not** transform the *grant* of the license into a commercial act. As expert Quiroga explains, hydrocarbons “constitutionally form part of the Nation’s heritage” and the State regulates “who can exploit them via contract/license.”²⁴⁸

Here, the specific measures challenged are regulatory, not commercial:

- (i) Deciding whether to process or reject a qualification application → administrative
- (ii) Deciding whether blocks are available for direct negotiation vs. public tender → regulatory/policy
- (iii) Conducting and supervising a public bidding process → administrative
- (iv) Modifying bidding rules → regulatory

None of these is the equivalent of a private actor selling goods or services.

“In order for an act to be attributed to a State, it must have a close link to the State. This close link can result from the fact that the person performing the act is part of the State’s organic structure (Article 4); or is utilising the State’s specific governmental powers to perform such act, even if it is a separate entity (Article 5); or is acting under the effective control (on the instructions, or under the direction or control) of the State, even if it is a private or public party (Article 8).”²⁴⁹

The conduct of a person or entity which is not an organ of the State under article 4 but which is empowered by the law of that State to exercise elements of the government authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance.²⁵⁰

In *Burlington Resources, Inc. v. Republic of Ecuador*, the tribunal reasoned that:

²⁴⁸ See Claimant’s Reply, ¶ 435; CER– 2 [Quiroga], ¶ 3.11.

²⁴⁹ See (CLA-227), *Hamester v. Ghana*, ICSID Case No. ARB/07/24, Award, 18 June 2010, ¶ 172.

²⁵⁰ See ARSIWA’s Article 5, (CLA-67), ARSIWA Commentary, Claimant’s Reply, ¶ 448.

“...outside the umbrella clause context, a breach of contract by the State can amount to a Treaty breach only if the State’s sovereign power is involved. Otherwise stated, [r]espondent’s purported repudiation of the tax indemnification clauses could result in a breach of fair and equitable treatment under the Treaty *only if Respondent’s sovereign power were involved*....”²⁵¹ In this Arbitration, under Burlington, Peru’s breach amounts to a Treaty breach because of [REDACTED]

[REDACTED]²⁵²

In sum, PeruPetro is a *De Jure* State organ, and all events that triggered the claims in this Arbitration are not “commercial” in nature, and attributable to Peru.²⁵³

E. The causal connection between Peru’s Treaty Breach and Amorrtortu’s damages

Peru’s causation objection is a merits defense dressed as a jurisdictional objection, and it should be denied on that ground alone.

Moreover, Peru argues that Article 10.16.1 of the Treaty limits claims to those directly resulting in “loss or damage” to the investor, and that Amorrtortu cannot demonstrate the required causal connection between Peru’s alleged breach and his claimed damages.²⁵⁴ Peru contends that even if corruption occurred (*quod non*), Baspetro would never have obtained the License Contracts because: (i) Baspetro lacked petroleum qualification and could not have started direct

²⁵¹ See (CLA-252) *Burlington Resources, Inc. v. Republic of Ecuador*, ICSID Case No. ARB/08/5, Decision on Jurisdiction 2 June 2010, ¶¶ 204, 110; (CLA-22) *DUKE ENERGY ELECTROQUIL PARTNERS & ELECTROQUIL S.A. v. Republic of Ecuador*, ICSID Case No. ARB/04/19, Award, August 18, 2008, ¶ 345.

²⁵² See [REDACTED]

²⁵³ See CER-3[Quiroga] Anibal Quiroga’s Third Declaration.

²⁵⁴ See Respondent’s Rejoinder and Reply on Jurisdiction, 14 July 2026, ¶¶ 476–483.

negotiations; (ii) the Alleged Proposal did not meet the legal requirements to trigger a direct negotiation; and (iii) even if direct negotiation commenced, other companies' interest would have required a public tender, in which Baspetro could not have qualified or competed.²⁵⁵ Peru's core argument is that, because Baspetro could never have obtained the contracts even absent corruption (due to lack of qualification, unavailability of blocks, and competitive disadvantage), there is an "insurmountable disconnect" between the breach and the claimed damages, depriving the Tribunal of jurisdiction.²⁵⁶

Peru's objection conflates a merits-stage causation inquiry with a jurisdictional threshold. Article 10.16.1 requires only that the claimant *allege* loss "by reason of" the breach—not that it *prove* causation at the jurisdictional phase.²⁵⁷ The *PACC v. Mexico* tribunal—Peru's own authority—only dismissed claims where the measures were directed at a *different entity entirely* and affected the investor only "secondarily and indirectly."²⁵⁸ That is a jurisdictional disconnect. Here, the measures are directed *squarely* at Amorrortu's investment: Baspetro's proposal and procedural rights.

