

BEFORE THE INTERNATIONAL CENTRE FOR THE SETTLEMENT
OF INVESTMENT DISPUTES

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In the Matter of Arbitration between: :

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FREEPORT-MCMORAN INC., :

:

 Claimant, : Case No.

: ARB/20/8

 v. :

:

REPUBLIC of PERÚ, :

:

 Respondent. :

:

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HEARING ON JURISDICTION, MERITS, AND QUANTUM

Friday, May 5, 2023

The World Bank Group
1225 Connecticut Avenue, N.W.
Conference Room C1-450
Washington, D.C. 20003

The Hearing in the above-entitled matter
came on at 9:29 a.m. before:

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President of the Tribunal

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Co-Arbitrator

MR. BERNARDO M. CREMADES
Co-Arbitrator

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P R O C E E D I N G S

PRESIDENT HANEFELD: Good morning. Welcome to Day 5 of our Hearing.

Before we continue with Mr. Polo, do you have any housekeeping matters to address?

MR. PRAGER: Good morning. Nothing from Claimant's side.

PRESIDENT HANEFELD: Thank you.

MS. HAWORTH McCANDLESS: Good morning, Madam President. Nothing from Respondent, either.

PRESIDENT HANEFELD: Thank you. Then please be so kind to call Mr. Polo in.

CÉSAR AUGUSTO POLO ROBILLIARD,
RESPONDENT'S WITNESS, CALLED (continuing)

PRESIDENT HANEFELD: Good morning, Mr. Polo. Welcome back.

We will now continue with the cross-examination by Claimant's Counsel.

CROSS-EXAMINATION (continuing)

BY MR. PRAGER:

Q. Good morning, Mr. Polo.
Yesterday in the late afternoon, we

1 discussed that Perú was going through significant
2 economic, financial, and security crises in the late
3 1980s, early 1990s, when you joined the Ministry as
4 Vice Minister in 1990. You explained that previously
5 you used to work at Centromín, and when you took up
6 the position in the Ministry, you were on loan from
7 Centromín.

8 So, continuing that conversation, given the
9 economic, financial, and security crises at that time,
10 would you agree that it was one of Minister Sánchez
11 Albavera's aim to promote investments in the mining
12 sector?

13 Did you hear anything translated or nothing?

14 (Comments off microphone.)

15 A. Now I can hear the translation.

16 Q. Okay. I'm going to start again, then.

17 I was just saying that yesterday in the late
18 afternoon, we discussed that Perú was going through an
19 economic--a severe economic, financial, and security
20 crisis in the late 1980s and early 1990s. You
21 joined--you used to work, in the 1980s, at Centromín,
22 and then joined in August 1990 the MINEM as the Vice

1 Minister, and you explained you were on loan from
2 Centromín, so you received your salary from Centromín
3 when you joined the Ministry.

4 So, my first question, following up on what
5 we were discussing yesterday, was: Would you agree
6 that, given the economic, financial, and security
7 crisis, it was one of the key objectives of Minister
8 Sánchez Albavera to promote investments in the mining
9 sector?

10 A. Yes, indeed.

11 Q. And the Government saw promoting foreign
12 investment in the mining sector, actually, as being of
13 national interest; right?

14 A. Yes, that's true.

15 Q. And one of the ways to promote foreign
16 investment in the mining sector was reforming the
17 existing mining law by enacting Legislative Decree
18 708; right?

19 A. That's correct.

20 Q. And specifically, Minister Sánchez Albavera
21 wanted to promote foreign investment by granting
22 investor Stability Guarantees; right?

1 A. To the investments, yes, correct.

2 Q. And Minister Sánchez Albavera actually asked
3 you to work on new provisions regarding Stability
4 Guarantees; is that right?

5 A. That is correct.

6 Q. And you described at the SMM Hearing that
7 you were working with a team of well-recognized Tax
8 Experts, including Dr. Rubio and others; is that
9 right?

10 A. They participated in one or two meetings,
11 but they were not strictly part of my team.

12 Q. And you sought to broaden the existing
13 Stability Guarantees to make them more attractive for
14 foreign investment; is that right?

15 A. To the investment projects, new investment
16 projects, yes.

17 Q. And to give you a better idea about what the
18 new provisions regarding Stability Agreements could
19 contain, Minister Sánchez Albavera sent to you Chile;
20 right?

21 A. Yes.

22 Q. And Chile had implemented a mining reform in

1 the early 1980s; right?

2 A. It started in the '70s, and then it went on
3 in the '80s, I think.

4 Q. And would you agree with me that Chile had
5 been successful in attracting foreign investment in
6 the mining sector as a result of that reform?

7 A. Yes. It had good success. It was
8 interesting to know its experience.

9 Q. And you would also agree that in the early
10 1990s, Chile was Perú's biggest mining competitor as
11 far as attracting foreign investment goes?

12 A. It was an important competitor, apart from
13 others.

14 Q. Well, in the SMM Hearing--well, it's fine.

15 So, Minister Albavera sent you to Chile to
16 study its Mining Law; right?

17 A. Yes, for me to talk to the officials about
18 the mining legislation and the attraction investment
19 mechanisms. I also spoke to Government officials and
20 private parties.

21 Q. And one of the purposes of your trip was to
22 learn about the Stability Regime that existed under

1 Chilean law; right?

2 A. Well, in connection with the regime in
3 Chile, and also--I also looked at the system of
4 investment attraction of Decree Number 600. So, we
5 talked a lot about the mining sector. It's not
6 exactly the same thing.

7 Q. Well, Minister Sánchez Albavera tasked to
8 you work on new provisions for Stability Guarantees.
9 So, the key purpose to travel to Chile was for you to
10 learn how Stability Guarantees were handled in Chile,
11 wasn't it?

12 A. Amongst other things. I had to look at
13 other things as well, such as the more flexible
14 management mechanisms for labor protections, and we
15 did take some of those things and we adapted them to
16 Perú.

17 Then we also learned that there were
18 guarantees that they afforded the investors for the
19 money they brought in, and also for the repatriated
20 funds for investments. I discussed this with
21 officials from CODELCO, COCHILCO, SocieQuíMin, and the
22 Ministry of Energy and Mines, amongst others.

1 Q. So, when you say "entre otros," then one of
2 the areas that you were looking at to learn from the
3 Chilean legislation was how Chile treated legal
4 stability; right?

5 A. Yes, legal stability, new investments that
6 were brought in, and capital repatriations for all
7 sectors in general. That is what I recall.

8 Q. And Chile being, you know, one of your main
9 competitors, for you it was important that the
10 Stability Guarantees that you would work on for the
11 new Peruvian legislation would be at least as
12 favorable as that of Chile; right?

13 A. We were not seeking to do something that was
14 the same. We wanted to get to know them and adapt
15 them to Peruvian law. That was the relevant thing. I
16 had very clear idea, because I had experience in
17 projects and finances in connection with the
18 investors.

19 (Overlapping interpretation and speakers.)

20 (Stenographer clarification.)

21 Q. I said, well, let's look at your First
22 Witness Statement, Paragraph 10.

1 A. Where is that?

2 Q. It's in your folder under Tab 1. There's
3 like--yeah. I think the small one might actually have
4 it as well. It's probably easier to handle.

5 It's your First--the First Witness
6 Statement, Paragraph 10.

7 A. Yes, I'm looking at it here.

8 Q. We are putting it on the screen. Just one
9 second.

10 I will read the English part. You said
11 there: "To prepare the draft Legislative Decree,
12 Minister Sánchez Albavera assigned me the task of
13 proposing the new provisions on stabilization
14 matters"; right?

15 "Faced with that important task of proposing
16 the new provisions on stabilization matters and to
17 have a better idea of what the Regulation might
18 contain, I traveled to Chile with the aim of studying
19 its Mining Law. Chile was Perú's biggest competitor
20 at that time in terms of mining investment and, for
21 us, it was important that the legal regime in Perú be
22 no less favorable than Chile's, even more so

1 considering the circumstances that Perú was in."

2 Do you see that?

3 A. Yes, that's correct.

4 Q. So, what you wanted to do in order to be
5 competitive with Chile is to have a Stability Regime
6 that was at least as favorable as that of Chile's?

7 A. Better, from our viewpoint. We wanted to be
8 better, from our viewpoint. Not the same or favorable
9 or less favorable. We wanted it to be better from
10 Perú's viewpoint.

11 Q. I was just quoting from your Witness
12 Statement where you said "no less favorable, even more
13 so." But "better" is understood.

14 And, in your recollection, at that time
15 Chile granted Stability Guarantees to concessions;
16 right?

17 A. The Mining Law does not say that, and I
18 looked at the Mining Law as well, as my Statement
19 says.

20 The Mining Law does not say that there is a
21 Stability Guarantee to the Concession, legal
22 stability; this in terms of what we're talking about

1 in Perú. It provides stability. It may be an
2 infinite concession, but we did our own thing. The
3 Chileans provided a certain stability, and this had to
4 do with the previous history that Chile had.

5 Q. Well, let me show you what Perú said in its
6 Rejoinder at Paragraph 170 and see whether you agree
7 with that. It's at Paragraph 170 of the Rejoinder.

8 A. (Not translated.)

9 Q. Sorry. In the binder, it's Tab 9.

10 A. That's a big binder; right?

11 Q. Yeah. That's going to be in the big one.
12 Sorry, it's Tab 8. Tab 8 in the binder.

13 A. Is there a Spanish version or just an
14 English version?

15 Q. I think that's only English. So, I will
16 read it into the record so that you get a translation
17 of it.

18 It says: "Respondent"--which is the
19 Republic of Perú here--"agrees that some mining
20 jurisdictions, such as Chile, grant Stability
21 Guarantees to all concessions, and that that is a
22 valid choice for a Stability Regime."

1 A. I'm not sure what kind of stability they're
2 talking about. I don't know if they're talking about
3 concessions. So, if they're talking about
4 concessions, then they cannot be canceled without a
5 special provision, well, that's one thing. But we're
6 not talking about administrative or tax or legal
7 stability, and that is what are pursuing for
8 investment projects.

9 The Concession has a stability, and that
10 lasts forever. It is granted by the judiciary, and it
11 treats it in a special manner. If that's what they
12 are talking about, then I'd agree, but I have not
13 heard or seen anything in connection with stability,
14 tax stability, in the Chilean Mining Law.

15 I took whatever I considered necessary, and
16 we went to the relevant things. What we were going to
17 do in Perú with it had to be relevant.

18 Q. So, Mr. Polo, you're talking about the
19 Law 600 in Chile?

20 A. No. In this case, if we're talking about
21 the Mining Law and the Concessions, well, I'm talking
22 about the Organic Constitutional Law of Mining, which

1 is a special law that was passed in Chile for the
2 mining sector. It was promoted by José Piñera,
3 amongst others. That is the Mining Law in Chile.

4 I have not seen there or heard anything
5 there referred--that refers to the Stability
6 Agreements as we referred to them here.

7 Q. Law 600 in Chile granted tax stability and
8 other stability to Concessions, didn't it, at that
9 time?

10 A. I have not seen it or heard it like that.
11 Law 600 was for all sectors, not only for
12 the mining sector. Law 600 is a law for investors
13 that bring money, provides guarantees, and it provides
14 also guarantees for the repatriated capital in all
15 those sectors in the Mining Law.

16 Q. Well, in your understanding, Law 600 also
17 applied to mining companies, didn't it?

18 A. It applies in a particular manner. I didn't
19 delve--dip into the matter. It wasn't the case. I
20 knew the general stability provision and the
21 guarantees that it was providing.

22 I heard--I discussed this. I brought this

1 to Perú. We discussed this with the Minister, and we
2 decided to do this. And that's the relevant thing.

3 Q. The Mining Reform, Mr. Polo, that you were
4 working on introduced a principle that's called
5 "administrative simplification"; right?

6 A. That's correct. There is a specific title
7 that bears that name.

8 Q. And the main purpose of the administrative
9 simplification was to cut the red tape, to make the
10 administration of Stability Guarantees less
11 bureaucratic; is that right?

12 A. In general. The purpose of it was to reduce
13 the paperwork, reduce discretionality, and to make
14 things as transparent as possible, and to prevent
15 arbitrary decisions to be taken within the Ministry,
16 so there was a presumption of truthfulness.

17 Also, we had administrative positive silence
18 to make it faster if it was delayed, notwithstanding
19 the responsibility of the public officer who caused
20 the delay. Also, we had an external sworn statement,
21 and other aspects that I cannot recall at this point
22 in time, but the proceedings--or procedures, rather,

1 were more agile, and we wanted to have a very
2 transparent mechanism, as transparent as possible.

3 Also, amparo related to labor matters. That
4 was simplified because this brought about
5 complications that led to corruption and
6 discretionalities, and we took that from Chile. Chile
7 had a different amparo for work. Chile just pays. We
8 pay, but if there are Penalties as well. So, there
9 are simpler things we took from Chile, and that's part
10 of administrative simplification, and the way to
11 evidence this is simpler. We have sale settlements
12 for \$100 per hectare, so that's a simplification for
13 mining producers, and all of the statements that we
14 saw that are presumed truthful, we also had things
15 under oath and also positive administrative silence.
16 That's what I remember.

17 I need to drink some water. Excuse me.

18 Q. Mr. Polo, one of the features of
19 administrative simplification was also that you wanted
20 to eliminate discretion of Government officials;
21 right?

22 A. That's correct.

1 Q. And one of the purposes of eliminating
2 discretion of Government officials was to reduce
3 opportunities for corruption; right?

4 A. Correct.

5 Q. So, let me show you an excerpt of a book
6 that Minister Sánchez Albavera wrote which is called
7 "Cartas sobre la mesa."

8 Let me ask you first, are you familiar with
9 the book "Cartas sobre la mesa"?

10 A. I do. Yes, I do. I have read it some time
11 ago. I do know the book.

12 Q. You have read the book before?

13 A. Yes, of course. I have read it.

14 Q. Well, let's look at the one part of it.
15 This is in your binder in Tab 3. It is Claimant
16 Exhibit 311.

17 Yeah, it's on the screen, and you also have
18 it in your big binder as Tab 3, if you want to look
19 there. And the excerpt is from Page 83.

20 A. It's very small on the screen. You said
21 Tab 3?

22 Q. Yes.

1 A. So, it's better to look at it on the screen,
2 I think.

3 Q. Apologies.

4 A. Okay. Now I have it.

5 Q. Tab 4 and Page 83. And he says here, you
6 will see: "The mining reform introduces the
7 principles of administrative simplification to
8 expedite matters procedurally, based on the
9 presumption of truthfulness and positive
10 administrative silence in all procedures. These
11 principles are aimed at de-bureaucratizing Decisions
12 by making the administration of concessions more
13 transparent and the supervision of mining operations
14 more effective, which, under the previous Regulations,
15 lent themselves to maneuvers that facilitated
16 administrative corruption."

17 Do you see that?

18 A. I do see that. Yes, that's correct. That's
19 the same thing I've said.

20 Q. And you agree with Mr. Albavera's
21 statements?

22 A. I do, yes.

1 Q. So, one of the features was to make the
2 supervision of mining administrations more effective;
3 right?

4 A. Yes, that's right.

5 Q. Now, one of the features of administrative
6 simplification was making Stability Agreement Adhesion
7 Contracts; right?

8 A. It's the same law, but there are two
9 different chapters in the law; same law, two different
10 chapters.

11 In a certain manner, concession contracts
12 are a way to put things in order and avoid
13 discretionalities. That was precisely their purpose.
14 And this is connected to guarantees, and I think the
15 titles are different in the law. I think one of them
16 is Title Nine and the other is a different title. I
17 don't recall.

18 Q. Just to clarify, I was not talking about
19 concession contracts. I see that you mention
20 concession contracts. I was talking about adhesion
21 contracts, form contracts.

22 You may have misspoken, just to correct the

1 record.

2 A. Okay. Okay, adhesion contracts. Concession
3 contracts, no, they don't exist in Perú.

4 Q. And when you say: "There are two different
5 chapters," what are you referring to, Mr. Polo?

6 A. Within the law, there is a title that says
7 "administrative simplification," and the other chapter
8 talks about the benefits and guarantees. That's a
9 different chapter.

10 Benefits and guarantees--and I think
11 Article 13 of 708, well, it talks about adhesion
12 contracts, and I mentioned this in my Statement in the
13 other Hearing. I said that I had brought this in from
14 personal experience when I looked at a Stability
15 Agreement, when I had just sat down as a Vice
16 Minister, and there's some aspects that I thought were
17 not within the purview of the Vice Minister. So, I
18 realized that we had to put things in order here.

19 The final purpose was, okay, this is what we
20 are guaranteed; it's very clear, and this is what
21 goes. Nothing can go beyond this. And the proposal
22 was for a model to be prepared, approved by a Supreme

1 Decree with the Council of Ministers' vote for larger
2 contracts and for the smaller contracts that were
3 going to be approved by administrative resolution in a
4 simpler manner, because the amounts were lower.

5 Mainly, it had to do with the
6 nondiscretionality in the management of the contract,
7 because everybody had the same kind of opportunity and
8 everything had to be approved by a law.

9 Q. And so, if I understood you correctly,
10 before the Mining Reform contract--stability contracts
11 were negotiated with the Government, and companies had
12 different Stability Agreements, but you--then you had
13 the idea of making them into adhesion contracts so
14 that--is that correct?

15 A. Let's say that I found that it was more
16 appropriate that the guarantees section of the
17 Agreement--the Agreement has a number of portions--the
18 guarantee portion of the Agreement had to be adhesion,
19 because we applied this to all cases, all the same,
20 for equal opportunity and to have things clear.
21 That's it.

22 Q. So, you would agree with me that the purpose

1 of the adhesion contracts was to eliminate
2 negotiations between the Parties and the Government as
3 to the terms of the Stability Guarantees; right?

4 A. Negotiate outside of the guarantees. That
5 was not allowed. The Agreement is not literal, fully,
6 in nature. It looks at the blanks and the blanks have
7 to do with the regime current at that point in time.

8 The Stability Agreement has to cover this,
9 this, and this and this, and then you have an exhibit
10 which is the Feasibility Study that relates to the
11 project that was receiving the benefits, the mining
12 project, mining investment project.

13 Q. So, what you wanted to do, if I understood
14 you correctly, just to be clear, was to eliminate
15 negotiations regarding the scope of the Stability
16 Guarantees; is that right?

17 A. To guarantee whatever it was exactly
18 necessary for investment projects, whatever was
19 required for investment projects to have very clear
20 and precise rules of the game, nothing else.

21 I looked at a contract once and they wanted
22 to stabilize water rates and electricity rates.

1 That's not part of the competence of the Vice Minister
2 of Mines, and it had other things that I thought were
3 excessive.

4 It was very clear to me that what we had to
5 guarantee is that the investor of the project has
6 clear rules for a period of time, rules that are
7 reasonable and stable, and that may allow to assess
8 the profitability in the feasibility studies that they
9 submitted themselves for the projects that they
10 presented as a subject matter of a contract.

11
12 (Overlapping interpretation and speakers.)

13 Q. Let me show you what you said in the SMM
14 Hearing. That's in Tab 3, which is Claimant's
15 Exhibit 1137.

16 A. Tab 3 here?

17 Q. Yes. And this is in the Spanish version
18 that you look at. It's 1233, 1-5, and in the English
19 version 1209, 3-7.

20 And it said, like--I asked you: "And you
21 wanted to eliminate any negotiations regarding the
22 scope that was the Stability Guarantees would have?"

1 And you said: "Yes. The regime would have
2 to be the same for anyone who met the requirements."

3 Do you see that?

4 A. Yes. That's what I just said. It's the
5 same thing as I just said. Yes.

6 Q. So, you agree with that statement? Okay.

7 A. Yes.

8 Q. And so, just to see what that means, so it
9 means that the Government and the investor, they
10 cannot sit down and negotiate which Stability
11 Guarantees would be included in the Contract and which
12 ones would not be included; right?

13 A. That's right. The guarantees were set out
14 in the law. What it was that was being guaranteed, it
15 was set out in the law, and, according to the model
16 approved--and that was done under another Vice
17 Minister, not me--one had to fill in the blanks, as
18 they say, with the regime that corresponded at that
19 particular moment in time. That's it.

20 Q. And it also means that the mining investor
21 and the Government could not negotiate the terms of
22 the Stability Agreement; right?

1 It could not say, "Well, the law says 15; I
2 would like to have 17," or "I would like to have 12";
3 right?

4 A. The law doesn't say 15. The law says:
5 "Shall have the tax rate at that time," from the
6 moment the Feasibility Study is approved.

7 At the moment the Stability Agreement is
8 adopted, what's the income tax rate? 30. And so,
9 it's set at 30. But it doesn't say 30 in the model
10 contract. It varies depending on the moment when the
11 Stability Agreement is signed or approved.

12 What you can't say is, "Well, it's 30.
13 Well, you know, in Chile they give us 27"--no, that
14 could not be done. It is what the law says at the
15 time of the Feasibility Study, and that is what the
16 Adhesion Contract refers to for that sort of thing.

17 It also indicates that one can review
18 profits and the new Government might come in and say
19 it's convertible. It says I can freely reinvest or
20 return--redo the profits.

21 Q. I'm just always waiting for the translation
22 to finish.

1 I think you were misunderstanding me.

2 I was referring to the length of the
3 Stability Guarantees. So, Stability Guarantees are
4 granted for 10 years or for 15 years, and I think
5 that--is that correct?

6 A. That is correct. You have both. It depends
7 on the nature, particularly based on the size of the
8 project. It's a larger one--well, it's set out in the
9 law. In the case of Cerro Verde, it's 15.

10 Q. And that was actually one of your ideas, I
11 understand, to simplify matters and say, from now on,
12 all Stability Agreements will have a fixed term; is
13 that right?

14 A. A 10-year term for those that are more than
15 two or less than 20 or 50 at the time, and, for those
16 that are more than 50, a term of 15 years.

17 Q. So, the mining investor and the Government
18 could not sit down and negotiate different terms.
19 They could not say, "I want to have 20 years," or "I
20 want to have 12 years"; is that correct?

21 A. No, that could not be done.

22 Q. And the same is true with regard to the

1 scope of Stability Agreement. If the law says that
2 Stability Agreements have a certain scope, then the
3 Parties cannot say, you know, I want to have a bigger
4 or a more restricted scope; right?

5 A. What do you mean when you say "scope"?

6 Q. What I can say with "scope," I mean to what
7 type of activities the Stability Guarantees apply.

8 A. The activities were spelled out by the
9 investor in their Feasibility Study. The Feasibility
10 Study would say it's to explore such-and-such pit or
11 mine, and at the same time it would undertake
12 concentration and refining. That was defined by the
13 investor in their project, in their Feasibility Study,
14 and that's what was then--that's what defined the
15 scope, as you call it.

16 Q. Well, we know that is your point of view,
17 but my question was if the law--you would agree with
18 me that the law defines the scope in Article 83 and
19 in--and so do the Regulations in Articles 2 and 22?

20 You would agree with that; right?

21 A. It defines the scope in the sense of it
22 referring to the investment project, if that's what

1 you call the scope. But it doesn't refer to the
2 specific project, investment project, or how much is
3 to be invested. That is defined by the investor.
4 They have to say: "This is for an investment
5 project." That's what 83 says, and 7 and 11. That is
6 clear.

7 Now, what project, what investment? Well,
8 bring in your Feasibility Study. We'll review it,
9 we'll approve it, and then we'll fix the Stability
10 Regime. That is what would be done.

11 Q. But the law--the law defines--you would
12 agree with me that the law defines the scope. So, in
13 your view, the law says that the stability benefits
14 apply to Investment Projects, and Claimant has
15 different views, but whatever the proper scope is, you
16 would agree that the law applies--that the law defines
17 the scope of the stability benefits; right?

18 A. The law defines that the benefits are for
19 the investment project that is the subject of the
20 Agreement and the subject of the Feasibility Study.
21 That is what the law says.

22 What the Claimant is putting forward is a

1 respectable point of view, but that's not what the law
2 says. It's not what the Regulation says. It's not
3 what anything says, based on my view, based on my
4 experience, and based on the experience of many
5 persons.

6 Q. So, let me show you--let me show you--just
7 give me one second. Sorry. We are going to come to
8 the legal provision in a second. Let me show you a
9 statement from Mr. Eguiguren, who is the
10 Constitutional Law Expert you were referring to
11 yesterday, and you can tell me whether you agree with
12 him or not.

13 That is in--that is Respondent's Expert
14 Report Number 1, and it's in Tab 27. I'm referring to
15 his First Report, which is Paragraph 61.

16 MS. HAWORTH McCANDLESS: Madam President,
17 the--according to the rules, the only issues that are
18 supposed to be discussed in cross are matters that are
19 addressed or presented in a witness statement or
20 direct examination. And I don't believe that
21 Mr. Eguiguren's Report was referenced there.

22 PRESIDENT HANEFELD: Mr. Prager will

1 probably have a different view, so...

2 MR. PRAGER: I do have a different view,
3 because what was discussed in the Witness Statement is
4 Adhesion Contracts, and this statement is about
5 Adhesion Contracts.

6 PRESIDENT HANEFELD: Please go ahead.

7 BY MR. PRAGER:

8 Q. So, we are going to put that on the screen
9 in a second, maybe a little bit bigger.

10 (Comments off microphone.)

11 Q. That's a Spanish version, while we look for
12 the English one. So, he says here: "The content of
13 the Agreement, the benefits, and the guarantees it
14 provides to the investor, as well as the requirements
15 to access this special contractual regime are
16 predetermined under the law, which is mandatory,
17 public, not private law. Consequently, the
18 contractual stipulations do not arise from the free
19 will or negotiation of the Parties nor are they
20 subject to the political discretion of the
21 administration or the public officials in office, nor
22 the discretion of the private parties. This avoids

1 potential situations of inequality or discrimination
2 to the detriment of an investor by applying the same
3 requirements and guarantees provided for under the law
4 and incorporated into the Agreement for those who meet
5 these conditions."

6 Q. Do you agree with the statement by Professor
7 Eguiguren, who is Perú's Expert?

8 A. I can't see it so clearly. It was clearer
9 before. Just a second. Because you haven't told me
10 exactly where you are.

11 Q. Yes, Paragraph 61, and the tab was--

12 (Overlapping interpretation and speakers.)

13 A. Of which tab number?

14 Q. 25.

15 A. 25. Okay. And the paragraph number?

16 Q. 61.

17 A. 61. Okay.

18 Q. So, my question was: Do you agree with the
19 statement of Professor Eguiguren?

20 A. It's the same thing that I have said
21 regarding the guarantees, the exact same thing.

22 Moreover, they are provisions. They are

1 Supreme Decrees. The Model Contract is a Supreme
2 Decree, a Ministerial Resolution. It's the same
3 thing. What you don't have is all of the texts and
4 the specific figures because that depends on the
5 moment when the Feasibility Study is signed, at that
6 time.

7 So, let me repeat once again: If in 1998
8 the income tax rate was 30 and if in 2002 it was 40
9 and you signed in 1998, then you have 30 and not 40.
10 But it doesn't say 30 and 40 in each case in the
11 Agreements. It says the regime at the time of the
12 signing or approval of the Feasibility Study. That's
13 what it is. It is not subject to negotiation. It's
14 not that the law says 40 and one says, I'm going to
15 invest twice as much, I should get a benefit of 35.
16 No, that won't happen and the same thing--Eguiguren
17 said the same thing I'm saying.

18 Q. So, just to further clarify that, I asked
19 you about the scope; right?

20 So, let's look at what Professor Eguiguren
21 said when I posed him a question at the SMM Hearing.
22 That's in Claimant's Exhibit 1140, which you have in

1 Tab 27, and in the English Transcript that is--I need
2 your help--2279, 227. In the Spanish one--if you look
3 in Tab 27 of your binder, in the Spanish one it is
4 2396, so 2396, Lines 21, going to the next page, 97,
5 Line 4. So, if you look at the bottom of 2396. We
6 are going to put it on the screen in a moment. That's
7 not the--in the meantime, you can look at the tab. We
8 are still finding the right one for the screen.

9 Why don't we just--is it on now? Okay. So,
10 you see--I asked: "Estaría usted de acuerdo," which
11 in English--so, I asked Professor Eguiguren--in the
12 English, it is here on the right side, and in the
13 Spanish you see: "Estaría usted de acuerdo?"

14 I asked: "So, Professor, you would agree
15 with me that if the Mining Law says that the scope of
16 the Stability Guarantees is X, that the Parties could
17 then not negotiate that the scope of the stability
18 benefits is something different, is Y?"

19 And his answer was: "Yes, in principle,
20 that is the case."

21 So, would you agree with that statement of
22 Professor Eguiguren?

1 A. Well, I don't have it right here and I don't
2 see it right there, but I have understood what you
3 have said.

4 Q. Are you seeing it on the screen?

5 A. In the screen it is in English.

6 Q. Okay. We will highlight the Spanish,
7 please.

8 A. But I have understood. I've understood.
9 Well, clearly the benefits and the guarantees are set
10 out in the law. The law says in Article 72, I think,
11 in the single text, and in 2 of 708, it says the
12 benefits and guarantees are this, this, and that. You
13 can read it. It is not negotiable. It is what is set
14 out in the law.

15 Q. Mr. Polo, this question specifically
16 referred to the scope of the Stability Guarantees.
17 So, the question that I asked Professor Eguiguren,
18 Perú's Expert, was whether he would agree if the
19 Mining Law says that the scope of the Stability
20 Guarantees is X, that the Parties could then not
21 negotiate that the scope of the stability benefits is
22 something different, is Y; right?

1 A. Again, what do you to mean by "scope"?

2 Q. Well, let's put in the X and Y.

3 So, let's take Claimant's position, then
4 let's take Perú's position. Let's say if the Mining
5 Law says that the scope of Stability Guarantees
6 extends to concessions and mining units, then the
7 Parties cannot negotiate a different scope, like they
8 can't broaden or limit it to something different;
9 right?

10 A. Well, it doesn't say what you've suggested,
11 example, anywhere. What the law says is that the
12 scope is for defined investment projects--investment
13 projects defined by the investors in their own
14 Feasibility Studies with which they make the decision
15 to invest. That's what the State tests and supervises
16 afterwards, applying the legal provisions.

17 Q. Well, let's take another example for the X
18 and Y here. So, let's take your example. You say if
19 the Mining Law says the scope of the Stability
20 Guarantees is a specific Investment Project set forth
21 in the Feasibility Study, then the Parties could not
22 negotiate that, instead the Stability Guarantees apply

1 to an entire Mining Unit; right?

2 You would agree with that?

3 A. That's not negotiable. The law says that
4 it's for investment projects. Well, if--what does the
5 investor want to do? Negotiate something that is
6 outside or different from what the law says? That's
7 impossible. Both would be committing a serious
8 breach.

9 Q. So, I think that we agreed that whatever the
10 law says, it is not--it cannot be negotiated, in the
11 Stability Agreement; right?

12 A. One cannot negotiate the guarantees nor can
13 one guarantee that--negotiate that it's for an
14 investment project or--that it's not for an investment
15 project or something else. The same answer.

16 Q. So, we agree that, whatever the law says
17 regarding the scope cannot be negotiated by the
18 Parties in the Stability Agreement; right?

19 A. The scope in terms of the investment project
20 to be carried out is defined by the investor, and
21 that's a matter of their own free will. They
22 undertake their Feasibility Study, and they say, this

1 is what I want to stabilize. Agreed. Now, the
2 guarantees for that are these. Those guarantees are
3 not negotiable. The Project is defined by the
4 investor. The investor makes the decision. How far
5 do they want to go with the Project, that's decided by
6 the investor. Until when do they want to invest, that
7 is decided by the investor. That's what I am saying.

