
In the matter of

**Gramercy Funds Management LLC
Gramercy Peru Holdings LLC**
Claimants

v.

The Republic of Peru
Respondent

(UNCT/18/2)

**Submission of the Republic of Peru
on Procedural Safeguards**

1 June 2018



RUBIO LEGUÍA NORMAND
Lima

WHITE & CASE
Washington, D.C.

**Submission of the Republic of Peru
on Procedural Safeguards**

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Annex on Incidents of Aggravation

Submission of the Republic of Peru on Procedural Safeguards

1. The Republic of Peru (“Peru”) hereby submits its Submission on Procedural Safeguards further to Tribunal communication A-11 dated 10 May 2018. Peru respectfully requests that the Tribunal adopt certain procedural safeguards to ensure respect for channels of communication and protect the integrity of this proceeding brought by Gramercy Funds Management LLC and Gramercy Peru Holdings LLC (together, “Gramercy”) under the Peru-United States Trade Promotion Agreement (the “Treaty”).

2. The Tribunal held, pursuant to communication A-11, that the Parties should “abstain from any action or conduct that may result in an aggravation of the dispute, and that *pro tem* all communications between the Party be channelled in the manner required by each Party.”¹ It further ordered simultaneous submissions with respect to those issues. Peru requests that the Tribunal enter an order confirming those procedural safeguards. In summary:

The Procedural Safeguards

Peru requests the Tribunal rule that all communications among any of the Parties, including communications involving any of their representatives, shall be channeled solely in the manner indicated by each Party in the Terms of Appointment. Peru further requests that the Tribunal confirm that the Parties shall abstain from any action or conduct that may result in aggravation, and respect the Treaty-mandated role of the non-disputing Party.

The Integrity of the Proceeding

The procedural safeguards proposed by Peru are important to protect the integrity of this proceeding. They are based on and consistent with the object of Investor-State Dispute Settlement under the Treaty and the established principle of non-aggravation. They are not prejudicial and it is in the Tribunal’s mandate and power to act.

The Pattern of Aggravation

The Tribunal does not need to find actual harm in order to adopt safeguards. It may nonetheless consider the pattern of aggravation by Gramercy, and make such findings as may be relevant to the adoption of the procedural safeguards or otherwise relevant to put order to this proceeding. The pattern of aggravation by Gramercy has been communicated by Peru over more than two years; whereas Gramercy has denied such aggravation and has not similarly alleged aggravation by Peru. Instead of relying on the Treaty proceeding it elected to file as the forum to resolve its dispute with Peru, Gramercy has disrespected designated channels of communication, aggravated the dispute and demonstrated utter disdain for the integrity of the Treaty proceeding and the Treaty-established role of the non-disputing party, as discussed in the Annex on Incidences of Aggravation.

3. The Tribunal has a mandate to put order to this Treaty proceeding.

¹ Letter from Tribunal to Parties, 10 May 2018 (A-11) (quoting communication A-11).

I. THE PROCEDURAL SAFEGUARDS

4. The Republic of Peru, per prior correspondence, requests that the Tribunal adopt procedural safeguards related to (A) respect for channels of communications; (B) non-aggravation of the proceeding, including with respect for the role of the non-disputing Party.

5. As a procedural matter, Peru proposed procedural safeguards in the context of the Tribunals' request that the Parties confer and submit a joint communication with regards to procedural matters including "any other matters that the Parties wish to include."² Peru's proposed language relating to respect for designated channels of communication and safeguarding the integrity of the proceeding³ followed two years of related communications.

6. Gramercy has consistently rejected procedural safeguards. Further to its pattern of backtracking at the last minute during the negotiation of documents,⁴ Gramercy then sought to force Peru to capitulate to altered versions of draft procedural agreements that omitted or moved the points regarding procedural safeguards, and it did so on not one but two distinct deadlines.⁵ Peru accordingly submitted to the Tribunal proposed procedural safeguards which remain before the Tribunal. In addition to prior exchanges over the past two years, Peru addressed these issues in its letter of 17 April 2018⁶ and during the preliminary conference held on 4 May 2018. The Tribunal subsequently ordered the present submission.⁷

A. Respect for Channels of Communication

7. Consistent with Tribunal communication A-11, and with Peru's prior request for an order as to channels of communications,⁸ Peru requests the Tribunal enter the following order related to respect for channels of communications:

All communications among any of the Parties, including communications involving any of their representatives, shall be channeled solely in the manner indicated by each Party in the Terms of Appointment.

8. Such an expectation is routine and commonsensical, yet necessary to specify given Gramercy's conduct. Indeed, Peru has consistently advised Gramercy of its point of contact for this matter over time including, among other instances:

- As a matter of Peruvian law, Gramercy's decision to pursue this Treaty proceeding triggered the competency of the Special Commission that Represents the State in International Investment Dispute (the "Special Commission").⁹

² Letter from Tribunal to Parties, 9 March 2018 (A-2).

³ See Letter from Peru to Tribunal, 17 April 2018, Exhibit A (R-7).

⁴ See, e.g., Letter from Special Commission of Peru to Gramercy, No. 055-2016-EF/CE-36, 27 May 2016 (Doc. R-52); Letter from Special Commission of Peru to Gramercy, No. 57-2016-EF/CE-36, 31 May 2016 (Doc. R-54); Letter from Special Commission of Peru to Gramercy, No. 060-2016-EF/CE-36, 1 June 2016 (Doc. R-55); Letter from Gramercy to Peru, 17 May 2016 (Doc. R-64); Letter from Gramercy to Special Commission of Peru, 1 June 2016 (Doc. R-56). Gramercy has demanded other last minute changes, including blowing up the negotiation of a simple tolling agreement so that it could file its Notice of Arbitration just before Peruvian elections.

⁵ See Letter from Gramercy to Peru, 13 April 2018 (Doc. R-213); Email from Gramercy to Peru, 17 April 2018 (Doc. R-215).

⁶ Letter from Peru to Tribunal, 17 April 2018 (R-7); Letter from Gramercy to Tribunal, 17 April 2018 (C-13).

⁷ Letter from Tribunal to Parties, 10 May 2018 (A-11).

⁸ See Letter from Peru to Tribunal, 17 April 2018, Exhibit A, Section A(7)(a) (R-7).

- After the initial Notice of Intent dated 1 February 2016, the Special Commission informed Gramercy that it was the relevant point of contact.¹⁰
- After the initial Notice of Arbitration dated 2 June 2016, the Special Commission notified Gramercy that White & Case LLP was the designated point of contact.¹¹
- Among other examples, the Office of the President of Peru confirmed the roles of the Special Commission and White & Case in a letter dated 16 October 2017.¹²
- For the avoidance of doubt, on 11 May 2018, the Special Commission confirmed that White & Case remains the designated point of contact for all purposes.¹³
- In addition, the Parties have each signed the Terms of Appointment, which specify the respective points of contact for this dispute.¹⁴

9. Gramercy nonetheless has demonstrated a pattern of disrespect and disregard for the requested channel of communications over time. Peru has provided to the Tribunal over two dozen examples when Peru requested that Gramercy respect the designated channels of communication. It was telling when, when requested to confirm respect for Peru's designated channel of communication, Gramercy's representative stated: "Absolutely not. Absolutely 100% not." Gramercy's representative and counsel confirmed as much during the procedural conference. Accordingly, it falls to the Tribunal to act.

B. Non-Aggravation of the Dispute

10. Consistent with Tribunal communication A-11, and with Peru's prior request for an order as to non-aggravation,¹⁵ Peru requests the Tribunal enter the following order:

The Parties shall abstain from any action or conduct that may result in an aggravation of the dispute.

Correspondingly, the Parties shall respect the role of the non-disputing Party as established in the Treaty. In consultation with the Parties, the Tribunal shall establish in a procedural order pursuant to which the non-disputing Party may make certain submissions in a manner consistent with the Treaty.

11. The general provision encompasses a range of types of conduct previously highlighted by Peru, including, for example, engaging in lobbying activity, interfering with public officials or public events, using the press or social media in an offensive manner to apply undue pressure, circumventing established dispute mechanisms related to this proceeding in an effort to obtain materials in a non-transparent manner, disregarding designated channels of contact, or interfering with diplomatic relations and/or public

⁹ See Law Establishing the State's Coordination and Response System in International Investment Disputes, Law No. 28933, 14 December 2006, Art. 7 (Doc. RA-12).

¹⁰ See Letter from Special Commission of Peru to Gramercy, No. 022-2016-EF/CE.36, 15 February 2016 (Doc. R-44).

¹¹ See Letter from Special Commission of Peru to Gramercy, No. 061-2016-EF/CE.36, 2 June 2016 (Doc. R-57).

¹² See, e.g., Letter from the Office of the President of Peru to Gramercy, No. 354-2017-DP/SG, 16 October 2017 (Doc. R-194).

¹³ See Letter from Peru to Tribunal, 11 May 2018 (R-15) (attaching Letter from Special Commission of Peru to White & Case LLP, No. 130-2018-EF/CE-36, 11 May 2018).

¹⁴ See Terms of Appointment, 22 May 2018, Section I.

¹⁵ See Letter from Peru to Tribunal, 17 April 2018, Exhibit A, Section A(7)(a) (R-7).

institutions.¹⁶ The further provision refers to the role of the “non-disputing Party,”¹⁷ i.e., the United States in the present proceeding, as established in the Treaty and discussed below.¹⁸

12. It was telling that, when recently asked whether Gramercy would put aside its aggravating conduct, Gramercy’s representative abandoned a pattern of feigning ignorance as to Gramercy’s conduct and directly responded that Gramercy would stop “when Peru stops seeking membership in the OECD.”¹⁹ Again, it falls to the Tribunal to act.

