

**The Renco Group, Inc.**  
*Claimant*

v.

**The Republic of Peru**  
*Respondent*

(UNCT/13/1)

## **PERU'S SUBMISSION ON COSTS**

15 August 2016



***The Renco Group, Inc. v. The Republic of Peru***

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**TABLE OF CONTENTS**

I.	INTRODUCTION.....	1
II.	RENCO WAS UNSUCCESSFUL AND IT SHOULD BEAR THE COSTS.....	2
	A.    Legal Basis .....	2
	B.    Renco Failed To Comply With The Treaty And Is The Unsuccessful Party .....	4
III.	RENCO DELAYED AND AGGRAVATED THE DISPUTE.....	5
	A.    Legal Basis .....	5
	B.    Peru Timely Raised Its Waiver Objections and Advocated For Efficient Proceedings.....	6
	C.    Renco Repeatedly Insisted On Delaying Decision Of Peru’s Waiver Objection And Aggravating The Dispute .....	8
IV.	PERU’S COSTS ARE REASONABLE.....	11
	A.    Legal Basis .....	11
	B.    Peru’s Costs Are Reasonable .....	12
V.	REQUEST FOR RELIEF .....	14

## ***The Renco Group, Inc. v. The Republic of Peru***

### **PERU'S SUBMISSION ON COSTS**

1. The Republic of Peru ("Peru") hereby submits its Submission on Costs in accordance with the Tribunal's Partial Award on Jurisdiction dated 15 July 2016 ("Partial Award"), the partial procedural agreement with The Renco Group, Inc. ("Renco"), the instructions of the Tribunal of 15 August 2016, Article 10.26(1) of the Peru-United States Trade Promotion Agreement (the "Treaty"), and Articles 40 and 42 of the UNCITRAL Arbitration Rules.<sup>1</sup>

#### **I. INTRODUCTION**

2. Renco commenced its arbitration under the Treaty in a manner that willfully violated a basic requirement of the Treaty; remained in continuous violation of the Treaty despite being timely alerted to and notified of its violation; and delayed the proceeding by consistently seeking to prevent Peru from being heard with respect to the violation. The Tribunal concluded that Renco violated the Treaty and its claims were dismissed. Renco accordingly should pay the costs of its failed proceeding.

▪ *Renco is the unsuccessful party:*

- Peru and the United States included a waiver requirement in the Treaty as an express condition to their consent to arbitrate.
- Renco chose to pursue claims under the Treaty without providing an absolute waiver – not once, but twice – intentionally maintaining its impermissible reservation.
- The Tribunal has determined that Renco's claim fails for lack of jurisdiction due to Renco's defective waiver. Renco, thus, is required to bear Peru's costs pursuant to Article 42(1) of the UNCITRAL Arbitration Rules.

▪ *Renco delayed and aggravated the resolution of this dispute:*

- Peru conducted itself in a diligent and efficient manner, and conveyed early signals of concern regarding the waiver violation, including in letters in 2011 referring, *inter alia*, to "the scope of the mandatory waiver of other proceedings" and "the scope of the consent to arbitrate."<sup>2</sup>
- Renco, however, has been responsible for protracting and unnecessarily complicating this arbitration. It repeatedly objected to Peru being heard on the waiver violation and sought to delay this issue by years, resulting in a pleading process that ultimately lasted almost nineteen months. It took numerous, shifting positions, including a last minute argument, to which Peru could not respond, that Peru's objection constituted an abuse of rights.
- If Peru had not been ultimately successful at having its waiver objection heard as a preliminary issue, Renco's actions would have led to extraordinary inefficiency. For this additional reason, Renco must be held responsible for the costs of this arbitration.

- *Peru's costs are reasonable.* The costs that Peru has incurred to defend against Renco's claims reflect the significance and complexity of the claims, the length of the proceedings, and the

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<sup>1</sup> Peru prepared its Submission on Costs in reliance of Renco's characterization of the parameters it would follow for this simultaneous submission. *See, e.g.*, Letter from Renco to the Tribunal dated 11 Aug. 2016.

<sup>2</sup> Letter from Peru to Renco dated 9 Sept. 2011; *see also* Letter from Peru to Renco dated 6 May 2011.

complications caused by Renco’s strategic choices. Peru’s costs are reasonable and, therefore, should be fully reimbursed by Renco.

## II. RENCO WAS UNSUCCESSFUL AND IT SHOULD BEAR THE COSTS

### A. Legal Basis

3. The Treaty provides at Article 10.26(1) that the Tribunal has the authority to “award costs and attorney’s fees in accordance with this Section and the applicable arbitration rules.”<sup>3</sup> The UNCITRAL Arbitration Rules applicable in this case establish at Article 42(1) that: “[t]he costs of the arbitration *shall* in principle be borne by the *unsuccessful party* or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.”<sup>4</sup> Article 42(1) thus establishes a presumption that the arbitration costs be borne by the losing party – the so-called “loser pays” or “costs follow the event” rule.<sup>5</sup> This presumption applies also to the costs of legal representation.<sup>6</sup>

4. There are ample examples of application of the loser pays principle in the context of the UNCITRAL Arbitration Rules. In *Tembec v. United States*, for instance, the tribunal observed that the “general principle of ‘costs follow the event,’ save for exceptional circumstances such as issues concerning access to justice” is compelling in cases governed by the UNCITRAL Arbitration Rules, and awarded the prevailing party, the United States, its costs, including legal fees.<sup>7</sup> Similarly, in the *Khan Resources v. Mongolia* case, the tribunal observed that there was one successful party and “no extraordinary factors that would cause it to depart from the presumption that costs follow the event.”<sup>8</sup> The tribunal thus ordered the losing party to pay the totality of the prevailing party’s costs, amounting to US\$ 9,074,143.51.<sup>9</sup> Also in *British Caribbean Bank v. Belize* the tribunal found that “the general principle should be that the ‘costs follow the event,’ save for exceptional circumstances.”<sup>10</sup> Thus, the tribunal awarded the claimant the totality of the costs of the arbitration, including legal fees.<sup>11</sup>

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<sup>3</sup> Article 10.20(6) of the Treaty addresses the allocation of costs with respect to a decision regarding an objection made under Articles 10.20(4) or 10.20(5), providing that “[w]hen it decides a respondent’s objection under paragraph 4 or 5, the tribunal may, if warranted, *award to the prevailing disputing party reasonable costs and attorney’s fees* incurred in submitting or opposing the objection.” Treaty, Art. 10.20(6) (emphasis added).

<sup>4</sup> UNCITRAL Arbitration Rules, Art. 42(1) (emphasis added).

<sup>5</sup> See, e.g., *ST-AD GmbH v. Republic of Bulgaria* (UNCITRAL) Award on Jurisdiction dated 18 Jul. 2013, ¶ 426 (noting that the UNCITRAL Arbitration Rules “establish a presumption in favour of the losing party paying the costs of the arbitration.”) (RLA-135); *ECE v. Czech Republic* (UNCITRAL) Award dated 19 Sept. 2013, ¶¶ 6.68, 6.69, 6.74 (noting that there is a “presumption under the UNCITRAL Rules that the costs of the arbitration should follow the event.”) (RLA-190).