8 Q. Okay. So, if hypothetically--if the law
9 said what you say, that it applies to a particular
10 Investment Project set forth in a Feasibility Study,
11 is it your view that the investor and the Government
12 could agree that instead it would apply not only to
13 that Investment Project, but also to future Investment
14 Projects that the investor makes in various Mining
15 Units?

16 A. That's not possible. That's not what the
17 law says, and it's not possible, so much so that, as
18 soon as the investment is carried out--the Project
19 that is subject to stability, well, the counting
20 begins. The time begins to run.

21 In what I participated in when I was Vice
22 Minister, the investment project is this, you carry it

1 out, the meter starts running, and then you have
2 15 years of stability of what we signed in the
3 agreement for that project. Nothing can be added or
4 changed or anything of the sort. It is that. And
5 that is defined by the project and the scope of the
6 project is defined by the investor. What's the scope?
7 Well, I'm going to increase production from 30,000 to
8 70,000, and therefore I am going to invest so much.
9 I'm going to hire so many workers and I am going to
10 install a concentrator. That's the scope. It is
11 defined by the investor. And I say, fine, that's
12 what--the rules that we have today are these: I
13 review the Feasibility Study, I agree, we sign the
14 Agreement, and everything is perfectly well-defined.

15 QUESTIONS FROM THE TRIBUNAL

16 ARBITRATOR TAWIL: I have a question by way
17 of follow-up. Forget about the Concentrator. Now, if
18 it were the original plant and an expansion of the
19 investment, then it wouldn't be covered either?

20 THE WITNESS: No, it would be an expansion.

21 ARBITRATOR TAWIL: And not even if there
22 were some correction or adjustment, anything

1 additional would not be covered?

2 THE WITNESS: It is not covered. What is
3 covered is the original project and the adjustments
4 are made before the investment is made, and as the law
5 says at some place--I don't remember where--it has to
6 be a matter of clarification, something minor,
7 specification. All those adjustments can be made in
8 the Feasibility Study, and any variations in terms of
9 what was invested as set out in the Feasibility Study,
10 one can have a--make such adjustments only until the
11 meter starts running when it is finalized.

12 ARBITRATOR TAWIL: And that's been the
13 practice, that no additional investment is allowed to
14 be covered by stability? So, in each contract when
15 you say, I'm going to invest \$215 million, it's going
16 to be 38,000 tons. Tomorrow, I have to invest
17 \$50 million more, so instead of 38,000 tons I'm going
18 to have 38,700. So, there's no stability with respect
19 to the variations there?

20 So, my question is if that were the
21 consistent practice.

22 THE WITNESS: Well, the consistent practice,

1 I spent some time, six years, so I can't speak of
2 anything else. Here the fundamental concept is what
3 is defined by the Feasibility Study.

4 ARBITRATOR TAWIL: But if you could answer
5 my question, please. I understand that the
6 Feasibility Study is rigid when it is submitted. That
7 is your position. My question is, any time a change
8 needs to be made--understanding that Mining Projects
9 have variations over time or there are additional
10 investments made and so on, stability was the snapshot
11 taken on the day of the feasibility plan. Because I
12 could understand the debate if the--as to whether the
13 Concentrator is the same original project, but what
14 you're saying is it's the snapshot at that time and no
15 additional investment, no additional yield is
16 stabilized.

17 Could you let me know whether that's been
18 the practice and if, in effect, we, as a Tribunal,
19 begin to look into the papers, we begin to see that,
20 in effect, any time there was an additional investment
21 a change had to be made or it was simply not
22 considered to enjoy the stability and taxes would

1 begin to be imposed beyond the original project. I'm
2 asking this because it seems to me two different
3 things. One thing is to say the Concentrator is a
4 different project, it's another thing to say that that
5 snapshot is immutable.

6 THE WITNESS: The Feasibility Study is not a
7 form. It's a document that has a basis, and it's
8 evaluated. And it shows results, and that's why an
9 investment is made and a commitment is made. And the
10 State for those results provides general stability.

11 Now, that doesn't mean if one intended to
12 get 30,000 and you get 32,000, no, it's the same that
13 you would have to pay more? No. It's the plant, the
14 same project. If you change the plant, if you change
15 the Project, if you expand it, then you would need to
16 have another Stability Agreement.

17 ARBITRATOR TAWIL: So, you do pay? If
18 instead of 30,000, you pay--

19 THE WITNESS: No. I'm saying if it's the
20 same project that you presented and you end up having
21 2,000 more, then you don't pay.

22 ARBITRATOR TAWIL: If instead of 2,000 you

1 have 10,000 or 20,000 or three times as much?

2 THE WITNESS: I don't know of any cases.

3 ARBITRATOR TAWIL: We're speaking in theory,
4 to know how it would work. If you ended up with a
5 yield four times as much as the original project
6 contemplated, would you pay or not?

7 THE WITNESS: There is no original project
8 that yields four times as much because there are
9 bottlenecks when it comes to obtaining four times
10 more. You need investment.

11 ARBITRATOR TAWIL: Sir, I'm asking if you
12 could answer my question.

13 THE WITNESS: You've cited an example that
14 would be impossible.

15 ARBITRATOR TAWIL: What I want to know is
16 the concept. If I got four times more, 10 times more,
17 would I pay or not pay?

18 THE WITNESS: I will answer you with respect
19 to the concept or not the number. The concept is as
20 follows: So long as you stick within the original
21 project--with all the characteristics that project
22 has--you make reasonable technological improvements,

1 the costs might go up or down a little bit, and you
2 obtain a percentage which might happen in practice,
3 then there is no problem. You are going to enjoy
4 stability. But if you say four times more, I would
5 say, well, please, bring me that person who is capable
6 of doing that. That just simply doesn't exist.

7 So, I'm sorry to answer you in this manner,
8 but I--I can only answer conceptually, and it's not a
9 rigid concept. We weren't rigid, at least I have
10 never been rigid, but I have been guided by the law
11 and by the principles and what is fair. What is fair
12 is what I stabilize, well, the result that you might
13 get because of your skill, your capacity, because not
14 everything is in the book. The Feasibility Study is a
15 baseline document. But if with that same document or
16 with those investments or with those resources I can
17 obtain more or less, it can be more profitable, that
18 is welcome. It's a question of efficiency, but not a
19 new investment. If it's greater efficiency with the
20 same resources, then it's no problem. It would enjoy
21 stability.

22 ARBITRATOR TAWIL: Thank you.

1 ARBITRATOR CREMADES: I would now like to
2 ask you a question to move from the conceptual level
3 to the reality that we are examining.

4 We find ourselves in the face of a situation
5 in which an investor wishes to make an investment, in
6 this case for \$800 million, which is a very
7 significant sum to invest, and they say that they
8 would like to avail themselves of the existing
9 Stability Agreement for part of the output, and they
10 even try in writing that if they are granted that
11 expansion, they seek in writing for such an expansion,
12 the Government doesn't respond, but we've seen in what
13 we've been told by Director General Chappuis, that
14 she, contrary to your view, maintained that was not
15 the specific investment or the specific project, but
16 rather the mining unit that would be covered.

17 In the future, do you think we need to make
18 decisions about not only whether it's covered or not,
19 but also whether the investor felt deceived because
20 the Director General, who was the one who had to
21 decide, maintains one opinion, and she says, it is
22 different from my boss' view, but this is my view.

1 So, to what extent can one speak of deception by the
2 Administration and the person in charge of the General
3 Directorate vis-à-vis the investor?

4 THE WITNESS: I do not want to talk about
5 personal issues because that is not the case--this is
6 not the case, but we are going to talk about those who
7 have the power to do so. The office--the Directorate
8 General of Mining is competent for approving the
9 feasibility study for a specific project. It was not
10 to expand the Stability Contract, or Agreement, but
11 beyond that, at the Constitutional Court and also in
12 the draft communique, and she has drafted with me and
13 with Mr. Isasi a ministerial resolution that says
14 "exclusively." The word "exclusively" would not be
15 included if it was going to be for all of the
16 Concession. Why would you say "exclusively" if it is
17 for everything. So, "exclusively" is a portion of it.
18 So, it says "exclusively" from the Leaching Project.

19 That's what it says: Isasi, Chappuis, Polo, and
20 signed by the Minister. It couldn't be any clearer.

21 ARBITRATOR CREMADES: Thank you very much.

22 PRESIDENT HANEFELD: Just a follow-up

1 question to Dr. Cremades. I heard you testifying
2 yesterday, "the Ministry, Isasi, Chappuis, myself, the
3 Minister, all said that the investment projects that
4 had Stability Agreements would not have to pay
5 Royalties," and as Mr. Cremades just said, we heard
6 Ms. Chappuis testifying the clear opposite yesterday.
7 And she testified that in a meeting on the 15th of
8 June 2004, the entire Ministry--her Legal Advisors,
9 Mr. Tovar, everyone--was clearly taking the opposite
10 position that for Cerro Verde the whole Concession
11 would be covered by the Stability Agreement. How do
12 you respond to this testimony? Do you know of this
13 meeting? Have you been consulted? So, please be as
14 specific as you can be whether you know some factual
15 background of this testimony?

16 THE WITNESS: Let me talk to you about
17 official decisions. First, official decisions are
18 issued by the Minister or persons appointed by the
19 Minister, and I have seen in one of my statements that
20 I have clearly stated that, in Congress--the one who
21 went to discuss the Royalty Law before Congress was
22 myself. It was not Chappuis or the legal team. So,

1 their powers, their area of work is operational, but
2 they do not interpret the Contract and see if there
3 was a specific provision. And they are bordering a
4 very serious problem if they said something that I
5 have not seen in writing. What I have seen in writing
6 is what I just mentioned, exclusively for the Project,
7 for the Leaching Project.

8 I said this three times clearly before
9 Congress: "It is not the Company. It is just the
10 Project of investment." A concession may have several
11 investment projects, one protected by a stability
12 contract, but the other ones do not have it.

13 The Constitutional Court accepted--not with
14 those words, but they accepted that the only aspect,
15 and I am not a lawyer. This is 109 of the Declaration
16 by the Tribunal, the Constitutional Tribunal, and
17 Isasi and myself attended. So, they are clearly
18 stating that the rest may be modified, but not the
19 provisions of the Contract. They talk about jus
20 imperium, or the area of the State, because that is
21 more general and the other one is an exceptional rule
22 to guarantee and promote.

1 So, I said it in Congress, and I wish you
2 had the possibility to see the recording of what I
3 said that has been cited in my Statement. I also said
4 it before the Constitutional Court. One of the
5 members of the Constitutional Court asked me: The
6 Concession? No, the investment project. And you can
7 see that throughout my writings. And I was the Vice
8 Minister, Ms. Chappuis was the Director General of
9 Mining. She did not have the powers, and none of the
10 ones that you mentioned. I was the Vice Minister, and
11 the Minister sent me. I had a meeting with the
12 Minister of Economy and also with a representative of
13 the legal--of Legal Affairs, my own Legal Advisor, and
14 we all reached the same conclusion, and I'm sure that
15 the file must include a draft communique that clearly
16 states the same.

17 Whatever Ms. Chappuis has said, with due
18 respect, is not in writing anywhere, is not the
19 opinion of the Ministry, starting in 1998, and this is
20 also that Dr. Ávila mentioned when he referred to the
21 Leaching Project Stability Agreement.

22 So, the position, again, this is something

1 that was stated by Juana Menendez, one of the
2 attorneys with the Ministry, in a report that clearly
3 states that it is not the company, it is the project.
4 And in one of Juana Menendez projects, with the
5 signature of Rosario Padilla, and at the bottom it
6 says María Chappuis, "elévase," and there's a copy of
7 the resolution that Mr. Davenport and Legal Affairs of
8 Cerro Verde had. So, they were perfectly aware of the
9 problem.

10 PRESIDENT HANEFELD: You just referred, if I
11 understand you correctly, to an event where you
12 publicly made another statement that you referred to.
13 Is this this Mining Royalty forum on the 11th of
14 March 2004 where you expressed your position?

15 THE WITNESS: It was 2004. I don't recall
16 if it was March 11, but, yes, that's what I said very
17 clearly.

18 PRESIDENT HANEFELD: So, this is the audio
19 recording that we have on the record; right? RE-185.

20 THE WITNESS: Would you help me find it? Is
21 it here?

22 MS. HAWORTH McCANDLESS: In the Declaration

1 I think he's referring to, in front of Congress, it is
2 RE-185.

3 PRESIDENT HANEFELD: 185. Okay. And I
4 noted that there you stated stabilization agreements
5 are not granted per company, but grant the right to
6 stabilization for that investment. But what was this
7 forum about? I've never attended a Peruvian Mining
8 Royalties forum, so who was present? Was it the
9 Mining Society or the companies, or what was this
10 forum about? Was it a public thing?

11 THE WITNESS: Yes. It was public and it was
12 before the Congress of the Republic, and the
13 Commission of Energy And Mines of the Republic
14 convened a meeting because there was a position within
15 the Congress to apply Royalties to everything, to
16 everyone, to everyone, with stability or without
17 Stability Contracts. And I held publicly that
18 investment projects were protected, and they would not
19 pay Royalties because they were protected by the
20 Stability Agreement. That is what I held.

21 They wanted for everyone to pay, so I
22 expressed my position, and I clarified also that it

1 was not the Company, rather the investment project
2 that was included in the Feasibility Study that was
3 also the subject matter of the Stability Agreement.
4 So, that is--the protection was for, for example,
5 leaching. They did not pay Royalties and they should
6 not pay Royalties, as well as any other aspect that
7 had a stability agreement.

8 ARBITRATOR TAWIL: Yesterday Dr. Isasi told
9 us that Ms. Chappuis and you had well-known
10 differences.

11 Could you refer to those differences?

12 THE WITNESS: She never told me in my face
13 that she thought that it was the Concession. If she
14 had told me directly that she thought it was the
15 Concession, I would have respected her position. If
16 she had been certain about it, I would have said,
17 first, that it was not her jurisdiction. I would have
18 told her that it is not your jurisdiction or
19 competence. That is my competence and also the
20 competence of the Minister. And she was not even
21 following the topic very close.

22 ARBITRATOR TAWIL: So, I don't understand

1 why Dr. Isasi said that the disagreements were well
2 known if she never told you personally.

3 THE WITNESS: Well, it was known because
4 this topic was addressed, and at some point in time it
5 was not heard, the one who addressed it. I think that
6 someone from the Ministry was in attendance, and I
7 told him this is the way it is. And the Minister
8 said, "Wait a minute." Isasi had just arrived. "Let
9 Isasi have his own opinion."

10 ARBITRATOR TAWIL: Yes, but Isasi arrived
11 later, a month later. So, what we are trying to know
12 is what was going on in 2004 when the Beneficiation
13 Concession was requested. So, Isasi arrived in July.
14 That was before, but you are saying that the
15 disagreements were well-known, but it was already
16 known that she had a different opinion?

17 THE WITNESS: Well, yes, but I heard that
18 that is what they said it was, but she never told me
19 face to face, and whenever it was said in front of the
20 Minister, they didn't get to say the Concession. They
21 got to saying that it applied to the sulfide project,
22 but I didn't see it in writing either. But it was

1 known.

2 ARBITRATOR TAWIL: So, the question is, if
3 it was known back then that they were obtaining a
4 beneficiation concession, what did you do? Did you
5 convene them and say, no, this is not the way it is,
6 whatever Chappuis or the Beneficiation Concession told
7 you did not include this.

8 Did you do this or not? This is 2004.

9 THE WITNESS: The Beneficiation Concession
10 is different from the Stability Contract.

11 ARBITRATOR TAWIL: But you know that
12 Chappuis had a different outlook and you know that
13 there were conversations with them on the
14 Beneficiation Concession, or didn't you know anything?

15 THE WITNESS: Well, you shouldn't talk--so
16 there was no need to talk to me about the
17 Beneficiation Concession.

18 ARBITRATOR TAWIL: With engineer Chappuis. I
19 am following--please follow the line.

20 THE WITNESS: I am.

21 ARBITRATOR TAWIL: But if Ms. Chappuis tells
22 you, I have a different vision--so, they make the

1 investments, the Beneficiation Concession is granted.

2 What did you do? Did you call them and say:

3 "Watch out, this Beneficiation Concession does not
4 have that scope," "watch out that you will have the
5 Royalties"? Or was this only stated when you went to
6 Congress? Because you knew they have obtained the
7 Beneficiation Concession for an \$850 million project.

8 I want to know because, as Dr. Isasi said, you were
9 aware that you and Chappuis had a different view.

10 THE WITNESS: Let me clarify two things,
11 first of all. The Beneficiation Concession is not a
12 Project, first. It's not \$800 million. The
13 Beneficiation Concession is a request for that
14 expansion--that is, to say, the right, the right to
15 expand or to build something.

16 The request, a beneficiation concession nor
17 Project, and there was no Project in mining or with
18 the Vice Ministry of Mines or anything of this sort,
19 and the fact that it was expanded, the fact that they
20 were given the right, the right to transform more is
21 not the Project. And the Stability Project, or the
22 Project was never presented as Stability Project, and

1 this is something that I already said.

2 Official remarks by the attorneys with the
3 General Office of Mining, Dr. Menendez, Dr. Padilla
4 were clear, and this was endorsed by Ms. Chappuis, and
5 also sent to the Company, to Mr. Davenport, and also
6 Legal Advisors, Legal Affairs.

7 And the document clearly states that the
8 Company is not the one that is benefiting from this
9 stability but the Project.

10 I knew that there was a discussion on that
11 topic and that Mining thought in Mining, and Chappuis
12 was the lead of Mining, and in Mining they thought--I
13 don't know clearly what it was--, but when I heard
14 about it I said it very clear, "No, that is not like
15 that, it's the Project."

16 ARBITRATOR TAWIL: But you didn't think that
17 it should have been clarified with them?

18 THE WITNESS: As an official, I have an
19 opinion on specific requests. I am not going to go
20 and ask them what they think and what they want to do.
21 That is not my role.

22 ARBITRATOR TAWIL: But knowing that they

1 were making an investment and--let me finish--knowing
2 that they were making an investment based on what
3 Ms. Chappuis said, you thought that you had to do
4 nothing?

5 THE WITNESS: They were not doing the
6 investment. And I'm not a public official like that,
7 who may seem negligent, as you may be suggesting in
8 your question. It is not like that. I never go out
9 looking for businessmen; I receive all businessmen
10 that want to talk, I sit them down, put my team, talk
11 to them clearly, and I was never asked to sit down to
12 talk clearly.

13 ARBITRATOR TAWIL: And when you learned that
14 they thought that Dr. Chappuis had said that and they
15 thought it was that way, what did you do?

16 THE WITNESS: It was never stated that way.
17 They had not done the Project, because they had not
18 done anything yet. They had not initiated the
19 investment based on what Chappuis said. Never. I
20 never knew that. I knew that Mining thought that the
21 Project may be included, should be, could be, et
22 cetera, but not even grounded, because there was no

1 paper. I said--because it was clear to me--

2 ARBITRATOR TAWIL: But it was so clear to
3 you then. It was an important Project.

4 THE WITNESS: Yes, of course.

5 ARBITRATOR TAWIL: And you didn't think it
6 was reasonable to clarify this with them, call them to
7 a meeting, and say, "If you are thinking that this is
8 stabilized, it's not the case beyond what Ms. Chappuis
9 may have told you"?

10 THE WITNESS: Well, I don't know what
11 Ms. Chappuis told them.

12 ARBITRATOR TAWIL: But you knew that there
13 were some disagreements and that they had talked with
14 Ms. Chappuis.

15 THE WITNESS: I don't know what they talked,
16 who talked, and how far they talked.

17 ARBITRATOR TAWIL: Mister Stenographer, do
18 you need us to repeat anything.

19 THE WITNESS: I don't know what they talked
20 with Maria Chappuis about. I know that there was an
21 understanding between Ms. Chappuis and
22 Ms. Torreblanca, and I regret that she is not present.

1 ARBITRATOR TAWIL: She is right there.

2 THE WITNESS: She is here. They were
3 discussing that topic a little bit, and also saying
4 that that was a possibility, and I don't know if
5 Ms. Torreblanca at one point talked to me, and I said
6 that was not the case. Nothing else. That was not the
7 case.

8 And then at some point, the conversation
9 continued. And it was also stated at an informal
10 meeting, and I said, once again, what my opinion was.

11 And that was also when Mr. Isasi arrived, he
12 was new to Legal Affairs, and then I was told: "okay,
13 let- Isasi look at this, because you are not a
14 lawyer," the Minister said. And I said, I have no
15 issues, and he says he got to the same conclusion.

16 ARBITRATOR TAWIL: So, let's have Isasi look
17 at this. But this was after granting the
18 Beneficiation Concession.

19 THE WITNESS: No. The Beneficiation
20 Concession does not mean that that was an investment.
21 That meant that they had the right to expand their
22 possibility to--for the beneficiation. They had the

1 right. They are two different things. They had not
2 invested one single dollar. They had the right.
3 There is no investment needed. They just need to
4 comply with the requirements.

5 ARBITRATOR TAWIL: Agreed. Thank you.

6 ARBITRATOR CREMADES: I would like to go
7 back to the concepts.

8 (Comments off microphone.)

9 ARBITRATOR CREMADES: You had said you
10 didn't want to, but I'd like to go back to. On the
11 one hand, the intervention by Ms. Chappuis, and also
12 the intervention later on by Mr. Isasi show us two
13 very different points of view. Dr. Chappuis talked
14 about gossip, and she even went as far as to say that
15 the Decision by the Constitutional Court was an
16 unheard solution. So, she even questioned all of the
17 legal aspects.

18 And I think that there is a very significant
19 difference between one and the other, and I'm asking
20 you, you're an engineer by training, and you have many
21 adventures in the administrative, legal, and political
22 paths, but you also have this legal knowledge.

1 And I think that Mrs. Chappuis' position is
2 you, the people from the legal world have no idea
3 because, as the people who are in mining do know how
4 this should work, we should look into the Contracts,
5 the Units, rather than the Contract that you had
6 developed as a Stability Contract. What is your point
7 of view in this situation?

8 What may be maintained as a Unit, or quite
9 the contrary, and, indeed, the Project, as you stated,
10 the investment, specific Investment Project.

11 THE WITNESS: Beyond the individuals.

12 ARBITRATOR CREMADES: That's why I asked you
13 to look into the concepts.

14 THE WITNESS: The rules, the regulations, as
15 mathematicians, mining engineers, attorneys, to be
16 bound by them, so we are bound by them, and the
17 Constitutional Tribunal is the highest Authority as to
18 the Constitution, and their decisions are case law,
19 binding case law for judges and for everyone. So, at
20 least in Perú, and a General--Director General of
21 Mining, not even a judge, may express their--or may
22 use their own decisions here.

1 Let us think of the absurd situation of
2 having stability for the Mining Titleholder. A Mining
3 Titleholder--I'm not talking about Cerro Verde, but
4 any has Concessions all over the country. So, you are
5 stabilizing the Titleholder. Some of the regimes are
6 very old, and they were--used to pay 45 percent, and
7 now they are going to sign a Stability Agreement and
8 apply a retroactivity of the Law, and now pay
9 30 percent.

10 Or even in the future, if the State decides
11 stability for anything that you may do in the future
12 without knowing who will benefit and who will not,
13 from my point of view, once again, I'm not an
14 attorney, but it doesn't make any sense.

15 Beyond this, we looked into the investment
16 project. What is it that the investor is looking for?
17 And this is something that I have been working on my
18 whole life. I specialize in finance and investment
19 projects, economy, and I know what the investor--or
20 what the investment project or the investor is looking
21 for.

22 The investor will be investing, let's say,

1 500 million. So, I need to have clear rules of the
2 game, but if you are a promoter, let's say, I give you
3 a Stability Contract. I reduce the country risk, and
4 I increase the investment rate. I offer you stable
5 conditions in a framework of economic policy that is
6 throughout Latin America and, at the same time that is
7 trendy because of the Washington consensus, and that
8 we also reflected in a series of laws.

9 But this would be--so, I stopped being a
10 rock country to become, from the financial point of
11 view, to becoming a country that follows clear rules
12 of the game. I am going to obtain financing, more
13 percentages and lower rates, and reduce the country
14 risk. So, what are you going to have?

15 You are going to have attractive return on
16 investments, and your return that I guarantee with the
17 Stability Contract for that \$800 million investment.
18 So, you decide, and you do your own Feasibility Study,
19 and then your Shareholders decide. But I do not make
20 a decision. It doesn't make any sense, in my opinion.

21 ARBITRATOR CREMADES: But you gave us the
22 example. This is a mining unit, and it turns out

1 that, in the future, as part of that mining unit,
2 strange rare earths are discovered. We were told that
3 the Stability Contract also included a stability in
4 connection with the production of those rare earths
5 towards the future. Does that make any sense, for an
6 engineer? Because she was talking here as an
7 engineer.

8 THE WITNESS: I'm also an engineer. So,
9 we're going to have a broad view. I'm always trying
10 to have a broad view. If rare earths are part of the
11 mineral that I am extracting, and--that's perfect.
12 But if I have to put together a special plant and
13 investment to extract the rare earths, and for a
14 different treatment, that is a different Project.

15 But if they're rare earths, and they're with
16 a mineral, and the rare earths were seen in--with that
17 mineral. And that mineral that I may treat through
18 the stabilized system, we'll be defining a concentrate
19 that has the--a valuable content of rare earths.

20 But the same Project, once again, I do not
21 know what I can get from the earth. But what I cannot
22 do is to expand, because I already know that I have

1 rare earth and expect that would be part of the
2 previous situation, and that's the reason why you have
3 a different Stability Contract if you want to.

4 ARBITRATOR TAWIL: Bernardo, would you allow
5 me to ask a question.

6 I thank you, but--and I also apologize for
7 this ping-pong of questions. I have a final question.
8 I have a copper Concession, and I need a different
9 technology for copper. And let's say that with that
10 Concession, I obtain gold but it is stabilized.

11 THE WITNESS: Let me tell you that the
12 Concessions are not for copper, they are for metals
13 and nonmetals. You may have with--if with the same
14 Project you get copper, gold is the same. Well, you
15 don't know what you are going to get. It's
16 stabilized. And that's the way it is. You are going
17 to have a higher benefit, but you will be using the
18 same Resources. As long as you use the same
19 Resources, we are all happy. Welcome.

20 (Comments off microphone.)

21 PRESIDENT HANEFELD: I think we can then now
22 continue with Claimant's cross-examination, and I may

1 also have some questions at the end.

2 MR. PRAGER: Thank you, Madam President.

3 And those were very good questions that already hit on
4 a number of the issues I wanted to discuss with
5 Mr. Polo.

6 BY MR. PRAGER:

7 Q. But, let me ask you the following question.
8 You said you are also an engineer. Just to clarify,
9 you're a civil engineer, and Ms. Chappuis is a mining
10 engineer; is that right?

11 A. Yes, of course.

12 Q. And you would agree with me that the
13 investment in the Concentrator approach, like at Cerro
14 Verde, was the biggest mining investment in Perú in
15 the year 2004; right?

16 A. I don't think that it was in 2004. I think
17 it started in 2004. I was going to leave my post soon
18 thereafter. Well, it was a very important investment,
19 and I was happy that it was made.

20 Q. Yeah, it started at the end of 2004, and it
21 was completed in 2006; correct?

22 Is that your recollection?

1 A. I was no longer the Vice Minister. I
2 am--left in May of '05.

3 Q. And in 2004, you surely were aware of Cerro
4 Verde's intention to invest in a Concentrator, weren't
5 you?

6 A. Yes, yes. And I think--I don't know if I
7 had discussions at some point in time with Mr. Rodrigo
8 there, and I shared my viewpoint with him. I don't
9 recall exactly. We had friendly conversations, and we
10 had some disagreements as well.

11 Q. Okay.

12 ARBITRATOR TAWIL: Quick question. You had
13 disagreements on this?

14 THE WITNESS: I don't remember if it was
15 about this or another Project that Mr. Rodrigo was
16 providing legal advice to. I remember that I had
17 disagreements with him about the investment project.
18 Perhaps it was Cerro Verde or Aranda; I don't know.
19 Many years have gone by.

20 BY MR. PRAGER:

21 Q. You say--if you go to your Second Witness
22 Statement, Tab 2, if you look at Paragraph 34, which

1 is--it's perhaps easier for the Witness Statements, if
2 you look at the small binder where you have both of
3 your Witness Statements in there, so you don't have to
4 turn so many pages. Yeah, I think. If you look there
5 at your Second Witness Statement in Paragraph 34.

6 Now, you say: "Now, I would like to note
7 that, despite the fact that some Cerro Verde officials
8 were constantly visiting MINEM during the 2004-2005
9 period, and, in particular, on the eve of the
10 enactment of the Mining Royalty Law, they did not
11 personally consult me about my opinion on the scope of
12 their Stabilization Agreement."

13 Do you see that?

14 A. I do.

15 Q. That's still your recollection?

16 A. Yes. Yes.

17 Q. And the reason they did not was probably
18 because the DGM--you would agree with me--right?--that
19 the DGM was the responsible body within the Ministry
20 for overseeing mining activities; right?

21 A. That has nothing to do--overseeing mining
22 activities. It has nothing to do with this issue. It

1 supervises mining companies in operation. This has
2 nothing to do with the Stability Agreement, whether
3 this applies to Primary Sulfides, that's all part of
4 their jurisdiction.

5 Q. Mining was responsible for ensuring
6 compliance--

7 (Overlapping interpretation and speakers.)

8 BY MR. PRAGER:

9 Q. The Director General of Mining was
10 responsible for ensuring compliance with Stability
11 Agreements, weren't they?

12 A. Yes. For the investments to be made, and it
13 verified that the investments were made with the
14 opinion of the auditor. It looks at them. It
15 approves them, and if it doesn't approve them, there
16 is constructive approval. And then it would supervise
17 and oversee, but that has nothing to do with the
18 Stability Agreement.

19 Q. That's what the Mining Law says, in Article
20 101(e).

21 PRESIDENT HANEFELD: Excuse me, I would have
22 a follow-up question, because I would--and I like to

1 better understand the Authorities within the Ministry.

2 MR. PRAGER: Sure.

3 PRESIDENT HANEFELD: So--and I--you just
4 described that they were to ensure compliance with Tax
5 Stability Agreements, but this is something completely
6 different than defining its scope, or what was--can
7 you explain what the Authority is, when we get here,
8 to the heart of the matter?

9 THE WITNESS: That's in the law. It is very
10 clear in the law, Articles 85 of the Single Unified
11 Text. The issue is when the Feasibility Study
12 submitted to the DGM. The DGM looks at the
13 Feasibility Study. There is an exchange of opinions,
14 there are adjustments, corrections are to be made here
15 and there.

16 When the Feasibility Study is approved by
17 the DGM, it is sent to the Vice Minister of Mines for
18 the Contract relative to the specific Project to be
19 prepared. And that's the end of the approval of the
20 Feasibility Study. Once the Contract is signed, then
21 we have to see when the stability period begins to
22 run, and then the Company starts making its

1 investment.

2 Let's just say that we ended in 2006. There
3 is an external autonomous auditor that's an Expert.
4 He or she certifies this, and says, okay, this has met
5 all of the provisions of the Feasibility Study,
6 et cetera, and this goes back to the DGM.

7 The DGM has to issue an opinion on the basis
8 of the audit, and it has to say, okay, that's the
9 investment made. That's the process. Okay. Then
10 during operations, mining oversight is going to be
11 conducted, and, of course, all of the current
12 procedures are going to take place. That's it.

13 ARBITRATOR TAWIL: You're a civil engineer.
14 I am an administrative lawyer. So, my specialty is
15 administrative law.

16 The Regulation establishes this. Is there
17 any other provision that establishes specific powers
18 in connection with stabilization agreements? For
19 example, we have a Ministry Law in countries like mine
20 that, for example, gets general powers and then
21 details specific powers. So, are there any other
22 powers different from the DGM's powers to deal with

1 these stabilization agreements?