Instead, the correct jurisdictional test is whether there is a *plausible* or "legally significant connection" between the alleged breach and the claimed loss—not whether causation is *proven*.²⁵⁹ A corrupt diversion of contracts away from the only company in active direct negotiation proceedings plainly satisfies this threshold.

On the merits, the evidence more than demonstrates that Baspetro would have been awarded the contracts to operate Blocks III and IV. After all, Amorrortu's experience and know

²⁵⁵ See Respondent's Rejoinder and Reply on Jurisdiction, 14 July 2026 ¶¶ 478–483.

²⁵⁶ See Statement of Defense, ¶¶ 313–321.

²⁵⁷ See Treaty, Article 10.16.1.

²⁵⁸ See (**RLA-181**) *PACC Offshore Services Holdings Ltd v. United Mexican States*, ICSID Case No. UNCT/18/5, Award, 11 January 2022, ¶ 147.

²⁵⁹ See Statement of Defense, ¶¶ 317–318.

how in operating the Blocks in an efficient manner is unmatched as has been well established in these proceedings.

Further, Baspetro's financial terms were far superior to any of the terms offered by the other companies that expressed an interest.²⁶⁰ And Baspetro had the support of the local communities.

Peru's causation argument assumes a world without corruption but *with* all other existing conditions (Baspetro unqualified, blocks reserved for bidding). This is logically flawed because the corruption *itself* is what created those conditions:

- (i) **The blocks were “reserved for bidding” *because of corruption*.** But for the corrupt scheme, PeruPetro would have processed the Baspetro Proposal through the Direct Negotiation Procedure as instructed by Mr. Ortigas. The decision to divert to public bidding was itself the corrupt act.²⁶¹
- (ii) **Baspetro was never told its proposal was deficient *because of corruption*.** PeruPetro was legally required to notify Baspetro of deficiencies within 30 days—and never did.²⁶² In a corruption-free world, PeruPetro would have either processed the proposal or provided the required notification, allowing Baspetro to cure.
- (iii) The but-for world must exclude *all* consequences of the wrongful act. If corruption motivated the bidding process, then Peru cannot rely on that same corrupt bidding process to argue Baspetro would have failed anyway.

And, even if the Tribunal cannot conclude with certainty that Baspetro *would* have

²⁶⁰ See (C-011), (C-183); *CER-1 [Zamalloa]*.

²⁶¹ See Claimant's Reply, ¶ 13.

²⁶² See Claimant's Reply, ¶ 129.

received the contracts, this does not defeat causation—it merely affects the *quantum* of damages. The *Lemire v. Ukraine* tribunal held that “if it can be proven that in the normal course of events a certain cause will produce a certain effect, it can be safely assumed that a (rebuttable) presumption of causality between both events exists.”²⁶³ Per *Bilcon v. Canada* (Schwartz concurrence), the deprivation of a commercial opportunity is itself a compensable harm—the “loss of business opportunity” is “a sub-species of lost profits, which is resorted to when the available data does not allow making a more precise calculation.”²⁶⁴

Pursuant to the UNIDROIT Principles: “[c]ompensation may be due for the loss of a chance in proportion to the probability of its occurrence.”²⁶⁵

Accordingly, the inquiry has to be reframed: Amorrortu need not prove certainty of obtaining the contracts; he need only show that corruption *deprived him of a real chance* to obtain them—and that chance had quantifiable economic value.

Amorrortu’s rebuttal to this jurisdictional objection is further strengthened by the findings in Amorrortu I, which established causal foundation. That tribunal found that “it would be open to the Tribunal to conclude that the refusal of PeruPetro to take these (or any) steps in a procedure which Mr. Amorrortu says PeruPetro through its President instructed him to pursue, constituted a denial of [FET].” This establishes:

- (v) Amorrortu *did* commence the Direct Negotiation Procedure.
- (vi) PeruPetro *was required* to take certain procedural steps and failed to do so.
- (vii) That failure is capable of constituting an FET violation “justifying an award in

²⁶³ See (CLA-34), *Joseph Charles Lemire v. Ukraine*, ICSID Case No. ARB/06/18, Award, 28 March 2011, ¶ 169.

²⁶⁴ See (CLA-114), *William Ralph Clayton, William Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Government of Canada*, PCA Case No. 2009-04, Award on Damages, Concurring Opinion of Professor Bryan Schwartz, 10 January 2019, ¶ 12.

²⁶⁵ See (CLA-230), UNIDROIT Principles, Article 7.4.3(2).

Mr. Amorrortu's favor.”

If the *breach* (failure to process the Direct Negotiation) is established, and the *damage* (loss of the opportunity to obtain the contracts through that procedure) flows directly from it, causation is self-evident.

Peru argues that even in a direct negotiation scenario, third parties could express interest within 30 days, triggering a public tender where Baspetro would fail.²⁶⁶ However, such a hypothetical chain of speculative contingencies (third parties *might* express interest, the negotiation *might* then terminate, Baspetro *might* then lose a tender) is not supported by the facts.