II. THE INTEGRITY OF THE PROCEEDING

13. The procedural safeguards proposed by Peru are important to protect the integrity of this proceeding. They are based on and consistent with the object of Investor-State Dispute Settlement under the Treaty and the established principle of non-aggravation. They are not prejudicial and it is in the Tribunal’s mandate and power to adopt such safeguards.

A. The Exclusivity of Investor-State Dispute Settlement

14. Gramercy chose to submit claims to arbitration under the Treaty, which establishes at Chapter X, Section B, a mechanism for Investor-State Dispute Settlement (“ISDS”).²⁰ Pursuant to the Treaty, ISDS is an exclusive mechanism, whereby investment disputes shall be resolved according to either “Consultation and Negotiation,” or “Submission of a Claim to Arbitration.”²¹ As stated by the Office of the United States Trade Representative (“USTR”), ISDS is a “neutral, international arbitration procedure” that “seeks to provide an impartial, law-based approach to resolve conflicts,” and “[t]o resolve investment conflicts without creating state-to-state conflict.”²² ISDS thus is designed to channel investment disputes into a procedural mechanism that removes such disputes from international relations and politics, so that issues may be decided in a neutral forum, as Peru has highlighted.²³

15. Professor Schreuer and Ms. Loretta Malintoppi have explained that “dispute settlement is depoliticized and subjected to objective legal criteria.”²⁴ Professor Vandeveld explains, commenting on U.S. investment treaties in particular, “[o]ne of the most important functions of the BIT series is to encourage investors and host countries to resolve investment disputes through binding third-party arbitration.”²⁵ He further explains, “the BIT ensures investors a neutral mechanism for settlement of investment disputes that is wholly insulated

¹⁶ See Letter from Peru to Tribunal, 17 April 2018, Exhibit A, Section B(8)(d) (R-7).

¹⁷ See, e.g., Treaty, Art. 10.28 (Doc. RA-1) (“**non-disputing Party** means a Party that is not a party to an investment dispute”).

¹⁸ See, e.g., Treaty, Art. 10.20.2 (Doc. RA-1).

¹⁹ See Letter from Peru to Tribunal, 17 April 2018 (R-7).

²⁰ Treaty, Chapter X, Section B (Doc. RA-1).

²¹ Treaty, Art. 10.15 (Doc. RA-1); Treaty, Art. 10.16 (Doc. RA-1).

²² See *FACT SHEET: Investor-State Dispute Settlement (ISDS)*, Office of the United States Trade Representative, March 2015, at 1 (Doc. R-78).

²³ See, e.g., Response of the Republic of Peru, 5 July 2016, ¶¶ 3, 99 (R-2); see also Letter from Peru to Tribunal, 17 April 2018, at 5 (R-7).

²⁴ Christoph Schreuer and Loretta Malintoppi, *The ICSID Convention: A Commentary*, 2001, at 398 (Doc. RA-10).

²⁵ Kenneth Vandeveld, *The Bilateral Investment Treaty Program of the United States*, Cornell International Law Journal 21 (2), 1988, at 256-258 (Doc. RA-6).

from the political relationship between the investor's government and the host government."²⁶

16. It is uncontroversial that a claimant subjects itself to certain limitations when commencing a Treaty case and consenting to arbitrate. As one example, the Treaty requires claimants to waive or discontinue proceedings "before any administrative tribunal or court under the law of any Party, or other dispute settlement procedures."²⁷ Because of the exclusivity of the Treaty dispute mechanism, once invoked there can be no-U turn. Gramercy tellingly tried to evade this basic requirement, only to later change course after Peru's victory in another investment treaty proceeding.²⁸

17. Parallel limitations operate with respect to the State parties. The essential compact of ISDS is that the host state consents to arbitration in return for which the state of nationality agrees not to engage in "diplomatic protection." A necessary corollary to the boundaries on the role of the States-parties is that a claimant, having elected arbitration and made itself subject to the norms of arbitral comportment, may not agitate to induce its State to engage in actions that fall within the category of diplomatic protection.²⁹

18. Here, the Treaty expressly establishes the role of the non-disputing Party in connection with an investment dispute arising under the Treaty: "[a] non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement,"³⁰ and is entitled to receive certain documents subject to the Treaty's transparency provisions.³¹

19. Professor Reisman accordingly concludes: "[P]art of the compact upon which BITs rest is the 'legalization' and corresponding 'depoliticization' of the standards of dispute resolution for investor-state disputes." Indeed, it is evident as an historical matter that a neutral and depoliticized forum has been central to the emergence of ISDS in the Americas.

B. The Principle of Non-Aggravation

20. It is also a well-established principle of international law that parties must refrain from conduct that aggravates the dispute. The principle of non-aggravation was explained by the PCIJ in the seminal case of *Electricity Company of Sofia and Bulgaria* as follows:

²⁶ *Id.* at 258.

²⁷ Treaty, Art. 10.18.2 (Doc. RA-1). The nature of the waiver requirement was explained in the first case brought under the Treaty, in which an arbitral tribunal dismissed all claims brought against Peru. *See The Renco Group, Inc. v. The Republic of Peru*, ICSID Case No. UNCT/13/1, Partial Award on Jurisdiction, 15 July 2016 (Doc. RA-21). Despite Gramercy's uninformed comments during the procedural conference, Peru timely raised its concerns in the *Renco* case, and the tribunal concluded that "Peru's waiver objection [was] not tainted by any ulterior motive to evade its duty to arbitrate Renco's claims," and it expressed "its sincere gratitude to counsel for their high degree of professionalism throughout this period." *Id.* ¶¶ 192, 193.

²⁸ It was only after Peru's success in the *Renco* case that Gramercy twice amended its Notice of Arbitration so as to include a new waiver. Peru reserves all rights to address this issue at the appropriate time.

²⁹ *See* W. Michael Reisman, *Opinion with Respect to Jurisdiction in the Interstate Arbitration Initiated by Ecuador against the United States*, 24 April 2012, ¶¶ 24-25 (Doc. RA-15).

³⁰ Treaty, Art. 10.20.2 (Doc. RA-1).

³¹ *See* Treaty, Art. 10.21 (Doc. RA-1) ("[1]. Subject to paragraphs 2 and 4, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Parties [...] [4.a] neither the disputing parties nor the tribunal shall disclose to any non-disputing Party or to the public any protected information where the disputing party that provided the information clearly designates it in accordance with subparagraph (b) [...] [c] Only the redacted version shall be provided to the non-disputing Parties and made public in accordance with paragraph 1"). *See also* Treaty, Art. 10.20.9(a) (Doc. RA-1).

[T]he principle universally accepted by international tribunals and likewise laid down in many conventions [is] that the parties to a case must abstain from any measure capable of exercising a prejudicial effect in regard to the execution of the decision to be given and, in general, not allow *any step of any kind* to be taken which might aggravate or extend the dispute.³²

21. The principle of non-aggravation has also been recognized by investment arbitration tribunals for decades. In one of the very first ICSID arbitrations, the tribunal in *Amco Asia* noted that it is a “good and fair practical rule” that “both parties to a legal dispute should refrain, in their own interest, to do anything that could aggravate or exacerbate the same, thus rendering its solution possibly more difficult.”³³ Likewise, the principle has been highlighted in more recent cases, including, among others, *City Oriente v. Ecuador* (“the principle that neither party may aggravate or extend the dispute or take justice into their own hands prevails.”),³⁴ *Occidental v. Ecuador* (finding that the principle “requires parties to a dispute submitted to international law to abstain from any action, regardless of its nature that may aggravate or extend the controversy pending before the tribunal.”),³⁵ and *Pey Casado v. Chile* (finding that the principle is “undoubtedly established for several decades in international jurisprudence.”).³⁶

22. International jurisprudence recognizes that various types of conduct may aggravate a dispute, including, without limitation, campaigns “calculated to inflame opinion.” For instance, in the *Anglo-Iranian Oil Case*, the ICJ ordered the following, among other things:

The Imperial Government of Iran and the Government of the United Kingdom should ensure that no step of any kind is taken capable of aggravating or extending the dispute submitted to the Court, *and in particular, the Imperial Government of Iran should abstain from all propaganda calculated to inflame opinion in Iran against the Anglo-Iranian Oil Company, Limited, and the United Kingdom.*³⁷

23. In the investment arbitration context, the tribunal in *Biwater Gauff* concluded:

It is now settled in both treaty and international commercial arbitration that an arbitral tribunal is entitled to direct the parties not to take any step that might (1) harm or prejudice the integrity of the proceedings, or (2) aggravate or exacerbate the dispute.... Both concerns have a number of aspects, which can be articulated in various ways, such as the need to:

- preserve the Tribunal’s mission and mandate to determine finally the issues between the parties;
- preserve the proper functioning of the dispute settlement procedure;

³² *Electricity Company of Sofia and Bulgaria* (Belgium v. Bulgaria), 1939 P.C.I.J. (ser. A/B) No. 79, Order, 5 December 1939, at 199 (Doc. RA-2) (emphasis added).

³³ *Amco Asia Corporation and Others v. Republic of Indonesia*, ICSID Case No ARB/81/1, Decision on Request for Provisional Measures, 9 December 1983, at 412 (Doc. RA-4).

³⁴ *City Oriente Limited v. Republic of Ecuador and Empresa Estatal Petroleos del Ecuador*, ICSID Case No. ARB/06/21, Decision on Provisional Measures, 19 November 2007, ¶ 57 (Doc. RA-13).