2 THE WITNESS: Well, we have a special law of
3 organization and functions that is approved via a
4 Resolution. The stabilization agreement is an
5 exceptional Act. It is not regular. The Government
6 establishes an exceptional benefit for these cases.
7 Regular things are established in administrative
8 provisions with all the powers, and the powers
9 indicate what the Vice Minister can do, what the DGM
10 can do, et cetera.

11 And the Mining Law provides for this itself.
12 At the end of the Feasibility Study, the Feasibility
13 Study will be sent to the--to the Vice Minister for
14 the Agreement to begin.

15 ARBITRATOR TAWIL: Now, in connection with
16 the powers, here it talks about to insure compliance
17 with Tax Stability Agreement.

18 Is there any other specific power different
19 from the DGM that is related to the Tax stabilization
20 agreements?

21 THE WITNESS: I don't recall, sir. I don't
22 recall.

1 ARBITRATOR TAWIL: You said that it wasn't
2 within the powers of the DGM?

3 THE WITNESS: No, it's not their power to
4 approve Stability Agreements or to modify them or to
5 treat them. Those Agreements are entered into by the
6 Minister or the Vice Minister, and that is sent--those
7 Agreements are sent to the Central Bank, to the
8 Ministry of the Economy.

9 So, you cannot really take it upon yourself
10 other powers that you don't have. For example, to
11 modify Stability Agreements signed by the Minister of
12 Energy and Mines, or Vice Ministers, or things that
13 have to do with exchange issues, those powers are not
14 within the DGM.

15 ARBITRATOR TAWIL: Now, if you modify the
16 Stability Agreement, if you're trying to interpret the
17 scope, why is it that that is not within this power to
18 ensure compliance with Tax Stability Agreements?

19 THE WITNESS: Neither the Minister nor I can
20 interpret that. That was signed. If we want to make
21 a change, there are procedures to make a change, and
22 that is via contractual amendments. My attorneys,

1 others, have said to me that exceptional aspects
2 within a general provision cannot be interpreted.
3 They need to be exhaustive.

4 I am an engineer, but that is, again, what I
5 understood from what they told me. A third-level
6 official cannot take upon himself functions it does
7 not have, much less interpret things that are
8 perfectly provided for in the law.

9 I would say that that is terrible. Why?
10 Because behind all this, you have public funds; right?
11 Imagine if a lower-level official changes what higher
12 officials have approved and, you know, they're public
13 funds, and then \$300 million of taxes are not paid.
14 And that would be great corruption; right?

15 PRESIDENT HANEFELD: So, do I understand you
16 correctly, that it's your position that, even if
17 Ms. Chappuis were of the opinion that the Concentrator
18 was stabilized, and even if she was of the opinion and
19 would have really expressed it, that the extension of
20 the Beneficiation Concession would bring the
21 Concentrator under the Stabilized Regime, that this
22 would have been clearly beyond the powers of the

1 Directorate General of Mining, as defined in the
2 applicable laws?

3 THE WITNESS: That is correct. Her opinion
4 is valuable. It is taken into account, but she cannot
5 do this, and she would be explained that she's not
6 correct. Like I explained to everyone that asked me
7 questions. I didn't impose anything. I provided
8 reasons. I explained things, and I expressed my
9 viewpoint publicly before Congress, before the
10 Constitutional Tribunal, before the Ministry, in
11 writing, in the writings I submitted to ECLAC.

12 Yes, you can follow my opinions. My
13 opinions were public. I haven't seen any public
14 opinions from the DGM, the Directorate that said
15 that--I'm sure that would pose a lot of problems for
16 her.

17 PRESIDENT HANEFELD: And is your view on the
18 scope of powers of the Directorate General, is it a
19 debatable issue, or is it in your view a very clear
20 authorization--or lack of authorization stipulated by
21 the law? We have Experts on that. And I know you are
22 an engineer, and I can ask the Experts, but I just

1 want your personal view.

2 THE WITNESS: Her powers are very clear.
3 Her purview is very clear. So, clear that she
4 exercised them while I was her boss. She has
5 disagreed with me oftentimes, but always acting within
6 her powers.

7 PRESIDENT HANEFELD: Thank you.

8 So, finally, I hand over to Mr. Prager.

9 MR. PRAGER: I appreciate very much the
10 Tribunal's questions.

11 PRESIDENT HANEFELD: Or maybe we should make
12 a break.

13 MR. PRAGER: We can make a break now.
14 That's fine.

15 PRESIDENT HANEFELD: Yes.

16 MR. PRAGER: Thank you.

17 PRESIDENT HANEFELD: Okay. Then we have a
18 15-minute break.

19 (Brief recess.)

20 PRESIDENT HANEFELD: I think we are ready to
21 start.

22 Mr. Prager, please.

1 BY MR. PRAGER:

2 Q. Mr. Polo, the Vice Minister signs the
3 10-year Stability Agreements, and the Minister signs
4 the 15-year Stability Agreements; correct?

5 A. That is correct.

6 Q. Once the Stability Agreements are signed, it
7 is the Directorate General of Mining's responsibility
8 to ensure compliance with Tax Stability Agreements, as
9 we discussed; right?

10 A. The DGM assures compliance with what is
11 established in the Feasibility Study. That is their
12 function.

13 Q. That is not what it says here.
14 Article 101(e) says: "The powers of the Directorate
15 General of Mining are to ensure compliance with Tax
16 Stability Agreements"; right?

17 A. Yes, within their authority. They are not
18 going to verify payment of Royalties. That is done by
19 SUNAT. They're going to verify that the investments
20 set out in the investment project are carried out.
21 That is what--that's the part of the Tax Stability
22 Agreement that corresponds to that.

1 (Overlapping interpretation and speakers.)

2 (Interruption.)

3 (Stenographer clarification.)

4 BY MR. PRAGER:

5 Q. Mr. Polo, to ensure compliance with Tax
6 Stability Agreements, the DGM also has to determine
7 what the scope of the Stability Agreements is; right?

8 A. What the DGM needs to determine is review of
9 the Feasibility Study and approve it. That is the
10 scope, that they review, approve, and supervise up
11 until its approval that there is a stabilization of
12 the rules that--and then they are to see that the
13 Feasibility Study is--that what is said under the
14 Feasibility Study is implemented.

15 Q. What I said in my question--two parts of it:
16 Reviewing the Feasibility Study to determine whether
17 it meets the requirements to conclude the Stability
18 Agreement, we agree that's also the function of the
19 DGM; right?

20 A. It is a function of the DGM to review the
21 Feasibility Study. I repeat: It is not their
22 function to review their guarantees. That's not their

1 issue.

2 Q. But, to the second part of it, once the
3 Stability Agreement is concluded, to ensure the
4 compliance with the Stability Agreement, the DGM also
5 has to determine what the scope of the Agreement is.
6 Otherwise, you can't ensure the compliance; right?

7 A. The DGM has to pronounce themselves on
8 implementation of the investments that are in the
9 Feasibility Study that was previously approved and
10 then to see if they effectively coincide with what was
11 approved. That's it.

12 And once the DGM says the investment has
13 been carried out after the study by the external
14 auditor, then the stability period begins to run for
15 15 years. That is what the DGM does.

16 Q. The mining investor makes a new investment
17 and says: "This new investment is stabilized." It's
18 up to the DGM then to determine whether the--whether
19 the investor is correct, whether the investment is or
20 is not stabilized. Isn't that the case?

21 A. That is not up to the DGM. Plus, if it is
22 stabilized, it would have to have an agreement, and

1 that is not up to the DGM. That is not the DGM's
2 function.

3 (Overlapping interpretation and speakers.)

4 (Interruption.)

5 (Stenographer clarification.)

6 BY MR. PRAGER:

7 Q. So, whose function is it, in your view, to
8 make that determination?

9 A. First, the signed Stability Agreements go to
10 SUNAT, and the one that reviews to see to compliance
11 with the tax aspect and other issues that are of
12 the--under the authority of SUNAT is SUNAT. It has
13 the Feasibility Study. It reviews exactly what is
14 stabilized, and payments are made based on what's
15 stabilized, not the DGM.

16 The one who reviews exchange rate issues is
17 the Central Bank, not the DGM. The DGM reviews to
18 make sure that the investments in the--are actually
19 made.

20 Plus, the Agreements are a matter of public
21 knowledge. One says, "I have an agreement." Where is
22 your agreement? Neither the DGM nor me nor the

1 Minister nor anyone can say, in effect, "I do think it
2 is appropriate because it's in the agreement. It's
3 the same unit." No, no one, not even the Minister.

4 ARBITRATOR TAWIL: But if there is an
5 additional investment, the SUNAT doesn't know whether
6 it's in the scope of the original project or not. Who
7 looks at that at the Ministry of Mining?

8 THE WITNESS: SUNAT receives the Feasibility
9 Study, receives the Agreement, and attached to the
10 Agreement is the Feasibility Study. The SUNAT has all
11 the information.

12 ARBITRATOR TAWIL: But you said before when
13 I asked you, if there are additional investments and
14 the yield is two, three, or four times greater or
15 whatever, insofar as it's the same project then it
16 would be stabilized.

17 So, how does the SUNAT know this? Does
18 someone at the Ministry has to tell them it's
19 stabilized?

20 THE WITNESS: Sir, what is stabilized is in
21 the Feasibility Study, correct.

22 ARBITRATOR TAWIL: Excuse me, but could you

1 answer my question, please? Because what I said is,
2 if there are additional investments and the result is
3 a greater yield, you said that, if it corresponds to
4 the same general project, even though it's a greater
5 or new investment, then it's stabilized.

6 So, what I'm telling you is, well, the SUNAT
7 doesn't know that. The SUNAT sees that, instead of
8 50 million, they get 200 million. How does the SUNAT
9 know? Who at the Ministry of Mining tells them
10 whether that is or is not within the Stability
11 Agreement?

12 THE WITNESS: First of all, I did not talk
13 about additional investments that yielded four times
14 the output. What I say--well, what SUNAT has to look
15 at is the Feasibility Study. The Feasibility Study
16 defines what's going to be made, what's going to be
17 done. If there are additional investments, then they
18 would have to have a different Stability Agreement.
19 That's what I say.

20 ARBITRATOR TAWIL: But that's not what you
21 said earlier. You said earlier that, if there are
22 additional investments within the same Project--for

1 example, instead of investing 250 we invested 275,
2 and, instead of 100 million, that yields 110, 120,
3 180--you said it's stabilized insofar as it's the same
4 Project.

5 THE WITNESS: Now, let me tell you what "the
6 same Project" means. I don't think we understood or I
7 didn't--one another, or I didn't explain it very well
8 before.

9 One knows what the Project is once the
10 external auditor declares it and the DGM approves it.
11 So, there you have the Project. There are specific
12 projects that are subject to external audits approved
13 by the DGM. That is the Project.

14 Now, what I told you is, if you have a
15 project--a plant--you have ore, for example, that you
16 found rare earths and you got rare earths, well,
17 that's okay. It's stabilized. But if you tell me
18 that it's four times greater, that's not possible.
19 That is just impossible.

20 ARBITRATOR TAWIL: But who will tell SUNAT
21 that it's the same Project?

22 THE WITNESS: The SUNAT has the Project.

1 ARBITRATOR TAWIL: Who says at the Ministry
2 of Mining whether it's the same Project?

3 THE WITNESS: What do you mean by "the same
4 Project"?

5 ARBITRATOR TAWIL: For example, as
6 Mr. Cremades asked, if you take out a different
7 mineral and you get the same--it enjoys the same
8 benefit, who tells the--who at the Ministry of Mining
9 indicates that?

10 THE WITNESS: It's set out in the Project.

11 ARBITRATOR TAWIL: So, does SUNAT interpret
12 this without any help from the Ministry?

13 THE WITNESS: SUNAT has the Feasibility
14 Study. Excuse me. It has the Feasibility Study.

15 So, we're talking about tax-related matters.
16 It has the Feasibility Study--there are going to be
17 revenues, costs, and results based on the investment
18 project. SUNAT has that because they have the study.
19 They know what it is.

20 Plus, SUNAT has--according to Article 25 of
21 the Regulation, the titleholder has to have exhibits
22 showing anything that has varied, and nothing stands

1 in the way of the SUNAT if it finds something unusual.
2 Well, if it takes note of that, then of course they
3 can engage in a consultation. That's obvious, but
4 there is no specific procedure.

5 SUNAT has what it needs. It has the
6 Feasibility Study, and they have to have the
7 Demonstrative Appendices, and that's set out in the
8 Regulation.

9 BY MR. PRAGER:

10 Q. Perhaps we can--again, there are various
11 things that you said that I want to follow up on.

12 The first thing is, if you look at
13 Article 101 in its entirety, which is in Tab 9 that
14 you have there, if you look at little (c), it says "to
15 approve the Technical-Economic Feasibility Study,"
16 which is what you mentioned. That's the
17 Technical-Economic Feasibility Study that allows--that
18 proves that the requirements are being met.

19 A. (Not translated.)

20 Q. Sorry, it's at Tab 9.

21 A. Where is it?

22 Q. Part (c), like "César." We also put it on

1 the screen.

2 A. This is 9, and this is a Decree 01492. It's
3 something else.

4 Q. Yes. It's Tab 9. That's from the Mining
5 Law, Article 101 of the Ley de Minería.

6 If you go to Article 101--we also put it on
7 the screen.

8 A. Yeah.

9 Q. Okay. So, you see you mentioned approve the
10 Technical-Economic Feasibility Study. That is 101(c).

11 Do you see that?

12 A. Yes.

13 Q. And the Technical-Economic Feasibility Study
14 proves that the requirements are being met to access
15 stability; right?

16 A. That's not what a Feasibility Study does.
17 The Feasibility Study describes what has been decided
18 upon by the investors themselves, what the Project is
19 about. It has to do with increasing from 70 to 100.
20 For that, I require this investment; I need more
21 workers; I need to make use of this technology. I'm
22 going to access--

1 Q. Mr. Polo, you already explained that. We
2 disagree on that, but that's fine.

3 And little (e), the point I wanted to make
4 is: "To ensure compliance with Tax Stability
5 Agreement."

6 Do you see that?

7 A. Yes. I already said so.

8 Q. So, your compliance with the Tax Stability
9 Agreements cannot only mean to approve a Feasibility
10 Study; isn't that the case?

11 A. They have to oversee compliance with the Tax
12 Stability Agreements within the scope of their
13 authority, not outside of it. They cannot invade the
14 authority of the Ministers. That's clear.

15 You say that I've already said that, but
16 then you ask it of me again.

17 Q. Let me show you something, an exchange from
18 the SMM Hearing, and that's in Tab 3, Claimant
19 Exhibit 1137. And that is, in the Spanish, 1287.

20 Do you have it? It's Page 1287-1288. It
21 starts--it's a longer exchange. It starts on Line 3
22 and ends on Page 1288, Line 22. And in the English,

1 it starts on 1259, Line 11, and goes to 1261, Line 5.

2 A. I'm sorry. Which tab in Spanish?

3 Q. It is Tab 3.

4 A. Okay. And where is that?

5 Q. We are going to put it on the screen in a
6 moment. It's 1287, Page 1287 in Spanish, where it
7 says "President Blanch," and it goes to 1288. And in
8 English it's 1259, and we start at Line 11.

9 So, here President Blanch asked you: "So,
10 just to confirm, the issue would then be, is it
11 replacement of the same piece of technology, and the
12 fact that it may improve production because it's a new
13 piece of equipment is irrelevant? So, the issue is
14 whether it's a replacement or whether it's a new
15 technology. Is that how you see the difference?"

16 And we were discussing, you know, about what
17 constitutes an investment and what does not constitute
18 an investment that is covered by a Stability
19 Agreement. So, she wanted to--she asked you that
20 question of whether the determining factor is whether
21 it's the same technology or whether a new technology
22 is applied that makes an investment project stabilized

1 or not.

2 And you responded to that after you gave an
3 explanation. You said in English: "In addition to
4 that, that is not my specialty. It is not my
5 competence. It is under the General Directorate of
6 Mining that would have to analyze it."

7 So, isn't it the case that here in the SMM
8 Hearing, you said that to determine what is stabilized
9 and what is not stabilized was not the competence of
10 the Vice Minister, but was the competence of the
11 General Directorate of Mining?

12 A. Well, I could never say that, that the
13 authority to see whether or not it's stabilized lies
14 with the DGM. I never would have said that. I
15 understand what you have read, but I couldn't have
16 said that.

17 What I could say is that one could consult
18 on a technical matter with the DGM: What do you think
19 of the nature and impact of that new technology in the
20 Project, in the Feasibility Study that was approved by
21 the DGM? Most likely I would call the Director
22 General for Mining and say: "Explain to me, what is

1 this?"

2 So, I have to use criterion because not
3 everything is etched in stone, a criterion whether to
4 determine whether the technology is completely
5 obsolete.

6 Now, a project is a whole set. Now, if we
7 say that we're going remove all the technology and
8 then put in new technology, when--just a minute.
9 That's another project.

10 (Overlapping interpretation and speakers.)

11 Q. Okay. Let me just--let me just summarize
12 your question.

13 So, what you're telling me today is that
14 what you told President Blanch of the SMM Tribunal was
15 not correct. That is your testimony?

16 A. No. I'm not talking about correct or
17 incorrect. What I'm saying is that I have never said
18 that the authority to see whether something is--lies
19 within the feasibility agreement is--lies with the
20 DGM. If that is what was put down or what was
21 translated, I apologize, but I never could have said
22 that.

1 Q. Okay. But what you were saying is that you
2 were wrongly transcribed? Is that your testimony?

3 A. I cannot testify as to something about a
4 transcription being incorrect or the words not being
5 correct. I don't understand what you said where you
6 say that at some point in time I say that the DGM has
7 the authority to know and to interpret what is part of
8 the Stability Agreement, Feasibility Study, or not. I
9 don't have that--they don't have that authority, and
10 if I said that, then I could not have said that, and
11 if I did, I misspoke.

12 To say that in the scenario where you want
13 me to say it, well, I agree that I might have
14 misspoke, if that's what's understood, but I don't
15 understand that. I could not have said that the DGM
16 has the authority to interpret the Stability
17 Agreement, because it does not and it cannot. That
18 would be a serious matter.

19 And I've said that on several occasions.

20 Q. Mr. Polo, do you want us to listen to the
21 audio to confirm?

22 A. As you wish. I have no problem rectifying

1 what I've said if that is the case.

2 Q. Now, let's take another example.

3 We had a longer discussion about that at the
4 SMM Hearing. You apparently changed your mind in the
5 last three months.

6 So, let's go to, again, Tab 3, 1137. This
7 is, in Spanish, Page 1266, 12-20, Lines 12-20. And,
8 in English, 1239, Line 17, to 1240, Line 3.

9 And the question here was: "So, when you
10 were Vice Minister of Mines, you were responsible for
11 executing the 10-year Stability Agreements; right?"

12 Your answer: "No."

13 "Question: You were not?"

14 "Answer: No. I was Vice Minister of Mines,
15 and the responsibility, no. Following up on the
16 Stability Agreement was not part of my function."

17 Do you see that?

18 A. Yes. That's right. It's not part of my
19 function.

20 Q. So, we are agreed that following up on
21 Stability Agreements is not part of your function as
22 Vice Minister?

1 A. No, unless a point is raised and asking for
2 my opinion, but it's not up to me to monitor the
3 Stability Agreements.

4 Once they are approved, they take their
5 course, and then they go to the SUNAT. They don't go
6 back to the DGM or to the Vice Minister for Mining or
7 the Ministry of Energy and Mines.

8 And I tell you once again, if you're saying
9 that I've changed my mind over a three-month period,
10 that's your opinion, not mine.

11 (Overlapping interpretation and speakers.)

12 (Interruption.)

13 (Stenographer clarification.)

14 Q. So, whose responsibility within the Ministry
15 is it, then, to follow up on the Stability Agreements?

16 A. The Stability Agreements, once again, once
17 the investment is approved, go together with their
18 studies--the Feasibility Study and the Agreement go
19 with a copy to SUNAT, and then the Company follows the
20 road of the SUNAT, and everything is there.

21 If at some point in time some clarification
22 is needed, nothing stands in the way of them asking

1 for such clarification. They could ask the Ministry.

2 If it's a highly technical issue, then I
3 would call the DGM and I will say: "What does this
4 exactly?" And they will tell me, not that the--it
5 should be granted as part of the Feasibility Study.
6 That's not within their authority or mine. They will
7 tell me: "That means this." And I will say--I will
8 tell the Minister: "This is my opinion," and I would
9 set it out in writing.

10 Q. Mr. Polo, can you point me to a provision in
11 the Mining Law or in the Regulations of the Ministry
12 that confirms what you just told me so we can look it
13 up?

14 A. Not everything is regulated by law. That is
15 why one must operate with their own criterion. I
16 operate under my authority and with the criterion, not
17 with a list of things.

18 Q. So, you're telling us here today, Mr. Polo,
19 that the application of Stability Agreements is not
20 regulated anywhere?

21 The responsibility for the application of
22 the Stability Agreement is not regulated anywhere.

1 That's what your testimony is here?

2 A. Sir, please don't change my words. The
3 procedure that is set out in the law and the
4 Regulation is clearly established. Stability
5 Agreements are signed, they are approved, and the
6 investment is then approved, and that is where the
7 term of "stability" begins to be counted.

8 Now, those who regulate the guarantees are
9 the competent bodies. If it's tax, it's SUNAT. If
10 it's foreign exchange, it's the Central Bank. But
11 that is not follow-up. That is simply, I have my
12 Agreement, and I apply my Contract in my operations.
13 Everything goes forward normally.

14 Not everything has to be precisely
15 regulated. Before I go to the SUNAT, I have to go to
16 the DGM to see that everything is fine? No, that is
17 not the procedure. You go with that document that you
18 have, you have the Agreement in hand, and the State
19 answers for each of its institutions, each of them in
20 respect of its own authority.

21 Q. So, you're telling us that an investor who
22 wants to know whether a new investment the investor is

1 making is covered by stability or not has to wait
2 until--having made the investment, until the
3 investment is already producing for SUNAT to audit it,
4 and then to find out whether it was covered or not by
5 stability? Is that your testimony?

6 A. It's my testimony, and not yours. I am the
7 one who says what my testimony is. No new investment
8 can go and ask whether it has a Stability Agreement.
9 If it's a new investment, then you need to have a new
10 Stability Agreement. It's that simple.

11 I want to make a new investment. I go to
12 the Ministry with my Feasibility Study, and I ask to
13 have a Stability Agreement. A new investment comes
14 along and the Stability Agreement--do you--is that new
15 investment automatically covered by stability? No.
16 It's a new investment.

17 Q. Mr. Polo, let's come to your--perhaps it's
18 helpful, you know, to look at the concrete example.
19 And when we look at the concrete example, let's look
20 at the Stability Agreement that you have signed during
21 your time as a Vice Minister, and let's take a look at
22 Tab 11. That's Claimant's Exhibit 927, and that's a

1 Stability Agreement with Compañía Minera Milpo. Let's
2 take a look at that.

3 So, that's Tab 11.

4 MS. HAWORTH McCANDLESS: Madam President,
5 again I have to object, because the scope of the cross
6 is to be limited to what is included in the Witness
7 Statement, and I don't believe there's any reference
8 to Compañía Milpo in the Witness Statement.

9 MR. PRAGER: This goes to the essence of his
10 testimony, which is whether investment--whether
11 Stability Guarantees apply to an Investment Project,
12 and I'm surprised to hear that objection from somebody
13 who introduced 10-Ks to Witnesses who obviously have
14 never seen them before and who had nothing to do, and
15 who did not mention them in their Witness Statement.

16 So, it's not only inconsistent, but
17 it's--this goes entirely to the question of: What is
18 the scope of stability benefits?

19 MS. HAWORTH McCANDLESS: Madam President,
20 he's a testifier--

21 MR. PRAGER: And he signed it, too.

22 MS. HAWORTH McCANDLESS: He's a testifier of

1 facts of the respect with respect to issues that he
2 has discussed in his Witness Statements. So, his--and
3 according to the rules, he is supposed to be
4 testifying and having questions asked only with
5 respect to what is included in the Witness Statements.
6 And the provision is 19.7.3, which is included in
7 Provision 38 of the Procedural Order 4, where it
8 says: "The adverse Party may cross-examine a Witness
9 on matters that were addressed or presented in the
10 Witness Statement or during direct examination."

11 This is outside the scope of his Witness
12 Statement.

13 MR. PRAGER: Mr. Polo spent both of his
14 Witness Statements talking extensively about the scope
15 of Stability Guarantees, and he walked through all the
16 provisions--not all, but a number of provisions of the
17 Mining Law and the Regulations. That was the very
18 essence of his statement.

19 I'm showing him now a document that he
20 signed while he was at the Ministry in order to
21 discuss with him his concrete understanding about the
22 scope of Stability Benefits.

1 MS. HAWORTH McCANDLESS: Well, he didn't--

2 MR. PRAGER: You showed Mr. Davenport
3 documents that he never mentioned in his Witness
4 Statements, that had nothing to do with his Statement,
5 and that was fine.

6 Now when I show the Witness a document that
7 he signed, that goes to the very essence of his
8 Statement, you are objecting on it.

9 MS. HAWORTH McCANDLESS: Madam President,
10 I'm objecting on the basis of the rules that are
11 provided by the Tribunal that were governing these
12 proceedings.

13 MR. PRAGER: Well, should we strike the
14 questions you gave to Mr. Davenport on the basis of
15 your novel interpretation?

16 MS. HAWORTH McCANDLESS: There was no
17 objection at that point, and I'm objecting now. And I
18 leave it in the hands of Tribunal. I don't want to
19 have an argument with Counsel for Claimant right now.

20 PRESIDENT HANEFELD: I think it goes to the
21 heart of his testimony, I would agree, and we have
22 also references to other Projects. If he does not

1 know about the Project, he will certainly say so.

2 MR. PRAGER: I will not ask him about any
3 specific facts about the Project, but I will take it
4 as a basis to test his understanding of investment
5 projects and the scope of them. So, it's not meant to
6 be an exam about Milpo.

7 THE WITNESS: So, shall I speak?

8 BY MR. PRAGER:

9 Q. Not yet. Just confirm that you have found
10 in the meantime the Stability Agreement for Milpo.

11 A. Yes.

12 Q. And can you look at--just to confirm that,
13 can you look at the signature on the Agreement and
14 confirm that you signed it?

15 A. Yes. Yes. That's my signature. Correct.
16 My signature and approvals are there.

17 Q. And this is a 10-year Stability Agreement;
18 right?

19 A. Yes.

20 Q. And if you go to Clause 1.1, you see it says
21 here: "Proyecto De Ampliación Mina El Porvenir."

22 Do you see that?

1 A. Yes.

2 Q. So, let me ask you, first of all, that
3 question: Does that describe the scope of that
4 Stability Agreement?

5 A. No. In this case, it's a case in which they
6 only need to present the investments they are going to
7 make with a simple description. But the first part of
8 the description is that it's an Expansion Project.

9 Q. Okay. But my question was specifically
10 whether that term that was inserted here in quotation
11 mark and capitals, Proyecto De Ampliación Mina El
12 Porvenir, whether that defines the scope of the
13 Stability Agreement.

14 A. It defines it is an expansion. One will
15 have to look at the Investment Program presented to
16 figure out the scope, and this is 21 years ago, as I
17 recall.

18 Q. So, in your view, the name itself does
19 not--the name that is here in Clause 1.1 on its own
20 does not define the scope of the Stability Benefits?

21 A. The Stability Benefits are something else.
22 It doesn't define the Project. They're two different

1 things.

2 The project is defined by its content. In
3 the case of a 10-year investment, the contents are
4 simpler, because they are simpler projects. I don't
5 recall exactly what this expansion is about. At some
6 point it must say what it's about, but here I just
7 have the Agreement, and I don't actually remember what
8 the expansion is about.

9 Q. So, it's the content, and not the name, the
10 label used here in Clause 1.1, that defines the scope.
11 Are we agreed on that?

12 A. It's the name of the Project and the content
13 and purpose and results sought to be achieved for that
14 project. So, the content, well, it is called the
15 expansion of the El Porvenir Mine. What does that
16 entail? It entails deepening something or expanding
17 the Beneficiation Concession Plant to obtain such and
18 such a result. That's the Project and that's the
19 entire content of the Project.

20 Q. So, the Project is just the amplification of
21 the mine; it's not the facilities that existed before
22 the amplification took place. Is that what you're

1 telling us?

2 A. Of course. The Project, which is also to be
3 approved by those who are going to make the
4 investment, entails what the investment is going to
5 be. What's the investment? An expansion. What does
6 the expansion entail? 1, 2, 3, 4. That's the
7 Project, and that expansion is the subject matter of
8 the stability, and the part that was not expanded is
9 not part of the Stability Agreement. It is just the
10 expansion. That's right.

11 Q. So, you would--would you agree that the
12 title--or the name here, as it is used in 1.1, itself
13 does not tell us about what the scope of the stability
14 benefits are?

15 MS. HAWORTH McCANDLESS: I object because I
16 already asked this question, and he already answered
17 that question. There is no need to repeat it. He
18 already answered.

19 BY MR. PRAGER:

20 Q. Well, again, I mean, I don't want to belabor
21 how many times you asked questions twice.

22 MS. HAWORTH McCANDLESS: I'm just saying,

1 I'm objecting on the basis that this has been asked
2 and answered and there is no need to continue to ask
3 him the question.

4 BY MR. PRAGER:

5 Q. Let me ask it differently then. Can I show
6 you a document that MINEM sent to SUNAT that has all
7 the labels of the Stability Agreements, if you put
8 that up on the screen. That is--I'll give you it in a
9 second. It is Tab 21.

10 It is Exhibit RE-175. It is taken from
11 Mr. Isasi's April 2005 memo. It is coming in a
12 moment.

13 A. What label?

14 Q. It's 21, Tab 21.

15 Do you recognize the list? Have you seen
16 the list before? Can we do both languages?

17 A. What list is this? The one here? At 21?

18 Q. Can we get the Spanish back?

19 It's a list of Stability Agreements that I
20 represented to you that MINEM sent to SUNAT in
21 April 2005.

22 A. Yes. Is this here?

1 Q. Yeah, it's in Tab 21.

2 A. Yes, I see the list.

3 Q. Okay. Can you look at Number 24?

4 A. Yeah.

5 Q. You find what we just saw, the expansion of
6 the El Porvenir Mine.

7 Do you see that?

8 A. Yes.

9 Q. Okay. Now, let's take a look at Line 2, for
10 instance.

11 A. Centromín?

12 Q. Minera Toromocho.

13 A. Toromocho, yes.

14 Q. And here, the project title is "Centromín
15 Perú"; right?

16 A. Umm-hmm.

17 Q. Is it your view that the Stability Benefits
18 of the Minera Toromocho Agreement applied to the
19 entire Centromín Perú Company?

20 A. No.

21 Q. Why not?

22 A. Because it is for Toromocho.

1 Q. And would you agree with me that the title
2 in Clause 1.1 doesn't tell us what the scope of the
3 Stability Agreement is?

4 A. Let me reiterate, the titles do not give you
5 the scope of the Stability Agreement. We need to look
6 into the definitions under the Stability Agreement as
7 to what the Project is based on the definition.

8 Q. Let's do that. Let's look at the investment
9 project that you say defines the scope of the
10 stability benefits, and in--where do we typically look
11 in a Stability Agreement to find that, Mr. Polo?

12 A. At the bidding project.

13 Q. Well, let's look at Annex II.

14 A. You asked me. I told you.

15 Q. Yeah, sorry, we are going back to the
16 previous Stability Agreement that was Tab 11. So, if
17 you go back to Tab 11. I know these binders are very
18 difficult to handle.