<sup>6</sup> UNCITRAL Arbitration Rules, Articles 40(e), 42(1). This contrasts with the approach adopted in the 1976 version of the UNCITRAL Arbitration Rules that left tribunals “free to determine which party shall bear such costs.” 1976 UNCITRAL Arbitration Rules, Article 40(2); see also *Nova Scotia Power Inc. v. Bolivarian Republic of Venezuela* (UNCITRAL) Costs Order dated 30 Aug. 2010, ¶ 25 (noting that, under the 1976 UNCITRAL Arbitration Rules, the tribunal has discretion to allocate legal costs between the parties because they are not subject to the general rule that costs should be allocated to the unsuccessful party) (RLA-194).

<sup>7</sup> *Canfor Corp. v. United States of America; Tembec et al. v. United States of America; and Terminal Forest Products Ltd. v. United States of America* (UNCITRAL) Joint Order on the Costs of Arbitration and for the Termination of Certain Arbitral Proceedings dated 19 Jul. 2007, ¶¶ 139, 149, 152, 191.8 (RLA-177).

<sup>8</sup> *Khan Resources Inc., et al. v. Government of Mongolia* (UNCITRAL) Award on the Merits dated 2 Mar. 2015, ¶ 432 (RLA-178).

<sup>9</sup> *Id.* ¶ 450.

<sup>10</sup> *British Caribbean Bank v. Belize* (UNCITRAL) Award dated 19 Dec. 2014, ¶ 325, see also *id.* ¶ 317 (RLA-179).

<sup>11</sup> *Id.* ¶ 328.

5. Of particular note, in *Detroit International Bridge Company (DIBC) v. Canada*, also governed by the UNCITRAL Arbitration Rules, the tribunal awarded the respondent costs after dismissing the case for lack of jurisdiction because of the claimant's submission of a defective waiver.<sup>12</sup> As in this case, the decision dismissing the *DIBC* case was issued approximately five years after the claimant filed its notice of intent to arbitrate; the *DIBC* tribunal was not briefed and did not render any decision on the merits of the claim; and, although that tribunal unanimously determined that the claimant's waiver was defective, one of the arbitrators dissented on the issue as to whether the claimant could cure the defect.<sup>13</sup> The *DIBC* tribunal unanimously awarded the respondent its costs of the arbitration, including legal costs.<sup>14</sup>

6. The above cases, as well as many others,<sup>15</sup> demonstrate that the loser pays principle is the norm in cases governed by the UNCITRAL Arbitration Rules. As the tribunals in *Achmea v. Slovak Republic I* and *International Thunderbird Gaming Corp. v. Mexico* observed, the practice of having each party bear its own costs is no longer so compelling,<sup>16</sup> and this is particularly so when a claim governed by the UNCITRAL Arbitration Rules is denied in full. Awarding costs to the

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<sup>12</sup> *Detroit Int'l Bridge Co. v. The Government of Canada* (UNCITRAL) Award on Costs dated 17 Aug. 2015, ¶ 61 (RLA-180).

<sup>13</sup> *Detroit Int'l Bridge Co. v. The Government of Canada* (UNCITRAL) Award on Jurisdiction dated 2 Apr. 2015, ¶¶ 46, 107 (RLA-100); *Detroit Int'l Bridge Co. v. The Government of Canada* (UNCITRAL) Separate Dissenting Jurisdictional Statement of Michael Chertoff dated 2 Apr. 2015, ¶ 6 (RLA-101).

<sup>14</sup> *Detroit Int'l Bridge Co. v. The Government of Canada* (UNCITRAL) Award on Costs dated 17 Aug. 2015, ¶¶ 50, 61 (RLA-180).

<sup>15</sup> See, e.g., *ST-AD GmbH v. Republic of Bulgaria* (UNCITRAL) Award on Jurisdiction dated 18 Jul. 2013, ¶ 431 (ordering losing party to pay totality of prevailing party's costs, including legal costs) (RLA-135); *Konsortium Oeconomicus v. Czech Republic* (UNCITRAL) Award on Costs dated 8 Feb. 2012, ¶ 51 (same) (RLA-181); *Alps Finance and Trade AG v. Slovak Republic* (UNCITRAL) Award dated 5 Mar. 2011, ¶ 271 (same) (RLA-182); *Apotex v. United States of America* (UNCITRAL) Award on Jurisdiction and Admissibility dated 14 Jun. 2013, ¶ 340 (same) (RLA-183); *Methanex Corp. v. United States of America* (UNCITRAL) Final Award of the Tribunal on Jurisdiction and Merits dated 3 Aug. 2005, Part V, ¶¶ 5, 12 (same) (RLA-12); *SwemBalt AB, Sweden v. Republic of Latvia* (UNCITRAL) Decision by the Court of Arbitration dated 23 Oct. 2000, ¶ 49 (same) (RLA-184); *Peter Franz Voecklinghaus v. Czech Republic* (UNCITRAL) Final Award dated 19 Sept. 2011, ¶¶ 212-213 (same) (RLA-185); *ECE Projektmanagement Int'l GmbH and Kommanditgesellschaft Panta Achtundsechzigste Grundstücksgesellschaft mbH & Co. v. Czech Republic* (UNCITRAL) Award dated 19 Sept. 2013, ¶ 6.74 (awarding successful party 85 percent of costs, including legal fees) (RLA-190); *Luigiterzo Bosca v. The Republic of Lithuania* (UNCITRAL) Award dated 17 May 2013, ¶¶ 325, 327 (awarding successful party totality of tribunal and administrative costs and 80 percent of its legal fees) (RLA-186); *Achmea B.V. v. The Slovak Republic (II)* (UNCITRAL) Award on Jurisdiction and Admissibility dated 20 May 2014, ¶¶ 288-289 (awarding successful party totality of tribunal and administrative costs and 75 percent of its legal costs) (RLA-187); *Hulley Enterprises Ltd. v. Russian Federation* (UNCITRAL) Final Award dated 18 Jul. 2014, ¶¶ 1869, 1887 (awarding successful party totality of tribunal and administrative costs and 75 percent of its legal representation and expert costs) (RLA-188); *International Thunderbird Gaming Corp. v. The United Mexican States* (UNCITRAL) Award dated 26 Jan. 2006, ¶¶ 220, 221 (awarding successful party 75 percent of its costs, including legal fees) (CLA-19); *BG Group v. Argentina* (UNCITRAL) Final Award dated 24 Dec. 2007, ¶ 460 (ordering losing party to pay 70 percent of prevailing party's costs, including legal fees) (CLA-26); *Chemtura Corp. v. Canada* (UNCITRAL) Award dated 28 Aug. 2010, ¶¶ 272-273 (awarding successful party totality of the tribunal and administrative costs and 50 percent of its legal fees) (RLA-191); *Valeri Belokon v. The Kyrgyz Republic* (UNCITRAL) Award dated 24 Oct. 2014, ¶¶ 330, 333 (awarding successful party totality of the tribunal and administrative costs and 50 percent of its legal fees) (RLA-189); *Link-Trading Joint Stock Co. v. Republic of Moldova* (UNCITRAL) Final Award dated 18 Apr. 2002, ¶¶ 94, 96 (awarding successful party tribunal fees and a portion of its legal costs) (RLA-192); *Active Partners Group Ltd. v. The Republic of South Sudan* (UNCITRAL) Final Award dated 27 Jan. 2015, ¶¶ 414, 417 (awarding successful party totality of the tribunal and administrative costs and a portion of its legal fees) (RLA-193); *Nova Scotia Power Inc. v. Bolivarian Republic of Venezuela* (UNCITRAL) Costs Order dated 30 Aug. 2010, ¶¶ 20, 38 (awarding successful party totality of tribunal and administrative costs and a portion of its legal fees) (RLA-194); *Ulysseas, Inc. v. Republic of Ecuador* (UNCITRAL) Final Award dated 12 Jun. 2012, ¶ 365 (awarding successful party a portion of its legal fees) (RLA-195); *Jan Oostergetel and Theodora Laurentius v. Slovak Republic* (UNCITRAL) Final Award dated 23 Apr. 2012, ¶¶ 338, 340 (awarding successful party totality of the tribunal and administrative costs and a portion of its legal fees) (RLA-196).