³⁵ *Occidental Petroleum Corp., and Occidental Exploration and Production Co. v. Ecuador*, ICSID Case No. ARB/06/11, Decision on the Request to Modify the Decision on the Stay of Enforcement of the Award, 23 September 2014, ¶ 31 (Doc. RA-18).

³⁶ *Victor Pey Casado and President Allende Foundation v. Republic of Chile*, ICSID Case No ARB/98/2, Decision on Provisional Measures, 25 September 2001, ¶ 69 (Doc. RA-9) (unofficial translation).

³⁷ *Anglo-Iranian Oil Co. Case*, Order, 5 July 1951: I.C.J. Reports 1951, at 90-91 (Doc. RA-3).

- preserve and promote a relationship of trust and confidence between the parties;
- ensure the orderly unfolding of the arbitration process;
- ensure a level playing field;
- minimise the scope for any external pressure on any party, witness, expert or other participant in the process;
- avoid “trial by media.”

It is self-evident that the prosecution of a dispute in the media or in other public fora, or the uneven reporting and disclosure of documents or other parts of the record in parallel with a pending arbitration, may aggravate or exacerbate the dispute and may impact upon the integrity of the procedure.³⁸

24. The tribunal in *Teinver* similarly concluded that a “press conference and the matters described and commented upon” were “inconsistent with the Tribunal’s repeated orders to the Parties not to aggravate the dispute.”³⁹

C. The Safeguards Are Not Prejudicial

25. Safeguards are an inherent element of due process and protecting the integrity of a legal forum. Having chosen to file a Treaty proceeding, Gramercy now attempts to dramatize a basic procedural safeguard against aggravation by calling it a “gag-order,” a phrase that first came to Peru in this matter through the statements of a U.S. Congressman who has been lobbied by Gramercy. Gramercy should have known that, once a party exercises its option of ISDS, its actions with respect to the dispute become subject to the network of norms regulating the arbitral process in order to protect due process and the validity of the proceeding.

26. As the tribunal in *United Utilities et al v Estonia* held, aggravation goes too far when statements are used as “an instrument to antagonise any party, exacerbate the parties’ differences, aggravate the dispute, disrupt the proceedings or *unduly pressure any party*.”⁴⁰

27. It is not undemocratic or violative of free speech to protect the integrity of a legal proceeding. Courts in the United States can and do impose even stricter restraints on litigants as part of the power to regulate the conduct of proceedings.⁴¹ The Second Circuit court of Appeals has upheld an order restraining prosecutors, defendants, counsel, and their representatives from making “any extrajudicial statement concerning this case (1) to any person associated with a public communications media, or (2) that a reasonable person would expect to be communicated to a public communications media.”⁴² The court held the order was appropriate based on findings that the parties were escalating their already extensive

³⁸ *Biwater Gauff v. Tanzania*, ICSID Case No. ARB/05/22, Procedural Order No. 3, 29 September 2006, ¶¶ 135-136 (Doc. RA-11).

³⁹ *Teinver S.A., Transportes de Cercanías S.A. and Autobuses Urbanos del Sur S.A. v. The Argentine Republic*, ICSID Case No. ARB/09/1, Decision on Provisional Measures, 8 April 2016, ¶ 210 (Doc. RA-19).

⁴⁰ *United Utilities (Tallinn) B.V. and Aktsiaselts Tallinna Vesi v. Republic of Estonia*, ICSID Case No. ARB/14/24, Decisions Respondent’s Application for Provisional Measures, 12 May 2016, ¶ 112 (Doc. RA-20) (*emphasis added*). See also *Abaclat and others v. The Argentine Republic*, ICSID Case No. ARB/07/5, Procedural Order No. 3, 27 January 2010, ¶¶ 84-85 (Doc. RA-14).

⁴¹ *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1073 (1991) (Doc. RA-8).

⁴² *In re Application of Dow Jones & Co.*, 842 F.2d 603, 605-06 (2d Cir. 1988) (Doc. RA-7).

publicity, leaks to the media of grand-jury testimony were occurring, and the order allowed for exceptions of publicly available information.⁴³

28. Similarly, the Ninth Circuit Court of Appeals upheld an order restraining “all attorneys in this case, all parties and all their representatives and agents of counsel and the parties shall not make any statements to members of the news media concerning any aspect of this case that bears upon the merits to be resolved by the jury.”⁴⁴ The court held the order was appropriate based on the district court’s findings that the case received extensive publicity that would increase as trial approached, counsel’s statements were made near to the trial, and counsel’s statements foreshadowed that the trial would become “a circus show performed outside the courtroom.”⁴⁵

29. Because the present dispute has been channeled into the Treaty’s dispute mechanism, reasonable safeguards will not prejudice the Parties, who will have the opportunity to present their cases in accordance with an established and orderly procedure.

D. The Authority and Mandate of the Tribunal

30. A tribunal’s power “to direct the parties not to take any step that might (1) harm or prejudice the integrity of the proceedings, or (2) aggravate or exacerbate the dispute,” explained the *Biwater* tribunal, “may be seen as a particular type of provisional measure [...] or simply as a facet of the tribunal’s overall procedural powers and its responsibility for its own process.”⁴⁶ Indeed, the tribunal highlighted that it was a tribunal’s responsibility to make such orders to avoid aggravation:

[The tribunal’s] mandate and responsibility includes ensuring that the proceedings will be conducted in the future in a regular, fair and orderly manner (including by issuing and enforcing procedural directions to that effect). Among other things, its mandate extends to ensuring that potential inhibitions and unfairness do not arise; equally, its mandate extends to attempting to reduce the risk of future aggravation and exacerbation of the dispute.⁴⁷

31. The Tribunal has broad authority to “conduct the arbitration in such manner as it considers appropriate.”⁴⁸ That includes the adoption of the requested procedural safeguards to protect the integrity of this Treaty proceeding.

⁴³ *In re Application of Dow Jones & Co.*, 842 F.2d 603, 606, 611 (2d Cir. 1988) (Doc. RA-7).

⁴⁴ *Levine v. United States Dist. Court for the Cent. Dist. of California*, 764 F.2d 590, 593 (9th Cir. 1985) (Doc. RA-5).

⁴⁵ *Levine v. United States Dist. Court for the Cent. Dist. of California*, 764 F.2d 590, 597-98 (9th Cir. 1985) (Doc. RA-5). The case was remanded for the limited purpose of having the district court narrow the order to specify the types of statements that would pose a threat to a fair trial. *Id.* at 599.

⁴⁶ *Biwater Gauff v. Tanzania*, ICSID Case No. ARB/05/22, Procedural Order No. 3, 29 September 2006, ¶ 135 (Doc. RA-11).

⁴⁷ *Biwater Gauff v. Tanzania*, ICSID Case No. ARB/05/22, Procedural Order No. 3, 29 September 2006, ¶ 145 (Doc. RA-11).

⁴⁸ See UNCITRAL Arbitration Rules, Art. 17.1.

III. THE PATTERN OF AGGRAVATION

32. Actual harm need not be manifested before procedural safeguards may be adopted, as the *Biwater* tribunal concluded.⁴⁹ The Tribunal thus would not need to make affirmative findings of fact as to aggravation or actual harm to adopt safeguards to put order to this proceeding. Indeed, the safeguards before the Tribunal are so fundamental that in most contexts the adoption of such safeguards may be uncontroversial. Here, however, Gramercy has derided and disregarded over two years of documented concerns regarding point of contact and aggravation and rejected reasonable procedural safeguards, even thumbing its nose during the procedural conference before the Tribunal.

33. The Tribunal thus may also consider the documented pattern of aggravation reflected in Gramercy's conduct over more than two years, and make such findings as may be relevant to the adoption of the procedural safeguards or otherwise putting order to this proceeding. It bears emphasizing that the pattern of aggravation by Gramercy has been documented and communicated by Peru to Gramercy over more than two years; and has been briefed as a matter of fact and of law in Peru's Response of 6 September 2016 and its procedural letter of 17 April 2018. As discussed below, Gramercy established a multi-pronged mechanism designed to cause aggravation, developed dubious messaging and the used its mechanism to amplify its messages over and over, and over again, even now in the face of a Tribunal order.

34. It also bears emphasizing that Gramercy has denied the relevance of aggravation, and has not similarly alleged any aggravation by Peru, which has sought to contain the aggravation and encourage a respectful proceeding. If Gramercy seeks to sandbag Peru with such arguments at this point, it certainly would be an attempt to deflect attention from its own conduct. To the extent Gramercy raises issues that go to the merits, it may brief them soon enough the context of an orderly proceeding, and Peru will respond.

A. The Gramercy Mechanism

35. In soliciting capital, Gramercy has said that its team looks for "situations where we can introduce a catalyst to positively affect the outcome."⁵⁰ With respect to the agrarian reform bonds, this has in practice meant, as the international press has explained, "seeking to stir up a revolt" and "add pressure on the government,"⁵¹ and "waging a campaign to make Peru pay off."⁵² This campaign involves Gramercy created groups, lobbyists, hired experts, and public relations advisors, among others.

1. Organizations

36. Gramercy has established and used organizations to amplify its message. In 2015, Gramercy's counsel established the group Peruvian-American Bondholders for Justice ("PABJ"),⁵³ PABJ shares its address and phone number with Gramercy, as revealed by PABJ tax forms submitted by Mr. James Taylor, Gramercy's Chief Legal Officer who participated in the procedural conference before the Tribunal and confirmed that Gramercy did not

⁴⁹ *Biwater Gauff v. Tanzania*, ICSID Case No. ARB/05/22, Procedural Order 3, 29 Sept 2006, ¶145 (Doc. RA-11).