19 A. I have 11, and it is in English. It is in
20 English.

21 Q. You should have it in English and Spanish.

22 A. I see a resolution.

1 Q. Before the English, you have the Spanish.

2 A. So, Label 11. I am at Label 11. Let's see
3 if there is another 11 around here.

4 Q. So, there is a sheet. There is an English
5 translation of a couple of provisions at the first
6 sheet, then you find the blue sheet, and after the
7 blue one, you find the Spanish-language original. And
8 apologies to the President, the English version is not
9 a full translation of the Agreement, but--if you go to
10 Annex II, you see this? We also have it on the
11 screen.

12 A. First you told me it is 11.

13 Q. It's 11. Yes, at the very end of 11. Last
14 page of Tab 11.

15 PRESIDENT HANEFELD: But just that I
16 understand it correctly because it's in Spanish, we
17 talk about a total investment of 14 million, or--

18 MR. PRAGER: That's correct, yes. We are
19 talking about a total investment of 14 million.

20 BY MR. PRAGER:

21 Q. Do you see that, Mr. Polo? Now you have it.
22 Now you have it. Okay?

1 A. Yes, 14.

2 Q. Is that the Investment Program we should
3 look to that--to see what defines the scope of
4 Stability Agreements?

5 A. No. The Investment Program is not presented
6 on a page. It is not a page. It is simple, but it
7 needs to have an explanation as to what it includes,
8 what the expansion is, and also from what tonnage to
9 what tonnage it will go. The investments, here you
10 see the list of investments, but it is not just a
11 list. This is not just a checklist. Okay? So, if we
12 look at this, this Stability Contract says more than
13 that, provides for more than that.

14 This annex includes all of the investments
15 estimated to be done.

16 Q. Let's look at 4(1), Paragraph 2 of the
17 Stability Agreement. It says in Spanish--so that it
18 can be translated into English: "This Investment
19 Plan, duly approved by the General Office of Mining
20 for the signing of this document, is part of this
21 document as Annex II."

22 So, it is the Investment Program approved by

1 the DGM. Okay?

2 A. (Not interpreted.)

3 Q. Yeah.

4 A. It is similar to the Feasibility Study.

5 Q. And that's the entire Investment Program.

6 It's attached to Annex II.

7 A. It is the whole Investment Program as
8 approved.

9 Q. And as Madam President asked, this is for a
10 total investment of \$14 million; right? \$14,162,600;
11 correct? U.S. dollars.

12 A. Umm-hmm.

13 Q. And because it's for a relatively minor
14 amount, 14 million, it did not qualify yet. It did
15 not qualify for a 15-year Stability Agreement. It did
16 qualify for a 10-year Stability Agreement; correct?

17 A. Correct.

18 Q. And if you look at some of the investments
19 here--let me highlight two--one is an access ramp.
20 That's the third one.

21 Do you see that? A "rampa de acceso,"
22 translated into English, "access ramp"?

1 A. Yes. Yes.

2 Q. And let me take one more. It says:

3 "Profundización pique picaso."

4 A "pique" is like an elevator, an elevator
5 that goes down the shaft for the workers; right?

6 A. Yes.

7 Q. And then it says also, "development of the
8 lower levels of the mine"?

9 A. Yes.

10 Q. Okay. So, let's leave Milpo. I'm not going
11 test your memory about Milpo. Let's take those three
12 as a hypothetical, just to understand--well, we can
13 still leave that on, but just to understand sort of
14 your understanding.

15 So, what you are saying is that the
16 Stability Benefits are limited to the specific
17 investments listed here, this \$14 million investment,
18 but not to anything else?

19 A. They limit themselves to what these
20 investments generate, the results that they generate
21 that will be reviewed by SUNAT, within the management
22 areas where the results are produced.

1 Q. Okay. So, let me better understand that a
2 little bit.

3 So, if you have a ramp access--so this is--

4 A. Okay. Okay. I understand.

5 Q. We keep it a hypothetical. I'm not testing
6 you about Milpo. But let's say this is an underground
7 mine. People are building a ramp access or extending
8 a ramp access. And trucks are going down that ramp
9 access. What happens to the ore that is being
10 extracted? Is that ore stabilized, because the access
11 ramp was extended? Or is that ore not stabilized?

12 A. The results of that access ramp that will
13 lead to higher production of the ore are stabilized,
14 and that's very easy. You have prior to the expansion
15 a result, let's say, of 50. After the expansion, 80.
16 80 minus 50, 30. 30 is your stabilized amount.

17 Correct?

18 Q. So, it's not just the ramp access itself but
19 the increased output that comes from the ramp access.
20 Is that your testimony?

21 A. Yes. The increase of the result is what
22 will be impacted by the stabilization process. That

1 is, the increase, not previous results. That's why
2 I'm telling you. Let's say that prior to the
3 expansion, let us talk about the income tax. Let's
4 say that the Company prior to the expansion paid an
5 income tax of 35. Let's say 35.

6 They invested. They made the additional
7 investment, they expanded, and the contract defined
8 that now the income tax was 25. So, the question is,
9 given for the first they paid 35 and for the rest they
10 paid 25, how do you get to that? Because of the
11 difference in flow. You have the old flows and the
12 total new flows. You subtract and you get incremental
13 flows. Those incremental flows are the annexes to be
14 presented by the Company for SUNAT to know what is
15 stabilized. Okay.?

16 Q. So, let's imagine that there is also an
17 increment in the production because the
18 already-existing production is handled more
19 efficiently. So, let's say from the lower levels that
20 you described there was an increase, contributed to an
21 increase of 50, but new efficiencies add an additional
22 20 percent, and the efficiencies are not related to

1 the investment and Investment Program.

2 Is that stabilized too or that is not
3 stabilized?

4 A. I would apply, since the increases are due
5 to the investment, once again, I would apply the flow
6 differential. You have given me one of the most
7 complex cases because you are going to say which one
8 is which. You don't need to know which one is which,
9 but you may know it because if the miners know, the
10 miners know what block they are extracting it from.
11 But which one is easier for SUNAT and anyone? You
12 have the initial flows, and you have the flows with
13 the investment.

14 The differential in flows generates
15 everything that is to be applied under the Stability
16 Contract, and you are giving me one of the
17 hypothetical cases that might be a little bit more
18 complicated. There are others that are simpler, such
19 as the subject matter of this Hearing.

20 Q. You didn't answer my question. My question
21 was: What part of the increased output is the result
22 of efficiencies and not of the new investment?

1 In your concrete example, you said the new
2 investment, as you interpret it, added an increased
3 output of 50. Now, increased efficiency adds 20. The
4 efficiencies don't come from the investment. Let's
5 say they have a new machinery. Are those 20
6 stabilized or not?

7 A. I understood that the new investment led to
8 higher efficiency, but now you're telling me it is not
9 the case.

10 Q. This is a hypothetical.

11 A. It's highly hypothetical. Now, let's say
12 that--it is difficult, I could say, to differentiate.
13 But it's not that difficult. You need to show SUNAT
14 that this is what the investment does. This is what a
15 company does when they want things to be done
16 correctly. This is what we do with the investment. I
17 have included this technology, this technological
18 change, which is a new investment, and I get to this
19 new outcome, and this is the expansion. So, you
20 subtract what you get from the technological change
21 that is not here, and you subtract, and the rest
22 belongs to expansion.

1 Now, for the technology change, you had also
2 investments that are not here or anywhere, depending
3 on the scope. If it is changing just one chip for
4 another one, that is not a problem. That's when we
5 use the criterion, and I cannot recall right now here
6 during the Hearing and also with this hypothetical,
7 but I have criteria, and I know how to use my--I have
8 a judgment and I know how to use that judgment.

9 Q. Ok, so, in my hypothetical example. The
10 increase of 20 units caused by efficiency, that's
11 something that SUNAT is going to tell me eventually,
12 whether that's covered or not. You can't tell me that
13 right now?

14 A. I would need to know what is it that leads
15 to that increase. If it's a change, for example,
16 let's say that there is a new shift system for the
17 workers and you have more production. I can tell you,
18 okay, there's a change in the shift. Then there's not
19 a problem. We maintain the old system. But the new
20 investments--what leads to the new investments is here
21 the issue. If that 20 percent was part of that, then
22 it would be stabilized. And then you mention--

1 (Overlapping interpretation and speakers.)

2 BY MR. PRAGER:

3 Q. You mentioned technological changes. So,
4 let's assume Milpo--that's pure hypothetical. Milpo
5 buys new drilling machines that were not part of the
6 initial investments and mines ore with those new
7 machines, with that new technology, from the lower
8 part; right? Is that now stabilized or not? Because
9 we understand from the Project that lower parts would
10 be stabilized, and now we're drilling with equipment
11 that is not stabilized? How is that decided?

12 A. First of all, I need to establish whether
13 the new machines were here or not as part of this
14 investment project that was, and this was supported or
15 not. If this was here, there wouldn't be a problem.
16 If they were not there, we need to see if it is just a
17 mere change of machines. It is just a current
18 expense, and it is a normal investment.

19 Q. In my hypothetical, the new machines were
20 not an Investment Program?

21 A. Well, in principle, the new plant is not
22 stabilized. Those new plants are not stabilized, but

1 when were the machines introduced? Before? After the
2 expansion? When? I would need to know the details.
3 And you're talking about a hypothetical here.

4 Q. Let me just repeat the hypothetical again.
5 And I wasn't talking about plantas, I was talking
6 about new drilling machines. They did not form part
7 of the Investment Program that we are looking at in
8 the hypotheticals. And they are now going with this
9 new drilling machines and drilling the ore from the
10 lower levels. They are using the access ramp that was
11 stabilized. They are using--the workers come down
12 with the elevator that was stabilized, but they have
13 this new machines with which they are drilling the
14 ore. That is stabilized or that is not stabilized,
15 the ore that is now mined with the new drilling
16 machines using the stabilized tunnels and access
17 ramps?

18 A. What you are telling me here is that in this
19 investment I have introduced a new drilling machine
20 that uses all of the stuff that is already here. And
21 that new drilling machine, does it replace the one
22 that you had before?

1 Q. Yes.

2 A. When? Before? After?

3 Q. While the Stability Agreement is in force.

4 A. I need to think about it. Clearly accesses
5 and all that is stabilized, but I need to think about
6 it. The issue has to do with the materiality, with
7 the substance, but I need to think about it, if it is
8 a very important investment.

9 Unfortunately, it would not be included.

10 But the problem is how to establish a difference.

11 Once again, the way to differentiate those cases, the
12 ones that you are mentioning that are quite complex
13 for me and that they are a "hypothetical"--in between
14 inverted commas--because the new--if the new driller
15 existed when there was no contract, and I understand
16 that it would have been logical for it to be included
17 in the Investment Plan, but these are investors that
18 are up-to-date.

19 But this is simple because you have the
20 history of production without the Project--with the
21 Project, and now with the machine; correct? So,
22 basically, you--and, once again, this goes back to

1 materiality. Everything that is easily evidenced as
2 part of this investment is stabilized. Whatever is
3 not the subject matter of the investment is not
4 stabilized.

5 Except if it is--if the previous drilling
6 machine had a problem, and I change it into a new one
7 that is better, well then it would be just a
8 replacement. It is not a new project.

9 It depends on the circumstances. So, if
10 things are not black or white or they are not just a
11 checklist and a list, then I wouldn't need Vice
12 Ministers or DGMS, I could probably do it much easier
13 these days, probably with a ChatGPT.

14 Q. Probably with a new machine. I wasn't
15 asking whether the drilling machine itself would be
16 covered or not. I was asking the ore, the ore that
17 was mined as a result of the nonstabilized drilling
18 machine. Is that still stabilized?

19 I mean, an investor would need to know that;
20 right? Is that ore still stabilized because they are
21 using the access ramps from the Investment Program and
22 the elevator? Or is that no longer stabilized because

1 they are drilling it now with a nonstabilized driller?

2 It is not that complex. I mean, that's how mining
3 happens; right?

4 A. Well, you should know. Let's see. The
5 ore--at the end of the day, the machines are not
6 stabilized. Everything that goes with the machine,
7 and that includes the mineral, the ore, if you're
8 having access to new ore, that's a different
9 situation. It is not part of the Project as such. I
10 understand that this is something to be studied
11 thoroughly, carefully, so that we are not unfair with
12 one party or the other. But you are asking me to look
13 into hypotheticals, and this is a Project that is not
14 the one that you are not mentioning here, but it could
15 be very similar, and--about a way in which I think
16 that's something that I saw 22 years ago. Clearly, I
17 was not the only one judging the situation. I always
18 had the assistance of the team, Legal Affairs. We
19 would also report to the Minister, clearly.

20 Q. Mr. Polo, what does it mean if you access
21 new mineral that is not covered? What do you mean
22 with "if you access new mineral"?

1 A. Let's say that that drilling machine allows
2 you to get to areas that were not accessible before.
3 We are talking about the access, the new machine may
4 allow you to have access to areas that you were unable
5 to reach without the new investments. We are talking
6 about different things.

7 Q. So, who determines where the old zone ends
8 and the new zone starts, and how do you account for
9 that?

10 A. That is done by the miners because they are
11 familiar with the blocks, and also, in the
12 aide-mémoire to these investments, it's quite likely
13 that they would state these will be applied to this
14 area or the other one. But you would realize because
15 geologically, the geologists conduct their mining
16 plans with the miners and also their development
17 plans, and they make progress and they keep moving
18 forward, and they constantly have access to some
19 areas, and others are not accessible. If, with new
20 machine, you have access to new areas and you can get
21 more ore, then that is part of a different project, if
22 it is something significant. If it is just the

1 change--just changing one drilling piece of equipment
2 for another one, and then I get more out of
3 efficiency, yes, it could also be covered by
4 stability. It depends on the situation. You're
5 asking me to look into a hypothetical situation just
6 by myself. I never work like that.

7 Q. Well, Mr. Polo, you are testifying that that
8 was your idea--your idea, to limit stability benefits
9 to an investment project. So, you surely gave it some
10 thought. So, that's why I'm asking you here.

11 So, what if they, you know, are drilling and
12 they--you know, it's a zinc mine; right? Zinc and
13 lead mine. But what if they are lucky and strike
14 gold? Is that an--and the Investment Plan doesn't
15 tell us anything about, you know, gold. It is limited
16 to zinc and lead. So, is the gold they find
17 stabilized or not?

18 A. It was not limited to zinc and lead. It was
19 defined. There was a mineral area that was going to
20 be acted upon that had defined contents. If you find
21 gold with the same investment, of course, it is part
22 of the Stability Contract. It is no one may know what

1 you will end up finding, and technology evolves and,
2 for example, price may change. Price--the reserve is
3 an economic, not a physical, term. Economic term
4 means that it is related to pricing and costs and also
5 the economic nature of the extraction. Some economic
6 areas allow us to extract more and also to increase
7 reserves. It doesn't mean that you are going to have
8 more reserves. You are going to extract more. It
9 doesn't mean that each piece of mineral will be
10 stabilized. If I have these resources and with these
11 resources have a higher extraction, in my opinion it
12 is stabilized because of accessibility, price,
13 efficiency. But if I introduce a new investment, and
14 this investment is materially significant, it is not a
15 replacement with better technology, et cetera, et
16 cetera, then in that case, in principle, it would seem
17 a new investment and also an adjustment with a new
18 feasibility study.

19 Q. So, let's use the hypothetical that there is
20 a nonstabilized plant; right? I mean, let's say they
21 built a new plant that is not stabilized, in your
22 point of view, and the ore that comes from--the

1 stabilized ore that comes from the lower parts is not
2 processed in that nonstabilized plant.

3 Does it then become stabilized or not?

4 Let's say we have, like, a concentrator afterwards.

5 Is that stabilized or not?

6 PRESIDENT HANEFELD: Mr. Prager, can you
7 repeat the question? I got somehow lost.

8 MR. PRAGER: Sorry.

9 BY MR. PRAGER:

10 Q. Okay. Let's assume there's a nonstabilized
11 processing plant and the stabilized ore that is being
12 extracted from the mine is processed by that
13 stabilized plant. Let's say it's a flotation plant, a
14 nonstabilized flotation plant.

15 Is the ore that was stabilized--does it
16 remain stabilized when it's treated in a nonstabilized
17 plant, or does it become nonstabilized as a result of
18 being processed in a nonstabilized plant?

19 A. So, to begin with, the mineral is not what
20 is stabilized. The Project is what is stabilized. I
21 don't know if that clarifies my answer.

22 You stabilized a project with that mineral.

1 You said what mineral it was, what project was going
2 to process it, and that has a stability plan. If that
3 mineral is taken elsewhere, then you are not within
4 the Stability Agreement. You have a project that uses
5 the resources that are here.

6 If you have a different plant that is not
7 stabilized, you are outside the stabilization
8 agreement. If you decide to take that mineral to the
9 nonstabilized plant--that would be strange,
10 really--well, things are different. They can process
11 different minerals with different characteristics. I
12 wouldn't want to give an example, but...

13 ARBITRATOR CREMADES: I do have a question
14 for you. After listening to all of these questions
15 that you are posed--these are hypotheticals, but also,
16 some of these things are real.

17 There are two fields here: First the
18 technical field, and then you have the tax field,
19 which goes to SUNAT and SUNAT is the one that has to
20 provide an answer.

21 There are institutional inquiries, of
22 course, and the logical thing would be that, okay, if

1 there are doubts, those doubts should be included to
2 the inquiry--rather, included in the inquiry to the
3 SUNAT, to the MINEM.

4 Now, these inquiries, are they binding in
5 connection with these technical matters? Must they be
6 answered in writing? And if the questions are not
7 asked, then that's an issue of the investor, but if
8 there are doubts, things have to be asked in writing?

9 THE WITNESS: Inquiries are very simple.
10 Inquiries do not change responsibilities. The
11 responsibility of the MINEM is to say, okay, what is
12 the Project? Is this the Project? Is this not the
13 Project? And one says, okay, here is the Feasibility
14 Agreement. The demonstratives, have you been give
15 those or not?

16 I'm going to explain. So, I meet with a
17 team and explain what it is, and I say, okay, this is
18 our opinion. It is not binding unless it is put in
19 writing as a formal opinion in connection with the
20 feasibility agreement. It may be binding or there may
21 be responsibility, it may or may not be binding.
22 SUNAT is not an agency that executes things that it is

1 told.

2 So, somebody opines under his or her
3 responsibility, and SUNAT acts under its authority and
4 under its responsibility. If there are doubts, they
5 have to consult those that are responsible initially.

6 ARBITRATOR CREMADES: Thank you very much.

7 (Overlapping interpretation and speakers.)

8 BY MR. PRAGER:

9 Q. Sorry, Mr. Polo. So, you explained that it
10 depends on the circumstances, it explains--on the
11 size, it depends on whether it's something
12 significant. You said there are criteria. How do you
13 square that with the purpose of the Mining Law to
14 abolish discretion?

15 A. Correct. It would not be a
16 discretionary--discretionary act. It would have to be
17 perfectly justified. It's not something done under
18 the table. In answer to your question, well, the
19 answer would be, no, it is a new investment. Now, if
20 it's a replacement, for example, there is a machine
21 that broke down and it is old and you replaced it with
22 a new one that is more efficient, I have enough

1 reasons to put in writing that you can continue with
2 the machine. That's my opinion. But you would have
3 to talk to other individuals to get confirmation that
4 indeed that is a replacement machine, that the other
5 machine was not working properly, et cetera. It is
6 not discretionality.

7 To do discretionary things has to do with
8 doing windy things. Here things are in writing. It
9 is well grounded, and then it is stated transparently.
10 I think this, I put in my signature, and I answer.

11 Q. Mr. Polo, somebody has--whether it's at
12 SUNAT or within the DGM--is going to have to make
13 judgment calls on what is significant in all these
14 situations that we discussed, on whether a particular
15 asset or a particular production capacity is
16 stabilized or is not stabilized.

17 People are going to have to make
18 judgment calls of what is significant, of what is
19 reasonably still within the investment or not; isn't
20 that the case?

21 A. No. These are not value judgments. These
22 are grounds. If you say that you are going to replace

1 a driller that broke down, and that the one that
2 you're going to buy is better, and that you are going
3 to be able to do more, that's fully grounded.

4 But if you're saying that you are going find
5 it--to buy a new driller that is not in the list, I
6 said, okay, you have to submit a Feasibility Study.
7 You have to submit an Investment Plan, give your
8 grounds and you're going to get your Stabilization
9 Regime. That's as simple as that.

10 Q. Mr. Polo, can you point me to a provision in
11 the Mining Law, in the Regulations, or elsewhere, that
12 was in force in the 1990s, or first decade of the
13 2000s, that would specifically lay down the
14 fundamentals, as you call it, on how an investor can
15 determine what is stabilized and what is not
16 stabilized?

17 Can you tell us what those provisions are?

18 A. Sir, when the investor submits the
19 Feasibility Study, and that is an integral part of the
20 Contract, the investor knows that that is stabilized.
21 I don't have to tell anyone to show me something that
22 that person knows about, and they know it's an

1 integral part of the Contract.

2 What is the basis of this Decision of the
3 investor? Well, the Feasibility Study. The
4 Feasibility Study has to clearly establish all the
5 resources that an investor is going to have to put in
6 to get a certain outcome. The investor knows this. I
7 don't have to tell the investor anything.

8 I approve this, I move this to the SUNAT,
9 and the SUNAT applies the provisions. It's not that
10 the investor does not know. The investor knows. It
11 knows what Projects are stabilized. The investor has
12 done that. The investor has provided the Feasibility
13 Study. It has submitted this to the decision-making
14 bodies in the Company, the Board of Directors,
15 et cetera, and all of them have made a decision on the
16 basis of what the Feasibility Study includes.

17 Nobody has to tell the investor what goes,
18 what doesn't go. The investor knows.

19 Q. Mr. Polo, is that the administrative
20 simplification that you tried to achieve?

21 A. I don't know. I don't know what you thought
22 it is. This has nothing to do with that. It has to

1 do with the responsibility of the Company. The
2 responsibility of the Company and what the Company
3 does. The Company knows what the Feasibility Study
4 contains, and the Ministry has the responsibility to
5 prove this, so that it can be the subject matter of
6 the Stability Agreement. They know everything.

7 Q. You mentioned SUNAT can make a lot of those
8 determinations. Now, I want to show you how SUNAT
9 actually applied Stability Guarantees to El Porvenir?

10 And that is in--

11 (Overlapping speakers.)

12 MS. HAWORTH McCANDLESS: I'm sorry, Madam
13 President, I'm going to object because he is
14 inferring--

15 (Overlapping speakers.)

16 (Interruption.)

17 MS. HAWORTH McCANDLESS: I'm objecting to
18 the line of questioning. He's going into SUNAT, which
19 is outside of Mr. Polo's competence. He is here as a
20 Minister, a Vice Minister of Mines and Energy, and
21 he's starting to go into a line of questions dealing
22 with SUNAT. And this is not his competency.

1 MR. PRAGER: Mr. Polo just referred us to
2 SUNAT as a--

3 (Overlapping speakers.)

4 MS. HAWORTH McCANDLESS: Yes, but he's not--

5 MR. PRAGER: --the determinations. I'm not
6 going to test him on any SUNAT Resolutions. I want
7 to--maybe you wait for the question that I ask.

8 MS. HAWORTH McCANDLESS: Well, the line of
9 questioning is starting to go into what SUNAT has
10 done. Mr. Polo is here. He's testifying as Vice
11 Minister of Mines with respect to what he did as Vice
12 Minister of Mines. And if there are going to be SUNAT
13 officials who are coming today, tomorrow, and the rest
14 of the Hearing to be able--they can ask questions of
15 the SUNAT officials with respect to issues in front of
16 SUNAT. It's not in his competence. He is here
17 testifying as the Vice Minister of Mines.

18 MR. PRAGER: His competence is the scope of
19 stability benefits, according to him, because he
20 testified in two Witness Statements extensively on
21 what he believes the scope of stability benefits is,
22 and I am entitled to test that. And I am entitled to

1 test that by showing him how actually the Government
2 applied the stability benefits. That is impeachment.
3 That goes to impeachment, he doesn't have to have
4 written the documents. I'm not testing him on the
5 content of that.

6 MS. HAWORTH McCANDLESS: Madam President, he
7 does--the issue of SUNAT and how SUNAT applies rules
8 in front of SUNAT are in the competence of SUNAT
9 officials. We have SUNAT officials who are here, who
10 can testify on those issues. They are the ones who
11 can answer questions about what SUNAT has done or not
12 done in the scope of their own competencies.

13 Mr. Polo is here testifying as the Vice
14 Minister of Mines, about issues about MINEM, Ministry
15 of Energy, and that is what he is here to testify to.
16 And I think it's an inappropriate line of questioning
17 to go down that path with him.

18 PRESIDENT HANEFELD: I agree. I think his
19 core competence needs to be tested, and--but the SUNAT
20 Assessments will be covered by two further days of
21 Witness testimony. So, it would be great if you
22 could.

1 MR. PRAGER: Can I just ask him one question
2 of whether he would be surprised if SUNAT actually
3 applied the stability benefits to the entire Unit and
4 not--did not have to get in to all the
5 judgment calls--

6 (Overlapping speakers.)

7 MS. HAWORTH McCANDLESS: Madam President.

8 PRESIDENT HANEFELD: To be honest, I think
9 this is so--the particular circumstances of each
10 assessment are so important that it does not--be easy
11 also for us to follow. So, I think it really goes
12 beyond what the Witness needs to testify about.

13 MR. PRAGER: Thank you, Madam President.

14 BY MR. PRAGER:

15 Q. So, moving on.

16 In your--just make sure I didn't leave
17 anything out.

18 In your Statements discussing the scope of
19 the stability benefits, you also discussed
20 Economic-Administrative Units, and that was, if you
21 look in your First Witness Statement, in
22 Paragraphs 29-30. Your First Witness Statement, which

1 is in a small binder of yours.

2 And for us, it's in Tab 1.

3 A. Behind Tab 1?

4 Q. Yes. It is Paragraphs 29-30.

5 A. Okay. Yes.

6 Q. Okay. And in that Statement, you say--I'll
7 just open it as well until it comes on the screen.

8 You say the Economic-Administrative Unit, "Unidad
9 Económico-Administrativa," or also EUA, "is an
10 administrative concept that makes it possible to
11 consolidate several mining concessions into a single
12 Unit." And then if you go to Paragraph 30, you
13 say--you refer to Article 44 of the Mining Law.

14 Do you see that?

15 A. I do.

16 Q. So, the Economic-Administrative Unit under
17 Article 44 is--enables the investor to combine a
18 number of mining concessions into one single Unit; is
19 that right?

20 A. In a single Economic-Administrative Unit.
21 Combine the rights, the rights. The
22 Economic-Administrative Unit brings together a number

1 of rights to meet certain obligations under the Mining
2 Law. If you want, we can deal with that later.

3 Q. Well, in your Witness Statement, you say
4 "mining concessions"; right? A titleholder of more
5 than--look here in Paragraph 30, specifically "the Law
6 provides to fulfill work obligations, a titleholder of
7 more than one mining concession of the same class in
8 nature may group them into UEAs to prove compliance."

9 Do you see that?

10 A. That's exactly right, yes.

11 Q. Okay. And you would agree with me that
12 Article 82 in the Mining Stability Agreement sections
13 defines a different type of Economic-Administrative
14 Unit; right?

15 A. Not exactly. If you recall, Article 82--and
16 this came from Legislative Decree 109, well, there it
17 says that for those companies that have Projects that
18 are new, and that are over 5,000 MT/d, well, they talk
19 about the EAU. So, to me, that that requirement they
20 can use all of the Concessions. It is a barrier, an
21 entry barrier.

22 So, they're included here, those that have

1 more than 5,000 MT/d. So, you can include all of the
2 Units over 5,000. Yes. So, that's what Article 82
3 says.

4 Q. Well, let's look at Article 82.

5 It is in Claimant's Authority 448. In Tab 9
6 in the binder. So, look at the second paragraph of
7 Article 82.

8 A. Just one moment. I was looking at the
9 English.

10 Q. We also have it on the screen, but feel free
11 to look in the binder.

12 A. Very well.

13 Q. Can you see it. Can you see it on the
14 screen?

15 A. Yeah, I can see it.

16 Q. So, it says, "For the purposes of the
17 Agreement referred to in the preceding paragraph, the
18 term 'Economic-Administrative Unit' means the set of
19 mining concessions located within the limits set forth
20 in Article 44 of this Law, that processing plants and
21 the other assets that constitute a single Production
22 Unit, due to sharing, supply, administration, and

1 services, which in each case the Director General of
2 Mining will qualify."

3 Do you see that?

4 A. I do. That's for purposes of the 5,000
5 MT/d.

6 Q. And you will agree with me that the way the
7 Economic Administrative--well, let me ask you first.
8 Let me take a step back and ask you first. This
9 Article does not come from the Mining Reform in 1991;
10 correct? It's not from Legislative Decree 708--709.

11 A. No, no. Eight.

12 Q. Oh, 708--

13 A. It's 708. No, it doesn't come from there,
14 but it comes from all the changes of 708, as you've
15 seen in other Articles. Article 2, last paragraph of
16 708 and also Article 72, last paragraph, it says
17 everything that's current is subject to the amendments
18 of this provision. 82 cannot be read in isolation.

19 Q. The reason I ask is I just wanted to
20 confirm, you did not draft that provision; right?

21 A. 82? No. That was drafted before. That was
22 kept from the past.

1 Q. So, the definition is, you can have mining
2 concessions that can be within the limits of
3 Article 44, as we discussed, but there are some
4 additional elements. One of them is processing
5 plants, and other assets that constitute a single
6 Production Unit. So, two questions. So, first of
7 all, it also includes--you see here it also includes
8 processing plants; correct?

9 A. Yes. That's also in Article 9 of the Law,
10 these accessory assets of the concession, and they
11 follow the real-property nature like the concession is
12 redundant, together with Article 9.

13 Q. And processing plants require beneficiation
14 concessions--right?--to operate.

15 A. That's true.

16 Q. So, the Economic-Administrative Unit, as
17 discussed here, includes mining concessions, and it
18 includes one or more beneficiation concessions; right?

19 A. The processing plants have an operating
20 permit, which is known as a beneficiation concession,
21 but according to Article 9, it is an accessory asset
22 that follows the concession as a piece of real

1 property. It has the same contents, so to speak.

2 Q. Okay--

3 A. I don't know the details of the Law, but
4 although the concession may be outside of the EAUs for
5 practical purposes, it is considered as a part of the
6 realty of the concessioned piece of property.

7 Q. My question was much simpler than that.

8 I was asking whether, under that definition,
9 you would agree that an Economic-Administrative Unit
10 comprises mining concessions, but also one or more
11 beneficiation concessions?

12 A. I'm thinking about that. I never thought
13 about that before. Everything indicates that that's
14 the case. This because of the principles of
15 Article 9. I'm not a lawyer. I'm speaking from
16 experience, and from what I read and what I've
17 learned.

18 This issue has never come up, but these are
19 accessory assets, assets that are accessory to the
20 concession, and this a group of concessions, so all of
21 the accessory assets of the concessions are going to
22 follow the concession under the EAU, and I'm not a

1 lawyer. I'm only basing my answer on my experience.

2 Q. Okay. You were describing the Mining Law
3 and Regulations in ample detail in your Witness
4 Statements, so if you're not a lawyer, on what do you
5 base it?

6 PRESIDENT HANEFELD: May I just ask another
7 question, maybe differently? I understood another
8 Witness testifying earlier in this Arbitration that
9 the Law recognizes, not only the
10 Economic-Administrative Units under Article 44, but
11 also de facto Administrative Units, and that Cerro
12 Verde clearly constituted such a de facto
13 Administrative Unit.