<sup>16</sup> *Achmea B.V. v. The Slovak Republic (I)* (UNCITRAL) Final Award dated 7 Dec. 2012, ¶ 348 (RLA-197); *International Thunderbird Gaming Corp. v. The United Mexican States* (UNCITRAL) Award dated 26 Jan. 2006, ¶¶ 214, 218 (CLA-19).

prevailing party has become the predominant practice in ICSID cases as well, even though, unlike the UNCITRAL Arbitration Rules, the ICSID Convention and Arbitration Rules do not expressly adopt the loser pays principle.<sup>17</sup>

7. Finally, the Tribunal itself recognized the appropriateness and applicability of the loser pays principle in its decision of 2 June 2015, when it stated that “there will be cost consequences in the event Peru’s application does not succeed.”<sup>18</sup> In accordance with the principle that the Parties be treated equally,<sup>19</sup> the converse must also apply, and there should be cost consequences for Renco, now that Peru’s application has succeeded.

## **B. Renco Failed To Comply With The Treaty And Is The Unsuccessful Party**

8. The result of this proceeding, as reflected in the Partial Award, was the outright dismissal of Renco’s claims. Specifically, the Tribunal dismissed Renco’s claims for lack of jurisdiction after finding that Renco had failed to comply with an important condition to Peru’s consent to arbitrate.<sup>20</sup> In particular, the Tribunal observed that:

- *Renco violated the express terms of the Treaty:* Renco submitted a waiver that did not comply with the express and unequivocal terms of Article 10.18(2)(b) of the Treaty, because that waiver contained a reservation of rights. Renco’s waiver thus was not “clear, explicit, and categorical,” as is required to engage the respondent’s consent to arbitrate.<sup>21</sup>
- *The violation was significant:* Because Art 10.18(2) concerns Peru’s consent to arbitrate and its terms are unequivocal, the Tribunal concluded that Renco’s defective waiver was “not a trivial defect which can be easily brushed aside—the defective waiver goes to the heart of the Tribunal’s jurisdiction.”<sup>22</sup>
- *The violation was willful, and not inadvertent:* The Tribunal observed that “there is no suggestion here that Renco’s reservation in its waiver was inadvertent.”<sup>23</sup> To the contrary, Renco knowingly and purposefully submitted a waiver that did not comport with the express conditions stated in the Treaty, notwithstanding the decisions of other tribunals that “have repeatedly held that a waiver is invalid if an investor purports to carve out from its scope certain domestic court proceedings.”<sup>24</sup>

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<sup>17</sup> See *Ron Fuchs v. Georgia* (ICSID Case No. ARB/07/15) Award dated 3 Mar. 2010, ¶ 689 (noting that “ICSID arbitration tribunals have exercised their discretion to award costs which follow the event in a number of cases, demonstrating that there is no reason in principle why a successful claimant in an investment treaty arbitration should not be paid its costs”) (RLA-198); *Gemplus S.A. et al. and Talsud S.A. v. United Mexican States* (ICSID Case Nos. ARB(AF)/04/3 and ARB(AF)/04/4) Award dated 16 Jun. 2010, ¶ 17-22 (noting that the recent practice is to take as the “starting-point the general principle that the successful party should have its reasonable costs paid by the unsuccessful party.”) (RLA-199).

<sup>18</sup> Decision Regarding Respondent’s Request for Relief dated 2 Jun. 2015, ¶ 75.

<sup>19</sup> UNCITRAL Arbitration Rules, Art. 17 (“Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality . . .”).

<sup>20</sup> Partial Award, ¶¶ 72-73, 119, 138, 193.

<sup>21</sup> Partial Award, ¶ 74. This also represents the views of both Parties to the Treaty, the United States and Peru. See Third Submission of the United States of America dated 11 Oct. 2015, ¶¶ 6, 8; Letter from Peru to the Tribunal dated 23 Oct. 2015.

<sup>22</sup> Partial Award, ¶ 138.

<sup>23</sup> Partial Award, ¶¶ 111, 138, 143.

<sup>24</sup> Partial Award, ¶ 75.

- *No cure*: While Renco argued that if the Tribunal were to conclude that the waiver was defective, Renco should be afforded an opportunity to cure the defect, a majority of the Tribunal, as well as both Parties to the Treaty, disagreed.<sup>25</sup> As the Tribunal aptly noted, because Renco submitted a defective waiver “Peru’s offer to arbitrate has not been, accepted; there is no arbitration agreement; and the Tribunal is without any authority whatsoever.”<sup>26</sup>
- *No abuse of rights*: Finally, the Tribunal rejected Renco’s last minute argument – which was raised in a manner that prevented Peru from responding<sup>27</sup> – that Peru’s objection constituted an abuse of rights.<sup>28</sup> Although Renco asserted that “Peru’s motive is to evade its duty to arbitrate Renco’s claims under the Treaty,”<sup>29</sup> the Tribunal rightly concluded that “in raising its waiver objection, Peru has sought to vindicate its right to receive a waiver which complies with the formal requirement of Article 10.18(2)(b) and a waiver which does not undermine the object and purpose of that Article.”<sup>30</sup>

9. The Tribunal consequently dismissed Renco’s claim on the basis of Peru’s objection as to the formal violation of the waiver requirement, and concluded that it was unnecessary to consider Peru’s other contentions.<sup>31</sup> Because Renco’s claim has been dismissed, Peru is indisputably the successful party in the arbitration and, as such, ought to be awarded costs. Renco also initially failed to comply with the Treaty requirements as to the appropriate parties and instruments relied upon, as discussed below.