⁵⁰ Gramercy Emerging Markets Equity, Gramercy, 3 October 2013, at 9 (Doc. R-71).

⁵¹ John Quigley and Ben Bartenstein, *A Lone Hedge Fund Seeks Allies in \$5.1 Billion Peru Bond Dispute*, Bloomberg, 2 February 2016 (Doc. R-101).

⁵² Matt Wirz, *Hedge Fund Challenges Peru on Land Bonds*, The Wall Street Journal, 15 January 2016 (Doc. R-97).

⁵³ See PABJ Certificate of Incorporation, Delaware, 29 June 2015, at 4 (Doc. R-81).

intended to respect consistently Peru's designated channel of communication.⁵⁴ In Peru, Gramercy has the address, lawyers and spokespersons of the Asociación de Bonistas de la Deuda Agraria ("ABDA").⁵⁵ ABDA and Alianza por el Pago Justo de los Bonos Agrarios ("APJ") – which has released propaganda with PABJ⁵⁶ – share a spokesperson, Mr. Carlos Anderson, who simultaneously worked for Gramercy as recently as 2017.⁵⁷

2. Lobbyists

37. Gramercy anticipated a lobbying strategy from the outset of its speculation on agrarian reform bonds.⁵⁸ Accordingly, "Gramercy has enlisted lobbying heavyweights such as the Podesta Group, the Daschle Group [affiliated with the Baker Donelson firm] and McClarty Associates," as reported by the *Washington Post*,⁵⁹ as well as Cogent Strategies (which includes former Podesta personnel). Lobbying records reveal payments to those firms of over US\$ 1.5 million dollars from 2015 through the first quarter of 2018 for work related to "international finance issues" and activities directed at USTR, Senate, House of Representatives, Department of State and Department of Agriculture, among others.⁶⁰ The registration forms for those firms reference Gramercy, and in some instances, Gramercy's counsel. McLarty Associates explained to the *Washington Post* that its "principal task" was "to make sure the new [Peru] administration ... was aware of this issue and was baking it into their going forward plans."⁶¹ A McLarty representative awkwardly gave a Peruvian Minister a business card at a public event seeking an "off the record conversation."⁶² More recently, "[t]he bondholders have hired Frontline Strategies" in an effort "to force Peru to pay up,"⁶³ and the strategist for a related political action committee placed an op-ed in *The Hill* calling on the U.S. to take action against Peru based on inaccurate statements about the bonds.⁶⁴

⁵⁴ PABJ, 2015 Annual Franchise Tax Report, Delaware, 5 February 2016 (Doc. R-104).

⁵⁵ See e.g. ABDA, Datos Peru (Doc. R-220); see also Letter from Gramercy to Peru, 21 April 2014 (Doc. R-76); Interview with Luis Bedoya, representative of the association of bondholders of the agrarian debt, APJ Website, 13 April 2015 (Doc. R-80). ("Luis Bedoya, representative of the Association of Bondholders of the Agrarian Debt"); *People expropriated by agrarian reform claim they will only be paid for 0.5% of the value of their land*, Gestión, 6 April 2015 (Doc. R-79); *Siege of Bonds*, Caretas, 25 October 2012 (Doc. R-72) (identifying Mr. Seoane as "current representative of Gramercy"); Laura Villahermosa, *Know what's happening with Peru's agrarian bonds*, América Economía, 5 April 2016 (identifying Mr. Seoane as "spokesman" for ABDA) (Doc. R-116).

⁵⁶ *Speculative bonds put pressure on MEF*, Poder, 27 October 2015 (Doc. R-94); see also *Flyer*, PABJ, 16 April 2016 (Doc. R-33).

⁵⁷ *Anderson: MEF's formula to pay bonds is flawed*, RPP Noticias, 11 August 2015 (Doc. R-83 (identifying Mr. Anderson as advisor to ABDA)); Interview: Carlos Anderson, APJ Website, 19 October 2015 (Doc. R-93) (identifying Mr. Anderson as advisor to APJ); Gramercy: Investment Research Team, Gramercy Website, 22 July 2017 (Doc. R-177) (identifying Carlos Anderson as Gramercy's Head of Andean Pact).

⁵⁸ Memorandum from David Herzberg to Robert Koenigsberger, 24 January 2006, at 3 (Doc. CE-114).

⁵⁹ Steven Mufson, *\$1.6 billion – or just about nada*, The Washington Post, 11 September 2016 (Doc. R-145).

⁶⁰ Lobbying Registration and Disclosures, Podesta Group (Doc. R-21, Doc. R-22, Doc. R-23, Doc. R-28, Doc. R-29, Doc. R-141, Doc. R-152, Doc. R-155, Doc. R-170, Doc. R-176, Doc. R-196, Doc. R-210); Lobbying Registration and Disclosures, Baker Donelson (Doc. R-24, Doc. R-25, Doc. R-26, Doc. R-27, Doc. R-140, Doc. R-151, Doc. R-154, Doc. R-169, Doc. R-175, Doc. R-195, Doc. R-208, Doc. R-216); Lobbying Registration and Disclosures, Cogent Strategies (Doc. R-202, Doc. R-209, Doc. R-217).

⁶¹ Steven Mufson, *\$1.6 billion – or just about nada*, The Washington Post, 11 September 2016 (Doc. R-145).

⁶² Business Card provided by McLarty Associates to Minister of Economy and Finance, 5 October 2016 (Doc. R-148).

⁶³ Matthew Boyle, *Globalist of the Year': Trump Allies Seek POTUS Help to Stop Mexico's NAFTA Negotiator from Screwing American Workers Again, This Time Through Peru*, Breitbart, 1 March 2018 (Doc. R-211).

⁶⁴ Ed Rollins, *Trump, Don't let Peru rip off American Workers*, The Hill, 13 May 2018 (Doc. R-218).

3. Hired Experts

38. Gramercy and its agents have hired and relied on professors and others to issue one-sided reports for public dissemination. Among other examples, prior to Gramercy filing its Notice of Intent, a law school professor addressed a report to Gramercy that begins by saying “[y]ou have asked for my legal opinion.”⁶⁵ The report was published on the PABJ website.⁶⁶ Another professor⁶⁷ authored an op-ed in Forbes questioning Peru’s credit rating, issued a report relying on the law professor’s report, and then was part of an event with Gramercy at the Emerging Markets Traders Association.⁶⁸ In June 2017, another report appeared as to Peru’s adherence to International IMF requirements, as disseminated by PABJ⁶⁹ and sent by ABDA to the IMF.⁷⁰ More recently, PABJ commissioned and disseminated a report questioning Peru’s fitness to become a member of the Organisation for Economic Co-operation and Development (OECD).⁷¹

4. Alternative Ratings

39. Gramercy and its agents also have obtained and rely on material with which to smear Peru from secondary agencies HR Ratings and Egan Jones.⁷² HR Ratings’ report notes that it “was solicited by an investor whose identity remains, and will be kept, unknown to the general public,” that the agency “received the corresponding fee for the rating services provided,” and that its main source was “[i]nformation contained in bonosagrarios.pe” (i.e. the APJ website).⁷³ Egan Jones, which also follows an investor-pays rating model,⁷⁴ previously was banned from issuing official ratings on asset-backed and government securities as part of a settlement with US regulators who alleged it had misled regulators and violated rules prohibiting conflicts of interest.⁷⁵

5. Public Relations and Wikipedia Manipulators

40. Gramercy has retained public relations firms ASC Advisors and Llorente & Cuenca, which have managed the issuance of diverse negative information into the press, together with Gramercy and other lobbyists and representatives.⁷⁶ The press operation apparently

⁶⁵ See John C. Coffee, Jr., Legal Opinion to GFM, 11 Jan 2016 (Doc. CE-39); John Quigley and Ben Bartenstein, *A Lone Hedge Fund Seeks Allies in \$5.1 Billion Peru Bond Dispute*, Bloomberg, 2 Feb 2016 (Doc. R-101).

⁶⁶ See ABDA, *Peru Sold \$3 billion of Debt in 2015 Based Upon “Materially Misleading” Prospectuses*, Businesswire, 19 January 2016 (Doc. R-99) (“Professor Coffee’s letter in its entirety can be found at: <http://perubonds.org/resource/analysis-of-perus-bond-prospectuses-filed-with-the-u-s-securities-and-exchange-commission-sec>”).

⁶⁷ Peru was told that Mr. Porzecanski said he was with Gramercy.

⁶⁸ Arturo Porzecanski, *Fitch, Moody’s and Standard & Poor Haven’t Learned Enough From the Financial Crisis*, Forbes, 9 Dec 2015 (Doc. R-95); Arturo Porzecanski, *Peru’s Selective Default: A Stain on Its Creditworthiness*, 28 Jan 2016 (Doc. CE-219); *EMTA Seminar: The Peru Land Reform Bond Case*, 2 Jun 2016 (Doc. R-129).

⁶⁹ *Resources*, PABJ Website (Doc. R-221).

⁷⁰ Letter from ABDA to International Monetary Fund, 26 July 2017 (Doc. R-178).

⁷¹ See PABJ, *New Report from Peruvian-American Bondholders for Justice (PABJ) Says Peru Is Not Ready For Membership In The OECD*, PR Newswire, 4 December 2017 (Doc. R-204).

⁷² *Stakeholders: Potential Sovereign Bond Investors*, PABJ Website (Doc. R-223).

⁷³ *Peruvian Agrarian Bonds*, HR Ratings, 27 October 2016 (Doc. R-31).