F. Amorrortu complied with Treaty requirements

Peru argues that Amorrortu failed to comply with the consultation and negotiation requirement under Article 10.15 before initiating this arbitration. In making this argument, Peru relies on *Murphy Exploration v. Ecuador (I)*.²⁶⁷ However, that case actually supports Claimant’s position: the *Murphy* claimant in the second arbitration had in fact undertaken fresh consultation and negotiation efforts after the first case was dismissed, precisely because it recognized that consultation had occurred in connection with the underlying dispute.²⁶⁸ Here, Amorrortu engaged in meaningful consultation and negotiation with Peru in 2019 before filing *Amorrortu I*, and the underlying dispute—Peru’s corrupt deprivation of Amorrortu’s Direct Negotiation rights—remains exactly the same. Further consultations on the same dispute would have been futile, as Peru demonstrated throughout the *Amorrortu I* process that it had no intention of settling the matter amicably.²⁶⁹

²⁶⁶ See Rejoinder, ¶ 625.

²⁶⁷ See Respondent’s Rejoinder and Reply on Jurisdiction, 14 July 2026 ¶ 670; (CLA-90) *Murphy Exploration & Production Company–International v. The Republic of Ecuador*, UNCITRAL, PCA Case No. 2012-16.

²⁶⁸ See (CLA-90) *Murphy Exploration v. Ecuador (I)*.

²⁶⁹ See (C-321) Oficio No. 062-2019-EF/CE.32 from El Ministerio de Economía y Finanzas dated December 5, 2019; See (RLA-79) *Lauder v. Czech Rep.* UNCITRAL ¶ 187, 190-191, Award 3 Sep., 2001; (CLA-15) *Biwater Gauff v.*

Peru also argues that Amorrortu failed to submit a new Notice of Intent before commencing this arbitration as required by Article 10.16.2. However, the purpose of the Notice of Intent requirement is to give the host State fair warning of an impending claim. Peru received precisely such notice through the *Amorrortu I* proceedings, including the full Statement of Claim and Notices, and was fully on notice of the claims Amorrortu intended to bring. Requiring a new notice for claims that have already been fully briefed and argued would elevate form over substance and serve no purpose under the Treaty.

In sum, Peru argues the Tribunal lacks jurisdiction *ratione voluntatis* because Amorrortu failed to comply with two Treaty prerequisites: (1) Article 10.15’s requirement to “initially seek to resolve the dispute through consultation and negotiation” before submitting claims to arbitration—Peru contends the 2019 Amorrortu I consultations cannot carry over to this arbitration since *Amorrortu I* was dismissed for lack of jurisdiction *ab initio*; and (2) Article 10.16.2’s requirement to deliver a written Notice of Intent at least 90 days before submitting any claim—Peru contends the 2019 NoI filed for *Amorrortu I* does not satisfy this requirement for a separate, new arbitration.²⁷⁰ Peru emphasizes that Renco itself submitted a new NoI before commencing Renco II, and that Amorrortu provides no case law supporting the proposition that a single NoI suffices for multiple distinct arbitrations.²⁷¹

Peru’s arguments that Amorrortu failed to comply with the procedural prerequisites for arbitration are without merit. At the threshold, the vast majority of tribunals consider these types of requirements (consultations, complying with the cooling off period, etc.) as admissibility issues.

Tanzania, ICSID ARB/05/22, ¶ 343, Award, 24 Jul., 2008; **(RLA 217)** *Alps Finance v. Slovak*, UNCITRAL ¶ 201-204, Award, March 5, 2011; **(CLA-245)** *Antin v España*, ICSID Case No. ARB/13/31, ¶ 356, Laudo 15 Jun., 2018.

²⁷⁰ See Respondent’s Rejoinder and Reply on Jurisdiction, 14 July 2026 ¶¶ 484–514.

²⁷¹ See Respondent’s Rejoinder and Reply on Jurisdiction, 14 July 2026 ¶¶ 509–511.

Accordingly, Peru inappropriately labels this as a jurisdictional issue when it is not.²⁷² Claimants are not required to spend more time or efforts when doing so would be futile. And, Peru bears the burden of proof with regard to this so-called objection in proving that that a new “consultation” would not have been futile here. Peru has not met this burden.