10. Renco, accordingly, is the “unsuccessful party” in this case for the purposes of Article 42(1) of the UNCITRAL Arbitration Rules and, thus, should bear the costs of the arbitration, including legal costs. This conclusion also follows from the application of general international law, which provides that “reparation must, as far as possible, wipe out all the consequences of the illegal act.”<sup>32</sup> This principle, as the *Gemplus and Talsud v. Argentina* tribunal observed, requires compensation for a party of its “reasonable costs [incurred] in successfully and necessarily asserting its disputed legal rights in arbitration proceedings against an unsuccessful” party.<sup>33</sup>

### III. RENCO DELAYED AND AGGRAVATED THE DISPUTE

#### A. Legal Basis

11. The Tribunal also should award costs to Peru because Renco opposed every attempt that Peru made to expeditiously determine the merits of Peru’s waiver objection, in addition to other conduct that complicated and delayed the resolution of the dispute.

<sup>25</sup> See Partial Award, ¶¶ 133-134, 155, 158.

<sup>26</sup> Partial Award, ¶ 158.

<sup>27</sup> See Email from Peru to the Tribunal dated 27 Oct. 2015; Email from the Tribunal to the Parties dated 1 Nov. 2015.

<sup>28</sup> See Partial Award, ¶ 174.

<sup>29</sup> Renco’s Submission dated 23 Oct. 2015, ¶ 9.

<sup>30</sup> Partial Award, ¶ 186.

<sup>31</sup> Partial Award, ¶ 190.

<sup>32</sup> *Gemplus S.A. et al. and Talsud S.A. v. United Mexican States* (ICSID Case Nos. ARB(AF)/04/3 and ARB(AF)/04/4) Award dated 16 Jun. 2010, ¶ 17.21 (RLA-199).

<sup>33</sup> *Id.* ¶ 17.21.

12. As the *International Thunderbird* tribunal noted, the fact that the unsuccessful party argues that it presented its “case in an efficient and professional manner” is not a “decisive factor for awarding costs in deviation of the general principle” that the costs follow the event.<sup>34</sup> Similarly, the *Khan Resources* tribunal observed that, when neither “the Claimant or the Respondents acted inappropriately in their conduct of the arbitration ... costs should follow the event as provided in Article 42 of the UNCITRAL Rules.”<sup>35</sup> When the unsuccessful party has acted in a manner that is inappropriate, however, and that conduct has exacerbated the dispute or unnecessarily increased costs, that underscores the appropriateness of awarding costs to the prevailing party.

13. In this case, Renco delayed and complicated the proceedings. In fact, were it not for Peru’s relentless pursuit in pursuing preliminary treatment of its waiver objection, this arbitration would have continued for several more years before the case was dismissed for lack of jurisdiction, resulting in extraordinary inefficiency.

## **B. Peru Timely Raised Its Waiver Objections and Advocated For Efficient Proceedings**

14. Peru negotiated and ratified the Treaty expressly conditioning its consent to arbitrate on compliance with the waiver requirement. From the outset, Peru conducted itself in an appropriate and efficient manner with respect to these proceedings, including by raising issues regarding the waiver requirement, timely filing the related objection, and consistently and respectfully requesting to be heard despite Renco’s incessant efforts to block Peru from protecting its rights under the Treaty.

**a. Before the notification of preliminary objections:** Within a month of receiving the Notice of Arbitration and Statement of Claim – and although it had no obligation under the Treaty to do so – Peru promptly informed Renco in May 2011 that the Notice was inconsistent with the Treaty in at least three aspects, namely, as regards to (i) the parties, (ii) the legal instruments invoked, and (iii) the scope of the consent to arbitrate, including the waiver.<sup>36</sup> Renco subsequently chose to submit an Amended Notice of Arbitration and Statement of Claim that (i) modified the parties to the arbitration by removing a claimant (DRP) and a respondent (Activos Mineros), (ii) withdrew its reliance on the arbitration clause of the Contract and the Guaranty as a basis for jurisdiction, and (iii) maintained the non-compliant waiver, modifying it only by carving out the now-removed claimant DRP.<sup>37</sup> In response, Peru filed its preliminary response on 9 September 2011, citing concerns regarding “**the scope of the mandatory waiver**” and “**the scope of the consent to arbitration**,” and reserving all rights, including as to jurisdiction.<sup>38</sup> The constitution of the Tribunal was then suspended by agreement of the Parties.

**b. After notification of preliminary objections:** Peru timely notified its objections under Article 10.20(4) on 21 March 2014, in accordance with the calendar adopted by the Tribunal in Procedural Order No. 1 in consultation with the Parties. In particular, among other things, Peru stated:

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<sup>34</sup> *International Thunderbird Gaming Cor. v. The United Mexican States* (UNCITRAL) Arbitral Award dated 26 Jan. 2006, ¶ 218 (CLA-19).

<sup>35</sup> *Khan Resources Inc., et al. v. Government of Mongolia* (UNCTRAL) Award on the Merits dated 2 Mar. 2015, ¶ 432 (RLA-178).

<sup>36</sup> Letter from Peru to Renco dated 6 May 2011; *see also* Letter from Peru to Renco dated 9 Sept. 2011 at 2.

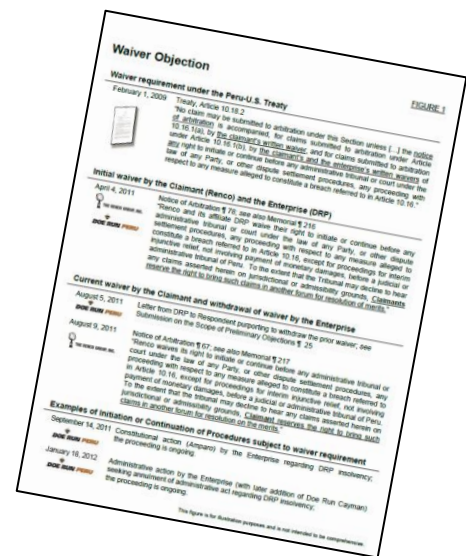
<sup>37</sup> Amended Notice of Arbitration and Statement of Claim dated 9 Aug. 2011.

<sup>38</sup> Letter from Peru to Renco dated 9 Sept. 2011.