⁷⁴ Andras Milidonis, *Federal Reserve & Academic Studies*, Egan-Jones Ratings Company, 2013 (Doc. R-74).

⁷⁵ *Egan-Jones Is Given SEC Ratings Ban*, The Financial Times, 22 January 2013 (Doc. R-30).

⁷⁶ *U.S. Fond notifies Peru of intent to arbitration for agrarian Bonds*, RPP Noticias, RPP Noticias, 2 February 2016 (Doc. R-100) (“The notice shows that ‘Gramercy is willing to enforce their international rights and be liable

even has extended to rewriting the well-known Wikipedia web site's entry on the Agrarian Reform Bonds, as a "PR firm hired to edit Wikipedia"⁷⁷ used online identities established for purposes of deception (known as "sockpuppets")⁷⁸ Since Peru first noted this issue in its Response, Wikipedia has identified and suspended an additional *sockpuppet*.⁷⁹ Other edits relating to the Bondholder Process were made by the same user whose prior activity includes edits to Wikipedia entries related to Gramercy's Senior Partner.⁸⁰

B. The Gramercy Messaging

41. Gramercy developed simplistic messaging with key words, defined terms and data that is amplified through the mechanism it assembled – messages that in a Treaty proceeding will be subject to due process and responses, but in the Gramercy echo chamber, are repeatedly incessantly – like copies of copies of copies. As a few examples, some of the key terms include:

- "Default": Notwithstanding the fact that Peru is following Peruvian law and carrying out a Bondholder Process, Gramercy maintains its messaging that Peru is in default,⁸¹ and amplifies that message through representatives.⁸²
- "Land Bonds": Gramercy has long referred to the Agrarian Reform Bonds as "Land Bonds,"⁸³ and deploys its buzzword through PABJ and mechanisms.⁸⁴
- "\$5 billion": Gramercy has developed a contorted figure suggesting that Peru owes approximately \$5 billion on the agrarian reform bonds,⁸⁵ and deploys this information through PABJ and other mechanisms.⁸⁶

to Peru by the deplorable conduct that the government has demonstrated to the case of the Bonds of Agrarian Reform' said the lawyer through a statement agency Llorente & Cuenca in Lima.").

⁷⁷ *Sockpuppet Investigation, Sherlock400, Wikipedia* (Doc. R-34).

⁷⁸ *Sockpuppet, Wikipedia* (Internet) (Doc. R-35).

⁷⁹ *Agrarian Bonds in Peru - Revision History, Wikipedia*, 14 November 2017 (Doc. R-200).

⁸⁰ *See User contributions for 65.249.189.253, Wikipedia*, 15 August 2017 (Doc. R-179) (showing contributions relating to Mr. Rauch, including the entry on the World Disc Federation, of which Mr. Rauch was the president).

⁸¹ Letter from Gramercy to the Embassy of Peru, 23 Dec. 2015 (Doc. CE-216); Gramercy, *Gramercy Funds Management Files US \$1.6 Billion Claim against Peru for Violations of the U.S.-Peru Trade Promotion Agreement*, PR Newswire, 2 June 2016 (Doc. R-128).

⁸² *Flyer, PABJ*, 16 April 2016 (Doc. R-33); *Flyer, PABJ*, 21 Apr. 2017 (Doc. R-171); *Mobile Billboards in Washington, DC, Haunt Peru*, PR Newswire, 24 Apr. 2017 (Doc. R-173); Letter from James Hoffa to Embassy of Peru, 24 Mar. 2017 (Doc. R-163); Nick Nardi, *Hard day's work deserves fair pension, LimaOhio*, 24 Mar. 2018 (Doc. R-212); Dennis Hower, *Peru's default on bonds hurting union retirees*, Lehigh Valley Opinion, 16 Apr. 2018 (Doc. R-213); Egan-Jones, *First-time Rating of "BB" To The Republic Of Peru's International Bonds*, 17 Nov. 2015 (Doc. CE-22), at 6; *Peru Agrarian Bonds, HR Ratings*, 27 Oct 2015 (Doc. R-31), at 1.

⁸³ Letters from Gramercy to Embassy of Peru, 23 Dec. 2015 and 29 Jan. 2016 (Doc. R-216), (Doc. R-256); Gramercy Notice of Intent, 1 Feb. 2016, ¶ 1; Second Amended Notice of Arbitration, 5 Aug. 2016, ¶ 1.

⁸⁴ PABJ, *New Report from Peruvian-American Bondholders for Justice (PABJ) Says Peru Is Not Ready For Membership In The OECD*, PR Newswire 4 Dec. 2017 (Doc. R-204); Coffee Opinion, at 2; Egan-Jones Ratings Company, *First-time Rating of "BB" To The Republic Of Peru's International Bonds*, 17 Nov. 2015 (Doc. CE-22); Letter from Embassy of Peru to James Hoffa, 18 Apr. 2017 (Doc. R-167); Dennis Hower, *Peru's default on bonds hurting union retirees*, Lehigh Valley Opinion, 16 Apr. 2018 (Doc. R-214); Nick Nardi, *Column: Hard day's work deserves fair pension, LimaOhio*, 24 March 2018 (Doc. R-212).

⁸⁵ Letters from Gramercy to Embassy of Peru, 23 December 2015 and 29 January 2016 (Doc. CE-216), (Doc. CE-256); *see also* Gramercy Notice of Intent, 1 February 2016, ¶ 26.

⁸⁶ *See e.g. Flyer - Peru Defaults. Rating Agencies Ignore it, PABJ*, April 2017 (Doc. R-171); Letter from Embassy of Peru to International Brotherhood of Teamsters President, 18 April 2017 (Doc. R-167); Nick Nardi, *Column: Hard day's work deserves fair pension, LimaOhio*, 24 March 2018 (Doc. R-212).

42. Peru reserves further comment on the content of Gramercy's messaging. The Parties should be heard in an orderly manner on Gramercy's allegations at the appropriate time in this forum, not through trial-by-media. This is a Treaty proceeding, not a Twitter war.

C. Incidents of Aggravation

43. Gramercy has used its mechanism to amplify its contorted messaging through numerous incidents of aggravation, seeking to force Peru to change its laws and seeking to undermine the Peruvian bondholder procedure. Instead of relying on the Treaty proceeding it elected to file as the forum to resolve its dispute with Peru, Gramercy has disrespected designated channels of communication, aggravated the dispute and demonstrated utter disdain for the integrity of the Treaty proceeding and the Treaty-established role of the non-disputing party. As discussed in the Annex on Incidences of Aggravation, examples include:

1. **The IMF/World Bank Meetings in Lima.** As Gramercy had contemplated even before allegedly acquiring any bonds, Gramercy pursued a lobbying strategy that involved key elements of its attack mechanism.
2. **The Embassy in Washington.** Gramercy targeted the Embassy of Peru in Washington through correspondence and lobbying.
3. **The Notice of Intent, Consultations and Threats.** After its initial Notice of Intent, Gramercy flagrantly flouted and flexed its capacity to turn its attacks off and on, depending on its level of satisfaction with consultations.
4. **The Initial Notice of Arbitration and Peruvian Elections.** Gramercy rejected consultations and timed the filing of its Notice of Intent to gain attention at the time of the Peruvian presidential elections.
5. **The Government Transition and Third Notice of Arbitration.** Gramercy sought to lobby the incoming Peruvian government and pressure publicly.
6. **The Evolving Campaign and Sovereign Finance.** Gramercy continued various efforts to interfere with Peru's contemporary sovereign bond program, which relates to bonds that are wholly distinct from the agrarian reform bonds, affirmatively attempting to harm Peru and its people.
7. **The Teamsters Issue and Aftermath.** Following the change of government in Washington in 2017, the campaign took a new turn centered on the evolving political discourse in Washington and relying on statements by misinformed unions.
8. **The Further Politicization of the Dispute.** While Peru was advancing the Bondholder Process, Gramercy intensified its efforts to politicize the dispute and involve U.S. officials.
9. **The OECD Issue.** At the end of 2017, the campaign accelerated, with new efforts to impede Peru's entry into the OECD, despite the prejudice to Peru and its citizens.
10. **The Tribunal Order and the Permanent Campaign.** Even after the constitution of the Tribunal and communication A-11, the negative campaign against Peru continues.

44. Peru previously has addressed such issues in its Response filings (R-1 and R-2), its letter R-7, and in various communications with Gramercy over more than two years, to no avail.⁸⁷ Gramercy's conduct has been counterproductive to consultations, unproductive to advancing a Treaty proceeding.

⁸⁷ Peru stands ready to provide additional details and/or evidence should it prove useful to the Tribunal, and reserves all rights in this regard.

IV. REQUEST FOR RELIEF

45. For the foregoing reasons, Peru requests that the Tribunal enter an order as follows:

All communications among any of the Parties, including communications involving any of their representatives, shall be channeled solely in the manner indicated by each Party in the Terms of Appointment.

The Parties shall abstain from any action or conduct that may result in an aggravation of the dispute.

Correspondingly, the Parties shall respect the role of the non-disputing Party as established in the Treaty. In consultation with the Parties, the Tribunal shall establish in a procedural order pursuant to which the non-disputing Party may make certain submissions in a manner consistent with the Treaty.

46. Peru also requests that the Tribunal award Peru all costs in connection herewith.⁸⁸

47. For the avoidance of doubt, Peru reserves the right to amplify the issues discussed herein and maintains its continuous reservation of rights with respect to this matter.

Respectfully submitted,



WHITE & CASE

Washington, D.C.

