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P R O C E E D I N G S

PRESIDENT HANEFELD: Good morning. Welcome to Day 8 of our Hearing.

Before we continue with the testimony of the Expert, Mr. Ralbovsky, are there any housekeeping issues from Claimant's or Respondent's side?

MR. PRAGER: No housekeeping issues for us. Thank you.

PRESIDENT HANEFELD: Thank you.

MS. HAWORTH McCANDLESS: No housekeeping issues for Respondent.

STEPHEN RALBOVSKY, RESPONDENT'S WITNESS, CALLED  
(Continuing)

PRESIDENT HANEFELD: Then, Mr. Prager, please continue--oh, no.

Please continue with your cross-examination.

MR. UKABIALA: Thank you, Madam President. Claimant doesn't have any further questions for the Expert at this time.

PRESIDENT HANEFELD: Okay. Any questions on redirect?

MS. HAWORTH McCANDLESS: No, Madam

1 President, no questions on redirect.

2 PRESIDENT HANEFELD: Do you have questions?

3 Do you have questions?

4 Then we may add just a couple of questions

5 from my end.

6 QUESTIONS FROM THE TRIBUNAL

7 PRESIDENT HANEFELD: The Claimant's Expert  
8 yesterday named the Stability Agreement "a short  
9 little agreement," and I understand you in your Expert  
10 are saying: "The key to the scope of the Agreement is  
11 the language in the Agreement itself," and you refer  
12 to an ICSID Case. It's in Exhibit RA-88. It's the  
13 case Aguaytia Energy v. Perú.

14 Can you explain why you think this is  
15 something and a Decision we should consider?

16 (Comments off microphone.)

17 (Stenographer clarification.)

18 THE WITNESS: Good morning. Aguaytia was a  
19 case involving Perú, and as I recall it was power  
20 transmission lines, and it was an arbitration very  
21 similar to this, and they had a stability agreement,  
22 and there was some action taken by Perú subsequent to

1 the Agreement.

2 I think it was some Most Favored Nation  
3 rules that Aguaytia thought they should come under  
4 because of their Stability Agreement, and the Tribunal  
5 held that that Stabilization Agreement, at that moment  
6 in time, froze things at that moment in time. It  
7 didn't provide any further future benefits.

8 So, that was the relationship I saw to this  
9 case, is that the Leaching Project is as of the date  
10 of the Feasibility Study and the Stability Agreement,  
11 and Claimant is coming along eight years later with  
12 new facts, a new project, and trying to relate it  
13 back. And that was the similarity that I saw.

14 PRESIDENT HANEFELD: That was the  
15 similarity, but it has nothing to do with the Mining  
16 Law; right?

17 THE WITNESS: No, ma'am. It was a power  
18 transmission case, yes.

19 PRESIDENT HANEFELD: Okay. Then there was  
20 another statement of Mr. Otto yesterday on which I  
21 would like to have your comments.

22 He talked yesterday about a worldwide

1 presumption that stability agreements cover all  
2 investments in a Mining Unit. And my question is--and  
3 I think you made reference to certain jurisdictions in  
4 your Second Report, in particular Argentina,  
5 Indonesia, and Mongolia.

6 Do you know of other jurisdictions where the  
7 Mining Laws provide for a mechanism restricting the  
8 scope of stability agreements to individual Investment  
9 Projects instead of the entire mining concession?

10 And I really want to ask you as an Expert,  
11 from your own experience during your time as PwC's  
12 Global Mining Tax Leader. So, I would like you to be  
13 very specific on that.

14 THE WITNESS: Sure. I don't--I've not had  
15 to face this issue in a stability agreement, either.  
16 I'm familiar with the mechanics and the need to  
17 separate things, and I looked at all the countries  
18 that Mr. Otto cited and reviewed everything he  
19 provided, and there are very clear examples in there  
20 where it talks about: "This is limited by what's in  
21 the original Agreement or what's in the Feasibility  
22 Study."

1           None of those were a situation where  
2 something started and then something completely out of  
3 the blue came later. They were all contemplated at  
4 the beginning and included at the beginning.

5           PRESIDENT HANEFELD: But--so, if I  
6 understand you correctly, this is nothing that you  
7 worked on during your time at PwC?

8           THE WITNESS: I've not had to face this in a  
9 stability agreement, either.

10          PRESIDENT HANEFELD: Okay. And then my  
11 final question, it relates to Slide 12 of your  
12 presentation that you gave yesterday in which you  
13 showed the different product values over time and  
14 wanted to alert us as to the economical impact that  
15 the Concentrator had.

16          And I just want to better understand: Did  
17 you, in preparing your Report, also study the  
18 Claimant's economic expectations at the time,  
19 including the 2002 Feasibility Study, or was it not  
20 part of your Expert Report?

21          THE WITNESS: Could I first get Slide 12 up  
22 to make sure we're talking about the same thing?

1           PRESIDENT HANEFELD: Yes, sure.

2           THE WITNESS: Gavin, can you help me out,  
3 please?

4           PRESIDENT HANEFELD: The three different  
5 colors, red, black, and green.

6           THE WITNESS: Okay. I know where we are  
7 now.

8           All of those numbers came from Claimant's  
9 Feasibility Studies. The '96--as you see right--you  
10 know, the title, "Different Products," and then  
11 saleable copper for the '96 and '04 Feasibility  
12 Studies. This is all data out of those Feasibility  
13 Studies.

14          PRESIDENT HANEFELD: And is it the data  
15 regarding the 2007 prices that came from the 2004  
16 Feasibility Study, or did you also study the 2002  
17 Pre-Feasibility Study?

18          THE WITNESS: No. I did not. And the 2007,  
19 those green lines are my math, because the Feasibility  
20 Study was done in '04 when it was \$0.90 a pound. But  
21 I realized that, as I said yesterday, when it came  
22 time for them to complete the tax returns, to

1 actually, okay, we're going to do this, that was the  
2 price of copper.

3           So, that is my math. What I got from the  
4 Feasibility Studies is the volumes of saleable copper,  
5 because that's what the engineers were doing, the  
6 prices of \$0.90. So, \$3.28 was, I believe--I took  
7 that--it's footnoted in my figures, but I believe it  
8 was Freeport's average copper price for the year of  
9 2007.

10           And so, I'm sorry, I did not relate it back  
11 to the pre-feas.

12           PRESIDENT HANEFELD: Okay. Thank you very  
13 much. This is understood.

14           ARBITRATOR TAWIL: Can I make a question?

15           PRESIDENT HANEFELD: Yes, please.

16           ARBITRATOR TAWIL: Why is the issue of price  
17 relevant for us in interpreting the Stability Clause?  
18 Does it have any relevance? Is it different, the  
19 stability, if the price of copper has increased or  
20 decreased?

21           THE WITNESS: The relevance to me as a tax  
22 advisor and someone who helps people develop

1 strategies and put things on returns is, when you're  
2 actually completing that return, you're dealing with  
3 the facts at that moment. So, my--does that help?

4 ARBITRATOR TAWIL: I would like you to  
5 answer my question.

6 I understand why it's relevant for you as  
7 tax advisor. The question is: Is it relevant for us  
8 in deciding the scope of the Stability Agreement?

9 THE WITNESS: My primary point for you as  
10 the Tribunal is to help you understand that--the real  
11 value of this, that Claimant--and I don't mean this as  
12 a wise guy--that Claimant wants to get under the '98  
13 Stability Agreement through the back door: Let's just  
14 put it in the Beneficiation Concession instead of  
15 going and asking for a new Stability Agreement in '04,  
16 that you look at the values of what was included in  
17 the Stability Agreement based on the Feasibility Study  
18 of '96 and the Agreement of '98, and what actually it  
19 turned out to be.

20 ARBITRATOR TAWIL: Understood.

21 Now, as a Tax Expert, is it relevant for us  
22 in determining the Tax Stability Agreement the price

1 of copper?

2 THE WITNESS: I think it is. I think all of  
3 these things are taken in their totality as to--you're  
4 being asked to allow Claimant to take something they  
5 specifically disclaimed in '96 and '98 and weren't  
6 able to prove up until years later and say that it's  
7 included. And I think the magnitude of that is  
8 something that anyone should be looking at if you're  
9 trying to consider it.

10 So, I very much do.

11 ARBITRATOR TAWIL: Thank you.

12 PRESIDENT HANEFELD: Any follow-up questions  
13 by the Parties?

14 MR. UKABIALA: Just a couple very brief  
15 follow-up questions, Madam President.

16 RECROSS-EXAMINATION

17 BY MR. UKABIALA:

18 Q. Mr. Ralbovsky, I wanted to ask you about the  
19 Aguaytia Case v. Perú case you were just discussing  
20 with the President. Are you aware that the stability  
21 agreement in that case was a legal stability  
22 agreement, not a mining stability agreement?

1           A.    Could we pull that up where I had it in my  
2 Report, please?

3           Q.    Well, I mean, you were just talking about it  
4 without having it in your Report.  Can you--

5           A.    You've asked me a different question.  Could  
6 I see it, please?

7           Q.    Sure.

8                   (Comments off microphone.)

9                   BY MR. UKABIALA:

10          Q.    It's in your Report, which is in your small  
11 binder there, if you'd like to open it up.

12          A.    Oh, okay.  What's the paragraph, please?

13                   Sorry.  It was the Second Report; correct?

14          Q.    It's your First Report.

15          A.    Oh, okay.

16          Q.    It's Paragraph 43 of your First Report.

17          A.    Ask your--your question is--

18          Q.    Do you understand that the stability  
19 agreement in that case was a legal stability  
20 agreement, not a mining stability agreement?

21          A.    I honestly don't recall.  I read it at the  
22 time--

1 (Overlapping speakers.)

2 A. Sorry.

3 Q. I'm sorry.

4 A. I read it at the time. I don't recall right  
5 now.

6 Q. Okay. And do you realize that legal  
7 stability agreements are governed by a completely  
8 different legal regime from mining stability  
9 agreements in Perú?

10 A. I believe the principle is the same, and  
11 that's why I cited it, that it's limited to the  
12 Agreement.

13 Q. Thank you.

14 MR. UKABIALA: No further questions.

15 MS. HAWORTH McCANDLESS: I have no follow-up  
16 on that. I think he answered that specifically.

17 PRESIDENT HANEFELD: Thank you very much.  
18 This concludes your testimony. You are released as an  
19 Expert. Have a good day.

20 THE WITNESS: Thank you very much.

21 (Witness steps down.)

22 PRESIDENT HANEFELD: And we can then right

1 away continue with Ms. Vega.

2 MS. HAWORTH McCANDLESS: We just need a  
3 couple of minutes to reorganize ourselves.

4 PRESIDENT HANEFELD: Sure.

5 (Pause.)

6 (Comments off microphone.)

7 MARÍA DEL CARMEN VEGA, CLAIMANT'S WITNESS, CALLED

8 PRESIDENT HANEFELD: Then let us continue.

9 Welcome, Ms. Vega. You already know us.  
10 You have seen us in action for a couple of days, so I  
11 do not need to introduce ourselves.

12 Please be so kind to read out the  
13 Declaration.

14 THE WITNESS: I solemnly declare, upon my  
15 honor and conscience, that my statement will be in  
16 accordance with my sincere belief.

17 PRESIDENT HANEFELD: Thank you.

18 Do you have your Expert Reports, CER-5 and  
19 10, in front of you and can confirm that these are  
20 yours and they are correct and do not need to be  
21 amended?

22 THE WITNESS: Yes, Madam President.

1 I take this opportunity, because I would  
2 like to make a small correction in my First Report at  
3 Paragraph 29. There is a conjunction that says "or,"  
4 and it should say "and."

5 PRESIDENT HANEFELD: Thank you. This is  
6 noted. And you have a presentation?

7 THE WITNESS: Yes.

8 PRESIDENT HANEFELD: So, please go ahead.

9 THE WITNESS: Thank you.

10 DIRECT PRESENTATION

11 THE WITNESS: Good morning, Madam President.  
12 Good morning, distinguished Members. My name is María  
13 del Carmen Vega. I am an attorney with more than  
14 30 years' experience in foreign investment, stability,  
15 and Corporate Law.

16 The Claimant's attorneys asked me to draw up  
17 an Expert Report on the scope of stability under the  
18 General Law on Mining and its Regulation. This was  
19 because I am the author of the Single Text of the  
20 Mining Law, the Single Unified Text, and I worked on  
21 the reforms to the whole package of laws that were  
22 undertaken in the 1990s to promote investment.

1 I'm going to begin my presentation now.

2 My presentation will address the scope of  
3 stability agreements under the Mining Law and its  
4 Regulations. I've divided my presentation into four  
5 parts. In the first, I'm going to address the  
6 background and the history that preceded the mining  
7 reform. In the second part, I'm going to discuss the  
8 scope of stability agreements under the Mining Law and  
9 its Regulations. In the third section, I'm going to  
10 talk about the application of stability agreements by  
11 the Ministry of Energy and Mines to Mining Units, and  
12 finally I'm going to refer to SUNAT's application of  
13 stability agreements, the Tax Authority, to Mining  
14 Units.

15 As regards history and background, as you  
16 know, the law that amended the Mining Law in force up  
17 until then, the past law dating to 1981, took place in  
18 1991. In that decade--at the beginning of that  
19 decade, Perú was experiencing one of the worst crises  
20 we have had thus far, not only an economic crisis, as  
21 you can see, with terrible macroeconomic indices,  
22 inflation over 7,500 percent, contraction of

1 production, but also a political and social crisis due  
2 to terrorist attacks and terrorist groups which, after  
3 destroying the country's infrastructure, were moving  
4 closer and closer to the cities. There was a great  
5 deal of corruption. The environment was not at all  
6 favorable for investment.

7           What the new Government did was to undertake  
8 first an economic adjustment program in order to turn  
9 these disastrous economic figures around, and then a  
10 program of structural reforms, which were carried out  
11 through a number of laws, more than 100 laws that were  
12 adopted to promote investment, the objective of which  
13 was for private investment to be the driving force of  
14 development.

15           Equal treatment for national and foreign  
16 investment was guaranteed as among the activities of  
17 the State when it engaged in business vis-à-vis  
18 private parties. It was defined that the State's role  
19 in the economy was subsidiary, and, therefore, a very  
20 aggressive program for privatization of State  
21 enterprises was pursued.

22           And, finally, a number of principles and

1 specific rules for administrative simplification were  
2 adopted. It's in this context that Legislative  
3 Decree 708, the law for promotion of mining  
4 investment, was adopted, and that introduced several  
5 major reforms to the then-in force General Law on  
6 Mining from 10 years earlier.

7           In this law, it was decreed that promoting  
8 investment in mining was of national interest. A  
9 number of incentives were put in place for mining  
10 investment, and a number of principles were enshrined,  
11 which I mentioned, for administrative simplification.

12           On this point, I would like to note that  
13 what was sought with the administrative simplification  
14 measures was first to curtail bureaucracy; second, to  
15 reduce discretion and eliminate corruption. What for?  
16 So that there could be predictability, so that there  
17 could be legal certainty in terms of what's being  
18 applied, and equal treatment for all regulated  
19 parties.

20           What was sought was for public officials to  
21 not have decision-making capability in respect of  
22 certain matters so as to decide one thing in one case

1 and something else in a different case. So, the idea  
2 was to do away with that, and at the same time, many  
3 procedures were simplified and standardized, and, in  
4 addition, form contracts or Adhesion Contracts were  
5 adopted so that everything could be foreseen and  
6 nothing could be left up to the discretion of public  
7 officials.

8           Now, as regards the scope of stability under  
9 the General Law on Mining, well, for me, there are  
10 five Articles that are relevant for purposes of  
11 determining the scope of stability. Two are set forth  
12 in the Law, and three in the Regulation.

13           But before explaining these, I would like to  
14 explain a few general aspects of the General Mining  
15 Law.

16           The General Mining Law establishes that  
17 mining is an activity regulated by the State. It is  
18 the State that decides what are mining activities, and  
19 the General Mining Law establishes that mining  
20 activities--exploration, exploitation, beneficiation,  
21 processing of ore--is done through the concession  
22 system. That's the basic rule.

1           Now, in terms of the scope of mining  
2 stability, the first relevant Article is Article 82.  
3 This Article came from the previous law, which  
4 referred in the first paragraph to the requirement of  
5 a minimum production capacity to be able to sign a  
6 stability agreement in the case of large-scale mining,  
7 but one of the jobs that I had to carry out in  
8 systematizing the Single Unified Text was to adapt the  
9 changes that had been made because, under the previous  
10 law, these contracts of large-scale mining did not  
11 have an established term. But the new law  
12 established, among the various measures to avoid  
13 discretion and all, that it's a fixed term for all  
14 large-scale mining which is 15 years, independent of  
15 the amount of production capacity. Once one attained  
16 the minimal amount, all stability agreements had a  
17 15-year term.

18           So, this Article is interesting because from  
19 the outset it sets forth what stability agreements  
20 seek, which is that they are done to promote  
21 investment and to facilitate financing of Mining  
22 Projects. Here we see that "Mining Project" is used

1 as a synonym for "Economic-Administrative Unit,"  
2 "Mining Unit." And at the second paragraph, which was  
3 also in the original law, the previous law, because  
4 that is the one that defines the scope of the  
5 stability of these agreements, well, I also had to  
6 reorganize there, because it was just loose or  
7 floating about in the previous law because of the  
8 changes that had been introduced. And I had a  
9 specific meeting with the Vice Minister of Mines in  
10 order to determine where it would be best to place  
11 this paragraph which was an Article of the previous  
12 law.

13           What the second paragraph says--and here we  
14 can see it better--is that, for the purposes of mining  
15 stability agreements, the term  
16 "Economic-Administrative Unit" means the group of  
17 mining concessions located within the limits set forth  
18 in Article 44 of this law--I'll explain this  
19 later--plus the beneficiation plants or beneficiation  
20 concessions and the other assets that constitute a  
21 single Production Unit.

22           This is the basic principle, that these

1 mining concessions, these processing concessions and  
2 other assets, constitute a single production unit.

3 Why? Because they share supply, administration, and  
4 services, and what is interesting is that in each  
5 case, it must be qualified by the DGM.

6           There are three things to emphasize: The  
7 question of the Economic-Administrative Unit of  
8 Article 82 is a broad concept that needs to be  
9 qualified. It doesn't need a resolution of approval  
10 from the DGM, as I'm going to explain. Next,  
11 comparing it with another similar concept but which  
12 has a different purpose and which allows and  
13 guarantees that in these Production Units, one be able  
14 to make investments continuously, which is how mining  
15 works.

16           As I said, there's a reference here in the  
17 definition to mining concessions that are indicated  
18 within the limits set forth in Article 44. Why?  
19 Because under the General Mining Law, there -is  
20 another type of Economic-Administrative Unit, which  
21 are under a different title and which are for  
22 different purposes and which only allow one to group

1 mining concessions, as opposed to the broad concept of  
2 Economic-Administrative Unit for purposes of  
3 stability, which includes both mining concessions and  
4 beneficiation concessions.

5           In this case, the Article 44 EAU is simply a  
6 provision that makes it possible to consolidate  
7 minimal amounts of production so as to be able to  
8 comply with requirements set out in the law.

9           Now, in this case, one does need have a  
10 resolution of approval from the DGM, in contrast to  
11 the EAU, under Article 82, which only requires a  
12 qualification in each case. This "in each case" is  
13 the respective agreement, as we'll see.

14           Let's continue with the second Article. The  
15 second Article, this Article was a new one, part of  
16 the reform. It's been mentioned on other occasions,  
17 but it includes as a requirement in addition to  
18 production capacity that one comply with a minimum  
19 investment amount in order to access stability. And  
20 then in the first paragraphs, it refers to the minimum  
21 amounts of investment that must be reached. The  
22 relevant paragraph for determining the scope is the

1 fourth paragraph, which says that the effect of the  
2 contractual benefit--that is to say, of the Stability  
3 Guarantee, shall apply exclusively to the activities  
4 of the mining company in whose favor the investment is  
5 made.

6 Now, this "exclusively" refers to activities  
7 of the mining company. Now, which activities? The  
8 activities which we've said are provided for in the  
9 law, which are exploration, exploitation,  
10 beneficiation, which are carried out through the  
11 Concession system, as I've indicated.

12 But let's see how later the Regulation sets  
13 this forth in greater detail. Now, I would just note  
14 that "in favor of which the investment is made," well,  
15 at least in Spanish, it is striking how it is worded,  
16 but as has been mentioned, I believe one of the  
17 Witnesses for Perú and one of the Witnesses for the  
18 Claimant as well--well, the explanation is that, up  
19 until that time, the State engaged in business  
20 activity in a big way in mining, and it did so through  
21 a mining company conglomerate. So, there are  
22 different holding companies that would invest in the

1 different units, and the idea was to make it clear  
2 that this mining company to which reference is made  
3 and -in whose concessions the stability falls into are  
4 the ones that directly receive the qualified  
5 investment. And nothing else, just that company.

6 A year after the Single Unified Text went  
7 into force, the Regulations were adopted, and this is  
8 the Regulations on Mining Stability, and it implements  
9 the scope of Stability Guarantees.

10 This Regulation reflects the understanding  
11 at the time regarding the scope of stability. It has  
12 been in force for almost 30 years without undergoing  
13 substantial amendments. In 2019 it was amended in  
14 light of the change to the Mining Law that took place  
15 in 2014 and which incorporated Perú's restrictive  
16 position regarding the scope of stability. And, as I  
17 said, it develops the law and it expressly defines the  
18 mining activities that enjoy stability.

19 There are three relevant Articles. The  
20 first is Article 1 and it says textually that tax,  
21 exchange rate, and administrative stability set out in  
22 the General Mining Law are the guarantees of juridical

1 security that are granted to the Mining Titleholders  
2 for carrying out their activities. Let's see how this  
3 is set forth in the second Article with greater  
4 emphasis.

5 Article 2 says that the provisions of the  
6 Stability Regime apply as of right to all mining  
7 activity titleholders, who are defined as the natural  
8 or legal persons who perform mining activities, and  
9 there it says that specifically, stability is given to  
10 the titleholders who perform mining activities in a  
11 concession or in concessions grouped in an  
12 Economic-Administrative Unit, so long as they enter  
13 into a stability agreement for 10- or 15-year term,  
14 complying with the requirements set out in the law,  
15 obviously.

16 The interesting thing here is the last  
17 paragraph of this Article, Article 2, that was not  
18 modified--this is the original Article in the  
19 Regulations--and that it says when "When the natural  
20 or legal person is the titleholder of several  
21 concessions or Economic-Administrative Units, the  
22 qualification will only take effect for those

1 concessions or units that are supported by the  
2 declarations or by the agreement referred to in this  
3 Article." That is why at Clause 3 in the model  
4 contracts, model agreements, in Exhibit 1, you see  
5 which concessions or Mining Units are stabilized.

6 Lastly--

7 ARBITRATOR CREMADES: Could you please  
8 repeat something you said? What is the reason for the  
9 reform in 2019 of the Regulations?

10 THE WITNESS: Well, as you know, the General  
11 Mining Law in 2014, when all of the SUNAT Assessments  
12 had been made, well, that was reformed. It was  
13 amended to introduce some amendments that had to do  
14 with the scope of stabilization contracts for mining.  
15 As a consequence of this provision, that reflects the  
16 restrictive position adopted by the State, years  
17 later, a regulation was enacted to make it operational  
18 and this is the Regulation that reflects those changes  
19 that had taken place.

20 ARBITRATOR CREMADES: Thank you.

21 THE WITNESS: As I said, the last Article is  
22 Article 22. It has been cited by a number of Experts

1 and Witnesses from both Parties. This Article says  
2 that contractual guarantees shall benefits the mining  
3 activity titleholder exclusively for the investments  
4 that it makes in the concessions or  
5 Economic-Administrative Units. It says this very  
6 clearly. The ones that enjoy stability are the  
7 investments made in the concessions or  
8 Economic-Administrative Units.

9           As we have seen, the Economic-Administrative  
10 Units are a broad concept and it is provided in  
11 Article 82 and an EAU is understood as a Production  
12 Unit. The second paragraph is very important, and I  
13 will cite it later in the examples I will provide for  
14 SUNAT and the DGM as well because it says that to  
15 determine the results of its operations, the mining  
16 activity titleholder that has other concessions or  
17 Economic-Administrative Units--that is to say,  
18 others--that is to say, others different from the ones  
19 that are stabilized, only in that case it shall keep  
20 independent accounts and reflect them in separate  
21 earning statements.

22           The only reason is for other concessions or

1 Economic-Administrative Units to exist that are  
2 different from the ones that are stabilized. It  
3 doesn't say another project. It just says: "Other  
4 concessions or Economic-Administrative Units."

5 I will now talk about the MINEM's  
6 application of stability agreements to Mining Units.

7 It's not working.

8 I first wanted to establish clearly that  
9 functions of the DGM, which is the Agency of the MINEM  
10 that is the most relevant for stability purposes. The  
11 DGM is responsible for supervising the different  
12 agencies--for example, Mining Regulation, Audit,  
13 Mining Promotion and Development-. Within the powers  
14 that the law grants to the DGM , there is the  
15 authority to grant titles of beneficiation, mining  
16 transportation, and general labor concessions, and  
17 also their extensions; to approve the  
18 Technical-Economic Feasibility Study that the mining  
19 company has to submit to qualify for a stability  
20 agreement; and the last one is very important, to  
21 ensure compliance with Tax stability agreements.

22 Let me emphasize this. The functions of the

1 DGM are not exhausted by the simple approval of the  
2 Technical-Economic Feasibility Study. No. This has  
3 to exist during the whole life of the Stability  
4 Agreement. Let us now look how is it that, in  
5 practice, the DGM exercises its authority to make sure  
6 that there is compliance with the stabilization  
7 agreement. The model contract establishes in Clause 3  
8 the scope, and it sends to Exhibit 1 in connection  
9 with the concessions that are part of the Mining Unit  
10 and that are stabilized.

11           The second paragraph of Clause 3 of the  
12 model contract says that new mining rights may be  
13 incorporated in these EAU that are stabilized, and for  
14 that, you need the approval of the DGM.

15           Let's look at a case here where a mining  
16 company that has a stabilization agreement that was  
17 signed and a Mining Unit that was stabilized, the  
18 Parcoy Unit that is made up by the beneficiation  
19 concession and the mining concessions asks that--under  
20 Paragraph 2 of this model contract, it asks for the  
21 incorporation of new mining rights to its Stability  
22 Agreement.

1           The interesting thing is here that the  
2 Mining Council--this is the second instance here,  
3 which is the agency of the Ministry in charge of  
4 deciding in last administrative instance resolutions  
5 that come from the DGM and other agencies, well, I was  
6 saying it is interesting because what the Mining  
7 Council says is that the concessions in the Parcoy EAU  
8 and the Parcoy Plant beneficiation concession are  
9 included in the Stability Agreement. So, it shows  
10 that stability includes the mining and beneficiation  
11 concessions that are part of the unit, and they say  
12 "Project Parcoy" here, but it is then used as a  
13 synonym for Parcoy Economic-Administrative Unit.

14           Why must the Mining Council issue a decision?  
15 Because this request by the mining company to  
16 incorporate new rights to the Stability Agreement will  
17 have implications since what the mining activity  
18 titleholder wanted was to extend the stability  
19 benefits to the new mining rights, and that's  
20 important.

21           The second case has to do with a 2003 case  
22 that the DGM addressed, in which a mining company that

1 already had a stabilization agreement that had been  
2 signed, and -that had stabilized its mining concession  
3 and beneficiation concessions, well, that company  
4 asked for a new stability agreement for the  
5 construction of a Leaching Plant in a different  
6 beneficiation concession, different from the one  
7 stabilized under the other contract. So, they were  
8 going to process ore that was already accumulated.

9           So, it asks that the mining and  
10 beneficiation concessions -that unit- is incorporated  
11 into the new stability agreement that was going to be  
12 signed. What the DGM says at the time when deciding  
13 this, that Article 82, Article 82 that includes a  
14 broad concept of "EAU" understood as a Production  
15 Unit, defines for purposes of the Stability Agreement  
16 what is meant by "UEA"--that is to say, it is the  
17 group of concessions included within such limits, and  
18 it is recognizing that, for purposes of stability,  
19 this definition departs from the classic definition of  
20 EAU, which refers to grouped mining concessions;  
21 whereas, for stability agreements, they do not  
22 necessarily have to be grouped together. Also, it

1 says that these units, these Mining Units, these  
2 Production Units may be made up of beneficiation  
3 plants, or they may stand alone, and this is  
4 consistent with Article 83.

5           It considers that, in itself, a  
6 beneficiation plant may also be a Production Unit, as  
7 in this case, in which they were treating ore that was  
8 accumulated but there was going to be no production.  
9 So, the new beneficiation plant is, in and of itself,  
10 a different Production Unit. And since this is a  
11 different Production Unit and the other one was a  
12 separate Production Unit, each one has to have its own  
13 stability agreement and thus the results, financially,  
14 have to be separated as well.

15           The Mining Council knows and has to decide  
16 administratively all these requests for review, and it  
17 also standardizes jurisprudence regarding mining  
18 issues.

19           I'm going to make reference as well to  
20 Sociedad Minera Cerro Verde. As you know, Sociedad  
21 Minera Cerro Verde signed in 1998 a Stabilization  
22 Agreement under which the Mining Unit of Cerro Verde

1 was stabilized, and this was made up of Cerro Verde 1,  
2 2, and 3 and the Beneficiation Plant of Cerro Verde.  
3 It signed the Stability Agreement, and in Exhibit 1  
4 the DGM qualified that these two concessions made up a  
5 Mining Unit, and in 2001 Cerro Verde asked the DGM an  
6 extension of its Beneficiation Concession because  
7 there was an increase in the number of hectares and  
8 also in the production capacity.

9           After looking at the file, the DGM  
10 considered that the requirements were met, and  
11 consequently, the extension or expansion was granted.  
12 Then, Cerro Verde, on that basis, made new  
13 investments, new investments that were not provided  
14 for in the Feasibility Study.

15           What happened then? SUNAT made no  
16 objections and it considered that they were included  
17 in the Stability Agreement. Then in 2004 Cerro Verde  
18 submitted a new request to the DGM to extend or expand  
19 the Concession because it was going to build a  
20 Concentrator inside the same Beneficiation Concession,  
21 which along with the Mining Concession made up the  
22 Cerro Verde Mining Unit.

1           Why? Because, like before, there would be  
2 an increase in the number of hectares and production  
3 capacity. So, in this case, likewise, the DGM looked  
4 at the file, found everything in order and provided  
5 the authorization, with which Cerro Verde started the  
6 construction of the plant, but in this case -as we  
7 know- SUNAT adopted a position that was completely  
8 different from the position it had before, despite the  
9 fact that the plant was built inside the same  
10 Beneficiation Concession that was covered by the  
11 Stabilization Agreement.

12           Lastly, I'm going to provide a practical  
13 example of the application of stability agreements by  
14 SUNAT to Mining Units. I'm going to talk about Milpo.  
15 I think this was mentioned here, as well.

16           Milpo had three Mining Units: Cerro Lindo,  
17 El Porvenir, and Chapi that was not in production.  
18 Two of the companies had stability agreements, and  
19 we're going to see what happened.

20           In the Fiscal Year 2003, there was an audit  
21 conducted, and as a result of it, in 2005 the Tax  
22 Administration established a number of objections and

1 then issued an assessment, known as "acotación," and a  
2 number of objections were made, and the Tax Authority,  
3 as you can see, made a distinction when determining  
4 the income tax by Mining Unit.

5           If you look at the left where it says "Unit  
6 El Porvenir," it applied a Stability Regime with a  
7 different rate that was different. And then it says  
8 here "Other Units." Why? Because it is doing what  
9 Article 22 of the Regulations obliged it to do. When  
10 a mining company had other units, that mining company  
11 had to make this determination for each one of the  
12 Units.

13           Here, the Tax Authority calls Unidad  
14 El Porvenir as "El Porvenir Unit," and you see here  
15 there is footnote 24, and below you can see that it  
16 calls it "El Porvenir Unit" and it says "This Mining  
17 Unit"-they are used as synonyms- "has a Tax Stability  
18 Agreement entered into with the Peruvian State and the  
19 income tax was stabilized to the legal framework of  
20 the 2001 fiscal year and the rate of 20 percent was  
21 applied, which was the current rate for that fiscal  
22 year."

1           What we see clearly is that they have  
2 separated out each Unit at the time that Unit was  
3 stabilized vis-à-vis the others. Cerro Lindo also had  
4 a stability agreement, but it's not there. Why?  
5 Because the Agreement was not in force at that time.

6           And the second thing is another case that  
7 involves Milpo, but for the 2010 Fiscal Year, and here  
8 SUNAT decided a first-level claim, and we can see  
9 again how, when deciding the case and evaluating the  
10 case, SUNAT made a distinction and separated out each  
11 one of the Mining Units. Cerro Lindo at that time had  
12 the Stability Agreement in force and, well, we can see  
13 that the name of these Mining Units is "EAU  
14 El Porvenir,," the broad concept under Article 82, and  
15 then there's a footnote that says "the application of  
16 the different rates reflects the provisions of the  
17 stability agreements." So, at the time of the  
18 assessment under Article 22 that regulates Article 82  
19 of the law, a determination must be made that is  
20 independent for each one of the Mining Units because  
21 each Mining Unit has its own stability agreement.

22           And that is the end of my presentation.

1 Thank you.

2 PRESIDENT HANEFELD: Thank you very much.

3 So, we start with the cross-examination.

4 MS. DURÁN: Thank you, Madam President. And

5 with your permission, I'll turn to Spanish.

6 CROSS-EXAMINATION

7 BY MS. DURÁN:

8 Q. Good morning, Ms. Vega.

9 A. Good morning.

10 Q. It's a pleasure to see you again.

11 A. Likewise.

12 Q. Of course, we've done this before. Just to  
13 remind you that there is simultaneous interpretation  
14 and also there are Stenographers. Please speak  
15 slowly, this will behoove and you me, and there has to  
16 be a pause between question and answer so that the  
17 translation can catch up with us.

18 I'm sure Counsel told you, we are very short  
19 on time, and I'm going to ask you to please answer the  
20 questions that I ask you directly and concisely.

21 If there is something that you would like to  
22 explain, you can do so later during the recross.

1 Agreed?

2 A. Agreed.

3 Q. You said in your First Report that you have  
4 30 years' experience as a lawyer?

5 A. A little more; 32, actually.

6 Q. Okay. Yes. You wrote that two years ago.  
7 Yes, I understand. Okay. 32 years.

8 And 17 out of those 32 years you spent in  
9 the Rodrigo Law Firm, which is the Peruvian law firm  
10 that represents Freeport and Cerro Verde; correct?

11 A. Correct.

12 Q. So, half of your career you spent in the  
13 Rodrigo Law Firm; right?

14 A. Well, so far, but I'm going to practice my  
15 profession for much longer, I hope.

16 Q. Yes. Of course. You were the partner of  
17 the Rodrigo Law Firm 13 years out of those 17 years;  
18 correct?

19 A. Correct.

20 Q. Apart from being a partner, you were a  
21 member of the Board of the Rodrigo Law Firm?

22 A. Yes, for two years I was a member, yes.

1 Q. And during those two years, Luis Carlos  
2 Rodrigo was also a member of the Board of that law  
3 firm; correct?

4 A. Yes, correct.

5 Q. What you told me at the Cerro Verde Hearing,  
6 well, on the basis of that, I understand that the  
7 Board looks at general issues related to the law firm,  
8 the path the law firm is going to take, and strategic  
9 changes that must be made for the functioning of the  
10 law firm; correct?

11 A. Correct.

12 Q. How many members on the Board?

13 A. Six.

14 Q. Going back to your practice at the Rodrigo  
15 Law Firm, at the other Hearing you said that while you  
16 were working in it you provided advice to foreign  
17 companies, including mining companies, in connection  
18 with regulatory matters for investments and also  
19 stability matters; correct?

20 A. Yes, correct.

21 Q. And you confirmed that you represented 10 or  
22 15 mining companies; correct?

1 A. Correct. I don't remember the exact number.

2 Q. Yes, of course, but around 10 or 15; right?

3 A. Yes. Yes.

4 Q. Do you recall the names of some of the  
5 companies you provided advice to?

6 A. Yes. Antamina, Noranda, Teck, Hudbay,  
7 Goldfield, Minsur, Southern Perú. Yes, just about.

8 Q. At the last Hearing you said that you also  
9 provided advice to Milpo?

10 A. Yes, Milpo. I dealt with some issues  
11 related to Milpo.

12 Q. A moment ago you mentioned Milpo, and for  
13 the record, I would like to say that the Milpo  
14 agreements that you cited were in the file since their  
15 Reply. But in your Second Report, you did not mention  
16 those Agreements; correct?

17 A. Correct.

18 Q. When did you see these Milpo Agreements for  
19 the first time?

20 A. Well, on the occasion of the Resolutions  
21 that were added, and I had to look at the source,  
22 which were the stability agreements, to see each one

1 of them.

2 Q. So, when you provided advice to Milpo, you  
3 never saw the Stability Agreements when you were at  
4 the Rodrigo Law Firm?

5 A. No. At that moment I saw a very important  
6 extrajudicial transaction amongst the main  
7 Shareholders of this company. Well, the case was, it  
8 was two companies, and those companies split. I  
9 looked at those issues, but not stability issues in  
10 that case.

11 Q. Okay. And the Milpo Resolutions, when did  
12 you see them for the first time?

13 A. Well, perhaps two weeks or one week before  
14 the Sumitomo Hearing.

15 Q. The Sumitomo Hearing?

16 A. Yes, the first hearing.

17 Q. Okay. At that hearing in February, you said  
18 a "month ago."

19 A. Well, yes. February, mid-February, so maybe  
20 that happened 10 days or 15 days before the Hearing.

21 Q. Cerro Verde Counsel did not show that to you  
22 before?

1 A. No.

2 Q. Cerro Verde was also a client of the Rodrigo  
3 Law Firm when you were a partner of the law firm;  
4 correct?

5 A. Yes.

6 Q. During the Cerro Verde Hearing, you  
7 confirmed as well that you were one of the individuals  
8 that had knowledge of stability matters in the Rodrigo  
9 Law Firm; correct?

10 A. Yes.

11 Q. And that is why you were asked to  
12 participate in meetings with clients?

13 A. Yes. On some occasions, yes. I wasn't the  
14 only one. There were other Experts as well.

15 Q. How many Experts were there on stability  
16 matters?

17 A. As far as I can recall, three: Mr. Rodrigo  
18 and Mr. Jack Batievsky. Regretfully, he's no longer  
19 with the firm.

20 Q. As you indicated in your Report and you said  
21 also at the Cerro Verde Hearing, it is possible that  
22 you participated in a meeting that was related to

1 Cerro Verde; right?

2 A. I don't recall being at any meeting, that is  
3 the truth. But since I looked at stability matters  
4 and I looked at stability matters in general and I was  
5 asked to participate, it is possible--when you asked  
6 me again, as I cannot emphatically say no because this  
7 was many years ago, it is possible that I participated  
8 in a meeting. But I don't recall with the client.  
9 Truthfully, I do not recall, but I cannot emphatically  
10 say no.

