

INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT  
DISPUTES

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 In the matter of Arbitration :  
 between: :  
 :  
 GRAMERCY FUNDS MANAGEMENT LLC AND :  
 GRAMERCY PERU HOLDINGS LLC, :  
 :  
 Claimants, :  
 : ICSID Case No.  
 and : UNCT/18/2  
 :  
 REPUBLIC OF PERÚ, :  
 :  
 Respondent. :  
 ----- -x Volume 9

VIDEOCONFERENCE:

HEARING ON JURISDICTION, MERITS AND QUANTUM

Wednesday, November 18, 2020

The hearing in the above-entitled matter  
came on at 9:05 a.m. (EST) before:

PROFESSOR JUAN FERNÁNDEZ ARMESTO, President

MR. STEPHEN L. DRYMER, Co-Arbitrator

PROFESSOR BRIGITTE STERN, Co-Arbitrator

*In the case of discrepancy, the audio recording in the  
original language will prevail.*

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P R O C E E D I N G S

1  
2           PRESIDENT FERNÁNDEZ ARMESTO: We now begin  
3 the Hearing. This is Day 2 in the Final Hearing in  
4 arbitration under UNCITRAL Rules between Gramercy  
5 Funds Management LLC and Gramercy Perú Holdings LLC,  
6 the Republic of Perú.

7           I welcome you on behalf of the Tribunal on  
8 this second and final day of our Hearings. First of  
9 all, we're going to ask if there is any point of order  
10 this morning, or this afternoon, and then we will give  
11 the floor to Counsel for Perú.

12           Is there any point of order this morning?

13           MR. FRIEDMAN: None from Claimants' side.  
14 Thank you.

15           Good morning, Mr. President and Members of  
16 the Tribunal, and good afternoon, sorry, to those of  
17 you in Europe.

18           PRESIDENT FERNÁNDEZ ARMESTO: Thank you,  
19 Mr. Friedman.

20           I will now ask Mr. Hamilton.

21           Mr. Hamilton, any point of order on behalf of  
22 the Respondent?

1 MR. HAMILTON: No, Mr. President. Thank you  
2 for the question. We are ready to start.

3 PRESIDENT FERNÁNDEZ ARMESTO: Very well. In  
4 that case, we will now begin the Hearing, and Counsel  
5 for the Republic of Perú has the floor for your  
6 Closing Argument.

7 CLOSING STATEMENT BY COUNSEL FOR RESPONDENT

8 PRESIDENT FERNÁNDEZ ARMESTO: And we need to  
9 assign a number to this document being submitted by  
10 the Republic of Perú. We will call it H-22.

11 Madam Secretary? We couldn't hear you.  
12 Sorry.

13 SECRETARY PLANELLS-VALERO: Yes. H-22.

14 PRESIDENT FERNÁNDEZ ARMESTO: Very well.  
15 H-22.

16 MR. HAMILTON: If we might ask  
17 nonparticipants in the Oral Argument to close their  
18 video, other than the Tribunal and, Mr. Ambassador,  
19 could you open your video?

20 AMBASSADOR DE ZELA: Very well.

21 MR. HAMILTON: Mr. President and Members of  
22 the Tribunal, on behalf of the Republic of Perú,



1 White & Case, and Estudio Rubio, it is my pleasure to  
2 commence the Closing Statement of the Republic of Perú  
3 with respect to the proceeding of Gramercy v. Perú.

4           It is important at the outset of the Closing  
5 Statement that we keep in mind that this is a case  
6 under a treaty. Yesterday we heard the Treaty cited  
7 out of context, leaving out words, leaving out  
8 meaning, disregarding the object and purpose.

9           Next slide, please.

10           And there were two things that we heard very  
11 little about in Gramercy's Closing Statement. Not  
12 only did they disregard the object, purpose, and plain  
13 language of the Treaty, they also disregarded the  
14 Opinion of Yale University Professor Michael Reisman.  
15 Professor Reisman, an eminent scholar in the field of  
16 investment arbitration law, is the only International  
17 Law Expert before this Tribunal. Gramercy chose not  
18 to present an International Law Expert.

19           Indeed, they tried to exclude  
20 Professor Reisman's participation late in this  
21 proceeding. But his testimony stands before the  
22 Tribunal, nonetheless. And as he emphasized in his

1 First Report: "By initiating arbitration under the  
2 Treaty, Gramercy has subjected itself to the norms  
3 regulating the ISDS system and the integrity of the  
4 arbitration process, including specific requirements  
5 set forth under the Treaty itself."

6           During the course of Perú's Closing  
7 Statement, we will probe this issue with respect to  
8 the meaning of the Treaty, with respect to Gramercy's  
9 conduct, taking into account the requirements of the  
10 Treaty, and Gramercy's conduct outside the sacred  
11 confines of this Treaty proceeding, which also have  
12 serious ramifications for its claims.

13           And the other thing that Gramercy did not  
14 discuss is the submission by the Non-Disputing Party,  
15 the United States Government, and we will discuss that  
16 in detail.

17           Keep in mind with respect to the Treaty that  
18 it was carefully negotiated by the Republic of Perú  
19 with the aim of facilitating good commercial relations  
20 between the United States and Perú and to facilitate  
21 commercial investment--commercial activity and  
22 investment.

1 I would like to invite the Ambassador of  
2 Perú, Hugo de Zela, to share various additional  
3 comments related to the U.S.-Perú Treaty, and the  
4 Ambassador will speak in Spanish.

5 PRESIDENT FERNÁNDEZ ARMESTO: Very good.  
6 Thank you very much.

7 Mr. Ambassador, you have the floor.

8 AMBASSADOR DE ZELA: Thank you.

9 Good morning, Mr. President, Honorable  
10 Members of the Tribunal, ladies and gentlemen.

11 My name is Hugo de Zela. I am the Ambassador  
12 of the Republic of Perú to the United States of  
13 America. I address you today in representation of my  
14 country, Perú, as part of Perú's Closing Argument.

15 In this respect, I would like to make three  
16 observations that we consider to be important. First,  
17 the Trade Promotion Agreement between Perú and the  
18 United States is very important for the bilateral  
19 relationship between our two countries. The Treaty  
20 benefits Peruvians, U.S. citizens supporting the  
21 development of the peoples. We respect the  
22 international dispute settlement mechanisms, and we

1 participate diligently in them, as we have been doing  
2 in this proceeding. We would also like to note the  
3 relevance of the interpretation of the Treaty by Perú  
4 and the United States.

5           Second, Perú is a State that has displayed  
6 responsible macroeconomic conduct plus juridical  
7 security and solid fiscal discipline, all of which are  
8 factors that have helped position Perú as one of the  
9 most reliable markets for investors in the region, and  
10 it has also led Perú to attain rates of economic  
11 growth that are the highest in Latin America. The  
12 conduct of the Peruvian State along this line has been  
13 consistent for decades. Beyond transitions, political  
14 transitions and changes, Perú has maintained a stable  
15 macroeconomic policy that is respected here in  
16 Washington and in international markets for many  
17 years.

18           One example of the institutional framework  
19 and respect for legal mandates is the establishment of  
20 a procedure for paying the Agrarian Reform Bonds.  
21 Those Bonds involve unique historical antecedents that  
22 have been treated by the Peruvian State in a manner

1 that is provided for by law.

2 Third, Perú shares with the United States a  
3 perspective on the importance of its international  
4 obligations, reasonable--the reasonable expectation  
5 that this proceeding will be resolved transparently in  
6 keeping with the terms of the trade agreement signed  
7 by the two States and the shared interpretations  
8 rendered by them. In that regard, we regret the  
9 insistence of the other Party when it comes to  
10 repeatedly excluding the U.S. representatives and  
11 keeping them from receiving all of the evidence or  
12 from being able to observe the entirety of oral  
13 argument. In addition--or the oral proceedings.

14 In addition, for the Peruvian Government, the  
15 disinformation campaign that has sought to bring  
16 pressure to bear on Perú to bring about changes in its  
17 legislation is--and to oppose it to public opinion and  
18 to the Government of the United States and  
19 multilateral institutions, we denounce this campaign.

20 At the same time, I thank the kind attention  
21 provided by the Distinguished Members of this  
22 Tribunal, and I take this opportunity to respectfully

1 put before you for your consideration observations,  
2 the purpose of which is to show the seriousness and  
3 responsibility of the Peruvian State in addressing  
4 this matter.

5 We also reject conduct that undermines the  
6 trade agreement with the United States, which  
7 prejudiced efforts on the part of our countries to  
8 work together in the context of said bilateral  
9 instrument.

10 Now, with that, Mr. President, Distinguished  
11 Members of the Tribunal, I conclude these remarks, and  
12 our representative, Mr. Hamilton and his colleagues,  
13 will now go into these matters in greater detail. And  
14 I thank the Tribunal very much for your attention.

15 PRESIDENT FERNÁNDEZ ARMESTO: Thank you very  
16 much, Ambassador.

17 I now give the floor to Mr. Hamilton.

18 MR. HAMILTON: Thank you very much  
19 Ambassador, and thank you very much for the time that  
20 you have invested over a long time to prepare your own  
21 remarks.

22 As the Ambassador stated, the Republic of

1 Perú is a fiscally responsible sovereign. The former  
2 Minister of Economy and Finance and former Ambassador  
3 of Perú to the United States, Luis Miguel Castilla, a  
4 highly trained and highly credible Witness appeared  
5 before this Tribunal, and he confirmed that the fiscal  
6 management of Perú has been recognized  
7 internationally.

8           And let's be clear: Perú is not only an  
9 investment-grade sovereign; Perú has excellent  
10 relations with financial institutions, respects  
11 financial institutions, and financial institutions and  
12 the international markets respect Perú.

13           Gramercy's years of propaganda campaign have  
14 not changed these realities. Gramercy is an outlier.  
15 Its conduct is an outlier. Perú remains, as ever, a  
16 fiscally responsible sovereign, and it is in that  
17 context that Perú established pursuant to applicable  
18 law a global resolution related to the Agrarian Reform  
19 Bonds.

20           It is important to keep in mind that the  
21 Agrarian Reform Bonds have a unique history. They  
22 relate to expropriation of land undertaken beginning

1 in 1969, over a half a century ago, over half a  
2 century ago. And these Land Bonds are completely  
3 different from Global Bonds, and this has serious  
4 implications for what it means to hold a bond, what  
5 legal rights are available, what expectations a  
6 bondholder might have, and to any resolution related  
7 to the Bonds. This severe difference between Land  
8 Bonds and contemporary Global Bonds permeates this  
9 case. And it was precisely this unique history that  
10 left the Land Bonds in a state of persistent  
11 uncertainty over many years.

12           The Republic of Perú, however, historically  
13 resolved this matter. In 2013, the Constitutional  
14 Tribunal adopted a resolution that provided for  
15 valuation methodology and administrative procedure,  
16 two gaps that had existed over a period of many years.  
17 Correspondingly, the Peruvian State, through the  
18 Ministry of Economy and Finance, adopted Supreme  
19 Decrees that duly implemented the Constitutional  
20 Tribunal ruling based on extensive preparatory  
21 materials, hundreds of pages of material before the  
22 Tribunal showing the careful work that was undertaken



1 to prepare the Decrees and develop a bondholder  
2 process for the global resolution.

3 It is notable, as we will see, that  
4 Gramercy's key expert on these issues admitted that he  
5 had never examined relevant underlying documents.  
6 That's why the Vice Minister of Treasury, Betty  
7 Sotelo, testified before this Tribunal that the  
8 Minister of Economy and Finance had duly implemented  
9 the ruling of the Constitutional Tribunal, both in  
10 terms of law and in terms of procedure.

11 It bears noting that former  
12 Vice Minister Sotelo, also the former Head of Public  
13 Debt of the Ministry of Finance, has over 40 years of  
14 experience in the Ministry of Economy and Finance and  
15 has observed firsthand the entire history of these  
16 Bonds over several decades.

17 In addition, Perú established an effective  
18 Bondholder Process. Perú is not engaged in an  
19 exchange offer. It is not engaged in passing laws  
20 which are somehow offer or negotiating positions. It  
21 is applying the law established through a ruling of  
22 the highest court in Perú, the Constitutional

1 Tribunal. It is a compensation procedure and must be  
2 judged as such. It includes authentication,  
3 registration, value, and payment steps.

4 Dr. Norbert Wühler is an eminent  
5 international expert previously relied upon by  
6 international Tribunals based on his extensive work  
7 with the United Nations Claims Commission, and he  
8 concluded before this Tribunal that the Bondholder  
9 Process is a fair and effective process for the  
10 Resolution of the Bonds and also for individual  
11 bondholders themselves.

12 Finally, the Bonds reflect a global  
13 resolution. Quantum Expert Brent Kaczmarek, deeply  
14 experienced in investment treaty matters, concluded  
15 that the formula applied by the Ministry of Economy  
16 and Finance has no mathematical, economic, or  
17 theoretical flaws and provides a reasonable, in fact  
18 favorable, outcome for bondholders with coupons that  
19 were worthless when the Agrarian Bank closed. In  
20 other words, Perú, pursuant to Peruvian law, duly  
21 carried out Peruvian law, created a bondholder  
22 procedure, and created a global resolution. The

1 Tribunal really need look no further.

2           Perú's case has been supported through  
3 multiple Witnesses and Experts before this Tribunal.  
4 In addition to the Witnesses and Experts that we--that  
5 I have already mentioned, you also heard from Experts  
6 in Peruvian law, and we will discuss their comments  
7 further as we proceed, as well as the comments of a  
8 sovereign debt Expert, Dr. Pablo Guidotti, Ph.D. from  
9 the University of Chicago, a former Treasury  
10 Secretary, deeply familiar with the evolution of  
11 sovereign debt issues in Latin America over the past  
12 quarter of a century.

13           Next we will briefly summarize a piece of the  
14 puzzle that Gramercy seems to have forgotten in its  
15 own Closing Argument, and that is Gramercy itself. It  
16 is time that we open our eyes, come out of the  
17 fantastical world that we have seen presented  
18 yesterday and look at the reality of Gramercy: Who it  
19 is, what is its--what has its conduct been, and what  
20 does that mean for this proceeding? Gramercy exposed.  
21 It literally was the missing piece in Gramercy's own  
22 Closing Argument.

1           Normally, you would hear in an investment  
2 arbitration a diligent and respectful presentation  
3 with extensive documentation indicating why a company  
4 chose to invest based on clear laws, clear contracts,  
5 based on specific expectations that they might have  
6 had about what would happen next. But that is not  
7 something Gramercy did in its Closing Argument because  
8 it is not what happened.

9           In fact, the first two words of Gramercy's  
10 Closing Argument were "Gramercy's entitlement,"  
11 because Gramercy's entire case is about a fictional  
12 self-entitlement, preferred treatment that no other  
13 Peruvians would have, and special treatment that it  
14 had no basis to expect from the outset of its arrival  
15 to the story of the Peruvian Agrarian Reform Bonds.

16           Keep in mind who Gramercy is. Now, again,  
17 Perú has no objection, and certainly no ideological  
18 objection, to financial institutions. It's clear that  
19 Perú has good relations with financial institutions,  
20 and they respect Perú. But Gramercy has conducted  
21 itself in a way that is disqualifying to the  
22 protection of the Treaty and certainly to any

1 compensation.

2           Gramercy is in the business of uncertainty.  
3 Its own overview of its activities says they look to  
4 buy when there's blood in the street, and, as CEO  
5 Robert Koenigsberger said in one of a series of  
6 admissions that he made under cross-examination,  
7 Gramercy is not in the business of giving certainty or  
8 assurances. No, it is not in the business of giving  
9 certainty or assurances. It looks for uncertainty to  
10 try to exploit it and gain absurd, exorbitant  
11 windfalls. The Treaty offers no such protections.

12           What is its mission? Gramercy's stated  
13 mission is to find ways to monetize distressed debt.  
14 Gramercy in its own statement seeks to exploit  
15 distressed investment opportunities, not certain  
16 investment opportunities; distressed investment  
17 opportunities.

18           And that's why Gramercy tells those investors  
19 in Gramercy, such as American workers, that they may  
20 lose all. And Mr. Koenigsberger repeatedly confirmed  
21 under cross-examination that Gramercy assumes that  
22 investors may lose all. So, Gramercy is coming to

1 this Tribunal saying that this Tribunal should accept  
2 that Gramercy is entitled to all while everybody else  
3 is entitled to nothing. Perú never made any such  
4 promises.

5 Now, keep in mind that Gramercy, consistent  
6 with its approach to doing business, acquired claims  
7 amid uncertainty, and you only need to look to the  
8 underlying Gramercy due diligence memo. They have a  
9 grand total of one, a grand total of one due diligence  
10 memo, that, as demonstrated in Opening Argument, is  
11 largely cut and paste from another document. And they  
12 state in their own memo: The Land Reform Bonds have  
13 been in default, in their view, for a period of  
14 18 years. Why would the Government seek to reconcile  
15 these obligations now? As Mr. Koenigsberger admitted:  
16 "From the beginning there was a lack of certainty."

17 Now, we don't have to just listen to what  
18 Mr. Koenigsberger said at the Hearing last February or  
19 what their own documents said before they began  
20 acquiring claims. Let's see what Gramercy said in its  
21 own Closing Argument yesterday.

22 Yesterday, in Closing Argument, Gramercy's

1 best foot forward, one would think, before this  
2 Tribunal, Gramercy said the following: "Gramercy  
3 understood that receiving payment on the Bonds would  
4 take time and effort. It would take  
5 consensus-building."

6 Prior slide, please. Thank you.

7 "It would take consensus-building and even  
8 assertion of legal rights." Not only that, Gramercy  
9 said: "At the time of purchase, there was  
10 'considerable uncertainty,'" "considerable  
11 uncertainty." And maybe that's why Gramercy went on  
12 to say yesterday: "What Gramercy invested in is the  
13 hope"--the hope that it would be able to resolve the  
14 stagnant Land Bonds debt.

15 So, there was no certainty at the time that  
16 Gramercy showed up to this story. Indeed, there was  
17 considerable uncertainty, as Gramercy's own Counsel  
18 declared before this Tribunal in its Closing Argument.

19 Keep in mind that Gramercy acquired Bonds  
20 through purchase contracts. Now, Gramercy has never  
21 provided the physical instruments for 9,656 Land Bonds  
22 that it alleges that it holds. It withheld from this

1 Tribunal and Perú for an extended period of time even  
2 scans of those instruments. It knows that they have  
3 to be authenticated. It did not bother to put before  
4 this Tribunal any sort of expert advice verifying and  
5 authenticating these old physical documents. They are  
6 not authenticated. There is no expert before this  
7 Tribunal who has done it. They have never submitted  
8 to the Ministry of Economy and Finance, as other  
9 bondholders do.

10           They also, indeed, did withhold over  
11 20,000-plus pages of purchase contracts. These  
12 documents were not all in the possession of the  
13 Republic of Perú previously. That was a misstatement  
14 yesterday. These purchase contracts were also not  
15 even mentioned in the initial Pleadings of Gramercy to  
16 this Tribunal. That's right, Members of the Tribunal:  
17 Gramercy intentionally and knowingly did not disclose  
18 to this Tribunal that it, in fact, acquired certain  
19 types of limited rights through purchase contracts  
20 that it didn't even mention to this Tribunal.

21           In addition--and it goes without saying, in  
22 addition to other documents that were withheld,



1 Gramercy withheld over time evidence of 10-plus years  
2 of internal valuations, and, of course, Gramercy  
3 admitted, Mr. Koenigsberger under cross-examination,  
4 that it had bond purchases--it had made bond purchases  
5 in 2017 that were also hidden from this Tribunal and  
6 from the Republic of Perú.

7           The fact that this kind of material evidence  
8 was withheld and not presented timely to the Tribunal  
9 is damning to Gramercy's case. Moreover, inflated  
10 valuations--layers upon layers of meringue, as we have  
11 discussed before, Mr. President--is really the best  
12 way to understand the exorbitant amounts that Gramercy  
13 seeks.

14           The key figures you need to know, Members of  
15 the Tribunal, are that Gramercy, having hidden its  
16 purchase contracts, ultimately admitted that it  
17 actually spent \$33 million, \$33 million to acquire  
18 Bonds. Not only that; it used the money of others.  
19 Gramercy didn't spend its own \$33 million. It used  
20 the money of others, and these Bonds are held for  
21 other beneficial owners, which includes many U.S.  
22 citizens, but it includes non-U.S. citizens, and, it

1 appears, may include Peruvians.

2           The other thing Gramercy has admitted is that  
3 it could have obtained \$34 million through the duly  
4 established bondholder procedure. Those are the two  
5 numbers you most need to know, Members of the  
6 Tribunal. Everything else is fabricated, invented  
7 meringue dislocated from theories of compensation  
8 under a treaty. And, by the way, it is also telling,  
9 Gramercy valuations--Gramercy uses management fees to  
10 make money during the life that it is pursuing a  
11 resolution on claims, so Gramercy was making money all  
12 along based on a percentage of assets under  
13 management, and Gramercy set the valuation itself. It  
14 created its own valuation, generating its own  
15 management fee. And I'd love to talk about it, and,  
16 again, we apologize to the United States Government,  
17 but Gramercy insists that, while it can degrade Perú  
18 in public, it wants to keep secret various information  
19 about Gramercy.

20           Finally, what has its strategy been over the  
21 course of this dispute? Its strategy has been to  
22 weaponize this dispute, to weaponize this dispute.

1 This is not just aggravation. It is not an annoyance.  
2 It is abuse. It is abuse, and Gramercy is in rolling,  
3 constant and, as we sit here today, violation of the  
4 express instructions of this Tribunal and repeated  
5 orders of this Tribunal over the past 2.5 years that  
6 it should stop, that it should respect this Treaty  
7 proceeding.

8           And Gramercy has hired countless lobbyists.  
9 It has used Experts that it pays but doesn't reveal  
10 publicly what they have done. It uses propaganda that  
11 sets out disinformation and falsehoods about the  
12 Republic of Perú. And, as Gramercy itself said: "We  
13 are going to create grist for the media mill."

14           Well, you tried, Gramercy, but Perú will not  
15 bow to bullies and extortionists. This is wrong  
16 conduct. This is not the kind of conduct that can be  
17 permissible in the context of a treaty proceeding.

18           Let me give you just one example. Gramercy  
19 intentionally tried to interfere with bilateral  
20 relations related to the OECD and Perú's process of  
21 entry into the OECD and repeatedly threatened that it  
22 was going to stop Perú's entrance into the OECD.

1           Now, how is that in the interest of the  
2 development of Perú or of the relations between Perú  
3 and the United States as contemplated by the Treaty?  
4 It is not. And that's why the reality is that  
5 Gramercy has been on a campaign of deception.  
6 Gramercy uses this kind of absurd propaganda: A  
7 billboard parked in front of the United States  
8 Congress stating: "Perú defaults. American workers  
9 pay the bill." Well, if Gramercy has a problem with  
10 American workers because of the way it's managed its  
11 clients' money, that's a problem between Gramercy and  
12 American workers. Perú never marketed 50-year-old  
13 Agrarian Reform Bonds on international markets. There  
14 is absolutely no connection between this and  
15 contemporary bonds.

16           And most telling is that Mr. Koenigsberger  
17 admitted that: "At or around the time of this  
18 billboard, Gramercy was purchasing additional Land  
19 Bonds; is that correct?" And he admitted: "Somewhere  
20 in that time period, yes." And after an order of the  
21 Tribunal, we learned and discovered that, in fact,  
22 Gramercy was continuing to purchase Bonds during that

1 time period. It was continuing to purchase Bonds, but  
2 it certainly was not telling that to the United States  
3 Congress, the State Department, or the Executive  
4 Branch of the United States Government.

5 Now, we will now go into a discussion of the  
6 facts, jurisdiction, merits, and compensation, and our  
7 aim, Mr. President, is to go through the facts and  
8 then take a break.

9 With respect to the facts, we are going to  
10 discuss the following issues: First of all, the  
11 uncertainty that predated Gramercy's acquisitions of  
12 Land Bonds; second, the acquisition of Land Bonds and  
13 persistent uncertainty thereafter; third, Perú's legal  
14 resolution related to the Agrarian Reform Bonds;  
15 fourth, the bondholder process; and, finally a few  
16 observations on the aftermath.

17 (Audio interference.)

18 ARBITRATOR DRYMER: Mr. Hamilton, we have  
19 lost you.

20 PRESIDENT FERNÁNDEZ ARMESTO: Yes.

21 Ah, you are back.

22 MR. HAMILTON: I am here for you.

1           Regarding uncertainty, remember that the  
2 Bonds have unique origins and characteristics. This  
3 was a domestic dispute marked by legal and value  
4 uncertainty.

5           The unique origins of the Agrarian Reform  
6 Bonds are clear to this Tribunal. They date back to  
7 1969, and, after a period of inflation and currency  
8 changes, there was significant uncertainty and the  
9 Bonds effectively became worthless. In 2001, in a  
10 much-discussed Court Decision, the Court rejects the  
11 concept of nominal payment, but it did not resolve all  
12 the pieces of the puzzle to determine what would  
13 happen to the Peruvian Land Bonds. Specifically, as  
14 former Minister Castilla and former Vice Minister  
15 Sotelo explained, "the Agrarian debt is a unique  
16 historical chapter of Peruvian history."

17           We heard a lot yesterday from our  
18 counterparts about the obligation of this Tribunal to  
19 render justice related to something that happened in  
20 1969 to try to use as pawns Peruvian citizens who were  
21 affected half a century ago by the Agrarian reform  
22 process. That is not why this Tribunal is here. That

1 is simply paper that Gramercy is putting over itself  
2 because it itself is such an unsympathetic Claimant.

3           Let's be clear: This is an old domestic  
4 dispute that Gramercy chose to interfere with, to  
5 become an intermeddler with these circumstances. The  
6 unique characteristics between these two types of  
7 Bonds are really dispositive to many of the issues  
8 before the Tribunal. And we discussed the difference  
9 in old Agrarian Bonds and contemporary bonds in great  
10 detail at the hearing, discussed with  
11 Mr. Koenigsberger as well, and Mr. Koenigsberger made  
12 clear, and Gramercy's only documents made clear, that  
13 its preference is to acquire contemporary bonds that  
14 have all of the contemporary types of protections,  
15 clarity, promises, certainty that accompany those  
16 kinds of instruments.

17           That is not what Gramercy did in this  
18 instance. For whatever reason, it chose to enter a  
19 situation of great uncertainty. And these differences  
20 between the two types of Bonds before you, Members of  
21 the Tribunal, permeate many of the issues of this  
22 case.

1           Now, remember that by the 1990s the Bonds  
2 became worthless.

3           Sebastian Edwards acknowledged they became  
4 virtually worthless, and that's why both Perú's  
5 Quantum Experts and Professor Guidotti emphasize that  
6 Perú never defaulted. Literally, the Bonds became  
7 worthless after extreme hyperinflation in a very  
8 difficult period of time and multiple changes in  
9 currency. This is the seed of the deception of  
10 Gramercy, to repeatedly tell the United States  
11 Government that Perú was in default; something that,  
12 in fact, bondholders, financial institutions, and  
13 rating agencies have all rejected.

14           So, then we come to the Decision of 2001.  
15 The 2001 Sentence was limited. It was a limited  
16 ruling that provided only that nominal payment was  
17 unconstitutional. The operative language in this  
18 sentence is one small paragraph depicted before you on  
19 Slide 25, Members of the Tribunal. It was uncertain  
20 with respect to valuation method, no rule mandating  
21 CPI, no rule on reference date, no rule on interest  
22 and it was uncertain on payment procedure. And as



1 we'll see later, it is exactly these two  
2 elements--valuation method and payment procedure--that  
3 were ultimately addressed in the 2013 Constitutional  
4 Tribunal Decision.

5 I now invite Mr. Jijón to share additional  
6 observations on the uncertainty of Peruvian law  
7 pursuant to the 2001 Sentence.

8 PRESIDENT FERNÁNDEZ ARMESTO: Thank you,  
9 Dr. Hamilton. Happy to give the floor to Dr. Jijón.

10 On behalf of the Court Reporters, if  
11 Dr. Jijón could speak slightly slower, I think it  
12 would be appreciated.

13 Dr. Jijón, you have the floor.

14 SECRETARY PLANELLIS-VALERO: Mr. President,  
15 the Court Reporters and Interpreters are also asking  
16 if they could be sent the speaking points.

17 PRESIDENT FERNÁNDEZ ARMESTO: That is  
18 important, yes, because it makes their life so much  
19 easier and the quality of the interpretation so much  
20 higher. So, that would be highly appreciated.

21 SECRETARY PLANELLIS-VALERO: Thank you.

22 MR. JIJÓN: Thank you, Mr. President, Members

1 of the Tribunal. Good morning; good afternoon.

2 Thank you for this opportunity to speak on  
3 what Gramercy yesterday described as the central issue  
4 of this case. This goes to the very heart of what  
5 they call "Gramercy's entitlements," and, as  
6 Dr. Hamilton mentioned, this all arises from the 2001  
7 Sentence, which is an extremely limited Decision by  
8 the Constitutional Tribunal. It is four pages in its  
9 entirety. The operative part relevant to this being  
10 Paragraph 2, Paragraph 2, which merely says that  
11 Article 2 of Law 26,597 from 1996 is unconstitutional  
12 insofar as paying nominal value for Bonds did not take  
13 into account the effects of time: "Ajeno a la  
14 circunstancias de tiempo."

15 This one paragraph is the basis for  
16 Gramercy's argument that there was a clear legal rule.  
17 However, it is obvious on its face that this is not  
18 the case, and aside from the rhetoric that Gramercy  
19 has deployed yesterday and throughout this proceeding,  
20 this is not borne out by the evidence.

21 Now, this is a very important rule because it  
22 was the first time that it was established that the

1 Bonds should be paid at current value. And it's not  
2 in dispute that the Bonds should be paid at current  
3 value. However, there is a dispute as to what  
4 "current value" meant at that moment, and the idea  
5 that there was certainty as to how the Current Value  
6 Principle was to be applied is absurd and, again, not  
7 borne out by any evidence in the record. Contrary to  
8 what Gramercy argued yesterday, there had been no  
9 cases at this time or previously saying that the Bonds  
10 had to be updated at all, much less that they had to  
11 be updated in the way that Gramercy wants and says is  
12 the clear legal rule coming out of this case.

13           Next slide, please.

14           So, on the first point, there is clear  
15 uncertainty as to the valuation method, and both  
16 Parties' Experts agree that the 2001 Sentence does  
17 not--and I repeat, it does not--make any reference to  
18 the CPI method. You can go through the entire  
19 Sentence. It shouldn't take too long. The only  
20 operative part is that one paragraph. There is no  
21 reference to CPI. And as Dr. Hundskopf, an expert in  
22 Peruvian law, explained, you cannot read a reference

1 to the circumstances of time, to the Current Value  
2 Principle, as meaning CPI. CPI and the Current Value  
3 Principle are not synonymous.