Counsel to the Republic of Peru

1 June 2018

⁸⁸ UNCITRAL Arbitration Rules (2013), Art. 40(1) (“The arbitral tribunal shall fix the costs of arbitration in the final award and, if it deems appropriate, in another decision.”).

ANNEX ON INCIDENTS OF AGGRAVATION

1. The IMF/World Bank Meetings in Lima

1. As Gramercy had contemplated even before allegedly acquiring any bonds, Gramercy pursued a lobbying strategy that involved key elements of its attack mechanism. Specifically, in June 2015, Gramercy established PABJ,⁸⁹ which proceeded to give away tickets to a September 2015 soccer match in Washington between Peru and the United States and distribute propaganda.⁹⁰ Gramercy also began enlisting lobbyists at the Podesta Group and the Daschle Group.⁹¹ PABJ In October 2015, Peru hosted the 2015 annual IMF/World Bank fall meetings, the Financial Times reported that, “[a] US hedge fund is ratcheting up its campaign [link to PABJ website] to convince Peru to repay \$5bn of long-defaulted 40-year-old bonds by threatening to sue the country under a free-trade agreement with the US.”⁹² Asked how Gramercy was “ramping up the campaign,” the Financial Times reporter tweeted “PABJ, funding groups, meetings, etc.” and linked to a “ramped up” PABJ website.⁹³

2. The Embassy in Washington

2. *Gramercy targeted the Embassy of Peru in Washington through correspondence and lobbying.* In late 2015, Gramercy began sending threatening correspondence to the Embassy of Peru to the United States, asserting deadlines for the Embassy to respond to a one-sided recitation of arguments. Gramercy copied the letter to eighteen U.S. government officials, all of whom belonged to parts of the U.S. government that Gramercy-affiliated lobbyists disclosed they were lobbying.⁹⁴ The Embassy responded by suggested that “Gramercy consider an approach that is truly constructive and respectful or Peru and its laws and procedures,” and reminding Gramercy of appropriate channels of contact.⁹⁵ Gramercy subsequently sent a letter received 1 February 2016 emphasizing that it was copying numerous government officials, a list which had grown longer since the prior correspondence.⁹⁶ In its response, the Embassy said:

[T]his Embassy invites Gramercy, and calls on you, to stop the direct and indirect campaign aimed at damaging Peru’s reputation and financial stature. While Gramercy or its advisors may have used such a campaign in different circumstances not relevant to Peru, it is at odds with constructive dialogue and with procedures established by law and the Treaty. Under the Treaty, the role of the United States in relation to an investment dispute is as “Non-

⁸⁹ See PABJ Certificate of Incorporation, 29 June 2015 (Doc. R-81).

⁹⁰ *Sign Up*, PABJ Website, 25 July 2015 (Doc. R-82); Private photograph of PABJ propaganda at Peru vs. U.S. soccer match, 4 September 2015 (Doc. R-85).

⁹¹ Lobbying Registration, LD-1, House Identification 311100508 and Senate Identification 31680, 17 June 2015 (Doc. R-21); Lobbying Registration, LD-1, House Identification 308730279 and Senate Identification 5153, 23 October 2015 (Doc. R-24); Lobbying Report, LD-2, House Identification 308730279 and Senate Identification 5153-1006043, 20 January 2016 (Doc. R-25); Lobbying Report, LD-2, House Identification 308730279 and Senate Identification 5153-1006043, 20 January 2016 (Doc. R-26).

⁹² Robbin Wigglesworth, *Hedge fund pressures Peru to pay back 40-year-old debt*, Financial Times, 7 October 2015 (Doc. R-88); see also Paul Kilby and Davide Scigliuzzo, *Peru will stick to local law in debt dispute: Finance Minister*, Reuters, 11 October 2015 (Doc. R-92) (quoting James Taylor as stating: “The Supreme Decree issued by Peru last year is a complete repudiation of the debt cleverly wrapped in the cloth of a resolution.”).

⁹³ @RobinWigg (Robbin Wigglesworth), Tweet, 7 October 2015 (Doc. R-87).

⁹⁴ See Letter from Gramercy to the Embassy of Peru, 23 December 2015 (Doc. CE-216).

⁹⁵ See Letter from the Embassy of Peru to Gramercy, 19 January 2016 (Doc. R-43).

⁹⁶ See Letter from Gramercy to the Embassy of Peru, 29 January 2016 (Doc. CE-256).

Disputing Party,” making a campaign before numerous U.S. officials, and beyond, even less appropriate.⁹⁷

3. Meanwhile, the Daschle Group had approached the Embassy and continued to do so with respect to the agrarian reform bonds, initially concealing but later disclosing that it acted for Gramercy, and PABJ published the Coffee Opinion obtained by Gramercy.⁹⁸

3. The Notice of Intent, Consultations and Threats

4. After its initial Notice of Intent, Gramercy flagrantly flouted and flexed its capacity to turn its attacks off and on, depending on its level of satisfaction with consultations. Following Gramercy’s first Notice of Intent dated 1 February 2016, Gramercy representatives gave statements to the press,⁹⁹ which also published the Coffee opinion.¹⁰⁰ After the Special Commission informed Gramercy that it was the established channel of communication,¹⁰¹ Gramercy and its affiliates continued to seek contact with other Peruvian officials, including at a road show in New York.¹⁰²

5. Peru nonetheless engaged in consultations with Gramercy pursuant to the Treaty. During these consultations, Gramercy underscored its control over the media campaign, by stating that “Gramercy is open to refraining from taking other actions including affirmative steps to publicize the land bond issue at other upcoming events.”¹⁰³ Gramercy also indicated that its Notice of Arbitration would “provide grist for the media mill,” and that to abstain from filing it “would require a tolling agreement to suspend time counting against the 3-year statute of limitations in Article 10.18(1) of the TPA.”¹⁰⁴ When Peru informed Gramercy that the scope of its proposal was excessive and invited a new version, Gramercy replied that, “Gramercy and others will be resuming their efforts to focus attention on the land bonds issue.”¹⁰⁵

6. Gramercy followed through. During the 2016 annual IMF/World Bank spring meetings, Gramercy lobbyists¹⁰⁶ distributed PABJ pamphlets calling out Peru’s Minister of Finance by name,¹⁰⁷ and PABJ issued a press release “demanding answers” from the Minister.¹⁰⁸ On 18 April 2016, Gramercy told Peru: “Gramercy offered to – and did – reduce

⁹⁷ Letter from the Embassy of Peru to Gramercy, 18 February 2016 (Doc. R-107).

⁹⁸ See ABDA, *Peru Sold \$3 billion of Debt in 2015 Based Upon “Materially Misleading” Prospectuses*, Businesswire, 19 January 2016 (Doc. R-99) (“Professor Coffee’s letter in its entirety can be found at: <http://perubonds.org/resource/analysis-of-perus-bond-prospectuses-filed-with-the-u-s-securities-and-exchange-commission-sec>”).

⁹⁹ Robbin Wigglesworth, *Gramercy files \$1.3bn claim against Peru*, Financial Times, 2 February 2016 (Doc. R-103).

¹⁰⁰ John Quigley and Ben Bartenstein, *A Lone Hedge Fund Seeks Allies in \$5.1 Billion Peru Bond Dispute*, Bloomberg, 2 February 2016 (Doc. R-101).

¹⁰¹ Letter from Peru to Gramercy, No. 022-2016-EF/CE.36, 15 February 2016 (Doc. R-44).

¹⁰² ABDA, *Peru Hides \$5 Billion Land Bond Default and Misleads International Investors While Promising “Great Opportunities” in Road Show*, PR Newswire, 9 March 2016 (Doc. R-114).

¹⁰³ See Letter from Gramercy to Special Commission of Peru, 28 March 2016 (Doc. R-47).

¹⁰⁴ Letter from Gramercy to Special Commission of Peru, 28 March 2016 (Doc. R-47).

¹⁰⁵ Email from Gramercy to Special Commission of Peru, 13 April 2016 (Doc. R-117).

¹⁰⁶ Photograph of John Anderson of Podesta Group distributing PABJ Flyers, 16 April 2016 (Doc. R-172).

¹⁰⁷ *Flyer*, PABJ, 16 April 2016 (Doc. R-33).