11 Q. In your Report, you say that you were not a  
12 member of the main team, but again, you were one of  
13 the three Experts of the Rodrigo Law Firm in stability  
14 matters?

15 A. Yes.

16 Q. It is possible that you were asked to  
17 participate in one or more meetings. It's okay that  
18 you don't recall, but it's possible; correct?

19 A. I do not recall. I do not recall being  
20 asked to participate in meetings.

21 Q. The Rodrigo Law Firm provided advice to  
22 Cerro Verde when the 2002 Pre-Feasibility Study was

1 being prepared; right? And Cerro Verde was analyzing  
2 that Stability Agreement?

3 A. I don't recall.

4 Q. When did you leave the Rodrigo Law Firm?

5 A. In 2011.

6 Q. It's okay if you don't recall, but I  
7 represent to you that Rodrigo Law Firm provided advice  
8 to Phelps Dodge and Cerro Verde in the Application of  
9 the Profit Investment Program in 2004?

10 A. Yes. Yes. I saw that on the record, but I  
11 don't remember the date exactly. But now, when I saw  
12 it, yes, of course. Starting in 2004, it was a client  
13 of the law firm.

14 Q. So, you remember 2004 but not 2002?

15 A. I don't recall, but it's possible. It's  
16 possible that it was a client in 2002, because it was  
17 part of the same proceedings.

18 Q. And then in 2005 you provided advice, and in  
19 2004 advice you provided advice to Phelps Dodge and  
20 Cerro Verde in the structuring of the financing for  
21 the Concentrator?

22 A. Yes. Yes. I've seen that.

1 Q. In your First Report, you indicate that in  
2 1990, you had a "stagier" in Southern Perú for about a  
3 year?

4 A. Yes.

5 Q. Southern Perú, that was later a client of  
6 Rodrigo, the Rodrigo Law Firm?

7 A. Yes. At the time it was also the client of  
8 the Rodrigo Law Firm.

9 Q. Since 1990; right? It started being a  
10 client in 1990?

11 A. Yes.

12 Q. When you were doing this, Mr. Hans Flury was  
13 the Legal Vice President of the Company; correct?

14 A. Yes.

15 Q. And from your testimony in February, you got  
16 to know him from that time?

17 A. Yes, when I was an intern in Southern.

18 Q. And there you said that you saw the mining  
19 units, Toquepala, and you visited those on occasion?

20 A. I worked at the Legal Department of one of  
21 the Mining Units. Southern at that time had three  
22 Mining Units, and I worked in Toquepala where legal

1 was—in the southern zone— where we looked at the legal  
2 matters of all the three Units, and Mr. Hans Flury was  
3 the Legal Vice President of the whole Company, and he  
4 traveled periodically to each one of Units. So,  
5 obviously he was an important person. When he came  
6 in, everybody knew and everybody knew who he was.

7 Q. Hans Flury, at the time, was one of the  
8 Directors of the National Mining Society?

9 A. At that time, I do not recall. But  
10 two years later I remember that he was the Director  
11 because he was the one who entrusted the task to me  
12 via the Minister.

13 Q. Okay. Yeah. We're going to deal with that.  
14 Looking at your CV and your First Report,  
15 you say that you graduated as a lawyer in 1989, and  
16 then you obtained your degree in '91; correct?

17 A. Yes. In 1989, I obtained my bachelor's  
18 degree in law, because at the time in my country you  
19 had to, first, when you ended your studies, you had to  
20 write a thesis and submit it to a jury, and then you  
21 obtained your bachelor's law degree. After that, you  
22 had to obtain your law degree, for which you had to

1 support and present two files before a panel.

2 Q. The legal cultures are different. So, just  
3 to understand, law studies in Perú are under graduate  
4 studies; right?

5 A. They are under graduate studies that last  
6 seven years. Seven years is the full time of a law  
7 career.

8 Q. So, the seven years ended in '89 or '91?

9 A. '88- because I took a year to prepare my  
10 thesis. My thesis was a two-volume thesis, and, you  
11 know, I took a year to do it.

12 Q. So, when you obtained your degree as a  
13 lawyer, your first degree as a lawyer, this is the  
14 year that you were entrusted the preparation of the  
15 TUO of the Mining Law; right? And this is done  
16 through the MINEM and through the National Mining  
17 Society?

18 A. Yes. The TUO was entrusted to me a year  
19 after, in '92, because the year before '91, I was  
20 working on all the legislative reforms that -were  
21 approved during the process of reforms to promote  
22 investments.

1           Q.    Just to clarify, in your résumé--let us look  
2 at it on the screen. This is Exhibit C--unfortunately  
3 I do not have the page number. It's B, rather.  
4 Exhibit B, second page. Your first experience is  
5 right there from '91 to '92, and you're referring to  
6 participating in various reforms. And there you see  
7 the text of the Mining Law; correct?

8           A.    Yes. The reforms, yes. As a consequence of  
9 having worked on the reform, I was asked to  
10 systematize the Single Unified Text, and then that  
11 year I also worked on the Peruvian Model Agreement for  
12 the reciprocal promotion and protection of  
13 investments, and I was also participating in the  
14 negotiation for the signing of those Agreements. That  
15 was the experience that I had from the year before I  
16 was asked to work on the Single Unified Text of the  
17 Mining Law.

18           Q.    In your Report--unfortunately, I do not have  
19 the paragraph here--it says that you were asked to  
20 participate in 1991.

21                   Is this a correction?

22           A.    No, I was not called to participate in 1991.

1 It was in '92. The Single Text is of '92. The Mining  
2 Law was passed in November '91, but the Single Text,  
3 due to the modifications to the '91 Mining Law, was  
4 introduced in '92. I was asked to do this work at the  
5 start of 1992, and I finished it in June '92, when it  
6 was published.

7 Q. And up to that moment, up to '91, based on  
8 what we see in your résumé, your only professional  
9 experience had been the Southern internship?

10 A. Well, I had my studies, the internships I  
11 did during my studies, at a very large law firm with  
12 many mining clients. Then I worked on an auditing  
13 firm, which became EY, and we saw mining clients too  
14 (interrupted).

15 Q. Let me interrupt you. I asked you during  
16 the Cerro Verde Hearing whether your only experience  
17 when you were consolidating the Mining Law in the  
18 mining sector had been the Southern Perú internship,  
19 and you answered "correct."

20 Are you changing that answer?

21 A. No. It's okay, but in addition, all of this  
22 was prior to that internship.

1 Q. When you were studying law?

2 A. Yes, during my seven-year course of studies.

3 Q. Now, as part of the process to consolidate  
4 the Mining Law, you did not meet with the people who  
5 were in charge of drafting the Decree 708?

6 A. No, I did not, because when I started the  
7 task I was called by the Minister of Energy and Mines  
8 and I had as premise, from the first meeting he called  
9 me to, that I had the full institutional support of  
10 the officials who were in charge of the Ministry at  
11 that point in time.

12 So, any doubt, any concern, I had to talk  
13 directly to the Vice Minister. He was the one that I  
14 talked to the most, but there was also the General  
15 Mining Director, the head of the Mining Public  
16 Registry, from the public side, and I also had from  
17 the private side, the support of the Mining Society  
18 and all of the expert lawyers who had participated in  
19 the previous law, but also throughout the reform  
20 process.

21 Q. In the Cerro Verde Hearing, you said that it  
22 was not relevant, in your opinion, to have met those

1 who were responsible for drafting Legislative  
2 Decree 708 to understand the meaning of those reforms  
3 that had been enacted a year before?

4 A. It wasn't relevant or necessary. Because I  
5 had the support of the Ministry, and the Minister  
6 himself told me, any doubt you may have, talk to those  
7 who are in charge of the Ministry. So, that's why I  
8 didn't think it was necessary to resort to these  
9 individuals, to the Minister because truly, until this  
10 arbitration, I didn't know that Mr. Polo had  
11 participated in this process.

12 Q. You didn't know?

13 A. No.

14 Q. You didn't ask the Vice Minister?

15 A. No, I didn't.

16 Q. You didn't ask the Minister?

17 A. No, I was told about the previous Minister,  
18 and I also worked on the reforms that in parallel  
19 occurred with the mining reforms. Sometimes we had  
20 meetings in adjacent room, so I knew who were in  
21 charge. I never saw anyone else. I didn't know who  
22 he was, and now in this Arbitration, I have heard that

1 he was part of that reform.

2 Q. And that--to better understand, the only one  
3 that knew that had participated was Mr. Sánchez  
4 Albavera; correct?

5 A. I didn't hear before. I don't know if he  
6 was the only one, but at least when I was there, I  
7 didn't hear.

8 Q. And you only heard about Mr. Sánchez  
9 Albavera?

10 A. I didn't hear, but I knew because I was  
11 reading all of the laws. I knew who the Ministers  
12 were. I was working in the team on the reform. I  
13 attended the sessions of the Council of Ministers, the  
14 preparatory meetings, and several meetings with all of  
15 the Ministers. It was very active in the public and  
16 private sector. So, I knew who the Ministers were,  
17 while I was working on the other reforms that were in  
18 1991.

19 Q. And now you're telling me that it wasn't  
20 necessary to meet with them. You didn't think it was  
21 relevant. Are you changing your testimony?

22 A. No, what really mattered was what is

1 reflected in the law. Any doubt I may have had was to  
2 be clarified with those who were in charge of the  
3 Ministry and who had the institutional position of the  
4 Ministry.

5 Q. Now, to draft the Single Unified Text of the  
6 Mining Law, this process does not have an innovative  
7 or interpretative nature; correct?

8 A. In this specific case, I think it has.

9 Q. At the Cerro Verde Hearing, your answer to  
10 the question was "correct, that's why it is called  
11 Single Consolidated Text."

12 Are you changing your answer?

13 (Overlapping interpretation and speakers.)

14 (Interruption.)

15 MR. FRAGACHÁN: Can we show the Expert the  
16 relevant Transcript?

17 MS. DURÁN: If you look at Tab 3. And we  
18 can show this on the screen.

19 BY MS. DURÁN:

20 Q. Here you see Page 2169 in Spanish. Line 5.  
21 That's my question. That reads: "In the preparation  
22 of these texts in Perú does not entail interpretation;

1 correct?" Are you changing?

2 A. No, I am not, but I thank you because now I  
3 have the opportunity to clarify, that you made your  
4 question in a general way, about a single unified  
5 text. So, the single unified text of the Mining Law  
6 was a special situation because those laws had been  
7 issued with a difference of 10 years in between, with  
8 the second law introducing important amendments to the  
9 previous law. Many institutions of the previous law  
10 were eliminated, that for example reflected all  
11 business activity of the State in the mining industry,  
12 there were concepts that did not exist anymore.

13 So it is not cutting and pasting, we had to  
14 understand whether there had been implicit repeals  
15 because even though there had some been explicit  
16 repeals, others were up in the air, so we needed to  
17 work carefully from a legal standpoint, and we also  
18 had to be careful in having experience in legislation  
19 production and legislative systematization. And this  
20 is what I had been doing over the last year.

21 So, that's why I think that in general  
22 Single Unified Texts do not have any innovative

1 nature, but in this case it had an innovative nature  
2 because we had to do a very careful job of adapting  
3 and making it adequate, and it required a deeper  
4 analysis beyond systematizing or consolidating.

5           So, as to your question, I am not changing  
6 my Statement, I am just being specific. In this case,  
7 the Single Unified Text, in my opinion, was  
8 innovative.

9           Q. So, to better understand your answer, in  
10 general, the Single Consolidated Text in Perú are not  
11 innovative, and they do not have an interpretative  
12 nature?

13           A. No.

14           Q. This is just to consolidate; correct?

15           A. Yes. Well, it depends on each case to see  
16 if there is a similar situation to what happened with  
17 the Mining Law, whether I can tell you if it is  
18 innovative or not, interpretative, no, but we do need  
19 to look at the situation, to assess if it is  
20 innovative. For example, in the case of the Mining  
21 Law, I am explaining why I think that it had an  
22 innovative nature.

1 Q. And in your testimony, the Mining Law, which  
2 I understand was an exceptional case, different from  
3 general cases of the Single Consolidated Text, your  
4 testimony today is that it was innovative?

5 A. Yes, it was innovative in terms of the legal  
6 systematization work that had to be done, from the  
7 legal standpoint. That is what I mean with  
8 "innovative." I am not saying that things were  
9 changed as provided in the laws to be consolidated,  
10 just that clarification.

11 Q. So, you cannot draft new rules?

12 A. I cannot modify anything.

13 Q. So, you cannot modify. You cannot modify  
14 the two Legislative Decrees that were consolidated  
15 under one document?

16 A. I cannot modify, but if there are some  
17 provisions that as a consequence of the amendments or  
18 changes need to adapt to the new terminology and  
19 concepts, the work has to be done. That's why they  
20 look for someone who had experience to do this task,  
21 otherwise, the lawyer cannot establish that  
22 difference.

1           And so, that we do not cross the border  
2 between an adaptation and a modification, we need to  
3 consolidate everything under the Regulations so that  
4 the Administration and the mining companies can have  
5 certainty as to what Legal Framework is applicable. I  
6 don't know if this is clear enough.

7           Q.    And your Statement is that that innovative  
8 work was assigned to a person who had just graduated?

9           A.    Yes, but I had a year of experience of  
10 working 24/7 on the production of rules and  
11 systematization of rules and regulations. I had been  
12 working on that for a year and a half, and, honestly,  
13 if they chose me, it was because there was a reason.

14          Q.    And your Statement is that the innovative  
15 task was done without consulting anyone?

16                You did not consult any of the individuals  
17 who issued Decrees 109 or 708?

18          A.    109, yes. Of course. I told you that I had  
19 the institutional support of the Ministry, I had  
20 several meetings with the Vice Minister, the Minister  
21 and some General Directors from the Mining Public  
22 Registry. And from the private sector, I consulted

1 those that had the most mining experience, and one of  
2 them--one of the Witnesses for Perú quoted him, it was  
3 Mr. Alfonso Rubio. Alfonso Rubio had participated in  
4 the drafting of Legislative Decree 109 of 1981, and  
5 also in the new laws. And clearly, I had Hans Flury's  
6 opinion, who was also an Expert, of Ludwig Meier also.  
7 Those who had the most knowledge on mining, I had  
8 access to them, either because they had been my  
9 Professors or because I knew them through my practice,  
10 and I had direct contact with people from the  
11 Ministry.

12 Q. So, you're telling me that you consulted the  
13 private sector, the individuals that you just  
14 mentioned, but you didn't think it was relevant to  
15 consult those who drafted Legislative Decree 708?

16 Is that what you're saying?

17 A. What I am saying is that I consulted those I  
18 needed to consult based on what I had been asked to  
19 do. I am telling you that I consulted with these  
20 Experts, who had the most experience in explaining the  
21 General Mining Law, the previous law and the current  
22 one.

1           And as to the public issues, I consulted  
2 whenever I had to consult, whenever I had a doubt, the  
3 officials that were in charge of the Ministry, who  
4 were leading the Ministry, the second in charge, they  
5 are the ones who had the institutional position of the  
6 Ministry. And what then was the practice in mining.

7           Q. And just to understand, during the Cerro  
8 Verde Hearing, you told us that you do not have the  
9 contemporaneous notes of this task, I understand,  
10 based on you, of this innovative task, when you  
11 consolidated the text of 109 and 708.

12          A. Yes, correct. This was more than 30 years  
13 ago, and I do not have any notes.

14          Q. Did you look for them?

15          A. Yes, I did, but I have not found any notes  
16 and I don't remember taking notes because it was a  
17 highly specialized task, and neither the Vice Minister  
18 or the Minister were lawyers. That's why they asked  
19 me. I was a lawyer. And we had periodic meetings,  
20 and they asked me, how are you doing? What progress  
21 have you made? Do you have any doubts? But I didn't  
22 have any notes saying I was asked to do this or that.

1 Q. Dr. Vega, you just told us two different  
2 things.

3 A. No, I didn't.

4 Q. I'm sorry. I'm asking the question.

5 You told us that either you didn't find  
6 notes or you said I do not recall taking notes. So,  
7 you were not taking notes?

8 Is that what you're saying?

9 A. I must have done it on the text itself. It  
10 wasn't so digitalized back then. Truth is, I don't  
11 recall. Since I don't recall, I tried to find them  
12 but I couldn't.

13 Q. So, in your Report, you're referring to  
14 several Articles on the legal stability agreements in  
15 Perú, and you are referring to that at Exhibit B in  
16 your résumé; correct?

17 A. Yes.

18 Q. And if we look at B in your Report, you only  
19 include two publications, but you do not include any  
20 related to the stability agreements under the Mining  
21 Law; correct?

22 A. Correct.

1 Q. And at the February Hearing, you told us  
2 that you have not written chapters or Articles  
3 specifically on stability agreements; correct?

4 A. I have addressed them as part of the studies  
5 on stability, in general, I explored legal stability  
6 agreements, which is the general system, and then I  
7 would discuss the mining stability system because it  
8 is applicable for the sector, but I have not written  
9 publications exclusively on the mining stability.

10 Q. You also told us that you were never a  
11 professor in Perú?

12 A. Yes. I am not--I do not have a master's  
13 degree, and that's one of the requirements to be a  
14 professor. But I also said that I did attend several  
15 classes, that I had been invited to teach specific  
16 classes on my experience in the area of stability, and  
17 also the negotiation of the treaties for the promotion  
18 and encouragement of investments on behalf of Perú.

19 Q. Just to confirm, at Paragraph 13 of your  
20 First Report, you say that you are being paid--or that  
21 you are charging \$320 an hour.

22 Do you confirm this information?

1 A. Yes.

2 Q. Thank you.

3 MS. DURÁN: Madam President, I'm aware of  
4 the time, and I'm about to go into a different line of  
5 questioning, so I don't know if we want to take the  
6 break now.

7 PRESIDENT HANEFELD: Yes, please.

8 MS. DURÁN: Okay.

9 PRESIDENT HANEFELD: So, 15 minutes of  
10 break.

11 (Brief recess.)

12 PRESIDENT HANEFELD: Can we continue?

13 MS. DURÁN: Yes. Thank you, Madam  
14 President.

15 BY MS. DURÁN:

16 Q. Ms. Vega, now, getting into the substantive  
17 issues, before getting into it, I would like to  
18 understand your position on the scope of stability  
19 agreements.

20 In your Report you establish--and you said  
21 so a moment ago in your presentation--that stability  
22 agreements, which are specifically provided for in the

1 law, extended broadly to all investments that a mining  
2 company would make over a 10- or 15-year period within  
3 the concessions or mining units included within the  
4 stability agreement; is that right?

5 A. Correct.

6 Q. So, in your understanding of the law, any  
7 type of investment made during the contractual period,  
8 even if not contemplated even when the Agreement was  
9 signed, would be covered; right?

10 A. If it is done within the Concessions that  
11 are part of the Mining Unit that's been stabilized,  
12 then, yes.

13 Q. And so, your position is the investment, in  
14 order to be covered, has to be made within certain  
15 concessions; they can't be investments in just any  
16 concession that the Company has?

17 A. No, evidently. They have to be within the  
18 concessions that constitute the Mining Unit and that  
19 are spelled out in Annex 1 of the Stability Agreement.

20 Q. And just to understand, that would apply  
21 going forward, but it also applies retroactively,  
22 according to your position; correct?

1           A.    It's not retroactively, but, rather, it also  
2 includes, obviously, all of the facilities investments  
3 made previously.  But they're applied as of the coming  
4 into effect of stability.  So, it's comprehensive more  
5 than retroactive.

6           Q.    If a company has been operating, say, for  
7 60 years, and during those 60 years it has a Leaching  
8 Plant, and in Year 61 it signs a stability agreement  
9 for a Concentrator with a Feasibility Study that  
10 includes only the Concentrator, and that Concentrator  
11 is built within the geographic area of the same  
12 Beneficiation Concession of the Leaching Plant, then  
13 your position is that, automatically, all of the  
14 operations of the Leaching Plant would also be covered  
15 for 15 years; is that right?

16          A.    Correct.  Insofar as it is within one of the  
17 concessions in the stability agreement, then, yes,  
18 that's the spirit of the law and it's reflected in the  
19 law.  Once a stability agreement is signed, all of the  
20 investments made within the concessions or Mining  
21 Units set forth in the Agreement enjoy stability.

22          Q.    In other words, that Leaching Plant which

1 had been operating and which produced hundreds of  
2 thousands of metric tons with an investment, if just  
3 the minimum investment required is made, which is  
4 50 million for an expansion, if a \$50 million  
5 investment is made, then automatically everything from  
6 the past--that is to say, the output of the existing  
7 plant--plus any additional investment made for  
8 15 years would be stabilized.

9 That's your position?

10 A. Yes. Insofar as it's in the concessions and  
11 Mining Units covered by the Agreement, then, yes. And  
12 that's what happened in all the privatization  
13 processes (interrupted).

14 Q. I would ask you to please limit your answers  
15 to the questions.

16 A. Fine. I just want to note that that is, in  
17 fact, what happened, and that was the spirit of  
18 privatizing the State-owned companies which had been  
19 so inefficient and which had not received investment,  
20 and the incentive is precisely for the previous and  
21 the new facilities, and the new investments, insofar  
22 as they're done through the concessions covered by the

1 Agreement, are stabilized. That's what happened with  
2 several mining companies that were privatized.

3 Q. Of course. And your deposition is that, for  
4 example, in the case of the 10 years, if one invests  
5 just \$2 million for 10 years, and then it's stabilized  
6 for the prior and future operations, the ones that  
7 were not known about, all of them?

8 A. Insofar as they are done within the  
9 concessions covered in the Agreement, yes. And that  
10 is what happened in the case of Cerro Verde  
11 previously, in its first Stability Agreement from  
12 1994. It undertook a specific investment project to  
13 qualify, the Project entailed a small investment to  
14 buy two Caterpillar trucks and a conveyor belt. And,  
15 with that, it stabilized its Mining Unit and didn't  
16 have any problem applying the Stability Agreement as  
17 long as it was in force.

18 Q. Now, if we could turn to Tab 5, please, and  
19 there you find the book by Minister Sánchez Albavera,  
20 who you decided not to consult, where he speaks of the  
21 Mining Reforms that were carried out in 1991.

22 And, just for the record, we have printed

1 out an excerpt, but the full book is in the record.  
2 The book is called "The Cards on the Table," and I  
3 understand that you're familiar with it because you  
4 cite it in your Report; correct?

5 A. Yes, that's right.

6 Q. And if we turn to Page 81, please.

7 Just to put this in context, this chapter  
8 addresses the Mining Reform, and Minister Sánchez  
9 Albavera--it's up on the screen--explains that the  
10 granting of these Guarantees--he's talking about  
11 Stability Guarantees--constitutes an important  
12 incentive for mining companies by not altering the  
13 criteria that guided Investment Decisions, since their  
14 recovery is long-term; correct?

15 A. Yes.

16 Q. And he then notes that the Mining Reform  
17 considers that stability agreements--or considers them  
18 for two types of investment: One, the new  
19 investments--you can see that in the next sentence;  
20 and, second, those made by existing companies, which  
21 are like expansions; right?

22 A. Yes. But that's for the purposes of

1 requirements for qualifying, in effect.

2 Q. We'll see that in a moment. Okay.

3 But just to make it clear, Minister Sánchez  
4 Albavera, what he says is that these Contracts were  
5 applicable to two types of investments: New  
6 investments and also expansions made by existing  
7 companies; correct?

8 A. Once again, I can tell you that that is a  
9 distinction in terms of the requirements, but not for  
10 the purpose of stability agreements.

11 Q. And as we'll see, this concept was set forth  
12 in Articles 82 and 83 of the General Mining Law;  
13 correct?

14 A. It mentions the requirements in the case of  
15 new investments or expansions, as the case may be.  
16 It's one amount for the one situation and another for  
17 the other.

18 Q. If we now turn to Article 82 of the General  
19 Mining Law--and the law is at Tab 8; if you want to  
20 take a look at it, we will put it up on the screen.

21 In your presentation, you read out  
22 Article 82 underscoring certain--or underlining

1 certain parts of it. But let's see what you did not  
2 underline.

3 In particular, Article 82 says, as you  
4 indicated, that the purpose was to promote investment  
5 and facilitate the financing of Mining Projects;  
6 correct?

7 A. Yes. That's right.

8 Q. And you speak of two types of Mining  
9 Projects: One, with an initial capacity of not less  
10 than 5,000 MT; or, second, it says, or expansions  
11 intended to reach a capacity of not less than  
12 5,000 MT, referring to one or more  
13 Economic-Administrative Units; correct?

14 A. That is what it says as a requirement for  
15 being able to sign the Agreements.

16 Q. So, your testimony is that that is just the  
17 requirement for accessing the Agreement.

18 But, as we see in the Article in the part  
19 that you did not underline in your presentation, it  
20 speaks of two types of Mining Projects: One, the new  
21 investments, which are those that were being addressed  
22 by Minister Sánchez Albavera--that is to say,

1 companies that are just starting and that make a new  
2 investment, and they need to--which need to, as a  
3 minimum, come to 5,000 MT; or, second, a second type  
4 of project, expansions, which also have to be designed  
5 to reach at least 5,000 MT; right?

6 A. Together. Expansions, all of the Mining  
7 Unit, all of the Mining Project, all of the Production  
8 Unit.

9 Q. Exactly. Now, this concept of two types of  
10 investments or--which is to say, new investments or  
11 expansions--is also established in the next sentence  
12 in Article 82, which you do not underscore, either.

13 There it says that Stability Contracts will  
14 be guaranteed through an agreement entered into with  
15 the State for a term of 15 years, and those 15 years  
16 are counted from the fiscal year in which the  
17 investment or expansion is carried out--this is  
18 number one--well, in which the investment is made or  
19 the expansion.

20 Again, it's two types of projects; right?

21 A. Yes. Once one has shown that one meets this  
22 requirement, and that the Mining Authority approves

1 it, it's just then that the stability agreements come  
2 into force. So, these are requirements for being able  
3 to sign a stability agreement.

4 Q. The 15 years begins--begin to run once the  
5 investment is carried out--in other words, a new  
6 investment to start up operations or an investment to  
7 expand operations.

8 And then it says, "as the case may be";  
9 correct? Yes or no, please.

10 A. That one proves that the investment has been  
11 carried out--not that it has been done, but, rather,  
12 that it has been proved to the Mining Authority, which  
13 is different.

14 Q. So, if you are showing that the investment  
15 has been made, it's because it's being completed;  
16 correct?

17 A. Yes. I just wanted to note that detail.

18 Q. Of course. Now, this Article does not say  
19 textually that the Stability Guarantee is granted to  
20 all investments or all existing operations or all  
21 investments, present, future, known or unknown;  
22 correct?

1           A.    If you look, it says—as for the requirement—  
2 it includes all of the foregoing, because it says  
3 having reached the foregoing, right? that have reached  
4 this capacity. In the second paragraph, where it  
5 speaks of scope, it's defining what is understood as  
6 the scope of stability, which is the set of mining  
7 concessions which constitute a single unit--mining  
8 concessions, beneficiation concessions, assets, which  
9 altogether constitute a single Unit of Production.  
10 It's the whole Production Unit with what's already  
11 there and the new parts that are to be brought in.

12                   That's what's--once it's qualified and  
13 included as an annex to the stability agreement, it  
14 includes everything that is there and the new things  
15 to be done as well. That's the incentive for the  
16 granting of stability so that the investor can have  
17 peace of mind, knowing that my full entire integrated  
18 operation is going to be stabilized. And that's how  
19 the mining industry works.

20           Q.    Ms. Vega, I would ask that you limit your  
21 answers to my questions, please.

22                   The text does not expressly say what you've

1 just told us; correct?

2 A. Past, future, present, no, it does not speak  
3 of those time frames. But it does talk of "all."

4 Q. Now, if you focus on the second paragraph  
5 there, where it speaks of Economic-Administrative  
6 Units, and if I understand your testimony, it's  
7 because a minimum level of production was required to  
8 be able to gain access to a stability agreement;  
9 correct?

10 A. No. This second paragraph refers to the  
11 scope in general. And in this regard it is general  
12 for the application of the stability to mining  
13 stability agreements.

14 Q. This second paragraph does not say that the  
15 application of stability agreement--or it doesn't say  
16 that the guarantees contractually established apply to  
17 what you call the mining unit. It does not expressly  
18 state that; correct?

19 A. In that Article, it does not, yet it is an  
20 Article of the law that is complemented by the three  
21 Articles of the Regulation that I've noted, and  
22 there's no doubt about it that all investments made

1 within the concessions or Economic-Administrative  
2 Units that make up the Production Unit are stabilized.

3 Q. Ms. Vega, we'll get to the Regulation in a  
4 moment. Let's continue.

5 Article 83 also reflects this concept of  
6 projects with new investments or second expansion  
7 projects; correct?

8 A. Once again, for purposes of qualifying, yes.  
9 For the purposes of determining the scope, as you can  
10 see in the fourth paragraph, it speaks of activities  
11 of the mining company in general.

12 It doesn't say anything specifically or the  
13 two cases you mentioned, so it is clear that the  
14 distinction that you were drawing applies only to the  
15 requirement for qualifying, in one case the  
16 requirement of a minimum level of production, and, in  
17 this case the requirement of the minimum level of  
18 investment.

19 That is where the distinction is drawn. And  
20 the fourth paragraph, which talks about the scope,  
21 doesn't draw such a distinction.

22 Q. We'll get to that fourth paragraph. Don't

1 worry about it.

2           Just to make it clear: In the first  
3 paragraph of 83, it speaks of this concept of the  
4 first type of investment, and that's why it had to  
5 draw up a--or have an Investment Program for at least  
6 \$20 million investment; correct?

7           A. Yes.

8           Q. And if we are in the face of Scenario 2,  
9 which is an expansion project, one needed to have an  
10 investment project of at least \$50 million; correct?

11          A. Correct. Minimum, as you say.

12          Q. Of course. It could be more?

13          A. Yes, obviously. The requirement had to do  
14 with meeting the--well, the limit that you had to  
15 match to get to stability.

16          Q. And at Paragraph 29, what you are correcting  
17 in your Paragraph 29 of your First Report is that the  
18 requirements are a minimum level of production and a  
19 minimum amount of investment; correct?

20          A. Yes, that's right.

21          Q. Now, if we look at Article 25 of the  
22 Regulation, which is at Tab 6--

1           ARBITRATOR TAWIL: Excuse me. For the  
2 record, the exhibit number?

3           MS. DURÁN: Of course. I'm so sorry. It's  
4 CA-432, and the annex to the law is CA-448, I believe.

5           BY MS. DURÁN:

6           Q. Are you there?

7           A. Yes, I am.

8           Q. This Article, once again, speaks of both  
9 scenarios of investment projects. It says: "Without  
10 prejudice to the income and corporate assets tax  
11 returns which, according to the law, the Mining  
12 Activity Titleholder must submit in cases of, first,  
13 expansion; or, second--one, expansion of facilities;  
14 or, two, new investments that contractually enjoy the  
15 guarantee of legal stability, said Titleholder must  
16 make available to the Tax Administration the annexes  
17 that demonstrate the application of the Tax Regime  
18 granted to, first, the expansions, or, second, the new  
19 investments."

20           That's what the Article says; correct?

21           A. The thing is that that Article, if you look  
22 at when it was drafted, when it speaks of "that

1 contractually enjoy the guarantee of stability," the  
2 reference is that a stability agreement has already  
3 been signed, and that one is going to continue making  
4 new investments and new acquisitions, as is generally  
5 done in mining.

6           And what this provision establishes is that  
7 that taxpayer, the mining company, must keep the  
8 demonstrative annexes, their Working Papers, so that,  
9 tomorrow or later on, if there is an audit or  
10 inspection, they will be able to show how they have  
11 been applying their stability. But this makes more  
12 sense when the mining companies have several Mining  
13 Units.

14           So, the meaning is that investments will  
15 continue, and if tomorrow there's a SUNAT audit and  
16 they ask me, I'll be able to tell them, "Well, as in  
17 the case of Milpo, for the El Porvenir Unit, these are  
18 my working documents that show you how I have been  
19 applying the Tax Regime to this Unit. These are my  
20 working documents that show how I have been applying  
21 the Stability Guarantees to these new acquisitions  
22 I've made."

1           That's the gist of Article 25.

2           Q.   Ms. Vega, you do not mention Article 25 in  
3 your Report; is that correct?

4           A.   No, because it doesn't refer to scope.

5           Q.   Now, Article 25 does not speak of mining  
6 units or Economic-Administrative Units or concessions;  
7 correct?

8           A.   That Article does not talk about that. It  
9 is talking about what I just explained.

10          Q.   Of course. It speaks of, once the Agreement  
11 has been signed, what has to be done, and it reflects  
12 the two concepts of--or two types of projects that  
13 Minister Sánchez Albavera mentions, and which you  
14 don't mention, that are addressed in Articles 82 and  
15 83.

16                   Is that not correct?

17          A.   No. No. I'm explaining that this is not 82  
18 and 83, which are the requirements for signing the  
19 Agreement. Here we are saying that the Agreement is  
20 already in force with stability. Let's think about  
21 Milpo. It is Fiscal Year 2010 that they undertook the  
22 audit. It had two Mining Units, each with its own

1 Stability Agreement, and each one had a stabilized  
2 regime. What this provision says is, Milpo, keep your  
3 demonstrative documents because tomorrow if I'm going  
4 to perform an audit, you need to show me how you have  
5 applied each of the acquisitions and investments you  
6 have done to each of the Units. It doesn't have to  
7 say so with first name and last name, but that is the  
8 gist of the provision.

9 Q. I understand that that is your position, but  
10 just so that it's clear, the Article says that the  
11 Mining Titleholder must submit first in cases of  
12 expansion or in new investments. And the concept of  
13 an expansion project or new investment is a concept  
14 that was already indicated in Articles 82 and 83. Is  
15 that not correct?

16 A. I'm explaining to you that that is not what  
17 this Article is referring to. This Article is  
18 referring to something else. It does not refer to  
19 what those Articles refer to, which is the  
20 prequalifying stage to be able to access stability.  
21 This refers to the operational aspect. I don't know  
22 if I'm being clear.

1 Q. Ms. Vega, the Regulation does not say either  
2 expressly that the guarantees granted contractually  
3 apply to all of the investments, all past operations,  
4 all investments known or unknown, present or future;  
5 correct?

6 A. No. The law cannot say that in any country.  
7 It cannot talk about present, future, past; I don't  
8 think so. But it does say broadly to investments,  
9 without establishing any restriction, broadly,  
10 investments made in concessions or Mining Units.

11 What does that mean? All investments made  
12 in the concessions or Economic-Administrative Units  
13 that are provided for in the respective stability  
14 agreements.

15 Q. Now we are going to turn to Article 83,  
16 Paragraph 4, as I promised we would.

17 A. Thank you.

18 Q. We just saw two paragraphs that talk about  
19 the idea of projects, new investments to begin  
20 operations or expansion projects. If we look at  
21 Paragraph 4, it says that Investment Program needs to  
22 be prepared for those projects. I'm sorry, that's the

1 other paragraph.

2 Paragraph 4, like you said in your Report  
3 and your presentation, it says the effect of the  
4 contractual benefits will have to do with the  
5 activities of the mining company in favor of which the  
6 investment is made.

7 A. Yes, that's right.

8 Q. In your Second Report at Paragraph 8, you  
9 say--

10 A. Is it here?

11 Q. Yes. It is behind Tab 2.

12 A. Oh. Okay. Tab 2.

13 Q. You say that this language cannot be read by  
14 omitting "mining company." So, you cannot read it.  
15 It would only fall on activities because the words  
16 "empresa minera" would be superfluous, "mining  
17 company"?

18 A. Yes. The term exclusively refers to  
19 activities of the mining company.

20 Q. And that is what it says in that paragraph.  
21 But, Ms. Vega, Line 4 of the Article does not  
22 say--well, let's see. When it says that it refers

1 exclusively to mining activities, you're trying to  
2 draw a difference that--in the sense that these can  
3 only be the mining activity companies--of the company?

4 A. Yes, mining activities of the mining  
5 company.

6 Q. Okay. A mining company can have multiple  
7 concessions; correct?

8 A. Yes, multiple concessions, that's right.

9 Q. For example, some may be operational, some  
10 may not be operational?

11 A. Yes.

12 Q. Some may be during the exploitation stage or  
13 others at the exploration stage; correct?

14 A. Yes.

15 Q. When you read 83(4), you're only drawing  
16 difference between the mining activities and the  
17 non-mining activities; correct?

18 A. You know that the activities in Perú are  
19 governed by the system of concessions, mining  
20 activities, obviously.

21 Q. Okay. Your position is that stability  
22 agreements--well, you are actually limiting this a

1 little bit. You are saying that they apply to  
2 concessions where the investment is made; correct?  
3 Not all of the concessions that that Company may have  
4 are either operational or nonoperational?

5 A. Yes, in favor of which the investment is  
6 made included in the stability agreement, they are  
7 included there. That set of concessions that are a  
8 single Unit of Production and are included while the  
9 Agreement is in force are governed by the Stability  
10 Regime.

11 Q. Ms. Vega, I'm confused.

12 A. Let's see if I can clarify, ma'am.

13 Q. You have just told me that you were talking  
14 about the activities related to the investment made.

15 Is that your position? Because--

16 A. No, I'm talking about the activities of the  
17 mining company.

18 Q. Very well. The activities of the mining  
19 company. As we said, the mining company, as we said  
20 may have a concession in the exploration stage,  
21 another one in the exploitation stage, a concession  
22 that is a beneficiation concession, and, perhaps, the

1 stabilized investment applies just to one of them;  
2 correct?

3 A. The one that is going to qualify for the  
4 purposes of stability. It says here exclusively the  
5 activities of the mining company. Which one? The one  
6 that receives the qualified investment.

7 Q. Okay. The activity that receives the  
8 qualified investment?

9 A. No. The mining company that receives the  
10 qualified investment, the one that has met the  
11 requirements of minimum amount of investment, et  
12 cetera. As is told by the law.

13 Q. That's a confusion, ma'am. The company that  
14 receives the investment operates a number of  
15 concessions around the country in different  
16 geographical areas; for example, one in Arequipa and  
17 one in Piura.

18 A. Which ones are included in the stability  
19 agreement in your supposition?

20 Q. Okay. Piura.

21 A. And they have to do with the Production  
22 Unit?

1 Q. No. Let's not talk about production unit.

2 We are talking about the concessions in Piura.

3 A. Are they mentioned in Exhibit 1 or not?

4

5 Q. Yes, they are mentioned in Annex 1. Your  
6 interpretation of Article 83(4) that distinguishes  
7 only between mining and non-mining activities would  
8 cover, according to your position--it would cover both  
9 Piura and Arequipa?

10 A. No.

11 Q. That's not your position?

12 A. No. No. I'm trying to explain. My  
13 position is that the investments made in the  
14 concessions included in the Production Unit submitted  
15 to the Ministry and the Ministry has qualified for the  
16 purpose of the signature of the stability agreements,  
17 those are included. That is my position.