14 Would you agree with it?

15 THE WITNESS: I don't know what you mean by
16 EAUs that are de facto. Article 82 refers back to
17 Article 44. That means that there is a space in which
18 you can constitute EAUs. Article 44 uses EAU
19 specifically to say that you can comply with work
20 protection regulations. So, in order to not pay
21 penalties, and to say that you are producing, and that
22 you have your Concession current, you have to produce

1 \$100 per hectare per year.

2 What does that mean? Perhaps, one of the
3 Concessions inside the EAU may meet that \$100, and may
4 include all of them in the sense that the EAU produces
5 \$100 per hectare per year out of all of the
6 Concessions.

7 So, that is the purpose that this has.
8 Article 9, as I said, talks about the assets that are
9 part of the Concessions and the accessory assets. The
10 accessory assets are the plans and things that are
11 perhaps outside of the limits of the Concession.

12 So, if these accessory assets follow the
13 Concession and this is a group of Concessions, well,
14 the answer is yes. That is my understanding. This is
15 based on my experience, and what I've read--and of
16 what I've read. If you want a legal opinion, you have
17 to ask the lawyers. You're asking an opinion.

18 PRESIDENT HANEFELD: You answered my
19 question, so please continue.

20 MR. PRAGER: Thank you, Madam President.

21 BY MR. PRAGER:

22 Q. The reason I'm asking you is not to get

1 legal advice. The reason I'm asking you is because
2 you spent three pages of your First Witness Statement
3 writing about the Economic-Administrative Unit. So, I
4 wanted to probe that a little bit. I assume you have
5 ample experience with it because you testified on it.

6 So, the Economic-Administrative Unit that is
7 described here, we can agree, contains mining
8 concession, but it also says processing plants. A
9 mining concession does not authorize you to have a
10 processing plant. We are agreed on that, aren't we?

11 THE WITNESS: These are separate
12 Concessions, yes.

13 BY MR. PRAGER:

14 Q. But in order to have a processing plant, you
15 need a beneficiation concession. I think we can agree
16 on that as well, don't we?

17 A. That's correct.

18 Q. Okay. So, and the additional requirement
19 that it says here and other assets that together
20 constitute a single Production Unit, due to sharing
21 supply, administration, and services.

22 In your experience, how would you describe a

1 single Production Unit?

2 A. A single production unit is established
3 under a single command system. The superintendents of
4 operating unit, units and you have there: mines,
5 Concentrators, a transportation system. It is a set
6 of things that has a specific purpose under a single
7 operational command, and under a single production
8 line. That's a single conduction line--rather, that's
9 a production line.

10 (Overlapping interpretation and speakers.)

11 BY MR. PRAGER:

12 Q. --Exhibit.

13 So, let me show you Exhibit CE-484, which is
14 a MINEM communication from you February 23, 2005,
15 which is in Tab 19.

16 You see that? And that's a letter that you
17 wrote to SUNAT in February of 2005; correct?

18 A. Yes.

19 Q. You agree with the definition in there of a
20 "Production Unit." Is that still the way--I think it
21 was consistent with how you described it before.

22 A. Yes, it's reasonably correct. I don't

1 remember this. Someone prepared it. I saw it. I
2 signed it, and I'm responsible for it, of course.

3 Q. And you would agree that another way of
4 describing an Economic-Administrative Unit, a
5 Production Unit, is a Mining Unit; right?

6 A. You're saying it would be correct to call it
7 something--to call the production unit a mining unit,
8 or the Economic-Administrative Unit a mining unit? I
9 didn't understand.

10 Q. Let me ask, again. So, an
11 Economic-Administrative Unit is defined as a
12 Production Unit. Another word for it would be Mining
13 Unit.

14 MS. HAWORTH McCANDLESS: I'm sorry. He's
15 actually testifying right now. So, I don't think
16 that's a question. That's a statement of Counsel
17 about his interpretation.

18 MR. PRAGER: It was a question. There was a
19 question mark at the end.

20 MS. HAWORTH McCANDLESS: Well, the
21 Transcript doesn't reflect that, and the voice didn't
22 reflect it, and my objection is that it was more a

1 statement made by Counsel, and it's not a question of
2 the Witness. It was a Declaration, and an argument at
3 that.

4 BY MR. PRAGER:

5 Q. Okay. Let me ask it again.

6 So, an Economic-Administrative Unit is
7 defined as a "Production Unit," and another word for
8 it would be "Mining Unit"; correct?

9 A. No.

10 Q. So, Mr. Polo, can you give us your
11 definition of a "Mining Unit," then?

12 A. Mining unit or Economic-Administrative Unit?
13 Which one do you want me to define?

14 Q. A Mining Unit.

15 A. Mining unit is a space where mining
16 activities are carried out that have something in
17 common such as--well, first common management, most
18 likely common systems, in general. They might have
19 mines, Concentrators, and strips, and all of that is a
20 single Unit that would be for productive, managerial
21 command. They're different things. A single one.

22 Q. So, just a question.

1 MR. PRAGER: The Tribunal will interrupt me
2 whenever you want to go to lunch. But--

3 PRESIDENT HANEFELD: How long do you think
4 you will need?

5 MR. PRAGER: With Mr. Polo?

6 PRESIDENT HANEFELD: Yes.

7 MR. PRAGER: I would say another hour.

8 PRESIDENT HANEFELD: Another hour. So, then
9 would it be a good time for a break for you?

10 MR. PRAGER: I think it would be a good
11 time. Yeah.

12 PRESIDENT HANEFELD: Okay.

13 MR. PRAGER: Thank you.

14 PRESIDENT HANEFELD: Then we have a break.
15 One-hour lunch break, until 5 minutes past 2:00.

16 (Whereupon, at 1:01 p.m., the Hearing was
17 adjourned until 2:05 p.m., the same day.)

18 AFTERNOON SESSION

19 PRESIDENT HANEFELD: I think everyone is
20 ready. So, please continue, Mr. Prager.

21 MR. PRAGER: Thank you very much.

22 BY MR. PRAGER:

1 Q. Mr. Polo, let me show you Article 2 of the
2 Mining Regulations. The Mining Regulations are in
3 Tab 22, CA-432.

4 A. That's fine.

5 Q. Do you see them? I wanted to refer you to
6 Article 2 of the Mining Stability Regulations.

7 Now, let me ask you first--you discuss the
8 Mining Stability Regulations in your Witness
9 Statements. Is there any particular reason why you
10 omitted to mention Article 2 of the Mining Stability
11 Regulations?

12 A. Not as far as I recall.

13 Q. Okay. Let's take a look at them.

14 So, the first paragraph says--I'm going to
15 read the English. You have the Spanish on the screen
16 in what looks like the original print: "The
17 provisions contained in Title Nine of the Single
18 Unified Text."

19 Just let's stop here for a second. The
20 provisions contained in Title Nine of the Single
21 Unified Text, those are the provisions dealing with
22 Stability Guarantees; correct?

1 A. That's right.

2 Q. "Shall apply as a right to all mining
3 activity titleholders," and then it defines them as
4 "the natural or legal persons that perform mining
5 activities in the concession, or in concessions
6 grouped in an Economic-Administrative Unit as
7 titleholders or assignees, provided they fulfill
8 certain requirements."

9 Do you see that?

10 A. Yes.

11 Q. So, that provision doesn't refer to
12 "investment projects," does it?

13 A. No.

14 Q. It says that the provisions of Title Nine
15 apply to legal persons that perform mining activities
16 in a Concession or Economic-Administrative Unit;
17 correct?

18 A. Let me think.

19 Okay. Yes.

20 Q. I'm referring now to the last paragraph of
21 Article 2: "When the natural or legal person is the
22 titleholder of several concessions or

1 Economic-Administrative Units, the qualification will
2 only take effect for those Concessions or Units that
3 are supported by the Declarations or by the Agreement
4 referred to in this Article."

5 Do you see that?

6 A. Yes. Could you raise--show it a little
7 higher up?

8 Q. Yes.

9 A. I just asked if you can bring up the whole
10 paragraph.

11 Q. While we're doing that, do you have the
12 provision in front of you in the binder as well?

13 A. What number? 22?

14 Q. It was Number 2.

15 A. Article 2, but was it Tab 22?

16 Q. 22, yes.

17 A. 22. It's very small font. So, you're
18 telling me--oh, okay, where it begins with "natural
19 persons."

20 Q. Yes. So, would you agree with me that what
21 it is saying is that when a mining company has several
22 Concessions or Economic-Administrative Units, the

1 Stability Guarantees will only take effect for those
2 Concessions or Units that are supported by the
3 Stability Agreement?

4 A. It cannot be so interpreted, because a
5 Supreme Decree does not change the statute law. It
6 must refer to something else.

7 I did not draw up this Regulation. I did
8 not participate in it. I understand that it must
9 refer to those things as long as they are not at odds
10 with the statute law. This is called the "Kelson
11 pyramid," or something like that.

12 But I understand that statutes prevail over
13 Supreme Decrees, and, therefore, this--if you want it
14 to be understood that the Concessions or
15 Economic-Administrative Units have stability for them,
16 that cannot be, because that would contradict what the
17 law says. And one must read it differently, I
18 imagine.

19 That is, it cannot contradict the law.

20 Q. So, Mr. Polo, the Mining Stability
21 Regulations were prepared by MINEM; right?

22 A. Yes, I suppose so, when I was not there.

1 Q. Well, do you know whether they were prepared
2 by MINEM?

3 A. I wasn't there.

4 Q. Well, you testify on them in your Witness
5 Statement. Do you know whether they were prepared by
6 MINEM?

7 A. Yes, of course. They must be prepared by
8 MINEM, but a Supreme Decree implies that it would be
9 approved--well, I think it's with a vote by the
10 Council of Ministers, because it's also signed by the
11 Minister of Economy, the Minister of Energy and Mines,
12 and the person in charge of the Office of the
13 President of the Republic. So, it's a Supreme Decree,
14 but it is lower in rank than a law of the Republic.

15 Q. So, are you telling us that what is written
16 here in Article 2 is contrary to what is written--what
17 the Mining Law provides?

18 A. I'm thinking it depends on how you wish to
19 interpret it. If you wish to interpret it as though
20 the Economic-Administrative Units and Concessions have
21 Stability Agreements, that it's for them, then that
22 would be against the Mining Law, and it would not be

1 valid. So, the only way to interpret it is to read it
2 systematically with everything, and you'd have to read
3 the entirety of the Regulation.

4 And the Regulation and several articles--22,
5 25, and several of them--refer to the studies, the
6 Feasibility Studies which are the basis for the
7 Stability Agreement. So, everywhere it says, "as long
8 as it is consistent with the law."

9 So, I understand--I might be mistaken--that
10 you are suggesting that those who have Stability
11 Agreements are the Economic-Administrative Units or
12 the Concessions, and that cannot be. Plus, the
13 Regulation itself has to be read in several parts
14 where it is given to be understood that that cannot
15 be.

16 Q. Mr. Polo, I understood you as making sort of
17 two arguments: The first one is that you said--well,
18 let's take the first proposition, which is that what
19 is written in Article 2 is contrary to what the law
20 says, and then I will take you to the second one,
21 which is it has to be interpreted in accordance with
22 the law.

1 So, let me start with the first one, the
2 contrary to the law.

3 Are you aware of any Decision by a Peruvian
4 Court declaring Article 2 of the Mining Stability
5 Regulations, or any other article of the Mining
6 Stability Regulations, as invalid? Are you aware of
7 any such Decision?

8 A. No, because I understand that one can
9 interpret it in a manner different from what you were
10 suggesting.

11 Q. And coming now to the second part where it
12 said it should be interpreted a different way, is it
13 your testimony that people in MINEM made a mistake by
14 writing "concessions and Economic-Administrative
15 Units" when they should have written "investment
16 project set forth in the Feasibility Study"?

17 Is that your testimony?

18 A. I'd have to read it now, but what I have
19 read of the Regulation--I have reviewed it on several
20 occasions--it speaks of a sort of location--that is to
21 say, the meaning of saying the Concession, the
22 Economic-Administrative Unit, they use it so as to say

1 there, where the investments are, that is where the
2 investments are, but not with the meaning that the
3 Concessions or the Economic-Administrative Units have
4 the stability. They don't say it anywhere.

5 Indeed, in Article 22, if I remember it
6 well, it repeats once again what Article 7 and 11 of
7 Decree-Law 708 say, where there is talk of investments
8 in the Economic-Administrative Units or in the
9 Concessions, something like that.

10 We can read Article 22.

11 Q. We will get to Article 22. But right now it
12 doesn't say "in the concessions." It doesn't say
13 "investment in the concessions." It says "will take
14 effect for those concessions and
15 Economic-Administrative Units," "para," in Spanish,
16 "para las concesiones," doesn't it?

17 A. Yes. But the provisions have to be
18 interpreted in an integral systematic manner.

19 Q. Is that the reason that you omitted it from
20 your Witness Statement when you discussed the scope of
21 Stability Guarantees and the Regulations?

22 A. No. And, for me, everything is so clear

1 throughout the Regulation that I hadn't picked up on
2 the fact that that might be a contradiction, but,
3 since you are suggesting it, and very much limited to
4 that subparagraph of the article or that paragraph of
5 the article, well, there I have to say that that is
6 not the case.

7 Q. Well, let's take a look--I think you
8 mentioned Article 22, so let's take a look at
9 Article 22 of the Mining Stability Regulations.

10 Article 22 says in the English version: "The
11 contractual guarantees shall benefit the mining
12 activity titleholder exclusively for the investments
13 that it makes in the concessions or
14 Economic-Administrative Units."

15 And then it goes on to say: "To determine
16 the results of its operations, a mining activity
17 titleholder that has other concessions or
18 Economic-Administrative Units shall keep independent
19 accounts and reflect them in separate earning
20 statements."

21 Do you see that?

22 A. Yes. And it says what I said.

1 Q. Well, first of all, is there any reason why
2 you omitted the second paragraph of Article 22 when
3 you were discussing Article 22 in your Witness
4 Statement?

5 First Witness Statement, Paragraph 33.

6 A. No, not at all. For me, it's clear. It
7 says "exclusively." By saying "exclusively," you're
8 saying that it is totally determined and separated,
9 exclusively, and that are situated in the concessions
10 or Economic-Administrative Units.

11 Actually, one can accept that it is in, but
12 let us bear in mind that "in" is talking about the
13 delimitation. So--or exclusively for the investments,
14 the investment project. "investment" or "investment
15 project" is the same thing, "the investments that are
16 situated in." Nowhere does it say that the
17 concessions themselves have the right so as to follow
18 down the line that you were pointing to.

19 Q. Mr. Polo, it says, "investments that it
20 makes in the concessions or Economic-Administrative
21 Units."

22 So, first of all, it doesn't say "investment

1 projects." It says "investments," doesn't it?

2 A. Well, "investment" is the same as an
3 "investment project." Investments are made through
4 investment projects. And it says "in," yes, in that
5 place, "in" as in a place.

6 Q. An investment project is a single
7 investment. Here it talks about--it doesn't qualify
8 by number of the investments. It says "for the
9 investments that it makes in the concessions."

10 Isn't that what is written here?

11 A. It says the contractual guarantees--that is
12 to say, those that are established in the
13 Contract--shall benefit the mining activity
14 titleholder, exclusively for the investments that it
15 makes in the concessions or Economic-Administrative
16 Units. Those are the guarantees that are in the
17 Agreement. The Agreement is for the investment
18 project and the investments. Otherwise, you could
19 tell me it's all the investments that they have.
20 Well, why have a Stability Agreement if they already
21 have it?

22 Excuse me, please. I'd like to conclude.

1 The word "exclusively" is very clear, and it
2 refers to the contractual guarantees--that's is to
3 say, the Stability Agreement, and the part referring
4 to the concessions and Economic-Administrative Units
5 is a reference to the place. It is situating them,
6 determining they are in a particular place.

7 Q. Mr. Polo, we agree that not all investments
8 are covered, that the exclusivity distinguishes it,
9 but the distinction is drawn in the second paragraph,
10 that you omitted have your Witness Statement, isn't
11 it? The second paragraph says if you have several
12 concessions or Economic-Administrative Units, some of
13 them stabilized, others not, you have to reflect them
14 in separate accounts.

15 Do you see that?

16 A. Yes, I do see it.

17 Q. It doesn't say that you have to keep
18 separate account for different investment, specific
19 investment projects set forth in different Feasibility
20 Studies. That's not what it says, does it?

21 A. No, it doesn't say that there. It doesn't
22 say that exactly, but it says, to determine the

1 results of its operations and a mining titleholder
2 that has other--you have to look at all of its
3 operations that it has, and that has other concessions
4 or Economic-Administrative Units shall keep
5 independent accounts and reflect them in separate
6 earnings statements.

7 Well, to begin with, the accounts aren't
8 divided by concession or Economic-Administrative Unit,
9 rather by company. What they are saying is that there
10 need to be earning statements that are separate for
11 what is stabilized and what is not stabilized. There
12 are several articles that go to that same point,
13 Article 25, for example.

14 I did not participate in drafting this
15 Supreme Decree. I understand they wanted to put in
16 certain things, but it can't change what the law says
17 because of a Supreme Decree.

18 Q. Mr. Polo, let's stay with the topic, but
19 let's look at a specific event, and one that Madam
20 President has referred to, which is the March 2004
21 Royalty forum. So, you participated in the forum that
22 we know as the March 2004 Royalty forum, which--in

1 March 11, 2004; correct?

2 A. If the March 2004 Royalties Forum was the
3 11th, that I no longer recall.

4 Q. Just so that we know what we are talking
5 about, that was a forum organized by Perú's Congress;
6 right?

7 A. Yes, that is right.

8 Q. And the topic, the reason it is called
9 "Royalty Forum," is that at that time, Congress was
10 debating a Royalty Law. But in March 2004, the
11 Royalty Law was not yet passed; right?

12 A. That is right.

13 Q. And the Royalty Law would eventually be
14 signed into law in June of 2004, of that year; right?

15 A. That is right.

16 Q. And that was--that was a forum that was
17 closed to the public; right?

18 A. It was held in Congress where the people who
19 were at Congress were there, members of Congress and
20 their aids. It wasn't closed in terms of being a
21 secret--or secretive.

22 Q. And you attended that forum on behalf of

1 MINEM; right?

2 A. Yes. That's right. I was still Vice
3 Minister at that time and I went representing the
4 Ministry. The Minister must have told me to go.

5 Q. And you actually gave a presentation at that
6 forum; right?

7 A. That is right.

8 Q. And the presentation was entitled
9 "Evaluation of the Application of Royalties in Perú";
10 right?

11 A. I don't remember the title, but in one part
12 there's a comparative analysis on the effects of
13 Royalties, and in another part, I spoke specifically
14 to the situation of Royalties with, not so much the
15 projects, but the companies. So, there were different
16 parts. One was about the advisability or lack thereof
17 of adopting Royalties. I had some misgivings about
18 the adoption of Royalties.

19 Q. So, you had some reservations regarding the
20 adoption of Mining Royalties.

21 A. Yes. In that context, with those prices, my
22 concern was that a Royalty such as was being proposed,

1 applied blindly to the sales cost could affect Perú's
2 competitiveness vis-à-vis other mining jurisdictions,
3 and I made a presentation looking at the different
4 considerations.

5 Q. Were you the only person in the Government
6 who had concerns about the Royalty Law at that time?

7 A. Let's say I was the one who led the concern,
8 and as far as I recall, María Chappuis preferred to
9 abstain from--refrain from participating in that
10 discussion, as far as I recall. Many years have
11 passed. And it is likely that Oswaldo Tovar helped me
12 out with the graphs and tables. I said, just show it
13 to me with Royalties, without Royalties, how the
14 position might shift. That's what I was doing with
15 the people who worked with me.

16 Q. Do you recall the position of the Ministry
17 of Economy and Finance? Were they in favor or against
18 the adoption of the Royalty Law?

19 A. Well, first of all, they were the ones who
20 hired the Expert to analyze the issue of Royalties,
21 Mr. Otto, and I thought it was fine for them to call
22 him in, and he proposed imposing Royalties of up to

1 2 percent and not anything more, because that was
2 hazardous, but on recommending that it be offset with
3 another way of--well, looking at duties or factors, I
4 don't remember so well, and it's on the basis of that
5 study that I looked at--I used his data and I
6 presented tables, and--because what he was doing was
7 the sensitivity analysis. So, taking advantage of the
8 sensitivity analysis, I put up the Royalties and how
9 the table would vary. That's what I did, and I
10 expressed my concern about the loss of competitiveness
11 that might ensue.

12 Q. When you mention Otto, are you referring to
13 Professor Jim Otto who appears as an expert in this
14 Arbitration?

15 A. Yes.

16 Q. And so, is it correct to say that in your
17 presentation you also addressed the impact that
18 existing Stability Agreements would have on a Royalty
19 Law?

20 A. Yes. I was very clear about that, that
21 Royalties would not apply to investment projects that
22 had Stability Agreements. We maintained that position

1 very clearly.

2 Q. So, the position of MINEM at that time was
3 that Stability Agreements are to be respected, and to
4 the extent that companies are covered by Stability
5 Guarantees, Mining Royalties should not apply; is that
6 correct?

7 A. Let me correct. It's not the companies that
8 are protected, it's the projects that are protected.
9 And to that extent, they should not apply. The
10 companies is much more.

11 Q. Well, you make that clear a few times today.
12 So, let's look at the presentation. I think
13 you mentioned also that you used a PowerPoint; right?

14 A. Yes, I presented a PowerPoint, and looking
15 at the movements with the Royalties and so forth.

16 Q. That's the PowerPoint?

17 A. Yes.

18 Q. And you helped prepare--I think I heard you
19 say you helped prepare that PowerPoint; is that
20 correct?

21 A. I asked that they do the PowerPoint for me
22 with certain specifications. I wanted the PowerPoint

1 to be based on the tables of James Otto and to apply
2 to that, as part of the Report, the sensitivity
3 analysis with a varying Royalty to see how Perú's
4 competitive position would vary.

5 (Overlapping interpretation and speakers.)

6 BY MR. PRAGER:

7 Q. We will discuss that. But my question was:
8 Did you prepare that PowerPoint?

9 A. I had it prepared. That would be the
10 clearest response. I had it prepared for me.

11 Q. You mentioned that Mr. Tovar helped you with
12 the preparation of the PowerPoint? Did you say that?

13 A. Yes, of course. He handled much better than
14 I did the tables, computers, and all of that, so I
15 said prepare something.

16 Q. And I imagine, being a diligent person, you
17 reviewed the PowerPoint before you gave the
18 presentation; right?

19 A. Yes, of course. I had to review it.

20 Q. So, let's look what you said in the
21 presentation with regard to the PowerPoint, and we
22 have the Transcript of that presentation, and the

1 Transcript is CE-1137, which is in Tab 13--no,
2 Tab 17--I'm completely off--of your binder.

3 A. Just a second.

4 Did you tell me 17?

5 Q. Yes, Tab 17. And we're going to put it on
6 the screen as well. I put the relevant part where you
7 have addressed the topic on the screen.

8 A. Just written Transcript; right?

9 Q. Let's look first at what you said, and then
10 we're going to look at the graphics. Okay?

11 So, that's the Transcript of the session.
12 And you said--

13 A. Page?

14 Q. Slide--sorry, it's not slide. It is
15 Page--which page is it? Page 13 in Spanish and Page 4
16 in English. Yeah, "trece" in Spanish, and "four" in
17 English.

18 And you say--let us take a look at the
19 stabilization agreements, please. I'm reading from
20 the screen. That's where the Companies are,
21 stabilization agreement are not given on a company
22 basis. That's important to clarify. "A Company can

1 have a stabilization agreement for one Project and not
2 have it for another, or have an old activity that does
3 not have a Stability Agreement, and even when it does,
4 it's not given to the Company as a whole."

5 And then you say, "therefore, and here are
6 more or less the periods between in which the
7 Companies would be"--sorry, did I--"it's not given to
8 the Company as a whole. An investment of over
9 20 million or over 50 million is made, as the case may
10 be, and it gives the Company the right to stability
11 for that particular investment, for that development,
12 not the whole company. Therefore, and here are more
13 or less the periods between which the Companies would
14 be subjected to Royalties or not, and in the following
15 chart, you will see more or less what would be the
16 spectrum that would be subjected to the Royalties."

17 So, what you are basically referring here
18 to, you say stability is not granted to the Company as
19 a whole, but to Projects; right? And later on, you
20 call them "investment" and "developments"; right?

21 Do you see that?

22 A. Correct. As you said, for that investment,

1 for that investment, not for another one or for the
2 entire company. For that investment.

3 Q. And you also used the word "project." And
4 project, "Mining Project" is often used to refer to
5 Mining Units; right?

6 A. No. They are not synonyms. You can see
7 that at any--in any of the publications of the Mining
8 Investment portfolio for 2021, 2022, 2023, they are
9 going to see this a portfolio for investment, mining
10 investments.

11 The productive unit was the location of the
12 Project. And the--

13 Q. Mr. Polo--

14 A. --the Management Unit--

15 Q. Let's look at the slide that you presented
16 while you made those comments, and the slide is--it's
17 at Tab 18, CE-19. And it's Slide Number 10.

18 A. Correct.

19 Q. So, you would agree with me, that is the
20 slide that you were discussing when you made the
21 comments, and to refer to the Companies and the
22 periods during which the Agreements are effective;

1 right?

2 A. Yes. That's what it says, and you should
3 read "companies" and also a unit, a mining unit.

4 Q. So, on that slide, Mr. Polo, you were
5 referring to Mining Units, didn't you?

6 A. Yes. The title of the PowerPoint, of the
7 column, is "Mining Unit."

8 Q. You didn't list "investment projects"; did
9 you?

10 A. No, the projects were a little bit below.
11 Yes, it is true that as it said "Mining Unit," someone
12 could get confused, but not me. May I answer the
13 question?

14 Q. Well, I'm--let me ask a question. So, you
15 did not refer to the investment project, that it would
16 be covered by Stability Guarantees when you're
17 explaining what is exempted from--what would be
18 exempted from Royalties, did you?

19 A. Let's say that the graph is not specific,
20 but my words are even more precise, which I have
21 already said very clearly.

22 Q. Well, you said--let's take a look at what it

1 says here.

2 Do you see "Sociedad Minera Cerro Verde"?

3 A. Yes.

4 Q. It says, under "Unidad Minera Cerro
5 Verde 1, 2, 3," and it doesn't say the "Leaching
6 Project," does it?

7 A. That was the only one there was at that
8 point. There was nothing else. There was no room for
9 confusion.

10 Q. Well, let's look, for instance, at Tintaya.
11 It has its two Mining Units there. One--the Oxides
12 Plant Mining Unit and the other one, the Tintaya
13 Mining Unit.

14 Do you see that?

15 A. Yes, they are two different Projects. The
16 Oxide Plant is different from Tintaya. That is, the
17 Tintaya Company, but it was back then Billiton
18 Tintaya, the Oxide Plant is a Stabilized Project that
19 is different from the original Tintaya. But it was
20 also stabilized. And it is stated in that fashion
21 there, those are Projects. The Tokyo Industrial Plant
22 is one--

1 (Overlapping interpretation and speakers.)

2 (Stenographer clarification.)

3 BY MR. PRAGER:

4 Q. Tintaya is--you're telling me that Tintaya
5 is a specific investment project, Mr. Tovar, although
6 it's entitled "Unidad Minera"?

7 A. As to the second Project, I didn't know of
8 it as a Stability Contract, but it is there as an
9 industrial plant, and the other one may
10 not--Antamina--also says Antamina, without any
11 qualification, and so on and so forth. There is a
12 mining unit that is explained there, and within a
13 mining unit, it may have Projects that have stability
14 and that have that duration.

15 Q. Mr. Polo, isn't it the case that, in
16 March 2004, when those slides were prepared, you
17 clearly understood that Stability Agreements applied
18 to Mining Units, as it is set forth in Article 2
19 and 22 of the Mining Stability Regulations; didn't
20 you?

21 A. Never. Never. And I have repeated this a
22 million times at all the fora, all the fora that I

1 have attended everywhere. I must have also appeared
2 before the Constitutional Tribunal, and I asked you
3 and you told me that you are aware of it. Given the
4 question by Ms. Delia Revoredo, she asked me whether
5 the Concession was for the Project. I said it several
6 times. I understand that the graph may lead to a
7 confusion, but the fact that I may change my opinion
8 overnight is not my style unless I am convinced.

9 MR. PRAGER: Madam President. I don't have
10 any other questions. Thank you very much.

11 PRESIDENT HANEFELD: I was still with the
12 translation, so...

13 MR. PRAGER: Sorry.

14 PRESIDENT HANEFELD: So, you have no further
15 questions?

16 MR. PRAGER: I have no further questions.

17 PRESIDENT HANEFELD: Okay. Thank you.

18 Do you have questions on recross?

19 MS. HAWORTH McCANDLESS: I think I may have
20 a couple, but I just wanted to take a short break to
21 confer.

22 (Brief recess.)

1 MS. HAWORTH McCANDLESS: Okay. We're ready.

2 I have a couple of questions.

3 REDIRECT EXAMINATION

4 BY MS. HAWORTH McCANDLESS:

5 Q. Mr. Polo, do you recall when you were first
6 being cross-examined and Claimant's Counsel had asked
7 you how many hours you had spent preparing for the
8 Hearing, and you said 200 hours?

9 Were you paid--have you been paid for your
10 testimony?

11 A. No. That's my responsibility.

12 Q. You were also asked by Claimant's Counsel
13 about different terms, "Economic-Administrative Unit"
14 and "Mining Unit," and you said that they were
15 different, and you were taken to Article 82 and
16 Article 44 of the Mining Law to discuss the definition
17 of "EAU."

18 Is the term "Mining Unit" defined in the
19 Mining Law?

20 A. I don't recall, but that is a typical use.
21 That is, the management unit and the
22 Economic-Administrative Unit is an abstraction to

1 fulfill with the obligations of the rights granted to
2 Concessions that are put together to be complied with
3 as obligations.

4 Q. Is there a provision in the Mining Law such
5 as the EAU where it's defined?

6 A. Yes, it is defined. I don't recall.

7 Q. The EAU is defined?

8 A. At 44--I think it is defined at 44 with
9 the--with an area of action. For example, you can
10 group them together with a--

11 (Overlapping interpretation and speakers.)

12 (Comments off microphone.)

13 BY MS. HAWORTH McCANDLESS:

14 Q. You returned them with the
15 Economic-Administrative Unit?

16 A. Yes, the Economic-Administrative Unit.

17 (Overlapping interpretation and speakers.)

18 (Comments off microphone.)

19 MR. PRAGER: I objected that those were very
20 leading questions, and that Ms. Haworth is testifying
21 here on the record instead of asking questions.

22 MS. HAWORTH McCANDLESS: Well, I will move

1 on to another question. I disagree that that's the
2 case. I was just asking a question. But I wanted to
3 specify what was the precursor and what was being
4 discussed in the cross-examination in order to orient
5 him to what the question was going to stem from, the
6 discussion that he was having with Claimant's Counsel.

7 BY MS. HAWORTH McCANDLESS:

8 Q. You were just talking with Claimant's
9 Counsel--Claimant's Counsel was asking you certain
10 questions with respect to the Mining Regulation, and
11 in particular Article 2 of the Mining Regulation, and
12 I believe it's behind Tab 22 in the binder in front of
13 you.

14 Do you recall that discussion?

15 A. Yes, I do.

16 Q. And you said that, to understand those
17 Articles, you needed to consider the entire Mining
18 Regulation and the law, and you referred to
19 Article 22--I mean, sorry, 24 and 25 as supporting
20 your understanding.

21 Could you take a look at those two
22 provisions and explain what you meant? Because you

1 did not have a chance to discuss those two provisions.

2 MR. PRAGER: I objected because the cross
3 was about Article 2 and 22, so--

4 MS. HAWORTH McCANDLESS: He mentioned
5 Article 24 and 25, and he didn't get a chance to
6 respond--

7 (Overlapping speakers.)