4 Next slide.

5 Now, Gramercy, because it has to accept that  
6 the 2001 Sentence was silent as to the valuation  
7 method, has argued that CPI, that its preferred  
8 valuation method, is implicitly required by current  
9 value.

10 Unfortunately, this is simply not the case  
11 for Gramercy, and Gramercy does not and cannot support  
12 that. It tries to do so with Experts, and yesterday  
13 we saw Gramercy referring to the Report of Delia  
14 Revoredo, which was quite surprising, because that  
15 Report was Gramercy's first attempt to address these  
16 issues in this case. However, Delia Revoredo was  
17 withdrawn as an expert. She was absent during the  
18 Hearing. She was unavailable for cross-examination,  
19 and it was critical that she was unavailable for  
20 cross-examination because, after she had submitted her  
21 Report, Dr. Hundskopf identified numerous flaws in her  
22 Report, and it was only after that Report had been

1 demolished by Dr. Hundskopf that she withdrew.

2           It is also significant she was unavailable  
3 for cross-examination because, as was mentioned at the  
4 beginning of the Hearing in February, Dr. Revoredo has  
5 potential conflicts of interest that have been raised  
6 in the past and on which we were never able to  
7 cross-examine her.

8           Nor can Gramercy depend on Dr. Castillo  
9 Freyre for this point. Now, Dr. Castillo has made it  
10 very clear that he believes that CPI should apply as a  
11 general rule. And, again, yesterday on Gramercy's  
12 slides, you saw that, as a general rule, the current  
13 value of principal requires the use of CPI.

14           However, on cross-examination, we asked  
15 Dr. Castillo whether CPI applies as a general rule;  
16 that is, by default. And he said: "By default, no,  
17 no, no."

18           Next slide.

19           Now, it is also evident from  
20 contemporary--contemporaneous court cases that you  
21 don't need to take the word of the Experts. Courts in  
22 Perú at or around the time of the 2001 Sentence were

1 applying the Current Value Principle to other types of  
2 debt.

3           Now, yesterday Gramercy tried to put me on  
4 the spot by putting an exchange between the President  
5 and myself during the prior hearing where the  
6 President asked whether these cases had to do with the  
7 Bonds. And the answer is no. But why is the answer  
8 no? Because, as I mentioned, there were no cases  
9 prior to the 2001 Sentence, and there are certainly  
10 none in the record, where people were updating the  
11 Bonds with dollarization or with any other method.  
12 They just aren't there. And we asked Dr. Castillo if  
13 he knew of any cases in the 50 years since the Bonds  
14 had been issued where they had been updated prior to  
15 the 2001 Sentence, and he said he did not.

16           So, the other thing that Gramercy has to rely  
17 on and they argue, is that, well, okay, maybe CPI is  
18 not the default for all applications of the Current  
19 Value Principle, but it's going to be the default for  
20 updating sums of money.

21           Now, this is a really sneaky argument because  
22 you are going to recognize that, in this context, they

1 describe the Bonds as a debt for a sum of money;  
2 whereas, in others, they call it a debt for  
3 compensation for expropriation.

4           And why is it sneaky? Well, because, in  
5 Perú, debts for sums of money are not, as a general  
6 rule, subject to the Current Value Principle. This is  
7 something that is not in question. All the Experts  
8 have agreed, including Dr. Castillo who said as much  
9 in his direct testimony.

10           However, just so that there is no doubt in  
11 the Tribunal's mind, if you look at the cases that are  
12 in the record, you will find that dollarization was  
13 used both to update sums of money and compensations of  
14 various sort.

15           Next slide.

16           And this is just to say that Dr. Castillo  
17 acknowledged that dollarization was being used as a  
18 method of applying the Current Value Principle.

19           Next slide.

20           Another uncertainty in the 2001 Sentence  
21 refers to the reference date, that is, when you are  
22 going to calculate or update the value of the Bonds,

1 what date do you start at? Dr. Hundskopf points out,  
2 quite correctly, that nothing in the 2001 Sentence  
3 tells you where you should start calculating, and that  
4 left the door open to different dates being used. You  
5 could use the expropriation date, the placement date,  
6 the date of the last clipped coupon, the date the last  
7 payment was made by the Agrarian Bank, the day the  
8 bank was liquidated, the day that a purchaser of Bonds  
9 acquired those Bonds, et cetera.

10           None of these are necessarily wrong or right  
11 coming out of the 2001 Sentence. They were all  
12 potential reference dates. The point is there was  
13 uncertainty.

14           Next slide.

15           Now, Gramercy is a little flippant on this  
16 point. They say--and yesterday we heard them just  
17 dismiss using other dates. They said using any date  
18 other than the date of the origin of the debt is like  
19 valuing from the date of a solar eclipse. Well, that  
20 may sound pretty, but it's absolutely nonsensical.  
21 Absolutely, it can make sense. If you are trying to  
22 value a debt, why not update it from the day that that



1 debt was going to be paid.

2           So, what does Gramercy do? They have a  
3 different argument. They say that the debt was not  
4 born on the day it was supposed to be paid. They say  
5 you have to look at the date of the origin of the  
6 original obligation. And, here, they're not talking  
7 about the Bonds. What they are talking about is the  
8 debt for the original expropriation of land during the  
9 Agrarian reform, and they say that that obligation has  
10 to have been the date of expropriation.

11           Why do they say that? They say it's required  
12 by the Peruvian Constitution, and yesterday, again,  
13 they point to Article 70 of the Peruvian Constitution  
14 which says that, for expropriations, payment must be  
15 made in cash on the date of the expropriation.

16           Now, that is quite correct for expropriations  
17 under the current Constitution, but it is astounding  
18 that they should continue to make this argument  
19 because Perú has shown time and time again that that  
20 Constitution and that provision was not applicable  
21 when the Bonds were issued, a fact that Dr. Castillo  
22 acknowledged on cross-examination.

1           We asked him at the time of the  
2 expropriation, could the State pay--was the State  
3 required to pay with prior indemnization or could it  
4 pay with--over time and in Bonds? And he said: "Yes,  
5 of course, that was the point of the Constitutional  
6 Amendment of 1964." And, in fact, at the time of the  
7 Agrarian reform, the Constitution said that  
8 expropriations undertaken for the point of Agrarian  
9 reform could be paid over time, not on the date of.

10           Next slide, please.

11           I'm going to go quickly over interest. As  
12 Dr. Hundskopf has confirmed, again, there is nothing  
13 in the 2001 Sentence to refer to what type of interest  
14 was required to update the Bonds. And Dr. Castillo  
15 also said that he--this is Gramercy's only Expert,  
16 mind you--that he had not addressed this issue in his  
17 Report, that he had not gone into it "ahondo," but  
18 that interest, there is something different from  
19 current value. So, even if the 2001 Sentence is read  
20 to be about current value, it is not implicit that it  
21 should be read to say anything in particular about  
22 interest. That is something different.

1           Next slide.

2           You don't have to take our word for it or  
3 Gramercy's word for it. Look at how the 2001 Decision  
4 was interpreted over time. In 2004, a commission that  
5 had been put together for the express purpose of  
6 interpreting the 2001 Sentence concluded that there  
7 was uncertainty. This Commission was made up of  
8 representatives, both of the public sector as well as  
9 by bondholders, and they concluded that no valuation  
10 methodology was required by law, that the laws did not  
11 require any particular methodology. And when they did  
12 their attempts to quantify what a potential valuation  
13 could look like, they used three different valuation  
14 methods, not only CPI, not only the method that  
15 Gramercy says was the clear, legal rule. It wasn't.

16           There was a dollarization method, a CPI  
17 method, and an adjusted CPI method, all of which  
18 resulted in very different calculations.

19           Next slide.

20           Now, what else happened in 2004? There was  
21 another Constitutional Tribunal Decision. Gramercy  
22 has consistently misrepresented the significance of

1 this Decision. Contrary to what Gramercy says, the  
2 relevance of this Decision does not lie in the fact  
3 that it made dollarization an optional method for  
4 determining current value. What this Decision says is  
5 that dollarization is constitutional and consistent  
6 with current value, and Constitutional Tribunal said  
7 fundamentally, fundamentally, the difference between  
8 the Emergency Decree that mandated dollarization and  
9 the 1996 law at issue in the 2001 Sentence was that  
10 dollarization was consistent with current value. It  
11 did not ignore the effects of time.

12 Next slide.

13 And what happened the following year? 2005,  
14 another commission, this time in the legislature.  
15 Once, again, looked back and they adopted the  
16 recommendations of the 2004 Report, recognized them,  
17 and reaffirmed the conclusion that the law did not  
18 limit or restrict the factors or indices required to  
19 update the Bonds. And, again, they used these  
20 different methodologies, including the adjusted CPI.

21 Now, Dr. Castillo, on cross-examination,  
22 admitted that he did not know about the 2004 Report

1 until after he had finished his Expert Report in this  
2 case, and he said: "Well, it's--the adjusted CPI,  
3 it's cheeky." I don't know what that means. He can  
4 dismiss it all he wants, but the point is that at the  
5 time various commissions of the Peruvian Government,  
6 including a commission that included bondholders,  
7 included and recognized this uncertainty.

8 Next.

9 Again, we see how this was applied in the  
10 courts. All I want to say here is you can see for  
11 yourself different types of indices were being used,  
12 different reference dates were being used, different  
13 interest rates were being used. Not one of these is  
14 what Gramercy says is the default clear rule that  
15 should have come out of 2001.

16 Next.

17 Dr. Castillo agrees. He said he's read these  
18 cases and he's read other cases, which apparently are  
19 not in the record, but he's read others that came out  
20 in even different ways, and he acknowledged that there  
21 are different types of CPI, not just one type of CPI.  
22 And contrary to what Gramercy said yesterday, it is

1 not that CPI is CPI is CPI. He said: "I've always  
2 had this doubt about whether we should use the CPI of  
3 the place where the Bonds were issued."

4 Well, he may have that doubt. Gramercy  
5 apparently never did because they never did this.  
6 They've used one type of CPI and they have said only  
7 that one type of CPI could ever be used.

8 Next slide.

9 And, finally, if further proof were needed,  
10 you can just look at how the Legislature of Perú tried  
11 for many years to resolve the uncertainty. There were  
12 many draft bills. All of them failed. None of them  
13 included exactly what Gramercy says is the default  
14 rule.

15 Next.

16 So, to conclude, what they see is that there  
17 continued to be uncertainty as of 2001 and going  
18 forward through 2006. There were failed attempts at  
19 legislation, no consensus in the court, and there is  
20 no basis in Peruvian law for assuming that Gramercy's  
21 entitlement is, in fact, obvious or required by law.

22 Thank you, Members of the Tribunal.

1           PRESIDENT FERNÁNDEZ ARMESTO: Thank you,  
2 Dr. Jijón.

3           Who is taking over from you now?

4           MR. HAMILTON: Have no fear, Mr. President.

5           PRESIDENT FERNÁNDEZ ARMESTO: Mr. Hamilton.

6           MR. HAMILTON: I'm back.

7           ARBITRATOR DRYMER: Welcome back.

8           MR. HAMILTON: Thank you very much,  
9 Dr. Jijón.

10           How could there be any serious doubt left  
11 that the conditions of the Agrarian Reform Bonds were  
12 uncertain as of 2006 when Gramercy began to acquire  
13 these instruments. The timeline, the evidence, the  
14 law, the Experts, and Gramercy itself all make it  
15 quite clear. And keep in mind that this was not only  
16 a period of legal uncertainty, but as Quantum Expert  
17 Brent Kaczmarek emphasizes, it was a time of value  
18 uncertainty. The Decision was unclear as an economic  
19 matter. It is ambiguous, open to interpretation, and  
20 not possible to make a calculation; ergo, value  
21 uncertainty.

22           No doubt, then, why Mr. Koenigsberger

1 admitted there was a lack of certainty, or, as  
2 Gramercy itself stated yesterday, considerable  
3 uncertainty.

4 Now, that was the status when Gramercy chose  
5 to get involved with the Agrarian Reform Bonds.

6 And next I'm going to speak about something  
7 that Gramercy totally admitted from its own  
8 presentation, which was how Gramercy entered the  
9 picture and acquired Agrarian Reform Bonds. Please  
10 buckle up because we are going to go quite quickly  
11 through this segment as we get rolling.

12 Now, we've mentioned that Gramercy was, in  
13 the words of Bloomberg, "a lone hedge fund." Other  
14 people were not rushing to get involved in Agrarian  
15 Reform Bonds. There were not funds rushing to Perú.  
16 Perú didn't invite anybody to come and acquire  
17 Agrarian Reform Bonds, market them in the  
18 international markets. There was not some great  
19 certainty at the time; otherwise, why would people be  
20 selling their Bonds.

21 You only need to look at Gramercy's own due  
22 diligence memo from January of 2006. It's in the



1 record at CE-114, and, just to briefly summarize, it  
2 refers to Bonds that were in arrears, in Gramercy's  
3 view, in default, it emphasizes complexity, long  
4 periods of time for legal proceeding, long periods of  
5 time for Government to make a payment. They hoped for  
6 some form of resolution. They emphasized the  
7 importance of physical authentication of Bonds. They  
8 focused on draft legislation, discrepancies,  
9 differences in Government approaches, a proposal to  
10 use CPI, multiple alternative valuation scenarios, and  
11 the possibility of acquiring Bonds at a discount off  
12 of an estimated claim. Uncertainty. That is  
13 Gramercy's own words, contemporaneously, it's toasted.

14           There is another thing that is important  
15 about the outset of Gramercy's acquisition of Bonds,  
16 which is--was carefully timed to align with the  
17 signing of the U.S.-Perú Treaty. If you look at the  
18 evidence--and this is outlined in Perú's prior Briefs  
19 with timelines--the Treaty was signed in April of  
20 2006, and, within days, Claimant was established and  
21 Gramercy, then, proceeded to acquire the Bonds.  
22 That's because Gramercy knew from the beginning that

1 it was going to have to try to resolve claims that  
2 were preexisting and part of a preexisting dispute.

3           The uncertainty was confirmed, even by a  
4 report signed by Vice Minister Sotelo, then a  
5 functionary in the MEF, confirming that it was pending  
6 the establishment of a legal framework. And  
7 Mr. Koenigsberger acknowledged that Gramercy knew that  
8 that was the position of the Ministry.

9           So, what did Gramercy do in the face of all  
10 of this uncertainty? It proceeded just the same. It  
11 acquired Bonds that it never authenticated, and those  
12 Bonds were withheld from this Tribunal for a long  
13 period of time. Gramercy, not only didn't  
14 authenticate the Bonds, it used client funds. The  
15 Claimants only have a de minimis interest and the  
16 beneficial owners do not all have U.S. nationality,  
17 some may even be Peruvian as indicated through  
18 cross-examination. I direct you to the crosses of  
19 Mr. Lanava and Mr. Koenigsberger and Mr. Joannou.

20           And what did Gramercy actually acquire? It  
21 entered purchase contracts showing that there was use  
22 of Gramercy funds obtained through Gramercy clients,

1 \$33 million, and Mr. Joannou admitted that Gramercy  
2 paid 33 million. So, they paid \$33 million at the  
3 time and they paid for "derecho expectaticio." That  
4 is what they obtained.

5 And Mr. Hundskopf explains that "derecho  
6 expectaticio" means a gamble, a remote possibility.  
7 This is the opposite of a scenario where a company  
8 goes to a Host State, enters into, let's say, a  
9 Concession Agreement in a clear legal framework with  
10 certainty based on clear contractual provisions that  
11 set out its rights and expectations. This was the  
12 opposite.

13 And as you look forward, Gramercy, over time,  
14 continually was trying to change the law and  
15 supporting efforts and behind efforts to try to change  
16 Peruvian law, and it also quickly resorted to Treaty  
17 threats after the Treaty entered into force, including  
18 a statement in 2010 referring to the Free Trade  
19 Agreement between Perú and the United States, and that  
20 is in the record before the Tribunal.

21 Now, the key thing about all of these efforts  
22 to change the law, if everything was certain, why are

1 you trying to change the law? They knew from the  
2 beginning they were going to try to change the law.  
3 Repeatedly, they sought to change the law to try to  
4 inflate what they thought they could receive.

5 Now, unfortunately, we can't show the public  
6 and the United States Government all of the evidence,  
7 the damning evidence of Gramercy, related to these  
8 efforts to change the law, but one thing is quite  
9 clear: All these legislative efforts failed. 2006  
10 failed; 2008 failed; again, in 2008 failed; 2011,  
11 failed. Multiple efforts to change laws, to try to  
12 create certainty where there was none. But, as we all  
13 know, to change the law, you are going to need  
14 Congressional approval, and they didn't have the  
15 votes. Meanwhile, limited resort to local  
16 proceedings.

17 As the Tribunal asked yesterday, if it was so  
18 clear that you could go to local courts and magically  
19 receive \$840 million on these instruments that you  
20 paid \$33 million for, why didn't you do it? Because  
21 it was uncertain, because they wouldn't have obtained  
22 that, and it is very clear that they became Parties to

1 some legal proceedings but, obviously, chose not to  
2 proceed locally. That's because there was no  
3 certainty with the situation.

4           The uncertainty persisted. You can look to  
5 contemporaneous documents of Minister Castilla, even  
6 in his era as Vice Minister of Finance. It's in the  
7 record. No legal framework. And, again, when  
8 Gramercy tried a back-door approach to the Minister in  
9 2012, on the side of a meeting with another financial  
10 institution, the response was the same: There is no  
11 legal framework.

12           And keep in mind that all this time Gramercy  
13 was making money anyway because Gramercy was making  
14 money on Management Fees all along the way. And as  
15 Mr. Koenigsberger's admitted, Gramercy's own  
16 calculation of the valuation of the Bonds, which it  
17 keeps secret from the United States Government,  
18 determines Gramercy's management fee, and this was  
19 performance-based compensation as they themselves  
20 valued the Bonds at a time of rolling uncertainty.  
21 Gramercy was making money as it went.

22           Now, of course, as we will hear later,

1 Gramercy has never put before this Tribunal any  
2 breakdown of what actually happened to the Claimants  
3 before this Tribunal that were making money through  
4 Management Fees, how they were specifically impacted.  
5 It ignores that entire piece of the puzzle. And  
6 that's because it is not favorable to Gramercy.

7 Bottom line, Gramercy invested--sorry,  
8 acquired Bonds at the time of the great uncertainty.  
9 It acquired Bonds with limited rights through purchase  
10 contracts, and it repeatedly sought to change the law  
11 and bring certainty to no avail, changes in law to  
12 which it had no right and no reasonable expectation.

13 That's why it is so critical that, in 2013,  
14 the Constitutional Tribunal of Perú resolved this  
15 matter. It recognized the prior uncertainty. It  
16 established certainty and remains valid law of Perú.

17 There can be no doubt that the Constitutional  
18 Court Resolution identified precisely the lacuna in  
19 the 2001 Decision. It referred to the lack of  
20 valuation criteria and the lack of clarity on an  
21 Administrative Procedure.

22 There is simply no doubt about this. It is

1 as plain as day.

2 And that's why the 2013 Resolution was a  
3 historic resolution. It established a valuation  
4 method. Now we see clarity, dollarization, how do you  
5 update it, how do you use interest, and it mandated a  
6 payment procedure.

7 Mr. Jijón, very briefly, will touch on the  
8 legal circumstances related to the resolution.

9 Thank you.

10 PRESIDENT FERNÁNDEZ ARMESTO: Dr. Jijón.

11 MR. JIJÓN: Thank you.

12 Very briefly, unlike the 2001 Sentence, the  
13 2013 Resolution is much more in depth.

14 Next slide, please.

15 First, the Constitutional Tribunal did  
16 address various methodologies, several methodologies,  
17 in fact, and it, once again, said these are all  
18 potential methodologies. It examined the possibility  
19 of CPI, and it examined dollarization.

20 Next slide.

21 And having done so, it determined that  
22 dollarization should be applied to update the Bonds.

1 This was critical. This was the first time that it  
2 became Peruvian law, that there was a fixed method for  
3 determining the value under the Current Value  
4 Principle.

5 Next slide.

6 In addition, the Court mandated a payment  
7 process. And this also was very important because  
8 this allowed and, in fact, required the Ministry of  
9 Economy and Finance to establish an Administrative  
10 Procedure to be able to pay the Bonds, and it  
11 established exactly what the types of regulations had  
12 to be, the steps that had to be gone through in order  
13 to reach payment including authentication,  
14 registration, valuation, and determination of payment.

15 And this was confirmed by both Perú's  
16 Experts, Dr. Hundskopf and Dr. García-Godos.

17 Next slide.

18 And I want to just end noting that the Court  
19 recognized that there were challenges and discussion  
20 of the 2013 Decision going on in public. So, a month  
21 after the Decision, they met. They debated--all of  
22 the Magistrates debated the situation, and as the



1 record of their meeting indicates, they unanimously  
2 agreed this case is closed.

3 Thank you. Dr. Hamilton.

4 PRESIDENT FERNÁNDEZ ARMESTO: Mr. Hamilton,  
5 you have the floor.

6 MR. HAMILTON: --resolution was the  
7 cornerstone of the global resolution of the--

8 (Audio interference.)

9 (Stenographer clarification.)

10 MR. HAMILTON: If there is any doubt, the  
11 2013 Tribunal ruling was the cornerstone of the global  
12 resolution of the Agrarian reform debt.

13 PRESIDENT FERNÁNDEZ ARMESTO: How did that  
14 work with the Court Reporter?

15 REALTIME STENOGRAPHER: Much louder now.  
16 Thank you.

17 PRESIDENT FERNÁNDEZ ARMESTO: Thank you.

18 Mr. Hamilton.

19 MR. HAMILTON: Just very briefly, we are  
20 going to touch on Gramercy's unproven attacks.

21 Gramercy, strangely, attacks the resolution  
22 that finally brought the legal certainty that they had

1 been craving. Their issue is very simple: Gramercy  
2 just wants more. That is all that Gramercy ever wants  
3 is simply more.

4 This Court resolution clearly establishes and  
5 resolves the legal uncertainty and set the stage for a  
6 Bondholder process that has functioned as a global  
7 resolution of this problem. Keep in mind that  
8 Gramercy, despite a lot of mudslinging, has never  
9 delivered any meaningful evidence to undermine the  
10 origins or the validity of this Court Decision.

11 Minister Castilla expressly rejected  
12 allegations of interference, the Magistrates denied  
13 interference, and a criminal prosecutor confirmed the  
14 irrelevance of a proceeding related to the Liquid  
15 Paper issue about formalities of signature processes.

16 Very briefly, very briefly, given the time  
17 that we have, I want to note that Gramercy did not go  
18 through in its Closing Argument as in its Opening  
19 Argument, its fantastical timeline based on basically  
20 press statements, principally, trying to string  
21 together some sort of conspiracy theory about the  
22 origins of the Tribunal ruling.

1           And, in fact, Gramercy misuses the Transcript  
2 of Minister Castilla, and let's just be very clear  
3 what he said, and I will read briefly. Minister  
4 Castilla said: "I reject such statements and I reject  
5 those statements or assertions, period, 'punto  
6 final.'" Minister Castilla is a highly  
7 internationally respected public servant, and his  
8 testimony was clear and credible.

9           And you can look specifically at the  
10 exchanges between the President of the Tribunal and  
11 Minister Castilla regarding the reality that a  
12 Minister in Perú receives diverse officials in the  
13 normal course. And keep in mind what Gramercy  
14 acknowledged under cross-examination, and what the  
15 facts show is that it was Gramercy that was repeatedly  
16 visiting the Court.

17           You can look to R-467, the registry of visits  
18 to the Constitutional Tribunal, and you see over and  
19 over and over again visits by representatives of  
20 Gramercy, and an internal email to Mr. Koenigsberger  
21 explained: "We are discussing issues with the  
22 President of the Tribunal."

1           And under cross-examination,  
2 Mr. Koenigsberger, while clearly uncomfortable, made  
3 it clear that Mr. Seoane, for example, was both their  
4 Counsel and Counsel to other Bondholders, and they  
5 were actively advocating before the Court, and, as  
6 Mr. Koenigsberger acknowledged, it's a bit different  
7 than in the United States. You invest abroad,  
8 sometimes things are a little bit different. None of  
9 this reflects any sort of conspiracy theory.

10           And on top of that, the congressional  
11 record--Gramercy made a big deal in this case about a  
12 congressional investigation that was going to uncover  
13 things related to this Court Decision. It has  
14 resorted simply to ignoring the outcome of that  
15 investigation and, again, misusing the Transcript.

16           Members of the Tribunal, I encourage you to  
17 look at Slide 72 in the actual testimony of the  
18 Justices who repeatedly said that they rejected and  
19 did not suffer pressure or interference. They  
20 specifically say that they reject, that is  
21 "absolutamente falso," absolutely false that they were  
22 improperly interfered with.

1           That is what the record says. And that is  
2 why the Congress rejected those accusations. The  
3 white-out has been shown to be a red herring as well,  
4 maybe great for propaganda campaigns, but not so good  
5 as evidence. I, again, encourage you to look at the  
6 record.

7           And finally, a criminal process related to  
8 formalities of an administrative person in the Court  
9 found no relevance or impact on the validity of the  
10 Court Decision. Keep in mind, Members of the  
11 Tribunal, that the Government was not thrilled and did  
12 not embrace this resolution. In fact, it presented a  
13 "recurso" afterwards.

14           So, if there was this magical intervention,  
15 why were they so unhappy afterwards? The bottom line  
16 is that there was a recurso, the Court and the  
17 Justices confirmed their ruling, and the Government  
18 went ahead and duly implemented the ruling. End of  
19 story.

20           Bondholder process, briefly. The Minister of  
21 Economy complied with the Court mandate. As Minister  
22 Castilla and Vice Minister Sotelo explained, they duly

1 and in good faith carried out the instructions of the  
2 Constitutional Tribunal. They did so through the  
3 development of Decrees.

4 First, there were Decrees in 2014 that  
5 established the Bondholder process. They got the  
6 process moving, and they anticipated further Supreme  
7 Decrees. Subsequently, they refined the valuation  
8 methodology precisely to clarify and confirm the  
9 valuation before any methodology was ever applied to  
10 any Bondholder, and they established the payment  
11 option methodology.

12 Finally, soon after that, they adopted a bill  
13 that is--it is called a "TUA," it's a "texto único  
14 ordenado," and this is a very common instrument. It  
15 has been in other cases that Members of the Tribunal  
16 have been a part of related to the Republic of Perú.  
17 This is basically a consolidated text that leaves  
18 clarity published in El Peruano and in the public  
19 record, exactly the final steps of the process.

20 Now, one looks in cases to see was there a  
21 diligent, rational process? Yes. Did the Ministry  
22 comply with the Court ruling? Yes. There are over

1 400 pages of material in the record before the  
2 Tribunal related to internal studies and processes  
3 that led to the development of each Decree  
4 implementing the ruling of the Court.

5           And you can see, as an example, that they  
6 include Reports of a local financial expert and also,  
7 for additional security, an international financial  
8 expert as well. This is not the kind of scenario  
9 where a Government slaps something together and the  
10 Tribunal somehow needs to go in and second-guess  
11 everything it did.

12           This is a highly-regarded Ministry of Economy  
13 and Finance, very well-regarded around the world, very  
14 well-respected by international financial  
15 institutions, rating agencies in the international  
16 markets. They carried out the Court order. They duly  
17 implemented relevant Decrees, they duly developed all  
18 aspects of the process.

19           And these Decrees, let's be clear: They set  
20 out statements of reasons, pre-publication was  
21 unnecessary, and Gramercy, in its Closing Argument,  
22 again, is just trying to misrepresent the records

1 regarding the reasonableness of these Decrees.

2           The reality is that the kinds of attacks that  
3 Gramercy tried to make on the Decrees at the Hearing  
4 previously simply do not hold water. And perhaps,  
5 most telling, was that Gramercy's Expert brought in,  
6 in our view, in violation of due process, late in the  
7 proceeding to attack the Decrees, did not even review  
8 the complete set of Supreme Decree records, and I want  
9 to read in Spanish to be clear.

10           Gramercy's Expert brought in to attack the  
11 Supreme Decrees. This is what he said with respect to  
12 the deep record of documents showing how the MEF  
13 carefully prepared these Decrees, and I'll read in  
14 Spanish": "To be honest, there are documents that I  
15 had never seen before then. I am not sure whether  
16 they were on the record or not. But what I have  
17 received for analysis does not include all of those  
18 documents. I do not recall all of those figures, all  
19 of these documents. I do not recall the table at the  
20 end. I do not recall all of those figures, all of  
21 those documents."

22           Their own Expert crumbled--crumbled--and this



1 is someone who unfortunately has given conflicting  
2 Opinions in other cases and, in fact, is Claimants'  
3 Counsel against Perú in other Treaty proceedings.

4           The Bondholder process accordingly was  
5 established. This is a compensation procedure. It is  
6 a compensation procedure. As everybody knew from the  
7 beginning, this is not a contemporary Bond procedure.  
8 One of the interesting things that I noticed yesterday  
9 is that Gramercy describes laws as "offers," and  
10 Decrees as "negotiations." Not in this world. These  
11 laws are not offers to Gramercy.

12           They are laws, regulations, Decrees adopted  
13 to comply with applicable law, with instruments  
14 subject to applicable law, as everybody has known  
15 since 1969.

16           And so, this process, authentication,  
17 registration, actualization, and payment is a  
18 perfectly normal compensation procedure, where a  
19 Government is taking physical instruments that must be  
20 authenticated because you cannot have gross incidence  
21 or risk of fraud with respect to payments by the  
22 State. That's why they have a procedure. They have

1 duties as public officials.

2           And this procedure shows that the MEF has  
3 been paying Bondholders going through this process.  
4 It is in the hands of Bondholders to present their  
5 papers and participate. This is a thorough and  
6 rigorous process. We have demonstrated on the screen  
7 a single case record showing the amount of  
8 documentation prepared in order to process a  
9 Bondholder.

10           It is simple: It's an old process that a  
11 special procedure had to be devised for. If you  
12 wanted contemporary Global Bonds, go spend your  
13 resources on contemporary Global Bonds that have a  
14 different way of organizing files.

15           Nobody knows, Mr. President, how many  
16 outstanding Bonds there are. That's not the way this  
17 was handled. We all think in terms of the way things  
18 are done today. That is not the way that things were  
19 done in 1969. Payments were made for land, payments  
20 were made in paper. There is no registry. There is  
21 no clarity on the total Bonds outstanding. The  
22 numbers we hear from Gramercy are invented by Gramercy

1 for its own purposes.