18 Q. Can we show please 83(4) again? Where is it  
19 that you see in this Article--well, where do you see  
20 that additional limitation that you say exists in this  
21 paragraph? According to your testimony, it only talks  
22 about mining activities and not other activities, not

1 a restaurant, for example, not a building.

2 A. These are two different things, activities  
3 of the mining company. I'm trying to explain to you  
4 the origin of this Article. The origin of this  
5 Article has to do with mining matters and the company,  
6 the company that must receive the investment directly.

7 I was explaining that this came from the  
8 practice of the business activity of the State that  
9 had in the past acted by means of having  
10 conglomerates, State-owned conglomerates, and  
11 oftentimes a company making an investment in one area  
12 could extend it to other areas.

13 The following needs to be clear. First, that  
14 they are mining activities. Second, that this company  
15 is the one that receives the investment. It doesn't  
16 extend to others. Perhaps it is clearer in other  
17 cases such as Mining Holdings, as they operated in the  
18 past.

19 Q. At Paragraph 4, it does not say that it  
20 applies to the concession where the investment is  
21 made, only to that concession and not others in other  
22 places in the country of that same mining company

1 that, according to you, receives the investment;  
2 right?

3 A. I didn't understand your question. Please  
4 repeat it.

5 Q. Of course. Paragraph 4 does not say--does  
6 not provide any limitation to the application of the  
7 stability agreement, as you say, to the concession in  
8 which the investment is made, and it doesn't apply to  
9 the other concessions of that same mining company that  
10 receives the investment; right?

11 A. "Exclusively to the activities of the mining  
12 company."

13 Q. Okay. That mining company, ma'am, has  
14 multiple mining activities, multiple mining  
15 activities, in Piura, in Arequipa--I don't know where  
16 else in Perú we could have mining activities. I'm not  
17 a local in Perú. My apologies.

18 But if it makes an investment in Piura for  
19 its concessions in Piura, to be clear, your position  
20 is that it applies to the concessions in Piura but not  
21 to the concessions in Arequipa?

22 A. Yes, obviously, because the Production Unit

1 that receives the stability and the one that is  
2 guaranteed is that one.

3 Q. Okay. But that is not what this  
4 Article says because in your understanding it talks  
5 about mining activities in general and that same  
6 company has--well, the same company that receives the  
7 investment has mining activities in Piura and in  
8 Arequipa and elsewhere in Perú where it can have  
9 mining activities. Your position is that somehow the  
10 Article limits this to the Piura concession only.

11 Is that your testimony?

12 A. Yes.

13 Q. You are saying--well, before I get into  
14 that, at Paragraph 41 of your First Report, then, just  
15 to contextualize this, at Paragraph 40 you're  
16 explaining what you just told us in connection with  
17 83(4). And then at Paragraph 41, you say Articles 72,  
18 80, and 84 also defined Stability Guarantees by making  
19 reference to the Mining Activity Titleholder--in other  
20 words, the Mining Activity Titleholder with operations  
21 in a mining or beneficiation concession.

22 That's what it says; right?

1           A.    Yes.

2           Q.    Just to understand your position, your  
3 position is not that the stability applies to the  
4 whole company?

5           A.    No, it does not apply to the whole company.  
6 It applies to the concessions that make up its mining  
7 units. In the case of Milpo, there are a number of  
8 units and in connection with El Porvenir or Cerro  
9 Lindo. In the case of Cerro Verde, as Cerro Verde has  
10 only one mining unit, so it was the whole Mining Unit.  
11 But it depends on the case; right? It depends on the  
12 company.

13          Q.    Right. But in the paragraphs you're citing  
14 here, you are just saying that they refer to the  
15 mining activity titleholder, the company?

16          A.    Well, the mining activity titleholder is the  
17 taxpayer. It is the titleholder that holds the  
18 concessions, but that does not mean that it is the one  
19 that receives the mining stability.

20          Q.    This issue of mining activities. In your  
21 presentation you said that mining activity in general  
22 is regulated; correct?

1 A. Yes.

2 Q. And there are certain types of activities:

3 Exploration, exploitation, beneficiation, amongst  
4 others; right?

5 A. That's correct.

6 Q. To conduct those activities, to carry them  
7 out for exploration purposes or exploitation purposes,  
8 one needs a concession, a mining concession or a  
9 beneficiation concession; correct?

10 A. Yes. For extraction, a mining concession.  
11 For processing, beneficiation concession.

12 Q. And those concessions under the Mining Law  
13 are rights that one has to get to obtain--to carry out  
14 those activities.

15 A. Yes. Yes. It's a title you need to access  
16 those rights but then, of course, you have to do  
17 certain things to keep them current.

18 Q. Apart from obtaining the concession, the  
19 titleholder must obtain certain licenses, permits,  
20 environmental licenses, et cetera; correct?

21 A. Correct.

22 Q. It's not that automatically with the

1 concession you can exploit the geographical area where  
2 the concession is in; correct?

3 A. Correct.

4 Q. Once you obtain the concession, the  
5 titleholder that wants to carry out one of these  
6 activities has to make investments to carry out these  
7 activities; correct?

8 A. Investments to construct infrastructure and  
9 to carry out these activities.

10 Q. The investments are described in Feasibility  
11 Studies, for example; correct?

12 A. Yes. The Feasibility Studies contain the  
13 initial investments that the titleholder commits to  
14 making in order to have access to the stability.

15 Q. Well, and then the Feasibility Study  
16 describes the investment specifically; right?

17 A. Yes. That's right. To qualify, it is a  
18 specific Project for such purposes.

19 Q. And the Feasibility Study do not describe a  
20 specific investment in a Company; right? They  
21 describe the investment in a Project; correct?

22 A. Yes.

1 Q. Article 85 of the Mining Law establishes  
2 that for the 15-year Contracts, one needs to submit a  
3 Feasibility Study; correct?

4 A. Correct.

5 Q. This is a Feasibility Study,  
6 Technical-Economic Feasibility Study that is going to  
7 be an affidavit and it needs to be approved by the  
8 DGM; correct?

9 A. Yes.

10 Q. If we look at Article 24 of the  
11 Regulations--it's going to be shown on the screen  
12 momentarily. Article 24 provides that the Feasibility  
13 Study will serve as the basis to determine the  
14 investments that are the subject matter of the  
15 Agreement; correct?

16 A. This Article--

17 Q. Please respond to my question.

18 A. Yes, as you said, it is regulating  
19 Article 85, which is the requirement to have access to  
20 stability.

21 ARBITRATOR TAWIL: Excuse me. Why don't you  
22 read the full Article and you talk about this. And it

1 mentions Article 86 of the TUO?

2 BY MS. DURÁN:

3 Q. It says here to determine the investments of  
4 the subject matter of the Contract, and in order to  
5 proceed with the signing of the private deed, prepared  
6 in accordance to the model approved pursuant to  
7 Article 86 of the Single Unified Text of the Mining  
8 Law.

9 That means, Ms. Vega, that with the  
10 Feasibility Study, you determine the investments that  
11 are the subject matter of the Agreement, and that  
12 Contract is prepared on the basis of the model  
13 stability agreement that has been approved; right?

14 A. Yes. For the Stability Agreement to be  
15 signed, what this provision says is that once the  
16 Feasibility Study has been approved, and the Study  
17 evidences that the requirement has been met, then you  
18 can proceed to the signature of the Stability  
19 Agreement.

20 Q. Mrs. Vega. It does not say that has been  
21 evidenced. It says that it will serve as the basis to  
22 determine the investments that are subject matter of

1 the Agreement. Doesn't say anything about evidencing  
2 the minimum requirement for investment. It says here  
3 "will serve as the basis to determine the investments  
4 that are the subject matter of the Agreement."

5 A. Well, in order to then proceed to the  
6 signing of the Deed. Once it has been proved that I  
7 have met the requirement and that I have the  
8 Directorial Resolution, I can go to the Ministry and I  
9 can sign the Contract on the basis of the investments  
10 that are provided and foreseen for qualification  
11 purposes. For purposes of proceeding to the signature  
12 of the Contract, under the model contract approved by  
13 the Supreme Decree, in the case of the 15-year  
14 Contracts.

15 Q. The Article says that the Feasibility Study  
16 will determine the investments that are the subject  
17 matter of the Agreement, and once those investments  
18 are determined, then you can sign the Contract; right?

19 A. Yes. You have to determine that those  
20 investments are the ones that qualified in order for  
21 the Contract to be signed.

22 Q. Just to be clear, ma'am, Article 24 does not

1 talk about qualifications to enter into the Contract;  
2 right?

3 A. You know that the Feasibility Study is what  
4 allows a company to qualify to sign a stability  
5 agreement. The sequence is the following. I have the  
6 Directorial Resolution that approves the Feasibility  
7 Study in which a specific investment project is  
8 included, with the only purpose to prove that the  
9 requirement to sign a stability agreement has been  
10 met. So, then you can go ahead, sign the stability  
11 agreement, and then use the model as approved.

12 Q. In your Presentation, you were asked about  
13 the reforms of 2019. The text of this Article, it  
14 says here "which will serve as the basis to determine  
15 the investment subject matter of the Agreement."

16 That did not change; right?

17 A. Article 24 changed, I think it was 39 later.  
18 I don't know. I would have to look at the text of the  
19 amendment.

20 Q. You're going to see that with your lawyers,  
21 I'm sure. In your First Report, you talk about the  
22 Feasibility Studies, and you focus about evidencing

1 the minimum amount of investment. I'm going to focus  
2 on Paragraph 33. Let us show it on the screen.

3           Halfway it says: "Rather, the Feasibility  
4 Studies played a specific role. They demonstrated  
5 that the Mining Company's qualifying Investment  
6 Program was technically and economically feasible, and  
7 it had to comply with the Mining Law's initial minimum  
8 investment requirement to receive Stability  
9 Guarantees"; right?

10           So, Feasibility Studies meet an objective,  
11 which is to determine whether an investment contained  
12 in the Investment Program is technically and  
13 economically feasible; right?

14           A. If the Project that is submitted is  
15 technically and economically feasible.

16           Q. Again, the Feasibility Study talks about a  
17 specific investment project; correct?

18           A. Yes. Only in that case it is a specific  
19 investment project to qualify and to sign the  
20 stability agreement.

21           Q. Article 19 of the Regulations--let's put it  
22 on the screen, please. It's behind Tab 6. CA-432,

1 for the record. Article 19 establishes the  
2 requirements of what needs to be included in the  
3 Feasibility Studies, as mentioned in Article 85 of the  
4 Single Consolidated Text of the Law; correct?

5 A. Correct.

6 Q. It's quite detailed. We're not going to  
7 look at it right now. There are a number of  
8 requirements. We don't have enough time, but if we  
9 look at B, it says that the Feasibility Study must  
10 include the acquisition of machinery and equipment to  
11 be used in the Project; correct?

12 A. Yes. In that specific project, yes.

13 Q. Okay. In that specific investment project;  
14 right?

15 A. Yes.

16 Q. And then if we look at G, you must include  
17 the profitability of the Project. We're talking about  
18 the specific investment project included in the  
19 Feasibility Study; correct?

20 A. Yes.

21 Q. In your Report, you cite an Article of  
22 Antonio Pinilla Cisneros; correct?

1 A. Yes.

2 Q. At the last Hearing, I understand that you  
3 said that he is a lawyer working for a mining company;  
4 correct?

5 A. Yes, in Antamina.

6 Q. Were you able to hear the Statement by  
7 Mr. Bullard, who came after you, as to who Mr. Pinilla  
8 was?

9 A. Yes, of course. I knew him from the  
10 university and a professional practice.

11 Q. Mr. Bullard said that he is an individual  
12 that knows a lot. He works for a mining company, and  
13 I understand he has been a professor; correct?

14 A. Yes.

15 Q. If we look at Tab 9, CA-114.

16 A. Where are you?

17 Q. Tab 9, please.

18 A. Okay. What page?

19 Q. 177.

20 In this Article, he is talking about the  
21 situation of Royalties and why Royalties should be  
22 included within the regime of administrative

1 stability, et cetera. But there is another paragraph  
2 that I want you to read with me.

3           After talking about Clause 10 of the  
4 stability agreements, it says--and it's being  
5 highlighted now. I don't think this paragraph has  
6 been translated in English. I'm going to read it so  
7 it can be translated in English.

8           "The explanation for the existence of this  
9 clause is simple." It's talking about Clause 10 here.

10 "The Feasibility Study developed and approved by the  
11 Minister of Energy and Mines contains the economic  
12 basis on which the Mining Project Investment has been  
13 structured"; correct?

14           A. Yes, that's what it says.

15           Q. Okay. It contains the economic basis on  
16 which a specific investment is decided; right?

17           A. Yes. Because at that time, it's the only  
18 certain thing that a company has when initiating the  
19 Project.

20           Q. Right. So, it says: "For the preparation  
21 of this plan of this Feasibility Study Investment  
22 Program, a number of variables are taken into

1 account"; right? "Amongst others, the legal regime  
2 that exists in the country, and the destination  
3 country of the investment. At the date of preparation  
4 and when it's been submitted for the approval of the  
5 Administrative Authority, the Feasibility Study  
6 analyzes the legal regime applicable to the investment  
7 that is sought to be conducted."

8 A. At the time, yes, but to conduct an analysis  
9 of something, the only certain thing to have access  
10 to, the stability agreement, is the initial investment  
11 that you have to do and include in your Feasibility  
12 Study. That is what this is making reference to.

13 I also consider that he's a very good  
14 lawyer. I cite in my Report Mr. Pinilla. Mr. Pinilla  
15 was talking about *contratos-ley*. The stability  
16 agreement is a *contrato-ley*, and I cited him in that  
17 context.

18 I have read the whole Article. I don't  
19 agree with some of the drafting of certain portions,  
20 but that is the explanation on which we need to  
21 understand the reference by Mr. Pinilla.

22 Q. If we read on, it says: "The stability of

1 this legal regime"--he's talking about the legal  
2 regime--"is a key factor for the determination of the  
3 destination of the investment."

4           Again, a specific investment. The only  
5 thing left for the calculation of the return for an  
6 investment is the activity submitted to fluctuation of  
7 prices.

8           So, the Feasibility Study takes into account  
9 a legal regime specific at that point in time, and  
10 specific for that investment that is being analyzed,  
11 that is being detailed in the Feasibility Study. As  
12 we saw in Article 19, as Mr. Pinilla says again, it  
13 calculates the return on investment on the basis of  
14 that legal regime applicable to that investment?

15           A. Right. That is what the provision says, a  
16 specific investment so that we meet the requirement  
17 established by the Law. The analysis has to do  
18 whether this Project is economically viable or not in  
19 connection with the minimum amount of investment that  
20 it commits to make.

21           Q. Then it says: "In other words, it  
22 eliminates the concern of the constant changes of the

1 tax regime, and it eliminates the concern that the  
2 legal regime may be modified that the investor took  
3 into account when projecting the investment."

4           The specific investment contained in the  
5 Stability Project; right?

6           A.    No, it is not the one contained in the  
7 feasibility study--in the project--I don't understand.

8           Q.    It says: "What stability does is it  
9 eliminates the concern of the constant changes in the  
10 tax regime, and it removes the concern that the legal  
11 regime may be in and of itself modified, the legal  
12 regime that the investor took into account when  
13 projecting the investment."

14           The investment has specifically--has been  
15 specifically established in the Feasibility Study;  
16 right?

17           A.    Yes. This is more of the same. It refers  
18 to the Feasibility Study containing the initial  
19 investment to qualify for a stabilization agreement.  
20 That is the initial investment. We know that,  
21 perhaps, there are other investments that are going to  
22 be made, but at that time the analysis and projection

1 is based on the Feasibility Study and the investment  
2 contained in that Feasibility Study.

3 Q. To be clear, the Feasibility Study does not  
4 include uncertain investments. It includes a specific  
5 investment being analyzed at that point in time;  
6 right?

7 A. That is what's needed to qualify for  
8 stability. The Project has to be economically and  
9 technically viable, and it has to meet the  
10 requirements set forth by the Law.

11 MS. DURÁN: Thank you.

12 I have no further questions.

13 PRESIDENT HANEFELD: Thank you.

14 Any questions in redirect?

15 MR. FRAGACHÁN: Thank you, Madam President.

16 Can we ask you for three minutes to reconvene?

17 PRESIDENT HANEFELD: Sure.

18 MR. FRAGACHÁN: Thank you so much.

19 (Pause.)

20 MR. FRAGACHÁN: Madam President, we have no  
21 further questions.

22 PRESIDENT HANEFELD: The Tribunal has no

1 further questions, either.

2           So, thank you very much. You are released  
3 as an Expert.

4           (Witness steps down.)

5           PRESIDENT HANEFELD: Can we then right away  
6 continue with Mr. Bullard?

7           MS. DURÁN: Yes. We just need to switch  
8 seats.

9           (Comments off microphone.)

10           MS. DURÁN: You're fine? Okay. Then we  
11 don't need to switch seats.

12           ALFREDO BULLARD, CLAIMANT'S WITNESS, CALLED

13           PRESIDENT HANEFELD: Can we then proceed  
14 with the Claimant's Expert, Mr. Bullard?

15           So, welcome. You have been called by the  
16 Claimant as Expert in this proceeding.

17           Let me just briefly introduce the Tribunal.  
18 Maybe you know Members already. On my left is  
19 Professor Tawil; on my right, I have Dr. Cremades. My  
20 name is Inka Hanefeld. I'm the presiding arbitrator  
21 in this case.

22           If I could kindly ask you to read out the

1 Declaration in front of you.

2 THE WITNESS: I solemnly declare, upon my  
3 honor and conscience, that I shall speak the truth and  
4 that what I say will be in accordance with my sincere  
5 belief.

6 PRESIDENT HANEFELD: Thank you. We have  
7 three Expert Reports of yours on the record at CER-2,  
8 7, and 12.

9 Can you confirm that these are your Reports,  
10 and do you have any corrections to make?

11 THE WITNESS: These are my Reports, and I do  
12 not have any corrections to make.

13 (Comments off microphone.)

14 PRESIDENT HANEFELD: And I see that you have  
15 prepared a presentation. We have the Spanish version  
16 in front of us. So, please start with your  
17 presentation.

18 DIRECT PRESENTATION

19 THE WITNESS: Thank you very much.

20 I will be summing up the content of my three  
21 Reports in the time I have been allocated.

22 This is a brief summary of my academic and

1 professional experience. This is in the First Report  
2 as an attachment. You can review it there, and I will  
3 be addressing directly the four topics.

4 I will be addressing the legal framework of  
5 the Stability Agreement, interpretative analysis of  
6 the Stability Agreement, the Supreme Court Decision in  
7 the 2008 Royalty Case, and the breach of the Stability  
8 Agreement.

9 First, the mining stability agreement, as  
10 has been said several times and as has already been  
11 recognized by all Experts and Witnesses, is an  
12 Adhesion Contract, as stated under Article 86 of the  
13 Mining Law that provides that they are Adhesion  
14 Contracts, and their models will be prepared by the  
15 Ministry of Energy and Mines. And there is also a  
16 model contract that is--or agreement that is approved  
17 by a Supreme Decree.

18 What does it mean to have an Adhesion  
19 Contract? First, it means that there is a unified and  
20 consolidated text of the Mining Law and regulations  
21 that establish the conditions through which stability  
22 is granted, the Guarantees and the scope of such

1 stability.

2           This is reflected in the model agreement  
3 that has to follow what the law and the Regulations  
4 state; therefore, the Stability Agreement, by being  
5 based on the model contract or agreement, has to  
6 reflect what that model contract states and also what  
7 the Mining Law and its Regulations established.

8           This is traceability. The Stability  
9 Contract can be traced back to the Regulations and the  
10 Law by means of the model contract. The idea is to  
11 guarantee that there is a perfect reflection of what  
12 the Law states, what the Regulations state, in the  
13 text of the Stability Contract. This means that a  
14 Stability Contract should have the legally established  
15 scope. It cannot have more or less. It has to have  
16 whatever the law provides for. Therefore, it cannot  
17 go against the law, the Mining Law and its  
18 Regulations. It cannot be interpreted contrary to the  
19 Mining Law and its Regulations, and a greater or  
20 lesser scope than the one established by the Mining  
21 Law, the Regulations and the model contract can  
22 be--cannot be negotiated.

1           The second comment: The interpretative  
2 analysis of the Stability Agreement. If we interpret  
3 the Stability Agreement under the Mining Law and its  
4 Regulations, "the Leaching Project of Cerro Verde"  
5 means the Cerro Verde Mining Unit, which is an  
6 Administrative-Economic Unit, and that means Mining  
7 Concession Cerro Verde 1, 2, 3, and also the  
8 Beneficiation Concession. This is the consequence of  
9 reading the law, the model contract, and also the  
10 Stability Contract all together.

11           Let us look at the Contract in the third  
12 clause. The third clause is titled "On Mining  
13 Rights," and "mining rights" under Peruvian law means  
14 Concessions. That is clearly established in the  
15 preliminary title of the law and in all the text of  
16 the law. So, if we're talking about Mining Rights,  
17 then we are talking about Concessions, and the third  
18 clause defines the scope of the Contract.

19           This clause uses the term "is  
20 circumscribed." It says, according to what is  
21 expressed in 1.1 of the Leaching Project of Cerro  
22 Verde, this is circumscribed to the Concessions

1 related in Exhibit 1. And "circumscribed" in the  
2 dictionary means to keep within certain limits, to  
3 adhere. One circumscribes what is the limit that the  
4 Cerro Verde Leaching Project will have, and that  
5 limit, that scope, is precisely what we see at Annex 1  
6 or Exhibit 1. And that means that this is only  
7 limited--that the Cerro Verde Leaching Project is  
8 limited to the Concessions in Annex 1, Exhibit 1. And  
9 Annex 1 describes the two Concessions that we have  
10 mentioned: the Concession Cerro Verde 1, 2, 3, and the  
11 Beneficiation Concession. This word is not in the  
12 Contract. Nowhere in the Contract we see that,  
13 according to what is expressed in 1.1, the Leaching  
14 Project of Cerro Verde is located in the Concessions.  
15 If it was for geographical purposes, the Stability  
16 Contract would have a different wording. But here it  
17 says "circumscribed."

18           And the second paragraph also helps us  
19 understand the first one: "What is provided in the  
20 above paragraph does not prevent the Owner from  
21 incorporating other mining rights." And a mining  
22 right, as we saw, is a Concession. We can incorporate

1 a concession, a mining right, to an  
2 Administrative-Economic Unit, but it is not possible  
3 to incorporate a mining right to a concession. And  
4 here it says "others." In other words, it says, a  
5 mining right can be incorporated to other mining  
6 rights. Not to an investment. An investment is not a  
7 mining right. A project of investment is not a Mining  
8 Project.

9           And this can be seen in this graph. To the  
10 left, we have an Administrative-Economic Unit that has  
11 a mining concession and a beneficiation concession,  
12 and here we have to the right investment projects.  
13 These may be a fleet of trucks or a plant that is part  
14 of a beneficiation concession, but is a separate  
15 investment. Let's imagine there are several plants or  
16 processes within the same beneficiation concession.  
17 It is totally feasible for a new concession, another  
18 mining right, to be incorporated to an  
19 Administrative-Economic Unit. This is what is  
20 permitted under the second paragraph of the third  
21 clause. But it is not feasible for a new  
22 concession--for a new concession to be incorporated to

1 an investment project. I cannot incorporate a  
2 concession to a fleet of trucks or I cannot  
3 incorporate a concession to facilities. I need to  
4 incorporate it legally to other mining right. So, the  
5 second paragraph of this clause is telling us that the  
6 addition has to be--the inclusion has to be to mining  
7 rights to allow for the stability to be extended to  
8 that new right.

9           The reading of the Stability Contract is  
10 consistent with the Mining Law. Mining stability  
11 agreements grant guarantees to Administrative-Economic  
12 Units, and if we look at this Article 82, we see that:  
13 "In order to promote investment and facilitate the  
14 financing of Mining Projects referring to one or more  
15 Economic-Administrative Units, Mining Activity  
16 Titleholder shall enjoy Tax stability agreement that  
17 shall be guaranteed through an agreement entered into  
18 with the State." Here it doesn't refer to "investment  
19 project." It's referring to the  
20 Economic-Administrative Unit.

21           And if we look at the Article 82, it  
22 says--this is the second paragraph--"For the purposes

1 of the stability agreement referred to in the  
2 preceding paragraph, the term 'Economic-Administrative  
3 Unit' means the set of mining concessions located  
4 within the limits set forth in Article 44 of this law,  
5 the processing plants and the other assets that  
6 constitute a single Production Unit due to sharing  
7 supply, administration, and services."

8           An Economic-Administrative Unit is an  
9 economic operational concept. It is the one that is  
10 stabilized for the purpose of the Contract. This is  
11 what we see here. If the interpretation was that this  
12 only stabilizes investment projects, the second  
13 paragraph would have no consequence. It would not  
14 have a useful effect because it would be good for  
15 nothing. And this Article also creates a different  
16 concept of Economic-Administrative Unit, different  
17 from Article 44, because this is for the purpose of  
18 stability.

19           The Regulations also always refer to units  
20 or concessions, but they never refer to "investment  
21 projects" for the purposes of stability. Article 2,  
22 last paragraph, states that when natural or legal

1 persons are the titleholders of several concessions or  
2 Economic-Administrative Units, the qualification -it  
3 is referring to the qualification for purposes of the  
4 stability agreement- would only take effect for those  
5 concessions or units that are supported by the  
6 stability agreement, those concessions or units that  
7 are supported. The stability is for those purposes.  
8 So, it doesn't say for the purposes of an investment;  
9 rather, it says for the purposes of a unit or  
10 concession.

11           And Article 22 has two paragraphs that have  
12 been discussed at length. In the first paragraph, it  
13 says that contractual guarantees shall benefit the  
14 Mining Activity Titleholder exclusively for the  
15 investments that they make in the concessions or  
16 Economic-Administrative Units. So, it goes back to  
17 the same concept.

18           And the second paragraph clearly states why  
19 that concept is important: "To determine the result  
20 of its operations, a Mining Activity Titleholder that  
21 has other Concessions or Economic-Administrative Units  
22 shall keep independent accounts and reflect them in

1 separate earning statements." There is no reference  
2 to "independent accounts" or "separate results of  
3 investments." The reference here is to  
4 "Economic-Administrative Units" or "Concessions."

5           And now we look at the model contract. What  
6 do we see in the first clause of this Contract? It  
7 identifies that the relevant elements for stability  
8 are the "concessions" that are part of an  
9 Economic-Administrative Unit. It mentions them  
10 expressly, it says, its concessions constituted over  
11 the Economic-Administrative Units.

12           And now I would like to understand why it  
13 is--how this EAU is composed and how the EAU is still  
14 reflected in the current Contract.

15           If you look at this, the concept of  
16 Economic-Administrative Unit has been defined as the  
17 Cerro Verde Leaching Project. That is what the first  
18 clause does. It qualifies it. And now, from the  
19 Contract, they take the term "the Concessions  
20 constituted on the Economic-Administrative Units," and  
21 that goes back to the Contract, "is the same as the  
22 Cerro Verde Concession 1, 2, 3."

1           So, one takes the concept,  
2 Economic-Administrative Unit, from the model contract,  
3 takes that out and says what? Which  
4 Economic-Administrative Unit will I be placing there?  
5 And includes Cerro Verde 1, 2, 3. And it says  
6 "hereinafter, the Cerro Verde Leaching Project."

7           And, also, in the signed Stability Contract,  
8 you see a colon after "its concession." There it says  
9 "Investments in its concession, colon, Cerro Verde 1,  
10 2, 3. Hereinafter, the Leaching Project of Cerro  
11 Verde." So, the colon shows that what will be  
12 referred to hereinafter as the Leaching Project is  
13 Cerro Verde 1, 2, 3, it splits the phrase and clearly  
14 indicates what the "hereinafter" is referring to.

15           The third clause of the model contract is  
16 consistent with the first clause. It reiterates that  
17 what is relevant for stability are the concessions  
18 that are part of the Economic-Administrative Unit.  
19 Let's see why. And it says "as stated in the  
20 Project," and then you have the name as defined at  
21 Clause 1.1. It is circumscribed, we already discussed  
22 this word, to the Economic-Administrative Unit, and a

1 blank space, consisting of the Concessions.

2           So, here, once again, what is finally done?  
3 They take the concept of Economic-Administrative Unit  
4 and they say, okay, the first clause already told us  
5 that it is the Cerro Verde Leaching Project, and they  
6 include "according to what is expressed in the Cerro  
7 Verde Leaching Project, it is circumscribed to" and  
8 the "circumscribed to" is completed with Annex 1.  
9 Annex 1, that is precisely the one defining which are  
10 the Concessions or mining rights that are the subject  
11 matter of the stability.

12           And here it says: "What is provided in the  
13 above paragraph does not prevent the Owner from  
14 incorporating other mining rights to this Project."  
15 The model contract clearly states that it is--what is  
16 relevant are the Economic-Administrative Units, and  
17 Cerro Verde's Stability Agreement is consistent with  
18 this model, because what it includes is what Annex 1  
19 defines as an "Economic-Administrative Unit."

20           This is a document, RE-175. Just as an  
21 example I will take some of the names. We have seen  
22 this exhibit several times. You will see that these

1 names do not have any consistency as to what they are.

2           One could not say that they all define a  
3 project. For example, in the case of "Centromín  
4 Perú"--there are two "Centromín Perú"--is the holding  
5 of a set of companies, "Mahr Tunel" is a place where  
6 there is a tunnel, "Fundición y Refinería" is just the  
7 name of something, of a smelter and refinery which I  
8 don't even know what it is, but it is not a place.  
9 "Minsur" is the name of the Company, the name of the  
10 Company that has several Concessions.

11           So, truth be told, there is no consistency.  
12 What the law does and what is important here, what is  
13 important to define, is the annex. Because the annex  
14 is the one that defines the scope. You may review all  
15 of these cases, but all of these cases will include an  
16 Annex 1, and in all of them you will find that Annex 1  
17 defines a set of Concessions, and they are the ones  
18 stabilized under the reading that we have made.

19           Now, what happens here is that, under the  
20 discussion in this case, Perú's position confuses two  
21 different concepts. One thing is the key to open the  
22 door to stability, and another one is the stability.

1           To open the door of stability I have to  
2 comply with certain requirements. No one objects that  
3 the feasibility study and the investment plan are  
4 important. But they do not define the stability. What  
5 defines the stability is Annex 1, the one that defines  
6 the Economic-Administrative Unit that is qualified.  
7 And it is in that moment, after the requirements are  
8 met, that finally the Concession is obtained.

9           These are several clauses that have been  
10 cited to say, no, what defines is the  
11 Technical-Economic Feasibility Study. But if you read  
12 these clauses--and if the Tribunal has any doubt, I  
13 will be happy to address this--all of these clauses do  
14 not define the scope; rather, they define how the  
15 procedure is followed to comply with the investment  
16 that triggers the scope, that triggers what is  
17 protected. So these clauses are irrelevant to  
18 determine the scope. The ones that are useful to  
19 determine the scope are the third clause if one reads  
20 it together with clause 1.1. And it is interesting.  
21 Clauses 9 and 10 are relevant to understand also the  
22 scope of the Stability Agreement. They define the

1 guarantees. It is important or interesting because we  
2 have had a great deal of discussion. We are talking  
3 about tax stability, but the stability of this  
4 Contract goes beyond tax stability. There is  
5 stability, for example, to be able to export the  
6 mineral. If Perú change a rule to ban the export,  
7 that rule cannot change the Contract. There are rules  
8 on exchange rate stability, rules about customs, rules  
9 on the validity fees of the Concessions.

10           So, all of those rules, if Perú's position  
11 was correct, would have to be analyzed separately  
12 based on the type of investment, and a decision would  
13 have to be made as to what can be exported and what  
14 cannot be exported.

15           For example, if you think of the  
16 concentrates--that is, ore dust, how would we know  
17 what part of that dust or powder could be exported?  
18 If I go to the Central Bank of Reserve to ask for  
19 dollars in case there is an exchange control, how can  
20 we determine what those dollars are going to be used  
21 for? This shows the sense of the contract. The  
22 contract seeks for stability for all of these rules,

1 not only the tax rules, and it is very difficult to  
2 think that someone imagined a system so "Kafkian" with  
3 regard to all of these guarantees that have been  
4 granted.

5           Now I am going to move on to the Decision of  
6 the Supreme Court in the Royalty Case. This Decision  
7 is used to support the interpretation of the Stability  
8 Contract. But, as I am going to show, as I say in my  
9 Reports, this ruling is not useful to decide this  
10 case. It is not res judicata. It is only res  
11 judicata in a contentious-administrative proceeding,  
12 at the local level, not in a breach of contract  
13 proceeding, and also, about the particular 2008  
14 Royalty case. It does not have a greater effect.

15           One looks at this because, what was  
16 discussed under this ruling was a contentious-  
17 administrative process. The nullity of an  
18 administrative resolution. It does not decide a civil  
19 claim about the breach of the contract under civil  
20 law. And this also has a practical effect.

21           The evidence in a contentious-administrative  
22 proceeding is just limited to that proceeding, to the

1 case file of the administrative proceeding. There is  
2 nothing else. That is all that is in the file.

3           There are no witnesses on the execution and  
4 performance of the Contract or the interpretation of  
5 the legal framework. There is no evidence that  
6 reflects the contemporaneous intent of the Government  
7 or the investor as to the benefits of the stability.  
8 There is no document production phase. Economic expert  
9 reports are not filed. So, there is none of the phases  
10 that we have here. We do not have two weeks of  
11 Hearings, and we do not have Memorials nor all the  
12 time that we have discussed. When I have a hearing  
13 before the Supreme Court, I'm lucky if they give me  
14 five minutes to explain my case, and when one goes to  
15 a contentious-administrative proceeding, they are very  
16 focused on the matters referred to the contentious-  
17 administrative process.

18           This, second, the Royalties Decision is not  
19 a binding precedent. This has been recognized by all  
20 of Perú's Experts. It was even said so by Professor  
21 Eguiguren at the previous Hearing. What the Supreme  
22 Court said about the 2008 Royalties is not binding

1 precedent. He clearly stated this.

2           Third, the Decision on the Royalties Case  
3 does not deserve any special deference either--does  
4 not deserve deference either. Different judges in  
5 Peru can and often do reach different decisions.  
6 Mr. Eguiguren also agrees with me. He indicated at  
7 the previous hearing it could happen that there were  
8 different decisions because both the Superior Court  
9 and the Supreme Court were different Chambers. But it  
10 could have happened that they would have been  
11 different because the Courts were different, and there  
12 is where the role of the judge to interpret and  
13 motivate their vote comes in, and they might say  
14 different things, and in fact they do say different  
15 things all the time. But, moreover, the Judgment has  
16 a conceptual problem. It's mistaken, legally  
17 speaking.

18           This is a graphic that shows how the  
19 stabilization mechanism works. First, one applies for  
20 stability. With what? With a Feasibility Study.  
21 This Feasibility Study, once approved, makes it  
22 possible to sign the stability agreement, and once it

1 is signed, it is possible to carry out the investment  
2 and, finally, obtain stability; to use the key to open  
3 the door and get into the house, which is the  
4 Stabilized Economic-Administrative Unit.

5           Now, be careful. It's very important to  
6 note that this is not exactly what happened in the  
7 contract that we are discussing here because it was  
8 executed before the signing of the Agreement. But for  
9 practical purposes, it is not important.

10           It is important to realize, I've often heard  
11 it said that the Feasibility Study is part of the  
12 Agreement. The Feasibility Study is not part of the  
13 Agreement. There is no annex to the Feasibility  
14 Study. The only thing there is a summary of the  
15 Investment Plan because, well, of course, in the  
16 Agreement one states what must be done to achieve  
17 stability. And to do so, one must make the  
18 investments that are defined in the annex, which is a  
19 part of it, but it doesn't define the scope of  
20 stability, it is the key to open the door.

21           Actually, the problem of the Court is that  
22 it is seeing everything as though it's a single color,

1 but actually, there are two distinct stages. There is  
2 the stage where the Feasibility Study and the  
3 Investment Program are necessary to make sure that the  
4 benefit--the commitment of the investment be carried  
5 out, and then there's the stage where the State  
6 performs by granting stability to the  
7 Economic-Administrative Unit.

8           With this, I move on to the last point,  
9 which is the breach of the Stability Agreement.

10           When is there a breach of contract? Let's  
11 recall, we're talking about breach of contract. The  
12 general rule is, when there is a lack of coincidence  
13 between what is promised and the debtor's conduct,  
14 there is a breach. And the obligation is breached when  
15 the application of--when different laws are applied  
16 than those that are provided for in the Stabilized  
17 Regime. That's where there is a breach.

18           The obligation of stability that the State  
19 assumes is an obligation to not do, to not apply a  
20 legal regime other than the Stabilized Regime, and  
21 every time that an assessment against Cerro Verde  
22 turns into a final, definitive and enforceable

1 administrative act, then there is a breach because  
2 that is where a law is effectively being applied, one  
3 that is different from the stabilized one.

4           This occurs in the cases listed in  
5 Article 115 of the Tax Code. There's a decision, for  
6 example, by the Tax Tribunal which is definitive and  
7 final. The taxpayer does not challenge or appeal,  
8 which makes it a definitive and final decision, or the  
9 taxpayer withdraws its challenge or appeal with which  
10 it is a definitive and final decision. From there, it  
11 is enforceable. This according to the Tax Code.

12           So, only from the moment that there is a  
13 final and definitive assessment is there effective  
14 application of provisions other than those that are  
15 provided for in the Stabilized Regime, and at that  
16 point Perú breaches its obligation with the final, and  
17 definitive decision, which is enforceable, and it is  
18 only at that point that Cerro Verde suffers a negative  
19 impact on its--a negative economic impact, damages.  
20 Only then a damage is produced.

21           So, Perú is responsible for its breach as of  
22 that moment. Once it becomes final and definitive,

1 Cerro Verde has an interest in taking action, because  
2 before it did not have an interest to act—because the  
3 damage had not been incurred, and that's where the  
4 statute of limitation begins to run.

5           This was determined in a decision taken by  
6 the Judiciary in the Poderosa Case. In the Poderosa  
7 Case, an objection due to the statute of limitations  
8 was raised, saying that the contractual claim had  
9 expired. But to analyze whether the limitations  
10 period had run, it's necessary to identify, the Court  
11 says, as from which moment Poderosa had an expedited  
12 right to claim before the judiciary about the  
13 compliance with the Tax stability agreement entered  
14 into with the Peruvian State. That is the question  
15 asked by the Court.

16           And how does it answer? Well, in this case,  
17 as from the date on which the breach of the  
18 aforementioned agreement occurred through the issuance  
19 of the aforementioned administrative resolutions of  
20 the Tax Tribunal.

21           In other words, it is just with the Decision  
22 of the Tax Tribunal that it's understood that the

1 limitations period began to run.

2           Now, each assessment that becomes final,  
3 definitive, and enforceable constitutes, therefore, a  
4 breach. But, moreover, each is a separate breach.  
5 Each is a distinct breach. Let us recall, once again,  
6 that we are talking about breach of contract. Let me  
7 cite an example.