**Renco has presented an invalid waiver in this proceeding because it does not conform with the language required by the Treaty...** In addition, through the initiation and continuation of certain proceedings with respect to measures alleged to constitute a breach by Renco, both Renco and Doe Run Peru also have violated the waiver requirement.<sup>39</sup>

Peru reiterated its request to be heard on the waiver violation in its submissions dated 23 April 2014 and 3 October 2014, in which it stressed that “these objections should be heard in a preliminary phase.”<sup>40</sup> At that time, Peru noted that “Renco’s waiver violation is a preliminary – indeed, a threshold – issue that goes to the heart of Peru’s consent” and that it “turns on a narrow set of facts involving a single paragraph in Claimant’s original April 2011 Notice of Arbitration, a single paragraph in Claimant’s August 2011 Amended Notice of Arbitration, a one-page August 2011 letter from Doe Run Peru purporting to withdraw a prior waiver, and certain limited undisputed facts,”<sup>41</sup> and later reiterated that “[f]rom the outset of this proceeding, Renco exhibited fundamental flaws in its pleadings and waivers – flaws which have not been cured, and which Renco continues to exploit to pursue other proceedings.”<sup>42</sup> The waiver deficiencies were summarized in a one page figure reproduced to the right.<sup>43</sup> Renco objected to the Tribunal deciding Peru’s waiver objections under Article 10.20(4) in a preliminary phase. Nearly seven months were spent briefing the issue of whether Peru’s waiver objection, among others, fell within the scope of Article 10.20(4), and another two and a half additional months elapsed before the Tribunal decided on the scope of permissible objections under Article 10.20(4).<sup>44</sup>



**c. After Peru objected to ongoing violations:** Peru alerted the Tribunal of its concerns regarding ongoing waiver violations on 29 April 2015, observing that “[Renco’s] conduct is a serious violation that goes to the heart of Peru’s consent to arbitrate under the Treaty,” which “requires intervention,” because delaying the resolution of this issue “allows Renco to continue to violate the Treaty and renders the Tribunal without jurisdiction.”<sup>45</sup> Peru reiterated its request to be heard on its waiver objection through correspondence in May 2015.<sup>46</sup>

<sup>39</sup> Peru’s Notification of Preliminary Objections dated 21 Mar. 2014.  
<sup>40</sup> Peru’s Comments on the Non-Disputing Party Submission dated 3 Oct. 2014, ¶ 27.  
<sup>41</sup> Peru’s Submission on the Scope of Preliminary Objections dated 23 Apr. 2014, ¶ 25.  
<sup>42</sup> Peru’s Comments on the Non-Disputing Party Submission dated 3 Oct. 2014, ¶ 29.  
<sup>43</sup> Peru’s Comments on the Non-Disputing Party Submission dated 3 Oct. 2014, ¶ 47.  
<sup>44</sup> The last submission was filed on 3 October 2014. See Peru’s Comments on the Non-Disputing Party Submission dated 3 Oct. 2014; Decision as to the Scope of the Respondent’s Preliminary Objections under Article 10.20(4) dated 18 Dec. 2014.  
<sup>45</sup> Letter from Peru to the Tribunal dated 29 Apr. 2015, at 6-7.  
<sup>46</sup> See Letter from Peru to the Tribunal dated 18 May 2015; Emails from Peru to the Tribunal dated 7 May 2015 and 8 May 2015.

15. In accordance with Procedural Order No. 1, Peru was not required to raise an objection to Renco's violation of the waiver requirement until its Counter-Memorial on Liability.<sup>47</sup> In light of the nature of Renco's violation and for the sake of efficiency, however, Peru chose to raise the issue sooner. In fact, as the chronology of events demonstrates, Peru was diligent in notifying the Tribunal that it intended to raise preliminary objections, including as to jurisdiction and admissibility. Peru also made clear at the first opportunity that it believed that jurisdictional and admissibility objections that did not depend upon disputed facts could be brought under Article 10.20(4) of the Treaty and that, for this reason, Peru had agreed not to seek bifurcation of jurisdiction from the merits.<sup>48</sup> In this regard, Peru observed early on that, in its view, the purpose of Article 10.20(4) was "to allow claims that would fail as a matter of law, to be dispensed with quickly, without going through having the time and the cost of a full blown evidentiary hearing."<sup>49</sup> It was Renco that insisted on incorporating a phase into the schedule to determine whether the objections raised by Peru under Article 10.20(4) fell within the scope of that Article, while Peru had proposed that it simply brief the objections and have the Tribunal determine whether the objections were properly within the scope of Article 10.20(4) when it rendered its decision on those objections.<sup>50</sup> When the Tribunal later determined that Peru's waiver objection could not be heard under Article 10.20(4), Peru renewed its application to have its waiver objection decided as a preliminary matter, in accordance with the Tribunal's authority under the UNCITRAL Arbitration Rules.

16. Peru thus raised its objections to Renco's serious violations of an express requirement of the Treaty in a timely and diligent manner, and, due to its persistence, Renco's claim was dismissed in a preliminary phase, without the Parties and the Tribunal having to engage in an expensive and time-consuming proceeding on the merits.

### **C. Renco Repeatedly Insisted On Delaying Decision Of Peru's Waiver Objection And Aggravating The Dispute**

17. While Peru persistently sought an efficient and expedient determination of its waiver objection, Renco, in contrast, opposed Peru's efforts at every juncture and, instead, advocated for a protracted proceeding.

**a. Before the notification of preliminary objections:** After Peru's preliminary response, Renco intentionally maintained its non-compliant waiver, modifying it only by carving out DRP.<sup>51</sup> This gave Renco cover to argue that it was not continuing to engage in what Peru reasonably believes to be violations of the material requirement of the Treaty's waiver provision by directing DRP to continue with its actions in Peruvian courts challenging the measures at issue in the arbitration. After the constitution of the Tribunal and during the negotiation of the procedural calendar, Renco objected to Peru's attempt to have its waiver objection, along with all jurisdictional and admissibility objections that relied on undisputed facts, decided under Article 10.20(4).<sup>52</sup> Renco raised this objection only after Peru had agreed to forgo seeking bifurcation of jurisdiction and the

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<sup>47</sup> See Procedural Order No. 1 dated 22 Aug. 2013, Annex A. See also UNCITRAL Arbitration Rules, Art. 23(2) ("A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than in the statement of defence.").

<sup>48</sup> First Session Tr., 135:23 – 142:17; 143:10 – 145:8. See also Letter from Peru to the Tribunal dated 29 Jul. 2013, at 5; Peru's Submission on the Scope of Preliminary Objections dated 23 Apr. 2014, ¶¶ 30, 36.

<sup>49</sup> First Session Tr., 139:13-17.

<sup>50</sup> See Letter from Renco to the Tribunal dated 29 Jul. 2013, at 5; Letter from Peru to the Tribunal dated 29 Jul. 2013, at 1.

<sup>51</sup> Amended Notice of Arbitration and Statement of Claim dated 9 Aug. 2011.