2           And, finally, the Bondholder Process, yes, it  
3 was transparent: Information available, a clear  
4 website, explanation of valuation, detailed  
5 instructions, and answers to questions available to  
6 Bondholders. All of these reasons are why Dr. Wühler,  
7 an esteemed international expert, concluded that the  
8 process is transparent, it's fair, it's effective,  
9 it's a functioning and--and a functioning compensation  
10 procedure.

11           Final comment on Bondholder procedure.  
12 Gramercy undermined the global resolution. Gramercy  
13 from the beginning, with its deception and campaign of  
14 propaganda, has tried to undermine the functioning of  
15 the Bondholder procedure. It's done this  
16 intentionally to interfere with and reduce  
17 participation rates for its own aims to try to enhance  
18 its Treaty case.

19           It has attacked the Bondholder procedure  
20 using extreme propaganda and it's wrong. They have  
21 not been a key to a solution. Gramercy has  
22 specifically been the obstacle to a global resolution

1 of this problem, and this cannot stand. This cannot  
2 stand.

3 An esteemed Ministry of Finance duly  
4 implementing the ruling of the highest Court in the  
5 land, carrying out hundreds of pages of background  
6 material to prepare Decrees, to establish a  
7 compensation procedure, given the seal of approval by  
8 a leading international expert, it should not be  
9 attacked and undermined so that an entity that  
10 acquired distressed claims can try to maximize its  
11 chance for success in claims. And keep in mind--keep  
12 in mind some of the sellers to Gramercy would have  
13 done better with the MEF.

14 A final comment about the Bondholder process.  
15 And I refer you to R-197 as part of extensive  
16 discussion and exchanges between the Parties. And in  
17 this letter, Perú summarized the state of affairs in  
18 2017 as follows: Legal framework. Perú has taken note  
19 of Gramercy's observation that the Supreme Decree can  
20 be a feasible framework for resolution. Check.

21 Verification. Perú has taken note of  
22 Gramercy's acceptance that Perú needs to verify the

1 legitimacy of Agrarian Reform Bonds. Check.

2 Form of payment. Perú has taken note that  
3 Gramercy has confirmed its willingness to accept a  
4 noncash payment in the form of new Bonds, which is  
5 precisely what the Bondholder procedure offers.

6 Check.

7 On each of these core elements of the  
8 Bondholder procedure, Gramercy confirmed that they  
9 were sufficient. This was--came out of meetings that  
10 were not subject to confidentiality protections, they  
11 were never rebutted in any way whatsoever. The real  
12 issue for Gramercy was, and has always been, valuation  
13 because Gramercy wants more, and they will always want  
14 more.

15 Briefly as to aftermath. Gramercy has  
16 engaged in misconduct in this Arbitration, repeated  
17 procedural violations, repeated aggravation, and  
18 direct efforts to interfere with the attorney-client  
19 relationship, including using a shell company and  
20 lobbyists to interfere with the attorney-client  
21 relationship between the U.S. Government. It's wrong.

22 Gramercy has withheld evidence. I discussed

1 it in the Opening. It stands as a serious problem to  
2 the proceeding.

3 Gramercy never revealed its secret  
4 acquisition of Bonds. Gramercy sliced like a razor  
5 various representations it made to this Tribunal. "We  
6 made our final Land Bond purchase in 2008." There  
7 were multiple statements previously and throughout the  
8 document production process that were clearly designed  
9 and crafted to try to hide their 2017 acquisition.

10 Only on cross-examination did Gramercy  
11 finally admit the truth, that it was still buying  
12 Bonds while it was attacking Perú in public. And it  
13 bought new Bonds, 223 Bonds, \$15 million of its  
14 client's money, none of its own, valued the Bonds at a  
15 very high amount, sold interest in these Bonds to  
16 third parties.

17 And, by the way, Gramercy admitted that, in  
18 2017, it was a good idea to acquire Land Bonds. This  
19 is after the Court ruling, after the Supreme Decrees,  
20 and during the Bondholder procedures stage. Their  
21 conduct is at odds with their exaggerated arguments  
22 and propaganda.

1           And, by the way, the secret purchase  
2 Agreement that we uncovered only after the Tribunal  
3 ordered Gramercy to do so makes it clear they are  
4 teeing up more because you, Members of the Tribunal,  
5 I'm sorry to say, are pawns in Gramercy's campaign.  
6 They have already lined up more Bonds, probably for  
7 some other type of Treaty claim, which they would not  
8 answer at the Hearing, but you can see it reflected  
9 expressly in the document itself.

10           Keep in mind, all of this happened during a  
11 period of aggravation, a propaganda campaign, attacks  
12 on sovereign relations, deception of the Non-Disputing  
13 Party, where inaccurate information is given to the  
14 Non-Disputing Party, and, meanwhile, even in this  
15 proceeding, the Non-Disputing Party does not get full  
16 access to information.

17           Desperate lobbying, which actually  
18 intensified in 2020, despite the request of the  
19 President and repeated orders of the Tribunal. That's  
20 the reality. It's not just aggravation. It is Treaty  
21 abuse.

22           We will now take a break, Mr. President.

1           PRESIDENT FERNÁNDEZ ARMESTO: Thank you.

2 Thank you, Mr. Hamilton.

3           Let us get a time check from the Secretary so  
4 you know where you stand.

5           SECRETARY PLANELLS-VALERO: Thank you,  
6 Mr. President. The Respondent has one hour and  
7 3 minutes left.

8           PRESIDENT FERNÁNDEZ ARMESTO: One hour and  
9 3 minutes left. Very good. So, it is now 16:36 in  
10 Europe. Shall we say that we come back in 15 minutes?  
11 That would be 55. 16:55 we are back.

12           Would that be okay, Mr. Hamilton?

13           MR. HAMILTON: Five minutes before the hour,  
14 Mr. President. Sounds good.

15           PRESIDENT FERNÁNDEZ ARMESTO: Yeah, sounds  
16 good to everyone? Very good. Then we come back  
17 five minutes to the hour. Thank you.

18           MR. HAMILTON: Thank you very much.

19           (Brief recess.)

20           PRESIDENT FERNÁNDEZ ARMESTO: Now, we will  
21 resume the Hearing, and I give the floor back to the  
22 Republic of Perú.



1 MR. HAMILTON: Thank you, Mr. President.

2 I invite Ms. Menaker. Ms. Menaker is going  
3 to address jurisdiction and merits, together with our  
4 colleague Jonathan Ulrich. Thank you.

5 PRESIDENT FERNÁNDEZ ARMESTO: Very good.

6 Ms. Menaker, you have the floor.

7 MS. MENAKER: Thank you. I couldn't see all  
8 the Members of the Tribunal, but I do now. Thank you.

9 All right. So, good morning, good afternoon,  
10 Members of the Tribunal. As Mr. Hamilton said, I'm  
11 going to begin by discussing some of our  
12 jurisdictional objections and, in that regard, begin  
13 with our temporal non-retroactivity objection.

14 Now, yesterday Gramercy did not even discuss  
15 this objection and suggested wrongly that we may have  
16 even abandoned it, but that is far from the case. We  
17 very much maintain this objection. And, in fact, it  
18 is quite central. It goes to really the heart of the  
19 problems with Gramercy's case and the Tribunal's lack  
20 of jurisdiction.

21 As you know, the Treaty does not  
22 retroactively apply to acts or facts that predate its

1 entry into force. That is clear from the Treaty's  
2 language and is a principle of customary international  
3 law.

4 Now, ipso facto, the Treaty also cannot  
5 retroactively apply to disputes that predate its entry  
6 into force. If it does not even apply to an act, it  
7 clearly doesn't apply to a dispute that predates the  
8 Treaty's entry into force. And this is the fatal flaw  
9 with Gramercy's claims, which is that, at bottom,  
10 their Claim is that Perú, through its measures,  
11 destroyed the value of the Bonds and correspondingly  
12 failed to pay the so-called "intrinsic" value, the  
13 value that they think the Bonds are worth. But those  
14 things happened well before the Treaty entered into  
15 force and thus cannot form the basis for a treaty  
16 claim, and there is really no doubt about this that  
17 there--

18 Excuse me, can someone advance the slides.  
19 Thank you.

20 There can be no doubt about this because  
21 Gramercy has said so repeatedly, and even yesterday,  
22 for instance, they stated that their alleged

1 investment was a considered strategy to obtain money  
2 for a "stagnant debt."

3           So, what is stagnant debt? Stagnant debt is  
4 long, unpaid debt. So, they are asking for payment  
5 for long, unpaid debt, and that's the exact dispute  
6 that has persisted for decades. They said in their  
7 Post-Hearing Brief that they invested in a right to  
8 payment of the Land Bonds that Perú had not satisfied.  
9 Had not satisfied. It is something that happened in  
10 the past. It had been decades since the Bonds' face  
11 value had become worthless, and then there had been a  
12 dispute ever since then as to what amount, if any,  
13 Perú would pay for those Bonds. That is the crux of  
14 the dispute, and that dispute has preexisted for  
15 decades, well before the Treaty entered into force.

16           What is a dispute? At bottom, a dispute,  
17 again, is a disagreement about rights, a disagreement  
18 about legal rights. Here the dispute is what are  
19 Gramercy's or any other Bondholder's rights to payment  
20 to those Bonds. That's the dispute.

21           And when you're looking at whether a dispute  
22 preexisted, you need to look at what was the previous

1 dispute, what is the current dispute, and how do you  
2 tell if disputes are the same or they are different?

3 Well, the test is whether they concern the same  
4 subject matter, and we know that this concerns the  
5 same subject matter because we know what Gramercy did.

6 They didn't make an investment in--well,  
7 certainly not within the meaning of the Treaty and not  
8 within any normal understanding of the term. What  
9 they did is, they purchased preexisting claims. And  
10 when you look, they even have said that they became a  
11 party and took over some preexisting litigations. And  
12 they have discussed at length the Pomalca litigation.  
13 So, what was the basis for the Pomalca litigation?  
14 What were they seeking in the Pomalca litigation?

15 You've heard about this Expert Opinion that  
16 Gramercy has talked about that was submitted in that  
17 case. That Expert Opinion sought payment on the Bonds  
18 at CPI--to value the Bonds using CPI as well as  
19 compound interest annualized from the date of issuance  
20 of the Bonds. It's the exact same thing that they are  
21 seeking in this Arbitration. And that was a  
22 preexisting dispute. That has been disputed for ages.

1           So, I am now going to refer to some  
2 confidential materials, so I ask if we can just go  
3 into confidential session. And let me know when I can  
4 begin speaking.

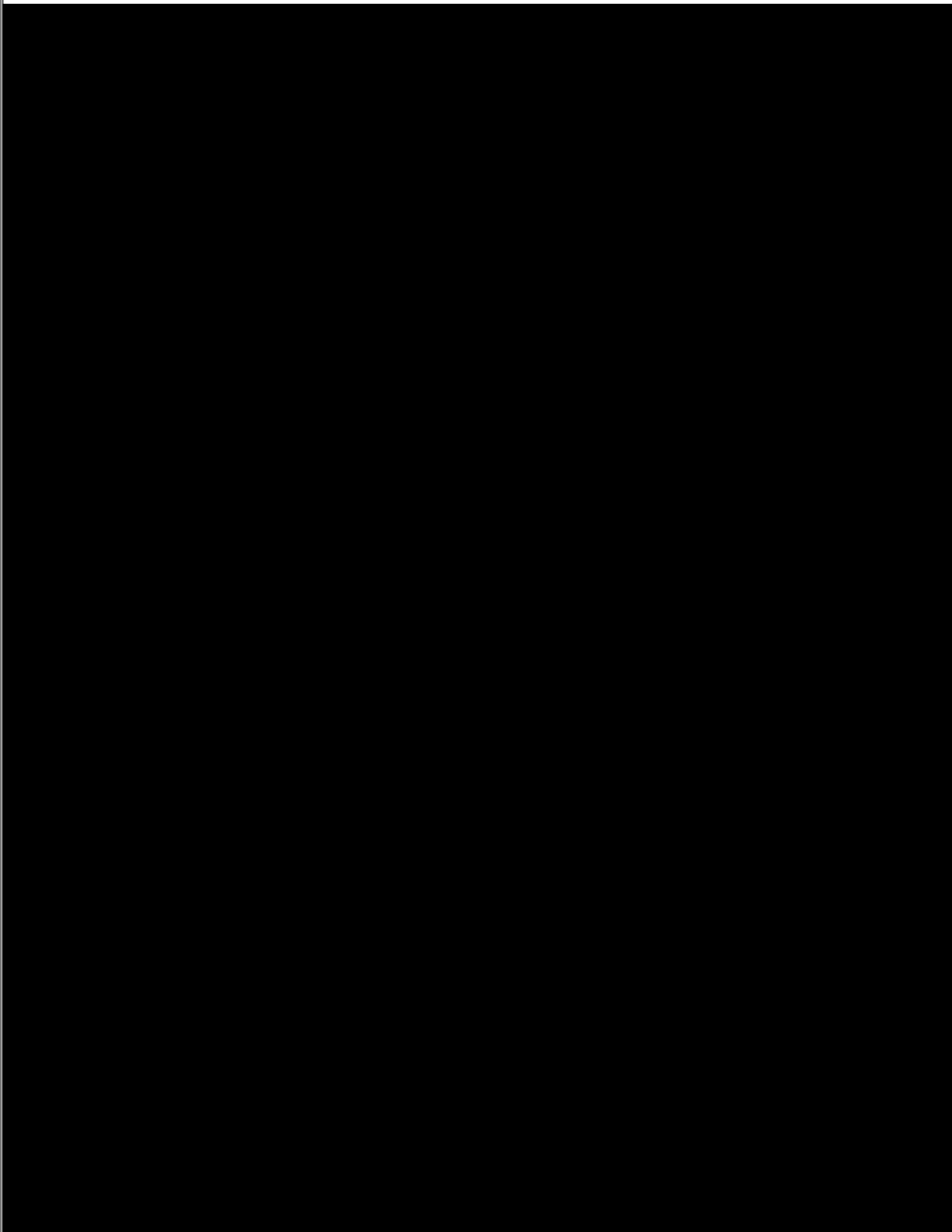
5           PRESIDENT FERNÁNDEZ ARMESTO: Thank you.

6           SECRETARY PLANELLIS-VALERO: Okay. Thank you.  
7 Yes. Yes. Give me a few seconds.

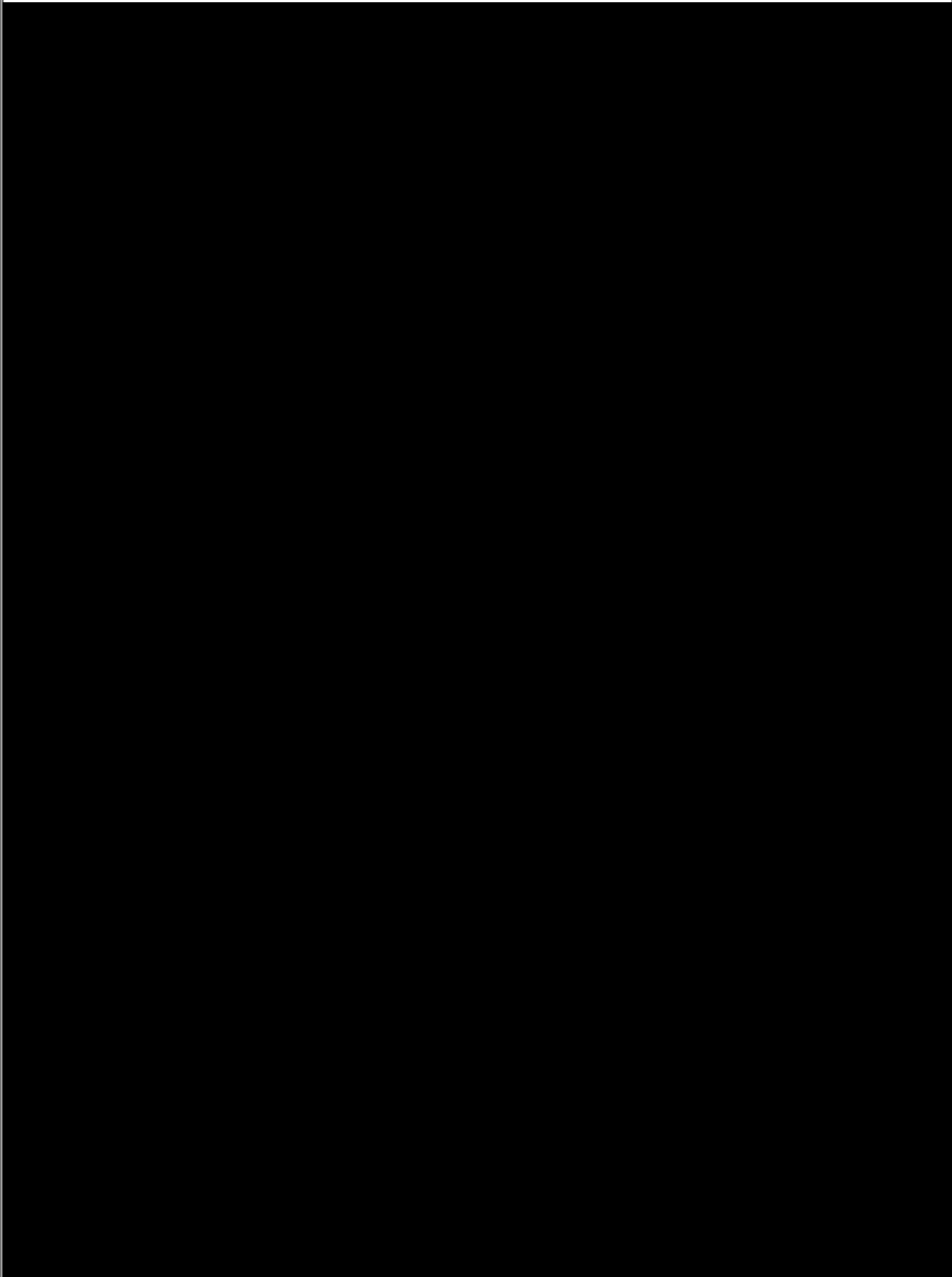
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9 information follows.)

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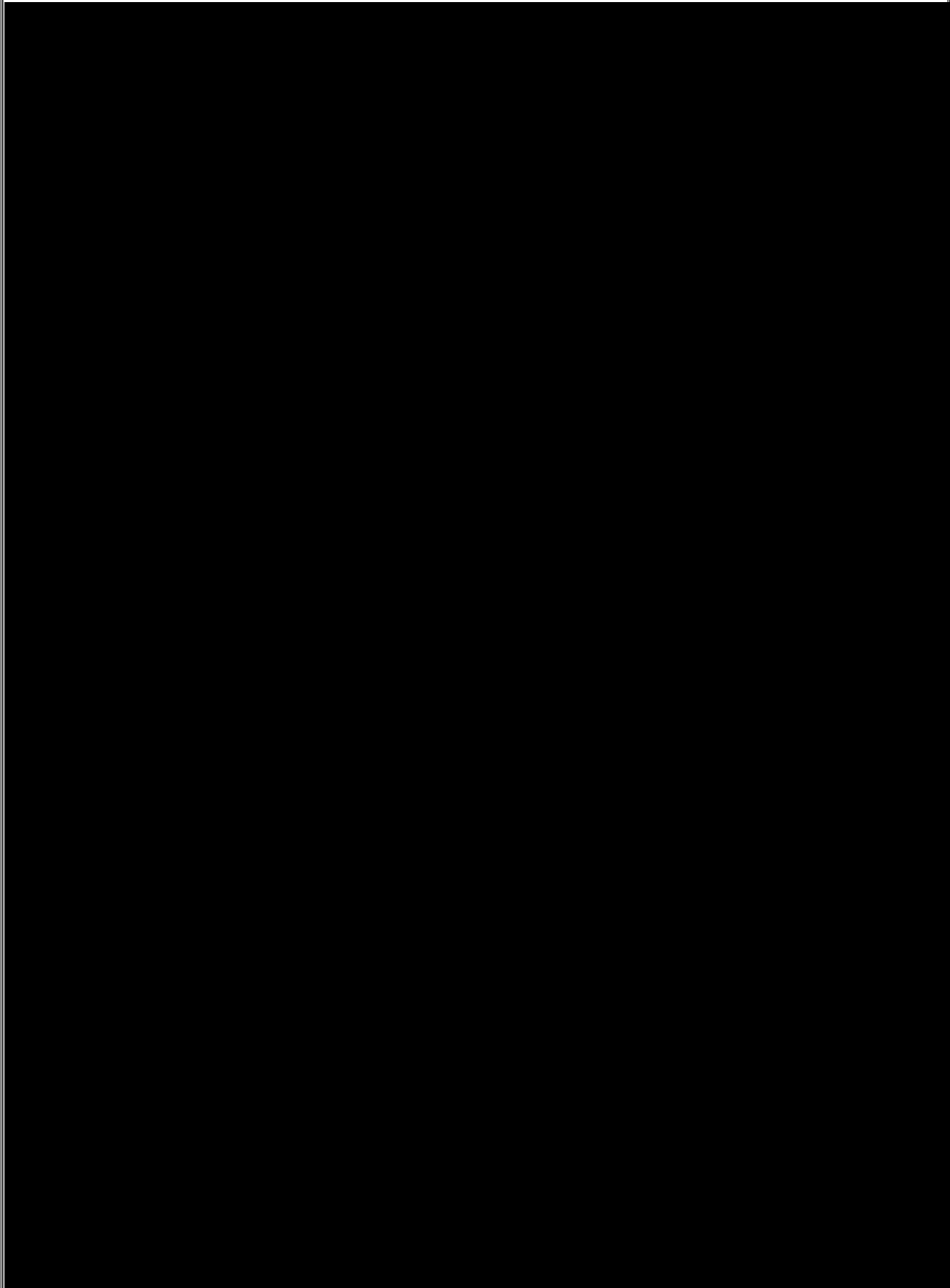
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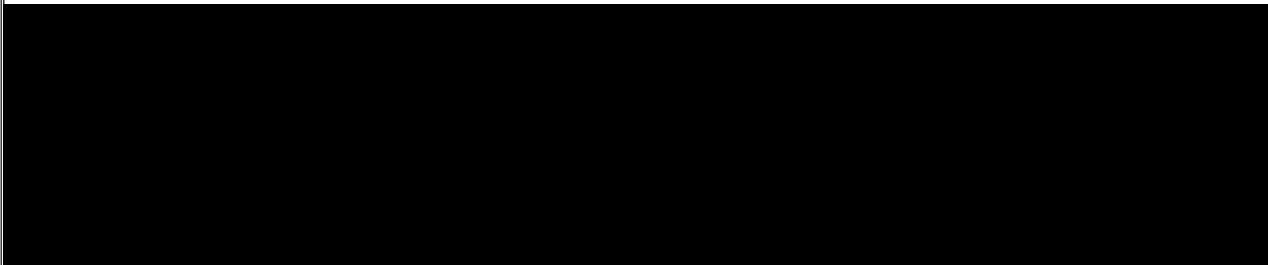
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(End of Attorneys' Eyes Only session.)

1 OPEN SESSION

2 SECRETARY PLANELLS-VALERO: Okay. The  
3 Non-Disputing Party is now back in the Hearing.

4 MS. MENAKER: Thank you.

5 I was just saying how unlike this is from an  
6 ordinary investment claim, where you have an investor  
7 that makes an investment, there is a measure that they  
8 believe is unlawful, and that measure causes them  
9 harm, and they bring a claim.

10 Here, Gramercy acquired a dispute with the  
11 objective of resolving that dispute, resolving that  
12 claim. There was nothing more to it than that. And  
13 yesterday Gramercy explained what they invested in was  
14 the hope that they could resolve this stagnant Land  
15 Bonds debt. That is a preexisting dispute. They  
16 purchased it hoping to resolve it, and they say that  
17 time and again. They say, "This was the time for Perú  
18 to finally clean up this Land Bonds debt."

19 So, as Gramercy said yesterday, once again,  
20 they emphasized repeatedly that this debt had remained  
21 unpaid for 40 or 50 years, and they said, "Perú must  
22 now at long last be compelled to pay what it owes."

1 This is using the Treaty as leverage in order to get  
2 that resolution to this preexisting dispute.

3 And this is the same thing as occurred in  
4 Phoenix Action. It is no different than in that case  
5 where the Claimant acquired an investment that was  
6 already burdened with litigation. All of the damages  
7 had already occurred when the alleged investment was  
8 made. That's the same thing here. All of the damage,  
9 the nonpayment of the Bonds, that had already occurred  
10 by the time Gramercy acquired the Land Bonds. They  
11 had remained unpaid for decades, and then Gramercy  
12 stepped in and purchased them in order to try to  
13 resolve the dispute to its satisfaction.

14 Now, in Phoenix Action, that was an abuse,  
15 and this is an abuse as well, but here, because of the  
16 timing, it is also--it also runs afoul of the non-  
17 retroactivity principle and results in a lack of  
18 jurisdiction of this Tribunal.

19 Now, secondly, Gramercy's claim also runs  
20 afoul of the three-year prescription period. As you  
21 know, the Treaty establishes a clear and rigid  
22 three-year prescription period, and where no claim may

1 be submitted to arbitration if more than three years  
2 have elapsed from the time that the Claimant acquired  
3 or should have first acquired knowledge of the alleged  
4 breach and knowledge that they have incurred loss or  
5 damage.

6 Now, of course there can be no Treaty breach  
7 before the Treaty enters into force, and so in that  
8 regard, this is fundamentally different from the  
9 nonretroactivity principle that I just discussed. And  
10 what's important here, though, is that you look at the  
11 date of when is the first date after the Treaty  
12 entered into force where they are alleging that was a  
13 breach, and when did they first acquire knowledge of  
14 loss or damage?

15 Now, the record is clear that they first  
16 appreciated alleged loss and damage and a breach no  
17 later than on July 16, 2013, the date of the 2013  
18 Constitutional Court Decision that we've heard so much  
19 about. And Mr. Koenigsberger, in the February  
20 hearing--at the February hearing said, you know, no,  
21 no, no, we had no idea what to make of the July 2013  
22 Ruling. He's trying to distance Gramercy from that

1 critical date because of this prescription period  
2 problem.

3           But the contemporaneous documents show  
4 otherwise, and you've seen here before the email chain  
5 between Mr. Koenigsberger and Mr. Cerritelli, where on  
6 the very day that that Constitutional Tribunal  
7 Decision is rendered, Mr. Koenigsberger said, "Where  
8 did they come up with this nonsense?" So, he's read  
9 it. He knows he doesn't like it, he calls it  
10 "nonsense." And then the Response is: "This is  
11 different from what we expected. We expected to  
12 represent a significant haircut." It doesn't matter  
13 that they can't quantify or doesn't quantify the  
14 haircut. He is saying this is different from what we  
15 expected, we don't like it. There is your breach.  
16 And your first appreciation of loss or damage is that  
17 you expected to represent a significant haircut.

18           And why is this? Because it's clear on the  
19 face of that Resolution that the Constitutional  
20 Tribunal had not adopted CPI and interest from the  
21 date of issuance. That was Gramercy's main points  
22 that they are still making here, that they've made in

1 the Pomalca Case. That's what they have been seeking,  
2 and it was clear on the face of that Resolution that  
3 that is not what the Court adopted. So, they  
4 immediately knew this doesn't comport with what we  
5 want; hence, in their mind, a breach. And it was  
6 going to result in lower payments to them; hence, an  
7 appreciation of loss or damage.

8           Now, in their Post-Hearing Brief, Gramercy  
9 characterizes this email exchange as a hasty email  
10 that was written by a "single Gramercy employee." But  
11 at the Hearing, Mr. Joannou testified that  
12 Mr. Cerritelli was "Gramercy's main man in Perú." He  
13 was the one who was most deeply involved with the  
14 acquisition of the Land Bonds and being there with  
15 respect to the Land Bonds. So that is simply not  
16 credible.

17           But there is also additional evidence in this  
18 regard. The following day, the very next day, a  
19 Gramercy-affiliated Expert states that: "Creditors  
20 might sue Perú in foreign or international court,"  
21 clearly appreciating the alleged loss or damage. And  
22 then we also have privileged withheld documents within

1 a couple of days that they prepared in anticipation of  
2 litigation and withheld.

3 Now, yesterday they also--excuse me, in  
4 February of the Hearing--Gramercy argued that they  
5 didn't have any appreciation of loss or damage until  
6 the issuance of the Supreme Decrees in 2014, but,  
7 again, that is belied by the evidence and, in fact, by  
8 Gramercy's own statements, even as recently as  
9 yesterday when Gramercy stated: "They understood that  
10 what the CT had ordered in July 2013 was something  
11 different. It understood it might have an adverse  
12 impact on its investment, but the extent of that  
13 impact wouldn't become clear until months later."

14 Again, the jurisprudence is clear. And this  
15 is a point on which the United States and Perú have  
16 expressly agreed, and that agreement shall be taken  
17 into account by the Tribunal, that you do not need to  
18 appreciate the full extent of the damage that you have  
19 suffered. What matters is the date on which you first  
20 appreciated that you have suffered some loss or  
21 damage. So, the fact that they didn't understand or  
22 appreciate the full extent of the damage is legally



1 irrelevant. This is a clear concession that they  
2 understood on that date that the Constitutional  
3 Tribunal's Decision had an adverse impact on their  
4 alleged investment. And they state this throughout  
5 their Post-Hearing Brief, in fact. They call the  
6 Decision the "smoking gun." They say it has features.  
7 It is error-filled. It's a flawed premise.

8           Again, what they are getting at is that it  
9 doesn't adopt CPI with interest from the issuance  
10 date. That is easy to see, not something that would  
11 take them a long time to find out--they knew it on the  
12 day it was issued--and not something that would take  
13 them any time at all to realize that it would result  
14 in a valuation far below what they have claimed that  
15 they are entitled to.

16           And again, recall, that in Gramercy's initial  
17 pleading, they stated: "The Government's intentions  
18 became apparent on July 16, 2013." Now, it was only  
19 later that they shifted their focus to later events  
20 when they appreciated the problem that they had here  
21 with the prescription period. And that problem, as  
22 you can see here, is that they did not submit their

1 claims to arbitration until--and GPH, excuse me, did  
2 not submit its claim to arbitration until August 2016,  
3 which is after that critical date.