8           I have a lease contract and someone fails to  
9 pay me for January. When they don't pay me for  
10 January, there's a breach. But that doesn't mean that  
11 they have breached in respect of February, March,  
12 April, May, or other months. They only breached in  
13 respect of January.

14           Now, I cannot bring a claim for breach in  
15 respect of February, March, April, May. I have no  
16 ability to do so because I don't even know if there's  
17 going to be a breach. And imagine if this were a  
18 variable rent that depends on the sales of the  
19 Company. One doesn't even know how much it is, so,  
20 how can one bring an action. Well, unless there's a  
21 term acceleration clause or something similar.

22           But if it is not the case, if the contract

1 is continuous, and it's performed over time, then it's  
2 only when there is a breach in respect of February, I  
3 can bring a claim for February, only when there is a  
4 breach in respect to March I can bring a claim for  
5 March, only when there is a breach in respect to April  
6 I can bring a claim for April.

7           So, if we were to carry this over to the  
8 Stability Agreement, it is only with the final  
9 Decision that I'm able to bring a claim. And each one  
10 is different. They have different content, different  
11 times for application, different amounts, and  
12 therefore it is not possible to understand that the  
13 first implies a breach of everything that comes  
14 afterwards when we still don't know what has happened  
15 afterwards.

16           With that, I conclude my presentation, and  
17 I'm available for any questions you may have.

18           PRESIDENT HANEFELD: Many thanks,  
19 Mr. Bullard, for your presentation.

20           Before we continue with the  
21 cross-examination by the Respondent's Counsel, I may  
22 ask two questions to you, now, that relate more to

1 your Report than to the presentation, but just for me  
2 to better understand maybe also topics in  
3 cross-examination.

4 QUESTIONS FROM THE TRIBUNAL

5 PRESIDENT HANEFELD: In your First Report in  
6 Paragraph 41, you state: "When the Government  
7 expanded the Beneficiation Concession to include the  
8 Concentrator, the Concentrator came formally under the  
9 protective scope of the Stability Agreement."

10 Why--this is my question--in your Expert  
11 view this is so under the Peruvian civil law rules on  
12 conflict interpretation, taking into account that at  
13 the time that the Stability Agreement was concluded,  
14 the Concentrator was not considered a feasible  
15 investment and was not included in the Beneficiation  
16 Concession at that time? And I heard you referring to  
17 this Exhibit 1, but this Exhibit 1 only refers to the  
18 "old Beneficiation Concession," relative at the time.  
19 And this is quite significant in terms of the area and  
20 the production capacity named therein.

21 So, under Peruvian contract interpretation  
22 rules, why do I need to look at the Beneficiation

1 Concession eight years later.

2 THE WITNESS: Well, first of all, as I  
3 already explained--

4 (Comments off microphone.)

5 THE WITNESS: Oh, I'm sorry.

6 First of all, as I already explained, the  
7 key concept is that it is an Adhesion Contract--as it  
8 is as an Adhesion Contract, the Contract cannot move  
9 away from what the law says. The law defines  
10 "stability" as stability of the  
11 Economic-Administrative Unit or of a concession.

12 So, what is stabilized is Annex 1. That  
13 implies that any investment within the time provided  
14 for the--by the Stability Agreement is covered by the  
15 stability. This has always been my interpretation of  
16 the laws on--laws and regulations on stability, and  
17 that is what is happening in this case. The thing is  
18 that the Concentrator was incorporated within a  
19 concession--that is to say--excuse me, the  
20 Concentrator is not a different concession from those  
21 that are already stabilized. They could have had a  
22 different concession, in which case--a different

1 concession with a different project, in which case  
2 that concentrator, had it been in a concession other  
3 than the ones listed in Annex 1, would not have been  
4 stabilized. But since it was incorporated into an  
5 already existing concession, moreover, that exists  
6 under the Ministry's approval, plus the incorporation  
7 has also been approved by the Ministry, by the DGM.

8           So, once it is incorporated, it is  
9 incorporated like any other investment, such as  
10 purchase of trucks, such as the construction of a  
11 ramp, such as expansion of the already-existing plant,  
12 because it is incorporated in the same concession.

13           Now, what I think one must be very careful  
14 about is to not confuse the project for which the  
15 feasibility study is presented. One mustn't confuse  
16 it with the scope of stability. They are two  
17 different things.

18           Now, this being the case, Perú has about 10  
19 different Stability Regimes, and it works the same way  
20 in all of them. There is an investment, and that  
21 investment has to meet certain requirements based on  
22 what is offered. Once those requirements are complied

1 with, then this stability is extended to a unit,  
2 sometimes a contract, sometimes to a company. It  
3 depends on the regime.

4           In this case, it's a Mining Unit, but in all  
5 of them, the investment is not what is protected.  
6 There are some exceptions when there is a foreign  
7 investor, where only the part that they contributed,  
8 their shares, are protected. But generally--for  
9 example, with oil stability, the same thing happens;  
10 there is a license contract that is equivalent to a  
11 concession. One offers to drill three wells. You  
12 drill three wells, and then if you want to continue  
13 drilling more, all the other drilling is also  
14 stabilized. It is also protected under the legal  
15 regime. It's the same thing here.

16           Now you asked me about the criteria of  
17 interpretation. Here I think it is important to  
18 consider how the Agreement should be interpreted. The  
19 Agreement is a contract, the terms of which come from  
20 the law. So, it's subject to a strict interpretation  
21 based on what the law says.

22           Now, if the law sets forth a definition, the

1 Contract can't modify it. So, the interpreter is  
2 limited.

3           This doesn't mean you can only render a  
4 literal interpretation, but it means that any literal  
5 interpretation must not expand the scope. So, my  
6 interpretation is that when you look at the text of  
7 the law, the concept of Economic-Administrative Unit  
8 is mentioned in an important manner in the relevant  
9 Articles.

10           No mention is made in the relevant Articles  
11 of an "investment project." It is not to be found.  
12 The literal meaning of clauses in the Mining Law,  
13 well, none of them would support the idea that what  
14 has been stabilized is an investment project. It is  
15 not even mentioned. So, one must stick to  
16 the--strictly to the text of the law. Then one  
17 eventually reaches the conclusion that the  
18 interpretation of the Agreement cannot depart from the  
19 law.

20           This is in my Report. I don't want to carry  
21 on further, but this is confirmed by a functional  
22 interpretation, which is another criterion allowed by

1 the law, because the logic of it is to attract the  
2 investment and allow for the Project to go forward.

3           In a systematic interpretation, what I  
4 mentioned, that not only the tax is stabilized, but  
5 one must also see how this interpretation which seeks  
6 to extract stability and attach it to a concept  
7 outside the text of the law, which is the investment  
8 project, well, it applies to other stabilities, such  
9 as stability in respect of exporting the ore or  
10 stability to receive money from the Central Bank of  
11 Reserve guaranteeing a certain rate, all of those  
12 rights which are spelled out in Clauses 9 and 10 of  
13 the Contract, well, all of those need to be read and  
14 see how this theory would work with all those  
15 different types of stability. Because it would have  
16 to be the same concept.

17           So, a systematic interpretation takes us to  
18 the same thing. I've gone on at some length, but I  
19 don't know, with this, if I've answered your question.

20           PRESIDENT HANEFELD: Just to make sure that  
21 I understand. So, I understand you say because it is  
22 an Adhesion Contract, Annex 1 is stabilized, and

1 regardless of how the Concession evolves over time.  
2 So, whether the Concession named in Exhibit 1  
3 comprises 463 hectares and 33,000 MT/d, or eight years  
4 later, it comprises four times more, it does not  
5 matter, in your understanding?

6 THE WITNESS: Yes. For me, it's not  
7 relevant.

8 (Interruption.)

9 THE WITNESS: For me, it's not relevant  
10 because the concept of stability under Peruvian law is  
11 a concept that does not limit stability to the  
12 specific investment. As Ms. Vega explained a moment  
13 ago, Perú's situation in the years in which these laws  
14 were adopted was terrible.

15 Its main competitor was Chile, which had a  
16 more developed institutional framework and it was  
17 credible, and Perú had no credibility. That's why, if  
18 you look at the original versions of the Law, with an  
19 investment of 2 million, I could get stability for the  
20 Unit because no one wanted to invest in Perú.

21 So, the legal arrangement is very  
22 attractive, and it's consistent with the international

1 framework for stability.

2           Now, what does this mean? Well, it means  
3 that, if I make an investment and I define an  
4 investment so as to comply with stability, and I  
5 undertake a Feasibility Study, and that Feasibility  
6 Study is viable, and that amount is greater than the  
7 threshold defined in the Law, then stability is for  
8 the entire Unit. Why?

9           Because what is truly valuable about the  
10 Contract or the Agreement, is not how much tax will be  
11 levied on me. Cerro Verde has paid for a long time  
12 more taxes than it was applicable at that time because  
13 it had been stabilized. It paid 30 and I think the  
14 rate at the time was 25.

15           The important thing is that the stability is  
16 there, that the rules to the game aren't going to  
17 change. That's how one must interpret the Contract  
18 and read it. That is why the definition of an  
19 investment is because what is wanted is for it to be  
20 an investment that is made in the Concession, that  
21 improves the production capacity of the Concession,  
22 and the consideration for that is stability of the

1 entire Concession.

2           PRESIDENT HANEFELD: Then allow me just one  
3 follow-up question before I hand over to the  
4 Respondent's Counsel.

5           In Paragraph 8 of your Second Expert Report,  
6 you make reference to a Legislative Decree confirming  
7 that this Adhesion Contract under Peruvian law have a  
8 civil and nonadministrative nature, and may only be  
9 amended or canceled by agreement between the Parties.

10           And also the Stability Agreement provides in  
11 Clause 14, the Contract cannot be modified,  
12 unilaterally, by any of Parties. Any modification  
13 must be made by public deed, once the Parties have  
14 reached an agreement with respect to such  
15 modification.

16           So, does the inclusion of the Concentrator  
17 by extension of the Beneficiation Concession later  
18 constitute such a modification to the Contract?

19           THE WITNESS: No. Because it falls within  
20 the very scope of the Contract, the Agreement.

21           The Concentrator, while--so long as it's  
22 incorporated as part of an existing mining right set

1 out in the Agreement, is covered. And the same thing  
2 happens with all investments made during the 15-year  
3 period of stability. So long as the Modification is  
4 covered one needn't change the scope because the scope  
5 is the Concession, the Economic-Administrative Unit in  
6 this case. It's a set of Concessions, grouped under  
7 an administrative--an Economic-Administrative Unit.

8           So, there's no need to amend the Contract or  
9 the Agreement.

10           And indeed, at a given point in time in the  
11 history of these three Agreements, at some point in  
12 time there was an intention to have an addenda to  
13 amend the scope because there was a concern of some  
14 overlap of the Agreements, though, that never  
15 happened, the addendum was proposed and it was not  
16 done because it was said that that modification  
17 doesn't fit within the model agreement because it  
18 referred to a temporary change or a time change, and  
19 that never happened. There was an interpretation that  
20 allowed the two Agreements to coexist while only one  
21 stability was applied.

22           But, once again, the modification wasn't

1 made because it didn't fit within the model agreement,  
2 and it did not fit within the Law.

3           PRESIDENT HANEFELD: Are you aware and have  
4 you analyzed that in 2004 Cerro Verde itself suggested  
5 an amendment to the Stability Agreement? Shall we  
6 show you the presentation which shows it, or are you  
7 aware of it?

8           THE WITNESS: I have seen it, and I  
9 understood that what was argued there--and I'm sorry  
10 if I'm not remembering correctly, if you're referring  
11 to that part of the presentation, that it was thought  
12 that the Concentrator might be built in a different  
13 Concession.

14           So, being a different Concession, there one  
15 would have to amend Annex 1 so as to incorporate  
16 another Concession to bring it within the scope of the  
17 Concession, but that doesn't impede new investments in  
18 the existing Concession from being covered. And I  
19 understand that that is what was executed for, because  
20 at the end of day, the investment was accepted within  
21 the same Beneficiation Concession.

22           So, at present, the Stabilized Unit is a

1 Unit that includes Cerro Verde 1, 2, and 3 and the  
2 Beneficiation Concession, nothing more. It continues  
3 to be the same thing. What's going on in these Units,  
4 so long as they're legitimate investments, is  
5 protected.

6 PRESIDENT HANEFELD: So, for you, the  
7 extension of the Beneficiation Concession to the  
8 Concentrator is the decisive point in this case?

9 THE WITNESS: I understand that that is the  
10 case, also stemming from an interpretation of the  
11 Contract or the Agreement. But, yes, because the  
12 discussion, once again, is whether the Concentrator is  
13 or is not part of an Economic-Administrative Unit.

14 My opinion, as reflected in my Reports, is  
15 that what is stabilized is the entire table.

16 The Concession of Cerro Verde 1, 2, and 3,  
17 and which within the same area has a Beneficiation  
18 Concession. Everything that is invested is within the  
19 Stability Agreement because that is what's defined by  
20 Law. And since the Law so defines it that--then it is  
21 protected. So, as I see it the Concentrator is  
22 protected because it's incorporated into this

1 Concession.

2           PRESIDENT HANEFELD: Thank you very much.

3           Maybe this could be a good time for a lunch  
4 break.

5           (Comments off microphone.)

6           PRESIDENT HANEFELD: No, it's not a good  
7 time for a lunch break. Please continue.

8           ARBITRATOR CREMADES: Now, continuing with  
9 your answer, following up on your answer to the  
10 President, I would like to remind you that there are  
11 three different stability agreements for Cerro Verde.  
12 One dates to 1994, another 2004, and another 2012.

13           Now, if you make a comparison, I think that  
14 what we're hearing is fine, and it's been an excellent  
15 presentation, but I think the fundamental thing for  
16 the purposes of stability is the Agreement, and the  
17 Agreement which, in effect, is made within a Legal  
18 Framework. But if you compare the Stability Agreement  
19 of 2004 with the 2012 one, in 2012, express mention is  
20 made not only of leaching but also the expansion in  
21 the form of the Concentrator.

22           Doesn't this entail recognition of a mistake

1 in the 2004 interpretation, precisely because in 2012  
2 this situation is addressed, and it said, expressly,  
3 that stability also covers the Concentrator, which is  
4 understood and recognized by the Parties, perhaps with  
5 the interpretation of 2012 Agreement--with the 2012  
6 Agreement, the Parties recognized that it wasn't  
7 covered, that the Concentrator wasn't covered before.

8 How do you compare these two Agreements?

9 (Overlapping interpretation and speakers.)

10 (Interruption.)

11 THE WITNESS: I believe that all of this  
12 needs--well, the textual interpretation needs to be  
13 accompanied by an interpretation of the context in  
14 which all this happens.

15 If I'm told that it--if I'm assured that  
16 it's not going to rain and then it does rain, then the  
17 next time I'll take an umbrella with me. I think the  
18 thing is that, as the--among the three Agreements,  
19 rain had fallen. There had been an understanding, a  
20 correct understanding on the part of the investors, I  
21 see it as regards the scope of coverage, and then an  
22 interpretation emerged, which I believe is mistaken.

1 And not only in my opinion, I think it's understood as  
2 a change in criterion.

3 And so, of course, one tries to draft a  
4 Contract so as to avoid--as happens all the time,  
5 depending on the context one is in.

6 If one sees that a contract is clear, and  
7 then it does not meet with compliance, then one tries  
8 to be even clearer. I think that's the reason.

9 ARBITRATOR CREMADES: Isn't there a  
10 change--is this a change in criterion, or is it a new  
11 \$800 million investment, which is a very different  
12 situation from a change in criterion?

13 THE WITNESS: Well, let's see. Once again,  
14 I think that's very important to understand the three  
15 Agreements. Why are the three Agreements? The three  
16 Agreements exist because the idea was to have a  
17 stability, which moves over time. What you cannot  
18 have are two agreements that simultaneously grant the  
19 same stability. That cannot be.

20 Or you cannot have one Stability Regime  
21 overlapping with another Stability Regime. The three  
22 Contracts move over time. The stability is the same,

1 and each Contract expands the level of stability. So,  
2 of course, I make an \$800 million investment, but if  
3 you understand that it was already protected because  
4 it's the same Economic-Administrative Unit, then I  
5 don't think that is what's relevant.

6           It could be 800 million, 1 billion, or one  
7 million. Well, it can't be one million because there  
8 is a minimum limit, but there are some investments  
9 that continue being covered and so I think the change  
10 in name--well, and we have already seen that the names  
11 are given in a--well, in somewhat--well, I do not know  
12 if I should call it arbitrary, but more or less  
13 fortuitous manner. So, I think what's relevant is to  
14 understand the Legal Framework under which the  
15 Agreement is structured.

16           The concept of Economic-Administrative Unit  
17 is a central concept for understanding the entire  
18 logic of the Agreement, and I repeat the same thing.  
19 The concept of "investment project" is not to be found  
20 in the Law. There's no clause of the law, no  
21 Article thereof, that mentions an investment project.  
22 So, I think that's what we need to look at.

1           One must look at whether that's already been  
2 stabilized, and I think the answer is, well, was that  
3 or was it not stabilized? In my opinion it was. What  
4 happens later doesn't add to or take away from what  
5 exists.

6           ARBITRATOR CREMADES: You are very  
7 recognized lawyer in your legal practice. Had your  
8 client said, I'm going to make an \$800 million  
9 investment, there are doubts as to whether or not this  
10 is covered by stability.

11           You would have advised them to ask the  
12 Administration to recognize in writing that it was  
13 covered, that it did enjoy the protection of that  
14 coverage?

15           THE WITNESS: Well, we lawyers can advise  
16 many things to improve contracts, and this takes me  
17 back to context. Provided that in the relevant  
18 context, it was possible to obtain that. What I would  
19 have told my client very clearly—is that it was  
20 covered by stability. I would have told my client,  
21 this is stabilized. This is already stabilized. It is,  
22 and, of course, then there's a whole discussion as to

1 whether I should ask for an oral assurance or a  
2 written assurance, as was being discussed.

3           That has to be seen in the context in which  
4 it is asked. What I think is that the oral assurances  
5 or the written assurances or whatever kind of  
6 assurance one might have attained would not change the  
7 legal status as provided by the law. So I might have  
8 advised my client, take other precautions, and see if  
9 that could improve or not. What I do believe is that  
10 my opinion would have always been the same with  
11 respect to scope. That is protected.

12           ARBITRATOR CREMADES: Thank you very much.

13           MS. HAWORTH McCANDLESS: Madam President.

14 We are, of course, in the Tribunal's hands. I'm  
15 prepared to continue if we wish for a bit before  
16 lunch. I'm completely--I want to just let you know  
17 that I'm prepared to go right ahead if it is in the  
18 interest of the Tribunal, it's--or we can pause. It  
19 is up to you.

20           PRESIDENT HANEFELD: I think we have for the  
21 time being no further questions, so it's a good time  
22 for a pause. We only have 40 minutes, and now, so we

1 meet again 20 minutes to 2:00.

2 (Whereupon, at 12:58 p.m., the Hearing was  
3 adjourned until 1:40 p.m., the same day.)

4 AFTERNOON SESSION

5 PRESIDENT HANEFELD: Thank you for the  
6 cross-examination from the Respondent's side.

7 So, you can now start with your  
8 cross-examination.

9 (Comments off microphone.)

10 MS. HAWORTH McCANDLESS: Sorry. My  
11 microphone that I had been previously using wasn't  
12 working. I don't know what happened over lunch.  
13 Okay.

14 CROSS-EXAMINATION

15 BY MS. HAWORTH McCANDLESS:

16 Q. Good afternoon, Mr. Bullard. How are you?

17 As you know, my name is Jennifer Haworth  
18 McCandless, and I'm part of the team representing the  
19 Republic of Perú in this case, and we have obviously  
20 met before. We met before in the Cerro Verde Hearing;  
21 we have met before on other occasions, other cases.  
22 And I know you know the practice and the rules.

1           I will be asking questions in English, and  
2 you will be answering in Spanish, so we will need to  
3 pause a bit for a translation. I know you understand  
4 English and I understand Spanish, so it will be a test  
5 for both of us. But in any case, we will have to  
6 pause; otherwise, the Transcript won't be able to  
7 record what we've stated.

8           And, as you also know, because time is  
9 limited, it will be appreciated if your answers are as  
10 concise as they can be so that we can be efficient  
11 with our time.

12         A. Perfect.

13         Q. Dr. Bullard, you state in Paragraph 2 of  
14 your First Report that you are issuing the Report--"I  
15 am issuing this Expert Report independent of the  
16 Parties and their Counsel," and then you state: "This  
17 Report fully reflects my independent understanding and  
18 Opinion," and then you state that: "The contents and  
19 conclusions expressed in this Report are based on my  
20 own knowledge and legal analysis of the laws,  
21 jurisprudence, and documents referenced  
22 therein"; correct?

1           A.    That's correct.

2           Q.    And you confirm that assertion, I assume?

3           A.    I do.

4           Q.    So, I first want to discuss your experience  
5 and background.

6                    In Paragraph 3 of your First Report, you  
7 list a number of international arbitration cases in  
8 which you've been involved in recent years in which  
9 Perú was a party to the case in any of those--any of  
10 those proceedings.

11                   And you say--in some, you say you were  
12 called to testify as an Expert on behalf of the  
13 Republic of Perú, and in some cases you are called to  
14 testify as an Expert or act as Counsel, local Counsel,  
15 in cases that have been held against the Republic of  
16 Perú; correct?

17           A.    That is correct.

18           Q.    And, in fact, I actually counted the number  
19 of cases in which you appeared on behalf of Perú and  
20 the number of cases in which you appeared on behalf of  
21 Claimant in the cases, and there were four for Perú  
22 and four against, although, if you count this

1 particular case, then it becomes five against and four  
2 in favor.

3 Does that sound about right to you?

4 A. I haven't counted them, but I think the  
5 count is correct. I imagine.

6 Q. I did notice a trend, and the cases in which  
7 you acted on behalf of the Republic of Perú  
8 occurred--and I'm only going based on the information  
9 you provided here, so I didn't look up the origination  
10 of the cases, but you're listing here kind of the  
11 dates for the Hearings, if they have Hearings, or the  
12 dates on which there was an Award issued. So, I'm  
13 going on these dates.

14 You indicated that, for cases in which there  
15 were Hearings from 2012 or earlier, in those  
16 cases--that's over 10 years ago--in those cases you  
17 were representing--sorry, I shouldn't say that--you  
18 were acting as an Expert on behalf of the Republic of  
19 Perú.

20 Does that sound correct to you?

21 A. Yes. That sounds logical. I haven't seen  
22 the dates, but it's more or less around those dates.

1 Q. And then the remaining cases, those are the  
2 ones in which you've either been a co-counsel against  
3 Perú in a case or you've acted as an Expert in a case  
4 on behalf of Claimants; is that correct?

5 A. That's correct, yes.

6 Q. And the case in which, for the purposes  
7 of--for this Tribunal to understand that we have seen  
8 each other in the recent past, with the exception of  
9 the Cerro Verde Hearing in February, was the Kuntur  
10 Wasi Case against the Republic of Perú, in which you  
11 were acting as local Counsel in that case; correct?

12 A. That's correct.

13 Q. Therefore, even if in earlier in your career  
14 you were acting as an Expert for cases involving Perú,  
15 at least in the last 10 years, it appears that you've  
16 been acting as an Expert or Counsel in cases against  
17 Perú; correct?

18 A. That's correct.

19 Q. And I looked at your CV, which is attached  
20 to your First Report, and in your CV, you note that  
21 you worked for Estudio Rodrigo for approximately  
22 five and a half years. That was from January of 1990

1 to May of 1995; is that correct?

2 A. Correct.

3 Q. And to make sure that the Tribunal  
4 understands, that's--the Estudio Rodrigo for whom you  
5 worked and you were a partner part of that time from  
6 1990 to 1995 is the same local Counsel that's  
7 appearing in this case; is that correct?

8 A. Yes, that's correct, about 30 years ago.

9 Q. And in the SMCV Hearing--SMM CV Hearing, you  
10 confirmed that you were a partner during a portion of  
11 that time. Was it for the last two years, I believe?

12 A. More or less the last two years, yes.

13 Q. And I think--and with respect to  
14 specifically whether or not you--when you were working  
15 at Estudio Rodrigo, I had asked if you had overlapped  
16 with Mr. Luis Carlos Rodrigo, who is acting on behalf  
17 of Claimant in this case, and asked whether or not you  
18 had overlapped with him, and I think you said--and  
19 this at Transcript Day 8, in the English at least, at  
20 Page 2194, starting with Line 1. It says: "And you  
21 were--in the same period of time in which Claimant's  
22 co-counsel, Mr. Luis Carlos Rodrigo, who is sitting

1 right here"--he's still sitting right here in this  
2 case, too--"you overlapped with him during that period  
3 of time; yes?"

4 And you answered: "Yes."

5 "A hundred percent of the time?"

6 And I think you answered: "Yes."

7 A. That is correct, yes.

8 Q. I assume you still confirm that as well  
9 right now?

10 A. That hasn't changed in the last two months.

11 Q. Excellent. And Claimant's Mining Expert,  
12 Ms. Vega, who testified a little bit earlier today,  
13 stated in her First Report, and again before this  
14 Tribunal, that she also worked at Estudio Rodrigo, and  
15 she says in Paragraph 7 of her First Report that she  
16 started there in 1994.

17 So, did you and she overlap in time, since  
18 you were there from 1990 to 1995 and she started in  
19 1994? I assume there was a little bit of overlap.

20 A. As far as I can remember, no. The only lady  
21 that was there was María Teresa Quiñones, who worked  
22 there at the firm. I do not remember María del Carmen

1 Vega working there at this--during the same period I  
2 was in.

3 Q. You just don't remember; right? I assume  
4 you are not suggesting she was not telling the truth  
5 and saying she started in 1994. But maybe you just  
6 don't remember.

7 A. Perhaps I'm making a mistake or she's making  
8 a mistake. This happened 30 years ago. I do not  
9 recall. My understanding is that that wasn't the  
10 case, but I may be incorrect. It was a long time ago.

11 Q. I was making assumptions based on  
12 statements, but if you don't remember, you don't  
13 remember, and you can't say anything other than that.

14 Ms. Vega had testified at the SMM Cerro  
15 Verde Hearing, and, again, she said it earlier today,  
16 that Cerro Verde was a client of the Rodrigo Law Firm,  
17 and I think in the Hearing in February, SMM Cerro  
18 Verde, you had said you didn't recall.

19 But do you recall--have a better  
20 recollection at this moment? She was stating that she  
21 recalled it was a client. I just wanted to see if you  
22 recall at this point.

1           A.    On the basis of the other Hearing, I asked  
2 the question.  When I was at Estudio Rodrigo, Cerro  
3 Verde was not a client of Estudio Rodrigo.

4           Q.    Okay.  Are you aware that there are emails  
5 and correspondence between Cerro Verde and Estudio  
6 Rodrigo that occurs during the summer--I say "summer"  
7 from a U.S. perspective--during June, July, August,  
8 2004--sorry, 1994 period?

9                    Are you aware that there is correspondence  
10 in the file?

11           A.    I do not.

12           Q.    Okay.  And just so that it's not--I'm not  
13 fibbing or making it up, if we could just look quickly  
14 at Exhibit--you're right.  Okay.  I won't show that.  
15 Okay.

16                    She was mentioning also the--in 2004 and  
17 2005, I think she was testifying that she provided  
18 advice to Phelps Dodge and SMCV regarding structuring  
19 of financing for the Concentrator.  Does that ring a  
20 bell?

21                    She said it was in the 2004-2005 time  
22 period.  That's what she testified today.  Does that

1 still not ring a bell to you?

2 A. No.

3 MR. PRAGER: Sorry. That's a  
4 misrepresentation of what Ms. Vega said.

5 MS. HAWORTH McCANDLESS: Oh, okay. Well,  
6 let me just go and see. I think I'll see if I can  
7 find it. Hang on one second.

8 MR. PRAGER: She testified that Estudio  
9 Rodrigo represented the client, but not that she did.

10 MS. HAWORTH McCANDLESS: Oh, okay. Fine.  
11 Okay. That is actually more relevant in any case. I  
12 wasn't necessarily trying to show that she--I will go  
13 back. Let me see if I can find where she states it.  
14 One moment.

15 MR. PRAGER: And with regard to your  
16 representation that there are documents on the record  
17 that in 1994 Estudio Rodrigo represented Cerro Verde,  
18 I wasn't quite sure. Did you withdraw that, or is  
19 that still your position? Because if so, please show  
20 them.

21 MS. HAWORTH McCANDLESS: Yeah, no, I was  
22 mistaken with my dates, and I'm going to the

1 discussion that Ms.--

2 MR. PRAGER: So, that's withdrawn?

3 MS. HAWORTH McCANDLESS: That is withdrawn.

4 BY MS. HAWORTH McCANDLESS:

5 Q. So, she had said--the question was--and then  
6 in--let's see here.

7 The question was: "It's okay"--this is 4713  
8 at--time was 10:25:35: "It's okay if you don't  
9 recall, but I represent to you that Rodrigo Law Firm  
10 provided advice to Phelps Dodge and Cerro Verde in the  
11 application of the Profit Investment Program in 2004."

12 And the answer was: "Yes. Yes. I saw that  
13 on the record, but I don't remember the date exactly,  
14 but now when I saw it, yes, of course, starting in  
15 2004 it was a client of the law firm."

16 So, yes, you're correct; it's a client of  
17 the law firm. Not necessarily--she wasn't necessarily  
18 testifying as to her involvement.

19 But the fact that--are you aware that she  
20 made that testimony? Does that refresh your  
21 recollection of them being a client of the firm?

22 A. No.

1           PRESIDENT HANEFELD: Sorry. Maybe I'm now  
2 confused. I understood that you are testifying that  
3 you left the firm in 1995, and you are now asking  
4 questions on 2004?

5           MS. HAWORTH McCANDLESS: Yes, you're right.  
6 I'm sorry. I am totally--I am absolutely mistaken.  
7 No, you're absolutely right. Sorry. That's all  
8 entirely withdrawn.

9           BY MS. HAWORTH McCANDLESS:

10          Q. Okay. You don't recall that SMCV was a  
11 client during the time in which you were there?

12                 Do you recall if Southern was a client of  
13 the firm, of the Rodrigo firm, at that time?

14          A. Southern was, indeed, a client when I was  
15 there at Estudio Rodrigo.

16          Q. And at the SMM Cerro Verde Hearing you  
17 testified that, when you were at Estudio Rodrigo, you  
18 advised several companies--advised several companies  
19 that participated in bidding and privatization  
20 processes in different stages of the process.

21                 Do you confirm that that was some of the  
22 work that you did at that time?

1           A.    Correct.

2           Q.    And you testified at the Hearing that, when  
3 you were working at the Rodrigo Law Firm, you saw  
4 various matters of privatization similar to  
5 discussions having to do with tax stability. Is that  
6 correct?

7           A.    Yes, that's correct.

8           Q.    Did you work on issues related to tax  
9 stability, or--just to be clear, because I wasn't  
10 clear, you said it was a privatization similar to  
11 discussions having to do with tax stability.

12                    Did you work on issues related to tax  
13 stability when you worked at Estudio Rodrigo?

14           A.    It is difficult for me to remember. I was  
15 involved in a number of privatization processes. That  
16 was the time in which everything started being  
17 privatized in the country, so perhaps at some point we  
18 saw an issue that had to do with tax stabilization or  
19 legal stabilization, but, truth be told, I would not  
20 be able to recall this.

21                    This happened 30 years ago. I wouldn't be  
22 able to tell you if that happened and in what case.

1 Q. Thank you.

2 Next I'd like to examine the basis upon  
3 which you reached the conclusions that you state in  
4 your Reports.

5 And in your First Report in Paragraph 11,  
6 you state that the purpose of your First Report is to  
7 "interpret the 1998 Stability Contract in accordance  
8 with Peruvian law and determine its scope and to  
9 determine whether it covered the investment in the  
10 Concentrator"; correct? That's in Paragraph 11 of  
11 your First Report?

12 A. Yes, that's what it says.

13 Q. And the purpose of your Second Report was  
14 similar; in Paragraph 1, you say: "I've been asked by  
15 the Claimant Freeport to review and respond to certain  
16 statements in the Expert Reports of Francisco  
17 Eguiguren, Professor Rómulo Morales, Professor Jorge  
18 Bravo, and Professor Jorge Picón."

19 And I've got to get the paragraph--and you  
20 go and you say the Statements relate to the legal  
21 framework of the guarantees and the interpretation of  
22 the Stability Agreement's scope and the implications

1 of the Supreme Court's Decision and the prescriptive  
2 period applicable to the annulment.

3           Anyway, so you go on to all those  
4 different--those different issues.

5           So, the scope in the Second Report was  
6 similar to the scope in the First Report; correct?

7           A.    Correct.

8           Q.    And you are--to confirm, you are a  
9 specialist in Peruvian civil law; is that correct?

10          A.    That's correct.

11          Q.    And you're not an expert in Mining Law;  
12 right?

13          A.    I'm not an expert in the sense that I'm not  
14 a mining lawyer, but I've had a lot of experience in  
15 mining matters, as an arbitrator, as an expert, and as  
16 a lawyer.

17          Q.    Let's look at your First Report, in  
18 particular, where in Paragraph 16--

19          A.    First Report; right?

20          Q.    Yes.  And in Paragraph 16, you state:  "I am  
21 not a mining lawyer, but for the purposes of this  
22 Report, I have assumed that the Mining Law and the

1 Regulations of Title Nine of the Mining Law provided  
2 that Stability Guarantees applied to all the  
3 Concessions or the entire Mining Unit in which the  
4 Titleholder made the minimum investment required to be  
5 entitled to enter into a mining stability  
6 agreement"; correct?

7 A. That's correct. But I have also reviewed  
8 the Regulations myself to confirm the conclusion.

9 (Overlapping interpretation and speakers.)

10 (Interruption.)

11 (Stenographer clarification.)

12 BY MS. HAWORTH McCANDLESS:

13 Q. Sir, I'm just asking if that's your  
14 Statement in your First Report. You are stating that  
15 you have "assumed that the Mining Law and Regulations  
16 of Title Nine of the Mining Law provided that  
17 Stability Guarantees applied to all the Concessions or  
18 the entire mining unit in which the Titleholder made  
19 the minimum investment required to be entitled to  
20 enter into a mining Stability Agreement."

21 You're stating that that was something that  
22 you assumed, and you state that in Paragraph 16 of

1 your First Report; correct?

2 A. Correct, with the clarification made a  
3 moment ago.

4 Q. And then you state that: "Assuming this to  
5 be true"--the next sentence--"it is my opinion that  
6 principles of contract interpretation from the  
7 Peruvian Civil Code all confirm that SMCV's Stability  
8 Agreement covered all investments that SMCV made  
9 within its mining unit during the Agreement's  
10 effective term."

11 So, the basis of that conclusion in that  
12 sentence which you're stating is based on the  
13 assumption of the--made in the previous sentence; is  
14 that correct?

15 A. That's correct.

16 Q. The assumption, was that an instruction  
17 given to you by Counsel?

18 A. It is something that I assumed on the basis  
19 of what was explained to me, and based on the facts of  
20 the case. But, again, I did conduct my analysis in  
21 connection with the regulations to confirm that this  
22 was correct.

1 Q. You would agree, would you not, that,  
2 if--and just hypothetically speaking, if you make--if  
3 one makes certain assumptions and if those  
4 assumptions, if there's an error in those assumptions,  
5 then the conclusions based on the erroneous  
6 assumptions can be incorrect?

7 There's a kind of theory of garbage in,  
8 garbage out. Are you familiar with that?

9 Would you agree with that hypothetical?

10 I'm not saying it's occurring here. I'm  
11 just asking the hypothetical, if you agree.

12 A. That's pure logic.

13 Q. And at the end of your First Report in  
14 Annex 2, there is an appendix, Appendix 2, that is  
15 assumed facts. So, there are assumed facts.

16 And for the purpose of preparing your  
17 Report, you assumed those facts; is that correct?

18 A. That is correct. It is simply--well, go  
19 ahead. Let's keep going.

20 Q. Well, my follow-up question to that is--and  
21 I think we had this discussion at the Cerro Verde  
22 Hearing, in the February Hearing, but just to see if

1 you're aware--are you aware that Ms. Vega and Mr. Otto  
2 also had assumed facts, and I actually looked at them  
3 fairly quickly, not necessarily making--comparing  
4 every single word, but they looked identical to me.

5 Are you aware that that is also--also those  
6 assumed facts were provided to Ms. Vega and Mr. Otto?

7 A. Yes. At the previous Hearing I indicated  
8 that I did not recall, but I did review it, and,  
9 indeed, there is an annex. I didn't review it word by  
10 word, but it's quite similar.

11 MS. HAWORTH McCANDLESS: I actually have no  
12 further questions.

13 PRESIDENT HANEFELD: Any questions in  
14 redirect?

15 MR. PRAGER: No redirect questions. Thank  
16 you, Madam President.

17 PRESIDENT HANEFELD: No questions from the  
18 Tribunal. You are released as an Expert. Thank you,  
19 Mr. Bullard.

20 THE WITNESS: Thank you very much.

21 (Witness steps down.)

22 PRESIDENT HANEFELD: Then, after everyone

1 gets sorted, we can continue with the Respondent's  
2 Expert, Mr. Eguiguren.

3 FRANCISCO EGUIGUREN PRAELI,  
4 RESPONDENT'S WITNESS, CALLED

5 PRESIDENT HANEFELD: Professor Eguiguren,  
6 welcome to this Hearing. You have been nominated as  
7 Expert in these proceedings. I think you were present  
8 already earlier today, so we do not need to introduce  
9 ourselves.

10 (Comments off microphone.)

11 PRESIDENT HANEFELD: Then we start right  
12 away.

13 Can I kindly request you to make a  
14 Declaration under Rule 35?

15 THE WITNESS: Yes.

16 I solemnly declare, upon my honor and  
17 conscience--I solemnly declare, upon my honor and  
18 conscience, that my statement will be in accordance  
19 with my sincere belief.

20 PRESIDENT HANEFELD: Thank you very much.

21 Do you have your Expert Reports, RER-1 and  
22 6, in front of you?

1 THE WITNESS: Yes.

2 PRESIDENT HANEFELD: And can you confirm  
3 that they are your Reports and nothing is to correct?

4 THE WITNESS: They are my Reports, I signed  
5 them, and I believe that there's no errors to correct.

6 PRESIDENT HANEFELD: Perfect. And I  
7 understand that you will make a presentation. So,  
8 please go ahead with your presentation.

9 MS. DURÁN: Just to clarify, Mr. Eguiguren,  
10 your presentation is at Tab 3 of the binder you've  
11 been given.

12 THE WITNESS: May I begin?

13 PRESIDENT HANEFELD: Yes, please.

14 DIRECT PRESENTATION

15 THE WITNESS: Good afternoon, Madam  
16 President of this Tribunal, Distinguished Arbitrators.  
17 And I also extend greetings to the attorneys of both  
18 Parties and all those who are accompanying us in this  
19 Hearing.