<sup>52</sup> See Letter from Renco to the Tribunal dated 29 Jul. 2013, at 2.

merits, and knowing that Peru considered all objections that relied on undisputed facts, including those relating to jurisdiction, to fall within the scope of Article 10.20(4).<sup>53</sup>

- b. After notification of preliminary objections:** Renco opposed Peru’s attempt to be heard on the waiver objection after Peru’s notification of preliminary objections pursuant to Procedural Order No. 1.<sup>54</sup>
- c. After Peru objected to ongoing violations:** Renco continued to oppose the Tribunal deciding Peru’s waiver objection as a preliminary matter under Article 23(3) of the UNCITRAL Arbitration Rules,<sup>55</sup> and, instead, argued that the waiver objection should be resolved years from now.<sup>56</sup> Even after the Tribunal decided in June 2015 to hear and decide Peru’s waiver objection in an expedited, preliminary phase, Renco appealed to the Tribunal to reconsider its ruling and continued to insist that the proper time for Peru to brief the waiver issue was with its Counter-Memorial on Liability.<sup>57</sup>

18. Renco’s preferred approach was that Peru’s waiver objection be adjudicated years from now – only after a document production phase of approximately four months; briefing by the Parties, including a phase devoted to non-disputing State Party submissions, lasting approximately twenty months; and potentially two weeks of hearings on jurisdiction and the merits, which, if everything went according to plan, would not occur until approximately June 2018.<sup>58</sup> In Renco’s own words:

- “Renco is concerned that the integrity of the agreed schedule will be compromised and the proceedings will unnecessarily devolve into an unfair disarray if the Tribunal hears and decides preliminary objections in its discretion.”<sup>59</sup> (29 July 2013)
- “Respondent may raise any and all jurisdictional objections that it may have later in the proceedings.”<sup>60</sup> (3 April 2014)
- “Peru also obfuscates its two separate waiver objections in order to conceal their patent lack of merit, in the hope that the Tribunal will allow the objections to go forward to an extensive briefing stage . . . its objections are completely devoid of any merit because Renco has presented a waiver that conforms *verbatim* to the waiver required under Article 10.18(2) of the Treaty, and it has never done anything that even arguably violates this waiver.”<sup>61</sup> (7 May 2014)

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<sup>53</sup> See Letter from Peru to the Tribunal dated 29 Jul. 2013; First Session Tr., 135:23 – 142:17; 143:10 – 145:8.

<sup>54</sup> Procedural Order No. 1 dated 22 Aug. 2013. See Claimant’s Submission Challenging the Scope of Preliminary Objections dated 3 Apr. 2014; Claimant’s Reply On Scope Of Respondent’s Article 10.20(4) Objections dated 7 May 2014; Claimant’s Comments On The Submission Of The United States Of America Regarding The Interpretation Of Article 10.20(4) dated 1 Oct. 2014.

<sup>55</sup> Letter from Renco to the Tribunal dated 5 May 2015.

<sup>56</sup> Letter from Renco to the Tribunal dated 5 May 2015.

<sup>57</sup> Letter from Renco to the Tribunal dated 10 Jun. 2015.

<sup>58</sup> Procedural Order No. 1 dated 22 Aug. 2013, Annex A.

<sup>59</sup> Letter from Renco to the Tribunal dated 29 Jul. 2013, at 3.

<sup>60</sup> Claimant’s Submission Challenging the Scope of Preliminary Objections dated 3 Apr. 2014, at 3.

<sup>61</sup> Claimant’s Reply On Scope Of Respondent’s Article 10.20(4) Objections dated 7 May 2014, at 28.

- “Claimant respectfully requests that the Tribunal issue an award declaring that . . . Respondent will bring its objections to the Tribunal’s competence during the merits phase of the case.”<sup>62</sup> (1 October 2014)
- “Respondent will have every opportunity to raise its other preliminary objections in its Counter-Memorial and subsequent phases of the proceeding.”<sup>63</sup> (5 May 2015)
- “Respondent goes even further and now asks, once again, that the Tribunal decide Peru’s waiver objection as a preliminary matter under Article 23(3) of the UNCITRAL Arbitration Rules (pp. 4-7).”<sup>64</sup> (5 May 2015)
- “[T]he proper time for Peru to raise its jurisdictional waiver defenses is in its jurisdictional and merits memorial – not as a preliminary matter.”<sup>65</sup> (8 May 2015)
- “If Respondent wishes to bring [the waiver] objection in these proceedings, it should be directed to do so with its Counter-Memorial on Liability.”<sup>66</sup> (10 June 2015)
- “Claimant respectfully requests that the Tribunal reconsider and reverse the portion of its June 2, 2015 Decision requiring full briefing on Peru’s objection that Renco violated the waiver provisions of the Treaty, and reaffirm its previous ruling that such objection be brought by Peru together with its Counter-Memorial on Liability.”<sup>67</sup> (10 June 2015)

19. Thus, while the Tribunal in its Partial Award indicated that it had misgivings about the manner in which Peru raised its waiver objection, as the above demonstrates, it was Renco that was intent on denying Peru the opportunity to have its waiver objection heard in an expeditious manner as a preliminary question.<sup>68</sup>

20. In addition to delaying the decision of the waiver issue, Renco repeatedly has engaged in actions inconsistent with the object and purpose of the Treaty and that aggravated and complicated the dispute, which further support the allocation to Renco of the costs of this arbitration. These actions included:

- Initiating and continuing local proceedings in Peru while Peru was endeavoring to cooperate with Renco to seek solutions and facilitate resumption of the operations at La Oroya;<sup>69</sup>
- Engaging in extensive lobbying seeking to influence this arbitration;<sup>70</sup>
- Compelling Peru to fight for dual-language proceedings<sup>71</sup> and compliance with the Treaty’s transparency provisions.<sup>72</sup>

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<sup>62</sup> Claimant’s Comments On The Submission Of The United States Of America Regarding The Interpretation Of Article 10.20(4) dated 1 Oct. 2014, at 14.

<sup>63</sup> Letter from Renco to the Tribunal dated 5 May 2015, at 4.

<sup>64</sup> Letter from Renco to the Tribunal dated 5 May 2015, at 3.

<sup>65</sup> Email from Renco to the Tribunal dated 8 May 2015.

<sup>66</sup> Letter from Renco to the Tribunal dated 10 Jun. 2015, at 3.

<sup>67</sup> Letter from Renco to the Tribunal dated 10 Jun. 2015, at 8.

<sup>68</sup> Partial Award, ¶¶ 123, 125.

<sup>69</sup> See Peru’s Reply on Waiver, ¶¶ 33-54.

<sup>70</sup> See Letter from Peru to Renco dated 9 Sep. 2011; Peru’s Comments on the Non-Disputing Party Submission, ¶¶ 40-43; Letter from Peru to the Tribunal dated 9 Sep. 2014; Letter from Peru to the Tribunal dated 29 Apr. 2015.

<sup>71</sup> See, e.g., First Session Tr., 61:1-63:12; Letter from Peru to the Tribunal dated 18 May 2015 at 5-6.