8 MR. PRAGER: --Mining Regulations for the
9 redirect. It has to be focused on that provision that
10 I discussed.

11 MS. HAWORTH McCANDLESS: No. He mentioned
12 Article 24 and 25 and didn't get an opportunity to
13 provide the full answer with respect to those two
14 provisions, so he is entitled to--it's exactly what
15 redirect is for.

16 PRESIDENT HANEFELD: Please go ahead.

17 BY MS. HAWORTH McCANDLESS:

18 Q. So, Mr. Polo, you were asked about Article 2
19 and Article 22 of the Mining Regulations, and you said
20 that you have to understand those articles and
21 consider them an entire regulation and in the context
22 of the law, and you referred to Article 24 and 25, but

1 you didn't get a chance to discuss those.

2 Could you please take a look at those
3 articles and explain how those articles support your
4 understanding of the scope of stabilization
5 agreements?

6 A. Let me read them; right?

7 "The Directorate General of Mining shall
8 submit to the Office the Vice Minister of Mining the
9 record and the Directorial Resolution approving the
10 Feasibility Study or Investment Program, as the case
11 may be, which will serve as the basis to determine the
12 investments of the Contract for the minutes, et
13 cetera, et cetera, according to Article 86 of the
14 Single Unified Text of the General Mining Law."

15 Article 25: "Without prejudice to the income
16 and corporate assets tax returns, which, according to
17 the law, the mining activity titleholder must submit
18 in cases of expansion of facilities or new investments
19 that contractually enjoy the guarantee of legal
20 stability--that is to say, the expansions on
21 investments that have stability clauses--such
22 titleholder must make available to the Tax

1 Administration the annexes that demonstrate the
2 application of the Tax Regime granted to the
3 aforementioned expansions or new investments."

4 It is extremely clear.

5 PRESIDENT HANEFELD: Is that what you
6 earlier referred to as another investor needs to
7 present its grounds now when he considers new
8 investments as being stabilized? Is this what
9 Article 25 is about?

10 THE WITNESS: No. That is correct in case
11 of expansions. In the case of expansions, you will
12 have projects that are ruled by various--governed by
13 various regimes, and, for example, if you're going to
14 present one that is under a contract, Stability
15 Agreement, but not the other one. Those
16 demonstratives need to show--starting with the
17 Stability Agreement that defines the Project, they
18 need to show how it has been developed year after
19 year, what has to be paid, what they are exempt from,
20 whether the tax is lower, whether the royalty won't be
21 paid.

22 For example, in the case instant, the intent

1 was to charge Royalties to everything. We said, "No,
2 no, no. Only what is left outside the Stability
3 Agreement will pay Royalties." So, if you have a
4 Stability Contract, you don't pay Royalties, but you
5 do if you do not have that Agreement. So, to the
6 SUNAT, we told them, "These are our annexes that were
7 approved with the Feasibility Study. This is not
8 going to pay the Royalties, but the rest will."

9 And this goes beyond the Income Tax and, for
10 SUNAT, you need all of those annexes so that it's
11 exclusion modification, whatever it is under the
12 Stability Contract for that Project requires. It is
13 very simple when we decide to do this because
14 investors, when they make a decision on the
15 Feasibility Study that is requested by the investors,
16 they make a decision on the Project, not on all of the
17 Company, and say, "Okay, we are going to invest
18 500 million. In what? On what?" This, this, and
19 that, for example. That's the answer. I am going to
20 look at the results, and then in this case that is a
21 Feasibility Study that will be approved and the one
22 that will be controlled on a yearly basis.

1 And that is separate from the existing
2 operation or unit. So, they need to be broken down,
3 because they apply exclusively to that. And that's
4 the reason why the word "exclusive" is central. The
5 exclusivity tells you that it cannot be everything.
6 It's exclusive to this; it cannot be everything. If
7 it was everything, it would say so. We wouldn't need
8 to say "exclusively."

9
10 MS. HAWORTH McCANDLESS: Madam President, I
11 have no further questions.

12 PRESIDENT HANEFELD: Just one final question
13 from my side.

14 QUESTIONS FROM THE TRIBUNAL

15 PRESIDENT HANEFELD: In your First Witness
16 Statement, you stated that titleholders of mining
17 activities may carry out one or several investment
18 projects within the area of the Concession, and in the
19 Second Witness Statement, you specifically refer as an
20 example to Southern Perú, where, according to your
21 testimony, different Stability Regimes applied within
22 one Concession.

1 So, maybe we can put back on screen this
2 Exhibit RE-175 to which Claimant's Counsel related to
3 earlier. RE-175. This is the MINEM list--and Counsel
4 will do it--of Stability Agreements in place when
5 they--and move on this list to the very end. We
6 already talked about it today.

7 THE WITNESS: Yeah.

8 BY MS. HAWORTH McCANDLESS:

9 PRESIDENT HANEFELD: So, now let us look
10 here to southern Perú--

11 THE WITNESS: Do I have it in my binder?

12 PRESIDENT HANEFELD: Yes.

13 THE WITNESS: What number is it? What is
14 the--

15 ARBITRATOR TAWIL: It is part of Mr. Isasi's
16 Report, I believe.

17 MR. PRAGER: It is Tab 21. Page 13.

18 PRESIDENT HANEFELD: Can we also put the
19 English translation on screen and maybe highlight the
20 line that concerns Southern Perú, and make it a little
21 bit bigger?

22 I think it's Line 9.

1 The Company is named Southern Perú Limited,
2 the Project is named "Electrowon Leaching," the
3 investment was 118 million, and we also have this
4 15-year Stabilization Agreement, and it started in
5 1996 or something. I have no idea whether it's
6 comparable, but at least some features may be
7 comparable.

8 THE WITNESS: Can you hear me?

9 MS. HAWORTH McCANDLESS: Yes.

10 THE WITNESS: I am not familiar with the
11 Project. This is only in English here in my binder.
12 9, Southern Perú Limited. It says "Electrowon
13 Leaching." And that Project--that Project--I
14 understand it is a project. It is to leach the
15 remaining Oxides from Southern Perú. That is
16 perfectly identified with the stability period. It
17 says 15 years.

18 I didn't get to know directly that Project.
19 It was approved in '96, and it was implemented up to
20 2010, but I understand that it is the Oxide Leaching
21 Project belonging to Southern, and it is a project as
22 such. Southern has a gigantic operation with other

1 assets.

2 They have Cuajone, Toquepala. So, they have
3 a different regime.

4 PRESIDENT HANEFELD: And you referred in
5 your Second Witness Statement to Southern Perú
6 specifically as an example of different Stability
7 Regimes within one Concession.

8 MS. HAWORTH McCANDLESS: Sorry. From which
9 paragraph is it?

10 PRESIDENT HANEFELD: It's Paragraph 63 of
11 his Second Witness Statement.

12 MS. HAWORTH McCANDLESS: I'm not sure that
13 that's his. He doesn't have that long of a Witness
14 Statement.

15 PRESIDENT HANEFELD: Oh, then it would
16 be--my apologies.

17 MS. HAWORTH McCANDLESS: Yeah, his goes only
18 up to 36 in his Second Witness Statement.

19 PRESIDENT HANEFELD: Okay. Then maybe I
20 have it wrongly on my list, and it was--

21 MS. HAWORTH McCANDLESS: Mr. Tovar, perhaps,
22 or Mr. Isasi, or--probably Mr. Tovar.

1 PRESIDENT HANEFELD: I'm sorry. So, I
2 understand that you are not familiar with the Project,
3 so I will certainly not ask you any further questions
4 on that. Sorry. It was my mistake.

5 So, no questions on my end. No.

6 THE WITNESS: Thank you.

7 PRESIDENT HANEFELD: Yeah, you are released
8 as a Witness. Thank you very much.

9 THE WITNESS: May I leave?

10 (Witness steps down.)

11 PRESIDENT HANEFELD: I suggest we right away
12 continue with the next Witness, Mr. Tovar.

13 CÉSAR OSWALDO TOVAR JUMPA,

14 RESPONDENT'S WITNESS, CALLED

15 PRESIDENT HANEFELD: Good afternoon,
16 Mr. Tovar. You can sit down.

17 Just for Counsel's--for planning purposes,
18 we also need to conclude today at 5:30, maybe a couple
19 of minutes later, but around about 5:30, just so you
20 know.

21 MR. PRAGER: Noted. Thank you, Madam
22 President.

1 CÉSAR OSWALDO TOVAR JUMPA,
2 RESPONDENT'S WITNESS, CALLED

3 PRESIDENT HANEFELD: Good afternoon,
4 Mr. Tovar. You can sit down.

5 Just for Counsel's--for planning purposes,
6 we also need to conclude today at 5:30, maybe a couple
7 of minutes later, but around about 5:30, just so you
8 know.

9 MR. PRAGER: Noted. Thank you, Madam
10 President.

11 CÉSAR OSWALDO TOVAR JUMPA,
12 RESPONDENT'S WITNESS, CALLED

13 PRESIDENT HANEFELD: So, welcome, Mr. Tovar.
14 I introduce the Tribunal first. I'm here with my
15 co-arbitrators, Professor Guido Tawil and Dr. Bernardo
16 Cremades. My name is Inka Hanefeld. I'm the
17 presiding arbitrator in this Arbitration.

18 You have been called as a Witness in the
19 proceedings by the Respondent, and because will you
20 testify, you need to read out the Declaration that you
21 will testify the truth and nothing but the truth. So,
22 please be so kind as to read out in Spanish the

1 Declaration that is in front of you.

2 THE WITNESS: Witness Declaration: I
3 solemnly declare, upon my honor and conscience, that I
4 shall speak the truth, the whole truth, and nothing
5 but the truth.

6 PRESIDENT HANEFELD: Thank you.

7 Do you have your two Witness Statements,
8 RWS-3 and 10, in front of you?

9 THE WITNESS: I do.

10 PRESIDENT HANEFELD: Thank you. Can you
11 confirm that these are your Witness Statements and
12 that they correspond to your recollection, or do you
13 have anything to amend or correct?

14 THE WITNESS: These are my Statements, the
15 ones I have prepared and signed, and they are in
16 order.

17 PRESIDENT HANEFELD: Okay. We hand over to
18 Respondent for a brief direct.

19 MS. DURÁN: Thank you, Madam President. I
20 will turn to Spanish with your permission.

21 DIRECT EXAMINATION

22 BY MS. DURÁN:

1 Q. Good afternoon, Mr. Tovar.

2 A. Good afternoon, everyone.

3 Q. The Witness Statements that the President
4 just asked you about are based on your experience and
5 personal knowledge; is that correct?

6 A. Yes, that is correct.

7 Q. Please describe your academic background.

8 A. I am a mines engineer from the Catholic
9 University of Lima in Perú. I got my degree in 2001.
10 After that, I did a master of sciences in mineral
11 economics in the Colorado School of Mines in 2009, and
12 I also have a diploma in Six Sigma in 2014 that I did
13 in Perú, in Lima.

14 Q. What is your position currently?

15 A. I am currently a partner in three companies.
16 One of them is devoted to mining consulting
17 exclusively, another one of my companies is a
18 distributor and importer of medical equipment in Perú,
19 and the third one is a contractor company in
20 construction matters.

21 Q. What positions did you have in the
22 Government of Perú before the positions you occupy

1 currently?

2 A. Between January '04 and September 2006, I
3 was the Director of Mining Promotion and Development.
4 It is one of the three Directorates at the time under
5 the General Directorate of Mines, which is part of the
6 Vice Ministry of Mines.

7 Q. What were the roles and responsibilities
8 that you had as a Director of Mining Promotion and
9 Development?

10 A. Generally, I had to promote the development
11 of the mining industry in Perú in a sustainable
12 manner. In particular, I recall that I managed and
13 published production statistics, mining safety
14 statistics. I provided opinions, and I reviewed
15 Stability Agreements, reinvestment of profits, GST
16 refund for explorations, beneficiation concessions,
17 Mining Plans, and the beginning of operations of new
18 projects in Perú.

19 Q. What is a beneficiation concession?

20 A. A beneficiation concession is a right. It
21 is a title that the Government grants as defined--as
22 defined by the General Mining Law for a private party,

1 an investor, to develop processing activities,
2 beneficiation activities of mineral.

3 This beneficiation concession, which is
4 really a title--it's a piece of paper--is different
5 from the investment that is made or will be made by
6 the investor. The issuance of this title, the
7 beneficiation concession, is granted by the State,
8 and, of course, the investment is in the hands of the
9 private investor.

10 Q. Thank you.

11 In your Witness Statement, you talk about
12 the expansion of the Beneficiation Concession
13 requested by Sociedad Minera Cerro Verde in 2004.

14 What is the relationship that exists between
15 the application for the modification of the
16 Concession--of the beneficiation concession and the
17 determination of the scope of a mining stability
18 agreement?

19 A. When I was at the Ministry, I assessed and
20 managed more than 50 applications for modification of
21 a beneficiation concession or for beneficiation
22 concessions. The processing of a beneficiation

1 concession never activated automatically any process
2 that had to do with a stabilization agreement, so much
3 so that, when we looked at the list of procedures that
4 were available at the MINEM, we identified that these
5 were independent cases. They had independent
6 requirements. They had different fees that had to be
7 paid, different signatories, different terms for
8 response. Well, these were different and independent
9 procedures.

10 Q. What was the understanding of MINEM in
11 connection with the scope of the Mining Stabilization
12 Agreements when you were working there?

13 A. The understanding was cross-cutting and
14 transparent and clear at all levels, at all management
15 levels, and also throughout my tenure.

16 The purpose of stability is not the Company
17 or the Concession. It is exclusively the investment
18 project that has been delimited by the investor itself
19 as described in the Feasibility Study. That is why
20 the law always asks for a submission of the
21 Feasibility Study of the project that seeks
22 stabilization. That has always been a clear position

1 without any discussions while I was there at the
2 Ministry.

3 Q. Thank you. The DGM or the MINEM, have they
4 ever provided to you a written confirmation--rather,
5 provided Cerro Verde with a written confirmation that
6 established that the Primary Sulfides Project of Cerro
7 Verde was included in the 1998 Stabilization Agreement
8 for the Leaching Project?

9 A. No, never. No written confirmation existed,
10 and in none of the meetings that I was present at,
11 there was--there wasn't even a verbal confirmation.
12 In some of the presentations made by the Company
13 itself, the Company asked for the inclusion of the
14 Primary Sulfides Project in the Stabilization
15 Agreement. This was to be found in the documents of
16 the case.

17 Specifically, as it pertains to me in one of
18 those meetings that I attended, and the Company was
19 there, I said that, if they wanted stability for the
20 Primary Sulfides Project, they could ask for the
21 signature of a new Stabilization Agreement because
22 there was a 2004 Feasibility Study.

1 Q. The DGM or the MINEM, do they ever confirm
2 that the Primary Sulfides Project could be included in
3 the 1998 Stabilization Agreement for the Leaching
4 Project?

5 A. No. They didn't do it in writing, and they
6 didn't do it orally, at least not in the meetings that
7 I was there at. It's not legal. It's not possible.
8 The regulations are very explicit. The Mining
9 Regulations are very explicit when they say that, yes,
10 there may be variations of the Feasibility Study
11 without changing the subject matter of it; this during
12 the execution of investment stage before the
13 operation. As public officials, we went to the law,
14 to the regulations, to have a clear position as to
15 what is it that we had to do.

16 MS. DURÁN: Thank you.

17 I have no further questions.

18 MR. PRAGER: Thank you, Madam President.

19 CROSS-EXAMINATION

20 BY MR. PRAGER:

21 Q. Mr. Tovar, pleasure to see you again. Good
22 afternoon.

1 A. Good afternoon.

2 Q. Did you watch the testimony of Mr. Polo this
3 morning or yesterday afternoon?

4 A. No, sir.

5 Q. Did you read the Transcript of the testimony
6 of Mr. Polo from yesterday afternoon?

7 A. No, sir. I've just arrived in Washington,
8 D.C. I arrived yesterday at 3:00 p.m., so I don't
9 have the personal knowledge of that.

10 Q. My question is: Did you read the testimony
11 of Mr. Polo from yesterday afternoon or from this
12 morning?

13 A. No. I have no access to Mr. Polo's
14 Statement or testimony.

15 Q. Mr. Tovar, in February of this year, you
16 testified at the Hearing in SMM Cerro Verde v. Perú
17 case; right?

18 A. That's correct, yes.

19 Q. Did you review the Transcript of that
20 Hearing?

21 A. My section, yes.

22 Q. Did you review the Transcript of any other

1 Witnesses?

2 A. I did not, no.

3 Q. Any other part of the Transcript other than
4 your testimony?

5 A. I've only read and had access to the
6 Transcript of my own testimony in February of this
7 year.

8 Q. And how many hours did you spend preparing
9 for this Hearing?

10 A. Six hours. I arrived at 3 p.m. yesterday. I
11 had three hours of meeting yesterday, and three hours
12 today; six hours for today's hearing.

13 Q. You had a meeting with your Counsel
14 yesterday evening for three hours?

15 A. Yeah, in the evening, yes. In the evening.

16 Q. And you had another meeting with your
17 counsel this morning for three hours?

18 A. Yes, at the lobby, yes, here.

19 Q. And did you have any meetings, virtual or in
20 person, with Counsel before you came to Washington for
21 this--in preparation of this Hearing?

22 A. Unfortunately, no. I've had no time

1 available to hold meetings, in-depth meetings, in
2 connection with today's Hearing. I haven't had any
3 virtual communication.

4 We had--well, we had two video calls in the
5 past, one in April and the other one last week, for
6 the final details of my trip. Nothing that was
7 substantial.

8 Q. So, you mentioned you had a three-hour
9 meeting with Counsel in the lobby. Are you talking
10 about the lobby here?

11 A. Yes. Yes.

12 (Overlapping interpretation and speakers.)

13 (Interruption.)

14 (Stenographer clarification.)

15 BY MR. PRAGER:

16 Q. Was it outside in the lobby, or was it in
17 the Party room, or where did you have the three-hour
18 meeting this morning?

19 A. Today's meeting--I had a meeting with the
20 lawyers at the Sidley law firm. I started at
21 8:30 sharp in the morning at their offices, and then
22 after a half hour we walked here, and we had some

1 conversations at the lobby of this building.

2 Q. When you mean "the lobby," you're referring
3 to the waiting area outside?

4 A. Yeah, outside here on the ground floor of
5 this building where all the furniture is, inside the
6 building. Of course.

7 Q. Yeah, but in the waiting area or in the
8 Party room? In the open area, or in the room
9 where--that is reserved for Respondent?

10 A. In the open area, where the furniture is,
11 and where you have the food there.

12 Q. And it's your testimony that you were
13 sitting there for how long prepping with your Counsel?

14 A. 20 minutes I was sitting there, and I was
15 also reading the printouts of my Statements. I have
16 them here, so I was reading those while I was outside
17 here on the ground floor in the waiting room.

18 Q. How many--other than meetings with Counsel,
19 how many hours did you spend yourself preparing for
20 the meeting, reviewing material and the like? You
21 haven't given me, like, a full number yet.

22 A. For this Hearing, for today's Hearing,

1 practically no time. I haven't had time in Lima to
2 examine documents. The videoconference meetings that
3 I've held with Counsel basically had to do with
4 reviewing my arrangements for the trip. I haven't had
5 a lot of time available, and the preparation, as you
6 call it, was based on my reviews yesterday evening at
7 the Sidley offices and what I've reviewed today, which
8 is, basically, my written Statement and the Transcript
9 of the February examination.

10 Q. Let me follow up one more time on the prep
11 in the open area, because nobody saw you. With whom
12 did you have that prep in the open area?

13 A. I arrived at 9:30 in the morning--well, we
14 arrived with Ms. Carolina Durán, the lawyer. We sat
15 on those white couches next to the TV set and close to
16 the window that faces the outside of the building. I
17 don't know what else I can tell you.

18 Q. How long did you--how many hours did you
19 spend preparing for the SMM Hearing?

20 If I say "SMM Hearing," I'm referring to the
21 Hearing in February between SMM Cerro Verde and Perú,
22 just as an abbreviation.

1 A. In the case of the February testimony, in
2 February, I was in Washington one week before I
3 provided testimony here before the examination. I
4 arrived here a week before. So, back then, I had more
5 time than the time I had now when I arrived in
6 Washington just yesterday.

7 Q. You had preparation sessions with Counsel
8 every day during that week, in preparation of the SMM
9 Hearing?

10 A. That's correct, yes.

11 Q. How many hours did you spend in total, like
12 for--on this and the SMM Cerro Verde Case, including
13 the preparation of the Witness Statements, Hearing
14 preparation, attending the Hearing?

15 A. I've never counted the hours, but perhaps I
16 can do it now.

17 So, five hours per day for the February
18 declarations, so 35 hours in Washington; plus the
19 video calls in Lima, two or three hours, perhaps
20 three; so 45 hours in total.

21 And for this Statement today, I only had a
22 meeting yesterday when I arrived in Washington and I

1 had a meeting today.

2 Q. So, that doesn't include the preparation for
3 the Witness Statements, just to be clear; right?

4 A. It does not include the preparation of these
5 documents.

6 Q. And if you include those as well, how many
7 hours approximately you would come to?

8 You don't need to give me the exact numbers,
9 but are we, like, talking intense, like 60, 70, 80,
10 90, 100? Something, if you can provide us with an
11 approximate number.

12 A. Approximately eight hours for each one of
13 these Witness Statements. Approximately.

14 Q. Eight hours. That's your Statement?

15 A. For each one of these, approximately.

16 Q. And just to be clear, your Witness
17 Statement, your First Witness Statement in the SMM
18 Arbitration and your First Witness Statement in this
19 Arbitration, the Freeport Arbitration, they are almost
20 identical, save for some very minor changes; is that
21 correct?

22 A. That is correct.

1 Q. And the same is true for the Second Witness
2 Statement; right? The Second Witness Statement in the
3 SMM Arbitration is almost identical with the Second
4 Witness Statement in this Arbitration; correct?

5 A. That's correct, yes.

6 Q. While you were preparing for the
7 arbitrations with Counsel, did any of the other
8 Witnesses participate in the meetings?

9 A. Are you talking about this Hearing, today's
10 Hearing?

11 Q. For both.

12 A. Yes. In particular, during the prep sessions,
13 there was Mr. César Polo, myself, and then later on
14 there were other individuals that came in that I--and
15 that I came to know in February.

16 Q. And these other persons that joined, they
17 were witnesses in this Arbitration or...

18 A. My understanding is that they were involved
19 in this Arbitration. Many of them did, but I don't
20 know what role they had.

21 Q. And Mr. Polo and you attended together
22 preparation sessions for the SMM Cerro Verde Hearing

1 or for the Freeport Hearing or for both?

2 A. In February we coincided in Washington, we
3 were here a few days before. I arrived on a Thursday.
4 I think he arrived on a Saturday. So, we coincided at
5 the same hotel and at the Sidley offices here in DC.
6 Sometimes we were reviewing documents in different
7 rooms, each of us was in a different room, and for
8 this testimony, today's testimony, I have had a
9 faraway contact with Mr. Polo today. I hadn't seen
10 him before.

11 Q. Did Mr. Polo participate in the session you
12 had yesterday evening?

13 A. He did not. No.

14 Q. Did you have any sessions together with
15 Mr. Isasi?

16 A. No, I did not.

17 Q. Did you have--other than a preparation
18 session with Counsel, did you have any other--any
19 discussions with Mr. Polo about this case, either
20 meeting him in person or while you were in Washington
21 here or by telephone or by email or elsewhere?

22 A. After the February testimony, I met twice

1 with César Polo in Lima. We had friendly
2 conversations, friendly discussions, nothing
3 substantial in connection with these cases.

4 Now, for today's testimony, I have had no
5 contact with César Polo and I have had no contact with
6 Mr. Isasi either.

7 Q. And did you have any conversations with
8 Mr. Isasi with regard to that case? You said you
9 didn't have any in preparation of this Hearing, but
10 before the preparations for this Hearing, did you have
11 any discussions with Mr. Isasi regarding this case?

12 A. No. I did not. The last time that I saw
13 Felipe Isasi was via a video call at a meeting in late
14 July 2022 when Sidley Counsel traveled to Lima.
15 Before that, well, perhaps I saw him personally three
16 or four years ago. Even here in Washington, I haven't
17 seen Felipe Isasi.

18 Q. So, you saw, the last time, Mr. Isasi in a
19 meeting that you had with Counsel for Perú in July of
20 2022; is that right?

21 A. It was a videoconference. I was there in
22 person at the Navarro law firm offices in Lima in San

1 Isidro, and Mr. Isasi participated at that meeting,
2 but via a videoconference link.

3 Q. What were you discussing at that meeting?

4 A. About the ways in which we had presented our
5 First Statement. From what I recall, they were
6 letting us know that there was going to be a second
7 testimony that did happen at the end of the year.
8 That's it.

9 Q. You mentioned Estudio Navarro. Did Sidley
10 participate at that meeting?

11 A. Yes. María Carolina Duran, the lawyer, was
12 there. She was there in person. Jennifer Haworth was
13 also there, from what I recall, in person.

14 Q. Other than the meeting in July of 2022, did
15 you have any other meetings in which Mr. Isasi--at
16 which Mr. Isasi participated with respect to this
17 case?

18 A. With me? No.

19 Q. With whom else?

20 A. I have not met with Isasi alone or by
21 videoconference or together with the lawyers either.

22 Q. So, let me ask you whether--Mr. Polo

1 testified that he received a binder in preparation of
2 the Hearing, a binder of all the Witness Statements in
3 this case, and Expert Reports.

4 Do you recall having also received the
5 binder with all the Witness Statements and Expert
6 Reports in this case in preparation of this Hearing?

7 A. Yesterday at 7 p.m., I received a physical
8 printed copy of my First Statement and my Second
9 Statement and the Transcript of my testimony in
10 February. And that was last night at 7:00 p.m.

11 Q. My question was: Have you received a
12 binder, physically or electronically, of all the
13 Witness Statements and Expert Reports--

14 A. Only mine. Only mine.

15 (Overlapping interpretation and speakers.)

16 Q. I'm talking about any time before this
17 Hearing.

18 MS. DURÁN: I'm sorry, Madam President.
19 He's talking about César Polo's testimony. He should
20 be showing it on the screen to him because how can he
21 know what he testified?

22 MR. PRAGER: Sure. I thought you wouldn't

1 like that, but I'm happy to do that.

2 Can we put yesterday's testimony--I have it
3 here as, in Spanish, as Page 1314. It is Tab 38 in
4 your binder. Actually, 1313 to start with. You
5 mentioned it several times. 38.

6 (Comments off microphone.)

7 MR. PRAGER: Madam President, would you like
8 us to introduce the Transcript as a Hearing Exhibit,
9 or are we fine using it as it is?

10 PRESIDENT HANEFELD: If Respondent's Counsel
11 wishes, we can just produce it on screen, but we do
12 not have to provide it as an exhibit.

13 MR. PRAGER: Okay. It looks as though we
14 are going to have to look at the physical copies. Do
15 we have a printout for the Members of the Tribunal?
16 Oh, it's in Tab 38.

17 PRESIDENT HANEFELD: Yes, and I recall.

18 MR. PRAGER: We are going to having to look
19 at the physical copies. So, if you look in Spanish,
20 it's 1313. Gosh, I have to find the English.

21 PRESIDENT HANEFELD: What about that your
22 colleagues look for it and you jump to the next

1 question and then we come back?

2 MR. PRAGER: Well, I was--yeah. I was asked
3 to show it.

4 BY MR. PRAGER:

5 Q. Here we have the Spanish, and I'm just going
6 to read it into the record for translation, so at
7 least it was here. The Spanish says: "I learned
8 about the testimony in a binder that was prepared for
9 the case, and I saw what their opinion was. Those
10 Statements I saw, but not all of them. I didn't read
11 them all because it was overwhelming. I saw some,
12 just those, and I got an idea. I have my own idea,
13 and I thought that would be enough."

14 And then on Page 314, he says--I asked
15 him: "When you say that you reviewed the Isasi
16 Witness Statements or the Expert Reports by the
17 Constitutional Law Experts, you did so to prepare for
18 the other Cerro Verde Hearing?"

19 And he responded: "I did it to take stock.
20 They sent me all of the Statements, and I thought that
21 I had to review them. I reviewed my own in detail, of
22 course, and a few more things, nothing more, just to

1 have an idea."

2 And on Page 315, he again says, 315, line
3 18: "Later we received from everyone. I imagine
4 everyone the same. This is what I recall."

5 So, having read those, is it your
6 recollection that you also received all the Witness
7 Statements of all the other witnesses, Mr. Tovar?

8 A. Let me be crystal clear: This Statement by
9 César Polo from February 2023, it's the first time I'm
10 seeing it. I've never seen this, either a physical
11 copy or--

12 Q. That wasn't my question. First of all, it's
13 his testimony from yesterday; and second, my question
14 was whether you received a binder, be it physical or
15 electronical, that has all the Witness Statements,
16 including all the Statements of Perú's Witnesses and
17 Experts, in it.

18 Did you or did you not?

19 A. Mr. Dietmar, I want to know if you are
20 referring to these Statements of February or--allow
21 me--or if you are referring to the Statements that I
22 have cited, for example, in my Witness Statement, my

1 written Witness Statement, which is in this other
2 binder. So, to answer you clearly.

3 Q. Let me ask the question again, so I can make
4 it clearer.

5 I'm referring to a binder that includes all
6 the Witness Statements that have been filed in the
7 case, including Mr. Isasi's two Statements, Mr. Polo's
8 two Statements, other people's Statements who are
9 Witnesses and Experts in this case.

10 Have you received a binder with those
11 Statements before the Hearing in February, or didn't
12 you?

13 A. In April with--of my First Statement, well,
14 I received once the statement was ready --and all it
15 needed was to be signed. I received that. And with
16 the lawyers, some parts of the Statement were compared
17 with the Statement by César Polo, and I did receive
18 the digital file of the final PDF of César Polo. I
19 have also received--I'm talking about April of 2022,
20 in preparation for my First Witness Statement. I also
21 received a digital copy of the Witness Statements of
22 some of the Claimant's witnesses. I don't recall

1 having received the digital file, but I did see it in
2 a video call. I saw and compared some paragraphs of
3 the Witness Statement that had already been executed
4 by Felipe Isasi. Then, when I got here to Washington
5 in February, Sidley did prepare two binders of this
6 size with many Witness Statements, and what they told
7 me is we have already given you all of this in digital
8 form. So, it was already reviewed, I never took it
9 with me. So, I hope that answers your question.

10 Q. Well, partially. It raises a lot of other
11 questions. So, Sidley told you that they had already
12 sent you an electronic binder with all the Witness
13 Statements and Expert Reports; correct?

14 A. No. I don't have Expert Reports. I have
15 Witness Statements by the Claimant that mention my
16 name, and since they mention my name, I need to
17 clarify whether the facts occurred as Claimant
18 witnesses have declared or not. Those I read. In
19 particular, if I can--this of Ms. Chappuis,
20 Ms. Torreblanca, I have received those in digital
21 form. From Mr. César Polo, the first in digital, PDF.
22 I don't recall the second one. In the case of Felipe

1 Isasi, that was a topic of conversation in February
2 here, in Washington. I was never sent the digital PDF
3 version, but we had had a discussion of it in some
4 video call, and it was shown on the screen.

5 Expert Reports, I don't recall having read
6 them. Basically my function, my role in this case is
7 as a witness, to recall and discuss the facts as they
8 occurred.

9 Q. Mr. Tovar, you testified: "Then when I got
10 here to Washington in February, Sidley prepared two
11 binders of this size with many Witness Statements.
12 And what they told me is we have already given you all
13 of this in digital form."