20 My name is Francisco Eguiguren. I'm a  
21 professor of constitutional law at the law school, at  
22 the graduate school, of the Catholic University. I am

1 devoted to teaching constitutional law and public law  
2 for the last 40 years. I have been a lawyer for  
3 45 years. So, I'm getting older.

4           And I wanted to note that, with respect to  
5 this case, I have prepared two Reports. In those  
6 Reports I have analyzed primarily four matters: First  
7 of all, what is the nature and scope of the *contratos-*  
8 *ley*, or Legal stabilization agreements, based on their  
9 constitutional and development in this case as  
10 sectoral law, the General Law on Mining? Based on  
11 this general conceptual framework, I have proceeded to  
12 analyze the Stabilization Agreement entered into in  
13 1998 by Cerro Verde and the Peruvian State. Seeking  
14 to clarify primarily what I believe is the key debate,  
15 whether this Agreement granted the Stability  
16 Guarantees exclusively for the investment contained in  
17 the Project--that is to say, the Leaching Project,  
18 which was part of the Feasibility Study that was  
19 submitted so as to be able to accede to this  
20 Agreement--that's the position that I uphold,  
21 coinciding with Respondent, and it's also been  
22 confirmed by the Supreme Court of Perú; and, in

1 addition, whether it also included any future  
2 investment or, in particular, the investment in the  
3 Primary Sulfides plant, also known as the  
4 Concentrator, as argued by the Claimant.

5 I'm going to refer briefly to each of these  
6 points.

7 First of all, what are, according to the  
8 constitutional and statutory framework in Perú,  
9 *contratos-ley*, or stabilization agreements? We begin  
10 by noting that the 1993 Constitution of Perú is the  
11 only one in the hemisphere, as far as I know, perhaps  
12 the only one internationally, that has a  
13 constitutional provision, Article 62, second  
14 paragraph, that accords constitutional treatment to  
15 what we call *contratos-ley*.

16 And what does that entail? Well, these  
17 agreements, which are obviously put forward in order  
18 to attract investment and to provide assurances and  
19 special guarantees to investors, well, if one had to  
20 say it very briefly, what is the main protection that  
21 they provide? Well, that those benefits and those  
22 guarantees included in the agreement cannot be

1 modified by any future law on the subject matter.  
2 Therefore, this guarantee of immutability, this  
3 constitutional armoring, as the Supreme Court has  
4 said, granted to the *contratos-ley* is an exception to  
5 fundamental constitutional rules and principles and  
6 the fundamental principles of the law anywhere, which  
7 is that the law is--applies immediately as of its  
8 coming into force, as of its promulgation and  
9 application, that it is general in scope, it governs  
10 all under conditions of equality. This is not the  
11 case in *contratos-ley* with respect to the guarantees  
12 incorporated in the Agreement. It doesn't matter what  
13 a future law may say; it will not apply to the  
14 investor who has a *contrato-ley* with regard to the  
15 benefits, guarantees, stipulations included in the  
16 contract.

17           This benefit, this guarantee, has to be  
18 interpreted as a provision that is an exception to the  
19 constitutional regime, and, therefore, it has to be  
20 interpreted in a strict--restrictive manner,  
21 circumscribed exclusively to that over which the  
22 guarantee was provided.

1           And in the 1998 Agreement, the only  
2 investment project based on the Feasibility Study  
3 that's included in the Agreement and is therefore  
4 protected by the Guarantee of Stability and  
5 Immutability is the Leaching Project and not any other  
6 type of project.

7           Now, these *contratos-ley*--and I'll go  
8 through this quickly; I've developed it in my  
9 Report--well, the Claimant and my dear Colleague  
10 Mr. Bullard argues that these are strictly civil law  
11 agreements. I am of the view that that is partially  
12 correct and, therefore, imprecise.

13           Stability agreements are a *sui generis*  
14 special category, mixed in nature, that combine  
15 elements of public law that are imperative and  
16 administrative--such as, for example, what's the  
17 minimum amount of the investment to be made? What is  
18 the term of the Contract? And, most important, what  
19 will the guarantees be, the subject matter that will  
20 receive the guarantee of stability? But this public  
21 administrative nature in respect of the drawing up and  
22 entering into of the agreement is supplemented by the

1 civil dimension of the Contract which refers to  
2 performance of the Contract.

3           Therefore, it is civil in nature in terms of  
4 its performance, but not in terms of the drawing up  
5 and entering into of the Agreement. And what does the  
6 civil nature imply? That the Parties, the State and  
7 the investor, are in the same situation. And, unlike  
8 Administrative Contracts, the State doesn't have  
9 exceptional exorbitant powers. It cannot unilaterally  
10 modify the Contract, nor can it apply new laws to it.

11           And this is recognized in one way or another  
12 by the Claimant themselves and their Experts, because  
13 they attach a quote which appears there, and Antonio  
14 Pinilla states that these agreements are of a mixed  
15 nature. So, I'm not the only one who says this.

16           Now, one point that does mark a very  
17 important difference of interpretation has to do with  
18 the Adhesion Contract nature of these agreements. The  
19 Law on Mining says that these agreements are entered  
20 into by adhesion, and from that the Claimant and their  
21 Experts adduce that, because it's an Adhesion  
22 Contract, a principle of interpretation is applicable,

1 which is also reflected in the Civil Code, which is  
2 the contra proferentem interpretation--that is to say,  
3 in the case of any obscurity, doubt, as to the  
4 interpretation of a contractual clause, one must  
5 embrace the interpretation that most benefits the  
6 Party that did not draw up the Contract.

7           In the abstract and in general, that's fine;  
8 I have no objection to it. The problem is that, had  
9 the Claimant and its Experts taken time to analyze  
10 this particular Agreement in the case of mining--the  
11 Cerro Verde Mining Company, they would have to realize  
12 this is not a typical or common adhesion contract.

13           What is characteristic of a common adhesion  
14 contract? One of the Parties unilaterally drafts what  
15 is called "the strong part" of this unbalanced  
16 relationship--that is to say, they draw up the  
17 Contract generally seeking to protect its own  
18 interests and limiting its own responsibilities--and  
19 the other party either accepts it or doesn't. That's  
20 typical in an adhesion contract, and therefore,  
21 because of this inequality, there is generally  
22 detriment to the rights or interest of the other

1 party.

2 Does that happen in this case, in the  
3 Adhesion Contract in mining or in this '98 Stability  
4 Agreement? No. That is not the case here.

5 First of all, it's not that the  
6 administration draws up the agreement or its clauses  
7 as it wishes. As was already said, and there is no  
8 question about it, there are certain stipulations that  
9 are copied from the General Mining Law and no--there  
10 can be no discussion of those. They are not  
11 negotiable, what the length will be, what's the  
12 minimum investment, how long will the agreement last,  
13 and what will be given--what will be covered by the  
14 guarantees.

15 But the investor doesn't have the passive  
16 role of an adhering party who just looks at and can't  
17 even discuss, simply signs, because the General Mining  
18 Law indicates clearly that, to be able to enter into  
19 this agreement, the investor draws up and presents a  
20 Feasibility Study, a Technical-Economic Feasibility  
21 Study, for an investment project.

22 Who draws up that study? The private party.

1 What are they going to devote the investment to? They  
2 decide it, or propose it, at any rate. How much will  
3 they spend, invest? How long will they take? What  
4 activities will they carry out? How long will the  
5 production take? What will be entailed? All of that  
6 emanates from the study that was drawn up by the  
7 private party. And that will be part of the Contract.

8           If we look at the 1998 Agreement, while it's  
9 true the Peruvian law says that there's a model, the  
10 model speaks to what aspects shall be included and  
11 what structure will the Agreement have. But when we  
12 talk about a model contract, sometimes if one's going  
13 to enter into a bank contract and such, they're all  
14 the same.

15           I heard in the February Hearing someone  
16 said: "All the Mining Contracts are the same." No,  
17 that's not so. They may have an alike structure, they  
18 might have a part that is the same, but a large part  
19 of the contract is determined by the Feasibility Study  
20 which was prepared by the investor.

21           In an Adhesion Contract, the one who is  
22 going to sign it, the one who is the "weak" party,

1 doesn't incorporate parts of the contract. And if we  
2 look at the '98 Agreement, there are any number of  
3 stipulations about the Leaching Project: How much is  
4 to be invested, how long is it going to be take, what  
5 is going to be purchased, and so on. So, it's not a  
6 typical Adhesion Contract.

7           And, finally, and most important point, the  
8 stabilization agreement grants benefits to the  
9 investor. It does not--is not to the detriment of its  
10 right. What's the great benefit? The immutability,  
11 the intangibility, of the guarantees set forth in the  
12 contract, in the agreement. Therefore, this is not a  
13 typical adhesion contract, and that is something that  
14 needs to be analyzed, because it has legal  
15 implications.

16           The General Mining Law clearly notes at  
17 Articles 82 and 83, particularly the last paragraph,  
18 that it is essential to present a Feasibility Study  
19 and that the investment or guarantee is going to cover  
20 that investment. The key word is "investment,"  
21 because it says that the aim of stabilization  
22 agreements is to attract investments. It's not, as

1 has been said here, that the guarantee is granted to a  
2 concession. The concession is a right. It's an  
3 asset. Contracts entered into is among persons, and  
4 the guarantee is granted to the investment. If  
5 there's no investment, well, not--and it's not an  
6 initial investment, as it says.

7           The investment in the investment project set  
8 forth in the Feasibility Study, which is drawn up by  
9 the private party and which the State then evaluates  
10 and approves and which is then incorporated into the  
11 Agreement, well, it's been said that, well, there's a  
12 specific reference to the Feasibility Study in several  
13 parts of the Agreement in Annex 2 of the Contract.  
14 And so, the investment, the Feasibility Study that is  
15 presented by the investor, is the starting point for  
16 filling out the content of the Agreement.

17           Article 85 of the General Mining Law says  
18 that one must present a Feasibility Study, a  
19 Technical-Economic Feasibility Study, that is  
20 equivalent to the Investment Program that is to be  
21 approved by the Director General of Mining.

22           The Claimant and its Experts argue that this

1 is an initial investment that is reflected in the  
2 Agreement, and that this provides protection for any  
3 future investment. Some of the opinions say "any  
4 future investment"; others say that it is further  
5 investments within the same concession. This doesn't  
6 make sense. First of all, the law doesn't say so.  
7 There's no Article that says the Agreement grants  
8 contracts or guarantees of stability with respect to  
9 what's set out, plus any future investment--such an  
10 Article doesn't exist--over any investment in the same  
11 concession--such an Article does not exist.  
12 Incomplete reference is made to the Regulation, but  
13 the Regulation is subordinate to the law, and it  
14 cannot say anything beyond what's in the law.

15           So, the key word, I repeat, is "investment,"  
16 and it's the investment that is made, in effect,  
17 circumscribed to a given concession or concessions.  
18 That obviously is what is guaranteed, but not the  
19 Concession. The investment. Otherwise, what sense  
20 would it make to submit an investment project or a  
21 Feasibility Study?

22           It's been suggested this morning that it

1 suffices to make an initial investment and win a  
2 privilege not only for that investment, but also for  
3 any future investment, and including other past  
4 investments.

5           Well, where is that? That would be great.  
6 One might say, "What a great business. I pay one and  
7 I take away five." I don't think that is the legal  
8 interpretation. I don't know of anyone in the  
9 national doctrine or case law having upheld that  
10 position, except, of course, after the Judgment of the  
11 Supreme Court to which we will refer afterwards.

12           The Contract makes several express  
13 references in many clauses to the Leaching Project.  
14 The Agreement is not a blank check. According to  
15 Peruvian Law, these *contratos-ley* respond to a public  
16 interest, a social interest, that the State has to  
17 evaluate based on the proposal by the private person.  
18 If it were a blank check, then the Feasibility Study  
19 would be useless. It would suffice to say in the  
20 Agreement that any investment made by this Company on  
21 these Concessions is covered. That's not so. That's  
22 not what the Agreement says. It's not what the law

1 says, nor is it what Peruvian case law has to say on  
2 this matter.

3 Now, the Supreme Court--in 2013, Cerro Verde  
4 filed two administrative proceedings, and one of them  
5 was with respect to the Royalties Assessment for 2008  
6 and another for the Royalties of 2006-2007.

7 The first, the 2008 Case, concluded with a  
8 Decision of Cassation by the Supreme Court which found  
9 that the action was unfounded in all its aspects. In  
10 other words, the Primary Sulfides Plant had to be  
11 subject to the payment of Royalties in 2008.

12 Now, with respect to the 2006-2007 Royalties  
13 Case, the Judgment at trial and on appeal rejected and  
14 dismissed Cerro Verde's action, and the Supreme Court  
15 held a Cassation Hearing. I was there. I  
16 participated there as part of the defense of SUNAT,  
17 defense counsel for SUNAT. And before the Judgment  
18 was handed down, Cerro Verde abandoned the case, and  
19 so the Judgment on Appeal dismissing the action was  
20 firm.

21 It was said in Opening Arguments by the  
22 Claimant, and it's been repeated here--a partial

1 reference has been made to my statement as to whether  
2 or not this cassation is a precedent erga omnes, which  
3 is to say, binding on all judges and parties. My  
4 answer has been, quite sincerely, no. But that cannot  
5 lead one to underestimate or minimize the scope of  
6 this cassation so much, both because of what cassation  
7 means in Peruvian law and because of what was resolved  
8 in the specific case regarding the interpretation of  
9 the Supreme Court or by the Supreme Court of the  
10 Mining Law and the '98 Stabilization Agreement and  
11 what they protect and what they do not protect.

12           Cassation is a special appeal--it's not a  
13 regular appeal--before the highest judicial body  
14 approved, the Supreme Court. What is resolved in  
15 cassation is res judicata as between the Parties.  
16 That's it. No court in Perú is going to be able to  
17 review or change what was resolved by the Supreme  
18 Court with respect to 2008 Royalties, nor with respect  
19 to 2006-2007 Royalties, which is a firm decision.  
20 It's res judicata as between the Parties.

21           So, it is not a precedent unless the Supreme  
22 Court says so, and it did not say so in this case.

1           Now, what is the value, then, of it? Well,  
2 one minimizes it and says it might be--well, it's not  
3 just anything, not just because the Supreme Court said  
4 so, but because it set forth a specific  
5 interpretation. What was resolved in the cassation by  
6 the Supreme Court is a reference that will have to be  
7 taken into account by all judges, all courts, and all  
8 lawyers in similar cases.

9           It is possible that one might move away from  
10 this reasoning? Yes. But it would have to be because  
11 of differences in circumstances in the case, perhaps a  
12 legislative change. Or it would have to be adequately  
13 justified. Thus far, what has been resolved in this  
14 precedent has not been subject to any change by any  
15 other court.

16           That is to say, in fact, it has been serving  
17 as "precedent," and of course, the Tax Tribunal has  
18 been citing it and applying it in several similar  
19 resolutions.

20           So, that it could technically  
21 speaking--technically speaking there could be a  
22 different interpretation in a case other than the 2008

1 and 2006-2007 Royalty Cases; yes, it's a possibility,  
2 but it would have to be adequately justified. And I  
3 doubt it because the interpretation of the 1998  
4 Agreement would be the same, and the Supreme Court  
5 already did so.

6           And to conclude, what did the Supreme Court  
7 do? Well, that the guarantees and benefits of  
8 stability are granted exclusively. And it says  
9 "exclusively" only in respect of that investment  
10 project contained in a Feasibility Study that was  
11 incorporated into the Agreement, and this is the  
12 thesis that we have been arguing. And it's not a  
13 premise. It's not that we assume this. We have  
14 upheld this position and the Supreme Court has said,  
15 that is so. One may take issue with it. One may  
16 criticize judgments. But they cannot be ignored. In  
17 this specific case, in both proceedings pursued by  
18 Cerro Verde as from the appeal, I participated--I said  
19 in my CV--as an attorney who joined or who worked as  
20 defense counsel for SUNAT in these cases.

21           This topic has been discussed before  
22 SUNAT--the revenue body--before the Tax Tribunal, and

1 then before the Courts of our country.

2           In both cases, both administrative and  
3 judicial, the position of the Claimants, which is the  
4 same as the position upheld by Cerro Verde, was  
5 dismissed, and therefore, it's a case that has been  
6 extensively discussed and debated in Perú.

7           So, to conclude, the Stability Agreement of  
8 '98 entered into by Cerro Verde and the State is of  
9 mixed legal nature, and while it is entered by  
10 adhesion, the adhesion is with respect to the  
11 guarantees, the benefits, the duration of the  
12 agreement, which are not negotiable. But obviously  
13 the investor, through its Feasibility Study, provides  
14 a number of elements that are going to be included in  
15 the Agreement. So, it's not a typical Adhesion  
16 Contract. Therefore, there should be no methodical  
17 application of basic principles, and one would have to  
18 say that the interests of the Company are prejudiced.

19           The '98 Agreement protected exclusively the  
20 investment in the Leaching Project. The Agreement  
21 itself, as was discussed earlier, allows for the  
22 possibility of expanding the guarantees to other

1 rights and other benefits. Well, that could be done,  
2 but the Company did not do so. It doesn't have any  
3 sort of--an agreement whether to amend the '98  
4 Agreement or any other agreement that would protect  
5 the investment in the Primary Sulfides Plant, also  
6 known as the Concentrator.

7           Therefore, the Agreement always referred to  
8 the Leaching Project. And what was resolved by the  
9 Supreme Court, which is res judicata in respect of the  
10 subject matter that it resolved, the '98 Agreement and  
11 the 2008 and 2006-2007 Royalties is res judicata.  
12 This means it cannot be reviewed by any Peruvian  
13 Court, and while it's not a precedent erga  
14 omnes--there might hypothetically be a different  
15 decision--there would have to be a different  
16 situation. The Courts would have to argue. It would  
17 have to be the Supreme Court that, based on this  
18 criterion, they would have to explain why what was  
19 established by the Supreme Court would not apply to  
20 the case before it.

21           But that has not happened, for the time  
22 being, and with that, I conclude my presentation.

1 Thank you very much.

2 PRESIDENT HANEFELD: Many thanks, and with  
3 your permission, I will start asking some questions  
4 before we enter into the cross-examination like I have  
5 done before with Experts because then, for me, it's  
6 particularly helpful and makes the listening to all  
7 other questions easier.

8 QUESTIONS FROM THE TRIBUNAL

9 PRESIDENT HANEFELD: You walked us through  
10 the hierarchy of norms, and now you explain the  
11 constitutional particularities of this Adhesion  
12 Contract and then you now went further to explain your  
13 understanding of the Mining Law, and I understand  
14 you're testifying that the Peruvian Mining Law, in  
15 your understanding, promotes investments, but does not  
16 necessarily relate always to the concession. And we  
17 had this subject also addressed by the Claimant's  
18 Expert, Mr. Otto, and now he testified, now, something  
19 very different. He said there is a worldwide  
20 assumption that Stability Agreements cover all  
21 investments in a Mining Unit, and, therefore, neither  
22 worldwide nor in Perú was this ever an issue, what we

1 have here now to decide in this Arbitration. It is a  
2 new and novel approach to focus on the investments as  
3 opposed to the concession.

4           What is your response to this testimony of  
5 Mr. Otto?

6           THE WITNESS: I didn't hear what Mr. Otto  
7 said, but I can hear you, and I cannot agree because  
8 my Report refers to how to interpret the Contract, the  
9 *contrato-ley*, and the Stability Agreement based on the  
10 Constitution and the Peruvian Mining Law as well as  
11 the case law, the Peruvian case law. And based on  
12 those sources, that is unsustainable. I don't know if  
13 in any place that is interpreted differently, but I  
14 would need to see a judgment of the Supreme Court of  
15 Justice telling me or any Article of the Mining Law  
16 showing that the guarantee covers not only the  
17 investment of the project, but any other investment,  
18 or a clause of the 1998 Contract that would provide  
19 for that.

20           But, of course, in interpretation of the  
21 law, I have not found that, and also because of the  
22 exceptional nature of the Contract and the

1 Constitution or in the case law, I have not found  
2 anything other than those saying that, so at any rate  
3 the Supreme Court of Justice does not agree with that.

4           PRESIDENT HANEFELD: And if you have not  
5 seen a Judgment or Legal Authority, are you aware of  
6 any MINEM practice that would confirm the notion that  
7 Claimant here argues?

8           THE WITNESS: As I mentioned before, I'm a  
9 professor on constitutional law, public law. I do not  
10 have specific information on mining activity, but I do  
11 know what the law says and also what the resolutions  
12 provided for. So, no, I do not know that and I have  
13 not heard in the presentation by Experts or in the  
14 Opening Statements by Claimant any reference to a  
15 Supreme Court of Justice Decision that would support  
16 that interpretation.

17           PRESIDENT HANEFELD: And, again, my question  
18 relates more to the administrative practice on how to  
19 deal with such stabilization agreements. Are you  
20 aware of any administrative practice with regard to  
21 other mining companies or other mining concessions in  
22 which the Stability Agreement extended to the new

1 investment regardless of the timing, scope, and  
2 whether they were covered by the Feasibility Study?

3 THE WITNESS: Detailed knowledge of the  
4 practice? No, I do not have. But I think that when  
5 Cerro Verde entered into an agreement in 1994 for  
6 10 years and four years after he entered into the 1998  
7 Agreement, on the same concessions, because they are  
8 the same concessions, that contradicts their argument.  
9 If they already had an agreement for one investment,  
10 for those investments in 1994 for 10 years, why is it  
11 that in 1998 they entered into a contract in the same  
12 concession, but on leaching. Their own acts  
13 contradict their arguments.

14 And also, based on what I have heard and  
15 also what I have seen in this type of proceeding and  
16 read, various companies have several investment  
17 projects, several or different stability agreements.  
18 They may have more than one various investments  
19 because the purpose of the stability agreement is to  
20 confer guarantees for the benefit of that investment  
21 that clearly is part of the concession. It is not  
22 just for any investment or any concession. But, once

1 again, I do not know, I have not heard by Claimant so  
2 far that they have had any reference to that type of  
3 decision. Whether it was the practice or not, I'm not  
4 qualified to say that. But the practice should not go  
5 against the law, and the law doesn't state that.

6 PRESIDENT HANEFELD: Thank you very much.

7 And then I move on to my next set of  
8 questions, which is more related to the Contract  
9 interpretation, which you also covered in your First  
10 Expert Report. There you said: "Contracts are  
11 obligatory insofar as this has been expressed within  
12 them. It is presumed that the declaration expressed  
13 in the Contract follows a common will of the Parties  
14 and whoever might deny that coincidence must prove  
15 it." This is in Paragraph 72 of your First Expert  
16 Report, and you refer to Article 1361 of the Peruvian  
17 Civil Code.

18 Do I understand you correctly that, first,  
19 it is your view that it is on the Claimant to prove  
20 that the Stability Agreement covered the Concentrator?

21 THE WITNESS: Yes. You have said it  
22 perfectly well. That's why I haven't even looked at

1 it, because that part of my Report goes back to the  
2 Civil Code that states that whatever is stated in the  
3 Contracts, I understand, are the will of the Parties,  
4 and whoever says no, whoever says no has to prove  
5 that, has to evidence that.

6 PRESIDENT HANEFELD: And, second part of the  
7 question, if I understand, you are saying that this  
8 Contract, be it an Adhesion Contract or not,  
9 constitutes mutual obligation. Does this mean that,  
10 if stabilization to the Concentrator would be granted,  
11 then this also entails the obligation to build a  
12 Concentrator? Is it a mutual concept, or do I  
13 understand this not correctly?

14 THE WITNESS: I don't think I understood the  
15 question very well, but I hope I understood enough to  
16 answer or, if not, you can tell me and I can expand.

17 In my First Report, I would say there is an  
18 equation. The private party will make an investment,  
19 a specific investment that is based on a Feasibility  
20 Study and an investment project that the mining  
21 division within the State will assess it, and if  
22 accepted, it will be part of the contract and the

1 contract will be approved.

2 That compels the State, as the other Party  
3 to the Contract, to be included to guarantee a special  
4 regime of immutability for what is provided for under  
5 the contract, as well as intangibility.

6 The plant, the Primary Sulfide Plant of the  
7 Concentrator may have been part of discussions, the  
8 State may have known about it, but that is irrelevant.  
9 It has to be provided for under a Stability Agreement,  
10 as an expansion, as an amendment of the 1998 Contract  
11 or as a separate contract. Therefore, there is no  
12 obligation to confer stability or immutability legally  
13 from the State in connection to the Primary Sulfide  
14 Plant.

15 PRESIDENT HANEFELD: This answers my  
16 question. I wanted to understand just better the  
17 principle of consideration under the Peruvian law  
18 system.

19 Now I come to my last question for the  
20 moment, relating to Paragraph 78 of your Second  
21 Report, RER-6. There you noted: "The construction of  
22 the Primary Sulfides Plant was not subsequently

1 incorporated by the Parties to the 1998 Stabilization  
2 Agreement and was not part of the specific agreement  
3 signed with a State that granted Stability  
4 Guarantees."

5           So, this is what you just mentioned. We do  
6 not have an amendment. But assuming that Cerro Verde  
7 has sought such an incorporation based on the  
8 understanding that the Concentrator was covered by the  
9 1998 Agreement, but this was denied on the grounds  
10 that the extension of the Beneficiation Concession  
11 would already have this effect.

12           So, going on the assumption, now, Cerro  
13 Verde received confirmation, just let us extend the  
14 Beneficiation Concession, then you will be covered.  
15 Does such an effect exist under Peruvian law? Can the  
16 extension of a beneficiation concession eight years  
17 later have the effect of, so to say, retroactively  
18 making everything safe under a stability agreement?

19           What is your view on that?

20           THE WITNESS: I already said in my  
21 presentation that *contratos-ley*, the law contracts in  
22 the stability agreement in mining, are part of a

1 regime that grant a special treatment. And I need to  
2 be very rigorous because this is an exception to  
3 constitutional provisions. The Peruvian State is also  
4 entering a commitment for future Congresses and future  
5 administrations under the legislative power they have.  
6 This is something really serious, and if under civil  
7 law the Code states that contracts are binding as to  
8 their provisions, I cannot assume with the expansion  
9 interpretation to extend benefits and guarantees that  
10 are not part of the Contract for investment that are  
11 not in the Contract when the Contract and the law  
12 establish the possibility to take--to have a special  
13 process to include that as part of a contract in force  
14 or a special contract. But never retroactively;  
15 never.

16           In Perú the laws are not retroactive. How  
17 could it be that a privilege, a benefit will be  
18 interpreted retroactively as it was almost suggested?  
19 This is an irony. As I said, okay, you buy one, but  
20 you get five. So, minimum investment and whatever  
21 happened when the contract was not there will be  
22 benefiting from that. I never heard of that anywhere

1 else, and I cannot agree with that interpretation.

2 ARBITRATOR TAWIL: Good afternoon. It's a  
3 pleasure to meet you.

4 You have been the attorney that had both  
5 cases of SUNAT v. Cerro Verde in local courts,  
6 correct?

7 THE WITNESS: It is correct, but I heard the  
8 word "represent." SUNAT had its own Attorney General,  
9 and I was called to cooperate with the defense. I  
10 have participated in the Reports and in the Hearings.

11 ARBITRATOR TAWIL: And how, then, should we  
12 understand your presentation in this arbitration? Are  
13 you here in this Arbitration as an independent expert?  
14 You're not here as Counsel but as independent expert?

15 THE WITNESS: That's my understanding, too.

16 ARBITRATOR TAWIL: And if you are here as  
17 independent expert, you are giving here an opinion  
18 that is different from the one that you offered in the  
19 legal case. Is that correct?

20 THE WITNESS: No. In the Hearing of the  
21 other case, there was a similar situation, and I  
22 explained the following: First I am an independent

1 lawyer. I am a university professor that also  
2 practices law. When I became--I started to  
3 participate in this proceeding, as I usually do, I  
4 reviewed the Claim, the Claim had already been  
5 presented by Cerro Verde, and SUNAT had already  
6 replied. So, I came here in second instance. I  
7 reviewed, and I said, I agree with this position as  
8 presented by SUNAT. And I said, yes, this is what I  
9 teach at the level of the university courses, and this  
10 is part of the *contrato-ley*. I feel I am identified.  
11 I usually participate in cases when I agree with the  
12 case itself. So, I have not said anything contrary to  
13 what I said in the proceeding or in my Reports.

14 ARBITRATOR TAWIL: I understand, but we are  
15 all attorneys here and we know that the attorney has  
16 one role when he or she is defending a case, and a  
17 different one when providing an independent opinion.

18 So, you are here providing an independent  
19 opinion or is it the same position that SUNAT had? I  
20 want to see how we should take your Report.

21 THE WITNESS: Well, from what I heard  
22 before, everyone who participated this morning had

1 some sort of relationship with the case. I said in my  
2 résumé, in particular, that I have been Counsel with  
3 SUNAT along these proceedings. Now, if that creates  
4 some bias, I would tell you that I do not say things  
5 different from what I said.

6 ARBITRATOR TAWIL: So, should we take it as  
7 an independent opinion or the same position that  
8 SUNAT, a body of Perú, had in the local litigation?  
9 Would you be able to contradict SUNAT?

10 THE WITNESS: Not in this case. In other  
11 cases, I would. In some cases I've been litigating  
12 against SUNAT.

13 ARBITRATOR TAWIL: Are you here to present  
14 your opinion or SUNAT's opinion?

15 THE WITNESS: I am presenting my opinion.  
16 That was the one that I upheld in the oral  
17 proceedings, and that is the one in which I believe as  
18 a professor.

19 ARBITRATOR TAWIL: Because if I look at  
20 Paragraph 10 of your First Report, you are saying that  
21 here you are supporting the Legal Arguments of your  
22 interpretation, but that was SUNAT's interpretation.

1           THE WITNESS: I would say that it was my  
2 interpretation.

3           ARBITRATOR TAWIL: But here you are saying  
4 it was SUNAT's.

5           THE WITNESS: No. I apologize. No. SUNAT  
6 had been losing these proceedings.

7           ARBITRATOR TAWIL: We're talking about your  
8 position before us. This is what I'm trying to  
9 understand.

10          THE WITNESS: I introduced in the  
11 jurisdictional case some elements that had to do with  
12 the constitutional position. I introduced some  
13 elements that are my own elements, the elements of  
14 Francisco Eguiguren. For me, SUNAT's was merely  
15 accidental.

16  
17          ARBITRATOR TAWIL: But you acted as SUNAT's  
18 attorney.

19          THE WITNESS: Yes, and you may--you are free  
20 to believe that and interpret that, and I know that  
21 that is a limitation and I stated that in my Report.

22          Now, does that disqualify me to have a legal

1 opinion? That depends on interpretation. You do not  
2 need to believe me.

3 ARBITRATOR TAWIL: But you just said that  
4 you wouldn't be able to contradict what SUNAT said.  
5 You wouldn't be able to disagree with what SUNAT said.  
6 Do you have any differences with the point of view of  
7 the SUNAT in the process in which you represented  
8 SUNAT?

9 THE WITNESS: In the matters that I deal  
10 with in this report here, and that is what I presented  
11 in the proceeding, they agreed with my approach, and I  
12 agreed with theirs. There were other parts of the  
13 proceeding that had to do more with taxes that were  
14 seen by them. But, no, no--

15 ARBITRATOR TAWIL: Thank you.

16 ARBITRATOR CREMADES: Professor, I would  
17 like to ask you: Assuming that the now-Claimant went  
18 to your law firm office back then, when you were--when  
19 they had some doubts about the investment for the  
20 Concentrator and they had heard what they called as  
21 "gossip" at the Ministry, the Vice Minister said one  
22 thing, the Director General said something else, and

1 even the Director General said that the Decision by  
2 the Constitutional Tribunal was unheard of, so this is  
3 perplexing to any foreigner.

4           What would have been your advice prior  
5 to--so as to have some certainty prior to the  
6 investment that the investment was going to be covered  
7 with the stability?

8           THE WITNESS: Even though investments are  
9 not my field, but as anyone that will be making an  
10 investment, I am cautious, and I'm usually fearful in  
11 that area. If I am going to invest millions, I would  
12 like to have the absolute certainty that they are  
13 protected. If I was asked as a lawyer, I would have  
14 said in the law I do not see anything clear that  
15 states that any new investments are going to be  
16 protected.

17           I do not see this in the law. I do not know  
18 of any case law that has stated that. I would say,  
19 first, either get the amendment to the Contract or get  
20 a new contract, but I shouldn't make the investment  
21 before getting the certainty. If I do not have the  
22 certainty, if I do not have an amended contract,

1 personally, I wouldn't feel comfortable because  
2 administrations change. Then I would have been a  
3 little bit more cautious, and my recommendation would  
4 have been not to do it without that certainty.

5 ARBITRATOR CREMADES: But the client would  
6 tell you, gossip at the level of the Ministry tell me  
7 that, if I present in writing a request to get the  
8 stability coverage, it will be denied. I do not want  
9 to submit it, but I am very interested in the  
10 investment. It is quite productive, and let's move  
11 forward.

12 In these circumstances, SUNAT imposes some  
13 sanctions. They would like to charge some interest,  
14 and they come before this Arbitral Tribunal and tell  
15 us that idea, that you are going to impose sanctions,  
16 that is contrary to the fair and equitable treatment.

17 Do you believe that that is contrary to fair  
18 and equitable treatment for someone that is making  
19 that investment in that fashion is imposed sanction?  
20 Do you think that is contrary to equity?

21 THE WITNESS: There is a principle under the  
22 law that says that any law mistake does not warrant

1 the actions. An investor could have understood that  
2 they were protected, but if we are talking about  
3 Stability Contract and an exceptional regime, I take  
4 my own certainties, and if I took a risk, it means I  
5 may be successful or not. So, I do not believe that  
6 this is something on equal terms. As I just told  
7 Madam President a couple of minutes, there was more  
8 than one Stability Contract in connection with more  
9 than one investment with Cerro Verde.

10 So, if I have a contract and I believe that  
11 everything is protected, I do not need another  
12 contract for other investments under the same  
13 concession.

14 I have even more reasons to look for that  
15 contract. But the project may not seem important, the  
16 State is not bound, but I may wait until I hear, and  
17 then I make the investment.

18 ARBITRATOR CREMADES: But if I move forward,  
19 I make the investment, and then I have some tax  
20 penalties, is there any path under Peruvian law to  
21 tell the Tax Administration, "Listen, do not  
22 exaggerate. Because, since there was no much gossip,

1 I do not have any certainty, those sanctions are  
2 against equality or equity"? And is there any path  
3 for the Tax Administration to act in favor of the  
4 taxpayer who made the investment because of the  
5 gossip, and as a consequence, the Tax Administration  
6 is not--does not have standing to impose those  
7 sanctions?

8 THE WITNESS: Well, I may not remember the  
9 name of the case, but there is one of a tax-paying  
10 company. I think it had to do with an additional tax  
11 on income or minimum income tax. But the Supreme  
12 Court said, in this case, there was a margin to have  
13 some obscurity or doubt as to the application of the  
14 law. And if the taxpayer interpreted it wrong, there  
15 was a reason for the mistake because of the ambiguity  
16 in the law, therefore, we will waive any payment of  
17 interest.

18 So, there was a reason why that party may  
19 have acted wrong; there wasn't bad faith. The problem  
20 was in the law. So, it is an exception. That case was  
21 quite an exception, and it was presented in connection  
22 with the conduct of a taxpayer.

1           Now, when there are lawyers in between, it  
2 is different. But there is a possibility.

3           ARBITRATOR CREMADES: But you maintain that  
4 the Tax Administration has the discretionality to  
5 condone those sanctions. Is that what you're saying?

6           THE WITNESS: No, I'm referring to a Supreme  
7 Court of Justice decision.

8           ARBITRATOR CREMADES: It is very important  
9 for you to refer to the Supreme Court of Justice when  
10 your intervention today, you were based on the  
11 importance of the Decision, of the Supreme Court  
12 Decision?

13          THE WITNESS: Yes, but I was referring to a  
14 very specific case in connection with that taxpayer,  
15 in connection with that taxpayer and a law in  
16 particular that could have a contradictory  
17 interpretation as to the time it was going to enter  
18 into force. It is not similar to what we are  
19 discussing right now.

20          ARBITRATOR CREMADES: Let us assume that the  
21 taxpayer in this case says, you know what? I have  
22 been discriminated. There are other cases in the

1 world of mining whereby coverage has been afforded in  
2 situations similar to mine, and it was denied to me.  
3 This has a political motivation because Diez Canseco  
4 and others in Arequipa, other representatives were  
5 asking for a hard position in connection with the  
6 Cerro Verde investment. This is discrimination.  
7 Since there is discrimination, all of this treatment  
8 is contrary to equality in treatment. How does this  
9 sound to you legally?

10 THE WITNESS: Well, it would have to be  
11 evidenced. They would need to show how other  
12 companies under similar contracts had that benefit.  
13 The reason for the Contract to be signed by adhesion  
14 as to the benefits, the guarantees granted under  
15 contract is precisely to avoid that--that is to say,  
16 transparency, legal certainty, any investor that meets  
17 the requirements under the law, that presents the  
18 study--and this is considered a national interest  
19 issue--has to have access to the same benefits,  
20 precisely to avoid the under-the-table negotiation  
21 with corruption when some officials may offer some  
22 benefits or beneficial treatment beyond the letter of

1 the law to some investors.

2 But those cases would need to be evidenced.  
3 Discrimination cannot be allowed or tolerated, but it  
4 has to be evidenced, not assumed. So, in the example  
5 that you mentioned, I do not know whether there is any  
6 specific reference to this company that was  
7 interpreted one way or the other.

8 ARBITRATOR CREMADES: And according to your  
9 legal judgment, which is of high interest to me, if  
10 the taxpayer in this case were able to say, "I was  
11 deceived. I was deceived."

12 Because we have heard time and again that  
13 the Company felt betrayed by the treatment they  
14 received: "I was asked to contribute millions of  
15 dollars as part of free contributions for the benefit  
16 of certain activities, charity activities in Arequipa  
17 because it was assumed that they were going to give me  
18 the stability coverage, and it wasn't given to me. I  
19 have been deceived."

20 What is your reaction from the legal point  
21 of view, given this idea?

22 THE WITNESS: Well, you're asking me to

1 analyze something that was not part of my Report.

2           ARBITRATOR CREMADES: Well, you're a  
3 constitutional lawyer, and as an Expert, I'm asking  
4 you for your opinion and to react vis-à-vis an  
5 argument like the one I'm putting to you.

6           THE WITNESS: Well, see, facts had to be  
7 evidenced and grounded. Perhaps there are some  
8 circumstances like the ones you pointed out, but to  
9 analyze contracts and the constitutional framework of  
10 *contratos-ley* and the benefits, well, I think that has  
11 to be looked at from the historical viewpoint: Who  
12 did it? Why did they do it? But if we look at  
13 commitments and contracts formally in order to  
14 maintain that position, I would have to show some kind  
15 of document, some kind of piece of evidence that is  
16 irrefutable that I was told this and then that, under  
17 that supposition, I acted in good faith.

18           But here it is supposed that the investment  
19 is made after the Project was--after the Agreement was  
20 entered into. And it doesn't cover prior investments.  
21 That's not technically true. Okay. There may be a  
22 lot of details here, and what you say may be true.