¹⁰⁸ PABJ, *PABJ Demands Answers From Peruvian Finance Minister Alonso Segura Regarding the Agrarian Reform Bond Scandal While He Attends the IMF World Bank Meetings in Washington, D.C.*, PR Newswire, 13 April 2016 (Doc. R-119).

certain efforts to focus public attention on the Government's treatment of the land bonds at an international meeting." Days later, during the United Nations General Assembly meeting in New York in April 2016, PABJ issued a press release (on which a Podesta Group lobbyist was listed as the point of contact) that "demands answers" from the President of Peru.¹⁰⁹

4. The Initial Notice of Arbitration and Peruvian Elections

7. Gramercy rejected consultations and timed the filing of its Notice of Intent to gain attention at the time of the Peruvian presidential elections. Having rejected good faith invitations to participate in further consultations, Gramercy filed its Notice of Arbitration on 2 June 2016, just prior to Peru's run-off election for President. The same date of the Notice of Arbitration, three days before Peru's run-off election, Gramercy's counsel, Gramercy's Managing Partner and a Gramercy-aligned expert appeared at an event at the headquarters of the Emerging Markets Traders Association, during which Gramercy distributed its filing and highlighted particular evidence, also made available on the PABJ website.¹¹⁰ It is no wonder Gramercy refused consultations: it would have disrupted its previously planned press opportunity. According to a published account of the meeting: "On the 17th floor of a glimmering office tower on Manhattan's Madison Avenue, men in dark suits picked over a catered spread, munching on shrimp cocktail and sharing war stories.... Billed as a panel discussion, the gathering quickly became an attack on the government of Peru."¹¹¹ Also on that day, the Special Commission requested that Gramercy that White & Case LLP direct its communications to White & Case LLP.¹¹² Nonetheless, in the following days, an attorney at the Peruvian law firm representing Gramercy, using a university email address and, without revealing his professional connection, requested that Peru provide documents pertaining to the Bondholder Process and to the bills and description of services of Peru's counsel.¹¹³

5. The Government Transition and Third Notice of Arbitration

8. Gramercy sought to lobby the incoming Peruvian government and pressure publicly. As early as 2006, Gramercy had contemplated a lobbying strategy taking advantage of moments of political transition.¹¹⁴ The new Peruvian administration assumed power on 28 July 2016. In the previous weeks, Gramercy PABJ, and ABDA had issued press releases taking issue with Peru's Response to the Notice of Arbitration,¹¹⁵ and Gramercy had filed an amended Notice of Arbitration. On 5 August 2016, Gramercy filed a third Notice of Arbitration, at which point it considered that "all conditions have been met for the formation of an arbitration agreement between Gramercy and Peru and the claims set forth in the Notice have been properly submitted to arbitration."¹¹⁶ Meanwhile, Gramercy sought to inroads with

¹⁰⁹ PABJ, *PABJ Demands Answers From Peruvian President Ollanta Humala Regarding the Agrarian Reform Bond Scandal While He Attends the UN General Assembly Special Session in New York*, PR Newswire, 22 April 2016 (Doc. R-122).

¹¹⁰ *EMTA Special Seminar: The Peru Land Reform Bond Case*, EMTA (Doc. R-129).

¹¹¹ Chris Hamby, *How Big Banks Bled a Tiny Island Nation*, BuzzFeed News, 31 August 2016 (Doc. R-144).

¹¹² Letter from Peru to Gramercy, No. 061-2016-EF/CE.36, 2 June 2016 (Doc. R-57).

¹¹³ See Letters from Estudio Rodrigo attorney to Ministry of Economy and Finance, 6 and 7 June 2016 (Doc. R-132) (Doc. R-133).

¹¹⁴ See Memorandum from David Herzberg to Robert Koenigsberger, 24 January 2006, at 3 (CE-114) ("[o]ne potential strategy would be to lobby a congress representative [that] may be willing to call for a vote knowing that he/she will be leaving congress within weeks and has little to lose.").

¹¹⁵ PABJ, *PABJ Calls on Peru to Make Dean Mahoney's Report Publicly Available*, PR Newswire, 14 June 2016 (Doc. R-134); ABDA, *Ministry of Economy and Finance (MEF), hides evidence that presumably invalidates international demands for Agrarian Bonds*, PR Newswire, 20 June 2016 (Doc. R-135); Gramercy Funds Management, *Gramercy Once Again Responds to False Accusations Contained in Peru's Response on Land Bonds*, PR Newswire, 6 July 2016 (Doc. R-138).

¹¹⁶ Letter from Gramercy to Peru, 5 August 2016 (Doc. R-143).

Peru's incoming government. The president of McLarty Associates told the press, "[o]ur principal task has been to make sure the new [Peruvian] administration ... was aware of this issue and was baking it into their going forward plans."¹¹⁷ Responding to questions about Gramercy in an interview with Latin Finance, Peru's newly elected President said, "[t]hey've hired lobbyists, they're making a big fuss. And we're not stupid."¹¹⁸ Consistent with Peru's position articulated before and after with respect to Gramercy's claims in this Treaty proceeding,¹¹⁹ the President stated, "I don't think we owe them anything."

6. The Evolving Campaign and Sovereign Finance

9. Gramercy continued various efforts to interfere with Peru's contemporary sovereign bond program, which relates to bonds that are wholly distinct from the agrarian reform bonds, affirmatively attempting to harm Peru and its people. On 20 September 2016, counsel for Gramercy wrote to Peru's underwriters in connection with a new sovereign debt offering announced that day.¹²⁰ Attaching the Coffee Opinion previously commissioned by Gramercy, and without mentioning the Bondholder Process, Gramercy purported that Peru had "disavow[ed] the Land Reform Bonds," which, according to Gramercy "puts the credibility of the country at issue with respect to other debt obligations."¹²¹

10. Shortly thereafter, Peru's Minister of Economy and Finance traveled to Washington, DC to participate in the IMF/World Bank annual meetings. At one event, for instance, he was approached by a McLarty Associates representative who provided a business card with a handwritten note soliciting a meeting. In light of the foregoing, Peru requested that Gramercy and its representatives respect the proceeding its chose to commence under the Treaty and channel its communication and conduct accordingly.¹²² That letter, to which Gramercy did not respond, stated:

[T]he Republic of Peru has requested on repeated occasions that the Gramercy entities and their representatives respect appropriate channels of communication. Peru considers that Gramercy has disregarded this request and continued to aggravate the circumstances of this dispute, as set forth in a long record of communications and pleadings. It is inappropriate for Gramercy representatives to continue engaging in conduct such as approaching officials at private and public events and locations, attempting to arrange meetings, and other such conduct. For the avoidance of doubt, certain other representatives who have acted in this matter arte copied as a professional courtesy.¹²³

11. The efforts to interfere with Peru's sovereign finance continue. On its website, for instance, PABJ tells potential sovereign bond investors to "[b]e wary of investing in Peru through their outstanding and future sovereign bond issues."¹²⁴ PABJ does not mention that

¹¹⁷ Steven Mufson, *\$1.6 billion – or just about nada*, The Washington Post, 11 September 2016 (Doc. R-145).

¹¹⁸ Katie Llanos-Small, *Peru's PPK: 'I don't think we owe [Gramercy] anything' – Exclusive*, Latin Finance, 22 August 2016 (Doc. R-62).

¹¹⁹ Response of the Republic of Peru (R-1), 6 September 2016, ¶ 113.

¹²⁰ Email from Gramercy counsel to Bank of America, 20 September 2016 (Doc. R-146).

¹²¹ Email from Gramercy counsel to Bank of America, 20 September 2016 (Doc. R-146).

¹²² Letter from Peru to Gramercy, 6 October 2016 (Doc. R-149).

¹²³ Letter from Peru to Gramercy, 6 October 2016 (Doc. R-149).

¹²⁴ *Stakeholders: Potential Sovereign Bond Investors*, PABJ Website (Doc. R-223).

all three principal credit ratings agencies rate Peru's foreign and local currency debt as investment grade and its outlook with a stable outlook.¹²⁵

12. The Parties signed a Consultation Protocol dated 18 November 2016 establishing established a Consultation Period, which lasted through 28 February 2017.¹²⁶ While there are many things that Peru might say about exchanges during this period, Peru refrains from doing so because the Consultation Protocol expressly provides that “communications and interactions by and among the parties, and information exchanged in connection with the Amicable Consultations during the Consultation Period following this Protocol is confidential and shall not be admissible in any forum for any purpose.” Whether Gramercy may claim that it downshifted its negative campaign during this time, it is clear that the perpetual-motion machines continued: the digital media, the misinformation and the lobbying, including continued spending on lobbyists and movements in Washington.¹²⁷

7. The Teamsters Issue and Aftermath

13. Following the change of government in Washington in 2017, the campaign took a new turn centered on the evolving political discourse in Washington and relying on statements by misinformed unions. As it continued to advance the Bondholder Process, Peru issued Supreme Decree No. 034-2017-EF on 28 February 2017 with respect to further steps with respect to the Bondholder Process, as anticipated.¹²⁸ On 1 March 2017, after the Consultation Period, Peru advised Gramercy that it remained open to without prejudice consultations to discuss the latest advances in the Bondholder Process, and, in the absence of a framework for such consultations, proposed to proceed with the appointment of the presiding arbitrator.¹²⁹

14. In the context of the continued progress of the Bondholder Process, on 29 March 2017, the President of the International Brotherhood of Teamsters, a major labor union, sent a letter to the Ambassador of Peru and copied the President of the United States and others in his administration.¹³⁰ According to Mr. Hoffa: “America can no longer allow countries that take advantage of our large domestic market to get away with defaulting on their debts.” The letter does not purport that the Teamsters or its members are actual bondholders. According to Mr. Hoffa, “[m]any of our pension funds are holding defaulted Peruvian land bonds through various investment vehicles.” POLITICO published a copy of the Teamsters letter,¹³¹ a version that was not a copy of the delivered document and does not have any official receipt stamps.¹³² Journalists had received the Teamster letter from Gramercy representatives, but Gramercy maintained its lack of transparency toward Peru. When asked to confirm if the bonds referenced by the Teamsters were the same bonds as those allegedly held by Gramercy, Gramercy's counsel clearly replied: “No comment.” Notably the Embassy responded to Mr. Hoffa, emphasizing the close relationship between Peru and the

¹²⁵ *Credit Ratings*, Ministry of Economy and Finance (Doc. R-225).

¹²⁶ See Consultation Protocol signed 11 November 2016 (Doc. R-153); Amendment, 23 January 2017 (Doc. R-156); Second Amendment, 22 February 2018 (Doc. R-157).

¹²⁷ Lobbying Disclosures, Podesta Group (Doc. R-155); (Doc. R-170).

¹²⁸ See Response of the Republic of Peru, 6 September 2016 ¶ 42 (R-1).

¹²⁹ Letter from Peru to Gramercy, 1 March 2017 (Doc. R-159).