Amorrortu did serve Peru with a notice of intent on September 19, 2019 to submit the controversy to arbitration pursuant to the Treaty (the “Notice of Intent”).²⁷³ In the Notice of Intent, Mr. Amorrortu explained that he intended to submit to arbitration, pursuant to Article 10.16 of the Treaty, his claims that Peru violated the Treaty by, *inter alia*, conducting a bidding process for Lots III and IV that was plagued with irregularities and corruption in violation of the fair and equitable treatment and expropriation protections of the Treaty.²⁷⁴

As Amorrortu made clear in his Reply, the Notice of Intent put Peru on notice of Mr. Amorrortu’s investment disputes and the claims he intended to submit to arbitration. This is the same investment dispute and the same claims submitted to arbitration in the Notice of Arbitration and Statement of Claim filed on February 13, 2020 and September 11, 2020 almost identical filings in *Amorrortu I* and *II*, respectively. In the Notice of Intent and in all the filings in *Amorrortu I* and *Amorrortu II*, **Mr. Amorrortu alleges the same claims:** Peru breached the Minimum Standard of Treatment (including Fair and Equitable Treatment) when, as a reward for political bribes paid to the President and the First Lady, Peru: (i) aborted the direct negotiation process through which Mr. Amorrortu’s company was going to resume the operation of Lot III and sign a contract to operate

²⁷² See (RLA-79) *Lauder v. Czech Rep.* UNCITRAL ¶ 187, 190-191, Award 3 Sep., 2001; (CLA-15) *Biwater Gauff v. Tanzania*, ICSID ARB/05/22, ¶ 343, Award, 24 Jul., 2008; (RLA 217) *Alps Finance v. Slovak*, UNCITRAL ¶ 201-204, Award, March 5, 2011; (CLA-245) *Antin v España*, ICSID Case No. ARB/13/31, ¶ 356, Laudo 15 Jun., 2018.

²⁷³ See Claimant Bacilio Amorrortu’s Opposition to Respondent Peru’s Request for Bifurcation December 19, 2023, ¶ 14; Procedural Order No. 2 Decision on Bifurcation, issued on March 18, 2023; (CLA-155) *Bacilio Amorrortu v. The Republic of Peru*, PCA Case No. 2020-11, Notice of Intent.

²⁷⁴ *Id.*

Lot IV of the Talara Basin, and (ii) launched an international bidding process designed to anoint GyM.²⁷⁵

Here, Amorrortu complied with the requirement that “[a]ny **claim** to arbitration” requires a notice of intent under the Treaty. Here, because the claims in *Amorrortu I* and in this Amorrortu are the same, this requirement was satisfied through the submission of the Notice of Intent in *Amorrortu I*.²⁷⁶

Amorrortu similarly complied with the Consultation and Negotiation requirement, for the same reasons set forth above corroborating his compliant Notice of Intent. Under Article 10.15, the Treaty states that the claimant and respondent “should *initially* seek to resolve the dispute through consultation and negotiation.”²⁷⁷ The provision’s reliance on the word “should” does not seem to make it a word of requirement like “shall.” Moreover, the Treaty’s Article 10.16(1) provides that if a disputing party “considers that an investment dispute cannot be settled by consultation and negotiation[,]” the claimant may submit the claim of respondent’s breach under an investment agreement to an arbitral body.²⁷⁸

Accordingly, the Treaty itself does not impose the mandate under which Peru raises its objection. In any event, as raised *supra*, this is an issue of admissibility and not a jurisdictional matter.²⁷⁹

²⁷⁵ See Claimant’s Reply ¶¶ 407-414.

²⁷⁶ *Id.* at 409; **(CLA-184)** *Kappes v. Guatemala*, ICSID Case No. ARB/18/43, Decision on Respondent’s Preliminary Objections, ¶ 194 (Mar. 2020); **(CLA-186)** *Pope & Talbot v. Canada*, Award concerning the Motion by Government of Canada respecting the Claim Based Upon Imposition of the “Super Fee,” ¶¶ 25-28 (Mar. 1999).

²⁷⁷ Treaty, Article 10.15 (emphasis added).

²⁷⁸ Treaty, Article 10.16(1).

²⁷⁹ Claimant’s Reply, ¶¶ 417- 415, **(RLA 79)** *Lauder v. Czech Rep.* UNCITRAL ¶ 187, 190-191, Award 3 Sep., 2001; **(CLA-15)** *Biwater Gauff v. Tanzania*, ICSID ARB/05/22, ¶ 343, Award, 24 Jul., 2008; **(RLA 217)** *Alps Finance v. Slovak*, UNCITRAL ¶ 201-204, Award, March 5, 2011; **(CLA-245)** *Antin v España*, ICSID Case No. ARB/13/31, ¶ 356, Laudo 15 Jun., 2018; **(CLA-188)** *Murphy v. Ecuador (II)*, PCA Case No. 2012-16, Partial Award on Jurisdiction, ¶ 195 (Sept. 2011).

In conclusion, for the foregoing reasons, all of Peru's jurisdictional objections fail as a matter of law and fact.

Respectfully submitted on August 18, 2026,

/s/ Francisco A. Rodriguez

ReedSmith LLP

Francisco A. Rodriguez
Gilberto A. Guerrero-Rocca
Ana R. Ulseth

Counsel for Claimant