14 Do you recall having received the two
15 binders with many Witness Statements in digital form?

16 A. I never did the comparison, but there was a
17 binder like this. They had--they weren't numbered
18 sequentially, but with codes. But there were two
19 volumes: Volume 1 and Volume 2, two different ones.

20 I did not review them in detail. I just
21 focused on studying and reviewing what I had signed,
22 what my Statement was, on my own.

1 Q. These binders contained the Witness
2 Statements of Mr. Polo and of Mr. Isasi; correct?

3 A. I cannot state for sure because I don't
4 recall having reviewed those documents in print form.
5 And in the particular case of Isasi, I remember
6 clearly that in February there was a discussion that
7 they had sent me the file, but I never received it.
8 Rather, it had been shown on the screen. That is why
9 mention is made in a footnote in one of my Witness
10 Statements from the other case.

11 Q. Let me come back to what you said with
12 regard to César Polo and Mr. Isasi--I'm going to take
13 this step and step.

14 So, one thing that you told me is, when you
15 prepared your First Witness Statement, before you
16 finalized it, you received PDFs of the Statement of
17 Mr. César Polo. Did I understand that correctly?

18 A. Yes.

19 Q. And didn't you also receive the Witness
20 Statement of Mr. Isasi on that occasion?

21 A. I did not receive it. It was shared by the
22 lawyers on some video call we had, some paragraphs

1 were reviewed, and I recall that video call because I
2 said, look, something is mentioned there that I
3 mentioned in my Statement, and it was decided to put a
4 reference as a footnote.

5 Q. Well, I asked you--I mean, maybe we can just
6 short-circuit that, but do you recall that your
7 Witness Statement in the SMM Arbitration contained
8 five footnotes citing to Mr. Isasi's First Witness
9 Statement?

10 Do you recall that?

11 A. Yes, sir.

12 Q. And do you recall that your Witness
13 Statement in the SMM Arbitration also contained a
14 footnote citing--of your First Statement citing to
15 Mr. Polo's First Witness Statement?

16 A. Yes, sir.

17 Q. Can you explain us why you removed those
18 footnotes from your Witness Statements in the Freeport
19 Arbitration?

20 A. Yes. I thought they were redundant. They
21 had already been used earlier. There was really no
22 need to show agreement. Personally, I thought it was

1 not necessary. But I do recall what you are saying.
2 I thought it's not necessary, and so, they were
3 removed.

4 Q. Mr. Tovar, you said when you were preparing,
5 you told me in the SMM Arbitration when you were
6 preparing the First Witness Statement, it took you
7 some time to prepare it because you had some problems
8 recollecting some of the facts.

9 Do I recall that correctly?

10 A. Yes, sir.

11 Q. You also said that it was not--all the facts
12 were not exclusively your recollection because after
13 17 years it is tedious to recollect some things
14 precisely.

15 Is that something that you would today agree
16 with?

17 A. Naturally, yes.

18 Q. And then you said, because you had some
19 problems recollecting the fact, Counsel for Perú sent
20 you a PDF of Mr. Polo's Statement.

21 Is that still your recollection?

22 A. Yes.

1 Q. And you said that you refreshed--reviewing
2 Mr. Polo's Statement, you refreshed your memory on
3 some of the facts. Is that a correct statement?

4 MS. DURÁN: I'm sorry. I'm confused about
5 what you are asking him about. If this is about what
6 he said in the SMM Cerro Verde Hearing, he should be
7 shown the Hearing Transcript as well.

8 MR. PRAGER: I'm happy to. I wanted to
9 short-circuit it, but we can walk through the Hearing
10 Transcript.

11 So, if you look at Tab 3, that is Exhibit
12 CE-1137, and that's a Transcript of Day 5 in the SMM
13 Arbitration. And in the Spanish Transcript, it is
14 Pages 1389, Line 14, to 1390, Line 8. And in the
15 English Transcript it is 1357:11 to 1358:3.

16 That was a mouthful.

17 BY MR. PRAGER:

18 Q. So, I asked--my question was specifically
19 whether you reviewed Mr. Polo's Witness Statement
20 before you drafted your Report since you cite it in a
21 footnote.

22 "Answer: Not before. Not before. And when

1 the Report was ready, when it was good and ready,
2 that's when I had access to the PDF with Mr. Polo's
3 Statement. So, what I wanted to explain was that the
4 reason I took more time to prepare the document, since
5 I did so, I was consulting the lawyers permanently,
6 and at the end I had access to a PDF file where what I
7 remembered coincides with what the other person
8 remembered. So, indeed, in that point I said, yes, it
9 was a coincidental opinion. I do not have a bad
10 recollection that happened. It happened that way."

11 Do you see that?

12 A. I'm sorry. I got lost. Can you show me
13 exactly where you are reading from? What page exactly
14 are you reading from. Is it 1390?

15 Q. It's on the screen. It is 1390, and starts
16 at Line 22. And if you then go to Page 1391 in
17 Spanish, Lines 5-17, that's in English, 1358, Line 19,
18 to 1359, Line 18.

19 I asked you: "You reviewed Mr. Isasi's
20 Witness Statement before you drafted your Statement or
21 after you drafted your Statement in order to see
22 whether there was 'concordancia,' concordance?"

1 "Answer: It was at the end, not before. I
2 didn't review the words of other people. It is not my
3 style. I prefer not to know, as I have learned
4 before. But in this case I was taking so long that
5 they offered me this possibility to say, you can check
6 here. Then it was this way and it was that. I was
7 running out of time, so I submitted my final version."
8 If we go to the next page, in Spanish, 1392, starting
9 on Line 20, and in English 1360, starting Line 6.

10 "Question: When you prepared your Second
11 Witness Statement"--we are talking now about the
12 second one--"and before you signed it, before you
13 signed it, did you review again Mr. Polo's Second
14 Witness Statement and Mr. Isasi's Second Witness
15 Statement?"

16 "Answer: The Second Statement, I think I
17 did, yes, from a Second Witness Statement. But I
18 remember that the second one, the one that was
19 prepared in November, September--of course, yes,
20 mid-September, for that one I was just coming back
21 from a trip and, yes, I did it. I did so. Yes, there
22 was something of that, but I remember they were always

1 PDF files, no Word. And this is when I was finishing
2 my Statement. I recall it clearly."

3 So, is that still your recollection today?

4 A. Yes, sir.

5 Q. So, you used Mr. Polo's and Mr. Isasi's
6 Witness Statements to make sure that you had a
7 "coincidental opinion," as you put it, a
8 "concordancia"?

9 A. I remember having answered that specific
10 question, and we have to be careful here. I don't
11 base my Statement on César Polo's Statement or on
12 Felipe Isasi's Statement. I wrote my Statement based
13 on what I myself remembered. It is just that once it
14 was completed, drafted, and ready to sign, a final
15 review was conducted with the lawyers and points of
16 coincidence were found, and I said, well, what a
17 coincidence, we both remember the same thing with
18 respect to several things, but that doesn't mean that
19 I based my Statement on what I read of the other
20 persons. That did not happen.

21 Q. So, you had some--so, the reason, to put it
22 clear, the reason you weren't finishing--you testified

1 that the reason you weren't finishing your First
2 Statement is you had some doubts about recollecting
3 facts, and then Sidley offered you the Witness
4 Statements of Mr. Polo and Mr. Isasi. And then you
5 looked at them, and then you could suddenly recall the
6 facts.

7 That's what you were testifying there.

8 Well, that was what I was just reading.

9 A. No. Mister...

10 Q. So, explain me how that could be interpreted
11 in a different way, Mr. Tovar.

12 A. Mr. Dietmar, I wrote my Witness Statement
13 alone, alone, me, without consulting Felipe Isasi or
14 César Polo on anything at all. Now, once the
15 Statement was ready, the first and the second, in the
16 final review of the document with the lawyers by video
17 call, that is where--well, it seems that I've always
18 been the last one to sign my Statements.

19 And when I was about to sign my Statement,
20 it was said, ah, it looks like César Polo remembers
21 the same thing. We have the same memory. It's
22 consistent. Let's cite him at the end of the document.

1 And that doesn't mean that I took César Polo's
2 document in order to then remember and write down my
3 document. I don't know if that clarifies things.

4 Q. Not entirely, Mr. Tovar, but any reason you
5 didn't review them after you signed the Statement?

6 A. Once I signed the Statement, there is
7 nothing more to be done. Why review them afterwards?

8 Q. Okay. Mr. Tovar, in preparing your Witness
9 Statement, you refreshed--I imagine you refreshed your
10 memory also looking at some other materials.

11 What documents did you look at--what type of
12 documents? Don't--you don't need to tell me, like,
13 the specific names of the documents, but what type of
14 documents were you looking at, refreshing your memory
15 by--for drafting the First Witness Statement?

16 A. The First Witness Statement--well, let's
17 see. Having a direct memory of what happened 15 or
18 16 years earlier is not so simple for a regular guy
19 like me. Some events I did recall. The times I went
20 to Congress, where I personally defended the Stability
21 Agreements, vis-à-vis the request of many members of
22 Congress, many events, but if you ask me some specific

1 question, I don't recall.

2 So, if someone is stating that, I'm
3 referring to a Claimant's Witness, I had, as I
4 explained in my February testimony, I had to go to the
5 back-up of information that I had from the Ministry.
6 When I left the Ministry, I left a copy of the backup
7 in the Ministry computer, and I took a copy. Emails, I
8 never deleted emails in the MEM. I left to my
9 successor all the institutional emails. I reviewed
10 these, I reviewed PowerPoints, I reviewed emails and
11 so on.

12 And based on that memory, I drew up my First
13 Statement. The same thing happened with the Second
14 Statement.

15 Q. So, Mr. Tovar, let me pick that apart what
16 you just said.

17 You said when you left the Ministry, you
18 made a copy of all the electronic documents.

19 A. Not of all. Certainly, there are many that
20 I did not take, but I made a copy of what I had in the
21 computer.

22 Q. So, you basically made a copy of what you

1 had on the hard drive of your computer in the Ministry
2 and took it with you?

3 A. Yes, sir. And I left the copy at the
4 Ministry. It wasn't erased, and I explained to my
5 successor, I'm leaving, here are all the emails, here
6 are all the files, and so on.

7 Q. The documents that you took, would you agree
8 with me that they belonged to the Republic?

9 A. I don't know how to answer that question.

10 Q. Okay. Mr. Tovar, you were--

11 A. It's a very legal question. I don't know
12 the answer at this time, to be honest.

13 Q. You were the person in the Ministry who,
14 among others, was responsible, for instance, for
15 granting beneficiation concessions; right?

16 A. Yes.

17 Q. So, you received, for instance, a lot of
18 information from mining companies about the technical
19 specificities of their investments, in order to
20 determine whether to improve an expansion or the
21 granting of a beneficiation concession; isn't that
22 true?

1 A. Yes, sir.

2 Q. So, you're telling us you took all that
3 Confidential Information with you? You copied that on
4 your hard drive.

5 A. Well, you have to be careful with that,
6 excuse me. First, a lot of information that is
7 provided by the regulated Parties in that year, 2004,
8 were not in digital form. They were in paper form.
9 So, anything that hadn't been scanned, I couldn't take
10 it with me. This first.

11 And second, by default, all the information
12 that comes into the State is public information. It's
13 not confidential. Confidentiality in Perú has to be
14 expressly declared.

15 If there's information for a beneficiation
16 concession, I don't recall that it being considered
17 confidential. I don't know why you say it's
18 confidential. I have not taken with me any
19 "Confidential Information," in this regard.

20 Q. So, you're saying that, for sure, you
21 received some electronic files, even in 2004, that
22 refer to information that you received from other

1 mining companies, didn't you?

2 A. Which is not necessarily Confidential
3 Information.

4 Q. That's not my question.

5 I was asking you, you surely received some
6 electronic files, emails from mining companies, with
7 information about the investment that they were
8 making?

9 A. I'm very careful in that regard,
10 Mr. Dietmar. Information that is confidential and
11 that I shouldn't have, I'd rather not have.
12 Information that comes into the Ministry of Energy and
13 Mines, even today, is not cataloged as confidential.

14 Q. That's not my question.

15 A. It's public.

16 Q. My question was not whether you qualified
17 them as confidential or not.

18 I said, surely some of the documents that
19 you had on your hard drive that you copied
20 were--contained information regarding investments made
21 by mining companies. Isn't that the case?

22 A. And it's public information, not

1 confidential.

2 Q. That was not my question. I'm not asking
3 you whether it's public or confidential. I'm asking
4 you that, surely information on the hard drive that
5 you took was information that you, among others, that
6 you had received from mining companies regarding
7 investments, that you obtained in your professional
8 capacity as the Technical Director of the DGM.

9 Isn't that the case?

10 A. I would not say that, Mr. Dietmar, because
11 all of the information that comes into the Ministry
12 comes in not to my email. It's not personally
13 delivered to me. It comes in through the reception
14 desk, goes to the Secretary, it's assigned to an
15 evaluating engineer, and then it comes to me on paper.

16 (Overlapping interpretation and speakers.)

17 Q. I said, let me ask it the other way around.

18 Sitting here today, you can say with
19 certainty that none of the documents that you copied
20 from your hard drive contained information that you
21 had received from mining companies regarding
22 Investment Projects.

1 Is that your testimony?

2 A. I'd like to hear something more specific
3 because the question is too general.

4 Q. No, it was not general.

5 I said, sitting here today, you
6 cannot--sitting here today, is it your testimony that
7 you can exclude that any of the documents that were on
8 your hard drive contained information that you had
9 received from mining companies regarding their
10 Investment Projects?

11 Yes or no. It's a very precise question.

12 A. I would say that no, Mr. Dietmar, because
13 the documents were not given to me personally. They
14 went through the reception desk.

15 Q. What no? Yes, you can exclude that none of
16 the documents contained that information or, yes--yes
17 you can exclude it or no, I cannot exclude that
18 possibility?

19 A. I wouldn't be able to assert something like
20 that.

21 Q. So, over the next 15 years then, you've
22 testified in the SMM Arbitration, you transferred the

1 files on at least two occasions on new hard drives; is
2 that right?

3 A. That is correct.

4 Q. And you also testified that in the process
5 of transferring the files to the other hard drives,
6 you believe that some documents might have gotten lost
7 or not copied properly; is that correct?

8 A. Yes, that is correct.

9 Q. So, I'm going to come back to your hard
10 drive. But you also mentioned that you were basing
11 some of your recollection on notebooks that you were
12 looking for. And perhaps we can, again, look at the
13 Transcript. That's CE-1137. In Tab 3, Page 1341, in
14 Spanish starting Line 10. Is that--no, sorry, it's
15 the English. 1341 in English, starting at Line 10,
16 and the Spanish is Page 1372, starting Line 16.

17 And you--let me know when you've found it.

18 I asked you: "And did you--is there
19 anything in a written state"--blah, blah, blah. Let
20 me see.

21 You mention--"and, again, having looked at
22 all documents, I looked up my notebooks and I

1 supplemented some things." And we have the Spanish
2 here. And then you say--then I asked: "So, you kept
3 'cuadernos,' notebooks, from that period?"

4 "Answer: Yes. Well, I was able to recover
5 the emails from the time from the institution."

6 And then I ask on Page 1341, in English
7 still: "And those notebooks that you had, were they
8 from the relevant period that you discussed in your
9 Witness Statements, 2004-2005?"

10 "Answer: Yes. These are notes that I'd
11 kept in my hard drive as documents as notes which
12 helped me ."

13 And then on page--later on 1342 you
14 said: "I looked up my notes, my written notebooks. I
15 actually didn't find my written notebooks. But I
16 found notes, aide-mémoires in the computer."

17 So, having read that, I just wanted to
18 confirm, because the answers were a little bit
19 confusing. Did you have any written notebooks, as you
20 seem to suggest in your first answer from that period,
21 or did you not have any written notebooks from that
22 period?

1 A. To clarify the answer, in the logical
2 sequence of events, I am going to repeat this, and I
3 am not going to read from what I said before.

4 If someone does not have immediate
5 recollection--

6 Q. That was not my question. My question was
7 not what you used them for.

8 My question was: Did you have written
9 notebooks, "cuadernos," from the time periods
10 2004-2005, or did you not have written notebooks that
11 you consulted? Did you have them? Did you not have
12 them?

13 A. Yes, I had them, but I couldn't find them
14 for my First and Second Statement. Physical
15 notebooks? Physical notebooks, yes. Yes, I had them,
16 but when the case was presented and I had to look for
17 older information to refresh my recollection, I never
18 found the notebooks. To date, I do not recall tossing
19 them, but I couldn't find them. I haven't looked for
20 them again, either.

21 Q. I was waiting for the Translation.

22 So, just to be precise, when you said "I had

1 them" you mean you had them at the time that you were
2 taking the notes, but you couldn't find those when you
3 were preparing the Witness Statement in 2021;
4 correct--or whenever that was, 2021, 2022?

5 A. 2022, correct. In 2004, I did have
6 notebooks. I made some notes of some meetings, some
7 things, and when this case came up and I couldn't
8 recall some events, I started to look for help as to
9 recall this, and the first attempt was to look for my
10 notebooks. I couldn't find them, so I started to look
11 for my backup of digital information where I had some
12 notes, and that's how I rebuilt my memories, my
13 recollection.

14 Q. Okay. So, I'm going to interpret your
15 Statement and again, having looked at all documents, I
16 looked at my notebooks, and I supplemented some
17 things, as reading you couldn't find your notebooks as
18 you later said.

19 So, you mention digital, digital notes.

20 What were those digital notes about?

21 A. Mainly, they were emails.

22 Q. Well, you just said there were some notes in

1 which you wrote down some things. When you said that,
2 you weren't referring to some aide mémoires or digital
3 notebooks, but what you mean is emails?

4 A. Mainly emails.

5 Q. So, in other words, you do not have any
6 notes, like annotations that you wrote down, either in
7 writing or electronically of the events about which
8 you testify. Is that the testimony? You were relying
9 on emails?

10 A. Yes, sir. Mainly I reviewed emails.

11 PRESIDENT HANEFELD: Mr. Prager, we do not
12 want to interrupt you. It's just time for a break at
13 some point.

14 MR. PRAGER: No, maybe just one question.

15 BY MR. PRAGER:

16 Q. And all the emails with which you refreshed
17 your memory, and you're relying on, you mention in
18 your--you identify in your two Witness Statements; is
19 that right?

20 A. That is correct. And it hasn't been because
21 of one search. For the First Witness Statement, I
22 look for my emails. One doesn't preserve those

1 emails, just-as "Cerro Verde Arbitration 2022." It is
2 impossible to forecast the future.

3 Q. We're going to come to the searching. I
4 just wanted to confirm.

5 So, the universe of the documents on which
6 you relied to refresh your memory is identified in a
7 Witness Statement.

8 Is that--in the two Witness Statements.

9 That's your testimony?

10 A. Yes.

11 Q. There are no other notes that you relied
12 that are not in your Witness Statement?

13 A. There are some pictures, photographs,
14 basically emails, PowerPoints, that I also found them
15 after looking for the emails. Emails, Excel,
16 PowerPoints, but the source was to look into the
17 emails.

18 Q. So, there are other documents on which you
19 relied to refresh your memory, which you did not
20 attach to your Witness Statement? That you do not
21 mention in your Witness Statement, is there?

22 Do I understand that now correctly?

1 A. No, everything that I found I gave to
2 counsel and I did verify it in my Statement.

3 Q. So all the documents in which you relied to
4 refresh your memory are in the Witness Statement. I'm
5 getting different messages here. So--

6 (Overlapping interpretation and speakers.)

7 A. Yes. Yes, that is the message.

8 Q. That's your testimony?

9 A. Yes, that is the message.

10 MR. PRAGER: Thank you.

11 PRESIDENT HANEFELD: Then we have a break of
12 15 minutes.

13 (Brief recess.)

14 MS. DURÁN: Madam President, if we can get
15 an estimate of time, if at all possible, of course,
16 just because we have another Witness waiting in the
17 lobby, so we wondered if we can release her or not.
18 She will, of course, wait.

19 MR. PRAGER: Madam President, the other
20 Witness can go home--not home, but to the hotel.

21 But there's an issue that I would like to
22 raise without the Witness being present. So, if I

1 could do that, please.

2 PRESIDENT HANEFELD: Mr. Tovar, can you
3 please leave the room for a minute? We will call you
4 in later. We have to discuss a procedural issue.

5 (Witness leaves the room.)

6 MR. PRAGER: Madam President, we've heard
7 yesterday and today shocking admissions of Witness
8 coordination, which are wholly inappropriate and
9 unethical. And I just wanted to put down a marker and
10 say that we, Claimant, reserve all our rights with
11 respect to that.

12 PRESIDENT HANEFELD: Does the Respondent
13 wish to comment?

14 MR. ALEXANDROV: We do. We will, of course,
15 need to address whatever arguments Counsel puts
16 forward.

17 At the moment, we don't understand what the
18 "shocking admissions" are for us to provide a fulsome
19 response. So, at the moment I would only say
20 Witnesses are sequestered from the Hearing. They are
21 not supposed to hear the testimony of other Witnesses
22 testifying before them, in particular their

1 cross-examination.

2 Witnesses are not sequestered from the
3 moment they are being interviewed to be Witnesses.
4 They are not sequestered from each other or from
5 anybody. They are not sequestered when they are
6 preparing their Witness Statements, and we don't see
7 why it is shocking that the Witness, when he's about
8 to sign his Witness testimony, is shown a Witness
9 Statement by somebody else to refresh his
10 recollection.

11 PRESIDENT HANEFELD: Mr. Prager, do you wish
12 to specify why this is shocking?

13 MR. PRAGER: What is shocking is that
14 Witnesses--there are instances where Witnesses were
15 prepared together, where they were together in
16 sessions preparing, where Witnesses--in particular,
17 Mr. Polo, Mr. Isasi, and Mr. Tovar--coordinated their
18 Witness Statements, such as, for instance, Mr. Tovar
19 admitting to having reviewed Mr. Polo's and Isasi's
20 Statements before he signed his own Statement, that
21 they read the other Witnesses' Statements before the
22 Hearing.

1 That influences the reliability of the
2 testimony. Witnesses are not supposed to coordinate
3 their testimony before the Hearing. It's no longer
4 reliable then.

5 MR. ALEXANDROV: May I?

6 Madam President, there is nothing shocking
7 about that. This is typical practice. I'm not saying
8 this has been done largely in this case. I'm not
9 talking about the facts. The facts are what the
10 Witnesses will say, so I'm not going here to testify
11 about how the Witnesses were prepared. Counsel is
12 asking them. You have the facts.

13 What I'm going to say simply is that Counsel
14 for Claimant is not in a position to give us any
15 reference to any rule that prohibits one Witness, when
16 preparing his or her Witness testimony, to review the
17 completed Witness testimony, completed Witness
18 Declaration, of another Witness to refresh his or her
19 recollection.

20 If Counsel gives us any rule, gives us a
21 reference to any rule that prohibits that, and
22 explains to us why there is a belief on the other side

1 that Witnesses are sequestered from the time they are
2 identified as potential Witnesses and shielded from
3 the possible Witness Statements that others would
4 prepare, if there is any reference to any rule, we
5 would appreciate seeing it, and then we can have a
6 substantive discussion.

7 Thank you.

8 PRESIDENT HANEFELD: But I understand that
9 you wish to take note of that, but we do not need to
10 enter into further substantive discussion on this
11 issue. Maybe it's also something that can be briefed
12 in Post-Hearing Submissions on the question of how
13 much weight the Tribunal gives one or the other to
14 give testimony, but I don't see any need. So--

15 MR. PRAGER: Yeah, I just wanted to clearly
16 state our position and reserve our rights, but we can
17 definitely and should definitely move on.

18 PRESIDENT HANEFELD: Do you agree?

19 MR. ALEXANDROV: I cannot disagree with the
20 reservation of right. It is their right to reserve
21 their right.

22 PRESIDENT HANEFELD: Yes. I think, then, we

1 can call in the Witness again.

2 (Witness re-enters the room.)

3 PRESIDENT HANEFELD: Welcome back,
4 Mr. Tovar.

5 THE WITNESS: Thank you.

6 PRESIDENT HANEFELD: It is late in this
7 week.

8 So, we will now continue with the
9 cross-examination.

10 BY MR. PRAGER:

11 Q. Good afternoon again, Mr. Tovar.

12 So, from the hard drive that you described,
13 you yourself reviewed it, searched for relevant
14 documents, and then handed those to Counsel; right?

15 A. That's right.

16 Q. So, for the--you know, one of the time
17 periods, as you know, that we are particularly
18 interested in here is the time period from
19 approximately June to October 2004.

20 Would you agree with me? That's when Cerro
21 Verde approached the Ministry, had discussions, when
22 the Beneficiation Concession Application was filed and

1 the Beneficiation Concession was approved, and in the
2 meantime the Reinvestment of Benefit Profit as well?

3 Would you agree with me that the time period
4 June to October 2004 is one of the relevant time
5 periods in your Witness Statement?

6 A. From what I recall, the contact with Cerro
7 Verde in connection with reinvestment and
8 Beneficiation Concession was from
9 January/February 2004. Not October.
10 January/February. That's in the documents.

11 Q. Okay. So, January to October.

12 And you presented a total of two emails from
13 that time period, and those emails are--we have them
14 in Tab 5. We don't have--if you want, you can look
15 them up, but I'm not going to discuss the content of
16 them. In Tab 5, it's RE-198. That's an email that we
17 all know from María Chappuis regarding a meeting on a
18 new Stabilization Agreement: "Is this legal?"

19 And Tab 6, RE-199, which is an email from
20 Ms. Chappuis to César Polo in which she says, among
21 others, that she won't participate at a meeting
22 discussing Royalties.

1 Those are the two emails that you identified
2 from that period; is that right?

3 A. Let me clarify something. You say that this
4 talks about a new contract.

5 Q. I'm not talking about content. I'm not
6 talking about the content. I'm just saying that those
7 are the two emails that you provided from your
8 collection regarding the time period January to
9 October 2004.

10 That's the first one, and we can look at the
11 second one, too.

12 A. It doesn't talk about a new contract.

13 Q. I'm not discussing--

14 (Overlapping interpretation and speakers.)

15 A. But that is super important.

16 (Overlapping interpretation and speakers.)

17 Q. I'm not discussing the content. I'm asking
18 you: These are the two emails that you presented with
19 your Witness Statement regarding the time period
20 January-October 2004?

21 A. That's correct.

22 Q. You have not presented any other email

1 during--regarding that time period, January to
2 October 2004; right?

3 A. I do not recall, sitting here today, but
4 these two that you mentioned to me, yes, I do recall
5 those two.

6 Q. So as it happens, both of those emails you
7 used to impeach Ms. Chappuis. On the one--regarding
8 the first one, you say in the Witness Statement that
9 she wasn't sure whether it was legal to include the
10 Concentrator, and the second one, you use that to show
11 that she does not participate in Royalty discussions;
12 right?

13 A. That is correct.

14 Q. So, is it your testimony that you carefully
15 looked through your entire files and that those
16 happened to be the two only emails from the time
17 period January until October 2004 that you could
18 locate?

19 A. That is correct. As you can see, the
20 subject line does not say "Cerro Verde." So, you have
21 to look at each one of these using key words such as
22 "SMCV," "Royalties," and "Cerro Verde," so the search

1 is not immediate, in a single attempt. It is a
2 process.

3 Q. Mr. Tovar, you would agree with me that the
4 Concentrator investment was a very high-profile case
5 for the Ministry in 2004, was it not?

6 A. I used those words here in February.

7 Q. And you would also agree that there were
8 several meetings with SMCV and MINEM officials in the
9 course of the year 2004; isn't that right?

10 A. That is correct.

11 Q. And you, Mr. Tovar, you reviewed and
12 approved Cerro Verde's Application for the expansion
13 of the Beneficiation Concession, isn't that the case?

14 A. To be more precise, I approved it in the
15 second stage, because there are three stages, or four.

16 The first was the publication of notices to
17 modify the area is signed by Ms. Chappuis, the
18 technical evaluation, and the approval of the
19 technical review for construction to begin--that was
20 signed by me--and then at the very end of the
21 construction stage, in 2007, when I wasn't there at
22 the Ministry, that was signed by my successor and

1 another Director General.

2 Q. So, you're telling us here today you haven't
3 found a single document regarding any of the meetings
4 relating to Cerro Verde at the time except for the one
5 where Ms. Chappuis says: "Is this legal"?

6 Is that your testimony?

7 A. And this one as well.

8 Q. And this one. So, those are the only two
9 emails you have found regarding the meetings with
10 regard to Cerro Verde?

11 A. In particular, this email does not talk
12 about Cerro Verde specifically, if you look at it. It
13 talks about its participation in general, about the
14 Royalties Law, which at this date, July 4, had been
15 officially passed and published in the Official
16 Gazette El Peruano.

17 (Overlapping interpretation and speakers.)

18 MR. PRAGER: Sorry. I breached the rules
19 here.

20 BY MR. PRAGER:

21 Q. You're right. You actually just presented
22 one email regarding Cerro Verde out of the copy that

1 you have from your hard drive; is that correct?

2 A. There are other emails from 2005-'06 with
3 presentations before Congress.

4 Q. We're going to come to them. We are now in
5 the 2004 time period.

6 So, during the entire application process of
7 the Beneficiation Concession, you didn't find anything
8 relevant in your document collection that would have
9 refreshed your memory or that you--nothing?

10 A. As you mention, nothing pertinent. I cannot
11 be an absolutist. I cannot say things absolutely. I
12 have conducted a search in various moments, during a
13 number of days. I used a number of key words and
14 phrases, and whatever I found I immediately sent to
15 Counsel by email.

16 Q. So, you're telling me that those are not the
17 only emails that you found. You actually sent
18 others--other emails to your lawyers, not to your
19 lawyers, but to the lawyers of the Republic?

20 A. I've just mentioned to you that there are
21 emails from '05, '06--

22 Q. No. We are in 2004. 2004. Okay?

1 Are you telling me that, in addition to
2 those emails, you found other emails which you sent
3 to--that you thought might be relevant and that you
4 used to refresh your memory that you sent to your
5 lawyers?

6 A. I don't have top of mind a list of all of
7 the emails that I've sent exclusively about 2004.

8 If I found an email, I sent it right away.
9 But if you want me to mentally go through a list, I
10 can't do that, but I do recognize these two emails.

11 Q. But, Mr. Tovar, you testified before the
12 break that all the emails you relied on, all the
13 documents that you relied on, are the ones that you
14 mentioned in your Witness Statement.

15 That's the entire universe of the documents
16 that you relied on for your testimony, and in 2004, we
17 have those two documents. So, you didn't have any
18 other document from 2004 that you relied on for
19 your--for purposes of your testimony on what happened
20 in 2004; that's right?

21 A. If we look at the emails one by one, I can
22 confirm to you if that's what I found. But here,

1 right here in my mind, I don't have them separated by
2 month or by year, so, I remember as an image right now
3 without looking at any written document, well, that
4 there have been a number of emails that I have sent
5 and found.

6 Q. Well, just to give an example, you give a
7 statement in your first Witness Statement: "Vice
8 Minister of Mines César Polo had clearly advised those
9 of us in the DGM, particularly Ms. Chappuis, who was
10 his subordinate, that the Concentrator was not covered
11 by the Stability Agreement."

12 THE INTERPRETER: Excuse me. The
13 Interpreter was not able to follow that. I'm sorry.

14 MR. PRAGER: Sorry. I'm going slowly.

15 BY MR. PRAGER:

16 Q. You state in your First Witness Statement,
17 and that's in Paragraph 14, that the Vice Minister of
18 Mines, César Polo, "had clearly advised those of us in
19 the DGM, particularly Ms. Chappuis, who was his
20 subordinate, that the Concentrator was not covered by
21 the Stabilization Agreement."