- Engaging in mischaracterizations to the Tribunal as to Peru’s efforts at cooperation and consultation, among other unreliable and unsupported assertions submitted by its witness.<sup>73</sup>
- Engaging in repeated and ongoing mischaracterizations to the Tribunal on various facts and issues, including Peru’s efforts as to procedural collaboration.<sup>74</sup>

21. All of these actions complicated and delayed the resolution of this dispute, and increased Peru’s costs, and, thus, constitute further reasons to allocate the costs of this arbitration to Renco. Renco, on the other hand, has sought to take advantage of the very existence of the arbitration to advance its interests in different ways on diverse fronts, including as part of its coordinated strategy in connection with other proceedings with respect to La Oroya and Peru. For instance, Renco has used the existence of arbitration proceedings under the Treaty to gain advantage in U.S. litigation proceedings filed by Peruvian citizens against Renco and certain of its affiliated companies and executives.<sup>75</sup> Notwithstanding the foregoing, Peru has continued to invite Renco to focus on solutions instead of conflicts regarding La Oroya, reiterating that the channel for consultations remains open, even as Renco has called its Treaty violations insignificant and started notifying more disputes.

#### IV. PERU’S COSTS ARE REASONABLE

##### A. Legal Basis

22. Article 40(2) of the UNCITRAL Arbitration Rules establishes that the costs of the arbitration include, among other things, the fees and reasonable expenses of the arbitral tribunal as well as the costs of “assistance required by the arbitral tribunal;” the “reasonable costs of expert advice;” and the “legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable.”<sup>76</sup>

23. Although the UNCITRAL Arbitration Rules do not specifically define what shall be considered reasonable costs, guidance is provided in Article 41(1), which establishes that “[t]he fees and expenses of the arbitrators shall be *reasonable* in amount, taking into account the *amount in dispute*, the *complexity of the subject matter*, the *time spent* by the arbitrators and any *other relevant circumstances* of the case.”<sup>77</sup>

24. There are also cases discussing the concept of reasonable costs. In *ECE v. Czech Republic*, for example, the tribunal clarified that the reasonableness standard for costs is an “objective one, which depends on the nature of the case which the successful Party had to establish or, as the

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<sup>72</sup> See, e.g., Letter from Peru to the Tribunal dated 9 Mar. 2015 (advocating for compliance with the transparency provisions set forth in the Treaty and Procedural Order No. 1 after Renco opposed publication of documents covered by those provisions).

<sup>73</sup> See Peru’s Reply on Preliminary Objections under 10.20(4), ¶12 (addressing the witness statement of Dennis Sadlowski). Renco’s representative and witness also verbally disparaged Peru’s representative in a public setting in January 2012.

<sup>74</sup> See e.g. Email from Peru to the Tribunal dated 12 Aug. 2016 (demonstrating that Renco’s repeated mischaracterizations as to Peru’s attempts to coordinate an efficient procedure for written submissions on costs, including an annex evidencing Peru’s 3 requests on page limits in 9 days, Renco’s subsequent rejection of page limit, and Peru’s continuing efforts to seek agreement).

<sup>75</sup> See Peru’s Reply on Waiver dated 17 August 2015, ¶ 52.

<sup>76</sup> UNCITRAL Arbitration Rules, Art. 40(2).

<sup>77</sup> UNCITRAL Arbitration Rules, Art. 41(1) (emphasis added).

case may be, to meet.”<sup>78</sup> The *ECE* tribunal further explained that discrepancy between the legal costs of the parties “is not in itself proof of unreasonableness,” because the “parties are entitled to be represented in a manner of their own choosing,” including retaining “Counsel from different jurisdictions.”<sup>79</sup>

25. In *Hulley Enterprises v. Russian Federation*, the tribunal determined the reasonableness of the costs by reference to the large claim for damages, which meant that “[t]he stakes were high” and, consequently, both parties were “thorough and vigorous” in presenting their cases, and were “represented by eminent counsel” that conducted the arbitration with “high professionalism.”<sup>80</sup> The tribunal remarked that it thus was “unsurprising that the cost submissions of the Parties, as to their amounts, should reflect the very considerable work which each Party was required to expend in order to, on the one hand, press its claims and, on the other hand, defend itself.”<sup>81</sup> In light of this, the tribunal awarded the prevailing claimant US\$ 60 million for its costs of legal representation and assistance, approximately one third of which corresponded to the jurisdictional phase.<sup>82</sup>

## **B. Peru’s Costs Are Reasonable**

26. Further to the Tribunal’s order of 15 August 2016, a summary of Peru’s costs incurred in this arbitration is set forth in Appendix A. The table includes experts, local and international counsel, costs, and Tribunal and administrative expenses broken down in three phases. Peru’s costs are eminently reasonable in light of the nature of Renco’s claims and its conduct throughout this proceeding.

27. Renco claimed more than US\$ 800 million in damages from Peru, seeking to make Peru liable for the health and environmental damage that Renco has caused to the town of La Oroya and its residents. Renco also used the press and lobbied the United States government to attempt to pressure Peru into relaxing the air quality standards adopted to protect the population. Renco attacked Peru on all possible fronts, domestic and international, leaving Peru with no choice other than to vigorously defend the interests of its population and its sustainable development. In cases of such significance, arbitral tribunals have routinely found costs of more than US\$ 5 million to be reasonable.<sup>83</sup> This was the case, for instance, in *Cementownia v. Turkey*, in which the tribunal found

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<sup>78</sup> *ECE Projektmanagement Int’l GmbH and Kommanditgesellschaft Panta Achtundsechzigste Grundstucksgesellschaft mbH & Co. v. Czech Republic* (UNCITRAL) Award dated 19 Sept. 2013, ¶ 6.60 (RLA-190).

<sup>79</sup> *Id.* ¶ 6.56-57.

<sup>80</sup> *Hulley Enterprises Limited v. Russian Federation* (UNCITRAL) Final Award dated 18 Jul. 2014, ¶¶ 1878, 1880 (RLA-188).

<sup>81</sup> *Id.* ¶ 1881.

<sup>82</sup> *Id.*, ¶¶ 1847, 1887.

<sup>83</sup> See, e.g., *Khan Resources Inc., et al. v. Government of Mongolia* (UNCTIRAL) Award on the Merits dated 2 Mar. 2015, ¶ 450 (awarding costs of US\$ 9,074,143.51) (RLA-178); *Ceskoslovenska Obchodni Banka, A.S. (CSOB) v. Slovak Republic* (ICSID Case No. ARB/97/4) Award dated 29 Dec. 2004, ¶ 374(5) (awarding costs of US\$ 10 million) (RLA-200); *Ron Fuchs v. Georgia* (ICSID Case No. ARB/07/15) Award dated 3 Mar. 2010, ¶ 693 (awarding costs of US\$ 7,942,297) (RLA-198); *Plama Consortium Ltd. v. Republic of Bulgaria* (ICSID Case No. ARB/03/24) Award dated 27 Aug. 2008, ¶¶ 324 (awarding costs of US\$ 7,460,000) (RLA-124); *TECO Guatemala Holdings LLC v. Republic of Guatemala* (ICSID Case No. ARB/10/17) Award dated 19 Dec. 2013, ¶ 779 (awarding costs of US\$ 7,520,695.39) (CLA-10); *Spyridon Roussalis v. Romania* (ICSID Case No. ARB/06/1) Award dated 7 Dec. 2011, ¶ 882 (awarding costs of € 6,053,443.78 and US\$ 217,290) (RLA-201); *Gemplus S.A. et al. and Talsud S.A. v. United Mexican States* (ICSID Case No. ARB(AF)/04/3 and ARB(AF)/04/4) Award dated 16 Jun. 2010, ¶¶ 17-26, 18-7, 18-8 (awarding costs of US\$ 5,450,000) (RLA-199).

that the respondent's costs of more than US\$ 5.3 million were reasonable.<sup>84</sup> As in this case, *Cementownia* was dismissed on jurisdictional grounds before the respondent was scheduled to brief the tribunal on the merits of the case.