1 Perhaps it's true. But you, to have stability, you  
2 need an agreement, an agreement that grants your  
3 investment stability in those concessions.

4 Do you have it? No? Okay. All else is  
5 gossip, speculation. But gossip I don't think is the  
6 source of the Contract. Why is it that you're going  
7 to make an investment if you don't have the Contract?

8 ARBITRATOR CREMADES: One last question. I  
9 think you are going to tell me that you are not a tax  
10 lawyer. But as a constitutional lawyer, I would like  
11 to know your opinion anyways.

12 Why is it that they say that Royalties are  
13 not a tax?

14 THE WITNESS: That is a very complex issue,  
15 sir. I'm going to give you a formal answer first.  
16 Well, it is so because the law says so. When the law  
17 was passed in Congress, it was said the Royalties are  
18 contributions resulting from the exploitation of a  
19 resource that is not finite. It is assumed that it is  
20 not a tax because the law says it is not a tax, but  
21 rather that it is part of the administrative realm.  
22 It is quite complex, this matter is. We should have a

1 specialized discussion with people that have tax  
2 knowledge to say whether this qualifies as a tax or  
3 not.

4           Undoubtedly it is a payment obligation.  
5 This is different from the tax on income. This was  
6 discussed when an action on constitutionality was  
7 brought against the--an issue of mining, Mining  
8 Royalties Law. I was a lawyer appointed by the  
9 Presidency of the Council of Ministers and I  
10 participated before the Constitutional Tribunal, and I  
11 said that Royalties were constitutional. And the  
12 Constitutional Court so declared.

13           An important part of that debate was whether  
14 they were or not a tribute that was duplicating income  
15 tax or an administrative payment that was duplicating  
16 the "derecho de vigencia," the validity fee. The  
17 Tribunal said that the law was constitutional. What is  
18 the royalty? Well, we can laugh--the royalty is the  
19 royalty.

20           ARBITRATOR CREMADES: Okay. You basically  
21 say the royalty is a royalty. Okay. You say a  
22 royalty is a royalty, but this Tribunal has to apply a

1 TPA, and the TPA says that taxes are excluded from the  
2 coverage of this Treaty. Perhaps this idea of tax or  
3 Royalty, for purposes of the Treaty, well, perhaps  
4 that is different from the internal concept that you  
5 have in your country in the field of tax. Perhaps  
6 when the Treaty talks about that taxes are not going  
7 to be covered by the Treaty, from the international  
8 viewpoint, perhaps Royalties need to be dealt with in  
9 the same manner as taxes. Constitutionally, how would  
10 you react to that?

11 THE WITNESS: I'm not sure if the answer is  
12 constitutional in nature. This is a very complex  
13 issue. Many of us get confused, and oftentimes when  
14 we talk about Royalties, we talk about taxes as well.

15 If you are asking my opinion without any  
16 kind commitment, I don't know the Treaty and I don't  
17 know about those things, truth be told. But if you  
18 ask me, I think Royalties are much closer to being  
19 taxes.

20 ARBITRATOR CREMADES: Excuse me?

21 THE WITNESS: Royalties are much closer to  
22 being a taxable contribution, a contribution. It is

1 very, very close to a tax, I think, a "tributo," we  
2 call it in Spanish.

3           And the taxpayer has other contributions  
4 that it must make, which is income tax, for example,  
5 paying income tax. So, this is not a "tributo," but  
6 it is, rather, a payment. I'm not a tax expert as to  
7 justify what it is. If you ask me, I think a royalty  
8 is closer to a "tributo" not only it has to be paid by  
9 the taxpayer, but because it emanates from the law and  
10 it has to do with the exploitation activity that it  
11 conducts. But I'm not qualified to answer this. It's  
12 a matter of opinion.

13           The law said that Royalties were not taxes.

14           ARBITRATOR CREMADES: Okay. The law may say  
15 that they were not taxes, but perhaps the signatories  
16 of the Treaty, the U.S. and Perú, well, what they  
17 wanted to do was to exclude actual or fictitious  
18 taxes, and a royalty, from the viewpoint of the  
19 taxpayer, well, the taxpayer sees the royalty as a  
20 tax.

21           THE WITNESS: Well, it is a "tributo," I  
22 think. And if we were to re-interpret those things--

1 That is why I said, without committing to anything or  
2 anybody, I also think that the royalty is closer to a  
3 "tributo." But that is my opinion. This was not  
4 discussed in Perú, and the Tribunal said that the law  
5 was constitutional and that is what happened. The law  
6 has been abided by.

7 ARBITRATOR CREMADES: Thank you very much  
8 for your answers, and I am asking you to excuse my  
9 insistence.

10 THE WITNESS: Yes. Of course. We have to  
11 think about this much more and I have to study much  
12 more. Thank you.

13 PRESIDENT HANEFELD: And then we hand over  
14 to the Claimant for--

15 MR. PRAGER: Thank you very much, Madam  
16 President. Before I start with the cross-examination,  
17 I just wanted to state it clearly for the record that,  
18 with the greatest respect, no jurisdictional objection  
19 has been made that the Royalties would fall under the  
20 tax exemption. So, that issue is not before the  
21 Tribunal.

22 CROSS-EXAMINATION

1 BY MR. PRAGER:

2 Q. Good afternoon, Mr. Eguiguren.

3 A. Good afternoon to you, sir.

4 Q. It's a pleasure to see you again.

5 A. It's a pleasure for me, as well. I hope it  
6 will continue to be a pleasure after this  
7 cross-examination.

8 Q. It will be.

9 We were talking a little bit about your  
10 representation of SUNAT.

11 MS. DURÁN: I'm so sorry to interrupt, but  
12 we haven't received the binders, the cross--

13 (Overlapping speakers.)

14 MR. PRAGER: Sorry for that. They're coming  
15 right now.

16 BY MR. PRAGER:

17 Q. Mr. Eguiguren, is it correct to say that you  
18 led SUNAT's defense in the contentious-administrative  
19 proceedings before the Appellate Courts and the  
20 Supreme Court in both the 2006-'07 Royalty Case and  
21 the 2008 Royalty Case?

22 A. Yes. I think I used the word "leader" in

1 the other hearing as well, in the sense that I was  
2 hired because of my academic background, and my  
3 experience and my age. I think I had a substantial  
4 influential role in justifying the defense of SUNAT.

5 ARBITRATOR TAWIL: Sorry. I don't seem to  
6 have Spanish Transcript.

7 (Comments off microphone.)

8 ARBITRATOR TAWIL: There. It appeared.  
9 Okay. Thanks. It appeared now.

10 MR. PRAGER: All right. Thank you.

11 BY MR. PRAGER:

12 Q. So, Professor Eguiguren, you prepared  
13 written submissions in the 2006-'07 Royalty Court Case  
14 for the Appellate Court?

15 A. I do not recall. My role was more to  
16 discuss strategy, to design the strategy, and to  
17 participate in the oral Hearing. Internally, I  
18 prepared some documents. I wouldn't want to say no,  
19 because there may have been an exception. But  
20 generally, I did not prepare the written Pleadings.  
21 The written Pleadings were mostly prepared by the  
22 Attorney General's Office and the lawyers of that

1 office.

2           Perhaps, I have done something, but I don't  
3 remember having signed something. Perhaps, I signed a  
4 Report that was supplementary to a pleading, but I  
5 didn't write the pleadings.

6           Q. I will show you to Paragraph 9 of your First  
7 Report. You say: "Specifically, my written  
8 professional work on both cases entailed submitting  
9 oral and/or or written arguments at the appellate and  
10 cassation stages of the proceedings before the  
11 Chambers of the Superior Court and Supreme Court that  
12 heard and resolved these cases."

13           Is that--does that refresh your  
14 recollection?

15           A. Well, what do we understand by written  
16 Reports. That's the problem. Perhaps there were  
17 written Reports for the legal team justifying a  
18 certain position, and some writings that were  
19 presented, like the appeal for example, those were  
20 submitted by SUNAT without my signature. They were  
21 the responsibility of the Attorney General and the  
22 Attorney General's lawyers.

1           Now, when we talk about detailed written  
2 arguments before the Tribunal, I don't remember. It  
3 may have happened in a specific occasion, but I really  
4 do not remember. My role was essentially coordinating  
5 the internal strategy, preparing Reports and oral  
6 Reports.

7           Q.    So you were arguing in the oral Hearings  
8 before the Supreme Court in both cases; is that right?

9           A.    That is true, yes.

10          Q.    And you made those arguments on behalf of  
11 SUNAT; right?

12          A.    Yes. Next to the Attorney General of SUNAT,  
13 that dealt with tax matters. I looked more at the  
14 Constitutional side of things, for example, in the  
15 cases of Cerro Verde, the debate on the nature of the  
16 contratos-ley and all of that, that was my doing.  
17 That was my part, so to speak.

18          Q.    And you also represented SUNAT in the oral  
19 arguments before the two Appellate Courts in the  
20 2006-'07 and the 2008 Royalty Cases; right?

21          A.    Of course.

22          Q.    And I recall you told us you had a success

1 fee arrangement for those cases, and the series of  
2 other cases in which you represented SUNAT.

3 Is that your recollection?

4 A. Yes. Would you want me to explain that or,  
5 yes, is enough?

6 Q. Well, let me ask you a question.

7 After SUNAT prevailed before the Supreme  
8 Court in the 2008 Case and prevailed, ultimately,  
9 before the Appellate Court in the 2006-'07 Case, you  
10 received a corresponding success fee payment; right?

11 A. Yes, as indicated and agreed upon in the  
12 Contracts that were entered into, this success fee  
13 would occur, one, if the case was won; and, two, there  
14 was a percentage on the amount obtained. And this  
15 would only occur--not only after the end of the  
16 proceedings at the Supreme Court level but also if the  
17 Decision became fully enforceable. In that moment,  
18 the percentage set forth in the Contract was  
19 collected. This is public information.

20 Q. You also represented a number of other  
21 investors--sorry, you also represented SUNAT in  
22 contentious-administrative proceedings before the

1 Peruvian Courts, brought by a number of other  
2 investors; is that right?

3 A. Yes. Mainly by Telefónica. There was a  
4 bank; there was also an oil company.

5 Q. I think you testified that you represented  
6 Telefónica--sorry, SUNAT in 16  
7 contentious-administrative cases that were being  
8 brought by Telefónica.

9 Is that your recollection?

10 A. Strictly speaking, I had five Contracts with  
11 SUNAT that started being in force in 2016. Out of  
12 those five, the more voluminous, so to speak, was the  
13 Telefónica one that had 13 cases.

14 Out of the 25 cases, 22 have been fully  
15 decided. Out of those 22, we won--we fully won or  
16 majorly won 18.

17 And in the case of Telefónica, out of the 13  
18 Telefónica cases, 12 have ended. We fully won or  
19 majorly won 10 and lost 2.

20 Q. So, in the Telefónica cases, SUNAT won 10  
21 cases, and lost--

22 (Overlapping interpretation and speakers.)

1 Q. --is that right? Approximately.

2 A. I'm--

3 (Overlapping interpretation and speakers.)

4 MR. PRAGER: The question or the answer?

5 (Interruption.)

6 BY MR. PRAGER:

7 Q. Okay.

8 Let me repeat it.

9 So, in the Telefónica cases, SUNAT won 10  
10 cases and lost two cases before the  
11 Contentious-administrative Courts; right?

12 A. Yes. Perhaps 8 or 10. It depends on  
13 whether it is fully won or fully lost.

14 Q. And you also represented Scotia Bank in  
15 contentious-administrative cases on behalf of SUNAT;  
16 right?

17 A. I don't know how--what you mean by  
18 "represent." I have been emphatic when I said that I  
19 do not represent. I have never represented SUNAT.  
20 SUNAT is represented by a single Attorney General. He  
21 is a public official. I have participated in the  
22 defense as a lawyer. I participated together with

1 SUNAT in two, I think, actions brought by Scotia Bank.  
2 There was an amparo and there was a contentious-  
3 administrative case, and both Decisions were favorable  
4 to SUNAT.

5 Q. And so, you also appeared on behalf of  
6 SUNAT--maybe that's a better word than "represent."  
7 You appeared on behalf of SUNAT in  
8 contentious-administrative cases that were brought by  
9 a Company called Savia.

10 Do you recall those?

11 A. Yes, I do recall. The Contract has two  
12 cases, in both cases the Claimant is Savia. Those  
13 cases concluded a long time ago, and the claims were  
14 dismissed, SUNAT won, and there were two amparos that  
15 SUNAT brought against Savia, and those are quite  
16 delayed, and they are still pending.

17 Q. The two Savia Cases that were concluded,  
18 SUNAT prevailed on those two cases; correct?

19 A. Yes.

20 Q. So, at the minimum in the cases in which you  
21 appear on behalf of SUNAT, SUNAT seems to have a  
22 crushing success rate. If I counted them, there were,

1 like, approximately, you know, 25 proceedings and 23  
2 wins, approximately. I may have gotten the math  
3 wrong, but it was an overwhelming success rate of  
4 SUNAT, wasn't it?

5 A. Well, it's not 23 successes. There may be  
6 19, 18, that's the number of successes. It is a  
7 success rate, yes. Give me a little bit of merit. I  
8 think I have to be shown some credit.

9 Q. Mr. Eguiguren, you also state that, in  
10 addition to having appeared in the defense of SUNAT in  
11 those cases that we just discussed, you also  
12 periodically advised MINEM and the Ministry of Economy  
13 and Finance; right?

14 A. In my CV, I make reference to State  
15 agencies, just in case for you to know this, that I  
16 have provided advice periodically or sporadically to  
17 these agencies. I didn't have specific Contracts.  
18 Yes, MINEM, the Central Reserve Bank the  
19 Superintendency of Banking and Insurance, and MINEM as  
20 well, a long time ago, but not for matters of this  
21 type.

22 And other public agencies, I included this

1 in my CV, because I wanted to talk about sporadic  
2 professional Contracts I had with State agencies.

3 Q. And, Mr. Eguiguren, you also told us at the  
4 SMM Hearing that you periodically provided advice to  
5 SUNAT; is that correct?

6 A. Yes. Before making these Contracts, I had  
7 prepared some specific Reports for SUNAT at the  
8 beginning of this century, specific things, yes.

9 Q. And this is not the first time you appear as  
10 an Expert in ICSID proceedings. I think you were  
11 retained by the Republic of Perú as an Expert in, I  
12 think, a total of four ICSID Cases; right?

13 A. Perhaps there is an older one. They might be  
14 five. There is a very old one, which is Aguaytia  
15 Energy, but I only provided a written Report in that  
16 case. My first hearing--well, in the Bear Creek Case,  
17 for example, I didn't come to Hearing either. My first  
18 hearing was in the Lidercón Case. And then, of  
19 course, in these two cases, Freeport and SMM.

20 Q. Actually, I have to correct myself. Now  
21 that I read Paragraph 6 of your First Statement. You  
22 appear not to have been--appeared as an Expert. You

1 say you were responsible for the Peruvian State's  
2 defense; is that correct?

3 If you can put it on the screen, it will be  
4 Paragraph 6 of your First Expert Report.

5 ARBITRATOR CREMADES: In the Spanish, it  
6 says Expert.

7 MR. PRAGER: In Spanish it's Expert?  
8 So--well, I didn't translate it.

9 MS. DURÁN: Just to be clear for the record,  
10 the Spanish is the original document.

11 MR. PRAGER: Well, yeah. Freudian  
12 translation slip, perhaps.

13 BY MR. PRAGER:

14 Q. So, your testimony is that you were retained  
15 as an Expert in those four cases on behalf of the  
16 Republic? Five cases you said. Yeah, if you count  
17 this case, we come to five, so your testimony's that  
18 you were retained as an Expert by the Republic of Perú  
19 in those five ICSID Cases; is that correct?

20 A. Technically, I was hired by Sidley. They  
21 have a relationship with the State of Perú. Now,  
22 where the resources come from, I don't know. I was

1 retained as an Expert.

2 Q. Professor, you haven't yet been retained as  
3 an Expert by an investor in an ICSID proceeding; is  
4 that correct?

5 A. Not yet, no. I hope.

6 Q. I reviewed your CV. It's fair to say that  
7 you have focused your career on constitutional law and  
8 human rights law; correct?

9 A. Yes. Constitutional law, that's a very  
10 broad subject; right?

11 Q. But you would not hold yourself out as a  
12 Mining Law Expert, would you?

13 A. Never.

14 Q. And it's also fair to say that you--it's  
15 also fair to say that you haven't taught Mining Law;  
16 right?

17 A. No. There is an undergrad and a post-grad  
18 seminar that I teach, and we have cases that we look  
19 at, and amongst those cases I deal with stability  
20 agreements, and one of those cases has to do with  
21 Cerro Verde.

22 Q. And you also have not published on Mining

1 Law; right?

2 A. I have not. A while ago, I published in the  
3 Gazette Juridica, work that had to do with the  
4 constitutional scope of contracting freedom and  
5 *contratos-ley*. I can tell you that in connection with  
6 freedom of contract, I have published a chapter in  
7 a book--and the publishing house was Gazette Juridica.

8 But not about mining in detail, only about  
9 *contratos-ley*.

10 Q. Let me ask you a few questions. You made  
11 previously a statement about Cerro Verde's various  
12 stability agreements. Let me ask you about the 199--

13 (Overlapping interpretation and speakers.)

14 (Interruption)

15 BY MR. PRAGER:

16 Q. I wanted to ask you a question. You  
17 mentioned earlier today Cerro Verde's Stability  
18 Agreements. And I wanted to ask you a question  
19 regarding the 1994 and 1998 Stability Agreements.

20 Do you know the difference between a 10-year  
21 stability agreement and the 15-year stability  
22 agreement?

1           A.    Yes.  But if the hypothetical is that the  
2 investment that is guaranteed is not only the one  
3 that's in the Contract but in future investments in  
4 the same concessions, the protection exists from the  
5 very first Contract.  If the Concessions are the same.

6           Q.    Professor, can you tell us the difference  
7 between a 10- and a 15-year stability agreement, other  
8 than the obvious one, which is that one lasts  
9 five years longer than the other?

10          A.    Yes.  That, as per Title Nine of the General  
11 Mining Law, which regulates special guarantees and  
12 assurances, it has to do with the amount of the  
13 investment, for example, that is made.  The objective  
14 that in respect of, say, expanding output, the  
15 lengthier Agreement, 15 years, means a large  
16 investment and a larger objective.

17          Q.    Let me be a bit more specific.  What  
18 additional benefits does a 15-year stability agreement  
19 give you that the 10-year stability agreement does not  
20 have?  Why would a mining company want to have a  
21 15-year stability agreement, other than it extends  
22 stability by five years.  What are the additional

1 benefits that the Mining Law grants, if you hold a  
2 15-year stability agreement?

3 A. I would tell you that you should consult  
4 with a mining expert—. I've studied the '98 Contract  
5 and its scope and content. I'm not a specialist in  
6 all the modalities, I know the basic things. But I  
7 would tell you to consult a specialist in mining. I'm  
8 not a mining expert.

9 Q. So, Professor Eguiguren, you're telling us  
10 that you testify in your Expert Report, and again here  
11 in the Opening about the '94 and the '98 Stability  
12 Agreement, and why Cerro Verde would have concluded  
13 both without having analyzed what the difference is,  
14 and why a mining company may want to conclude a  
15 15-year stability agreement. Is that your testimony?

16 A. No. I don't think so. From what I recall,  
17 both would fall over Concessions 1, 2, and 3 of Cerro  
18 Verde. And if the hypothesis that the Claimant has  
19 been putting forward is that the investments in a  
20 given Concession, not just the ones that are in the  
21 Agreement, but also future ones, are protected, then,  
22 of course, the duration of the contract is going to be

1 different, the amount of the contract is going to be  
2 different.

3           Perhaps what I would wonder is why, with  
4 this new investment, that contract was not expanded,  
5 or a new agreement was not started. But my legal  
6 argument is to say, that every time there has been a  
7 major investment, a new Agreement was sought.

8           Now, if every investment was covered, yes,  
9 there was a difference of some years, but the  
10 Stability Guarantees--well, now I'm not a specialist  
11 in the different types of mining agreements. I've  
12 analyzed the '98 Agreement.

13           Q. Before reaching a conclusion, Professor  
14 Eguiguren, have you reviewed correspondence between  
15 Cerro Verde and MINEM regarding the relationship  
16 between the '94 and the '98 Stability Agreement?

17           A. I've read what's been put forward in this  
18 proceeding, but not in detail because that wasn't part  
19 of the analysis that was entrusted to me. I've not  
20 given any opinion on facts, nor have I analyzed those  
21 matters. I have analyzed the Agreement.

22           Q. And did you know that Cerro Verde applied

1 the 1998 Stability Agreement to all of its--to its  
2 entire Mining Unit since the 1st of  
3 January 1994--1999? Pardon.

4 A. No, I did not know that, because it's not in  
5 the Agreement.

6 Q. Mr. Eguiguren, you testify--although you say  
7 you're not a Mining Law Expert, you testified about  
8 the scope of Article 83 of the Mining Law, don't you?

9 A. I don't recall. Article 83 of the Law?

10 Q. Yes, Article 83 of the law.

11 A. Oh, 83. 83.

12 Q. 83.

13 A. I'm sorry, but I heard three.

14 Yes. I have interpreted it, and I note that  
15 especially in its fourth paragraph, it raises the need  
16 and the requirement that the guarantee of the benefit  
17 granted has to do with the Feasibility Study, which is  
18 where the investment project is described.

19 Q. And I did not see in your Expert Report when  
20 you described the scope of the stability benefits  
21 reference to Articles 2 and 22 of the Mining  
22 Regulation.

1           Is there any particular reason you did not  
2 consider those?

3           A.    I believe I made some reference in my Reply  
4 Report because Ms. Vega referred to them, calling into  
5 question my position.

6           The thing is that it's likely that I made a  
7 very specific reference because, I reiterate, my  
8 analysis is based on the *contratos-ley*, as set out in  
9 the Constitution. That's the supreme law. The  
10 statutes can't go beyond the Constitution and then the  
11 Mining Law.

12           Now, the thing is that the same provisions  
13 are read differently by the Parties. As I see it  
14 Article 22 of the Regulation of Title Nine confirms,  
15 like the fourth paragraph of Article 83, confirmed  
16 that stability and the benefit of the guarantee is  
17 granted specifically with respect to the investment  
18 project contained in the Feasibility Study that's  
19 incorporated in the Agreement.

20           Now, regarding those same provisions, the  
21 Claimant and its Experts interpret that they cover any  
22 present day or future investment on the same

1 Concessions. These are different interpretations.  
2 Apparently irreconcilable, as between the Parties on  
3 this issue, but the difference, and favoring my  
4 interpretation, one can invoke a judgment on cassation  
5 by the Supreme Court.

6 Q. Professor Eguiguren, when you stated your  
7 position in your first report, paragraph--

8 (Overlapping interpretation and speakers.)

9 BY MR. PRAGER:

10 Q. Professor Eguiguren, when you stated your  
11 position in Paragraph 38, that the effect of the  
12 guarantees are limited to the investment project, what  
13 you did is you repeated the position you took as  
14 SUNAT's defense Counsel in all of those proceedings  
15 but you did not make an independent analysis that  
16 considered Articles 2 and 22 of the Mining  
17 Regulations, did you?

18 A. That's likely.

19 Q. And did you--coming to that conclusion, did  
20 you analyze Decisions that have been made by the DGM  
21 or by the Mining Council with regard to scope of  
22 stability agreements? Sorry.

1           A.    No.  I based myself on the Decisions of the  
2 Tax Tribunal and judicial Decisions.  It's like in the  
3 previous case.

4                    I don't place all that much emphasis on the  
5 Regulation because Regulation is subordinate to the  
6 Law, and it cannot go against the Law.  And so,  
7 interpretations of the Regulation that are contrary to  
8 the Law would be mistaken.  They'd be considered  
9 illegal, unconstitutional.  The same happens here.

10                   There may be opinions and such.  I'm not an  
11 Expert in mining, so, therefore, the work of the  
12 Mining Council is not something I've looked at, nor  
13 the Directorate General for Mining.  No.  Because I  
14 analyze a contract and, on that, I look at what the  
15 Tax Tribunal has said in its Decisions and what the  
16 judicial branch has said, and those are higher-ranking  
17 instances.

18           Q.    And Professor Eguiguren, did you review and  
19 consider Decisions by SUNAT regarding the application  
20 of stability agreements when--before you reached that  
21 conclusion?

22           A.    You mean, generally speaking?

1 Q. Before you reached that conclusion that you  
2 put into Paragraph 38 of your First Expert Report.

3 A. Now, as I have said in my participation in  
4 cases involving SUNAT and Cerro Verde, well, that  
5 began in 2016, 2017.

6 Obviously, in that case, I reviewed, for  
7 example--and then, of course, with this arbitration or  
8 the previous one, before writing my Report I reviewed  
9 the reference to the Reports by Mr. Isasi of the  
10 Ministry of Energy and Mines, who, going back to  
11 2005-2006 was already saying that the Primary  
12 Sulphides Project wasn't protected, the Statements by  
13 the Minister of Energy and Mines, and the SUNAT  
14 Assessment.

15 And I read internal SUNAT Reports that, more  
16 from a tax perspective, explained the position in that  
17 regard.

18 Now, all the prior history, no, because for  
19 my legal analysis, it wasn't necessary.

20 Q. So, that's what you base your conclusions  
21 on, Mr. Isasi's Report? Mr. Isasi's June 2006 Report?  
22 That's the--that's what you base your conclusion on?

1           A.    No.  No.  I base my conclusions on my  
2 analysis as a professor of constitutional law  
3 regarding the scope of *contratos-ley* and mining  
4 stability agreements, and the '98 Agreement.  And now  
5 what Mr. Isasi and other Witnesses have said  
6 corroborate my interpretation, but, no doubt, my  
7 analysis is a different one.  Not different in  
8 content, but it's my own analysis.  It would have been  
9 more complicated for me if it--if the meaning were  
10 different, but that wasn't the case.

11           Q.    Well, Professor Eguiguren, you said you're  
12 not a Mining Law Expert.  You did not look at the  
13 Decisions of the Mining Council.  So, what else did  
14 you look at, other than Mr. Isasi's Report?

15                    It was just Mr. Isasi's Report and your own  
16 reading of the Mining Law?

17                    Did I understand that correctly?

18           A.    For this arbitration and the previous one, I  
19 have also read Witness Statements, but the truth is,  
20 well, my First Report, if you know my Reports well, is  
21 a Report of legal analysis of the Constitution and the  
22 law.  You're not going to find in either of my two

1 Reports references to what Mr. Polo may have said,  
2 what Ms. Chappuis would have said. Yes, I do recall  
3 that I made a specific reference to Isasi's Report,  
4 but very much in passing, because those are facts, and  
5 I'm analyzing the '98 Agreement.

6 It would be different for me if there were  
7 an opinion of the State that had said, yes, the  
8 Primary Sulfides Plant is protected. That would have  
9 required that I undertake a different type of  
10 analysis, or it would have created a different kind of  
11 doubt, but I haven't seen in the Claim or in the  
12 Reports of Experts anything on that, other than said,  
13 suggested, proposed.

14 So, I don't claim to do what I haven't done,  
15 but you're familiar with my two Reports, and you know  
16 their scope.

17 PRESIDENT HANEFELD: Mr. Prager, would it be  
18 a good time for a break?

19 MR. PRAGER: Yes, it would be a good time.  
20 Thank you very much.

21 PRESIDENT HANEFELD: Then we meet again  
22 at 4:00.

1 (Brief recess.)

2 BY MR. PRAGER:

3 Q. Professor Eguiguren, let's talk about  
4 Article 86 of the Mining Law that you had already  
5 mentioned.

6 You will recall that it provides that  
7 stability agreements are Adhesion Contracts that  
8 incorporate all the guarantees established in the  
9 Mining Law; is that correct?

10 A. That is correct. They include Articles, or  
11 the Guarantees, mainly, of the Mining Law and the  
12 Feasibility Study.

13 Q. Well, let's take this apart.

14 You would agree that the content of the  
15 mining stability agreement is predetermined under the  
16 Mining Law and Regulations; right?

17 A. As I said before, that is correct. Part of  
18 the Contract comes from the law, the law mainly.

19 Q. Well, in your First Witness Statement in  
20 Paragraph 41, you said plainly the content of the  
21 Agreement is predetermined under the Mining Law.

22 Is there any reason you want to change that?

1           A.    No.  I don't need to change anything.  I am  
2 just being specific.  Part of the Contract is  
3 predetermined by the law, and it is nonnegotiable, but  
4 many other parts of the Contract will come from the  
5 Feasibility Study that was presented by the Company.

6                    In part, I would need to look at everything,  
7 but I think that the Report in its conclusions and as  
8 a whole do not support that everything is determined  
9 in the law.

10           Q.    Well, let's take--let's look at it a bit  
11 more precisely.

12                    The Mining Law provides for certain  
13 Stability Guarantees; right?  So, the Parties can't  
14 negotiate more Stability Guarantees than those  
15 provided in the law or less Stability Guarantees than  
16 those provided in the law; right?

17           A.    I didn't understand the last concept, but  
18 the guarantees are nonnegotiable.  They are provided  
19 for under the law.  The matters to which they apply and  
20 their duration.

21           Q.    Right.  The Mining Law also provides for a  
22 certain duration of the mining stability agreement.

1 It says mining stability agreements either have  
2 10 years or they have 15 years.

3 So, the Parties can't sit down and negotiate  
4 to have a 12-year stability agreement or an 18-year  
5 stability agreement; right?

6 A. I do not think so. It would depend on the  
7 type of contract.

8 Now, I am not an Expert--I said that  
9 before--in mining. I do not discard, because I do not  
10 know, that it could be that for some reason the  
11 duration may be lower, maybe. Higher, it's  
12 impossible, but honestly, I don't know. I would need  
13 to look at the characteristics of the investment,  
14 et cetera.

15 The law establishes a parameter that cannot  
16 be granted--that you cannot grant more guarantees on  
17 those matters, nor other requirements or other  
18 benefits.

19 Q. Well, Professor, if parties were able to  
20 negotiate a shorter term like 12 years or 8 years, how  
21 would that square with the nondiscrimination and the  
22 nondiscretion that you outlined as guiding principles

1 for the model agreement when you gave your Opening  
2 Presentation?

3 A. I do not know. I have not said that they  
4 can do that. I do not know, but what I said is  
5 that--let's see. The guarantee is a benefit, and  
6 that's why I said that it is an exceptional regime.

7 If for some reason the investor would like  
8 to have less, there is no discrimination, but the  
9 problem would be if they receive more than others. I  
10 don't even know if it is possible. I don't know  
11 whether there are cases in which they accept a shorter  
12 period.

13 You should not forget that, according to the  
14 Mining Law and the *contratos-ley* the investor may  
15 waive a benefit, may waive a term. If tomorrow the  
16 law would change and it would grant a better benefit  
17 than the one under the Contract, in my understanding,  
18 the investor can choose that benefit.

19 The problem is you cannot give someone more  
20 than you give someone else, because that would be  
21 discrimination.

22 Q. Well, you don't--can you tell me about a

1 stability agreement that's not a 10-year or a 15-year  
2 stability agreement, Professor?

3 Can you mention me an example?

4 A. I do not know. I doubt it.

5 Q. Okay. And the Mining Law also defines the  
6 scope of the stability agreements. You mentioned  
7 Article 83.3.

8 So, you would agree that the parties cannot  
9 also negotiate the different scope of--for a stability  
10 agreement than the one that's set forth in the Mining  
11 Law; right?

12 A. In connection with what?

13 Q. For the scope of the Stability Agreement, to  
14 what the Stability Agreement applies. The scope,  
15 "alcance."

16 A. That is correct.

17 Q. Well, let me just ask you: Under your  
18 premise, the--under your premise, the scope of the  
19 Stability Agreement, your premise which you have  
20 developed as an advocate for SUNAT, the Stability  
21 Agreement applies to investment projects.

22 So, the parties cannot go and reach an

1 agreement and say, "Well, we want the stability  
2 benefits applied to a Mining Unit"; right?

3 A. No. If the investment is not in connection  
4 with that concession and there is no new investment,  
5 the contract--for example, the 1998 Contract specifies  
6 at Clause 1.1, 2, 3, that the investment as such for  
7 the Leaching Project, what concessions it is  
8 circumscribed to. It cannot be expanded to others  
9 unless the contract is modified.

10 Q. And let's take our premise. If the Tribunal  
11 concluded that the Mining Law said that the scope of  
12 the stability benefits extends to concession or Mining  
13 Units, then the Parties could not negotiate a  
14 different scope than that, because they have to comply  
15 with the law; right?

16 A. I didn't understand the question very well.  
17 By making reference to "the Tribunal," is  
18 this this Tribunal or a different Tribunal, a  
19 Peruvian? I didn't understand the reference to "the  
20 Tribunal" and negotiation of the Parties.

21 Q. Let me give you a hypothetical.

22 You said under your premise, Article 83 says

1 that the scope of stability agreements applies to an  
2 investment project, and hence the parties cannot then  
3 negotiate something different. They cannot say, "Oh,  
4 I want it to apply to a Mining Unit," or "I want the  
5 scope to apply to something different."

6 Let's take another premise, another  
7 hypothetical.

8 If the Mining Law said that the Stability  
9 Guarantees apply to a Concession or a Mining Unit--not  
10 to an investment project, but to a Concession or a  
11 Mining Unit--the parties could then not negotiate  
12 something different. The scope would be set by the  
13 Mining Law; right?

14 A. If the law provided for that, yes. But then  
15 it would not, all in all, be a guarantee for an  
16 investment in particular. I think that the rationale  
17 behind this Contract is to have specific investments.

18 Q. Understood. That's your position as a SUNAT  
19 advocate, but I think you answered my question.

20 (Comments off microphone.)

21 MR. PRAGER: I don't have any further  
22 questions, then. Thank you very much, Professor.

1           PRESIDENT HANEFELD: Any questions in  
2 recross?

3           MS. DURÁN: Could I take three minutes,  
4 please?

5           (Pause.)

6           MS. DURÁN: May I? Thank you.

7           (Comments off microphone.)

8           (Discussion off the record.)

9                           REDIRECT EXAMINATION

10           BY MS. DURÁN:

11           Q. Dr. Eguiguren, you were asked about the  
12 advisory services you provided to SUNAT, and in your  
13 résumé you have included in your First Report as  
14 Exhibit A, you established that you are an advisor and  
15 consultant for State bodies and private companies.

16                           Would you please explain?

17           A. Yes. As stated here, my main professional  
18 experience, because of public law and constitutional  
19 law, has been requested mostly by public entities, but  
20 sometimes it is for private companies.

21                           In my résumé, as in the previous  
22 arbitration, I included mainly what is related to

1 State entities. I have not referred to private  
2 companies, in case it could be thought, especially  
3 because of SUNAT's matter, some type of public  
4 entities to which I have provided services. But I have  
5 provided Reports also for various private companies.

6 Sometimes, even if you allow me with the  
7 Rodrigo Law Firm as an external consultation for  
8 companies of constitutional and administrative issues,  
9 I have done that. But I didn't include it.

10 MS. DURÁN: Thank you. I have no further  
11 questions.

12 PRESIDENT HANEFELD: I have just one  
13 remaining question.

14 QUESTIONS FROM THE TRIBUNAL

15 PRESIDENT HANEFELD: In the course of today,  
16 we heard Mr. Bullard and you testifying on the same  
17 question, and the two of you came to clearly opposite  
18 results, and I want to understand the position you  
19 took today a little bit better.

20 I understood Mr. Bullard testifying today  
21 that, because the stability agreements are Adhesion  
22 Contracts, what matters is its Exhibit 1 and its

1 reference to the Beneficiation Concession, regardless  
2 of the time and scope of the Beneficiation Concession  
3 on the date of the Stability Agreement.

4           So, a future extension like we had it here  
5 for the Concentrator would bring the Concentrator  
6 under the protection of the Stability Agreement.

7           I understand you're testifying, "no, an  
8 extension of the Beneficiation Concession  
9 retroactively can by no means extend the scope of the  
10 Stability Agreement, never."

11           Did I understand you correctly that you have  
12 categorically denied the proposition that Mr. Bullard  
13 took this morning?

14           THE WITNESS: Yes. I say categorically no  
15 as to granting an exceptional benefit in a retroactive  
16 fashion.

17           Now, if it was possible for the Concentrator  
18 to be included, I know that technically--and I am not  
19 an expert--this is leaching. Leaching and  
20 Concentrator are two different things from the  
21 technical point of view, but Article 3 under the  
22 Contract allows to make expansions and additions to

1 this, and if this was the case or if a new contract  
2 was entered into in connection with the Concentrator,  
3 it would have the benefit as of the time of entering  
4 into the Contract.

5 But that did not happen, and it did not  
6 happen, and that's the reason why we have this case.

7 PRESIDENT HANEFELD: Thank you.

8 So, we have no further questions. Thank you  
9 very much. You are released as an Expert in this  
10 proceedings.

11 THE WITNESS: I thank you. I thank you very  
12 much.

13 (Witness steps down.)

14 PRESIDENT HANEFELD: And then we continue  
15 with the next Expert. This is Mr. Morales.

16 Let us know when you are ready.

17 (Pause.)

18 RÓMULO MORALES, RESPONDENT'S WITNESS, CALLED

19 PRESIDENT HANEFELD: So, welcome,  
20 Mr. Morales. Good afternoon.

21 THE WITNESS: Good afternoon.

22 PRESIDENT HANEFELD: You have been nominated

1 as an Expert in this Arbitration by the Respondent.

2 I introduce us as the Tribunal. I'm sitting  
3 here with Professor Tawil and Dr. Cremades. Myself,  
4 my name is Inka Hanefeld, and I'm the presiding  
5 arbitrator in this Arbitration, and I kindly request  
6 you to read out the Declaration that you should have  
7 in front of you.

8 THE WITNESS: I solemnly declare, upon my  
9 honor and conscience, that my statement will be in  
10 accordance with my sincere belief.

11 PRESIDENT HANEFELD: Thank you.

12 And do you also have your Expert Reports,  
13 RER-2 and 7, in front of you?

14 THE WITNESS: Yes, indeed. I can see my  
15 Reports of May 4, 2022, and November 3, 2022. And I  
16 recognize that these are my Reports, and also that I  
17 have drafted.

18 PRESIDENT HANEFELD: Perfect. Then we can  
19 proceed to your presentation. I understand that you  
20 will now have a presentation. Please go ahead.

21 DIRECT PRESENTATION

22 THE WITNESS: Good afternoon, Members of the

1 Tribunal. Greetings to Counsel, and also ICSID staff.  
2 My name is Rómulo Morales Hervias, and I will sum up  
3 the situation, but before that I will be--express some  
4 very specific points before going into the five parts  
5 of my presentation.

6 I am a civil law professor for 22 years at  
7 the Pontificia University of Perú. I have--among  
8 other institutions, such as the University of San  
9 Marcos, I have 25 years of professional experience. I  
10 am also an author of different books and essays on  
11 various aspects of civil law, and I am also an  
12 arbitrator at the Arbitral Center of Perú.