4 Now, recall yesterday in response to some  
5 questions from the Tribunal, when the issue came up  
6 that this only--this objection only applies to GPH,  
7 and Counsel stated, well, you know, that's okay  
8 because, if you have jurisdiction over GFM, you can  
9 award damages to GFM "on behalf of GPH," but, no, you  
10 can't do that. There is no provision in the Treaty  
11 that allows a Claimant to stand in the shoes of  
12 another Claimant over which the Tribunal lacks  
13 jurisdiction and to award to this other Claimant  
14 damages suffered by the Claimant over which you lack  
15 jurisdiction. So, you can't do that.

16 So, that is why this does remain important,  
17 and also because GFM, in addition to GPH, clearly is  
18 not an investor, as my colleague Mr. Ulrich will  
19 discuss in just a few minutes.

20 Now, the problem with the prescription period  
21 stems from the fact that they did not submit compliant  
22 waivers until August of 2016, and it is clear from the

1 Treaty itself, as well as the U.S. submission, as well  
2 as jurisprudence, that no claim can be submitted to  
3 arbitration until you submit a compliant waiver, and  
4 it has to be compliant in both form and in material  
5 respect. And that's a condition precedent to the  
6 submission of a claim to arbitration.

7 Now, counsel yesterday said: "A qualified  
8 waiver is perfectly consistent with the Treaty." But,  
9 no, it's not. The very words of the Treaty say  
10 otherwise, as does consistent jurisprudence, as does  
11 the Agreement of the United States and Perú.

12 Counsel also went on to say, even if it  
13 weren't, "an imperfect waiver is still enough to stop  
14 the clock on the time bar." That, too, is incorrect.  
15 For that proposition, as you know, Counsel has relied  
16 on the Renco II Decision. Now, Renco I, to take you  
17 back to that, confirmed that an improper waiver is not  
18 a trivial defect, but a defective waiver goes to the  
19 heart of the Tribunal's jurisdiction, and Renco II  
20 doesn't change that in any regard.

21 Now, Gramercy has placed into the record for  
22 the Tribunal's consideration, and it's going to rule

1 on the issue, I believe, after the Hearing, the  
2 majority opinion in Renco II, and it says that the  
3 Tribunal's majority agreed or found that the  
4 submission of a Statement of Claim in the earlier  
5 Arbitration, even though that Arbitration was  
6 dismissed for lack of jurisdiction, it suspended the  
7 running of the prescription period.

8 Now, that is simply wrong. And I have quoted  
9 here from the dissent, which Gramercy did not include,  
10 nor did they make reference to the U.S. submission in  
11 this case, which also contradicts the Renco  
12 II Tribunal's ruling in that regard.

13 As the dissent explained: "The majority has  
14 engaged in an excess of jurisdiction by arrogating for  
15 itself a power which it clearly doesn't hold, and the  
16 Contracting Parties' agreement, again, is that the  
17 date of submission of an effective waiver is the date  
18 on which the Claim has been submitted to arbitration  
19 for purposes of 10.18.1" of that treaty.

20 Now, to just give you a hypothetical example  
21 to put this very clearly in perspective, and to  
22 explain why that Decision of the majority in Renco

1 II is clearly improper and is not only contrary to the  
2 Parties' agreement, but beyond the Tribunal's  
3 jurisdiction, I just want to explain how that Decision  
4 both renders ineffective both the prescription, the  
5 time bar provision in the Treaty, as well as the  
6 waiver provision, and it is contrary to the object and  
7 purpose of the Treaty.

8           So, if you imagine that a party has a claim  
9 in domestic court and then wants to bring a claim in  
10 arbitration, under the Treaty, they can do that as  
11 long as, if it's running up against the three-year  
12 period, they have to discontinue their domestic court  
13 proceeding and then go to arbitration. They have to  
14 waive their right to continue the domestic court  
15 proceeding.

16           But let's imagine they don't do that, which  
17 is what Gramercy did here. They put in the written  
18 waiver, but they don't discontinue the proceeding.  
19 That is a material waiver violation. Tribunals--Waste  
20 Management II, other Tribunals--have clearly found  
21 that is a violation that will render the Tribunal  
22 without jurisdiction.

1           Now, in that event, what if the State Party  
2 then raised an objection to jurisdiction on the  
3 grounds of the material waiver violation? It goes  
4 through briefing; it goes through a hearing. It takes  
5 two years. The Tribunal renders a decision, dismisses  
6 the case for lack of jurisdiction. By that time, the  
7 prescription period has run. It's been more than  
8 three years. But they are still going ahead in court.  
9 They wait another year while they go through the court  
10 proceeding. They get a court decision; they don't  
11 like it. It's unfavorable. So, they file a new  
12 arbitration.

13           By any standard, that new arbitration should  
14 be time-barred. What Renco II, what Gramercy, wants  
15 you to say is, no, it's okay, because we are going to  
16 consider that it's not time-barred. We are going to  
17 look at the time when you initially submitted that  
18 claim to arbitration. That cannot be right because it  
19 renders the prescription period entirely ineffective.  
20 It renders the waiver requirement entirely  
21 ineffective. That simply cannot be correct and should  
22 not be followed here.

1           And finally, very briefly, I want to make a  
2 few comments on abuse, because in addition to the lack  
3 of jurisdiction the Claim is also inadmissible because  
4 it is abusive. Even if there had been no  
5 jurisdictional bar acquiring an investment that is  
6 subject to a preexisting dispute is abusive because,  
7 just like the Tribunal in Phoenix Action stated, that  
8 type of an investment is not made in order to engage  
9 in national economic activity. It is made in order to  
10 transform a preexisting dispute into an international  
11 dispute, which is exactly what Gramercy did here.

12           Now, as the Tribunal in Philip Morris  
13 explained, an abuse of right also applies when there  
14 is an existing dispute, although in many cases, there  
15 will be a jurisdictional bar as well, as in our case.

16           Now, even if you find, however, that there  
17 wasn't a preexisting dispute, Gramercy's claim is  
18 still inadmissible as an abuse because the dispute was  
19 reasonably foreseeable. And, as the jurisprudence  
20 shows, an abuse can be found when a party engages in  
21 corporate restructuring, the same thing as acquiring  
22 an alleged investment, in order to gain access to

1 Treaty protection in order to bring a dispute that is  
2 foreseeable.

3           And what does it mean if a dispute is  
4 foreseeable? It means that it is within the  
5 reasonable contemplation of the investor, if there's a  
6 reasonable prospect that the measure which may give  
7 rise to a treaty claim will materialize. And the  
8 amount of time it takes for that claim to materialize,  
9 that treaty claim, or legislation or something like  
10 that, does not make it--is not determinative as to  
11 whether it is foreseeable or not.

12           Now, here, at a minimum, it clearly--this  
13 Arbitration was clearly within Gramercy's reasonable  
14 contemplation when it acquired the Land Bonds. What  
15 did Mr. Koenigsberger testify to? Once again, he  
16 testified that Perú wanted to kick the can to the next  
17 administration. They just didn't want to deal with  
18 it. They waited until the next President. See if  
19 that administration will deal with it. If not, they  
20 kept kicking it down. This happened for decades.

21           Was it reasonably foreseeable that that would  
22 continue to happen? Of course. Was it reasonably



1 foreseeable that they wouldn't get this grand virtuous  
2 circle of a resolution, whatever that means? Of  
3 course it was. Was it reasonably foreseeable that  
4 they would end up in a dispute, a treaty dispute? Of  
5 course it was.

6 He goes on to say that: "Of course we knew  
7 there was an investment treaty. That was a valuable  
8 safety net." But more than that, they said yesterday,  
9 Gramercy invested because it saw an opportunity to  
10 resolve the Land Bonds debt, and Gramercy understood  
11 that receiving payment on the Bonds would likely take  
12 time and effort, it might require consensus-building  
13 and compromise, and perhaps even an assertion of legal  
14 rights associated with the Bonds. Of course it might,  
15 because this had been a long-standing dispute. Of  
16 course it was reasonably foreseeable that it would end  
17 up in arbitration, just like we are now.

18 So, with that, I'm going to pass the floor to  
19 Mr. Ulrich, who will talk about the lack of investment  
20 and investor.

21 Thank you.

22 PRESIDENT FERNÁNDEZ ARMESTO: Thank you.

1 Mr. Ulrich.

2 MR. ULRICH: Thank you. And thank you,  
3 Members of the Tribunal. Let me jump right in here.

4 Even if you set aside the fatal  
5 jurisdictional flaws just covered, the fact remains  
6 that Gramercy didn't make an investment under the  
7 Treaty, and neither Claimant is an investor under the  
8 Treaty.

9 With respect to investment, the Treaty  
10 definition is clear and requires an assessment of the  
11 characteristics of an investment. The Contracting  
12 Parties agree that this is an important requirement.  
13 You didn't hear once from Gramercy yesterday about the  
14 submission of the United States providing its views,  
15 really, the agreed views of both Contracting Parties,  
16 on various points of interpretation of the Treaty.

17 You did hear Gramercy's attempts to equate  
18 the Land Bonds with other types of Bonds, like  
19 comparing two types of cars from different eras, they  
20 say. But that is not the relevant inquiry, as  
21 Professor Reisman concluded. One must always assess  
22 on a case-by-case basis the characteristics of

1 "investment."

2           Now, the Contracting Parties also agree that  
3 the enumeration of a type of asset among the Treaty's  
4 illustrative examples is not dispositive.  
5 Nonetheless, you heard yesterday that because Bonds  
6 are mentioned, they are presumed to have the  
7 characteristics of an investment. This was the  
8 refuted direct testimony of Gramercy's Expert,  
9 Ambassador Allgeier, who had said he was thoroughly  
10 familiar with the U.S. Government's understanding of  
11 its treaties.

12           On cross-examination, Ambassador Allgeier  
13 wasn't familiar at all with the U.S. Government's  
14 submission on this Treaty in this case. This Treaty  
15 says nothing about a presumption, and the Contracting  
16 Parties have said nothing about a presumption. The  
17 Ambassador also repeatedly acknowledged that treaty  
18 interpretation is not within the scope of his  
19 expertise.

20           The negative list to approach the  
21 negotiations--this is another point covered by  
22 Ambassador Allgeier. This, too, cannot obviate the

1 assessment of investment characteristics. On the  
2 Ambassador's reading, and Gramercy's, every single  
3 asset under the sun that is not expressly identified  
4 by the Contracting Parties on an exclusion list is  
5 automatically protected by the Treaty. That  
6 completely deprives the investment characteristics  
7 requirement in Article 10.28 of any meaning. Negative  
8 list is a negotiating approach. It is not a legal  
9 requirement. It is not a treaty requirement, as the  
10 Ambassador acknowledged. It doesn't control the  
11 analysis.

12           Now, consideration of investment  
13 characteristics. Gramercy is skeptical that the  
14 Salini factors could apply in an UNCITRAL Proceeding.  
15 Professor Reisman, Perú's Expert, also has been  
16 skeptical. He has been critical in other cases under  
17 other treaties. But who better than a Salini skeptic  
18 to explain why Salini is relevant in this case under  
19 this Treaty? As Professor Reisman explains, Salini  
20 and its jurisprudence are relevant to understanding  
21 the Treaty precisely because the Treaty refers to the  
22 characteristics of an investment. An interpreter, he

1 says, has no choice but to apply them.

2           Applying this criteria, we see that a treaty  
3 investment requires that an investor make its own  
4 contribution. It doesn't make an investment merely by  
5 receiving an asset, let alone by inheriting control of  
6 an asset years after the fact. A number of Tribunals,  
7 some mentioned here, others in our Briefs, have ruled  
8 on this need for an investor to make its own  
9 contribution and not to act merely as a conduit for  
10 contributions by third parties.

11           By the same token, an investor must assume  
12 its own risk, and in the investment treaty context,  
13 the jurisprudence shows, we are not just talking about  
14 commercial risk, like the risk of nonpayment under a  
15 contract or under a debt instrument. Investment risk  
16 means operational risk tied to the success or failure  
17 of an economic venture. As the Poštová Banka v.  
18 Greece Tribunal ruled, that is not the kind of risk  
19 involved even in the acquisition of sovereign bond  
20 interests.

21           A treaty investment requires a certain  
22 duration. You see here that the FedEx Tribunal

1 cautioned against short-term arrangements where an  
2 investor seeks to make quick gains and then leave.  
3 And, in KT Asia, the duration--the Tribunal ruled  
4 that, where the investor's plan was to turn around and  
5 sell the interest to third parties, the duration  
6 element was not met just because that onward sale to  
7 monetize the asset took longer than originally  
8 planned.

9           A treaty investment requires a contribution  
10 to the Host State's economic development. As  
11 Professor Reisman testified, this is relevant because  
12 it is reflected in the preamble of the Treaty, where  
13 the contracting Parties resolve to promote broad-based  
14 economic development, also a latent purpose of this  
15 entire genre of treaties. Here, again, the  
16 jurisprudence draws a distinction between a treaty  
17 investment and an ordinary commercial transaction.  
18 For fuller treatment of the preamble, including other  
19 elements of the Treaty's object and purpose which must  
20 be considered when interpreting the Treaty, I refer  
21 you to our Briefs in the interest of time.

22           Now, Gramercy's alleged bond investment

1 doesn't meet any of these investment criteria. Not  
2 its own contribution, not risk, not duration, not  
3 contribution to Perú's economic development.

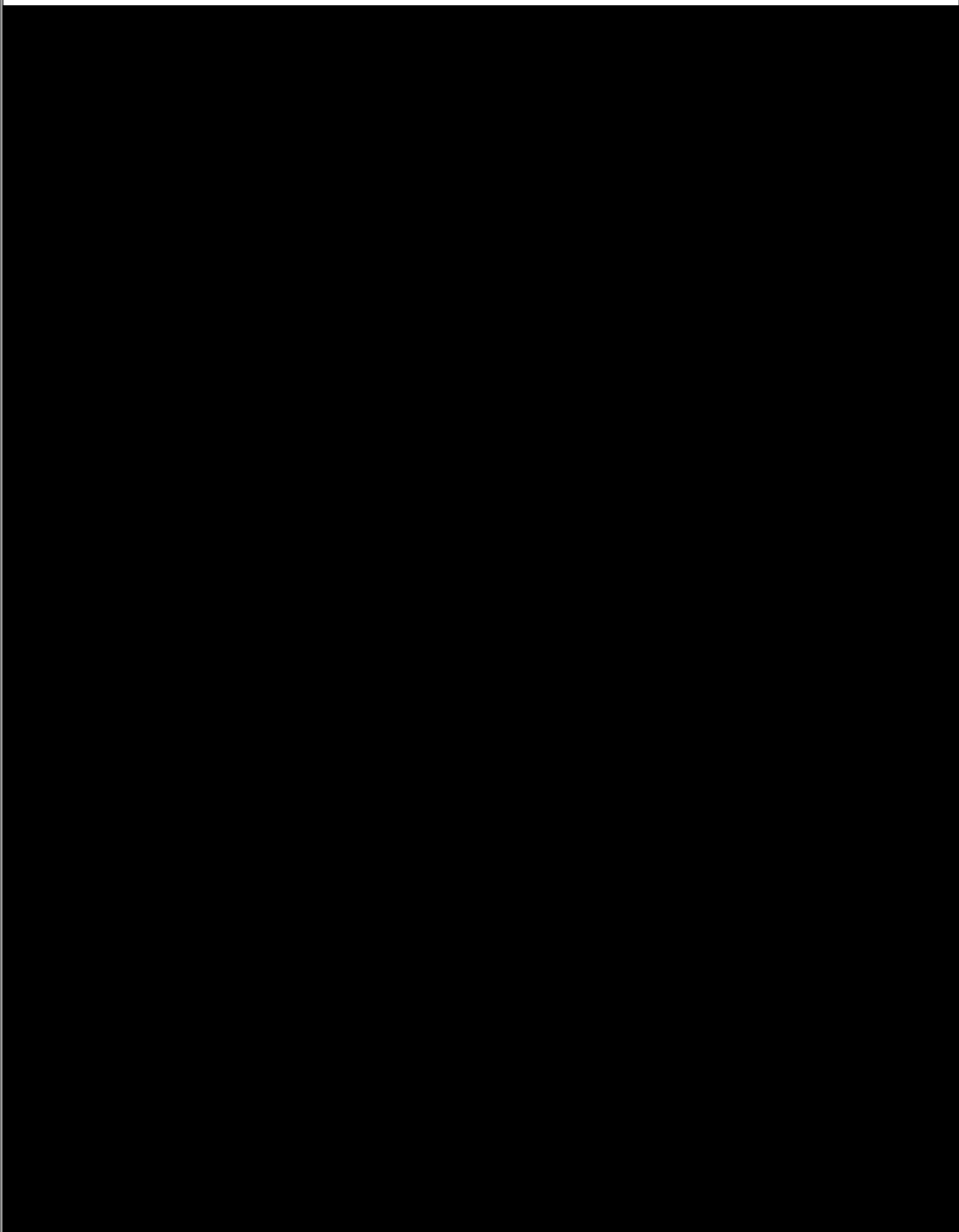
4           Much of the evidence relevant to this  
5 analysis has been designated confidential by Gramercy,  
6 so I need to ask that we enter into closed session,  
7 please.

8           SECRETARY PLANELLIS-VALERO: Okay. Thank you.  
9 Yes. Give me a few seconds.

10           (End of open session. Attorneys' Eyes Only  
11 information follows.)

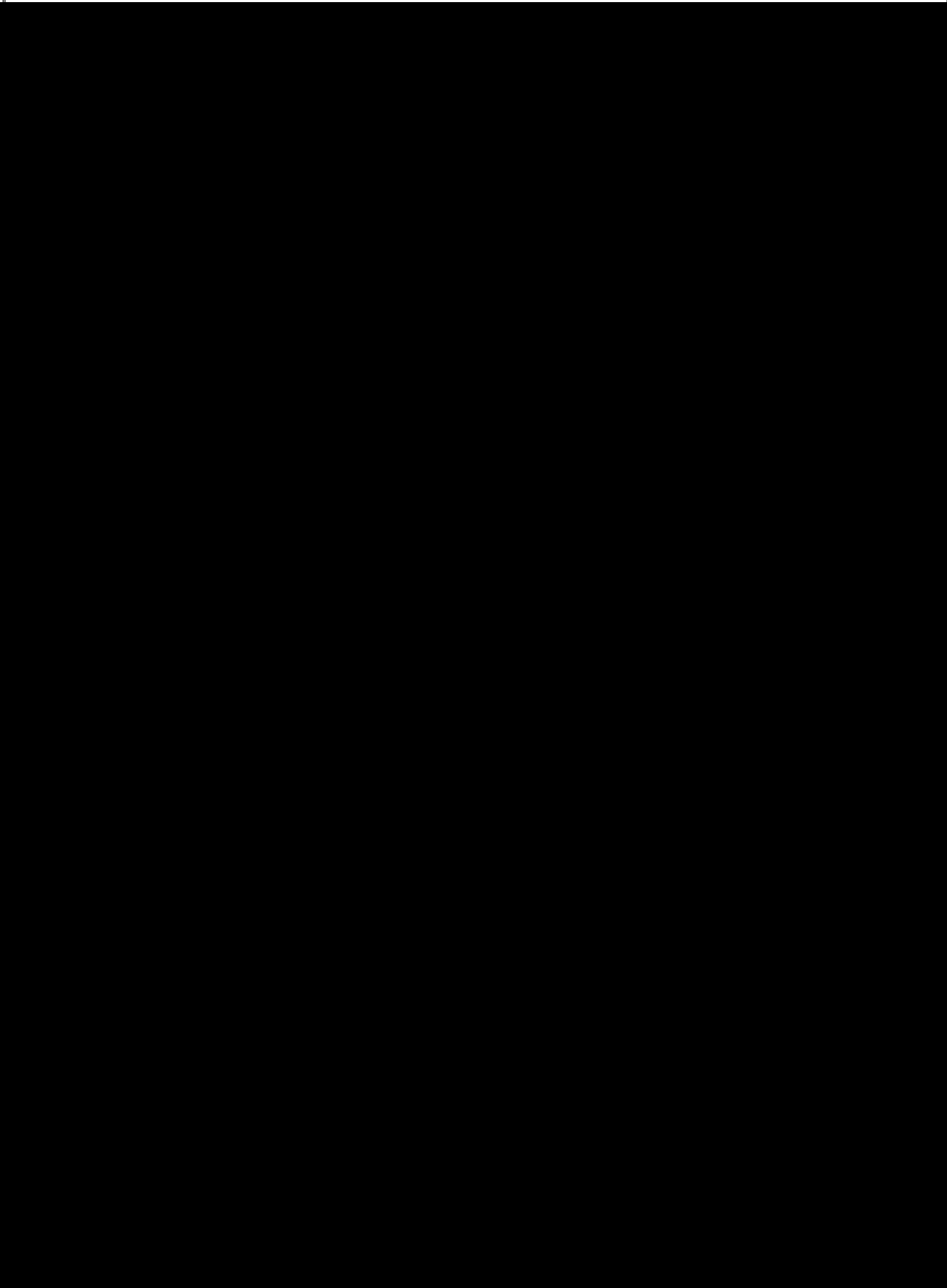
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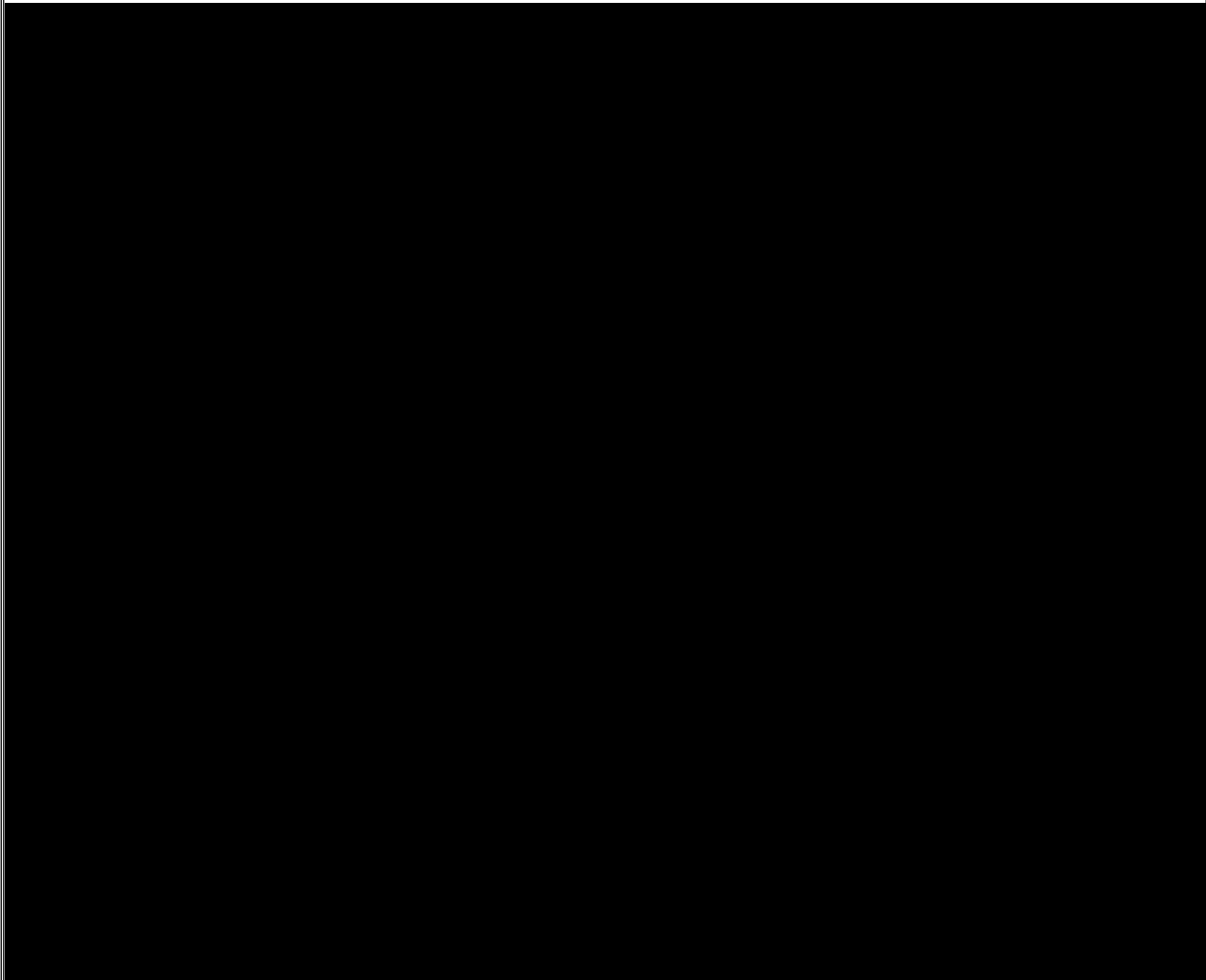
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(End of Attorneys' Eyes Only session.)

1 OPEN SESSION

2 SECRETARY PLANELLS-VALERO: The NDP is back  
3 into the hearing group. Thank you.

4 MR. ULRICH: Okay. Thank you.

5 All right. Let's discuss contribution to  
6 Perú's economic development. There wasn't any, not  
7 from GFM, not from GPH.

8 Now, we heard repeatedly yesterday that  
9 Gramercy planned to create a virtuous circle where it  
10 could catalyze a resolution of the Bonds supposedly  
11 with a wide range of corresponding benefits for Perú.  
12 But that alleged plan never materialized. In reality,  
13 Gramercy made one-off payments to bondholders using  
14 third-party funds. Gramercy repackaged bond interest  
15 for sale to third parties outside the Perú, and  
16 Gramercy generated fees for itself outside of Perú.  
17 Far from contributing to Perú, or to any economic  
18 venture creating value in Perú, Gramercy actively  
19 engaged in measures to undermine the economy in an  
20 attempt to pressure Perú to settle. That's not the  
21 type of conduct an investment treaty is meant to  
22 protect.

1           A quick note on Gramercy's two Experts,  
2 Ambassador Allgeier and Professor Olivares-Caminal.  
3 Neither had assessed the actual circumstances of  
4 Gramercy's bond acquisitions. They hadn't seen the  
5 Purchase Contracts, they weren't aware of the funding  
6 arrangements. As Ambassador Allgeier said, for  
7 example, "I am totally unfamiliar with the Bonds  
8 themselves and the transactions that took place."

9           In other words, they assessed the concept of  
10 Bonds in a vacuum, entirely devoid of context, without  
11 any consideration for the actual characteristics of  
12 Gramercy's alleged investment in this case. That is  
13 contrary to what Article 10.28 requires.

14           Now, jurisprudence on contemporary sovereign  
15 debt reinforces that the Bonds are not investments  
16 under the Treaty. We heard yesterday from Gramercy  
17 that "Perú has never attempted to distinguish this  
18 case from all the other cases in which Tribunals have  
19 found Government Bonds are, indeed, investments."

20           Well, that's not true. In fact, Perú  
21 introduced the analysis of this jurisprudence in a  
22 Statement of Defense because Gramercy didn't mention

1 any of these cases in its Statement of Claim. Perú  
2 also addressed the cases later in Briefing and also at  
3 the Hearing, as we see in an example from a slide in  
4 our Opening Argument and conclusions by  
5 Professor Reisman saying that the Land Bonds are  
6 nothing like the Bonds at issue in  
7 *Abaclat v. Argentina*. This record speaks for itself.

8           The Treaty negotiating history further  
9 confirms Gramercy didn't make an investment. As we  
10 see here, the testimony of Perú's Witness,  
11 Mr. Herrera, the chief negotiator for Perú, and  
12 Gramercy's Expert, Ambassador Allgeier, is aligned.  
13 The Bonds were never discussed at the negotiating  
14 table and are not mentioned in any of the minutes of  
15 the 13 rounds of Treaty negotiations. This hardly  
16 supports Gramercy's theory that the Contracting  
17 Parties were mindful of the Bonds, specifically  
18 accounted for them in negotiations, and intended for  
19 them to be covered under the Treaty.

20           Now, Ambassador Allgeier also testified that  
21 a number of pre-Treaty disputes involving U.S.  
22 investors regarding the land reform were "proverbial

1 sword of Damocles over the negotiations." As we saw  
2 at the Hearing, those disputes concerned expropriated  
3 property, not Bonds.

4 For example, the LeTourneau Case concerned a  
5 dispute over payment for a road which had been  
6 adjudicated in Peruvian Court. It wasn't a dispute  
7 over the Bonds.

8 Ambassador Allgeier ultimately admitted that  
9 he hadn't gone into details of that case or any of the  
10 other cases his Report had referenced.

11 And as contemporaneous diplomatic cables also  
12 showed, the U.S. Embassy in Perú actually recommended  
13 the removal of a number of cases from consideration  
14 due to lack of continued involvement of the investors.  
15 This is hardly evidence that the Land Bonds were a  
16 burning issue at the Treaty negotiations and that the  
17 Contracting Party specifically intended that they  
18 would fall under the protection of the Treaty. The  
19 link that Gramercy has tried to manufacture here does  
20 not exist.

21 If I may briefly make one further point here,  
22 and, then, in the interest of time, we are going to



1 pass it back to Ms. Menaker and on to further issues.

2           This issue I'm going to address is that of  
3 the beneficial owners. So, we see a critical issue  
4 that came to light only years into this proceeding  
5 with revelation of materials with Gramercy's Statement  
6 of Reply is the particular nature of the beneficial  
7 owners of Gramercy's alleged Bonds. As we  
8 briefed--I'm not going to go over it, again,  
9 here--Gramercy doesn't have standing to bring claims  
10 with respect to the interest of third-party beneficial  
11 owners.