22 You have not presented a single email in

1 which anyone, whether it's Mr. Polo, you yourself, or
2 anyone else, in 2004, expressed any views about the
3 scope of stabilization benefits, let alone their
4 application to the Concentrator; isn't that right?

5 A. Let's recall that César Polo, the Vice
6 Minister of Mines at that time, well, we held meetings
7 every Monday at 10:00 a.m. where we discussed
8 important issues of the week, and I clearly remember
9 that at those meetings we set the vision and the
10 common sense related to the application of the
11 Contracts.

12 Of course, Cerro Verde, too, was a
13 high-profile agenda item, the Primary Sulfides Plant,
14 and I had to report on this, and I did it with the
15 participation of all of the mining directors. All of
16 the meetings have been transparent.

17 Q. And on the high-profile Cerro Verde matter
18 that you had to report on, you did not find a single
19 document about those meetings, about your Report,
20 nothing? Just to confirm.

21 A. Cerro Verde was a high-profile project, so
22 we always had the good intention and the good faith

1 that the project was going to go forward, although the
2 first Environmental Impact Study of Cerro Verde had
3 not been approved. So, we had to show that the
4 Ministry was a promoter, a promoter of investment.
5 How is it, then, that the Ministry is going to reject
6 an Environmental Impact Study, and then it can say
7 that, you know, it was promoting investment?

8 Cerro Verde presented its Environmental
9 Impact Study again and it was a matter on agenda. How
10 is Cerro Verde doing? Every week. Now, you're asking
11 me about minutes or reports of these meetings every
12 Monday. No, we never had that. We never had minutes
13 of those meetings, of those Monday meetings. None at
14 all.

15 Q. Mr. Tovar, you started your work as the
16 Director of Mining Promotion and Development in
17 January 2004; right?

18 A. That's correct. Early January.

19 (Overlapping interpretation and speakers.)

20 (Interruption.)

21 (Stenographer clarification.)

22 BY MR. PRAGER:

1 Q. And that is a position within the
2 Directorate General of Mining; correct?

3 A. That is correct. What's more, the Director
4 General of Mining is the one who personally hired me.

5 Q. And that was who?

6 A. Engineer María Chappuis.

7 Q. And it was the responsibility of the DGM to
8 oversee and audit mining activities; right?

9 A. Just to be precise in my answer, the DGM had
10 three Directorates. One of them was the Auditing
11 Directorate. Mine was the one of Promotion and
12 Development. There was a third one; that was Legal.
13 There were three Directorates.

14 Q. Okay. So, I'm going to come to them in a
15 little moment, but I'm talking about the general
16 responsibilities of the DGM.

17 You would agree that the DGM was responsible
18 for overseeing and auditing mining activities?

19 A. That is correct, yes.

20 Q. And the DGM was also responsible for
21 ensuring compliance with Stability Agreements; right?

22 A. That's correct. Yes.

1 Q. The DGM was also responsible for granting
2 and expanding the beneficiation concessions; right?

3 A. That is correct. The term that was used was
4 a process for a new beneficiation concession, and
5 process for the modification of a beneficiation
6 concession. I think the word "expansion" was just
7 something that was understood, but the term that is
8 written until today is "modification."

9 Q. You were referring before to the structure
10 of the DGM, like the three pillars.

11 So, at the top of it, Ms. Maria Chappuis was
12 Head of the DGM, the Director General of Mining;
13 right?

14 A. That's right.

15 Q. And then one pillar was the
16 fiscalización--auditing--the auditing department. The
17 second pillar was--you mentioned a Legal Department.

18 A. Yes. Yes.

19 Q. And so, the DGM had its own Legal
20 Department?

21 A. Yes, that's right.

22 Q. And in 2004, do you recall who the lawyers

1 were in that Legal Department?

2 A. The Legal Department was known as the
3 Technical-Regulatory Office, and it was led by
4 Ms. Rosaria Padilla. She was a lawyer.

5 There were four lawyers working at Legal:
6 Gladis Pastrana--Ms. Pastrana.

7 Q. Okay. I don't need--

8 (Overlapping interpretation and speakers.)

9 Q. Okay.

10 A. Esquivel, Cecilia Sancho, and Nick Cayo.
11 Those are the four that I recall.

12 Q. Thank you.

13 And the third pillar is the Mining Promotion
14 and Development part; right? And you were the head of
15 that department as the Director of Mining Promotion
16 and Development; correct?

17 A. Yes.

18 Q. And would it be fair to describe that
19 department as sort of the Technical Engineering
20 Department, as opposed to the Legal one and the Fiscal
21 one?

22 A. Yes. But just to be more precise in my

1 answer to your question, when Ms. Chappuis came in in
2 2002, when she came to the DGM, she had the good
3 judgment of organizing the professionals and the
4 lawyers.

5 In my area there was one lawyer. Her name
6 was Juana Menendez. She was the fifth lawyer. She
7 reassigned all of the lawyers and placed them within
8 the technical regulatory area so that we could have
9 very clearly and pigeon-holed departments, so all of
10 the lawyers would be together and working in an
11 orderly pattern. That is what happened.

12 Q. So, in a colloquial way, your department,
13 you were the mining engineering guys; right?

14 A. To answer that question--and I will answer
15 your question--I have to share with you a
16 recollection.

17 In January, Ms. Chappuis said that all of
18 the officials must have a copy of all the Regulations
19 at hand--

20 (Overlapping interpretation and speakers.)

21 Q. My question was whether in your department
22 you were responsible for technical matters, and it was

1 mainly composed of mining engineers; right?

2 A. But they knew the rules, the regulations.
3 That's what I wanted to--I explained it to you. These
4 are not engineers that ignored the rules and the
5 regulations. They understood that, to apply it in
6 their Reports.

7 Q. And one of the responsibilities of the
8 Mining Promotion and Development Department was to
9 approve application regarding beneficiation
10 concessions from--yeah. Sorry. Let me rephrase that.

11 So, one of the responsibilities of the
12 Mining Promotion and Development Department was
13 approving the application regarding beneficiation
14 concessions from a technical perspective; right?

15 A. That is correct.

16 Q. And the legal--I call it the Legal
17 Department, the "Dirección Técnica," et cetera. They
18 would look at it from the legal perspective; right?

19 A. Yes. In a team as part of a process, and
20 not in isolation.

21 Q. Sure. All the decisions that you would
22 ultimately make, you would make as a team, the

1 technical part, the legal part, the fiscalización, and
2 ultimately the Directora as well; correct?

3 A. Yes, sir.

4 Q. So, let's talk about beneficiation
5 concessions. So, you mentioned already that, to
6 operate a Beneficiation Plant, you need a
7 beneficiation concession; right?

8 A. Yes, that's right.

9 Q. And let's say you have a mining company that
10 has already a plant, a beneficiation concession with
11 one plant, and now it decides to build a second plant.
12 There are two possibilities. The first possibility is
13 to ask for a separate beneficiation concession for the
14 second plant; right?

15 A. Yes, sir.

16 Q. And the second possibility is it could ask
17 for having the plant, the existing beneficiation
18 concession expanded to include the second plant in the
19 existing beneficiation concession; right?

20 A. You're correct.

21 Q. And you're--

22 A. You're doubly correct. Doubly correct

1 because, on the one hand, you have the two legal
2 alternatives that exist, and also you mentioned twice
3 that we are talking about a second plant. There were
4 two different plants: The Leaching Plant, and then
5 you twice said that we are talking about a second
6 plant, which is the flotation plant for Primary
7 Sulfides.

8 Q. There are some mining companies that have
9 built a second plant that requested a separate
10 beneficiation concession for the second plant.

11 And to give you an example, for instance,
12 Tintaya requested a separate beneficiation concession
13 for its Leaching Plant; right?

14 A. Also Cuajone and Southern, with Toquepala.
15 Southern with Cuajone and Southern with Toquepala.

16 Q. So, those companies have two separate
17 beneficiation concessions. Each has one plant in it;
18 right?

19 A. Yes.

20 Q. And in the case of Cerro Verde, Cerro Verde
21 requested that its Concentrator be incorporated in the
22 existing Beneficiation Concession; right?

1 A. Yes, sir.

2 Q. And if you have a common mining operation,
3 like a Mining Unit, would you agree that it makes more
4 sense adding the second plant that forms part of that
5 unit into the existing Beneficiation Concession rather
6 than having a separate beneficiation concession?

7 A. You're asking my opinion? Both options are
8 equally valid. As I said a moment ago, they are
9 legally valid, they are technically valid. They can
10 be done because the Regulation allows you to ask for a
11 new beneficiation concession, but it allows you also
12 to modify the existing beneficiation concession. It
13 doesn't restrict this. It can be a modification
14 related to tonnage, surface area or additional
15 installations. That may be the modification. So,
16 legally it is valid.

17 Now, who decides what is done? Well,
18 ultimately it is the investor.

19 Q. If you look at the Cerro Verde Beneficiation
20 Concession, that Beneficiation Concession, the DGM had
21 expanded that Beneficiation Concession several times
22 to include new investments; correct?

1 A. New facilities, and because of tonnage
2 issues as well, as I recall now. So, this coincides
3 with what I said a moment ago, the modification of the
4 beneficiation concession can be, first, because of an
5 expansion of capacity; number two, because of new
6 facilities, and if there are new facilities, well,
7 ultimately one has to broaden the surface area.

8 (Overlapping interpretation and speakers.)

9 Q. So, you're saying there are two parts of the
10 criteria that you have to take into account for the
11 beneficiation concession.

12 One is, I build a new plant, so I have to
13 expand the geographical area; correct?

14 A. Yes.

15 Q. And the second one is, I increase the
16 output, a new plant increases the output, so the
17 maximum output of the beneficiation concession, the
18 metric tons per day of that beneficiation concession,
19 is increased as well; right?

20 A. That's correct because let's recall what the
21 law says. The law grants the beneficiation concession
22 in connection with a tonnage. This is different to a

1 mining concession, which is granted on a surface area,
2 but the law has provided, and nobody discusses--has
3 objected to this or changed this--well, the
4 beneficiation concession is granted on the basis of
5 tonnage.

6 (Overlapping interpretation and speakers.)

7 Q. You mentioned that the Cerro Verde
8 Beneficiation Concession had previously been expanded.
9 Do you recall when that was the case?

10 A. Many times. It's happened many times. When
11 I looked at the digitalized copy of the file, I have
12 found changes in the Beneficiation Concession area
13 perhaps twice. Before I got to the Ministry, in
14 particular, in 2001 and possibly in 2003.

15 Q. So, let's--just one second.

16 Let's take a look at the approval of the
17 Beneficiation Concession. And that--the Report is in
18 Tab 7, Exhibit CE--476. Tab 9. Sorry. All the tabs
19 are updated since I printed out my outline.

20 We can see the document on the screen here.
21 Do you recognize that as the authorization for the
22 construction to modify the Concession of Cerro Verde

1 processing plant?

2 A. Yes, sir. It's signed by me.

3 Q. Okay. Let's take a look at that.

4 So, the Beneficiation Concession has a
5 title; right? It is called the "Cerro Verde
6 processing plant" in English, and in Spanish it is
7 called the "Planta de beneficio Cerro Verde."

8 You see it here in capital letters and
9 quotation marks?

10 A. Yes.

11 Q. And the authorization here is, if you look
12 at the second paragraph, was to expand the capacity
13 from 39,000 to 147,000 MT/d.

14 Do you see that?

15 A. 147,000. 147, sir.

16 Q. So, the original capacity of the Leaching
17 Plant was 39,000 metric tons; right?

18 A. That's correct.

19 Q. And then the Concentrator was 108,000
20 MT/d--yeah, per day?

21 A. Yes.

22 Q. And the overall amount was 100--the newly

1 expanded Concession had 147,000 MT/d; correct?

2 A. That is the two plants added together.

3 Q. And in your--in the geographical area, we
4 were also discussing the geographical area.

5 Do you recall where it is located?

6 Is it located like at the mining site of
7 Cerro Verde, or is the Concentrator located like
8 outside of the mining area?

9 A. They are separate. They are not on top of
10 one another in the same building. They are separate
11 facilities, they are separate plants, as you,
12 yourself, just mentioned. They are two processing
13 plants for beneficiation.

14 Q. But they were all located within the Cerro
15 Verde unit; right?

16 A. Physically, they are around in the vicinity
17 of the two open-pits that Cerro Verde has, to the
18 north. Let me see. To the north--the Leaching Plant
19 is to the north, and the pads were to the east, and
20 Primary Sulfides, which is the Concentrator, was to
21 the northwest with the tailings dam.

22 Q. So, if we look at the location of the Mining

1 Concession, the--would it be fair to say that the
2 Beneficiation Concession for most part was located on
3 top of the geographical area--it was located on top of
4 the geographical area of the Mining Concession?

5 A. Yes, but the overlap doesn't create any
6 problem because they are two different rights. The
7 right for a mining concession is different from the
8 right for a beneficiation concession, so there might
9 be overlap but there is no contradiction.

10 Q. I understood. I'm just talking about the
11 geographical location. A mining concession is a
12 mining concession; a beneficiation concession is a
13 beneficiation concession.

14 In your First Witness Statement, you tried
15 to distinguish between the two plants, and that is in
16 Paragraph 18 of your First Witness Statement. You
17 said--it's going to be on the screen in a moment.

18 In Paragraph 18, you said: "They were two
19 different plants in different locations with different
20 headquarters that processed minerals differently and
21 generated different products. Cerro Verde applied to
22 build a Concentrator in a new area as a new,

1 independent unit so that, once the Concentrator would
2 be installed, it would operate and process the
3 respective ore separately from the Leaching Plant."

4 Do you see that?

5 A. Yes, I do.

6 Q. Now, when you say--now when you say they
7 were in different locations, you mean they were not
8 located one on top of the other as would be
9 impossible, but they were located next to each other
10 within the same Mining Unit; right?

11 A. That's what I just said two minutes ago,
12 yes.

13 Q. And you distinguished in your Witness
14 Statement between the different processed minerals and
15 the different products, but the ore was all coming out
16 of the same pits; right?

17 A. And from the same deposit. In different
18 areas, insofar as the ore is exposed, then the
19 Planning Department decides what type of ore goes to
20 which plant. And it's sent separately to each of the
21 plants in order to carry out two separate independent
22 metallurgical processes.

1 Q. Well, you say in different areas, but there
2 wasn't one area of the mine where you could only mine
3 the Oxides and there was another area where you only
4 mined the Primary Sulfides. They were all--in the
5 same pit you had both oxides and
6 sulfides--right?--except that the deeper you get, the
7 more you would come to sulfides; right?

8 A. When I mention different areas, I'm
9 referring to the beneficiation installations. That is
10 what is written.

11 Now, if we look at the area of the pit, it
12 is easy to differentiate the areas where the oxide ore
13 is and where the sulfide ore is. They are not mixed.
14 They are not mixed together. They are separated.

15 Q. Well, let's look at the--perhaps it is
16 helpful if we look at a map of Cerro Verde, and we
17 have that in Tab 34, which is Claimant Exhibit 453.

18 That comes from Cerro Verde's August 2004
19 presentation that you mention in your Witness
20 Statement.

21 A. The tab number?

22 Q. It is 34. It doesn't show us the

1 geographical area of the Beneficiation Concession, but
2 it shows us the geographical area of the Mining
3 Concession. And it says "área concentradora"; that's
4 the place where the Concentrator is built; correct?

5 A. But in this image, you can clearly
6 differentiate. I don't know if you have a laser
7 pointer, I can explain to you where the sulfides
8 Concentrator is, the respective Tailings Dam, and the
9 leaching area. They are not overlap. There is no
10 overlap. They are separate.

11 Q. Of course, you can't build a Concentrator on
12 top of the leaching pad. They are separate, yes, but
13 they are all within the same mining area, aren't they?

14 And you would also agree with me that once
15 the ore is extracted from the pit, they are
16 transported by the same haulage trucks either to the
17 Leaching Plant or to the Concentrator?

18 A. It is decided at the pit, the decision is
19 made as to where the material is going. It could go
20 to the stockpile for the Concentrator or to the
21 leaching area. That's where the decision is made.

22 Q. By the way the ore is extracted for both out

1 of the pit, that distinguishes Cerro Verde from
2 Tintaya, for instance, where the Leaching Plant was
3 only processing stockpiled ore at that time; is that
4 right?

5 A. I don't really agree, technically speaking,
6 with what you have just said, Mr. Dietmar. The
7 deposits are very similar, and the work of a mining
8 engineer in an operation consists of identifying the
9 type of materials so as to send it to the appropriate
10 destination. So, I say this, and I must say it,
11 because in the February session perhaps there was some
12 confusion that all of the material was mixed together,
13 there was no way to separate it. But that's not how
14 it works. That is not how mining works. The
15 materials are separated, so much so that each shovel
16 has a specific material in front of it that loads
17 certain trucks that have a certain route and a certain
18 destination. So, one can clearly identify where each
19 type of material goes.

20 Q. Let me get back to Tintaya later. So, let's
21 focus on Cerro Verde. The operations also share the
22 same headquarters; right?

1 A. Yes.

2 Q. So, I think you have said in your First
3 Witness Statement that they had separate headquarters.

4 Do you want to correct that?

5 A. Could you show it to me so that I could
6 specify and explain please?

7 Q. So, you just--sorry, you just said they have
8 the same headquarters; right?

9 A. The offices--what are you referring to when
10 you say "headquarters"? The administrative offices,
11 the fields?

12 Q. Well, let's take the administrative offices.
13 So, the administrative offices at the mining site were
14 the same administrative offices for the Leaching Plant
15 and the Concentrator.

16 They did not have separate administrative
17 offices?

18 A. Personally I went to the site in September
19 of 2004, and I saw it and visited there for the first
20 time the facilities at Cerro Verde, and there was a
21 single building in which all the professionals were
22 working. That was 2004. I don't know if subsequently

1 other buildings were built or other offices. That, I
2 don't know.

3 Q. So, you would agree with me that the
4 operations formed a unit; right?

5 A. That is correct, yes.

6 Q. And, in fact--give me just one moment. In
7 fact, MINEM recognized that Cerro Verde--the
8 operations at Cerro Verde formed one unit; correct?

9 A. Well, they are in the same Mining
10 Concession, in the same Beneficiation Concession. I
11 don't recall any document that exclusively addresses
12 what you've just said, but it is understood.

13 Q. Right. I can show you an example, for
14 instance. It is Claimant Exhibit 584, which is in
15 Tab 34. Sorry, Tab 33. Do you know what the "Anuario
16 Minero Perú" is?

17 A. Yes, I do.

18 Q. Can you briefly explain what it is?

19 A. It is basically a summary, an Annual Report
20 on what has happened in the mining sector the previous
21 year, based on statistical information declared by the
22 companies in respect of investment, production, and

1 security.

2 Q. And that is prepared by MINEM; right?

3 A. That's right, yes.

4 Q. If you look at the last full paragraph from
5 the bottom here, we just have the Spanish, so I will
6 read it in Spanish so it's recorded in English, it
7 says: "Sociedad Minera Cerro Verde, with an
8 investment of 48 million in its EAU, Cerro Verde 1, 2,
9 3."

10 Can you see that?

11 A. Could you zoom out? I don't see the--to
12 provide the context and the date. I'm not saying what
13 is written here isn't valid, I just want to see the
14 context.

15 Q. It says 2009 here on the cover, and you were
16 not at MINEM. I just used it as an example, not--I'm
17 not saying that you drafted it or anything like that.

18 But it's a 2009 "anuario," as you can see
19 from the cover page?

20 A. Correct. Yes.

21 Q. And you have no reason to believe that MINEM
22 had a different view about the qualification of Cerro

1 Verde as an Economic Administrative Unit in 2009 than
2 it had in 2004, do you?

3 A. No, but let's remember that these texts,
4 these documents, since they are drawn up based on what
5 the titleholders declare, always have a summary
6 paragraph that is very concise, very brief that makes
7 mention in summary of what has happened in certain
8 companies.

9 Q. Okay. Let me--I know we only have--I'm
10 conscious we only have 15 minutes left, and I think
11 it's probably going to be unavoidable that I'm going
12 to divide a line of questioning into--interrupted by
13 the weekend, but I also don't want to say that we
14 should already break now. So, let's get started, and
15 then we can continue Monday.

16 Let me talk about what is known as the
17 "Roundtable Discussions," and you will know what we
18 mean with that.

19 Let me just start that--let's place
20 ourselves to 2006, that--the year 2006. Okay.

21 In that year, would you agree that Arequipa
22 politicians were complaining that Cerro Verde was

1 improperly benefiting from stability?

2 A. Mr. Dietmar, in my memory, the politicians
3 have always complained about everything in my country.
4 During my time at the Ministry, it was always like
5 that. They always went to complain. They weren't
6 always right. Generally, they weren't.

7 Q. But this was one of those instances, would
8 you agree with me, that Arequipa politicians were
9 particularly exercised about the fact that the
10 Ministry granted Cerro Verde their Reinvestment of
11 Profit Benefit, that, you know, for a short term
12 created a budget shortfall, even though later on the
13 investment would result in higher taxes, but for that
14 moment it created a shortfall of taxes for Arequipa.

15 Is that your recollection?

16 A. I remember a lot, that we were always
17 getting complaints and grievances and shouts from the
18 members of Congress, but we would explain what we had
19 done. We would explain to them that what we had done
20 was legal, even if they didn't like it, and they would
21 calm down.

22 I have lots of anecdotes about this in my

1 memory. I remember this. This is what I recall.

2 Q. So, sitting here today you don't recall
3 specifically that in Arequipa, in mid-2006,
4 politicians were particularly upset about Cerro Verde
5 getting their Reinvestment of Benefit Profit from
6 them? You don't recall that?

7 A. I told you that, generally speaking, I do.
8 Of course, I do.

9 Q. What you responded was a general view of
10 politicians, but I wanted to focus in particular now
11 on the year 2006 and the Arequipa politicians.

12 Now, you would agree that, in light of that
13 pressure, the Government then formed a Roundtable to
14 find a solution to the Claims of the politicians; is
15 that right?

16 A. Well, let me answer in two parts.

17 First, there have been pressures,
18 complaints, shouts, but MINEM never, ever changed its
19 position. Now, when I signed the Report approving, I
20 gave a favorable opinion on the reinvestment of Cerro
21 Verde. I had to go to Congress to defend my position,
22 and we never took one step backwards. We always

1 explained, and Mr. Isasi was extremely didactic in
2 explaining the legal issues, he would conduct a class.

3 Q. Mr. Tovar, we do want to advance. So,
4 please just answer my questions, and--so, that we can
5 still advance a little bit before 5:30.

6 So, those Roundtable Sessions, they were
7 organized in the--within the Congress--right?--the
8 Peruvian Congress?

9 A. Yes.

10 Q. And the first such Roundtable Session took
11 place on the 23rd of June 2006; right?

12 A. I recall that--yes, but before that there
13 were meetings and visits that I'd made to Congress in
14 2005, for example.

15 Q. Okay. But I'm talking now specifically
16 about the so-called "Roundtable Discussions" which
17 were organized by the Pro-Investment Commission in
18 Congress; right?

19 A. Yes.

20 Q. And the idea of those sessions was to bring
21 the Government, Cerro Verde, and the Arequipa
22 politicians at the table, and discuss the grieves of

1 the Arequipa politicians; right?

2 A. As members of the Executive Branch, we had
3 to sit very patiently to listen to all the complaints.
4 The Authorities, the Mayors are elected by the people,
5 and the public officials are not. So, we had to
6 listen.

7 Q. Mr. Tovar, please try to answer my questions
8 precisely and not with general statements.

9 Can you just answer my question, which was,
10 those sessions were meant to bring the Government,
11 Cerro Verde, and the Arequipa politicians together at
12 the table to discuss the grievances of the Arequipa
13 politicians.

14 Yes or no?

15 A. That is what I explained. Yes, sir.

16 Q. In your First Witness Statement, in
17 Paragraph 66, you said that in those sessions in
18 June 2006: "MINEM officials gave a presentation in
19 which they explained the tax regime applicable to
20 Cerro Verde's Projects and put forward the legal
21 reasons why MINEM found that a Company had to pay
22 Royalties in relation to the Concentrator."

1 Do you see that? That was Paragraph 66 of
2 your First Declaration.

3 A. Can you show it up on the screen. I see I
4 participated in those meetings. That paragraph?

5 Q. Well, your testimony in Paragraph 66 of your
6 First Statement was, that in "those sessions, MINEM
7 officials gave a presentation in which they explained
8 the tax regime applicable to Cerro Verde's Project,
9 and put forward the legal reasons why MINEM found that
10 the Company had to pay Royalties."

11 That's what you testified in Paragraph 66.

12 Do you see that?

13 A. Yes, but Paragraph 66 doesn't talk about the
14 roundtable in Congress--or, perhaps, I'm confused.

15 Q. We will--let me just tell. So, is--is your
16 recollection today that at the Roundtable Discussions,
17 MINEM gave a presentation in which they explained that
18 the Concentrator would not be covered by Stability
19 Guarantees?

20 A. That is correct, yes.

21 Q. And I think at the SMM Hearing, you told us
22 that that presentation was given by Mr. Isasi; right?

1 A. Yes.

2 Q. And how do you recall that the presentation
3 was given by Mr. Isasi?

4 A. Mr. Dietmar and Distinguished Members of the
5 Tribunal, one's memory is sometimes a series of
6 snapshots, and I remember that room. I arrived late.
7 I sat by the wall, and I remember that I was watching
8 from behind those who were sitting there. Well, I
9 clearly remember, Dr. Luis Carlos Rodrigo, who was
10 sitting to the right of Mr. Benavente, but I don't
11 recall having been seated making the presentation.

12 And on occasion of this arbitration, having
13 reviewed the documentation, including some of the
14 documents the lawyers gave me, I saw the printed
15 presentation, and I would generally bring the
16 presentations printed out, so as to be able to
17 distribute them to the attendees who asked for one.
18 And when I saw it printed out with two slides per
19 page, I recalled that that slide had the style, the
20 didactic style of presentation of Mr. Isasi.

21 Therefore, I concluded that it wasn't me who
22 made the presentation, but Mr. Felipe Isasi at that

1 meeting. And right thereafter, the printouts that I
2 took to the meeting--there should have been 10
3 printouts, were distributed at the end of the
4 presentation. And I also remember that Cerro Verde
5 made a presentation as well. I do remember that.

6 Q. So, let me understand whether I heard that
7 correctly. So, you looked at PowerPoint slides that
8 you found. You said those PowerPoint slides have the
9 style of Mr. Isasi, and from that you conclude that
10 Mr. Isasi must have given the presentation at the
11 meeting?

12 A. Yes, sir.

13 Q. You said you reviewed Mr. Isasi's First
14 Witness Statement before you signed your First Witness
15 Statement?

16 A. Emails, I discovered that reviewing emails,
17 and when I saw the date, which was 23 June of--well,
18 when the Roundtable was established. Well, here it
19 is, 23 June 2006. I was reviewing emails from those
20 dates, and there was the back and forth of the
21 versions that were reviewed with Felipe Isasi in order
22 to bring to the presentation that day.

1 Q. Mr. Tovar, you testified that before you
2 signed your First Witness Statement, you reviewed
3 Mr. Isasi's First Witness Statements. I will show you
4 now his First Witness Statement, Paragraph 65, that
5 you must have reviewed. "En primer lugar," in
6 Spanish, and the English is coming.

7 He said: "First place, I must point out
8 that although I know that those meetings took place, I
9 do not remember exactly what was discussed in each of
10 them. However, what Claimant's Witness asserts
11 regarding what allegedly happened in those meetings
12 makes no sense."

13 A. Which paragraph?

14 Q. 65 of the First Witness Statement.
15 Mr. Isasi, in his Witness Statement, did not recall
16 what happened at those meetings.

17 Do you see that?

18 A. Yes, I do.

19 Q. Mr. Isasi did not mention in his Witness
20 Statements that he gave a presentation at those
21 meetings.

22 Do you see that?

1 A. But let's not get confused. He doesn't say
2 that he didn't. He said that he didn't remember
3 making a presentation.

4 Q. So, Mr. Tovar, you see a PowerPoint, you
5 explain. You say the PowerPoint has the style of
6 Mr. Isasi. From that you conclude that Mr. Isasi must
7 have given a presentation, yet you review his Witness
8 Statement and the Witness Statement says, I do not
9 recall what happened at that meeting.

10 Yet, you testify in your Witness Statement
11 that it was Mr. Isasi--sorry, not in your Witness
12 Statement. You testified at the SMM Hearing that it
13 was Mr. Isasi who gave that presentation. Is that a
14 correct summary? And if not, can you tell me.

15 A. Mr. Dietmar, could you please repeat the
16 question? I got confused with your--what exactly your
17 question is.

18 Q. Okay. What I'm saying is, you look at the
19 PowerPoint to refresh your memory. You say the
20 PowerPoint has the style of Mr. Isasi. You conclude
21 from that, that Mr. Isasi must have given the
22 presentation at the Roundtable.

1 You then look at the Witness Statement of
2 Mr. Isasi, in which Mr. Isasi says, I do not recall
3 what happened at the meeting. Yet you write in your
4 Witness Statement--sorry, yet you testify at the SMM
5 Hearing that it was Mr. Isasi who gave that
6 presentation.

7 Is that an accurate summary of what you just
8 testified?

9 A. Mr. Dietmar, it is the same thing that I
10 just said right now, that I remember having been
11 seated at the rear, that it wasn't me who made the
12 presentation, it was Mr. Isasi. I took the printouts,
13 and I distributed them to a person or some persons who
14 had asked for copies, but I did not make the speech.

15 I was not the one seated at the microphone
16 making the presentation. It wasn't me, or I don't
17 remember it being me, because that sort of
18 presentation, as appears in the back and forth of
19 emails in the two to three previous days, were written
20 by Felipe Isasi. Isasi said, I'm going to add this
21 slide, I'm going to make an adjustment here. He was
22 the one who was going to make the presentation.

1 MR. PRAGER: Madam President, I'm conscious
2 of the time. I can make a break here and continue
3 then on Monday morning.

4 PRESIDENT HANEFELD: And do we have already
5 an estimate how much time you will need on Monday,
6 just so that we know when the other Witnesses need to
7 be available?

8 MR. PRAGER: Yeah. Not too much, because
9 obviously we are running against a clock. I really
10 would have to think about it over the weekend. But I
11 would say a maximum of two hours, but I will try to
12 have less. Certainly Ms. Padilla should be here by
13 10:00 a.m. or so.

14 PRESIDENT HANEFELD: Okay.

15 Any further issues to be addressed by
16 Claimant?

17 MR. PRAGER: No further issues from us,
18 other than to wish you a nice weekend.

19 PRESIDENT HANEFELD: Thank you.

20 From Respondent side?

21 MS. DURÁN: Nothing on our side. Have a
22 good weekend too.

1 PRESIDENT HANEFELD: Thank you. Yeah. Then
2 I take the opportunity on behalf of the Tribunal to
3 thank you very much for this week. It was a long
4 week, and we wish you all a nice weekend. And you are
5 released for today, and we will see you again on
6 Monday.

7 And I wish to thank also the Interpreters
8 and the Court Reporters. It was really impeccable
9 what we received. Thank you so much.

10 MR. PRAGER: Madam President, could you
11 please remind the Witness that he stays sequestered
12 over the weekend.

13 PRESIDENT HANEFELD: This is, again, firmly
14 understood.

15 THE WITNESS: Thank you to everybody. Thank
16 you.

17 (Whereupon, at 5:30 p.m., the Hearing was
18 adjourned until 9:30 a.m. the following day.)

CERTIFICATE OF REPORTER

I, Dawn K. Larson, RDR-CRR, Court Reporter, do hereby certify that the foregoing English-speaking proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the English-speaking proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.


Dawn K. Larson