13 The interpretation of the Mining Law, its  
14 Regulation, and the Peruvian Constitution, I do it  
15 following the principles and categories of Peruvian  
16 law. Perú's 2008 2017 Supreme Court Judgment in the  
17 2008 Royalty Case constitutes res judicata for the  
18 parties in those proceedings, but this Judgment has an  
19 interpretive value in connection with the Mining Law  
20 and the Stabilization Agreement.

21 I will address five parts. First I have  
22 some introductory comments. The Experts have already

1 received to the nature of the Stability Contracts, and  
2 Dr. Eguiguren has also explained that. Then I am  
3 going to refer to the Stabilization Agreement, and I  
4 am going to focus on the binding interpretive rules  
5 for any Tribunal analyzing this type of contract in  
6 Peru. Next I will be referring to the Supreme Court  
7 Judgment that ratifies my thinking, and this is a  
8 Judgment of 2017, and then I am going to refer to the  
9 absence of contract compliance, and then conclusions.

10 First, introduction as to the nature of the  
11 Stability Contracts. There is a debate in Perú as to  
12 the nature of the *contratos-ley*," and in my particular  
13 opinion, as I mention in my two Reports, is that they  
14 are of a mixed legal nature, not only because there is  
15 administrative and civil law doctrine and scholarly  
16 work that analyzes this, but before then, the 1984  
17 Code had already regulated this category of the  
18 *contratos-ley*.

19 The *contratos-ley* contain benefits in favor  
20 of individuals that the State can only grant by law  
21 because, given their content, they should be qualified  
22 as Administrative Contracts or Agreements. On the

1 other hand, the State is deprived of the *jus imperium*  
2 that characterizes the regime of Administrative  
3 Agreements. Therefore, *contratos-ley* have a dual  
4 character. They are agreements they are negotiated  
5 and entered into in accordance with the rules of  
6 public law, administrative law, but which are  
7 implemented under private law or civil law.

8           Something central to this is whether the  
9 Stability Contracts are not Adhesion Contracts. I  
10 argue that they are not ordinary Adhesion Contracts,  
11 and I refer to comparative scholarly work as to what  
12 has to be complied with the Adhesion Contract.

13           There is no pre-negotiation or negotiation  
14 such that the content of the Contract is drafted or  
15 prepared by one of the Contracting Parties, that the  
16 other Contracting Party adheres completely to the  
17 content of the Contract, and the fourth characteristic  
18 is that the adhering contracting party has a weak  
19 bargaining power.

20           In this case, 1, 2, and 4 are not met.  
21 Therefore, the purpose of the Contract which we are  
22 analyzing in this case is to stabilize the investment

1 project as described under the feasibility contract.  
2 The purpose is not adhesion, and it is the investor,  
3 the one that proposes the Feasibility Study. We here  
4 see a lot of blank spaces, or the form has blank  
5 spaces for the mining company to include it, taken  
6 from the Feasibility Study. This comes from  
7 Article 85 and 19 that referred to the Feasibility  
8 Study.

9           The General Mining Law and its Regulations  
10 define the guarantees granted to investors, but not  
11 the subject matter of the stabilization agreement.

12           The investors define the subject matter of  
13 the stabilization agreement through the  
14 Technical-Economic Feasibility Study. It wouldn't  
15 make any sense for the model contract to have left so  
16 many blank spaces for the Parties to include a  
17 description of the investment project or for  
18 Article 19 of the Regulations to include so many  
19 requirements to be met by the Technical-Economic  
20 Feasibility Study, and it would make no sense to  
21 interpret the Stabilization Agreement if the Stability  
22 Guarantees were only defined in the General Mining

1 Law.

2           This is important to mention. The Supreme  
3 Court has confirmed in their 2017 Judgment on the  
4 Royalties Case the interpretation of the Contract.  
5 The Supreme Court interpreted the Contract and whether  
6 it breached or not the Mining Law, and this is  
7 something that we are going to see.

8           The Supreme Court acted as a Cassation  
9 Court, and a Cassation Court in our civil law  
10 countries acts as a court to determine whether a  
11 contract breached the law or not. So, the Supreme  
12 Court of Justice, the highest court in Perú,  
13 determined whether this Contract breached the Mining  
14 Law or not.

15           The second portion of this will be focusing  
16 on the Stability Contract, Agreement, that did not  
17 comply, the Concentrator or the Primary Sulfide Plant.

18           I will--before I focus on the other  
19 portions, I will focus on interpretation.

20           In Perú, there are six rules of  
21 interpretation: The literal interpretation of the  
22 Contract; the systematic interpretation of the

1 Contract; the global interpretation--that is to say,  
2 the conduct of the Parties; the interpretation  
3 accordance with good faith; and functional  
4 interpretation; and contra proferentem  
5 interpretation--that is to say, the clauses, for  
6 example, those contracts that have adhesion clauses  
7 have to be interpreted in favor of the weaker of the  
8 two Parties--that is to say, the vulnerable party  
9 under the Contract. And in my specific opinion, this  
10 interpretation is not to be applied in this case.  
11 Why? Because the national doctrine of Perú, whenever  
12 indicating this, they have indicated that this  
13 interpretation, to begin with, is ancillary. So, a  
14 contra proferentem interpretation implies that I first  
15 need to resort to the five other ways of  
16 interpretation: Literal, systematic, global,  
17 functional, and in good faith to see if I can apply  
18 this one. And also the national scholarly writings  
19 show us that there has to be ambiguity to apply these  
20 contra-proferentem interpretation, and I am going to  
21 show that there is no ambiguity.

22 The purpose of this Contract is the

1 Feasibility Study, and here we have seen that it is  
2 the Concessions and the mining rights are the most  
3 important. No, and as the Contract says, the  
4 investment project, the Plan, are the most important  
5 aspects.

6 This is the basis so that the Mining  
7 Titleholder can have an agreement, a stability  
8 agreement. Without an investment project, there is  
9 nothing. The titleholder of the mining activity can  
10 have 100 concessions, but if it has no investment  
11 project, no benefits or guarantees under the Mining  
12 Law or the Constitution will be granted to them.

13 I'm going to explain very briefly these  
14 rules of interpretation. The literal interpretation  
15 is the privileged one. Article 168 of the Code is  
16 very clear. The clauses are to be interpreted  
17 according to what has been expressed in the Contract,  
18 according to what the Parties have said.

19 Here at Slide 13, it talks about the literal  
20 interpretation of Clauses 1, 3, and 4 of the  
21 Stabilization Agreement. It allows us to insert that  
22 the common intent of the Parties was that the

1 contractual Stability Guarantees would apply  
2 exclusively to the investment project included in the  
3 Feasibility Study. Another important interpretation  
4 is the systematic interpretation. What has the  
5 scholastic opinion said about this? That the relevant  
6 clauses have to be interpreted in connection with  
7 those clauses that are connected.

8 My colleague and friend Mr. Bullard said  
9 something that I disagree with, and this idea doesn't  
10 come out of Clauses 1-8. If you do a systematic  
11 interpretation of Clauses 1-8, what we can see is that  
12 to be a beneficiary of the contractual guarantees you  
13 need an investment project that needs to be approved  
14 by the Mining Authority. So, without an investment  
15 project you can be the titleholder of 1,000  
16 concessions, without an investment project you're not  
17 going to have the exceptional benefit provided to you,  
18 the investors, by the Constitution.

19 The Government says, okay, I'm going to  
20 place you in a situation of immunity. You're going to  
21 have exchange guarantees, guarantees where the law  
22 will not change, but in consideration of that, you

1 have to submit an investment project that's going to  
2 be approved by the Government.

3           This is important, and I will talk about the  
4 contra proferentem interpretation soon. Mr. Bullard  
5 talked about Clauses 9 and 10 because they are  
6 irrelevant. But the Supreme Court said that Clauses 9  
7 and 10 make no sense to provide any kind of  
8 interpretation or provide some kind of extension to an  
9 investment project.

10           Clause 9 clearly states the contractual  
11 benefits. Clause 9 talks about the contractual  
12 benefits. And Clause 10 says that later laws cannot  
13 be modifying what was already approved in the  
14 Feasibility Study, so these are irrelevant, really,  
15 for this discussion.

16           The '98 Stability Agreement does not mention  
17 at all the Primary Sulfides Project. To the contrary,  
18 it mentions 10 times the Cerro Verde Leaching Project.  
19 It's a literal interpretation of the Contract.

20           Another important interpretation that I  
21 think is fundamental and we need to mention here, at  
22 23, for example, you can see the language of the

1 Supreme Court ruling at Paragraph 35. This says that  
2 the 9th and 10th clauses of the Agreement do not  
3 render the above ineffective. Inasmuch as said  
4 Clause 9 only outlines the benefits that will be  
5 enjoyed by the Claimant in relation to the investment  
6 in its concession.

7           And then Clause 9 talks about the labor  
8 provisions after the approval of the Feasibility  
9 Study. Those are not going to affect the Stability  
10 Agreement. Clearly, the Court has taken a position in  
11 connection with Number 9.

12           It says that clauses 9 and 10 do not help us  
13 settle the controversy. This is a 2017 Judgment.  
14 There was no scholastic opinion, expert mining  
15 opinion, or a thesis or an Article in this ruling.  
16 This was published in the Official Gazette, and  
17 everybody can read it and to criticize it, and this is  
18 something that the Constitution says, and anybody can  
19 criticize the judgment. But no legal scholar had made  
20 reference to this in 2017.

21           What about good faith? What does it mean in  
22 interpretation? Well, the interpreter of a contract

1 has to apply the standard of an average reasonable  
2 man. The interpreter must place two reasonable  
3 persons in the shoes of the Contracting Parties,  
4 asking them how they would have understood what is  
5 stated in the Contract and how they would have  
6 complied with it in a similar case.

7           So, an average reasonable man would have  
8 interpreted that the guarantees of the Stabilization  
9 Agreement of SMCV reasonably extend to the Investment  
10 Plan of the Cerro Verde Leaching Project, according to  
11 the Technical-Economic Feasibility Study.

12           It is a functional interpretation; right?  
13 What is it? Well, you have to interpret your clauses  
14 according to their purpose and to the intent of the  
15 Parties, and here we are talking about a functional  
16 interpretation of the Stability Agreement. What is  
17 the functional interpretation of this Agreement?  
18 Well, to grant the stability benefit.

19           But in connection with the Leaching Project,  
20 Paragraph 36 of the Supreme Court is important. That  
21 it says that the investment includes the Feasibility  
22 Study and that the Investment Plan covers it and they

1 only extend to the scope of the benefits arising from  
2 the Stability Agreement.

3           The Supreme Court at Paragraph 36 of the  
4 Decision defines the purpose of the Stability  
5 Agreement.

6           You also have global interpretation. You  
7 are trying to interpret the conduct of the Parties.  
8 Mr. Bullard talked about seven different conducts by  
9 the Peruvian State that would have created reasonable  
10 reliance in the Mining Society that the Concentrator  
11 was included in the Agreement. But in all the  
12 conducts of the Parties mentioned by Dr. Bullard, it  
13 is verified that after the execution of the Agreement  
14 there was an agreement by both Parties that the  
15 contractual Stability Guarantees were included in the  
16 Concentrator Plant.

17           Mention was made that it is not implicit in  
18 the Stability Agreement. Clause 14 of the Stability  
19 Agreement clearly says to amend this Contract, you  
20 need an agreement and a public deed before a notary.

21           Is there a contractual agreement formalized  
22 by a notary that includes the Concentrator or the

1 Primary Sulfides Project in this Stability Agreement?

2 No. None. There is no addendum, there is no  
3 agreement. None.

4 Clause 14 is very clear in the Stability  
5 Agreement. There has to be an agreement. One cannot  
6 say, okay, I think that this is what it says. No. It  
7 has to be express agreement that that Primary Sulfides  
8 Project is included in this Stability Agreement.

9 Without that, then you will be violating the Contract  
10 if you resorted to that interpretation. That is why  
11 the Supreme Court said that the Primary Sulfides  
12 Project is not included in the Stability Agreement.

13 And I think this portion, Number 3, is very  
14 important. It has to do with the Supreme Court  
15 Judgment of 2017.

16 I said that in Perú there are six ways to  
17 interpret documents. These are interpretative rules  
18 that any lawyer, law student, or judge must resort to  
19 to justify his or her assertions and final decisions,  
20 specifically.

21 The literal interpretation, the systematic  
22 interpretation, the global interpretation, the

1 functional interpretation, and the interpretation  
2 based on good faith. And then there's a sixth one  
3 which is known as the "contra proferentem"  
4 interpretation.

5           The Court at Paragraph 36 of its Judgment  
6 addressed this. There is no ambiguity in the  
7 Stability Agreement of 1998. Where you can say, okay,  
8 here he talks about the sulfides project, over here  
9 they talk about the Leaching Project, and over here  
10 they talk about the Concentrator Plant, and this other  
11 talks about something else. No. There is no  
12 ambiguity. To apply 1401 of the Civil Code of Perú to  
13 interpret the clause in favor of the adhering party,  
14 then the contractual party has to be vulnerable.

15           Why?

16           Because that party has not negotiated the  
17 Contract. It has submitted itself to the Adhesion  
18 Contract. Here the investor has proposed the purpose  
19 of the Contract, which is the feasibility agreement.  
20 How can you say this a vulnerable, weak party?

21           Ambiguity, where is there ambiguity in the  
22 Stability Agreement? No mention is made in the

1 Contract at all of the Concentrator or the Primary  
2 Sulfides Project. It mentions 10 times, however, the  
3 Cerro Verde Leaching Project. The Court uses three  
4 interpretation criteria at Paragraph 170. It is  
5 mentioned here. Literal interpretation, systematic  
6 interpretation, and interpretation based on good  
7 faith. And this is critical. It says the contractual  
8 benefits that result from the Stability Agreement are  
9 not as broadly enjoyed as the appellant has suggested,  
10 which is why it is impossible to reach the conclusion  
11 that the benefit extends to every investment the  
12 mining company makes in the concession that is the  
13 subject matter of that Stability Agreement.

14           What Claimant and the Experts do is look at  
15 Adhesion Contracts from a very broad viewpoint. The  
16 law talks about Adhesion Contracts only in connection  
17 with guarantees. They are immutable. That is what it  
18 refers to.

19           Well, if we talk about this, we can talk  
20 about vinyl, we can talk about a CD, but what is a  
21 disk? Okay. They are talking about adhesion, right.  
22 But you have to interpret what adhesion is. A company

1 like SMCV, is it a vulnerable party? Definitely not.

2           Okay. An Adhesion Contract, right. You  
3 have to interpret the Contract. You are Members of  
4 the Tribunal, and you are going to interpret what  
5 "adhesion" means. But the Supreme Court has done so  
6 at Paragraph 36 of the judgment. I wanted to  
7 underscore that I think it's important to share with  
8 you this idea. Here I compare the interpretations  
9 that I've mentioned of the different clauses, and I  
10 have put here the paragraphs of the Supreme Court.

11           You, yourselves, can see at your office, by  
12 yourselves, whether there is a coincidence between the  
13 Stability Agreement clauses and what the Supreme Court  
14 has determined in that connection. Why is this  
15 judgment important?

16           Well, it's important for the Parties because  
17 it deals with the Royalties Case of 2008. The  
18 interpretation of the Supreme Court has not been  
19 contradicted by any court whatsoever. There has been  
20 no national scholastic opinion that has criticized  
21 this ruling. Well, maybe there were opinions, but  
22 they were just opinions. Those opinions were not

1 issued by a Supreme Court Justice. In our system and  
2 in other legal systems, well, we do have to respect  
3 the Decisions of the Supreme Court, and the Supreme  
4 Court here has interpreted the Stability Agreement as  
5 to whether there has been a violation by the Mining  
6 Law or by the Regulations.

7           If you seek to interpret this, you cannot  
8 ignore these things. It is not useful, like  
9 Mr. Bullard said, for a Supreme Court Justice to  
10 exist. What is it that that means? Of course a  
11 Supreme Court ruling is useful. Here the Supreme  
12 Court has interpreted something. So, weren't they  
13 competent? Didn't they have authority to interpret a  
14 mining contract, even though they were, perhaps, not  
15 Experts in mining law? No. Of course. They are  
16 Justices of the Court. You can question the Decision,  
17 but the effects are there, and the interpretation made  
18 by the Supreme Court has been given. So, I think that  
19 there is no reason for the Stability Contract to be  
20 interpreted otherwise.

21           The Supreme Court has decided via cassation  
22 as a Court of Last Resort. Cassation, what does it

1 mean? Well, it means that there is going to be an  
2 annulment of a ruling, and in Article 384 of the Code  
3 of Civil Procedure looks for the proper application of  
4 the law and the interpretation of objective law.

5           And Article 400 of the Code of Civil  
6 Procedure says that these cassation judgements are  
7 mandatorily published in the Official Gazette.  
8 Whether we like it or not, we have to abide by the  
9 interpretation by the Supreme Court. What the Supreme  
10 Court has done, ultimately, is to examine the '98  
11 Agreement and it has looked at whether this Contract  
12 applied to other projects or, in this case, the  
13 Primary Sulfides Project. But first the Court had to  
14 see whether the Contract had breached the law, had  
15 breached the Mining Regulations, but the Supreme Court  
16 also had to interpret it--the Contract. And it has  
17 used literal, systematic, and good-faith  
18 interpretation as methods.

19           So, the use of these interpretation rules  
20 has not been questioned. The Supreme Court has  
21 interpreted the Mining Law and the Stability  
22 Agreement.

1           That has to be respected. That Decision has  
2 to be respected. You can call it into question.

3 Fine. Of course you can criticize things, but you  
4 cannot modify this, unless you interpret the law in a  
5 different manner. I am a contract law specialist, and  
6 I cannot see how anyone can say otherwise.

7           If you would like to interpret this  
8 differently, and this is what Claimant is trying to  
9 do, if you are trying to say, okay, no, this Contract  
10 has to be interpreted only under the "contra  
11 proferentem" method.

12           First, there has to be a weak party; and,  
13 second, the clauses have to be ambiguous. No, this is  
14 not the case here. The provisions are very clear, as  
15 I have stated in my Reports.

16           And I think something else that is important  
17 has to do with the breaching of the Stabilization  
18 Agreement.

19           I was very surprised by the example by  
20 Mr. Bullard in connection with the lease agreement.  
21 For example, if you have a tenant that does not pay a  
22 number of rent payments, then, okay. I would have to

1 sue that person for that. But I have to say that the  
2 State was not obliged to apply the stabilized legal  
3 regime to the Concentrator Plant since the  
4 Stabilization Agreement granted tax currency exchange  
5 and administrative stability benefits only to the  
6 Leaching Project. And this is my conclusion using the  
7 interpretive rules that I have mentioned.

8           Consequently, SUNAT did not breach the  
9 Stabilization Agreement when it issued the assessment  
10 related to the payment of taxes and administrative  
11 charges related to the activities of the Concentrator.

12           Now, hypothetically, what would have  
13 happened if Perú had breached the Stability Agreement  
14 with these Assessments? The Alleged Breach of the  
15 Agreement occurred when SUNAT notified SMCV of the  
16 Assessments. Notice is very important. Assessments  
17 are administrative acts and, according to the Law on  
18 General Administrative Procedure , administrative acts  
19 have efficacy and are due ever since the regulated  
20 party is notified. There is also a very important  
21 principle, the validity of administrative acts.  
22 Administrative acts are considered valid unless they

1 are annulled or their efficacy disappears because of  
2 the decision of a Judicial or Administrative Court.

3 But ever since the regulated party receives notice,  
4 then, such party should know that if there is a  
5 breach, that breach exists at that point in time.

6 Then the economic loss resulting from the Alleged  
7 Breach materialized with those notifications.

8           Mr. Bullard says that, if the lessor doesn't  
9 pay the first, second, or third months of rent, it  
10 could mean that the damage would exist if in the  
11 future there are more breaches of the Lease Agreement.

12           With the first breach by the tenant, then  
13 the tenant has violated the contract, and then  
14 according to the Peruvian law, you can ask for  
15 compensation, for specific performance, or perhaps the  
16 lessor didn't pay for--rather, the lessee didn't pay  
17 for 12 months. And I'm not going to have 12 suits,  
18 just one suit is enough.

19           Here I talk about the alleged breach from a  
20 single cause.

21           The First Notice of the Assessment, that is  
22 a breach of the Contract. If there were other

1 Assessments referred to different amounts, referred to  
2 different fiscal years, well, that's a different  
3 thing. But hypothetically, if there is just one  
4 breach, that is enough.

5 That is why I bring here the example of  
6 Mr. Bullard because in Perú that case and this case as  
7 SMCV, well, SMCV should have considered that the first  
8 administrative act of assessments was notified to it.  
9 Well, the act was presumed valid, and, therefore, I  
10 can submit an action for contract breach.

11 I don't know how I'm doing time-wise.  
12 But...

13 PRESIDENT HANEFELD: I don't want to  
14 interrupt you, but now your time is almost used up.

15 So, if you could come to an end, this would  
16 be great.

17 THE WITNESS: Yes, Madam President. Five  
18 minutes. 27 minutes, it says here.

19 So, I have divided assessment into two  
20 phases, substantive and procedural. Mr. Bullard only  
21 looked at the procedural phase.

22 I think that, if there was a contract breach

1 by the public administration, that has to do with the  
2 first notice, and if there are more notices after  
3 that, well, then all of the breaches would have to be  
4 accumulated. And a claim is submitted if there are as  
5 many assessments as there were in this case.

6           What I say here is that, under Peruvian law,  
7 assessments do not have to be final, definitive, and  
8 enforceable acts, like Mr. Bullard said. In Perú  
9 contractual responsibility has a statute of  
10 limitations of 10 years. The provision is very clear.  
11 It is Article 1993 of the Peruvian Civil Code that  
12 says that the statute of limitation begins to run with  
13 the possibility of initiating the action.

14           When is it that Perú breached the Contract?  
15 Well, when the first assessment was notified.

16           MR. PRAGER: Madam President, we are now way  
17 above the time limit already. It doesn't sound like a  
18 concluding remark.

19           PRESIDENT HANEFELD: Where do we stand?

20           SECRETARY PLANELLS VALERO: 32 minutes.

21           THE WITNESS: How much minutes I have?

22           SECRETARY PLANELLS VALERO: None.

1 THE WITNESS: I finish?

2 PRESIDENT HANEFELD: If you could come to  
3 the conclusion.

4 THE WITNESS: Okay. Conclusions. I can  
5 read the conclusions if you allow me to do so.

6 The Stabilization Agreement is a dual-nature  
7 Contract, as I said. The scope of the Agreement only  
8 applies to the Cerro Verde Leaching Project. It is  
9 limited by the Feasibility Study and their contractual  
10 interpretation in accordance with Peruvian law.

11 The Supreme Court interpreted the 1998  
12 Agreement on the Mining Law, and concluded that the  
13 scope of the Agreement--we cited Paragraph 170 of the  
14 Judgment--is limited to the investment project defined  
15 by the Feasibility Agreement, the Leaching Project.  
16 And this is what I've been saying. In the case of a  
17 breach of contract, you have to look at it from a  
18 contractual viewpoint, and not from an administrative  
19 viewpoint.

20 In the hypothetical that Perú had breached  
21 the Stability Agreement, it did not. The Alleged  
22 Breach materialized from the moment SUNAT's

1 Assessments were notified to SMCV. And that is why I  
2 mentioned here at 39 that the Contract Breach has to  
3 be looked at from the viewpoint of the administrative  
4 law and not from other viewpoints. There's only one  
5 breach here, and it has to do with the notice of the  
6 first Assessments.

7 Thank you, Madam President, Members of the  
8 Tribunal.

9 PRESIDENT HANEFELD: Thank you, Mr. Morales.  
10 We have, for the moment, no questions. So, if  
11 Claimant would begin with the cross-examination.

12 MS. HAWORTH McCANDLESS: Do you happen to  
13 have a second binder for Respondent?

14 Do you have a second binder for Respondent?  
15 Thank you.

16 CROSS-EXAMINATION

17 BY MR. PRAGER:

18 Q. Good afternoon, Professor. Good to see you  
19 again.

20 A. Good afternoon.

21 Q. Professor, you are a Civil Law Expert;  
22 right?

1           A.    Yes.

2           Q.    And you have focused your practice on civil  
3 law; right?

4           A.    Yes.  Yes.  My professional practice in  
5 10 years--well, I have seen a number of matters, not  
6 only civil law but also cases of contentious-  
7 administrative claims.  I'm not necessarily linked to  
8 civil law.  The civil law always coexists with other  
9 matters, that are different matters as well.

10          Q.    Okay.  But I've reviewed your CV, and I have  
11 not seen any publications on Mining Law.

12                   Is that--did I miss something?

13          A.    No.  Indeed, I don't have any publications  
14 on Mining Law.

15          Q.    And you also do not hold yourself out as a  
16 Mining Law Expert; right?

17          A.    No.  Of course not.  Civil Law Expert.

18          Q.    So, let me show you First Report  
19 Paragraphs 25-27.  We have it here, you make there an  
20 analysis of the Mining Law and Regulations to  
21 determine the Stability Agreement scope, and you  
22 reached a conclusion that whilst--I quote, "the Mining

1 Law and its Regulation expressly restrict the scope of  
2 the stability benefits granted through the mining  
3 stabilization agreements to the activities related to  
4 the investment projects for which the Agreement was  
5 entered into."

6 Do you see that here?

7 A. Let me see. Just one moment, please. One  
8 moment.

9 Q. Yeah, it's in the small binder, if it's more  
10 comfortable. It's Paragraphs 25-27.

11 A. It is. Yes, yes. I found Paragraphs 25-27.

12 Q. All right. You based that conclusion on  
13 some bullet points that quote from selected provisions  
14 of the Mining Law and the Regulations. Maybe we can  
15 show the next page as well. Do you see that?

16 A. Yes. At 25, I cite Article 79 of the Law on  
17 Mining, Article 81 and Article 83 that talks about  
18 Investment Programs, and 83, in particular, talks  
19 about the effect of the contractual benefit. It goes  
20 exclusively to the activities of the company in favor  
21 of the investment.

22 Article 84 speaks of the Project which I

1 understand to be an investment project. Article 85  
2 species of the Feasibility Study. Articles 82 and  
3 83 say that for--well, Article 85 clearly says it,  
4 that titleholders, in order to enjoy guaranteed  
5 benefits you also need a Technical-Economic  
6 Feasibility Study. And the Regulation--of the  
7 Regulation, I cite Articles 22 and 24, which speak of  
8 investments and--

9 Q. You don't have to read them all aloud.

10 A. I'm just mentioning.

11 (Overlapping interpretation and speakers.)

12 THE WITNESS: I was just highlighting  
13 aspects.

14 BY MR. PRAGER:

15 Q. Okay. Let me ask a question.

16 So, my first question is, the conclusion  
17 that you reach in the first sentence of Paragraph 25,  
18 do you base that on a reading of the provisions that  
19 you cite here in the bullet points that you cite in  
20 Paragraph 25 and 26?

21 A. Yes. I reiterate what I've said at  
22 Paragraphs 25 and 27. I said this at the February

1 Hearing. Those of us who are specialists in civil law  
2 do something that many legal specialists don't do. We  
3 are looking at the law, and, like anyone who  
4 interprets the law, we interpret these Articles.

5 And, according to my--the results of my  
6 interpretation is that in order for a Mining Title  
7 holder to be a beneficiary, they must present a  
8 Feasibility Study. That's my interpretation.

9 Now 27--

10 Q. Professor, Professor, Professor. We all  
11 want--it's 5:00 p.m. now. We all want to go out. If  
12 you make long speeches of each of my questions, we are  
13 going to have to sit until 9:00 or 10:00. Nobody is  
14 going to be happy. So, just listen to my question and  
15 try to answer my question. Okay?

16 Did you select the provisions of the Mining  
17 Law and Regulations that you list here, or did Counsel  
18 provide you with that list?

19 A. I am the one who personally prepared my two  
20 Reports, and I can tell you that, as an arbitrator, in  
21 the arbitrators, I've done it alone. Not with a team  
22 and with a law firm. So, the professional academic

1 work that I do, I do it alone.

2 Q. So, you're testifying that you drafted those  
3 two paragraphs, Professor?

4 A. Yes, indeed.

5 Q. Is there any reason why you omitted  
6 Article 82 of the Mining Law from that list?

7 A. I have not cited certain provisions of the  
8 law on the Regulations because I thought these would  
9 be relevant to get a key idea, which is--well, I had  
10 to look at it comparing it with the Stability  
11 Agreement and the judgments of the Court. And, as  
12 I've stated in my Presentation, in my two Reports,  
13 what I interpreted based on those provisions of the  
14 Law, are in keeping with my final conclusions.

15 Q. Do you know what Article 82 of the Mining  
16 Law is about?

17 A. Right now, I don't have it at hand. I would  
18 not be able to tell you the content of that provision.

19 Q. Professor, any reason you did not include  
20 Article 2 of the Regulations, the Mining Stability  
21 Regulations?

22 A. As I explained, I selected those provisions

1 that backed up what I had to say in Paragraph 27,  
2 which is to say that the guarantees for Mining  
3 Titleholder are based on the presentation and approval  
4 of a Feasibility Study. That's what I said.

5 I could have selected more provisions, but I  
6 wanted to put forward a preliminary idea as a  
7 hypothesis and then corroborate it with the other  
8 activities I performed, interpretation, and studying  
9 the judgment of the Supreme Court of 2017. So, these  
10 activities corroborated what I said in Paragraph 27.

11 Q. Do you recall what the Article 2 of the  
12 Mining Regulations is about?

13 A. No. No. If you do not show it to me, I  
14 would not be able to tell you the content.

15 Q. Any reason why you omitted the second  
16 paragraph of Article 22 in your list?

17 A. No. There's no reason. I simply wanted to  
18 highlight the question of "investments."

19 And since no mention is made of them in the  
20 other paragraph, that's why I didn't mention it. So,  
21 I cite these provisions as examples. These are  
22 not--one doesn't necessarily have to cite them. So,

1 looking at these provisions, this is my conclusion,  
2 and that can be confirmed by interpreting the  
3 Stability Agreement and by analyzing the 2017 Decision  
4 of the Supreme Court.

5 Q. Professor, do you know what the Mining  
6 Council is?

7 A. Yes. Yes. It's a final administrative  
8 instance.

9 Q. Have you reviewed any of the Decisions of  
10 the Mining Council before you reached that conclusion?

11 A. No, I have not done so.

12 Q. Have you reviewed any Decisions of the  
13 Directorate General of Mining of MINEM before reaching  
14 that conclusion?

15 A. No. What I've reviewed, as I say, are  
16 basically the most important documents that I've  
17 analyzed--well, apart from the Mining Law and the  
18 Regulation have been the Stability Agreement of 1998  
19 and the Supreme Court Judgment of 2017.

20 Q. So, you also have not reviewed any Decisions  
21 by SUNAT, for instance, that go to the issue of the  
22 scope of stability agreements, have you?

1           A.    I have reviewed some, those that are related  
2 to the case, not all of them, but especially the 2008  
3 Royalties Case, but I have not gotten into an analysis  
4 of SUNAT's Decisions. I have not analyzed in depth  
5 Decisions by the Tax Tribunal, but I understand that  
6 they've been based on a legal foundation.

7                   And I think that is for the Tax Law Experts,  
8 but I'm an Expert in Civil Law. So, it wasn't  
9 relevant for me to give an opinion about  
10 administrative rulings, as that goes more to tax law.  
11 That's why I've not analyzed the Administrative  
12 Resolutions of the SUNAT or of the Tax Tribunal. I  
13 repeat: I have looked at the 2017 Judgment and the  
14 Stability Agreement.

15           Q.    And just to be precise, when you said you  
16 looked at some SUNAT Decisions, you're referring--I  
17 think you refer to the ones of Cerro Verde, that  
18 relate to the Cerro Verde, the Royalty Decision in the  
19 2008 Case? Is that what you were saying?

20           A.    Yes. It's in the 2017 Judgment, some of the  
21 background is mentioned, but in Perú, judgments,  
22 unlike in other countries, there's not very much of a

1 description of the facts. There's a summary of the  
2 facts as in the case of some of the Tax Tribunal  
3 Decisions. That's what I made reference to, but it's  
4 not that I had the rulings of the Tax Tribunal before  
5 me, and I've read them and analyzed them because  
6 that's not part of my legal analysis. Those are tax  
7 law issues.

8 Q. And you're not an Expert in tax matters?

9 A. No. No. I'm not a Tax Law Expert.

10 Q. So, you haven't reviewed any SUNAT Decisions  
11 that relate to other mining companies, where SUNAT  
12 applied stability agreements or the Mining Law to--in  
13 the case of other mining companies, other than Cerro  
14 Verde?

15 A. No, because, as I say, the purpose of my two  
16 Reports has been to undertake a contractual analysis.  
17 As an Expert in Civil Law, I'm here in this case as an  
18 Expert in contractual interpretation.

19 Q. Okay. Let's look at Paragraph 59 of your  
20 First Report. You say here that: "I agree with  
21 Dr. Bullard that the Stabilization Agreement is  
22 governed by a special Legal Framework, it reflects the

1 guarantees granted by the Mining Law. And, therefore,  
2 the systematic interpretation must be particularly  
3 stringent to avoid restricting or broadening the  
4 special Legal Framework applicable to the Contract."

5 In other words, the interpretation closest  
6 to what is provided in the Mining Law must be  
7 preferred over one that deviates from the--from said  
8 law.

9 So, leaving aside all the adjectives that we  
10 can give to interpretations, having no  
11 idea--interpretation and objective, et cetera, is it  
12 still your position that the interpretation closest to  
13 what is provided in the Mining Law has to be preferred  
14 over one that deviates from said law?

15 A. The example I just cited--when one  
16 interprets Article 36, for example, it has to be  
17 interpreted broadly, and what is--the others here  
18 agree with me.

19 SMCV is not an adhering party. It's not a  
20 vulnerable party. That's what I'm referring to.  
21 There are other considerations.

22 Q. Was that a yes or a no answer?

1 Do you still agree with that statement?

2 A. Of course. The paragraph you have cited of  
3 Dr. Bullard is written in general terms. It is not  
4 being applied to a specific case.

5 I can cite a specific case. You can't  
6 render an interpretation contrary to what the Law on  
7 Mining says, and I said this at the February Hearing.

8 Q. Professor, your answer was yes?

9 A. Yes. It agrees with Paragraph 26 of my  
10 Report, what I concluded in Paragraph 27, and what I  
11 also said in Paragraph 30 of my Second Report there.  
12 I say that the guarantees are applied exclusively to  
13 the Investment Programs. That's what I'm referring  
14 to.

15 Now, evidently that's a general assertion by  
16 Mr. Bullard, but here one begins to specifically--and  
17 when one gets to a specific interpretation of the  
18 Stability Agreement, there I don't agree with him.

19 Q. Okay. We are going to get there. We are  
20 going to get to more concrete things.

21 But that statement was made in a specific  
22 context of the Cerro Verde Stability Agreement;

1 correct?

2           It says: "I agree with Dr. Bullard that the  
3 Stabilization Agreement," in capital letters. That is  
4 referring to the Cerro Verde Stability Agreement;  
5 right?

6           A. Of course. The legal framework establishes  
7 the guarantees in favor of the Mining Titleholder, so  
8 long as they present an Investment Plan that's  
9 approved by the Authority. How could I disagree with  
10 that? That's basically what I'm arguing in my two  
11 Reports.

12           Q. And it's still your testimony that any  
13 interpretation--you call it "the systematic  
14 interpretation"--but any interpretation of the  
15 Stability Agreement must avoid restricting the  
16 framework, the special legal framework, or broadening  
17 the special legal framework?

18                   Is that still your position?

19           A. Of course. The guarantees can't be  
20 mutilated by the State. The guarantees are immutable.  
21 If a Mining Titleholder has a stability agreement and  
22 they have their Feasibility Study, then the State has

1 to respect those guarantees because of the benefit  
2 that they have received on an exceptional basis.  
3 That's in the Law on Mining, yes, but it's in the  
4 Constitution as well.

5           So, it's not sufficient to interpret the  
6 Mining Law in isolation, the Constitution states that  
7 a private person is protected by guarantees through a  
8 *contrato-ley*. So, how can a stability agreement in  
9 general not take into account this immutability, this  
10 immunity, this privilege that private persons have in  
11 that regard? That's the gist of what I'm saying. One  
12 mustn't remove these from context.

13           But I begin speaking about the Stability  
14 Agreement in general, and there I cite that cite, the  
15 quote in my Report in Paragraphs 23 and 24, I start  
16 saying "Also, just as I anticipated," and not only 59  
17 should be read, but everything that follows up until  
18 Paragraph 63, where I explain what I wish--what I  
19 mean.

20           So, if I take that paragraph in isolation,  
21 one might say, "Ah, so you're in agreement with  
22 Bullard on that." But how can I not agree--well, if

1 the Mining Law regulates the guarantees, they cannot  
2 be distorted in the *contrato-ley*.

3 Q. Okay.

4 A. Sorry for speaking at such length.

5 Q. So, the rules of game here is that you try  
6 to answer my question concretely, precisely, give the  
7 explanation you need in a few sentences, and that's  
8 it, because if you're going to give monologues that  
9 span over several pages, we're not going to leave here  
10 before 10:00 p.m., or we won't have the opportunity to  
11 ask you any questions, because the Tribunal is  
12 probably going to kick us out at some point.

13 So, let's stay focused. Listen to my  
14 question and try to answer it as concisely as  
15 possible.

16 So, when you say avoid restricting or  
17 broadening the special legal framework applicable to  
18 the Contract, with "the special legal framework," you  
19 mean the Mining Law; right?

20 A. At Paragraph 59, yes. No doubt I'm talking  
21 about the Mining Law.

22 Q. And the reason why the Stability Agreement

1 must be interpreted closest to what is provided in the  
2 Mining Law is that the Stability Agreement is an  
3 Adhesion Contract; right?

4 A. Article 36 of the General Law on Mining says  
5 that, but the second paragraph refers to guarantees.

6 So, I repeat, this has been corroborated by  
7 the Supreme Court when it has developed its  
8 interpretation regarding "contra proferentem," which  
9 is not applicable to the Stability Agreement. It is  
10 an Adhesion Contract with respect to the guarantees.

11 Q. So, I think the record said here Article 36.  
12 Were you referring to Article 86?

13 A. 86, yes, that speaks of Adhesion Contract,  
14 and the second paragraph speaks of guarantees.

15 Paragraph 36 is the paragraph of the--from  
16 the Supreme Court Decision. Excuse me.

17 Q. We are talking about Article 86. So, you  
18 would agree that stability agreements are governed by  
19 Article 86 of the Mining Law; right? Yes or no.