12           Can we advance the slides, please?

13           And at the Hearing, both  
14 Mr. Koenigsberger--keep going.

15           Can we had advance the slide, please? Again.  
16 Next one. Thank you.

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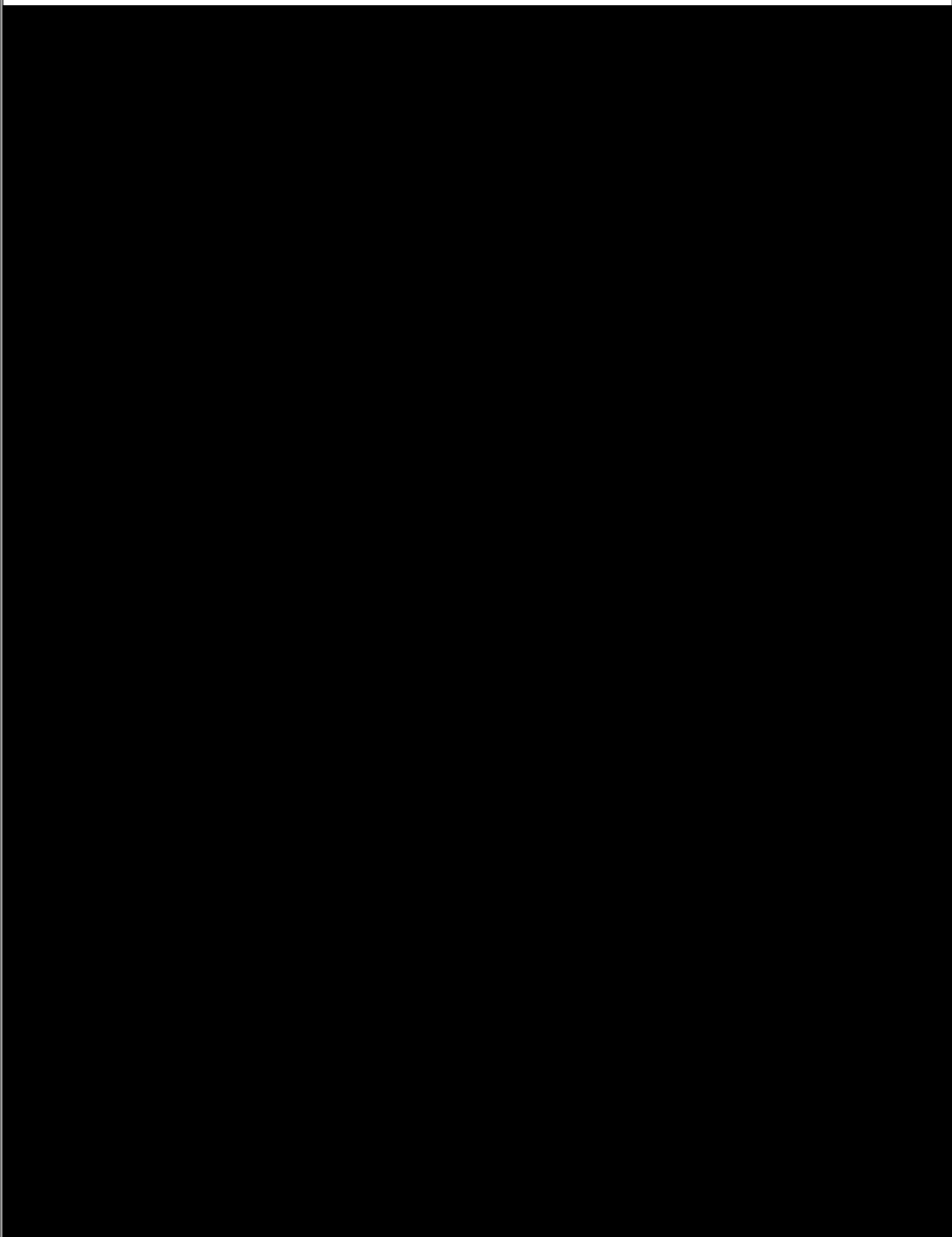
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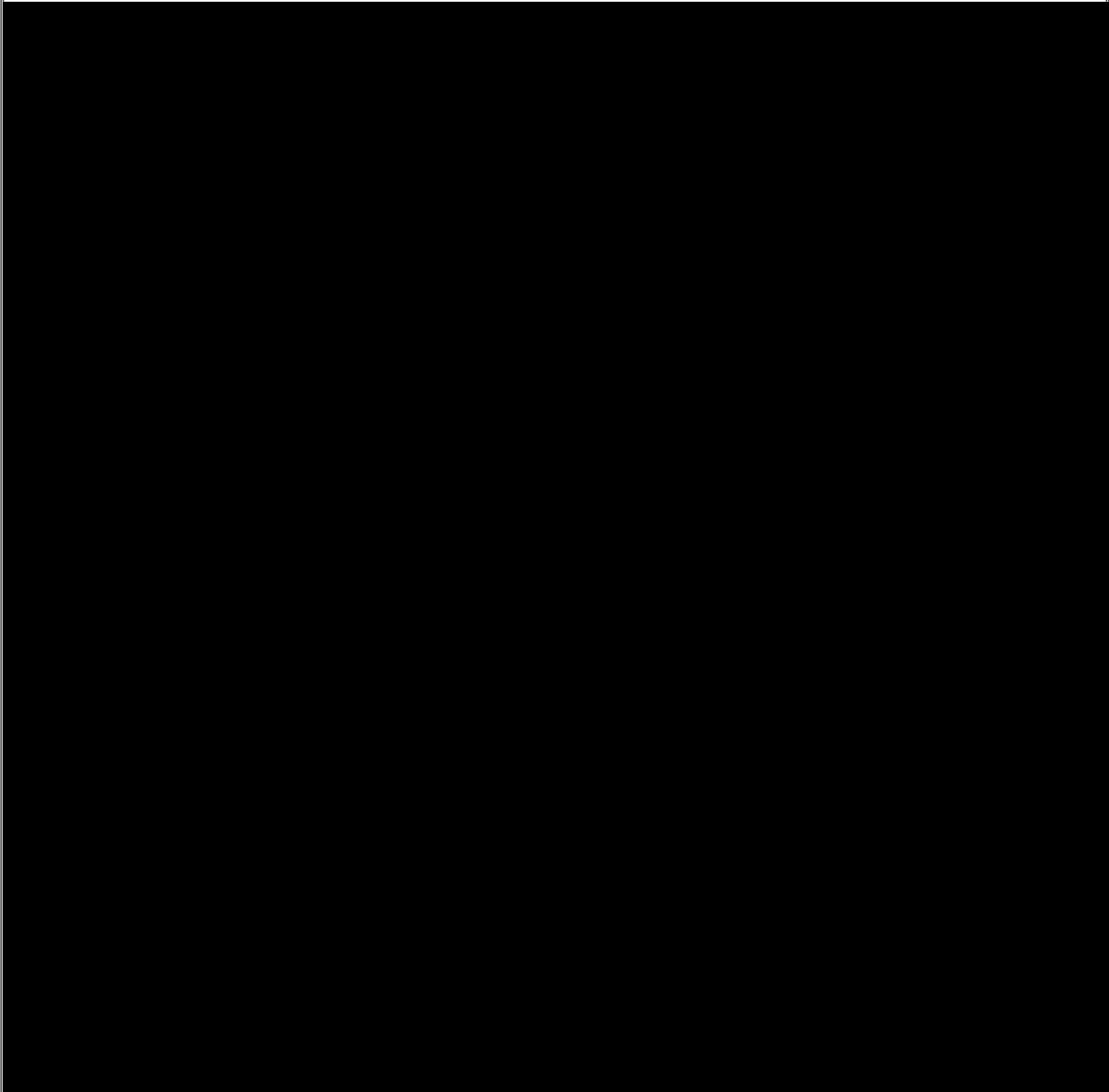
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CONFIDENTIAL SESSION

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(End of Attorneys' Eyes Only session.)

1 OPEN SESSION

2 MS. MENAKER: Let me know when I can begin,  
3 please.

4 SECRETARY PLANELLS-VALERO: The NDP is back  
5 in the room. Thank you.

6 MS. MENAKER: Thank you.

7 So, Gramercy's expropriation claim fails at  
8 the threshold because it cannot show that Perú has  
9 destroyed all or virtually all of the value of its  
10 investment, which is, of course, the requirement  
11 for--one of their requirements to show an  
12 expropriation. The Bonds, admittedly, were worthless  
13 on their face well before Gramercy acquired them and  
14 well before any of the Challenged Measures. And this  
15 destruction of the bond value was neither unlawful nor  
16 did it occur after the Treaty entered into force.

17 Now, yet in their Post-Hearing Brief,  
18 Gramercy said that Perú does not dispute that  
19 Gramercy's purchase price represented a steep discount  
20 to its Lands Bonds' value--true value--and that the  
21 reason for the discount was Perú's own conduct. And  
22 yesterday Gramercy said: "It was the Government that

1 confiscated the land the size of Portugal and did not  
2 pay for it. It was the Government that drove the  
3 economy into the ground and initially undercut the  
4 value of the debt."

5           However, it is undisputed that the Bonds  
6 became virtually worthless as a result of years of  
7 economic instability and severe inflation, not because  
8 of any unlawful conduct by Perú, and, in any event,  
9 this conduct occurred well outside of the time that  
10 the Treaty was in force. And Mr.--Professor Edwards  
11 recognized this. It was a result of severe  
12 hyperinflation that rendered the Bonds facially  
13 worthless.

14           In any event, the value of the Bonds has not  
15 been destroyed by Perú's actions because Perú has  
16 offered substantial compensation to Gramercy as well  
17 as other holders of Bonds that have been  
18 authenticated, but Gramercy chose to refuse that  
19 compensation. As you've heard many times, Gramercy  
20 paid \$33 million for these Bonds. If they had gone  
21 through the bondholder process, they could have  
22 obtained \$34 million.

1           Now, yesterday Gramercy said that the bond  
2 process offers "trivial amounts of money of which the  
3 society should be ashamed." At the same time,  
4 Gramercy yesterday said that the Sellers, the Peruvian  
5 bondholders that sold them their Bonds, agreed to sell  
6 them to Gramercy because Gramercy paid them fairly.

7           Now, Members of the Tribunal, these two  
8 statements are simply irreconcilable because Perú is  
9 offering, essentially, what Gramercy paid for the  
10 Bonds, which means that the bondholders who sold to  
11 Gramercy would have gotten approximately the same  
12 amount had they gone through the bondholder process.

13           Now, some of them, as you've seen, could have  
14 gotten more, would have gotten more. Some would have  
15 gotten slightly less; but, on average, approximately,  
16 it's the same amount. They can't, on the one hand,  
17 say that they treated these bondholders fairly, they  
18 paid them amounts that were fair, that represented the  
19 value of the bonds, and that they should be happy, and  
20 these Bondholders are very, very happy to have  
21 received this from Gramercy; and, at the same time,  
22 call it shameful that Perú would have offered them the

1 same amounts and would offer Gramercy the same amount,  
2 that is simply irreconcilable.

3           The other thing that defeats their  
4 Expropriation Claim is their Tranche 2 purchases, and  
5 you heard nothing about this yesterday from Gramercy.  
6 2017, well after any of the acts that Gramercy is now  
7 complaining about in this Arbitration, they went out  
8 and purchased additional Bonds.

9           Now, when can you ever imagine a Claimant  
10 having an investment that has been expropriated and  
11 then they go out and they purchase that same  
12 investment? Of course not. It had to have had value.  
13 It could not have been substantially devoid of all  
14 value if they went out and they actually purchased  
15 additional Bonds.

16           Now, the other aspects that one looks at when  
17 determining whether there has been an expropriation in  
18 addition to showing that a financial impact, that it  
19 was all or virtually all destroyed, you look at the  
20 character of the measure and whether there have been  
21 reasonable investment-backed expectations that have  
22 been quashed by the measures, and both of those



1 factors also doom their expropriation claim.

2 Now, with respect to the character of the  
3 measure, that's because this measure at issue here,  
4 the bondholder process, it applied to all Bondholders.  
5 It was a general application. It served a legitimate  
6 public interest of resolving a decades-long dispute.  
7 It was implemented on the basis of fundamental public  
8 welfare objectives, including promoting the public  
9 general welfare, providing basic services, ensuring  
10 that there was money available to provide those  
11 services, et cetera.

12 Yesterday, counsel referenced the Siemens  
13 Case and said that's insufficient. The Siemens Case  
14 is inapposite. That case concerned a measure which  
15 was a Government decree that terminated the Claimant's  
16 contract. The Claimant had, what amounted to, a  
17 12-year-long contract and, pursuant to Decree, the  
18 Government terminated that contract. That is a  
19 specific measure aimed at a specific Claimant. It is  
20 not a measure of general application that is adopted  
21 in pursuit of these objectives here, and it is  
22 completely inapposite.

1           Now, with respect to reasonable expectations,  
2 we have shown at length this morning that Gramercy had  
3 no reasonable expectations. They knew that the Bonds  
4 were subject to long-standing uncertainty and dispute.  
5 And, in the interest of time, I'm not going to repeat  
6 all of that here. In fact, I'm not going to repeat  
7 any of it here.

8           MS. BIRKLAND: This is confidential, I  
9 believe. This is a confidential slide.

10          MS. MENAKER: No, I'm not. We are skipping  
11 over those slides in the interest of time.

12           And I'm only going to mention that you have  
13 seen time and again the consistent lobbying if they  
14 had reasonable investment-backed expectations. That  
15 means that there was certainty. You wouldn't be  
16 lobbying. What are you lobbying for to change the law  
17 if there is certainty? Why are you going to court if  
18 there is certainty? Why are you only floating a test  
19 case? But I urge the Tribunal to look at the various  
20 additional quotations on the slides when you have  
21 time.

22           With respect to the Minimum Standard of

1 Treatment Claim, there, that claim is largely based on  
2 an argument that there has been a violation of fair  
3 and equitable treatment because Gramercy's legitimate  
4 expectations have allegedly been frustrated by Perú's  
5 measures. And that claim is also doomed to fail  
6 because, while legitimate expectations are a factor  
7 that is taken into account in an expropriation, it is  
8 expressly not a part of the customary international  
9 law Minimum Standard of Treatment. On this, the  
10 contracting Parties to the Tribunal agree. You have  
11 jurisprudence from Tribunals interpreting treaties  
12 similar to this one, as well as ICJ jurisprudence  
13 showing that.

14           So, then, when you look, what do they have  
15 left? When you're looking at a fair and equitable  
16 treatment standard--excuse me--violation in a  
17 nonjudicial context, the standard is indisputably very  
18 high, and they have not come close to meeting it.  
19 Instead, they rely on a host of arguments that these  
20 measures were contrary to Peruvian domestic law. But  
21 that alone is woefully insufficient to show a  
22 customary international law Minimum Standard of

1 Treatment violation.

2           Yesterday, Gramercy focused on some alleged  
3 domestic law violations and discussed, in particular,  
4 the prepublication requirement under Peruvian law.  
5 And it said that this requirement, in fact, emanated  
6 from our Treaty itself, and then was enacted into law  
7 in Perú in order to implement the Treaty's  
8 requirements. But that does not make noncompliance  
9 with that provision an FET violation.

10           And it is quite the opposite because our  
11 Treaty has express terms that says a breach of another  
12 provision of this Treaty does not constitute a breach  
13 of the customary international law Minimum Standard of  
14 Treatment. And the Tribunal will recall that the  
15 *Metalclad v. México* Decision was partially annulled,  
16 partially set aside for this very reason.

17           That Tribunal found a violation of the  
18 Minimum Standard of Treatment on the basis of alleged  
19 violations of transparency obligations that were part  
20 of other chapters of the Treaty, and the Court that  
21 set aside that Award partially on those grounds said  
22 those other violations do not constitute Minimum

1 Standard of Treatment violations.

2           So, instead, you have a host of complaints  
3 about a process that my colleagues discussed this  
4 morning in a lot of detail, so I won't repeat that  
5 here, but to say that also their complaints about  
6 alleged lack of consultations are inapplicable. This  
7 is not a restructuring, a global restructuring. They  
8 have pointed to no binding international--customary  
9 international law that would require the kind of  
10 procedure that they now are looking for.

11           And, at the end of the day, really, this is  
12 just post hoc complaints by them because, as my  
13 colleagues also showed, they didn't boycott this  
14 process because of these alleged procedural defects,  
15 of these shortcomings. At bottom, they did not like  
16 the valuation. They did not like the amount of money  
17 that they would get from this procedure, and that's  
18 what their complaint is.

19           And that is something that is well beyond the  
20 purview of this Tribunal to review and to decide that  
21 that would constitute a violation of the customary  
22 international law Minimum Standard of Treatment.

1           And, again, FET clearly does not provide an  
2 insurance or a guarantee for speculative investments.  
3 When you look at the Antin v. Spain case, I think it  
4 is quite instructive because there you had also a  
5 regulatory system that was in flux. You had people  
6 coming in, investing in solar power, but the market  
7 was overheated, and the Government was talking about  
8 having to do something about it.

9           They were debating what kind of legislation  
10 could we put in place? What new regulations? And  
11 this investor ran in, knowing this in the background,  
12 made an investment, and then when the law did change,  
13 they said, oh, wait, look, our expectations have been  
14 frustrated. This is an FET violation.

15           The Tribunal dismissed that, and they called  
16 that investor's actions opportunistic. That fits  
17 Gramercy to a T. They are opportunistic. They piled  
18 in to take advantage of laws which they knew were in a  
19 state of flux. All they had was a speculative hope.  
20 That hope is not protected by the Minimum Standard of  
21 Treatment.

22           Now, very briefly, Gramercy yesterday did not

1 even address their denial-of-justice claim, and that's  
2 clearly why they didn't do so is because they don't  
3 have standing to bring one. They--all of their  
4 complaints are with respect to the 2013 Constitutional  
5 Tribunal Decision, and they were not a Party to that  
6 Claim, that Case. And we pointed this out and they  
7 had no response whatsoever. So, they can't bring a  
8 denial-of-justice Claim.

9           So, now they tried to bring an Effective  
10 Means Claim. They can't do that either. They can't  
11 import the "effective means" provision through the MFN  
12 provision into this Treaty. Both of the Parties agree  
13 on that. It is clear in the text of the Treaty  
14 itself. It just simply cannot be done, but, at  
15 bottom, it fails for a number of different reasons in  
16 addition to all of the reasons we've discussed when we  
17 discussed the substance of the 2013 Constitutional  
18 Court Decision.

19           And, finally, with respect to national  
20 treatment on which Gramercy, again, that--spent very  
21 little time yesterday, that theme Claim also  
22 necessarily fails. They have not even identified a

1 relevant comparator. They are purporting to compare  
2 themselves to all the Peruvian Bondholders, which are  
3 largely comprised of a group of individuals with  
4 comparatively small holdings and various different  
5 circumstances.

6 But, anyway, they haven't shown any disparate  
7 treatment on account of nationality, which is what the  
8 national treatment obligation protects, and, at  
9 bottom, their national treatment claim rests on an  
10 irrelevant payment structure for small payments.

11 Yesterday, Gramercy said, quote, "it was the  
12 last in line to receive payment." That is gross  
13 misstatement, or it grossly misconstrues the nature of  
14 this provision in this Decree.

15 All this Decree says is that, when you go  
16 through the Bondholder process, you get paid in Bonds.  
17 However, for \$30,000 you can opt to get cash. But if  
18 the Government runs out of cash, then they have an  
19 order of priority, which means, for Gramercy's  
20 \$1.8 billion claim or \$840 million claim, it would  
21 have been maybe entitled to get \$30,000 of that in  
22 cash, if they were in the Order of priority and the



1 Government hadn't run out of cash.

2           This cannot form the basis for a national  
3 treatment Claim as the President recognized at the  
4 February Hearing for this arbitration. This  
5 provision, it's irrelevant. It may be important for  
6 small Bondholders, not for Gramercy. Gramercy, in any  
7 event, didn't participate in a process, and all along  
8 it said it was happy to receive Bonds.

9           So, with that, I thank the Tribunal for its  
10 attention, and I turn the floor over to my colleague,  
11 Mr. Llano.

12           PRESIDENT FERNÁNDEZ ARMESTO: Thank you. Let  
13 me, before--let me get a time check from the  
14 secretary.

15           SECRETARY PLANELLS-VALERO: Mr. President,  
16 the Respondent has one minute of its time left.

17           PRESIDENT FERNÁNDEZ ARMESTO: Very good. I  
18 think Dr. Llano, you wanted to, say, to take the  
19 floor?

20           MR. LLANO: Yes, Mr. President, if you can  
21 give me five minutes.

22           PRESIDENT FERNÁNDEZ ARMESTO: Of course. No

1 worry.

2 MR. LLANO: Okay. I will cover a handful of  
3 slides.

4 PRESIDENT FERNÁNDEZ ARMESTO: But it's better  
5 if you go slowly and you try to focus your comments to  
6 what is really important rather than trying to cover  
7 too much terrain.

8 MR. LLANO: Absolutely. I agree.

9 PRESIDENT FERNÁNDEZ ARMESTO: Thank you.

10 MR. LLANO: Thank you, Mr. President and  
11 Members of the Tribunal, for your attention and  
12 patience today.

13 Gramercy's damages case is a jumble of  
14 inconsistent figures and valuations, cherry-picked  
15 from a number of variables to suit their taste for a  
16 number that they are looking for. But before this  
17 Tribunal can even consider stepping into this morass  
18 of numbers it is key to address a series of threshold  
19 issues which Gramercy either confused or left  
20 unaddressed yesterday.

21 The first set of questions is who is Gramercy  
22 and why is Gramercy, as opposed to some undisclosed

1 third-party investor, entitled to any damages on the  
2 facts of this case? The answers are that Gramercy is  
3 merely a vehicle for other people's money, and that it  
4 is, therefore, not entitled to any damages in this  
5 Arbitration.

6 More specifically, Gramercy has failed to  
7 prove any investments by Claimants, not made on behalf  
8 of third-party beneficial investors, other than a  
9 de minimis ownership share by GFM. Gramercy also has  
10 failed to prove any damages to either Claimant, other  
11 than supposed lost Management Fees.

12 In fact, as testified by Mr. Lanava, which  
13 you can see on the screen, and that is Gramercy's  
14 Chief Compliance Officer, in his Second Witness  
15 Statement, "when and if Gramercy monetizes its Land  
16 Bonds investment--whether through a settlement with  
17 Perú or through an award in this Arbitration--the  
18 proceeds will be distributed by PARB exclusively to  
19 the...existing owners of PARB according to their  
20 ownership in PARB on our official books and records."

21 PARB, or Peruvian Agrarian Reform Bond  
22 Company, is a Cayman Islands entity that owns GPH, one

1 of the two Claimants in this case. And that is why  
2 Gramercy wasn't even clear in its Request for Relief  
3 as to whom any proceeds from this arbitration would  
4 need to be awarded to. Claimants suffered no damage  
5 and have proven none. At most, Claimants would get to  
6 keep whatever Management Fees they would be entitled  
7 to for pulling off such an extraordinary outcome.

8 But as also mentioned on this slide, Gramercy  
9 has not provided any evidence as to the amount of such  
10 Management Fees. And in any event, Gramercy has been  
11 collecting Management Fees for years on the back of  
12 hyperinflated valuations of the Land Bonds. Again, no  
13 damages proven here.

14 Gramercy has also failed to provide its  
15 financial models underlying its internal valuations  
16 and to provide financial statements or valuations  
17 coming from either Claimant. In short, this is not  
18 Gramercy's Claim. It is a Claim that they have sold  
19 to third-party investors who appear to have been taken  
20 in by self-sustaining valuations for years.

21 No damages to either Claimant have been  
22 proven, and we will provide a context at the end of

1 this very brief section, and references to evidence  
2 when we go into confidential session. Gramercy also  
3 has failed to establish and then satisfy a proper  
4 legal standard for damages in this case.

5 As Mr. Kaczmarek and Ms. Kunsman explained in  
6 their First Quantum Report, a damages case in an  
7 investment treaty arbitration must be anchored in an  
8 appropriate standard, and Tribunals most often adopt  
9 the Fair Market Value standard. That standard makes  
10 sense here precisely because there was so much  
11 uncertainty regarding the valuation of the Land Bonds  
12 at the time when Gramercy acquired its Bonds.

13 But Mr. Edwards disclaimed all that, he  
14 disclaimed all knowledge of Gramercy's expectations.  
15 He disclaimed all knowledge of Gramercy's due  
16 diligence. He disclaimed any concern with applicable  
17 standards in Treaty arbitrations.

18 In fact, when I asked him a question about  
19 whether he had any understanding about what the  
20 expropriatory act at issue would be, I was met with an  
21 objection from Claimants, which is telling because any  
22 meaningful valuation would take into account the

1 timing of the acts at issue.

2 Mr. Edwards' calculations are divorced from  
3 any understanding of Claimants' facts and Claimants'  
4 case, and the convenient use of the all-purpose  
5 phrase, "intrinsic value," does not bridge this gap.

6 MR. FRIEDMAN: Mr. President. Forgive me,  
7 Mr. President. You are on mute, Mr. President.

8 PRESIDENT FERNÁNDEZ ARMESTO: Sorry for that.  
9 No, I think, Mr. Friedman, you are going to say how  
10 long does Mr. Llano have to go.

11 MR. FRIEDMAN: In a slightly stronger form,  
12 which is that this is the second time because it  
13 happened at the Opening arguments, oral Opening  
14 arguments as well. I just want to make sure the rules  
15 are being applied equitably to the sides. That you  
16 will recall that both at the Opening and for this oral  
17 Closing, we had proposed slightly longer periods of  
18 time of three hours, which Perú objected to and cut  
19 back and said it should be 2.5 hours.

20 We then worked quite hard to be as  
21 disciplined as we could and felt sometimes we had to  
22 go faster than we wanted to in order to stick with

1 what the Tribunal had said, and so we left a lot of  
2 material on our cutting room floor out of being  
3 disciplined and respectful to what the Tribunal  
4 provided for.

5           Of course, we all appreciate that if you run  
6 over by a couple minutes because you want to wind up,  
7 nobody is objecting to that, but I note that Mr. Llano  
8 is sort of in the middle, or he is still at sort of  
9 the beginning of a whole series of slides on this  
10 topic.

11           And I just think it is rather--it is sort of  
12 unfair to have left us in a position for the second  
13 time where we had to comply and had the--there is a  
14 lot we didn't get to say because of the compression of  
15 time. And I think at the Opening, if I recall, I  
16 think that Respondent ended up taking about 20 minutes  
17 more than we did, which is not an immaterial amount of  
18 time when you are limited to 2.5 hours.

19           So, I would ask that the Tribunal simply  
20 apply the same discipline. They really--they have  
21 allocated their time and made their choices. They  
22 really do need to kind of conclude now, at least that

1 is our very respectful proposition and submission to  
2 the Tribunal.

3 PRESIDENT FERNÁNDEZ ARMESTO: Thank you.  
4 Thank you, Mr. Friedman.

5 Mr. Llano, I have--how long do you have to  
6 go?

7 Mr. Llano: Two slides.

8 PRESIDENT FERNÁNDEZ ARMESTO: Okay. You must  
9 come to an end now. You must wrap up your arguments,  
10 and if so we because I have some sympathy that you are  
11 really the last to speak and we compressed the  
12 presentations to 2.5 hours, and we should try to stick  
13 to that.

14 So, please. Two more. And please let's not  
15 make these old Spanish jokes that the five continents  
16 are four, Asia and Europe. Let's make it two slides.

17 MR. LLANO: Two slides, sir. Thank you.

18 So, I have--in these two slides, I have two  
19 points to make. One is about intrinsic value, and  
20 what is--and the other is about what is Gramercy's  
21 claim at the end of the day. So, on intrinsic value,  
22 what I want to say is this is just a euphemism for



1 whatever Gramercy sees fit to claim.

2           Whether it is \$300 million or 800 or  
3 \$1.8 billion, and as you can see on this slide,  
4 Mr. Edwards on cross-examination was taken to his  
5 First Report, his submission in chief, and he provided  
6 no connection between his so-called "intrinsic value"  
7 calculations and any understanding of Peruvian law.

8           He just came up with a high number. It is  
9 totally unilateral and totally circular. The number  
10 is not based on any market, any comparables, any  
11 certainty, any parameters.

12           And the other point I want to make just to  
13 conclude on this slide, is that we heard yesterday in  
14 Gramercy's Closing Arguments that intrinsic value is  
15 supported by Legal Authority. We respectfully  
16 disagree. Gramercy on Slide 151 of its presentation  
17 cited to Fedax v. Venezuela, Brazilian loans, Serbian  
18 Loans, and Vigotop.

19           Not one of these cases even mentions the  
20 phrase "intrinsic value." Fedax, which we show here,  
21 literally awarded the face value of the promissory  
22 notes at issue. The amounts that were specifically

1 recorded in terms of principal and they correspond  
2 exactly to the calculation of interest. Brazilian  
3 Loans awarded the precise amounts on the face of the  
4 loan Contracts, same with Serbian Loans, Vigotop is  
5 not even on point.

6 Intrinsic value is a meaningless phrase. It  
7 is not a standard, and to put in the same sentence  
8 together with Fair Market Value is ludicrous under  
9 international law.

10 So, now I will go, as I promised, to one of  
11 the final slides.

12 PRESIDENT FERNÁNDEZ ARMESTO: To your slide,  
13 to your final slide. Very good. Thank you. You are  
14 going to the values of your firm, which are important  
15 and probably you want to go one slide before that.

16 MR. LLANO: If my colleagues can pull back up  
17 the presentation, last slide.

18 PRESIDENT FERNÁNDEZ ARMESTO: "The value of  
19 your firm is never go one step back." And this is why  
20 you are unable now to go one slide back.

21 MR. LLANO: That's okay. Mr. President, we  
22 have dealt with worse.

1           So, I will tell you the point.  
2 Mr. President, Gramercy's claims, at the end of the  
3 day, turn on a Claim that was purchased from Peruvian  
4 Bondholders. It was purchased at a price, \$33  
5 million, and it was purchased at that price for a  
6 reason because there was no market and there was no  
7 certainty, and uncertainty carries a price.

8           That price was factored into the Market Value  
9 of the Bonds that Gramercy purchased, but it is  
10 not--that uncertainty is not factored into the  
11 valuation that was provided by Mr. Edwards. And the  
12 fact that Mr. Edwards was compelled to provide not  
13 one, not two, but seven different alternative  
14 quantifications, all of which purportedly are  
15 conveniently consistent with the notion of intrinsic  
16 value shows you--shows you--that there is no basis  
17 here for legitimate expectations.

18           There is no basis for a claim of certainty,  
19 and the suggestion that was made yesterday that  
20 intrinsic value applies when you have a sum certain  
21 that is taken away from you is exactly the opposite of  
22 reality. Reality is there was no certainty. There

1 were no legitimate expectations other than  
2 uncertainty, which is Gramercy's business.

3 Gramercy purchased a claim. [REDACTED]

4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED] I will not get into the specifics to  
9 avoid any confidentiality issues, but this is the core  
10 of the issue. They bought a claim. That's all they  
11 bought. No certainty, no legitimacy. This is an  
12 abusive Claim and it should be dismissed with costs.

13 I thank you, very much, Mr. President and  
14 Members of the Tribunal, I thank you especially for  
15 giving me this one last minute. Thank you.

16 PRESIDENT FERNÁNDEZ ARMESTO: Thank you,  
17 Dr. Llano.

18 With that, we finalize the presentation of  
19 the Republic of Perú. We will now break for a quarter  
20 of an hour, if that is agreeable.

21 Could I see--because I only see Dr. Llano.  
22 Maybe Mr. Friedman or Dr. Popova could come up. Yes.

1 Thank you, Mr. Hamilton. So, if this is agreeable to  
2 you, we will now break for a quarter of an hour and we  
3 may or not have some questions to you.