28. Renco also unnecessarily increased the length and complexity of this arbitration, impacting Peru's costs. For instance, Renco chose to file a Notice of Arbitration and Statement of Claim pursuing in one proceeding under the Treaty claims arising under the Treaty and a contract arbitration pursuant to the Contract, and combining Renco and DRP as claimants in a case against Peru and Activos Mineros;<sup>85</sup> opposed bilingual proceedings, requiring Peru to bring this issue to the attention of the Tribunal and consuming a substantial portion of the First Session;<sup>86</sup> requested an additional phase for the Parties to brief and for the Tribunal to decide the scope of permissible objections under Article 10.20(4) of the Treaty;<sup>87</sup> unilaterally decided not to address most of Peru's arguments concerning its Article 10.20(4) objection, while reserving the right to respond later, and thus causing the Tribunal to have to rule on the matter;<sup>88</sup> and raised numerous obstacles to Peru's attempts to have its waiver objections briefed and decided as a preliminary question. Responding to all of these objections and arguments, in addition to the regularly-scheduled submissions and questions from the Tribunal, consumed considerable time and resources. Peru, moreover, had to present six submissions to have its waiver objection heard as a preliminary question,<sup>89</sup> and six more, in addition to a hearing, to brief its objection and answer questions from the Tribunal.<sup>90</sup>

29. In addition, Renco made strategic choices that further complicated what were already complex factual and legal claims. This included its decision to submit an Amended Notice of Arbitration and Statement of Claim modifying the parties to the arbitration and invoking only the Treaty,<sup>91</sup> but maintaining the same claims for all relevant purposes.<sup>92</sup> This resulted in Renco presenting claims under the Treaty based on contractual instruments to which neither Renco nor Peru were parties,<sup>93</sup> while also withdrawing claims on behalf of its subsidiary, which was a party to those instruments.<sup>94</sup> Peru had to address the implications of Renco's strategy in this regard in the context of both its waiver objections and its Article 10.20(4) objections. The significance and complexity of

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<sup>84</sup> *Cementownia "Nowa Huta" S.A. v. Republic of Turkey* (ICSID Case No. ARB(AF)/06/2) Award dated 17 Sept. 2009, ¶¶ 178-179 (RLA-26).

<sup>85</sup> Peru and Renco spent several months discussing this issue. Renco eventually decided to file an Amended Notice of Arbitration and Statement of Claim. See Notice of Arbitration and Statement of Claim dated 4 Apr. 2011; Letter from Peru to Renco dated 6 May 2011; Letter from Peru to Renco dated 6 Jun. 2011; Letter from Peru to Renco dated 9 Sept. 2011.

<sup>86</sup> Transcript of the First Session of 18 Jul. 2013 ("First Session Tr."), 60:13-21; 61:1 – 83:1.

<sup>87</sup> Letter from Renco to the Tribunal dated 29 Jul. 2013.

<sup>88</sup> See Letter from Peru to the Tribunal dated 29 Apr. 2015; Decision Regarding Respondent's Request for Relief dated 2 Jun. 2015, ¶¶ 59-69.

<sup>89</sup> See Letter from Peru to the Tribunal dated 29 Jul. 2013; Notification of Preliminary Objections from Peru to the Tribunal dated 21 March 2014; Peru's Submission on the Scope of Preliminary Objections dated 23 April 2014; Peru's Comments on the Non-Disputing Party Submission dated 3 October 2014; Letter from Peru to the Tribunal dated 29 April 2015; Letter from Peru to the Tribunal dated 18 May 2015.

<sup>90</sup> See Peru's Memorial on Waiver dated 10 July 2015; Peru's Reply on Waiver dated 17 August 2015; Peru's Submission on Matters Arising from the Hearing on Waiver dated 23 September 2015; Peru's Post-Hearing Reply Submission on Waiver dated 30 September 2015; Peru's Post-Hearing Supplemental Submission dated 16 October 2015; Peru's Submission dated 23 October 2015.

<sup>91</sup> Amended Notice of Arbitration and Statement of Claim dated 9 Aug. 2011.

<sup>92</sup> See Peru's Memorial on Waiver, ¶ 31.

<sup>93</sup> Peru's Preliminary Objections under Article 10.20(4), ¶¶ 28, 30, 32, 36, 40, 42, 62; Peru's Reply on its Preliminary Objection under Article 10.20(4), ¶¶ 18-20, 22, 28, 46-47, 49-51, 81

<sup>94</sup> Peru's Preliminary Objections under Article 10.20(4), ¶¶ 34-35; Peru's Reply on its Preliminary Objection under Article 10.20(4), ¶¶ 23-26.

Renco's claims also required Peru to engage experts to evaluate the assertions made by Renco and its experts. While Renco can rely on the same experts in its defense to the U.S. lawsuits,<sup>95</sup> Peru's experts were engaged for the sole purpose of this arbitration.

## V. REQUEST FOR RELIEF

30. In light of the foregoing, and pursuant to Article 10.26 of the Treaty and Articles 40 and 42 of the UNCITRAL Arbitration Rules, Peru requests an award of arbitration costs for the total amount indicated in Appendix A.

Respectfully submitted,



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15 August 2016

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<sup>95</sup> For instance, Renco's legal expert, Dr. Fernando de Trazegnies, is also assisting Renco as an expert on Peruvian Law in the U.S. lawsuits.



## SUMMARY OF COSTS AND EXPENSES

<i>Costs/Expenses</i>	<i>Amount (US\$)</i>
<b>BEFORE NOTIFICATION OF PRELIMINARY OBJECTIONS</b>	
Experts	654,613.80
Local and International Counsel	2,154,559.80
Costs	98,564.39
Tribunal/Administrative Expenses	175,000
<b>Subtotal</b>	<b>3,082,737.99</b>
<b>AFTER NOTIFICATION OF PRELIMINARY OBJECTIONS</b>	
Experts	142,327.97
Local and International Counsel	1,306,744.66
Costs	9,777.13
Tribunal/Administrative Expenses	200,000
<b>Subtotal</b>	<b>1,658,849.76</b>
<b>AFTER PERU OBJECTED TO ONGOING VIOLATIONS</b>	
Experts	992,993.94
Local and International Counsel	2,374,665.70
Costs	83,531.23
Tribunal/Administrative Expenses	200,000
<b>Subtotal</b>	<b>3,651,190.87</b>
<b>TOTAL</b>	<b>US\$ 8,392,778.62</b>