20 A. Could you repeat the question, please?

21 Q. Would you agree with me that stability  
22 agreements are governed by the Mining Law?

1 A. Yes.

2 Q. And the Mining Law, as you mentioned, sets  
3 forth the Stability Guarantees; right?

4 A. Yes. It describes them, yes.

5 Q. And the Mining Law also sets forth the terms  
6 of the stability agreements; right?

7 A. Yes. It mentions certain contractual  
8 clauses, no doubt about that, but the Stability  
9 Agreement--well, there's a model, as I've mentioned,  
10 that has to be filled out by the--or filled in by the  
11 parties, and there are some cases where one must  
12 include the purpose of the Contract and the investors  
13 I mentioned in my Report.

14 Q. Well, Professor, do you know what the terms  
15 are that stability agreements can have, the duration?

16 A. Yes. Yes, of course, yes: The term,  
17 duration, the investment project. I think that was 14  
18 to modify the Contract and the stability agreement as  
19 between the parties. There are several clauses that  
20 establish. For example, this one, 14, is not in the  
21 Law on Mining.

22 Q. You're not answering my question. My

1 question was: Do you know for what duration you can  
2 conclude stability agreements under the Mining Law?

3 A. There is a time frame established by the  
4 law. Every agreement has to establish the term.

5 Q. So, sitting here--

6 A. It depends on the Investment Plan.

7 Q. That's your testimony? That the duration of  
8 the stability agreement depends on Investment Program?

9 A. Of course. A term is established as per the  
10 Investment Plan, as the '98 Stability Agreement has,  
11 no doubt.

12 And then after the time runs, one no longer  
13 has these benefits.

14 Q. I see. Okay.

15 Professor, the Mining Law also establishes  
16 eligibility requirements for stability agreements;  
17 right?

18 A. Yes. For example, Article 19 of the  
19 Regulation indicates what must be included in the  
20 Feasibility Study.

21 Q. By the way, just to not leave you confused,  
22 would you be surprised to hear from me that the Mining

1 Law sets the terms of stability agreements to either  
2 10 years or 15 years?

3 MS. DURÁN: Perhaps you show him the law,  
4 because he seems to be confused.

5 MR. PRAGER: Sure.

6 BY MR. PRAGER:

7 Q. I think it was Articles 72 and 79--yeah?

8 So, 78 and 82.

9 A. Yes, but I don't understand the question. I  
10 don't know what you're asking me.

11 I have interpreted the contractual clauses,  
12 and I've reached my conclusion. But I don't know if  
13 you're asking me something about the Mining Law. It  
14 would have to be based on my Report.

15 If you ask me a question about the Mining  
16 Law--

17 Q. Professor, I'm happy to answer that  
18 question.

19 You testified that the Stability Agreement  
20 has to be interpreted to what is closest to the Mining  
21 Law, that the Mining Law provides the legal framework  
22 of the Stability Agreement, and you have set forth in

1 your Expert Report what the legal framework is. So,  
2 that's why I'm asking you the questions. Okay?

3           Would you agree that the scope of the  
4 Stability Agreement is limited by the Mining Law?

5           A. My statement has been based on Article 85 of  
6 the Mining Law in that the Mining Titleholder, in  
7 order to be a beneficiary of the guarantees, has to  
8 present a Feasibility Study.

9           Now, that's my argument. You're asking me  
10 about provisions that are not in my Report. Well, in  
11 that case, I would have to review them; but, as I say,  
12 these are questions which, in my view, are not tied to  
13 my statement. I've said that. But you want me to--to  
14 have me say that I've said something else. But no, I  
15 said specifically what I said, that Mining Law has to  
16 be the framework. Yes.

17           What for? For the guarantees. If one  
18 wishes to be a beneficiary, you must have an  
19 investment project that's been approved, and it needs  
20 to be presented in a Feasibility Study. That's all  
21 I've said. But now you're telling me, no, the time  
22 frame--well, I'm sorry. I cannot answer something.

1 Well, if you're referring to a law or Regulation I've  
2 not mentioned in my Report, I'd have to analyze that  
3 in order to be able to provide you with a technical  
4 and serious answer, which is what you deserve and not  
5 just some random answer.

6 I'm sorry for going on at length, but I just  
7 want to clarify that you're asking me about certain  
8 subject matter that I've not analyzed.

9 Q. Professor. Professor.

10 You testified that the interpretation  
11 closest to what is provided in the Mining Law must be  
12 preferred, and that you have to be particularly  
13 stringent to avoid restricting or broadening the  
14 special legal framework, which is the Mining Law, that  
15 applies to the Contract.

16 And I'm asking you about the Mining Law, and  
17 you tell me that you don't know some of the provisions  
18 of the Mining Law that we are talking about and that  
19 they are irrelevant.

20 How does--how do you square that with your  
21 testimony?

22 A. I am familiar with them, but it's not been

1 covered in my Report. You are citing something which  
2 I have said that refers only to a conclusion. Based  
3 on the interpretation of the provisions that I have  
4 cited of the Law and the Regulation, I have said just  
5 one thing: That the Law and the Regulations provide  
6 guarantees to the investor if they present an  
7 Investment Plan through a Feasibility Study period.

8 That's what I've said. Nothing more.

9 Q. Professor, you base your entire analysis of  
10 the Stability Agreement on the affirmation that the  
11 Stability Agreement--that the Mining Law limits the  
12 scope of the stability benefits to investment  
13 projects.

14 You base your entire interpretation on that  
15 one analysis that we just looked at before, which was  
16 in Paragraphs 25 to 27. Let's take a look again to  
17 your Paragraphs 25 and 27 of your First Report.

18 Here in Paragraph 25, you say: "It should  
19 be pointed out that the Mining Law and its Regulation  
20 expressly restrict the scope of the stability benefits  
21 granted through mining stabilization agreements to the  
22 activities related to the investment projects for

1 which the Agreement was entered into."

2           And that conclusion is fundamental for your  
3 analysis, because you say you have to interpret a  
4 stability agreement in conformity with that  
5 definition.

6           So, I'm asking you now about that  
7 definition. Is that so surprising to you?

8           A. It's not surprising. It's what the Supreme  
9 Court has said. At Paragraph 170 of the Judgment of  
10 the Supreme Court of 2017, they said that.

11          Q. Professor, let me--let me ask the question.

12                    Would you agree with me that the scope of  
13 the Stabilization Agreement is defined by the Mining  
14 Law?

15           A. Yes, exactly, to investment projects. It's  
16 an interpretation. You say, why I did not cite  
17 Article 2 of the Regulation or Article 82, and I  
18 repeat, I have chosen those provisions that are based  
19 on this assertion at Paragraphs 25 and 27, and this  
20 was corroborated with the analysis of--the contractual  
21 analysis of the Stability Agreement, and this is in  
22 keeping with the 2017 Judgment of the Supreme Court.

1 I don't know if I've been clear in my  
2 response. I think it's the third time I'm repeating  
3 the same thing.

4 Q. Professor, I'm sorry. Look at Paragraph 25,  
5 and we can share 26. Where do you cite the Supreme  
6 Court Decision here?

7 A. I repeat, Paragraphs 25-27 is an  
8 introduction of a literal interpretation of these  
9 normative provisions, and then what I've done is to  
10 interpret the Stability Agreement and the 2017  
11 Judgment.

12 So, it's not separate.

13 Q. Professor, your entire interpretation of the  
14 Stability Agreement is based on this one conclusion  
15 that you reach here.

16 That's what you base your interpretation on,  
17 that the Mining Law limits Stability Guarantees,  
18 according to you, to an investment project. Isn't  
19 that the case?

20 A. If you'd like disregard paragraphs 25 and  
21 27. Let's imagine I did not include those paragraphs.

22 Well, paragraph 170 of the Supreme Court

1 Decision, says what I say in Article 27. So, you say  
2 I didn't analyze it. Well, the Supreme Court said it,  
3 so there is agreement. But if you want to take as the  
4 key relevant point that interpretation--recall, I'm a  
5 professor of civil law. I'm an Expert in contracts  
6 law.

7 So, I have respectfully answered your  
8 questions, that I'm not an Expert in Mining Law, but  
9 there is no national doctrine in Mining Law that  
10 interprets these provisions.

11 What are sources for interpreting the Mining  
12 Law and the Stability Agreement? The 2017 Supreme  
13 Court Judgment. Whether we like it or not, the  
14 Supreme Court has rendered an interpretation, and, as  
15 I say, there is no doctrine in Mining Law in Perú that  
16 says anything different from what the Supreme Court  
17 has said. And the Supreme Court has correctly, in my  
18 opinion, interpreted the scope of a Stability  
19 Agreement.

20 Now, if you take issue with my opinion--

21 Q. Professor--Professor--

22 A. --that's another matter.

1 Q. As I said, we have to be brief.

2 How can you say--on what basis do you say  
3 that "no existe doctrina" when you just testified that  
4 you did not look at any Mining Council Decisions, you  
5 did not look at any SUNAT Decisions, you did not look  
6 at any DGM Decisions to reach your conclusions, only  
7 at the Supreme Court Decision?

8 What's the basis for your Statement?

9 A. The Mining Council is an administrative  
10 body, and the Supreme Court is the highest court.  
11 They have interpreted this.

12 (Overlapping interpretation and speakers.)

13 (Interruption.)

14 (Stenographer clarification.)

15 BY MR. PRAGER:

16 Q. Did you cite the Supreme Court Decision in  
17 reaching that conclusion?

18 A. I cited it in my Report. I analyzed the  
19 Decision.

20 Q. Let's go back to where I was before we went  
21 back to the paragraph.

22 You agree with me that the scope of the

1 Stability Guarantees, to what they apply, that the  
2 scope of the Stability Guarantees is set forth in the  
3 Mining Law.

4 MS. DURÁN: That is not what he said in  
5 response to a question that you asked many times  
6 today.

7 MR. PRAGER: It doesn't matter. I'll ask  
8 him the question again.

9 BY MR. PRAGER:

10 Q. Do you agree that the scope of the Stability  
11 Agreement is defined by the Mining Law?

12 A. What do you mean by "the scope"? Could you  
13 please repeat the question?

14 Q. Okay. Let's look at your First Expert  
15 Report, Page 50.

16 ARBITRATOR TAWIL: Sorry, page or paragraph?

17 MR. PRAGER: Page in this case. It's the  
18 second bullet point on Page 50. Let me see whether--

19 ARBITRATOR TAWIL: The Spanish or English?

20 MR. PRAGER: It's in English. Pardon. I'm  
21 just looking for the equivalent in Spanish.

22 BY MR. PRAGER:

1 Q. It's on Page 50, and--yeah, it's Page 50 in  
2 Spanish as well. It's the third bullet under  
3 "Conclusions."

4 Does this refresh your memory that it was at  
5 least your testimony that the scope of the Stability  
6 Agreement is limited by the Mining Law itself,  
7 Professor?

8 A. Yes. I repeat, Article 85 provides for  
9 that, that the guarantees--the titleholder of the  
10 mining activity will have contract benefits that are  
11 the guarantees if the Feasibility Study is presented  
12 and it is approved. I reaffirm that conclusion and  
13 that conclusion is also on my--in my presentation.

14 (Overlapping interpretation and speakers.)

15 (Interruption.)

16 (Stenographer clarification.)

17 BY MR. PRAGER:

18 Q. The sentence that follows, "The Mining Law  
19 does not grant guarantees to all investment projects  
20 executed by an investor," et cetera, that, again, is  
21 the conclusion that we just saw that you reached in  
22 Paragraphs 26 and 27 that we looked at; is that right?

1           A.    I don't think I understood your question.

2           Q.    My question was that the sentence that  
3 follows the first sentence, that states: "The Mining  
4 Law does not grant guarantees to all investment  
5 projects executed by an investor or Mining Activity  
6 Titleholder during the term of the Stabilization  
7 Agreement; rather, the scope of a Stabilization  
8 Agreement is applicable to the specific investment  
9 project for which the Contract was signed, and in  
10 particular to the investment project included in the  
11 Feasibility Study," that sentence is the conclusion  
12 that we looked at that you had reached in  
13 Paragraphs 25 and 26 of your First Expert Report, that  
14 same Expert Report; right?

15           A.    Yes, of course. Of course. Once again, the  
16 investment project was part of the Feasibility Study,  
17 and it had to be approved by the Mining Authority.

18                   (Overlapping interpretation and speakers.)

19                   (Interruption.)

20                   (Stenographer clarification.)

21           BY MR. PRAGER:

22           Q.    Sometimes I just have to speak.

1           A.    But you don't allow me to answer.

2           Q.    Professor, somebody disagreed with your  
3 conclusion, and put in here that the Mining Law  
4 applied to Mining Units and Concessions.  Then the  
5 scope of the Stability Agreement would be defined and  
6 limited to Concessions and Mining Units; right?

7           A.    Well, I heard someone say that, but I do not  
8 agree.  Dr. Otto mentioned that, but we don't see that  
9 in the Stability--rather, Dr. Bullard said that, but I  
10 didn't see that.

11                   In my opinion, when the Contract refers to  
12 "circumscribes" it is referring to the location, it  
13 refers--it's a very colloquial expression.  It's  
14 meaning where it is located, and this is the way we  
15 use it in Perú.  "Electoral circumscription" means  
16 where the voting place is located, for example.  One  
17 can review any dictionary to know what is  
18 "circumscription," and it's not the interpretation  
19 given by Mr. Bullard.

20           Q.    Well, Professor, again, that's based on your  
21 conclusion in Paragraph 25, which you reached on the  
22 basis of those selected articles of the Mining Law

1 without consideration of what the Mining Council  
2 decided, without consideration of what the DGM  
3 decided, without consideration of what SUNAT decided;  
4 right?

5 A. Yes. I told you that I did not review those  
6 Administrative Resolutions.

7 Q. Professor, you also mentioned that you're  
8 not a tax lawyer; is that right?

9 A. No. I'm not a tax lawyer.

10 Q. And you also don't hold yourself out as an  
11 Expert in Administrative Law, do you?

12 A. No. I'm not an Expert on Administrative  
13 Law.

14 Q. Now, in Paragraph 98 of your First Expert  
15 Report, you mentioned that SMCV's tax obligation arose  
16 when SUNAT notified its Assessments.

17 Do you see that?

18 A. Yes, at Paragraph 98. Yes.

19 Q. Have you considered Article 2 of the Tax  
20 Code when you made that statement?

21 A. No. As I said in my presentation, I  
22 interpreted based on the general law of administrative

1 procedure, and also based on the scholarly articles  
2 that I cite from tax law, because tax practitioners  
3 have also followed the Brazilian school of thought. I  
4 cite two of them recognized in Brazil: Carballo is  
5 one of them, and I think it was translated by one of  
6 the Experts, Jorge Cucci, who will be here.

7           So, here it says that an administrative act  
8 is the one that supports the law, and at the same time  
9 there is efficacy.

10           ARBITRATOR TAWIL: Excuse me, Dr., what does  
11 Article 2 of the tax law provide for?

12           THE WITNESS: Article 2 refers to the  
13 origin--

14           ARBITRATOR TAWIL: I can see that, yes. I  
15 see it on the screen. Thank you.

16           BY MR. PRAGER:

17           Q. Professor, are you relying on Brazilian  
18 scholars rather than on the Peruvian Tax Code?

19           A. Well, they were translated because they are  
20 applicable to Peruvian law, and that's the reason why  
21 it was translated by Professor Jorge Bravo.

22           Brazilians refer to the obligation, the tax

1 obligation that has to be--to start and also be valid  
2 and due. And here, Article 2 is referring to the  
3 existence of this tax obligation.

4 I have said that this tax obligation is  
5 effective when it is notified to the taxpayer, and  
6 that was my conclusion.

7 Q. Professor, this is a case about Perú. Any  
8 reason you did not rely on the Tax Code in reaching  
9 that conclusion, but on Brazilian professors that talk  
10 about Brazilian tax law?

11 A. Well, but there is a general law that is  
12 Article 1374 of the Peruvian Civil Code that indicates  
13 that any unilateral act becomes effective whenever it  
14 is notified, whenever notice is served, and this is  
15 also consistent with the Law on General Administrative  
16 Procedure, which I cite in my report--when can we say  
17 that an administrative act is effective? With the  
18 notification. With the notification it is effective  
19 and enforceable.

20 So, the taxpayer clearly can claim--present  
21 a complaint.

22 Q. So, getting us back to Peruvian tax law, you

1 know that a tax obligation arises when a taxable event  
2 occurs? Would you agree with what Article 2 says?

3 A. Yes, of course.

4 Q. You also mention interest payment. Do you  
5 know that interest payments arise when the taxable  
6 event occurs?

7 A. Yes, of course.

8 Q. So, any reason--any reason why you suggested  
9 in your Report that--well, it's fine.

10 So, you are analyzing the date of a breach,  
11 Professor; right?

12 A. Yes. Basically, it was a civil law  
13 analysis, and clearly it had to refer to the Law on  
14 General Administrative Procedure--that is the law, the  
15 framework law to apply to the Tax Code. So, an  
16 administrative act is approached from that point of  
17 view.

18 Q. Professor, what you are analyzing in your  
19 Report is, what is the date at which the Stability  
20 Agreement was breached, on the hypothesis that it was  
21 breached; right?

22 That's the analysis that you are making

1 here; right?

2 A. Yes, indeed. As I have already said, if  
3 there was a breach by the Republic of Perú, it would  
4 be on the first day that the first breach was informed  
5 or notified.

6 Q. Professor, if you analyze a breach, working  
7 on a hypothesis that there was a breach, there was no  
8 tax obligation and interest didn't start to run. You  
9 can't have both a breach of the Stability Agreement  
10 for the imposition of the tax obligation that was  
11 contrary to the Stability Agreement and, at the same  
12 time, an obligation of the tax--of Cerro Verde to pay  
13 that obligation.

14 You had to have the obligation, and if  
15 there's an obligation, there's no breach, or you have  
16 the breach and there's no obligation. You cannot have  
17 both at the same time; right?

18 A. Well, the Contract obligation Perú had to  
19 comply is different with the obligation the taxpayer  
20 had.

21 When the Notice was served of the  
22 assessment, if SMCV considered that that assessment,

1 and also future assessments, generate an economic  
2 damage to the company, then there it has the paths  
3 that the law provides, and one of those paths is what  
4 it did, to file the administrative challenges but it  
5 could also have sued the State for contractual breach  
6 because, in my opinion, the Resolution in itself has a  
7 tax obligation. It includes the interest and also the  
8 breach, the hypothesis that is mentioned in the Code.

9           So, SUNAT says, okay, this is the  
10 hypothesis: There is a breach, so I serve notice.  
11 There is a breach of a tax law, for example, and in my  
12 own opinion, that gives rise to the legal power that a  
13 contracting party has to sue the State if there is a  
14 breach of the Stability Contract.

15           Q. Professor, when does the obligation  
16 to--well, let me put it that way.

17                   When does the assessment become enforceable  
18 under the Peruvian Tax Code?

19           A. I just said it: With a notification.

20           Q. Is that your testimony?

21           A. It is in my Report, and I also said it in my  
22 presentation.

1 Q. Are you aware--have you reviewed Article 115  
2 of the Tax Code?

3 A. I didn't include it in my Report, no. I have  
4 not analyzed it.

5 Q. So, sitting here today, you don't know what  
6 Article 115 of the tax law says?

7 A. Well, that should be done by the Tax  
8 Experts. As an Expert on Contract Law, I said if  
9 there was a breach, a contract breach by the State,  
10 when that breach occurred, and my answer was: When  
11 the first assessment was notified.

12 And it agrees with what Dr. Bullard  
13 mentioned. He mentioned the example of a lease  
14 agreement. His example, in my opinion, tells me that I  
15 am right. If there are several rent payments that are  
16 not paid by the tenant, it's the same case here, there  
17 were several assessments that were not agreed by the  
18 Titleholder of the mining activity, then it could  
19 claim only for one breach.

20 Q. And, Professor, you reached that conclusion  
21 without knowing what Article 115 of the Tax Code says;  
22 right?

1           A.    I didn't mention that in my Report.

2           Q.    Okay.  Would you agree that each SUNAT  
3 assessment is independent--gives rise to an  
4 independent administrative act?

5           A.    Well, this is the same example that  
6 Dr. Bullard used, and it is useful for me to respond  
7 to him: there are as many different rent payments, as  
8 different breaches.  I state in my reports that there's  
9 only one breach.

10          Q.    I didn't ask about "incumplimiento" right  
11 now.

12                   I asked you:  Would you agree with me that  
13 under Peruvian administrative law, each SUNAT--or each  
14 assessment by the Tax Authority gives rise to an  
15 independent administrative act?

16          A.    Unfortunately, I had not enough time to  
17 conclude my presentation, but from the administrative  
18 point of view, yes, there are several assessments that  
19 are independent; but, from the contract point of view,  
20 it is just one act, the breach of the Stability  
21 Contract, Agreement, if it was breached in this  
22 hypothetical.

1 Q. So, putting aside--we're going to come to  
2 the question of breach, but you would agree with me  
3 that each assessment by the Tax Authority gives rise  
4 to an independent administrative act? Is that a  
5 correct statement or not?

6 A. I said that in my presentation. I showed  
7 that contract law and administrative law. It is in my  
8 presentation.

9 Q. So, in your First Report you agreed that  
10 Cerro Verde could have initiated a separate contract  
11 claim before Peruvian courts for each of the SUNAT  
12 assessments, didn't you?

13 MS. DURÁN: Can you point him to a  
14 paragraph, please?

15 MR. PRAGER: Yes. It is, again, on Page 50  
16 that we looked at.

17 THE WITNESS: Is it Paragraph 108?

18 BY MR. PRAGER:

19 Q. It's the bullet points--

20 A. 108? 108?

21 Q. Sorry?

22 A. I am in "Conclusiones."

1 Q. Yeah, it's in the "Conclusiones."

2 A. 51. Page 51, no?

3 Q. In Spanish--Page 51. It's--sorry, in  
4 Spanish it's on Page 51.

5 A. Yes.

6 Q. And you see here--you said: "Via SUNAT's  
7 notifications, the taxpayer could exercise its right  
8 to file claims for breach of the Contract before  
9 judicial bodies."

10 Do you see that?

11 A. Yes.

12 Q. You used "claims," not a single claim,  
13 didn't you?

14 A. I may have said "to present claims," but I  
15 didn't mean that there are several breaches. I do not  
16 refer to breaches in the plural form.

17 Q. And let me point you to Paragraph 108 of  
18 your--Paragraph 108 of your First Expert Report, which  
19 is right before here, before the bullet points, the  
20 conclusion points.

21 Here you say: "Consequently, the statute of  
22 limitations for exercising actions based on alleged

1 breach of contract before the judicial bodies began to  
2 elapse from the moment SMCV was notified of the  
3 assessment and penalty resolutions, since it was at  
4 that moment that the breach occurred."

5 Do you see that?

6 A. Yes. Yes, it is true. 108 refers to  
7 actions, and at 51 I referred to claims, yes. Why?  
8 Because, given a contract breach, in Perú--any  
9 creditor may file a claim to terminate the contract,  
10 or to demand compliance with the contract, or to  
11 demand compensation for damages, and that is what I  
12 was referring to. I did not say it expressly there,  
13 but I am clarifying that, whenever there are actions  
14 or claims, I am not saying that, given so many  
15 Assessments, there should be separate claims.

16 I'm saying that, given the first day that  
17 that assessment is notified, there may be a claim,  
18 several claims, there could be a claim against the  
19 breach, for Damages, or the termination of the  
20 Contract, but given one act, that is the first  
21 notification of the assessment.

22 Q. But, Professor, that's not what you are

1 saying here. What you are saying here is that there  
2 are--

3 (Overlapping interpretation and speakers.)

4 BY MR. PRAGER:

5 Q. Let me finish my question first. Okay?

6 What you're saying here is that SMCV--that  
7 the statute of limitations for exercising actions  
8 based on alleged breach of contract before the  
9 judicial bodies begin to elapse from the moment that  
10 SMCV was identified.

11 You in your first--when you wrote your First  
12 Report--and I can walk you through additional  
13 provisions--you asserted that there were independent  
14 breaches for each of the agreements, but you only  
15 later on--later on decided to walk that back, didn't  
16 you?

17 A. That is your interpretation, and I do not  
18 agree, clearly.

19 I say that it is just one breach. If you  
20 think that I have said the contrary, I respect your  
21 opinion, but I disagree.

22 Q. Well, Professor, that's still what you're

1 believing. You said today on the Transcript at  
2 16:52--53:34, you said--I only have the Spanish here:  
3 "If there are successive notifications, it is  
4 something that would have to be--that all of the  
5 breaches would have to be accumulated."

6           You're speaking here about "todos los  
7 incumplimientos," all the breaches for the successive  
8 notifications. So, you still believe--

9           (Overlapping interpretation and speakers.)

10           BY MR. PRAGER:

11           Q. Pay attention.

12           A. Sorry.

13           Q. You still believe that there were separate  
14 breaches; right?

15           A. Not at all. The example that Professor  
16 Bullard offered showed that there are several  
17 breaches. I'm saying that there was only one.

18           When I'm saying that they are accumulated, I  
19 mean that I am not going to file a claim just for the  
20 first month that the contract was breached. In the  
21 case of the lease agreement. If the tenant didn't pay  
22 the first month and the third month, then once I

1 claim, I am going to file the claim for all of the  
2 breaches, but it is only one: the tenant did not pay  
3 the rent. Theoretically speaking, the landlord is not  
4 going to present 20 claims for 20 breaches. The  
5 breach is only one. The rent was not paid. And the  
6 same thing here.

7 Q. Professor--

8 A. There is only one breach.

9 Q. Professor, you just said "20 breaches." You  
10 just said you're not going to present 20 --

11 (Overlapping interpretation and speakers.)

12 BY MR. PRAGER:

13 Q. --20 actions, but you could, because there  
14 were 20 breaches. You just said it again. Professor.  
15 That's what you believe.

16 A. Quite the contrary. There is only one. The  
17 rent was not paid, so someone--I'm saying, under  
18 Peruvian law, someone will present a claim due to the  
19 breach of the lease contract. And when 20 months were  
20 not paid, 20 claims will be brought forward? No, only  
21 one asking for the payment of the unpaid leases, and  
22 the same thing here.

1           If there are 20 assessments, Cerro Verde has  
2 to claim for the breach of contract, and they are  
3 going to say, "These are the assessments."

4           Q.   Well, let's move to the next topic. Let's  
5 talk about the Supreme Court Decision that you had  
6 mentioned.

7           You would agree with me, and I think you  
8 mentioned it today, that the Supreme Court Judgment  
9 does not create a binding precedent; right?

10          A.   Agreed.

11          Q.   And you would agree with me that any court  
12 that reaches a conclusion that is different from  
13 the--well, first of all, that courts can reach a  
14 Decision that is different from the Supreme Court so  
15 long as they justify that different Decision; right?

16               Well, let me rephrase that and let me be  
17 more precise.

18           Any court that reaches a conclusion that is  
19 different from the Supreme Court's Decision in the  
20 2008 Royalty Case could do so, so long as the Court  
21 justifies why it reaches a different Decision; is that  
22 correct?

1           A.    As I have said before, this Judgment is a  
2 cassation judgment. So, the Supreme Court verified  
3 whether the justices at the higher level and at the  
4 appellate level have breached the law, and they  
5 interpreted the Stability Agreement and they  
6 interpreted the Mining Law.

7                    You're asking me, there could be another  
8 cassation that says the same, yes, but in my opinion,  
9 there is no interpretation that would allow us to get  
10 to a different result.

11           Q.    Well, your opinion is different from what I  
12 asked you.

13                    I asked you whether a court can reach a  
14 different--a court in Perú can reach a different  
15 Decision than that in the 2008 Royalty Case.

16           A.    Honestly, I do not want to be arrogant, but  
17 I do not find an interpretative argument to contradict  
18 what the Supreme Court of Justice said.

19           Q.    You didn't answer my question.

20                    Why don't we put up your Second Report,  
21 Paragraph 94?

22                    You say: "At present, the Supreme Court's

1 interpretation with respect to the agreement in the  
2 context of the Mining Law has not been the object of  
3 dissenting opinions for any other court in Perú.  
4 Although this could occur in light of the Supreme  
5 Court's Judgment in the 2008 Royalties Case, any court  
6 that reaches a conclusion that is different from the  
7 Supreme Court's must justify it. It cannot simply  
8 ignore what Supreme Court has held, as Dr. Bullard  
9 seeks to do."

10           So, it's your testimony, isn't it, that a  
11 court can reach a conclusion that is different from  
12 the Supreme Court, so long as it justifies it? Right?

13           A. I apologize. I have the Report. Is it the  
14 second or the first one?

15           Q. Second Report, Paragraph 94.

16           A. Yes, of course.

17           Q. I think--so, you still--

18           (Overlapping interpretation and speakers.)

19           THE WITNESS: Would you allow me to answer?

20           (Overlapping interpretation and speakers.)

21           BY MR. PRAGER:

22           Q. Yes. Let me ask the question.

1           A.    Let me answer the question.

2                   (Overlapping interpretation and speakers.)

3           BY MR. PRAGER:

4           Q.    Just let me ask my question, Professor.

5                   (Overlapping interpretation and speakers.)

6           BY MR. PRAGER:

7           Q.    You still agree with that statement,

8 Professor, don't you?

9           A.    My answer is also what you asked me, whether  
10 it is a binding precedent, and I said no.

11                   (Overlapping interpretation and speakers.)

12           Q.    --Arbitration.  And you said the same thing  
13 in the SMM Arbitration.  Here's the Transcript, that's  
14 Exhibit 11--Claimant Exhibit 1141, Transcript of the  
15 9th Day.  In Spanish, Page 2469, Lines 22 to 2470,  
16 Line 8.  And in English, Page 2340, Lines 8-13.

17                   So, you said:  "The interpretation of the  
18 Supreme Courts, thus far, has not been contradicted by  
19 any other court in Perú, as far as I know.  It could  
20 happen, given that the Supreme Court Judgment in the  
21 2008 Royalties Case was already given, but a court  
22 that reaches a different conclusion must justify it."

1 MS. DURÁN: If I may interrupt, can you tell  
2 us where in his binder--is because you're only showing  
3 the English, and he should be reading the Spanish.

4 MR. PRAGER: Yeah. We can put the Spanish  
5 also up. But it's in Tab 3. Apologies.

6 Again, Tab 3, the Spanish pages  
7 were--they're very small up--they're 2469, starting  
8 Line 22.

9 THE WITNESS: Perhaps I've confused things.  
10 What it is is what I said in February, and what it  
11 must be is that the Supreme Court may have an  
12 interpretation in connection with the Stability  
13 Agreement that is different.

14 But I said there is no legal reason--well,  
15 unless there's a justification, but I cannot find a  
16 justification. That is, that must be the situation,  
17 the current situation is that it doesn't have a  
18 binding precedent. It doesn't bind for the future.  
19 But it creates a very powerful argument in academia  
20 and in future litigations.

21 To date, there is no legal scholastic  
22 opinion in Perú that has questioned the Supreme Court

1 Judgment. That is an exemplary judgment, in my  
2 opinion, because it correctly interprets the Mining  
3 Law. But that there may be another Supreme Court that  
4 interprets differently? Yes, and I said this in  
5 February and in my Reports. But in my opinion I don't  
6 find a different argument, that's what I have said.

7 MR. PRAGER: I don't have any further  
8 questions, Professor, and Members of the Tribunal.

9 PRESIDENT HANEFELD: Thank you very much,  
10 Mr. Prager.

11 Any questions in recross.

12 MS. DURÁN: Could I have one minute, please.

13 PRESIDENT HANEFELD: I would like to use the  
14 time to ask just one question to you.

15 QUESTIONS FROM THE TRIBUNAL

16 PRESIDENT HANEFELD: Going back--or going  
17 away from the Mining Law and what answers it provides  
18 on our question here, do I understand that there is at  
19 least consensus between you and Mr. Bullard on the  
20 rules of interpretation under Peruvian law?

21 I understand them to be Article 168, literal  
22 interpretation and good faith; Article 169, systematic

1 interpretation; Article 170, functional  
2 interpretation; and Article 1,361, global  
3 interpretation. Is this right? Insofar you and  
4 Mr. Bullard agree?

5           THE WITNESS: I disagree with the way in  
6 which he has understood the interpretation of the  
7 Contract. He does not cite any legal scholastic  
8 opinion that maintains how the Contract must be  
9 interpreted. In my two Reports, I cited the legal  
10 scholastic opinion and comparative law that has  
11 influenced Peruvian legislators in connection with the  
12 interpretation.

13           The Italian Code has had a lot of influence  
14 in connection with the interpretation rules. To  
15 understand what these interpretation rules mean, you  
16 have to read legal scholastic opinion of Perú and of  
17 Italy in this case. He talks about, you know,  
18 estoppel. I disagree with that. He talks about  
19 functional interpretation, but he interprets the law  
20 but not the Contract.

21           Functional interpretation has to do with  
22 interpreting the purpose of the Contract. A

1 theological interpretation has to do with investment,  
2 but that is the Mining Law, but the Stability Contract  
3 has its own finality, its own purpose, which is the  
4 investment in the Concession, the Supreme Court said.  
5 If you compare both Reports, you're going to see that  
6 our interpretation perspectives are quite different,  
7 very different.

8           PRESIDENT HANEFELD: I noted that I just  
9 wanted to verify that these are the articles we have  
10 to pay particular attention to.

11           THE WITNESS: That's exactly right. 168,  
12 literal interpretation; 169, systematic  
13 interpretation; 170, functional interpretation; 168,  
14 good faith in interpretation; and 1401, "contra  
15 proferentem" interpretation; 1401, interpretation in  
16 favor of the adhering party, if the provisions are  
17 ambiguous. This under 1401 of the Civil Code of Perú.

18           PRESIDENT HANEFELD: And you mentioned in  
19 your Presentation the Settlement Agreement--and now of  
20 2001. Did you refer to the Settlement Agreement of  
21 the 30th of March 2001 between Cyprus and Minero Peru?

22           THE WITNESS: Where in my Report do I talk

1 about that?

2 PRESIDENT HANEFELD: Otherwise in the  
3 Transcript. Can you search for it, please?

4 Maybe I have--

5 (Overlapping interpretation and speakers.)

6 THE WITNESS: Yeah, I don't really remember  
7 that Settlement Agreement in my Presentation. I  
8 haven't mentioned that in my Presentation, that I can  
9 recall.

10 PRESIDENT HANEFELD: Maybe you have  
11 mentioned it in an answer to a question. We will  
12 check the Transcript.

13 I just wondered--and now, when you talked  
14 about global interpretation, you say in your  
15 presentation "the shared intent of the Parties can be  
16 discovered in their behaviors in the pre-negotiation,  
17 execution, and performance of the Contract."

18 And so, I wondered--and now, would something  
19 like a Settlement Agreement concluded after the  
20 2000--'98 Stability Agreement could be a factor to be  
21 considered in global interpretation?

22 THE WITNESS: Global interpretation, as a

1 contract scholastic opinion indicates, is subsidiary  
2 to the literal interpretation. If the literal  
3 interpretation does not work, I have to look at the  
4 conduct of the Parties, the negotiation during the  
5 interactions in connection with the Contract and  
6 further on. If the conduct is relevant.

7           Clause 14 of the Stability Agreement  
8 prevents that, because any contract modification has  
9 to be done by agreement of the Parties, memorialized  
10 in a notarized deed.

11           Professor Bullard says that there are seven  
12 acts of the Peruvian State that would have generated  
13 reliance on SMCV. If we were to apply the doctrine of  
14 estoppel, then this has to have--has to do with  
15 conducts between the Parties, the conduct of the  
16 Party.

17           But there is no agreement in connection with  
18 the Primary Sulfides Project, and that there is no  
19 agreement as to that in the Stability Agreement.

20           PRESIDENT HANEFELD: Okay. Thank you very  
21 much.

22           This was more than one minute.

1           So, Respondent, do you want to ask questions  
2 in recross?

3           MS. DURÁN: We have no further questions,  
4 Madam President.

5           PRESIDENT HANEFELD: Then this concludes  
6 your testimony, as my co-arbitrators have no questions  
7 either.

8           Thank you very much for your testimony,  
9 Mr. Morales. You are released as an Expert in these  
10 proceedings, and we will continue tomorrow with the  
11 Peruvian Tax Experts.

12           (Overlapping interpretation and speakers.)

13           THE WITNESS: Thank you very much.

14           (Witness steps down.)

15           PRESIDENT HANEFELD: Thank you. In terms of  
16 planning, you decided that we start at 9:30. I think  
17 this will be our starting time. We have also--the  
18 Parties have agreed that we end tomorrow at sharp  
19 5:30. So, our Secretary will circulate another time  
20 block, because we could imagine that the Parties want  
21 to avoid that, at the end all time is used up, and  
22 then there will be no time for cross-examination for

1 the Claimant on the Respondent's Damages Experts. So,  
2 we hope that the Parties will keep this in mind.

3 MR. PRAGER: Yes. Just, thank you Madam  
4 President. Just to say that it was Respondent's  
5 position that it's an absolute drop dead deadline, the  
6 5:30; whereas, we said that we hope that we're going  
7 to be concluded by that point, and we will do our best  
8 to be concluded at that point in time.

9 But we exactly want to avoid the situation  
10 that you just mentioned that, we--although we still  
11 have time left in our allocated time, do not have time  
12 to cross-examine the Quantum Expert. So, I hope this  
13 will all work out accordingly, but I just say we don't  
14 want to be in that situation, and if that's the case--

15 ARBITRATOR TAWIL: We were discussing the  
16 issue in the Tribunal, is it possible for you to agree  
17 on fixed times for each Party to use in cross  
18 examination in advance? Say, we're going to use an  
19 hour 45, so you know you have an hour 45, and that way  
20 you can concentrate in the main topics?

21 Because what we want to avoid is exactly  
22 having--as you still have time to have one Party using

1 more time than the other one. Is it possible for you  
2 to agree in advance on time for cross-examination,  
3 particularly of the last Experts in order to be even;  
4 no?--for tomorrow? Because you have--actually, you  
5 have two Witnesses in the morning. It's two together  
6 in your case, and one on your side. And you have one  
7 Witness each in the afternoon. So, you have exactly  
8 the same amount of Witnesses.

9 Is it possible to agree on fixed times?

10 MR. PRAGER: We--I have to be a little bit  
11 careful because Ms. Sinisterra is doing the  
12 cross-examination, and she may kill me if I make any  
13 commitments, but we will definitely take that into  
14 consideration. We will try to work out something that  
15 goes in that direction, how it's exactly going to  
16 look, I don't know. I'm not promising that it's going  
17 to be exact times, but something that tries to achieve  
18 the purpose.

19 ARBITRATOR TAWIL: But you should. If not,  
20 we're going to have a problem there.

21 MR. PRAGER: Yeah. We will work something  
22 out.

1           PRESIDENT HANEFELD: That is highly  
2 appreciated, and we trust on the continued cooperative  
3 spirit of Parties, which made this Hearing really very  
4 workable, given all the constraints. So, we look  
5 forward to hearing from you on that tomorrow, and wish  
6 you a good night.

7           MS. HAWORTH McCANDLESS: Yes. Thank you,  
8 Madam President. Of course, we will work  
9 cooperatively together on this issue.

10           MR. PRAGER: Thank you very much. We will.

11           (Whereupon, at 6:11 p.m., the Hearing was  
12 adjourned until 9:30 p.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