4 MR. FRIEDMAN: Of course.

5 PRESIDENT FERNÁNDEZ ARMESTO: Is that  
6 agreeable?

7 MR. FRIEDMAN: Of course, Mr. President.

8 PRESIDENT FERNÁNDEZ ARMESTO: So, it is now  
9 18:15. We will endeavor to be back by 18:30 French  
10 time, which is whatever time is in America.

11 MR. FRIEDMAN: 12:30 on the East Coast of the  
12 United States.

13 PRESIDENT FERNÁNDEZ ARMESTO: 12:30. We  
14 promise that we will let you off to a lunch in good  
15 time in America, and to dinner here in Europe. Thank  
16 you.

17 And we now break into our breakout rooms.

18 (Brief recess.)

19 QUESTIONS FROM THE TRIBUNAL

20 PRESIDENT FERNÁNDEZ ARMESTO: We have a few  
21 questions which we have deliberated upon and on which  
22 we would like some further short input because--I

1 mean, there is a huge amount of material in the case,  
2 and we will, of course, go through all the material.

3           We have, first, two areas which we would like  
4 to hear both Parties. One is the 2013 Constitutional  
5 Court Decision and then the three Supreme Court  
6 Decrees. And starting with the Constitutional Court  
7 Decision, we understand that it established the law of  
8 the land regarding the payment of the outstanding  
9 Agrarian Bonds.

10           Can we have a very brief summary of what the  
11 Constitutional Court said regarding the principal and  
12 the interest of the Bonds, these two issues which seem  
13 important?

14           Mr. Friedman, I give you just these two  
15 points, if you can give us, in a nutshell, what did,  
16 in your opinion, establish the Constitutional Court as  
17 the law of the land regarding principal and interest  
18 of Agrarian Bonds?

19           MR. FRIEDMAN: Thank you, Mr. President.

20           We addressed this to some extent yesterday in  
21 our presentation and have some slides, if I can just  
22 recall the slide numbers. I would refer you to them

1 because they are helpful on this topic. Yes. I'll  
2 refer to those in just a moment.

3           The Constitutional Tribunal July 2013  
4 Decision considered the issue, of course, against the  
5 constitutional and civil law background in which the  
6 question of updating the Land Bonds debt occurred.  
7 All right. So, it wasn't just an isolated issue, and  
8 there had obviously been a great deal of litigation in  
9 the lower Peruvian Courts as well, as you know, over  
10 the years about updating value in particular cases.

11           So, the Constitutional Tribunal considered  
12 what the principal was to achieve the current value,  
13 and it was their focus. And I think, as  
14 Professor Castillo described it during his testimony,  
15 and I think, actually, as Respondents acknowledged  
16 during their presentation today, strictly speaking,  
17 current value by itself means updating the principal  
18 so as to eliminate the effects of time, or inflation,  
19 that have denuded the value of Bonds--right?--so that  
20 it restores the original purchasing power of the  
21 obligation.

22           And I think the Constitutional Tribunal in

1 2013--it is quite clear, it is actually in the  
2 opinion--explicitly said that that is exactly what  
3 that same Tribunal had held in the same case back in  
4 2001. That is the principle that--the legal  
5 principle--that's p-r-i-n-c-i-p-l-e--includes updating  
6 the principal, p-r-i-n-c-i-p-a-l, of the Bonds to  
7 current value. And that--but neither the CT 2013  
8 case, nor, as Respondent's counsel correctly pointed  
9 out, the 2001 CT Decision was about the face--the  
10 interest rate that would also have to go along with it  
11 to comply with the obligation of the Civil Code  
12 because--I think because everybody understood that  
13 the--if I can speculate a little bit, but I think  
14 because everybody understood that was a Civil Code  
15 requirement in any event and that is--and  
16 consequently, the Constitutional Tribunal in 2013  
17 talks about the approach to updating, how they are  
18 going to do updating.

19           PRESIDENT FERNÁNDEZ ARMESTO: How will  
20 they--let's go to that. Let's go to the details of  
21 that.

22           MR. FRIEDMAN: Sure.



1           PRESIDENT FERNÁNDEZ ARMESTO: How is your  
2 understanding of the updating that the Constitutional  
3 Court mandates?

4           MR. FRIEDMAN: What they mandated were  
5 certain parameters that they then directed The  
6 Ministry of Economy and Finance to implement in  
7 Supreme Decrees. And that was the part, I think, the  
8 Ministry actually had the greatest problem was, which  
9 is that they were actually being told to do something  
10 in an enforcement instance by the Constitutional  
11 Tribunal, and it was the subject of their later  
12 challenges. But what the Constitutional Tribunal said  
13 on this can be found in the Decision itself. They  
14 looked at these different methods, and then in  
15 Paragraph 25 of the Decree, they say, "Okay. Here are  
16 the reasons why we are going to select one of these  
17 methods, and we think that's appropriate."

18           They describe two reasons for it in  
19 Article 25. They said they find it appropriate to opt  
20 for an updating criterion that employs conversion of  
21 the unpaid principal into United States dollars as of  
22 the date of default on the payment of the coupons of

1 the Bond, plus the interest rate of the United States  
2 Treasury Bonds. This is due to the fact that, first,  
3 the method of conversion, the United States dollars  
4 has legal precedent in Emergency Decree  
5 Number 088/2000, which you will recall was the subject  
6 of the Court's 2004 Decision. That was the optional  
7 dollarization approach; and, second, because, as  
8 stated, the other valuation methods described would  
9 generate severe impacts on the budget of the Republic  
10 to the point of making impractical the very payment of  
11 the debt.

12 PRESIDENT FERNÁNDEZ ARMESTO: Okay.

13 MR. FRIEDMAN: And so, that's what they then  
14 prescribed. But they also state, as we indicated  
15 in--this is where we indicated in our Slide 70  
16 yesterday--in Paragraph 28 of the Decree. They are  
17 directing then what the Supreme Decree must do, what  
18 the MEF must do to carry out this procedure, and they  
19 say: "Similarly, the Supreme Decree must contain a  
20 procedure intended to quantify the debt in each case,  
21 according to the method adopted for this purpose by  
22 the Tribunal. And it must be completed within

1 two years, and this procedure must show the updated  
2 amount of the land reform debt bonds plus the  
3 interest." Plus the interest.

4 And so, if you have updating as a concept,  
5 because that's what current value is about, that's the  
6 updating part. That is the piece about converting to  
7 U.S. dollars and then applying, in this case, a  
8 treasury rate, which the Ministry chose a short-term  
9 one-year U.S. Treasury rate, as you know, but plus the  
10 interest.

11 Now, if that was at all ambiguous--

12 PRESIDENT FERNÁNDEZ ARMESTO: No. We just  
13 want to--what about the parity exchange rate?

14 MR. FRIEDMAN: Yes. They do reference the  
15 parity exchange rate in--here, if I recall correctly,  
16 it is not in Paragraph 25. 25 is the methods we're  
17 selecting. I think what you must do to find out that  
18 is look at the prior paragraph, 24. That's the method  
19 that they are basically adopting. They say we  
20 have--we have the method that proposes the calculation  
21 of the updated value of the Bonds by indexing existing  
22 obligations to their equivalent in foreign currency,

1 which may be the dollar or others, to which the  
2 interest rate of American Treasury Bonds would be  
3 applied. This formula updates the obligation by  
4 converting the debt, principal, to U.S. dollars using  
5 the Parity Exchange Rate.

6           So, that was the--and it's very clear--so,  
7 they are describing that, and that's in distinction to  
8 Option 1, which was the--an original kind of  
9 dollarization approach that they had studied in the  
10 2004 Opinion. So, they specify--so, the parameters  
11 that come out of the CT 2013 Decision are convert to  
12 U.S. dollars at the date of default in using a Parity  
13 Exchange Rate, rather than some other kind of exchange  
14 rate.

15           And then they--enough to develop a process to  
16 do the updating, show the value of the updating plus  
17 the interest.

18           PRESIDENT FERNÁNDEZ ARMESTO: Very good.  
19 Thank you.

20           Let me get now the Republic, the Respondent,  
21 if they agree that this is what the Constitutional  
22 Court Decision said.

1           Mr.--now I have lost you because I have--yes,  
2 Mr. Hamilton. Now I have you.

3           MR. HAMILTON: Thank you very much,  
4 Mr. President.

5           PRESIDENT FERNÁNDEZ ARMESTO: Do you agree  
6 with the position of Claimant?

7           MR. HAMILTON: I am cautious to say that ever  
8 in this particular proceeding, but let me simply  
9 answer your question, Mr. President, and thank you for  
10 the question regarding principal and interest as  
11 addressed in the 2013 Court ruling. Keep in mind,  
12 Members of the Tribunal, that the 2001 Sentence, a  
13 limited ruling, did not set out a rule for valuation  
14 method, for principal or interest, and did not set out  
15 a payment procedure. And those uncertainties were  
16 clearly identified by the Court in the resolution and  
17 then correspondingly the Court proceeded to establish  
18 a valuation method and establish a payment procedure.  
19 With respect to the valuation method, the Court  
20 Decision, indeed, at Paragraph 25 and--24-25--sets out  
21 payment through dollarization updated from the last  
22 clipped coupon and interest at the U.S. T-bill rate.

1 I reference you to Respondent's Closing Statement  
2 Slides 58-60--to 61. And here we see the language  
3 just acknowledged by Claimant with respect to the  
4 designation of principal paid in dollars.

5 PRESIDENT FERNÁNDEZ ARMESTO: Very good. So,  
6 I think there is--we can all, I think, agree that the  
7 system declared constitutional by the Constitutional  
8 Court was based, as you said, that the principal was  
9 converted at the Parity Exchange Rate into dollars on  
10 the date of default, and then that thereafter, there  
11 would be interest accruing at the Treasury rate of the  
12 U.S.--the U.S. Treasury rate and that this would be  
13 the system of converting the original debt into  
14 current value. Very good.

15 Now, let us go to the next step, which is the  
16 two Supreme Decrees because we have spoken very little  
17 about them, and the Tribunal--

18 MR. HAMILTON: Mr. President--

19 PRESIDENT FERNÁNDEZ ARMESTO: And the  
20 Tribunal would like to have some further information  
21 on that.

22 Now, I understand that Claimant is saying

1 that the Supreme Decrees are arbitrary or they are in  
2 some way discriminatory. And can we ask Claimant to  
3 express exactly why it is of that opinion, and then we  
4 will get the Opinion of the Republic on exactly the  
5 same question.

6 Mr. Friedman.

7 MR. FRIEDMAN: Yes. The discrimination--

8 PRESIDENT FERNÁNDEZ ARMESTO: Financially.

9 Can we focus on these issues which we have now  
10 identified. Do you remember? We identified the  
11 principal, the interest, how it was going to be  
12 calculated. I know that you have some procedural  
13 issues with the Supreme Decrees, but can we go to the  
14 merits of the Supreme Decrees, why you think that  
15 these Decrees in establishing the parity rate and in  
16 converting it to and from dollars to local currency,  
17 why in your opinion there is some arbitrariness or  
18 discriminatory character in these Decrees.

19 MR. FRIEDMAN: Umm-hmm. We addressed that at  
20 some length yesterday, so I don't want to repeat  
21 everything I said yesterday--

22 PRESIDENT FERNÁNDEZ ARMESTO: I know.

1           MR. FRIEDMAN: --or the slides. I will give  
2 you the highest level summary, perhaps, and then if  
3 you have further questions.

4           Before I do, I just want to make clear that,  
5 because I didn't want it to be ambiguous in response  
6 to the last question and answer, that what we say the  
7 CT required in 2013 was that they do an updating, and  
8 that used U.S. Treasury--the interest rate of U.S.  
9 Treasury Bonds to do the updating; but, in addition to  
10 that, they needed to add the compensatory interest.  
11 So, the word "interest" comes up and has two  
12 connotations in that. And that's what the Supreme  
13 Court--I just--your restatement at the end of what the  
14 Parties had sort of agreed, I don't think reflected  
15 what we believed we had stated to you.

16           PRESIDENT FERNÁNDEZ ARMESTO: Okay. So, the  
17 compensatory interest. Why don't you dwell on that?

18           MR. FRIEDMAN: Yes. Well, that's exactly,  
19 exactly what was at issue in all of those Supreme  
20 Court cases, including the one that the Tribunal asked  
21 about in Procedural Order 11. In those cases, the  
22 Peruvian Supreme Court said it is not enough to do the



1 updating, which, of course, includes updating using  
2 U.S. Treasury rate--interest rates on U.S. Treasury  
3 Bonds. You also--and the Constitutional Tribunal in  
4 2013 also required adding to that compensatory  
5 interest on the Bonds at the face rate of the Bonds,  
6 either 4, 5, or 6 percent. And that's in RA-394,  
7 which is one of those Supreme Court Opinions, but  
8 there are five of them. And you'll recall  
9 Respondent's' Expert, Dr. Hundskopf, confirmed that  
10 they all said the same thing, that they were  
11 intellectually coherent under Peruvian law, and they  
12 carried out what the CT, the Constitutional Tribunal,  
13 had said in July 2013.

14           So, I just don't want--the word "interest," I  
15 just don't want to omit this important element of  
16 compensatory interest. And I say that--

17           PRESIDENT FERNÁNDEZ ARMESTO: How is exactly  
18 your idea that this compensatory interest would be  
19 calculated?

20           MR. FRIEDMAN: In general, so just sort of  
21 speaking about it conceptually, quite  
22 straightforwardly, you add the compensatory interest

1 to the updated value of the Bonds. Technically,  
2 Professor Edwards showed how you do that calculation  
3 in the formula that we attached to the Post-Hearing  
4 Brief.

5 PRESIDENT FERNÁNDEZ ARMESTO: Of course.

6 Professor Edwards goes to the 762, I think, rate or--

7 MR. FRIEDMAN: No, no, no. No, no, no. No,  
8 no. No. I'm sorry. Forgive me, but that's--yes,  
9 Professor Edwards did calculate the 7.2 percent rate  
10 as a real Rate of Return on debt in Perú, but put that  
11 completely aside. Pretend that doesn't even exist.  
12 Professor Edwards also shows that the--that the--if  
13 you simply apply compensatory interest at the Bond  
14 face rates to Gramercy's Bonds--

15 PRESIDENT FERNÁNDEZ ARMESTO: I must  
16 interrupt you. We have some difficulty with  
17 Mr. Drymer, who seems to have lost his connection.  
18 He's frozen. Sorry for that. Can I get the Secretary  
19 to double-check what is happening with Mr. Drymer.

20 SECRETARY PLANELLS-VALERO: Yes.

21 Mr. President, Mr. Drymer can hear us. He can just  
22 not see us, but we are checking with the technician at

1 this moment.

2 (Discussion off the record.)

3 LEGAL TECHNICIAN: Mr. Drymer, if you  
4 continue to have problems, I suggest quickly logging  
5 off and logging back on. That tends to quickly  
6 resolve this solution.

7 PRESIDENT FERNÁNDEZ ARMESTO: That is a  
8 recommendation for Mr. Drymer; correct?

9 LEGAL TECHNICIAN: Indeed. Yes, indeed.

10 PRESIDENT FERNÁNDEZ ARMESTO: Thank you.

11 (Discussion off the record.)

12 PRESIDENT FERNÁNDEZ ARMESTO: Very good.

13 Mr. Friedman, why don't you continue?

14 MR. FRIEDMAN: Yes.

15 ARBITRATOR DRYMER: Again, I assure you I  
16 heard everything that was being said, even if I  
17 couldn't see the video up until the moment the  
18 technician asked me to log off, which I did.

19 PRESIDENT FERNÁNDEZ ARMESTO: Okay. So, you  
20 just can continue where you stopped.

21 MR. FRIEDMAN: Okay. Thank you.

22 I just want to be quite clear, and it's a

1 response also to the question, Mr. President, that you  
2 asked, which is essentially what's wrong with the  
3 Supreme Decrees? One of big things that is wrong with  
4 them is that they don't pay compensatory interest.

5 Now, the compensatory interest is on top of  
6 the updating. That's a conceptual matter because  
7 updating is obviously restoring the original  
8 purchasing power of the principal. That's the whole  
9 point of it. And compensatory interest is intended to  
10 compensate people for the time--the value of money,  
11 the time that they didn't have that principal to be  
12 able to use. And that's what Professor Castillo and  
13 Dr. Hundskopf agreed on.

14 We say it's what's in the 2013 Constitutional  
15 Tribunal Decision in Paragraph 28 when they said the  
16 Ministry has to show the updated amount plus the  
17 interest. We say that is confirmed in a 2015 CT  
18 Decision, but even if you don't believe either of  
19 those, the Peruvian Supreme Court addressed that issue  
20 five times, including in that case RA-394. And at  
21 Paragraph 10.3 of that Decision, they clearly state  
22 that because the Article 1242 of the Civil Code

1 establishes that when interest is compensatory, it  
2 must be paid. And they say in this legal context it  
3 is observed from the Land Reform Bond coupons that the  
4 Parties agree that compensatory interest would be at  
5 the rate of 5 percent per annum or 4 percent per  
6 annum, depending on the class of Bonds, obviously, at  
7 issue in this case.

8           And then they said, accordingly, it was  
9 appropriate to order that said compensatory interest  
10 be paid once the debt had been updated and the  
11 judgment in force. And they reversed the lower court  
12 for not having included that amount, that compensatory  
13 interest amount, on top of the updated value of the  
14 Bonds.

15           So, as we described yesterday, one big  
16 problem in the Supreme Decree process is there is  
17 simply no recognition of this and no inclusion of it.

18           We also had sort of a conceptual problem that  
19 they didn't even attempt to do the balancing of it,  
20 and there are--sorry, the balancing that the  
21 Constitutional Tribunal had required. I think we  
22 mentioned that point yesterday, that there had to

1 be--you couldn't prioritize State budget, on the one  
2 hand, or paying the Bondholders on the other, but you  
3 needed to have a serious number, which we say they  
4 didn't accomplish.

5           And so, in an addition--you were asking,  
6 Mr. President, about the sort of technical or  
7 computational questions, so I want to confine the rest  
8 of my remarks in response to your question on that.

9           In addition to the lack of compensatory  
10 interest altogether, there is also the use of the  
11 Parity Exchange Rate.

12           PRESIDENT FERNÁNDEZ ARMESTO: Yes. And I  
13 would like you to explain that to us.

14           MR. FRIEDMAN: Yeah. We explained  
15 yesterday--and I hope through the testimony at the  
16 Hearing--why the Parity Exchange Rate is arbitrary in  
17 the sense it has no logical justification in any of  
18 Decrees and why it is very unusual and even in the  
19 August 2017 Decree an incorrect way simply like  
20 economically irrational way of calculating a Parity  
21 Exchange Rate. And as I explained yesterday--but  
22 really it is Dr. Edwards who explained this--that if

1 you are looking for a Parity Exchange Rate, what  
2 you're trying to do is find a time--

3 PRESIDENT FERNÁNDEZ ARMESTO: I perfectly  
4 remember the argument. So, the next--I just want that  
5 you itemize to me. So, you say, then, the Parity  
6 Exchange Rate is irrational.

7 (Overlapping speakers.)

8 PRESIDENT FERNÁNDEZ ARMESTO: Are there other  
9 elements which are irrational? Because I seem to  
10 remember that you said the Parity Exchange Rate and  
11 then the return rate was different. I just want to  
12 get the financial aspects which you think are  
13 irrational and to an irrational consequence.

14 MR. FRIEDMAN: Okay. So, it's, one, lack of  
15 compensatory interest; two, Parity Exchange Rate,  
16 which is irrational. And there are really, then, two  
17 branches of that because there is sort of two ways  
18 that you could fix that essentially. One is by using  
19 a real Parity Exchange Rate, like one that was  
20 calculated in a responsible, economically rational  
21 manner--and Professor Edwards gave you one of  
22 those--or as a sort of cruder fix, if you will, just

1 use the broken--the irrational Parity Exchange Rate  
2 both to convert to U.S. dollars, and then after the  
3 updating process is done, you convert back to soles.  
4 Because at least then you would be using this kind of  
5 broken measure, but you would be using it consistently  
6 so it wouldn't--you know, the fact that it understates  
7 value in one direction would overstate it coming back  
8 and would, in a sense, compensate. It is not as  
9 intellectually elegant, I have to say, as just using a  
10 responsible Parity Exchange Rate in the first place.  
11 But both of those solutions respond to this point  
12 about the irrationality and arbitrariness of the  
13 Parity Exchange Rate.

14           And then, three, there's a third component of  
15 it. It has a slightly different character for a  
16 reason I just want to be very clear about what our  
17 submissions are: That the updating from the date of  
18 last clipped coupon, basically, instead of from the  
19 date of the--the date that the Bonds were placed.

20           PRESIDENT FERNÁNDEZ ARMESTO: But that we all  
21 agree was mandated by the Constitutional Court.

22           MR. FRIEDMAN: That is exactly why I say it's



1 something of a different character. We do think that  
2 it is quite irrational. That's the  
3 Professor Castillo's testimony about the solar  
4 Eclipse. It doesn't make sense when the idea is to  
5 restore the principal to its original purchasing  
6 power. But, that said, that's why I flagged it up  
7 specifically as having a different character because  
8 that was in a sense part of the Constitutional  
9 Tribunal 2013 Order.

10 PRESIDENT FERNÁNDEZ ARMESTO: Yes. Very  
11 good.

12 MR. FRIEDMAN: And for further reference on  
13 this--I'm just trying to be very brief, but you could  
14 look at our Post-Hearing Brief, Section 2(c)(1) and  
15 Slide 70--sorry. Let me do that again.  
16 Section 2(c)(1), and the Closing slides from our  
17 presentation yesterday, Slides 70-81.

18 PRESIDENT FERNÁNDEZ ARMESTO: Thank you. To  
19 be true, I mean, we probably could get the answer to  
20 all of these questions going through the record, which  
21 is extremely detailed. It is just that we wanted to  
22 get some clarified summary--

1 MR. FRIEDMAN: Right. So--

2 (Overlapping speakers.)

3 PRESIDENT FERNÁNDEZ ARMESTO: --from the  
4 Parties so that we can in our minds exactly see the  
5 opposite positions.

6 With that, I give Mr. Hamilton the floor.

7 MR. HAMILTON: Thank you very much,  
8 Mr. President and Members of the Tribunal. I will  
9 share comments and my partner Dr. Llano will share  
10 some additional observations as well on this issue.  
11 As a starting point, we left off with the prior  
12 question with the provisions of the 2013  
13 Constitutional Tribunal sentence, which finely brought  
14 clarity to issues of valuation and procedure. And  
15 what we then see with the development of the Supreme  
16 Decrees is a process that implemented the Court  
17 ruling. And I just want to underscore before we now  
18 dive into this particular issue that these Decrees  
19 were developed through extensive documentation that  
20 included, for example--

21 PRESIDENT FERNÁNDEZ ARMESTO: Mr. Hamilton,  
22 sorry to interrupt you. In the interest of time, we

1 are perfectly aware. Let's go to these--we are really  
2 interested about the financial aspect.

3 MR. HAMILTON: We are coming.

4 (Overlapping speakers.)

5 PRESIDENT FERNÁNDEZ ARMESTO: Okay. Let's go  
6 to--if you are kind enough, let's go specifically to  
7 the issues which have been flagged by Claimant.

8 MR. HAMILTON: That's where we are headed,  
9 Mr. President. Thank you very much.

10 But I do want to underscore that, whereas  
11 Gramercy continues inventing different arguments, even  
12 until its final Brief before the Tribunal, these  
13 issues were addressed in internal records, external  
14 Expert Reports, all in the record of the development  
15 of Decrees, and all addressed by Mr. Kaczmarek with  
16 respect to the manner in which the Decrees carry out  
17 appropriately the Court Decision. And I direct your  
18 attention to Mr. Kaczmarek's presentation from the  
19 Hearing at Slides 22, 28, and 38.

20 Now, with respect to the two issues that we  
21 were just discussing, let me first mention the Parity  
22 Exchange Rate. Perú has established that the Parity

1 Exchange Rate was not mandated, and during the Hearing  
2 Mr. Edwards himself confirmed that it's difficult to  
3 choose the base that you have to apply, and when you  
4 do, it is complex.

5           Mr. Edwards used ex post facto information,  
6 as we have discussed in our prior Pleadings. So,  
7 Gramercy's criticism of the Parity Exchange Rate used  
8 by Perú is also inconsistent with its own position.  
9 In particular, Gramercy alleged that Perú's use of  
10 January 1969, a single month, as the base period  
11 contravenes what they call a basic rule, and Gramercy  
12 self-entitles itself to create all sorts of supposed  
13 basic rules or certainty that simply are not  
14 applicable and are not supported.

15           In addition, regarding your query as to  
16 compensatory interest, Gramercy applies the Bonds'  
17 stated coupon rates on top of the U.S. Treasury rate.  
18 And in its Post-Hearing Brief, Gramercy claims that  
19 the addition of compensatory interest is somehow  
20 required by what it calls "clear and well-established  
21 principles." That is simply, again, not the case, and  
22 it is belied by its own Expert, again, who did not

1 include compensatory interest in the manner that  
2 Mr. Edwards prepared his initial calculations in his  
3 First and Second Reports.

4 Now, I want to invite Mr. Llano for  
5 additional comments in this regard.

6 ARBITRATOR DRYMER: May I ask--just pardon  
7 me, Mr. President, and Counsel. May I ask one  
8 question following up directly on Mr. Hamilton's last  
9 couple of words?

10 And perhaps I have misunderstood; it is  
11 probably the case, sir, so clear things you up for me.

12 In Perú's view, did the 2013 Constitutional  
13 Tribunal Resolution mandate compensatory interest, on  
14 top of updating of principal by whichever means?

15 MR. LLANO: I'd be happy to take that  
16 question.

17 ARBITRATOR DRYMER: Sure. Sure. Absolutely.  
18 And perhaps you are coming to it.

19 MR. LLANO: I was. I was going to start with  
20 that, Mr. Drymer. Thank you very much for the  
21 question. It really does tee up the point.

22 So, I'm looking at the 2013 Resolution, and I

1 would direct your attention to Paragraph 28. The last  
2 sentence of Paragraph 28--I apologize; I have the  
3 Spanish version in front of me--it says that--it  
4 mandates that the procedure that will be established  
5 for a payment of Bonds "must provide the amount of the  
6 actualized value of the Bonds of the Agrarian debt  
7 plus interest." Okay?

8           So, here are the two components that the  
9 court directed to the executive, and in particular to  
10 the MEF. It's the actualization, the updating, and  
11 interest.

12           The first component is achieved through  
13 dollarization. The updating of the value of the  
14 principal is converted to dollars, and it's not just  
15 me saying that. I would direct your attention now to  
16 Paragraph 24 of the Resolution, which says that the  
17 actualization--in the first sentence--there we are.

18           It says: "The methodology for the  
19 actualization of the Bonds through the indexing of the  
20 existing obligations to their equivalent in foreign  
21 currency, which may be dollar or any other free  
22 circulation, to which the interest rate of the

1 American Treasury Bonds will be added." So, there  
2 again, you have the two components. Actualization is  
3 achieved through dollarization. Interest is achieved  
4 through the T-bills. And we know that because it is,  
5 I think, a common ground between the Parties, that  
6 T-bills include an interest component.

7 And so, of course, this general formula or  
8 general framework that is being set up here leaves  
9 some issues that must be filled out, which the MEF did  
10 in a very rational way and which is not for us, any of  
11 us, to micromanage at this point. The question being,  
12 for example, what is the proper Parity Exchange Rate  
13 to convert to dollars? The first element of the  
14 formula, actualization through conversion to dollars,  
15 must be done through a Parity Exchange Rate.

16 The MEF applied the January 1969 rate as the  
17 Parity Exchange Rate, and that makes sense. That  
18 makes total rational sense, as Mr. Kaczmarek  
19 explained, because the information that came after the  
20 stoppage of payments on the Bonds was ex post. It  
21 wouldn't have been known at the time of the  
22 nonpayment, which is presumably the issue that we're

1 trying to fix here.

2           With respect to the T-bills, why one-year  
3 T-bills as opposed to other durations? There are all  
4 sorts of reasons for that. Long bond durations carry  
5 more risk, and Mr. Edwards admitted as much on the  
6 stand. And you can do a search for the phrase "long  
7 bonds" in the Transcript. You will find that there  
8 were a couple of exchanges on this. And he said, yes,  
9 the longer the hold, the longer the risk, the bigger  
10 the risk.

11           ARBITRATOR DRYMER: I think we all understand  
12 that.

13           MR. LLANO: Right. It's a very basic  
14 concept.

15           So, you have these--again, just going back to  
16 first principles, you have actualization through  
17 dollarization; done. Check. That was done through  
18 the conversion to dollars at the Parity Exchange Rate  
19 selected by the MEF. Then you have the T-bills.  
20 Check. The MEF selected the one-year T-bills, which  
21 make total rational sense. And then you have this red  
22 herring about, you know, do we add interest on top of



1 interest? And the answer is no for legal and economic  
2 reasons.

3 From a legal standpoint, the 2013 Resolution  
4 does not require interest on interest. It never says  
5 that. And I've shown you the two paragraphs, 24 and  
6 28, which reference the issue of interest. Again,  
7 dollarization plus interest, not dollarization plus  
8 interest plus bonus compensatory interest. That's  
9 from a legal standpoint.

10 From an economic standpoint, I would direct  
11 you to Mr. Kaczmarek's testimony during the February  
12 hearing--it seems like ages ago--where he explains  
13 that that would be double-counting. To apply the  
14 T-bill rate plus some other compensatory rate, whether  
15 it's the stated coupon rate or whatever else, is  
16 double-counting for interest. But that is precisely  
17 why the two last alternatives which Gramercy has  
18 provided, which belatedly came with their Post-Hearing  
19 Brief, are completely wrong, because they do just  
20 that--

21 PRESIDENT FERNÁNDEZ ARMESTO: Mr. Llano,  
22 thank you.

1 MR. LLANO: Okay. Thank you.

2 PRESIDENT FERNÁNDEZ ARMESTO: You are getting  
3 now into pleading your case. And thank you for your  
4 explanations. I think it is now reasonably clear  
5 where the differences lie. Let me then--

6 MR. FRIEDMAN: Mr. President, may I respond?  
7 Or is that--

8 (Overlapping speakers.)

9 PRESIDENT FERNÁNDEZ ARMESTO: Of course, if  
10 you want, if it's short and on these points.

11 (Overlapping speakers.)

12 PRESIDENT FERNÁNDEZ ARMESTO: --I ask that  
13 you really address these issues. But if it's on these  
14 financial issues, you are more than welcome.