¹³⁰ Letter from International Brotherhood of Teamsters President James P. Hoffa to Embassy of Peru, 24 March 2017 (Doc. R-163).

¹³¹ Peru was told that Politico received the letter from Gramercy's representatives.

¹³² Adam Behsudi, *Labor union calls out Peru over land bond dispute*, Politico, 11 April 2017 (Doc. R-165). c.f. Letter from International Brotherhood of Teamsters President James P. Hoffa to Embassy of Peru, 24 March 2017 (Doc. R-163).

United States and the fact that Peru has established a procedure for the authentication and payment of the bonds. The Embassy states:

The Embassy takes note that this appears to be the first time that you or your organization have communicated with us regarding this matter, that you have chosen to copy in the first instance the President of the United States and other senior officials and that your letter appears to have been provided to the press. The Embassy is pleased to have provided you with relevant information, which has also been made available to the mentioned government authorities.¹³³

15. Peru did not distribute the letter, nor did it ever receive any response or acknowledgment. During the 2017 annual IMF/World Bank spring meetings, PABJ featured quotes from the Teamsters letter on hired mobile billboards to drive around Washington, DC,¹³⁴ as well as on PABJ flyers that Gramercy lobbyists distributed during meetings at the U.S. Chamber of Commerce in which Peru's Minister of Economy and Finance was participating,¹³⁵ which were also attended by Gramercy and its lobbyists who sought to question the Minister on the issue of the agrarian reform bonds. The Teamsters letter has continued to be cited and relied up as part of the attack campaign, and extracts are featured prominently on the PABJ website.¹³⁶

8. The Further Politicization of the Dispute

16. While Peru was advancing the Bondholder Process, Gramercy intensified its efforts to politicize the dispute and involve U.S. officials. When Peru invited Gramercy to a meeting following the issuance Supreme Decree No. 242-2017-EF,¹³⁷ Gramercy refused to agree to a consultation protocol similar to the one used by the Parties in November 2016, insisting that it had to be able to “report about the meeting to, among others, representatives of the U.S. Government.”¹³⁸ The meeting went forward, but was limited by the lack of a simple without prejudice protocol. Following this meeting, Gramercy wrote the President of Peru, copying U.S. Members of Congress, and stated that “[w]e have pledged to certain Member of Congress to keep them abreast of our negotiations.”¹³⁹ Following a letter from the Office of the President of Peru—copied to those same Members of Congress as a courtesy—that confirmed the designated and preferred channel of communication,¹⁴⁰ Gramercy again wrote the President of Peru, again copying the Members of Congress, calling out Peru's counsel by name ten times, and again seeking direct negotiations with the president “or other appropriate representatives of the Peruvian Government.”¹⁴¹

¹³³ Letter from the Embassy of Peru to International Brotherhood of Teamsters President James P. Hoffa, 18 April 2017 (Doc. R-163).

¹³⁴ *Mobile Billboards in Washington, DC, Haunt Peru over Agrarian Land Bond Default*, PR Newswire, 24 April 2017 (Doc. R-173).

¹³⁵ *Flyer*, PABJ, 16 April 2016 (Doc. R-33); *Flyer - Peru Defaults. Rating Agencies Ignore it*, PABJ, 21 April 2017 (Doc. R-171).

¹³⁶ *Stakeholders: U.S. Pensioners & Nonprofits*, PABJ Website (Doc. R-224).

¹³⁷ See Letter from Peru to Gramercy, 18 September 2017 (Doc. R-186).

¹³⁸ Email from Gramercy to Peru, 21 September 2017 (Doc. R-190).

¹³⁹ Letter from Gramercy to President Kuczynski, 29 September 2017 (Doc. R-192).

¹⁴⁰ Letter from the Office of the President of Peru to Gramercy, 16 Oct 2017 (Doc. R-194).

¹⁴¹ Letter from Gramercy to President of Peru, 29 September 2017 (Doc. R-192).

9. The OECD Issue

17. At the end of 2017, the campaign accelerated, with new efforts to impede Peru's entry into the OECD, despite the prejudice to Peru and its citizens. On 17 November 2017, PABJ twitter account @PeruLandBonds¹⁴² launched with the tweet "Peruvian American Bondholders for Justice Fights for Peruvians, Americans, and pension funds."¹⁴³ Shortly thereafter, PABJ and ABDA disseminated a report arguing that Peru's prospective OECD accession should to be put on hold. The report had been commissioned by PABJ and ABDA,¹⁴⁴ and was sent to the OECD by them and six other signatories.¹⁴⁵ An article that is linked on PABJ's website explains: "[t]he plan goes something like this: bondholders intend to put pressure on the OECD, with whatever help they can get from [the U.S. government], to force the OECD to make Peru pay up or lose the opportunity to join the OECD."¹⁴⁶ On 6 December 2017, Peru wrote the Secretary General of ICSID requesting that the designation of the president of the Tribunal in light of the lack of resolution through consultations and the aggravation of the circumstances.¹⁴⁷ Notably, Gramercy's counsel linked Peru's entry into the OECD with Gramercy's aggravation of the dispute: Asked if Gramercy would stop aggravating the dispute, Gramercy's representative stated that Gramercy would stop "when Peru stops seeking membership in the OECD."

10. The Tribunal Order and the Permanent Campaign

18. Even after the constitution of the Tribunal and the Tribunal's communication A-11, the negative campaign against Peru continues. As the Parties engaged in procedural discussions, the campaign continued. In March and April of 2018, Teamsters representatives published columns addressing the agrarian reform bonds, using Gramercy's term "land bonds" and continuing to cite the Teamster issues of a year before, with no mention of the Embassy's diligent response.¹⁴⁸ PABJ tweeted links to those articles,¹⁴⁹ and linked back to a PABJ press release mentioning the same old Teamsters article.¹⁵⁰

19. PABJ continues to urge U.S. policymakers to "Stand up for your constituents," "end U.S. aid to Peru," and "[e]nd the U.S.-Peru Free Trade Agreement," arguing that the United States "should not have a trade pact with a country that is flagrantly stealing from American

¹⁴² This was a new account, different from the preexisting @LandBonds account.

¹⁴³ @PeruLandBonds (PABJ), Tweets, 17 November 2017 to 1 June 2018 (Doc. R-199).

¹⁴⁴ PABJ, *New Report from Peruvian-American Bondholders for Justice (PABJ) says Peru not ready for Membership in the OECD*, PR Newswire, 4 December 2017 (Doc. R-204).

¹⁴⁵ Letter from PABJ, ABDA and others to Secretary-General of OECD, 3 December 2017 (Doc. R-203). In a letter to the OECD, the First Prime Minister of Peru noted that "[t]his is the latest step in a negative campaign orchestrated by a U.S.-based fund that is seeking to force Peru to change its laws and pay it an exorbitant amount." See Letter from Peru to Secretary General of OECD, No. 264-2017-PCM/DPCM, 5 December 2017 (Doc. R-205). In a non-denial by Mr. Carlos Anderson—without disclosing his erstwhile position at Gramercy—said that Gramercy had not sent the report to the OECD, but did not address the relationship between Gramercy and PABJ or ABDA. See Agrarian Bondholders: "We don't want an amount, but rather an updated methodology", Gestion, 6 December 2017 (Doc. R-206).

¹⁴⁶ Matthew Boyle, 'Globalist of the Year': Trump Allies Seek POTUS Help to Stop Mexico's NAFTA Negotiator from Screwing American Workers Again, This Time Through Peru, Breitbart, 1 March 2018 (Doc. R-211).

¹⁴⁷ See Letter from Peru to ICSID, 6 December 2017 (Doc. R-207).

¹⁴⁸ Nick Nardi, *Hard day's work deserves fair pension*, LimaOhio, 24 March 2018 (Doc. R-212); Dennis Hower, President, Teamsters Local 773, *Peru's default on bonds hurting union retirees*, Lehigh Valley Opinion, 16 April 2018 (Doc. R-214).

¹⁴⁹ Tweet by @PeruLandBonds, 25 March 2018, at 9; Tweet by @PeruLandBonds, 26 March 2018, at 8; Tweet by @PeruLandBonds, 23 April 2018, at 5; Tweet by @PeruLandBonds, 25 April 2018, at 4-5 (Doc. R-199).

¹⁵⁰ Dennis Hower, President, Teamsters Local 773, *Peru's default on bonds hurting union retirees*, Lehigh Valley Opinion, 16 April 2018 (Doc. R-214).

citizens.”¹⁵¹ Concurrently, a high-profile strategist of a political action committee linked to a lobbyist, as discussed in Peru’s Submission, published an op-ed in *The Hill* that joins many strands of Gramercy’s campaign: accusing Peru of “default,” citing the Teamsters, referencing the termination of treaties, calling Peru’s application to the OECD “untenable,” and saying that the U.S. “must pressure the Peruvian government to pay the land bonds in full — with no exceptions.”¹⁵²

20. Even in the face of the Tribunal’s decision set forth in communication A-11, the Gramercy campaign continues, as lobbying and messaging are ongoing. Even in the days immediately prior to this Submission, the Gramercy-created PABJ continued to recycle and repost the Teamster and OECD issues,¹⁵³ as Gramercy’s campaign continues.

¹⁵¹ *Stakeholders: U.S. Policymakers*, PABJ Website (Doc. R-222).

¹⁵² Ed Rollins, *Trump, don’t let Peru rip off American workers*, *The Hill*, 13 May 2018 (Doc. R-218).

¹⁵³ @PeruLandBonds (PABJ), Tweets, 17 November 2017 to 1 June 2018 (Doc. R-199).