15 MR. FRIEDMAN: Thank you. It is exactly on  
16 these same financial issues, and responding  
17 specifically to what Mr. Llano just said.

18 First, I think that it's intellectually wrong  
19 and legally wrong to suggest, as he did, that merely  
20 converting to U.S. dollars is updating the debt. All  
21 that would do is establish a value in U.S. dollars at  
22 some historical point in time. It could be 1972.

1 That is not the value today. At the very least, that  
2 number would be subject to inflation risk in the  
3 United States. So, that can't be the updated value of  
4 the debt.

5           Second, the--as you know, the interest rate,  
6 as we pointed out, in the U.S. Treasuries, especially  
7 the short-term ones that the Ministry chose, is  
8 immaterial. It is not the same thing as the  
9 compensatory interest in Perú, that Peruvian law and  
10 the Civil Code requires.

11           And, third, please don't take my word for it,  
12 but the Supreme Court, five times on this very issue,  
13 which the Respondent continues to avoid addressing in  
14 all of its responses.

15           And, last, I simply want to suggest that this  
16 idea that there is something wrong with using ex post  
17 data--none of the data that you needed to responsibly  
18 calculate a Parity Exchange Rate was ex post or  
19 unavailable in 2013 or 2014. I mean, there were  
20 plenty of years of parity to use as reference at that  
21 time. It wasn't like the MEF was establishing a  
22 Parity Exchange Rate in 1969.

1           So--and while I quite agree that it's not the  
2 Tribunal's job to just sit and second-guess on  
3 economic decisions, it is the Tribunal's job to  
4 analyze State action that is consequential against the  
5 legal standard which prohibits arbitrary and  
6 irrational decision-making on important investor  
7 rights.

8           So, if that's the level, I would just suggest  
9 that you take--that is, obviously, your job. And as  
10 between Mr. Kaczmarek and Professor Edwards, in  
11 evaluating how you think about what is rational or not  
12 or the rules of calculating Parity Exchange Rates,  
13 Professor Edwards has published books on it. And  
14 Mr. Kaczmarek said he doesn't deal with it; it's not  
15 something he spends time thinking about.

16           Thank you.

17           PRESIDENT FERNÁNDEZ ARMESTO: Thank you.

18           So--

19           MR. LLANO: Mr. President, can I make a  
20 30-second economic rebuttal?

21           PRESIDENT FERNÁNDEZ ARMESTO: Yes. Yes, but  
22 we'll get--let me close the door, and--

1           MR. HAMILTON: Mr. Llano, you can make more  
2 than 30 seconds, because we just heard more than  
3 30 seconds.

4           (Overlapping speakers.)

5           PRESIDENT FERNÁNDEZ ARMESTO: --to say, but  
6 then I have to say--okay. Hopefully this is the last  
7 argument on this topic, because we have a couple of  
8 others.

9           MR. LLANO: Okay. So, of course the MEF has  
10 actualized the debt. Don't forget, Mr. President and  
11 Members of the Tribunal, that in 1992 when the  
12 Agrarian Bank closed, the Gramercy-held Bonds were  
13 worth 34 cents. So, the fact that they were converted  
14 to dollars is--again, not me saying it, and I  
15 appreciate Mr. Friedman's words, but take a look at  
16 Paragraph 24 of the Decision. It says "actualization  
17 through the indexation to dollars." That is the  
18 mechanism that the Court directed the MEF to use, and  
19 they did. 34 cents were converted to 3--more than  
20 \$3 million, \$3.3 million. That's a 900 million  
21 percent hair extension. So, that is certainly an  
22 actualization to current value.

1           And, on top of that, there is interest  
2 through the application of T-bills. So, mission  
3 accomplished.

4           Thank you.

5           PRESIDENT FERNÁNDEZ ARMESTO: Very good. I  
6 think that the discussion is clear.

7           Let me get to another point which is related.  
8 And that is the USD 33.57 million which Claimant--no,  
9 Respondent says that Claimant would receive if it  
10 submitted to the bond exchange--the bond payment  
11 procedure.

12           Now, first of all, I have a couple of  
13 questions. The first one is: Where does this figure  
14 come from? Is this a figure from Respondent? Because  
15 Respondent, when you referred to it, you just then  
16 referred to Statements by Witnesses of Claimant. I'm  
17 not clear--and that is on Page 35, Note 276. The  
18 origin of the 35--USD 33.57 million figures are the  
19 two--Mr. Edwards and Mr. Koenigsberger. Who  
20 has--where does this very precise figure come from?  
21 And I think I should ask first Respondent.

22           Dr. Llano, maybe you or Mr. Hamilton,

1 whatever is more convenient.

2 MR. HAMILTON: Thank you, Mr. President.

3 This number is derived from an examination of  
4 the purchase contracts which Gramercy withheld from  
5 this Tribunal for an extended period of time.

6 Mr. Kaczmarek, in the initial Quantum Expert  
7 Report by Perú, took available bond purchase  
8 contracts, calculated those amounts, and reached a  
9 total of approximately \$33 million. Then Gramercy,  
10 the cat being out of the bag that it was asking for,  
11 at that time, \$1.9 billion, then did the calculation  
12 itself and itself acknowledged in Pleadings and  
13 Reports and at Hearing that the figure had been  
14 \$33.57 million. And so, this figure is derived from  
15 the bond purchase contracts. And obviously, I will  
16 not enter into the issue about where the money came  
17 from, et cetera.

18 PRESIDENT FERNÁNDEZ ARMESTO: No.

19 So, it is--let me understand it. This comes  
20 from Mr. Kaczmarek. So, there is a representation by  
21 the Republic that this is the amount which Claimant  
22 would receive if it presented its Bonds to this

1 system?

2 MR. HAMILTON: No, Mr. President. Perhaps I  
3 can clarify.

4 There are two different figures: One is the  
5 amount that was used to acquire the Land Bonds--

6 PRESIDENT FERNÁNDEZ ARMESTO: I know. I  
7 know. I know the--

8 (Overlapping speakers.)

9 MR. HAMILTON: And the second is what--

10 PRESIDENT FERNÁNDEZ ARMESTO: I know the  
11 facts of case extremely well.

12 MR. HAMILTON: Sorry, but what I've answered  
13 so far--

14 (Overlapping speakers.)

15 PRESIDENT FERNÁNDEZ ARMESTO: Let me explain  
16 to you exactly what I am--the \$33.57 million figure,  
17 which you round up to \$34 million, is in your  
18 Post-Hearing Brief Page 35, last bullet of  
19 Paragraph 76. And in this, you say: "Gramercy could  
20 have obtained USD 34 million. Gramercy's Witnesses  
21 confirm the undisputed fact that Gramercy could have  
22 obtained USD 34 million if it had tendered the Bonds



1 into the Bondholder Process." This is what I was  
2 asking you.

3 You have, I think, clarified to me that the  
4 number comes from Mr. Kaczmarek, and you are now going  
5 to confirm to me that this is a representation by the  
6 Republic that, if the Bonds are tendered, this is the  
7 amount they would receive under the bond payment  
8 program.

9 MR. HAMILTON: Thank you, Mr. President.  
10 Your question is now more clear to me.

11 So, just to confirm, my prior comments  
12 related to the calculation of the amount paid to  
13 acquire the Bonds.

14 PRESIDENT FERNÁNDEZ ARMESTO: Oh.

15 MR. HAMILTON: Now, if you turn to the  
16 separate issue--and there is a coincidence now--

17 PRESIDENT FERNÁNDEZ ARMESTO: I know.

18 MR. HAMILTON: --it was a process--that the  
19 Parties are aligned as to what was paid to acquire the  
20 Bonds.

21 Similarly, there is a coincidence of  
22 calculation by the Experts on each side, applying the

1 Bondholder--the formula of the Supreme Decrees, what  
2 amount would Gramercy have received if it participated  
3 in the process? Gramercy itself stated in its Third  
4 Amended Notice of Arbitration and Statement of Claim  
5 from July 2018 Gramercy would receive \$33.57 million.  
6 So, that exact figure, Gramercy states that in  
7 Paragraph 3 of its principal Brief of July 13, 2018.

8           So, what I would say at this point is that  
9 Gramercy repudiated and disparaged the Bondholder  
10 Process. It never participated, so it never went  
11 through a valuation process like participating  
12 Bondholders. In the context of this Arbitration,  
13 Respondent's Quantum Expert and Gramercy itself have  
14 effectively aligned--I don't know if there's a slight  
15 difference, but have effectively aligned that the  
16 amount available through the Bondholder Process would  
17 be in that range of \$33.5 million to \$34 million,  
18 applying the formula of the Supreme Decrees. That is  
19 the position of Respondent's Experts, and that  
20 obviously assumes that all of the Bonds are authentic.

21           PRESIDENT FERNÁNDEZ ARMESTO: Of course.

22           And then I understood--I think this was the

1 first time I had that understanding--from Ms. Menaker  
2 that these \$34 million would not be paid in cash, that  
3 they would be paid in Bonds, in normal financial Bonds  
4 issued by the Republic.

5 And first question: Is this correct?

6 MR. HAMILTON: The Supreme Decrees provide  
7 for payment options. One of those payment options is  
8 to receive new Bonds. As set out in Perú's Closing  
9 Statement today, Gramercy has indicated, and it's a  
10 matter of record, that it was interested in receiving  
11 new Bonds. And I refer you to comments that I made  
12 earlier today in that regard.

13 PRESIDENT FERNÁNDEZ ARMESTO: Yeah. Because  
14 I understood Ms. Menaker to say the following:  
15 Because you remember that one of the--the Decree has  
16 this payment schedule, and the last one to collect is  
17 "tenedores especulativo," speculative holder of debt.  
18 And I don't know if it is clear whether Gramercy would  
19 or not fit into that category, and if it fits--if it  
20 were to fit into that category, I now understand after  
21 Ms. Menaker's statement that it implies not that it  
22 does not collect. It implies that it does not collect

1 in cash, that it cannot collect in cash, that it must  
2 collect in Bonds. And so, it would receive the  
3 \$34 million in Bonds, presumably in Bonds which have a  
4 Market Value equivalent to \$34 million.

5           Could you clarify that, Mr. Hamilton.

6           MR. HAMILTON: Yes, Mr. President.

7           The Supreme Decrees establish a menu of  
8 options for payment. That was one of the things that  
9 the Initial Decree anticipated, that as the process  
10 went forward, they would finalize the payment options  
11 and verify the formula, which is exactly what they  
12 did. And there is a menu of options, and that menu  
13 includes electing to receive payment through new  
14 Bonds, and that in the past has been what Gramercy has  
15 expressed an interest in.

16           There certainly is not a provision that says  
17 Gramercy doesn't get paid, and of course I think it  
18 goes without saying the principal reason Gramercy  
19 hasn't been paid through the Bondholder Process is  
20 because it didn't participate, because they process  
21 the Bonds presented into the Bondholder Process just  
22 like when you go and buy ice cream: The first one in

1 line is the first one that is getting processed  
2 through.

3 PRESIDENT FERNÁNDEZ ARMESTO: But you have  
4 not answered my question. Is Gramercy "un tenedores  
5 especulativo? And, if it is, what is the implication?

6 MR. HAMILTON: Well, I believe your question  
7 was whether Gramercy would not get paid because it  
8 potentially could be designated that way.

9 PRESIDENT FERNÁNDEZ ARMESTO: But--but--

10 MR. HAMILTON: And the answer, as Ms. Menaker  
11 set out, is that Gramercy can be paid through new  
12 Bonds or other options in that list.

13 Now, there are limits on cash outlays  
14 contemplated in the Supreme Decrees, and that is the  
15 way that the Ministry reasonably regulates the risk of  
16 the uncertainty of not knowing how many Bonds are out  
17 there.

18 PRESIDENT FERNÁNDEZ ARMESTO: Let me phrase  
19 your statement in my terms.

20 It is your representation on behalf of the  
21 Republic that even if Claimant is considered as a  
22 tenedor especulativo, that would not affect its right

1 to receive USD 34 million in exchange for the Bonds to  
2 be paid, not in cash, but in Peruvian normally traded  
3 Bonds, for a value equivalent to USD 34 million.

4 MR. HAMILTON: I'm just reading the  
5 Transcript again to be confident in my reading of your  
6 question.

7 PRESIDENT FERNÁNDEZ ARMESTO: Of course.

8 (Discussion off the record.)

9 MR. HAMILTON: Mr. President, regardless of  
10 whether Gramercy were considered to be--through the  
11 Bondholder Process, if it were considered to be  
12 speculative, as you mention, that would not prevent  
13 Gramercy from receiving compensation through election  
14 to receive new Bonds.

15 And the amount--as we have discussed, there  
16 is a coincidence of opinions by Experts in this  
17 proceeding that the amount available by applying the  
18 formula of the MEF would be approximately \$34 million.

19 PRESIDENT FERNÁNDEZ ARMESTO: And now--yes,  
20 Mr. Drymer?

21 ARBITRATOR DRYMER: I apologize. I still  
22 don't understand. And, again, it is probably just me.

1 I understood Ms. Menaker to be telling us  
2 that that ranking, if you will, that puts speculative  
3 holders at the bottom applies only to those who  
4 request payment in cash, and then she further said  
5 that--my understanding is that they can only request  
6 \$30,000 in any event. So, it is immaterial in this  
7 case.

8 Did I understand correctly? In other words,  
9 it--

10 MR. HAMILTON: Yes, Mr. Drymer. Thank you  
11 for your question and confirmation.

12 And I invite Ms. Menaker to join. We are not  
13 in the same location, and so we can't signal to each  
14 other, but--

15 ARBITRATOR DRYMER: Sure. Of course.

16 MR. HAMILTON: But, yes, precisely. And if  
17 you look at the text of the "texto único ordenado"  
18 from August of 2017, you can see this is confirmed.

19 ARBITRATOR DRYMER: And again, conversely,  
20 that ranking, if you will, that places speculative  
21 holders at the bottom does not apply to holders of  
22 Agrarian Bonds who seek payment for them in the

1 current process by means of issuance of current  
2 Peruvian Bonds; correct?

3 MR. HAMILTON: Correct.

4 ARBITRATOR DRYMER: It applies only for  
5 people who ask for cash. It doesn't apply to payment  
6 in the form of Bonds.

7 MR. HAMILTON: Well, I think the critical  
8 point--and here is Ms. Menaker. I will let her  
9 comment on this, but I think part of the critical  
10 point is that it's effectively immaterial to the  
11 reality of what would occur here.

12 Ms. Menaker?

13 MS. MENAKER: I have to say that I just--yes,  
14 that is my understanding, and I was hoping to get the  
15 document from a colleague, but we're not in the same  
16 location.

17 But, yes, it doesn't affect their right to  
18 compensation through this procedure. They would still  
19 have the \$34 million; however, not be paid necessarily  
20 in cash, but, again, only up to that small amount.  
21 But that is what it is. It is priority ranking for  
22 these cash amounts.



1           ARBITRATOR DRYMER: Okay. That's what I  
2 happened to have understood your argument to be  
3 earlier on.

4           Thank you for clarifying that, Ms. Menaker  
5 and Mr. Hamilton.

6           PRESIDENT FERNÁNDEZ ARMESTO: So, now let us  
7 see if Mr. Friedman has any further questions--or, not  
8 further question, but further comment to this  
9 question. Sorry.

10          MR. FRIEDMAN: Yes. So, that colloquy  
11 involved a few issues. If I may, I'd like to briefly  
12 address each of them.

13          The first was, where did the calculation of  
14 the notional amount that the Bondholder Process might  
15 offer to Gramercy come from? I think I can help bring  
16 some clarity to that question of the Tribunal. I  
17 believe that that was first calculated by Professor  
18 Edwards, and you'll find that number in Paragraph 271  
19 of his Amended Expert Report, which is CER-4. That  
20 was based just on him trying to apply the formula as  
21 he best understood it.

22          I have to say that we also have been confused

1 about whether Perú has ever actually subscribed to  
2 that number. It has usually been put, this is  
3 something they say they could get, instead of  
4 something that we adopt.

5           It may be that Mr. Kaczmarek calculated the  
6 same number or confirmed that in his First Quantum  
7 Report, but I have to say I'm not--to this day, I  
8 still don't know whether Perú has actually ever said  
9 that or represented that that was their understanding  
10 of what their own Decree would yield if applied to all  
11 of Gramercy's Bonds, assuming of course that they were  
12 authentic and whatever else--whatever other filters  
13 they put them through. But I don't know that that is  
14 their representation. That is something we calculated  
15 to try to parameterize what it could be, but that's  
16 all that it is as far as I know.

17           Second, you asked about the treatment of  
18 speculative holders. I think--well, you will make  
19 what you will, of course, of the responses you've had  
20 to the direct questions today, and of course you heard  
21 the Witnesses testify about whether that is a Gramercy  
22 bill of attainder, basically, or not. And so, I think

1 we've submitted the evidence on that. But I don't  
2 think that the representation--and that alone, even if  
3 it did only apply to the cash payments, it would still  
4 be discrimination and, we think, emblematic of a lot  
5 of the thinking behind these. We think that it stands  
6 for more than it would be in that case. But I don't  
7 think we accept the idea that it is limited to cash  
8 payment.

9           It is true that the Bondholder Process does  
10 say that cash payments can only be made in an amount  
11 up to 100,000 soles, which is about USD 33,000 at kind  
12 of normalized exchange rates for any Bondholder;  
13 right? That's what it says.

14           But then the payment priorities are not  
15 distinctly linked or limited only to the payment in  
16 cash. And it's true that Gramercy has said on a  
17 number of occasions that it would be happy to accept  
18 Bonds as part of a global settlement, because that  
19 could be a good way of restructuring that would spread  
20 out Perú's obligations over time; but I have to say  
21 Gramercy always would have been happy to receive cash,  
22 and much more happy to receive cash than more Bonds.

1           And I have to say, the other thing is that,  
2 you know, it's fine to talk about Bonds, but if you  
3 actually look at the payment provisions of the Supreme  
4 Decrees, not only is the waterfall not necessarily  
5 limited to cash, but the flexibility of the Ministry  
6 in how to pay the debt, what forms to pay in, other  
7 than the cap on cash, are wide open. They can pay in  
8 land if they want to. They can pay in Bonds, but it  
9 doesn't specify what Bonds.

10           And one of the earlier proposals, the 2004  
11 proposal from the--regulation from the Government,  
12 which was itself a Supreme Decree that the  
13 Constitutional Tribunal studied in that 2004  
14 Decision--remember the optional dollarization one?  
15 That was interesting, because that Supreme Decree had  
16 a very high interest rate on top of the dollarization.  
17 It added 7.5 percent interest to dollarization. But  
18 the problem with it was, and the reason Bondholders  
19 didn't take it up, was that it said, "We are going to  
20 pay you in Bonds that pay no interest for another  
21 20 years." There is nothing that prohibits the  
22 Ministry under the Supreme Decree from paying with a

1 bond that has some base value, or however they  
2 determine it, but that doesn't have valid economic  
3 value over time.

4           So, there's an enormous amount--I just want  
5 it to be very clear that there's an enormous amount of  
6 discretion that the Ministry has reserved to itself in  
7 how it actually goes about paying Bondholders.

8           Of course, in the event where it has only  
9 paid about \$300,000 in cash to all Bondholders who  
10 went through the process, at least up to the last time  
11 we saw evidence on it, I don't think they had to make  
12 a lot of hard decisions, but they also reserved  
13 themselves to stop making payments if it's going to  
14 hurt the budget of the country. And so, there is  
15 quite a lot in there that is unregulated and very  
16 uncertain for any Bondholder who goes into it,  
17 especially since you have to waive your rights to do  
18 anything else once you submit to the process.

19           MR. HAMILTON: Mr. President, we are unable  
20 to hear you. Thank you.

21           PRESIDENT FERNÁNDEZ ARMESTO: Sorry for that.

22           No, I was going to say if you want to comment

1 on this argument by Mr. Friedman, that a holder of  
2 Land Bonds would have to waive his right to collect  
3 through the Courts or through any other system before  
4 embarking in this Supreme Decree procedure, and that  
5 there was a wide margin of discretionality for the  
6 Ministry of Finance in how the payment can be  
7 structured. And Mr. Friedman was saying it could be  
8 structured in a 20-year bond without interest and that  
9 this created this lack of knowledge compared with the  
10 necessity of waiving your rights that it created. I  
11 don't know what the objective was. I don't know if  
12 you said arbitrary or discriminatory or what was  
13 exactly the adjective you used to qualify this  
14 extension.

15 MR. HAMILTON: Mr. President, I will comment  
16 and then Ms. Menaker will comment as well.

17 I will comment to clean things up because  
18 Gramercy continues to be all over the map because, of  
19 course, in imaginary land, they can make up all sorts  
20 of things that they think would be nice for them but  
21 that's not the way this works. This is not a  
22 restructuring. It's not an offer. It's not a

1 negotiation. It is the implementation by a sovereign  
2 of the ruling of its Constitutional Tribunal as  
3 carried out appropriately through Supreme Decrees.

4           And so, specifically, with respect to the  
5 issue that you raised, let's be clear: There is a  
6 common understanding before the Tribunal by the  
7 Parties and their Experts in this arbitration that  
8 Gramercy paid 33 million, Gramercy could obtain  
9 34 million.

10           Of course, the Ministry has not opined  
11 through that process. I must say it because we just  
12 heard confusion. The Ministry does not opine on  
13 Bondholders who are not participating in the process,  
14 so we have articulated, there's a common position.  
15 33 paid, 34 million, approximately, available for  
16 authenticated Bonds.

17           With respect to--

18           PRESIDENT FERNÁNDEZ ARMESTO: But that was  
19 not my question, Mr. Hamilton. Sorry. But that is  
20 not the question.

21           The question which Mr. Friedman raised I  
22 would like your comments on is slightly different. It

1 is that you have to embark without knowing the  
2 outcome. And I just--and that was the argument of  
3 Mr. Friedman. And I--could I get your comment on  
4 that?

5 MR. HAMILTON: My one final comment and then  
6 we answer your question--and I'm sorry, because we  
7 heard confusion that could clutter understandings,  
8 and, therefore, I'm simply cleaning up the basics.

9 Second, I refer the Tribunal to Article 18 of  
10 the text from August of 2017, which specifies--and  
11 I'll read this in Spanish, if I might: "Priority in  
12 the payment of the updated debt of the Agrarian Reform  
13 Bonds is to be applied one time only to the option of  
14 payment in cash."

15 It is to answer the priority question, which  
16 there continues to be--it is expressed and it's clear.

17 Now, the other issue, Mr. President, which we  
18 now come to having confirmed the foregoing.

19 Ms. Menaker, again, we are not in the same  
20 room, is this what you are interested in proceeding to  
21 address?

22 MS. MENAKER: Yes.



1 MR. HAMILTON: Perfect.

2 ARBITRATOR DRYMER: That's a leading  
3 question, Mr. Hamilton.

4 MR. HAMILTON: She is waiting patiently, so  
5 I'm going to bend to her will.

6 PRESIDENT FERNÁNDEZ ARMESTO: No, it  
7 difficult in these times where we are all separated in  
8 organizing answers to questions when you have a big  
9 team. So, thank you for--both Parties for their  
10 efforts in doing this Hearing in this fashion, and we  
11 are perfectly aware that it puts strain on everyone.  
12 So, if at any time any of you need some time to  
13 collect or you would like some time to speak to all of  
14 the members of your teams, please feel free to say so.

15 Ms. Menaker.

16 MS. MENAKER: Thank you.

17 So, just in response to your question or the  
18 comment that whether there is a problem because you  
19 needed to waive your right to pursue a court action,  
20 for instance, without knowing the specifics of what  
21 would occur. And Dr. Wühler actually addressed this  
22 in both of his Expert Reports and remarked that it's

1 not at all an unusual feature of mass claims  
2 resolution procedures, that when you have these types  
3 of commissions put forth that are established by a  
4 State to resolve mass claims, often exclusivity is a  
5 primary factor or element of that because, otherwise,  
6 the system doesn't work; right?

7 I mean, if the State going to, essentially,  
8 create a system and they want to do it, put everyone  
9 on the same footing, apply the same types of  
10 considerations, and then have a certain amount of  
11 money or something like that that they are going to  
12 pay, it only works if you funnel everyone through that  
13 type of system. So, it's a very common element, and  
14 that's what Perú did here. So, that doesn't, in our  
15 view, make it at all arbitrary or rational and,  
16 certainly, it is not unusual.

17 PRESIDENT FERNÁNDEZ ARMESTO: No, I think, if  
18 I can just--I completely understand that you have to  
19 get everyone on the same line.

20 No, I think Mr. Friedman was saying that the  
21 outcome, that there was a high level of discretion,  
22 and I think you could be paid with land, for example.

1 So, that Gramercy could be--find itself to be the  
2 landowner of some land in Perú or that you could be  
3 paid with a 20-year zero coupon bond.

4 And could you just comment on this?

5 MS. MENAKER: Yeah. No, I think that is just  
6 not reasonable interpretation of the Decrees because  
7 what the State has done is it has afforded itself some  
8 flexibility because, as we've discussed, I mean, you  
9 have this mass claim procedure. The State has a  
10 public interest in ensuring that it's going to be able  
11 to balance the public objectives, maintain fiscal  
12 stability, et cetera. So, it has to guard against an  
13 unknown issue because, again, as we've said, they  
14 don't know for certain how many of these Bonds are  
15 outstanding and what the potential liability might be  
16 because there was no register. You don't know if  
17 people have been hiding these in their attics or  
18 something.

19 So, they are not sure of what could be the  
20 outcome and what if they were flooded with tons of  
21 claims immediately and they wouldn't be able to  
22 satisfy them by paying out the cash or even paying out

1 Bonds that would become due, you know, very quickly.

2 They had to afford themselves some discretion.

3           Now, the amount of compensation is not varied  
4 because that is done pursuant to the formula. So,  
5 even if you get a bond who is like--you're going to be  
6 paid later, you are going to still be paid what the  
7 compensation is. The form of payments may change just  
8 in order to ensure that the State has the fiscal  
9 wherewithal in order to cover its liabilities in that  
10 regard. And I think that--when looking at this in  
11 context, I think that Gramercy is really making it  
12 seem as if it is much more--not problematic but  
13 uncertain. Like, to say that they would be afforded  
14 land just doesn't make any sense; right? I mean that,  
15 naturally, would be put in because this was all due to  
16 the expropriation of land.

17           So, again, the State is putting something in  
18 there to give itself a little bit of the flexibility  
19 that in the event someone, a landowner, came in  
20 50 years later and said: My land was expropriated.  
21 Okay, here's what it is worth, and maybe we can just  
22 do that. That might be easier.

1           Are they going to give Gramercy land? I  
2 mean, no. And if they did, it would still be worth  
3 the \$34 million and they could go sell the land. I  
4 mean, it's still--but I just think that is fanciful  
5 thinking, that that would actually apply to them.

6           And so, I think, again, the State has  
7 afforded itself some flexibility to make these  
8 payments in different ways in order to ensure that  
9 they always had the fiscal stability to run the  
10 country and that it--also there's tension in  
11 Gramercy's arguments that this alleged uncertainty  
12 prevented them from going into this process, when, at  
13 the same time, they remark that participation rates  
14 were so low. Because if participation rates were as  
15 low as they say they are, then it wouldn't have put  
16 that strain on the fiscal capabilities of the  
17 Government, and the Government would be able to pay in  
18 the ordinary manner.

19           MR. HAMILTON: Mr. President, and  
20 Ms. Menaker, please, just to provide a citation--and  
21 let's be very clear here: The Decree states at  
22 Article 16, modalities of payment. And it says

1 specifically--and I'm going to read it in Spanish:

2 "The legitimate Agrarian Reform bondholders with  
3 updated debt may opt--may opt for the following  
4 payment modalities: (a), payment with sovereign  
5 bonds; (b), payment by conveying lands; (c), payment  
6 in cash up to a maximum of X amount; (d), to swap for  
7 investment in sectors prioritized by the State."

8 (Interruption.)

9 (Stenographer clarification.)

10 MR. HAMILTON: Going back to English.

11 The reason we are referring to a menu is  
12 because, in black and white, there is a menu  
13 available, and I just read the menu to you and the  
14 menu starts with "bonos soberanos," with sovereign  
15 bonds, and has the other options as well, and those  
16 are the options made available. That menu is made  
17 available to legitimate Bondholders, not  
18 differentiating among them at all.

19 And as I just cited earlier, the same Decree  
20 also makes it clear that the issue of prioritization  
21 only relates to the payment in cash and the payment in  
22 cash amount is strictly limited; therefore,

1 immaterial.

2           Finally, your initial question,  
3 Mr. President, about the requirement of a waiver. In  
4 addition to all of the important arguments that  
5 Ms. Menaker made, it is also notable that there was a  
6 similar requirement under some of the draft bills that  
7 Gramercy supported and were never passed.

8           Thank you.

9           PRESIDENT FERNÁNDEZ ARMESTO: Mr. Friedman,  
10 your last words.

11           MR. FRIEDMAN: Yes. Yes, I will be brief.

12           I'm quite glad that Mr. Hamilton brought you  
13 to the text of the MEF's own regulations. They did  
14 change a little bit also between 2014 and 2017, so he  
15 was reading to you from the 2017 ones. But I'm glad  
16 he did. The reference is CE-275, Article 16.

17           And, I mean, what it said is--he read it  
18 accurately--there's a set of options. The option for  
19 actually getting paid in cash is limited to 100,000  
20 soles or about 33,000, and I should just add, just to  
21 be fair, what it says is that you can be paid up to  
22 that small amount in cash that can be paid, where

1 possible, over not more than eight years. So, the MEF  
2 can also string out payments in cash over eight years  
3 if it wishes to.

4 But then the other three options that are  
5 left after whatever you have above 100,000 soles are  
6 sovereign bonds with no term specified. And,  
7 remember, they did in that earlier iteration have no  
8 interest Bonds with a 20-year term. Or investment  
9 swaps and sectors prioritized by the State or land.

10 So, really you can only get \$30,000 in actual  
11 cash and the rest of it is up to whatever the MEF  
12 really ultimately decides.

13 To the extent--and I think Ms. Lavaud  
14 explored that also with Dr. Wühler, during his  
15 testimony. You might refer back to that. He couldn't  
16 really explain it or explain how it would work, but  
17 it's quite clear at the end of day, the Ministry  
18 creates those options, it tells you what's available.  
19 So, if you can choose from three really bad options,  
20 it's not a particularly good choice.

21 And I think--yes, I think that was really the  
22 only thing that I wanted to draw to your attention.



1 Thank you.

2 PRESIDENT FERNÁNDEZ ARMESTO: Thank you. So,  
3 I think this now brings us to the end of the Hearing.  
4 Let me double-check with Professor Stern and  
5 Mr. Drymer. If there is anything else they would like  
6 to both put to the Parties.

7 Professor Stern? No. She is perfect.

8 And Mr. Drymer?

9 ARBITRATOR DRYMER: She is always perfect,  
10 even if she has questions.

11 I have no further questions. Thank you.

12 PRESIDENT FERNÁNDEZ ARMESTO: Very good.

13 So, this really, then, puts an end to the  
14 Hearing, it puts an end to this extensive case. And I  
15 thank you all for the double effort you have made in  
16 making such excellent presentations, and I know you  
17 are spread all over the world, different offices and  
18 different places. Some in lock down, some at home.  
19 It has been an extremely high quality--high, high  
20 quality presentations. Extremely helpful. There is a  
21 lot of work which went into them on both sides.

22 Just looking at your Post-Hearing Briefs, how

1 much work and how well you have--both have used the  
2 evidence to support your case. This could be a  
3 law--for law faculty examples to show students how one  
4 should draft a post-hearing brief. So, really  
5 excellent work. We appreciate the effort.

6 And we appreciate the effort of our Court  
7 Reporters and our Interpreters. For them, these  
8 presentations are always extremely hard work and thank  
9 you for the efforts.

10 And to our technicians. I think they are in  
11 England, in fact, at least by the accent. Thank you  
12 very much.

13 (Comments off the record.)

14 PRESIDENT FERNÁNDEZ ARMESTO: It has worked  
15 very, very well. Thank you, Marisa, and thank you to  
16 the technicians and all the supporting staff.

17 You are all worried, and you would like to  
18 know when the Award will come out. We will do an  
19 effort. It is a complex case. We will have a  
20 deliberation tomorrow to start the work and--but it  
21 will take some months that we just get through the  
22 facts and then all the jurisdictional issues and then,

1 if we get there, to the merits. We will keep you  
2 updated on how we are progressing, but it will not  
3 be--it's a complex case, and it will take some time  
4 too. You know how much work goes into one. It has  
5 gone into all of your presentations. An equivalent  
6 amount of work will go into the Award, and it takes,  
7 inevitably, some time.

8           So, with that, I thank my two colleagues, and  
9 I thank all of you, and I wish you--today is  
10 Wednesday. I was going to say, Mr. Hamilton and  
11 Mr. Friedman, that you should give the weekend off to  
12 your--all your younger staff so that they can relax  
13 after what must have been very hard work, but it is  
14 Wednesday and maybe it's too early for that.

15           But they deserve not to work at least on  
16 Friday. So, that is to all the young lawyers who have  
17 done the really tough work, and I think that they  
18 deserve at least two or three days off to recover from  
19 their efforts.

20           (Comments off microphone.)

21           MR. FRIEDMAN: Mr. President, if I may just  
22 for a moment, I want to, of course, join in and echo

1 all of your thanks that you extended to all of the  
2 people on both teams, White & Case as well as  
3 Debevoise, as well as Estudio Rubio and Estudio  
4 Rodrigo and the people at the clients who worked very  
5 hard on, sort of, making sure that we were able to  
6 bring all this to you, and to all the people who made  
7 this possible, the assistants, the Secretariat, thank  
8 you, Marisa, the translators and Interpreters.

9           But also, a special thanks to the three of  
10 you. This--we have given you a lot of material. I  
11 know that during the February hearing, with the bit of  
12 anxiety about what might be happening in the world in  
13 the back of our minds, you, nevertheless, stayed quite  
14 late some nights to make sure that we were able to  
15 work through.

16           And you have always been throughout--well,  
17 I'm sure both sides have, from time to time, wished  
18 things had come out maybe a little bit differently.  
19 We are grateful to you because we think you have  
20 conducted the case in a very responsible, appropriate  
21 manner, and we really do wish to thank you for your  
22 careful attention to it, which has been obvious

1 throughout, and just for the way--the very  
2 professional way that you have handled things  
3 throughout. So, a sincere thank you from Gramercy and  
4 Debevoise.

5           PRESIDENT FERNÁNDEZ ARMESTO: Thank you.  
6 Mr. Hamilton, you don't have to equal that. You can  
7 just say, well, we--but I will let you also thank. If  
8 you prefer, you can even express whatever you feel at  
9 this moment.

10           MR. HAMILTON: Thank you, Mr. President.  
11 And, of course, we offered empanadas as well, so I  
12 think we all can be in a more relaxed frame of mind.

13           I want to mention two things before I say  
14 thanks. Number one--and please forgive me--but the  
15 order of the menu of options in the Supreme Decree  
16 derives from the 2013 Court Ruling. I refer you to  
17 Paragraph 29 and the subsequent paragraphs, and also  
18 just to confirm the 2013 Court Ruling does not provide  
19 for accounting from date of default but, rather, date  
20 of last coupon. Just a factual note to ensure there  
21 was no lack of clarity in the record.

22           And the other only thing I need to mention--

1 MR. FRIEDMAN: Factually inaccurate note.

2 PRESIDENT FERNÁNDEZ ARMESTO: Okay. We will  
3 look it up. Don't worry.

4 MR. HAMILTON: The other issue is cost  
5 submissions.

6 PRESIDENT FERNÁNDEZ ARMESTO: Don't worry.  
7 We will look it up. And we will double-check. As you  
8 know, we always double-check every single item, and  
9 whatever has been is there, we will double-check it.  
10 And it will come out the way it was.

11 MR. HAMILTON: Cost submissions is other  
12 thing I wanted to mention before saying thank you.

13 PRESIDENT FERNÁNDEZ ARMESTO: Thank you.

14 MR. HAMILTON: And we want guidance and  
15 pragmatism, lest we reopen Pandora's box that the  
16 President has just managed to close.

17 PRESIDENT FERNÁNDEZ ARMESTO: Yes. I would  
18 propose the following.

19 We now declare the procedure closed so there  
20 will not be any new submissions. There will be no  
21 marshaling of evidence, except if there are  
22 exceptional circumstances. Should that happen, you

1 both know the rules. You must first write to the  
2 Tribunal, without making the submission and without  
3 attaching the evidence, explaining why you have to  
4 make that submission or why you have to marshal the  
5 evidence. We will hear the other party and we will  
6 take a decision.

7 But you know the rules, and you are highly  
8 professional, experienced counsel that knows how to  
9 respond to presentation of submissions or evidence  
10 after this point. So, that is the first issue.

11 The second is we need, of course, your input  
12 on costs. I would recommend that after  
13 Thanksgiving--at some reasonable time after  
14 Thanksgiving, on the same date, you make--I would  
15 expect an affidavit from Mr. Friedman and Mr. Hamilton  
16 or from Ms. Popova or Mr. Llano or Mr. Jijón, whoever  
17 is--but I would assume Mr. Friedman and  
18 Mr. Hamilton--making a breakdown of the costs you have  
19 incurred in this case.

20 It may be interesting that you break it down,  
21 taking into account jurisdiction and merits and the  
22 rest. So, because if we allocate, depending on where

1 we come out in jurisdiction, there may be a different  
2 allocation or not. So, I would kindly ask you that  
3 you break it down into phases, jurisdiction, and  
4 merits, and that, then, you also break it down by  
5 stating the--itemizing the different costs which you  
6 have incurred.

7 And I would expect that you state that these  
8 are the true and proper costs and subject that you  
9 disagree with this proposal, I would think that this  
10 is the most efficient way to go about it.

11 But let me ask Mr. Friedman first.

12 MR. FRIEDMAN: I had one other comment on--in  
13 response to the housekeeping comment that you had  
14 made.

15 But, on cost submissions, I think that it may  
16 be that the Parties should discuss--I think what often  
17 comes up is sort of what date do you want them by and  
18 what level of detail are you interested in? And I  
19 think it would be good for us to have something that  
20 looks similar, that has the same level of detail, and  
21 a date that doesn't require our teams to miss the  
22 Thanksgiving holiday in the United States.



1           PRESIDENT FERNÁNDEZ ARMESTO: It could be, I  
2 would say, by the end of November or the middle of  
3 December. There is no hurry in it. So, before the  
4 year-end you should send it, but not before that.

5           And the second is why don't you establish the  
6 date? I expect that two, three, four-page summary in  
7 the form of an affidavit from one of you--from both of  
8 you itemizing the costs. Maybe starting with costs  
9 related to jurisdiction, and to the extent you can and  
10 costs related to merits. To the extent you can break  
11 them down, it is helpful. Or make at least some  
12 allocation, even if it's a rough allocation.

13           MR. FRIEDMAN: When you say itemize the cost,  
14 when we think about that, we often think about very  
15 detailed bills, which often raise questions of  
16 privilege and individual time entries, which, I  
17 assume, you do not want.

18           PRESIDENT FERNÁNDEZ ARMESTO: No. I would  
19 expect saying Debevoise \$300,000 or \$315,000. And  
20 White & Case--

21           MR. HAMILTON: Debevoise \$300,000.

22           PRESIDENT FERNÁNDEZ ARMESTO: Something like

1 that.

2           And you say, then, expert. Well, Expert A,  
3 \$50,000. Expert B, traveling expenses, 200,000.  
4 Organizing the Hearing, 300,000. Payments to ICSID,  
5 600,000. You itemize them so that we can have an idea  
6 of how you--but then that you--that you, then,  
7 represent that these are really the truly incurred  
8 costs. I would expect a representation from you that  
9 these costs are real.

10           MR. HAMILTON: To assist Mr. President, just  
11 to be concrete, we would suggest a cover letter no  
12 more than one page and a summary table along the lines  
13 the President just described. We were going to  
14 suggest one-page summary table, but if it assists for  
15 practical reasons to say up to two-page summary table,  
16 that would be okay. And that clearly is a summary  
17 table that's just--sort of just the facts and we would  
18 propose a date. We were going to say January 7  
19 actually. But if you want December 31.

20           PRESIDENT FERNÁNDEZ ARMESTO: January 7, that  
21 is one day after the Holy Magi, and it's a very  
22 appropriate--in Spanish-speaking world, a very

1 appropriate day after the finalizing of the holiday  
2 period. So, yeah, 7th sounds good to me if it sounds  
3 good to Mr. Friedman.

4 MR. FRIEDMAN: Yes. And I think what we  
5 should do is and what Mr. Hamilton is describing, in  
6 principle, sounds fine. I would suggest that--it  
7 sounds like we should talk about it a little off-line  
8 but come up with something along those lines that is  
9 short submissions that don't provide a lot of detail,  
10 but that are, then, certified as to their accuracy by  
11 Counsel.

12 May I, Mr. President--

13 MR. HAMILTON: And without reopening  
14 Pandora's box, so to speak. It's a cost submission  
15 and nothing more.

16 PRESIDENT FERNÁNDEZ ARMESTO: Yeah. Please  
17 don't. Because, I mean, we will evaluate them. We  
18 will, then, make an analysis of them. I don't think  
19 that it--I would discourage you, let me say it that  
20 way, that we, then, have a round in which you, then,  
21 comment on the other party's submission. To be very  
22 frank, I don't think that--that would be more costs

1 and it would not be extremely helpful to the Tribunal.

2 MR. FRIEDMAN: We couldn't agree more.

3 If I may, Mr. President, there is just one  
4 sort of matter of housekeeping that really I regret to  
5 raise, but I was reminded of it and it did come up  
6 today in Respondent's submissions.

7 As you know, there were a number of 10  
8 authorities that we had proffered to the Tribunal with  
9 our Post-Hearing Brief on Jurisdiction. Tribunal  
10 reserved on those. There are two in particular that I  
11 think may now be relevant and that you should take  
12 account of in light of Respondent's submissions today.

13 The first of them is Renco II, which was the  
14 other case against Perú under the same Treaty.  
15 Ms. Menaker referred to that in some detail in her  
16 slides, and so I think it is appropriate--it is in the  
17 public sphere anyway, I think it is appropriate that  
18 that come in. The second one is Ms. Menaker also  
19 referred to the annulment Decision of the Canadian  
20 courts in the Metalclad case.

21 That's an Authority that's not in the record,  
22 but if it's an annulment on a relevant issue of a case

1 that a party is relying on, we don't really have an  
2 objection to you taking account of what the reality of  
3 the state of the law is, but, by the same token, you  
4 should probably take into account the annulment in the  
5 Clorox case on which Respondents have relied because  
6 that was annulled on the very issue that they cited it  
7 for.

8           So, I just wanted to bring those two Legal  
9 Authorities to your attention because I do think  
10 equality of arms would sort of allow you to and maybe  
11 require you to take account of them in light of  
12 Respondent's legal submissions today.

13           MR. HAMILTON: Mr. President, if I might,  
14 equality of arms would have meant that they followed  
15 the rules, that Gramercy did not repeatedly break  
16 procedural rules, did not repeatedly stuff into the  
17 record improperly, in violation of Tribunal orders,  
18 additional evidence at the wrong periods of time, did  
19 not sandbag with additional documents, did not bring  
20 out new Authorities, did not repeatedly try to change  
21 Professor Edwards' submissions.

22           All of it has been violative of due process.

1 I'm sorry. I'm sorry he raised this. Putting in  
2 extra cases now, we did not get the opportunity to put  
3 in 10 new cases that we felt like. There are many new  
4 things that we might observe to continue to undermine  
5 Gramercy's case, and so simply to let in what they  
6 want because they unilaterally decided, they  
7 unilaterally violated the rules, they not only  
8 unilaterally violated the rules, they didn't even  
9 follow the proper procedure, something they had  
10 already been scolded for in the past by the Tribunal.

11 So, unfortunately, there is no equality to--I  
12 can cram in what I want. I can break the procedural  
13 rules, and then we will try to sort of squeeze it in  
14 this way later and call it equality. It is not  
15 equality, Mr. President. That is why we have rules,  
16 and if they want to crack it open, we will go to town  
17 with new cases. We could have put in 10 new cases.  
18 We can put in 15 new cases. So, that is the  
19 difficulty before the Tribunal.

20 We would be very glad, for example, to allow  
21 the United States Government, the Non-Disputing Party,  
22 which we have made our views clear on how it has been

1 treated in this proceeding by Gramercy. We are sure  
2 they would have views on Renco II, but they never were  
3 given a chance to do so.

4 So, all of these are the problems with a  
5 Claimant who breaks the rules. And, I'm sorry, but  
6 just trying to at the last minute get us to cave on  
7 their repeated procedural violations doesn't work for  
8 all the reasons that we have articulated.

9 So, we are sorry that the Tribunal has been  
10 put in this uncomfortable position. We did not create  
11 the circumstances. We are simply trying to cope with  
12 the circumstances.

13 PRESIDENT FERNÁNDEZ ARMESTO: Let me ask--

14 MR. FRIEDMAN: You did assert a new  
15 jurisdictional objection at the Post-Hearing Briefs  
16 stage, which is what prompted this--

17 (Overlapping speakers.)

18 MR. HAMILTON: That is true because of your  
19 withholding of relevant evidence over time. I'm sorry  
20 that this is happening at the end of the case,  
21 Mr. President, but if Claimant continues to bring up  
22 issues like this we are going continue to push back as

1 necessary to protect the State. I'm sorry about it.

2 PRESIDENT FERNÁNDEZ ARMESTO: Mr. Hamilton,  
3 let me ask Ms. Menaker, I remember you spoke about  
4 Renco II.

5 MS. MENAKER: Yes. I'm sorry. Is that your  
6 question? Yes. I did address it.

7 PRESIDENT FERNÁNDEZ ARMESTO: Yes. Okay. I  
8 don't remember whether you spoke about the annulment  
9 of Metalclad.

10 MS. MENAKER: Yes, I did. Let me just say  
11 when I spoke about Renco II, I did also reference the  
12 dissent--

13 (Overlapping speakers.)

14 PRESIDENT FERNÁNDEZ ARMESTO: Okay. Did you  
15 speak about--

16 MS. MENAKER: Metalclad, I did. It was--it  
17 is not on a slide. I just mentioned it in response to  
18 an argument about the prepublication rule in Perú  
19 allegedly having been violated, and that that would  
20 constitute or could constitute a fair and equitable  
21 treatment violation, and I was making the argument  
22 that domestic violations are not necessarily



1 equivalent to international violations and,  
2 particularly, in the context of transparency  
3 obligations like that, even if they are found in  
4 another provision of that same Treaty, and that was an  
5 issue that was before the Canadian--the British  
6 Columbia Supreme Court many years ago in the Metalclad  
7 case where that case was partially set aside.

8           So, I just--I mentioned that.

9           PRESIDENT FERNÁNDEZ ARMESTO: Yeah. And did  
10 you mention the annulment of Clorox?

11           MS. MENAKER: No, I didn't. That was a case  
12 that we had relied on earlier, and that was what  
13 Gramercy mentioned, that that case had been annulled,  
14 I believe, by the Swiss courts in their Post-Hearing  
15 Brief. They mentioned that.

16           PRESIDENT FERNÁNDEZ ARMESTO: Okay.

17           MS. MENAKER: I don't know if my colleague,  
18 Jonathan Ulrich, if he addressed that.

19           PRESIDENT FERNÁNDEZ ARMESTO: Let me finish  
20 with you, if I may, Ms. Menaker.

21           So, Renco II, is it--do you know if it is in  
22 the record?

1 MS. MENAKER: It is not in the record. It  
2 was one of the cases--

3 PRESIDENT FERNÁNDEZ ARMESTO: Okay. Do you  
4 mind, since you have referred to it, would you mind  
5 sending us a copy of Renco II, so that it is in the  
6 record.

7 MS. MENAKER: The Claimant, I believe,  
8 already has because it mentioned it in its  
9 Post-Hearing Brief.

10 Then after that--because it was a new  
11 Authority, Perú wrote in complaining that they had  
12 introduced new Legal Authorities, and the Tribunal  
13 said it will keep it there and it would decide the  
14 issue at the end of the Hearing. So, that's what the  
15 Agreement--

16 (Overlapping speakers.)

17 PRESIDENT FERNÁNDEZ ARMESTO: I know.  
18 Ms. Menaker, my question is very specific. Since you  
19 have referred to it now, you presumably do not mind to  
20 bring it into the record.

21 MS. MENAKER: Yes.

22 PRESIDENT FERNÁNDEZ ARMESTO: We can do it.

1 (Overlapping speakers.)

2 PRESIDENT FERNÁNDEZ ARMESTO: We can validate  
3 what the Claimant has done or you can send to us the  
4 Renco II copy, whichever you prefer.

5 MR. HAMILTON: Mr. President, again.

6 PRESIDENT FERNÁNDEZ ARMESTO: No,  
7 Mr. Hamilton, let me finish, please, with Ms. Menaker.  
8 Would--do you mind?

9 MS. MENAKER: So, you understand that you  
10 have the Authority from the Post-Hearing Brief, and  
11 you're asking me if--

12 PRESIDENT FERNÁNDEZ ARMESTO: If you agree  
13 that we use it, Ms. Menaker? You have referred to it.  
14 Since you have referred to it, the other Party has  
15 brought it in. Is there any objection on your side  
16 that we have a look at it. It is very difficult to--I  
17 mean--

18 MS. MENAKER: No.

19 (Overlapping speakers.)

20 PRESIDENT FERNÁNDEZ ARMESTO: Let me say how  
21 the world works, I go into the internet, I type in  
22 "Renco II," I will read it and then see what--if what

1 you have said makes sense to me or not because I  
2 cannot validate your--

3 MS. MENAKER: I understand, Mr. President.

4 PRESIDENT FERNÁNDEZ ARMESTO: So, it is a  
5 purely formal question whether these Decisions, which  
6 are in the public domain, whether we incorporate them  
7 or not.

8 So, if we can be as flexible, let's just say  
9 let's incorporate it. It is what the Claimant wants  
10 and you have used it. I don't think that there should  
11 be any problem with that.

12 MS. MENAKER: No.

13 MR. HAMILTON: Mr. President, you leave us no  
14 choice, I'm sorry to say. We are left with no choice.  
15 This is what happens, and I'm watching the smirks and  
16 chuckles of opposing Counsel that cram these things  
17 into the record, specifically for this reason. They  
18 briefed it, it is in their Briefs, which have never  
19 been published on the internet. It is in their  
20 Briefs. We never got a chance to brief it. So, I'm  
21 sorry, but this is why people should follow the rules.

22 So, we are basically left with no choice,

1 Mr. President. We are left with no choice.

2 Renco II--

3 PRESIDENT FERNÁNDEZ ARMESTO: Mr. Hamilton,  
4 Ms. Menaker did recently refer to Renco II.

5 (Overlapping speakers.)

6 MR. HAMILTON: We did it specifically because  
7 the issue has been left hanging out. There has been  
8 no ruling on it. They have already briefed it, it is  
9 sitting in their Briefs together with 10 other sources  
10 that they were not authorized to use. We followed the  
11 rules. So, I'm sorry, this is exactly the problem  
12 with rule-breaking, and it is exactly why it is not  
13 okay.

14 I understand the Tribunal wishes to make  
15 reference--or to take notice of Renco II, together  
16 with the Dissent, together with the position of the  
17 Non-Disputing Party, the United States, which agrees  
18 with the Republic of Perú about the interpretation of  
19 the Treaty, so, under the circumstances, we understand  
20 you are saying you are going to read it anyway. So,  
21 we don't know what else we can say.

22 PRESIDENT FERNÁNDEZ ARMESTO: But the point

1 is--but, Mr. Hamilton, this is not reasonable.  
2 Ms. Menaker has--Ms. Menaker, you have--it is in your  
3 slides.

4 MR. HAMILTON: By necessity because they put  
5 it into their Briefs.

6 (Overlapping speakers.)

7 MR. HAMILTON: So, we are left with no  
8 choice.

9 That is my point.

10 PRESIDENT FERNÁNDEZ ARMESTO: Yeah, but now  
11 you have chosen to react to Renco II, and now you have  
12 made some arguments on Renco II. How do you want us  
13 to validate Renco II if we don't put it into the  
14 record? I just don't see the reasonability now of not  
15 putting it into the record, Mr. Hamilton.

16 MR. HAMILTON: I think that it's unreasonable  
17 that they broke the rules and put us in this position,  
18 but, in any event, we understand that the Tribunal is  
19 going to take notice of the entirety of the Renco  
20 II package that I mentioned at this point in time.

21 PRESIDENT FERNÁNDEZ ARMESTO: Okay.

22 MR. HAMILTON: I'm sorry to sound stubborn,

1 but I'm simply applying the rules that apply. I  
2 apologize. I'm sorry that we have all been put in  
3 this situation again.

4 PRESIDENT FERNÁNDEZ ARMESTO: Yes, I fully  
5 understand your point. But the position is that  
6 Ms. Menaker has now referred to these two Decisions,  
7 and so, to some extent this is now--this is object of  
8 dispute between the Parties, and I think this is  
9 Renco II in the annulment of Metalclad, you both--you  
10 referred to these two Decisions.

11 They are not in the--they were in these  
12 documents which Claimant wanted to introduce into the  
13 record. You objected to that. But now you have  
14 reacted to these two. So, I don't know how you want  
15 to solve this, Mr. Hamilton.

16 MR. HAMILTON: As I mentioned, Mr. President,  
17 I think that Respondent is left with no choice. I  
18 think that the bottom line is that Renco has been put  
19 improperly into the record. It has been improperly  
20 briefed by Counsel, that I have been watching smirk  
21 through this conversation, and therefore, Respondent  
22 because it had not been excluded addressed it.

1           And so, I understand the Tribunal is asking  
2 for the submission of Renco II, together with the  
3 Dissent and the position of Non-Disputing Party, and  
4 that would be it. We understand that all other  
5 unauthorized material submitted by Gramercy would be  
6 excluded, and we understand that we are not to submit  
7 any new materials by Respondent either.

8           PRESIDENT FERNÁNDEZ ARMESTO: Excellent. So,  
9 we all agree on that, I think.

10           MR. FRIEDMAN: Well, no, the--I think  
11 Mr. Hamilton smuggled a few things into that answer,  
12 purporting to be in agreement, which we don't all  
13 agree on.

14           It's quite clear that Ms. Menaker referred to  
15 Renco II, my--and, look, the Tribunal will--the legal  
16 Authority that you can get on the internet, I just  
17 really don't understand the position, and the second,  
18 the issue with the Metalclad annulment was that  
19 that's--that wasn't an Authority that we had proposed  
20 you take a look at.

21           It is one that Ms. Menaker for the first time  
22 today, I think, suggested bore on one of the issues



1 that she was pleading about. And she said that's  
2 relevant because we had relied on an aspect of  
3 Metalclad Tribunal Decision that she then said was  
4 annulled. So, if you should take account of that,  
5 which we are not--we aren't fighting on this.

6 We aren't resisting the idea that, if they  
7 wanted to--it's one Authority, if they wanted to send  
8 you the Metalclad annulment to make good what she said  
9 during her speech today, we don't really have an  
10 objection to that, but by the same token, we had cited  
11 the Clorox annulment case, which is one of the 10 that  
12 we had proposed that you take a look at, because that  
13 was a very recent Annulment Decision by the Swiss  
14 courts on the issue for which Respondent was relying  
15 on it.

16 So, I just--that's a kind of equal treatment.  
17 And I really have resisted going tit for tat on this  
18 idea of Gramercy and Debevoise are rule-breakers. I  
19 absolutely resist it.

20 I think that it is absolutely incredibly  
21 against all the rules to try to assert a new  
22 jurisdictional defense for the very first time in a

1 Post-Hearing Brief, when all of the evidence on which  
2 they made that argument were available to them well  
3 beforehand. Certainly, well before the Hearing and  
4 at--in time for all of their last briefs.

5 It is simply--I mean, that's a gross  
6 violation of the rules, and most of the authorities  
7 that we presented to you were simply in response to  
8 that, if you get past even a threshold looking at it,  
9 given what the--clarity of the UNCITRAL Rules.

10 So, I don't want to argue the point. It is  
11 not productive. It is late in the day and we should  
12 have said our "thank-yous" and "congratulations" and  
13 "goodbyes" already, but I did want to just make sure  
14 that the housekeeping issue was fairly put and that  
15 you have it in front of you.

16 PRESIDENT FERNÁNDEZ ARMESTO: Very good. We  
17 will do the following. We will do the following. Let  
18 us go through--we have to go through the record, and  
19 we will see where these cases including Renco,  
20 Metalclad annulment and Clorox annulment, whether they  
21 are relevant for our Decision.

22 And now I must remind our Secretary and

1 Crystal and the assistant to the Tribunal that, if we  
2 find that they are relevant, we will tell you, and if  
3 you want to say anything about these cases, which are  
4 in the public domain, you are more than welcome to do  
5 that. Hopefully, you will not have anything to add.  
6 But we will solve it in this way. And, hopefully, we  
7 will not need these cases. If we need them, we will  
8 let you know and we will give you an opportunity to  
9 speak.

10 But we must--the only problem with this is  
11 that we must remember that--to do that, and we must  
12 leave a note somewhere at the beginning of the Award  
13 so that we do not do this without giving some thought.

14 And if we are to use any other case which is  
15 not in the record, we will also let you know so that  
16 you can make arguments.

17 MR. HAMILTON: Mr. President.

18 PRESIDENT FERNÁNDEZ ARMESTO: Mr. Hamilton.

19 MR. HAMILTON: I appreciate the effort. I  
20 must say, though, that your comment puts a foot in the  
21 door to actually closing the record of this case and  
22 opens the scenario that there are going to be more

1 letters, more exchanges, and I think that, at least 15  
2 minutes ago, we were trying to stop all that.

3           So, we would be very content to run this to  
4 ground right now and be done with it because otherwise  
5 we can't do cost submissions, we don't know what  
6 people are going to be drumming up to put into some  
7 letter in three months from now. We can just close  
8 the issue right now. We are glad to do it and end the  
9 letters and end the uncertainty and end all these  
10 procedural issues and then you never have to hear--we  
11 never have to hear each other again about--

12           (Overlapping speakers.)

13           PRESIDENT FERNÁNDEZ ARMESTO: Well, then  
14 let's all agree. Let's all agree. Renco II,  
15 annulment of Metalclad and annulment of Clorox we put  
16 it into the record. That makes life much easier.  
17 Let's just say these are three publicly-known  
18 Decisions. Let's put them into the record. That's  
19 the easy solution, and we solve this problem forever.  
20 If not, we will go the other way. And I give you the  
21 choice, Mr. Hamilton. You choose one way or the  
22 other.

1 MR. HAMILTON: Our choice is that Gramercy  
2 should have followed the rules, but, in any event, we  
3 accept your compromise solution, which is I understand  
4 an effort to wrap it up.

5 (Overlapping speakers.)

6 MR. HAMILTON: So, Ms. Menaker, do you have  
7 any other comment?

8 MS. MENAKER: No.

9 PRESIDENT FERNÁNDEZ ARMESTO: A no to my  
10 proposal or a no to no further comments? Okay.

11 (Overlapping speakers.)

12 MS. MENAKER: No, to no further comments.  
13 I'm okay with your proposal, Mr. President.

14 PRESIDENT FERNÁNDEZ ARMESTO: So, you agree  
15 we put these three Decisions into the record.

16 MR. HAMILTON: We do not object to the  
17 Tribunal's choice to take notice of them, given the  
18 circumstances that have been created by the conduct of  
19 Claimant. Thank you.

20 PRESIDENT FERNÁNDEZ ARMESTO: Okay. So, can  
21 I ask the secretary and the assistant, can you put a  
22 number to these three Decisions. Just get them down

1 from the internet. Put a number to them and inform  
2 the Parties, and we close this. Excellent. Thank  
3 you.

4 Thank you for that. It would not--

5 (Overlapping speakers.)

6 MR. HAMILTON: I only say I never had a  
7 chance to say thank you and be nice.

8 (Overlapping speakers.)

9 PRESIDENT FERNÁNDEZ ARMESTO: This is a  
10 fitting end to this case if we had not had this  
11 discussion on these three documents. It is a fitting  
12 end, and I think it is also a fitting end that we have  
13 found a solution.

14 So, no further ado. It is now half past  
15 8:00 in Europe, and you have to go to lunch probably  
16 in the States and in Canada. Thank you to all of you,  
17 and I hope to see you safe and healthy very soon in  
18 person. Thank you. Bye.

19 ARBITRATOR DRYMER: Thank you, everybody.

20 MS. MENAKER: Thank you, everyone.

21 MR. HAMILTON: Thank you. Thank you,  
22 Dr. Stern, Mr. Drymer. Mr. Armesto. Thank you very

1 much.

2 (Whereupon, at 2:28 p.m., the Hearing was

3 concluded.)

## CERTIFICATE OF REPORTER

I, Dawn K. Larson, RDR-CRR, Court Reporter, do hereby certify that the foregoing 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 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