
In the matter of

The Renco Group, Inc.

Claimant

v.

The Republic of Peru

Respondent

PCA Cases No. 2019-46/47

Peru's Memorial On Preliminary Objections

20 December 2019



WHITE & CASE

Peru's Memorial On Preliminary Objections

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Peru's Memorial On Preliminary Objections

1. The Republic of Peru ("Peru") hereby submits its Memorial On Preliminary Objections pursuant to the Tribunal's decision of December 17, 2019, in accordance with the Peru-United States Trade Promotion Agreement (the "Treaty") and the UNCITRAL Arbitration Rules (the "Rules").

I. Introduction

2. Peru of hereby requests that this proceeding be dismissed entirely because the claims filed by The Renco Group, Inc. ("Renco") violate the Treaty's strict temporal requirements with respect to non-retroactivity and prescription. Peru, therefore, has not consented to this proceeding, the Tribunal is not competent to hear Renco's claims, and the case must be dismissed in its entirety, with costs to Peru.

- **Preliminary Objections Under the Treaty.** Article 10.20.5 of the Treaty provides an expedited mechanism for efficiently resolving objections that a dispute is not within a tribunal's competence. As coordinated in advance with Renco, Peru duly filed a request under Article 10.20.5 for the Tribunal to decide Peru's preliminary objections.

- **Procedural Status.** This proceeding relates to a dispute that dates back well over a decade, before the Treaty ever entered into force. Renco alleges that it invested in Doe Run Peru S.R.LTDA ("DRP") in connection with a smelting and refining complex in La Oroya, Peru (the "Facility") in 1997. By 2007, litigation brought by Peruvian children had arisen in U.S. courts in connection with environmental conditions. Following the entry into force of the Treaty, DRP closed the Facility in 2009, ceased making payments to its creditors and was placed in bankruptcy, and notified a dispute under the Treaty. In the subsequent arbitration under the Treaty (the "First Arbitration" or "*Renco I*"), Renco lost because the tribunal found that Renco had violated the Treaty with respect to a strict jurisdictional requirement. The same result should befall this proceeding due to Renco's latest violations.

- **The Temporal Requirements and Relevant Dates.** The Treaty establishes rigid temporal requirements that go to the heart of the Tribunal's competence. Article 10.1.3 of the Treaty specifies that it does not bind any Party in relation to any act or fact that took place before the date of entry into force, and Article 10.18.1 further provides that no claim may be submitted to arbitration if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the claimant has incurred loss or damage. The relevant dates are as follows:

Treaty Entry into Force	February 1, 2009
Treaty Prescription Date (Based on the Treaty pursuant to Art. 10.18)	October 23, 2015
Adjusted Treaty Prescription Date (Adjusted in the manner most favorable to Claimant)	November 13, 2013

▪ **Renco’s Latest Violations of the Treaty.** Renco has failed to meet its burden of establishing that it complied with the Treaty’s temporal requirements. Indeed, in its Statement of Claim, all but maybe one of the facts alleged by Renco either predate the entry into force of the Treaty or the adjusted prescription date, as detailed in figures herein. Correspondingly, all three of Renco’s claims fall afoul of the Treaty’s temporal requirements. Peru has not consented to arbitrate such claims.

▪ **Renco’s Prior Violations of the Treaty and the Consequences Thereof.** Renco has long been aware of the Treaty’s rigid temporal requirements, and repeatedly tried to stop Peru from being heard on this issue in the First Arbitration. Indeed, in 2016, Renco requested that Peru accept that time had stopped running for the purposes of the temporal requirement during the First Arbitration. (Later, when the Parties entered into a Consultation Agreement and subsequent Framework Agreement, they did agree to temporarily freeze the prescription clock – Peru has adjusted the Treaty prescription date accordingly). Having failed to comply with the Treaty requirements in the First Arbitration, Renco is not entitled to benefit from its improper submission of claims to improperly extend the prescription period. The Treaty does not allow claimants to escape its requirements because of their prior violations of Treaty requirements.

▪ **The Tribunal Lacks Jurisdiction.** While Renco continues seeking to avoid a determination and prefers to keep kicking this can down the road, the Treaty in fact requires dismissal of all Renco’s claims. Peru in any event reserves all rights, including with respect to further objections regarding the factually and legally meritless nature of Renco’s claims.

II. Preliminary Objections Under the Treaty

3. Article 10.20.5 of the Treaty provides an expedited mechanism for the efficient resolution of preliminary objections, including competence objections. Renco’s claims in this longstanding dispute, dating back well over a decade and subject to fundamental temporal flaws, are ripe for resolution pursuant to this mechanism.

A. The Treaty’s Mechanism for Preliminary Objections

4. Article 10.20.5 of the Treaty states:

In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 4 and any objection that the dispute is not within the tribunal’s competence. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection(s), stating the grounds therefor, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed 30 days.

5. Pursuant to the Vienna Convention on the Law of Treaties, the Treaty is to be interpreted “in good faith in accordance with the ordinary meaning to be given to the terms of

the treaty in their context and in light of its object and purpose.”¹ The ordinary meaning of Article 10.20.5 is clear: if, within 45 days of the tribunal’s constitution, a respondent State “requests” that the tribunal decide a preliminary objection on an expedited basis, the tribunal “shall suspend any proceedings on the merits” and issue its decision within the time provided.

6. Both Peru and the United States have confirmed their agreement that the expedited procedure, once invoked by a State, is mandatory. As the United States observed in a Non-Disputing Party submission in the First Arbitration, Article 10.20.5 “modifies the applicable arbitration rules by *requiring* a tribunal to decide on an expedited basis any paragraph 4 objection as well as any objection to competence.”²

7. While the mutual position of the Contracting Parties is sufficient, Renco, too, has previously acknowledged the mandatory nature of the expedited mechanism, stating: “Article 10.20(5) *requires* a tribunal to decide an objection to its competence on an expedited basis *if the respondent so requests* within 45 days after the tribunal is constituted.”³

8. The object and purpose of the Treaty’s preliminary objections regime is likewise clear: to establish an efficient mechanism to promptly and cost-effectively dispose of unmeritorious claims at an early stage in the proceedings. In the First Arbitration, for example, the tribunal found that Article 10.20.5 “provide[s] for an efficient mechanism for disposing of claims at an early stage in the arbitral proceedings which is fully consonant with the object and purpose intended by the Parties.”⁴ Peru and the United States have confirmed their agreement in this regard as well – and that prior investment arbitration experiences underscored, for each Contracting Party, the critical function of such preliminary objection mechanisms to resolve unmeritorious claims without undue time and expense.⁵

9. Renco also has acknowledged the undisputed object and purpose of the Treaty’s expedited mechanism for preliminary objections: as the tribunal in the First Arbitration noted, “[i]t is common ground between the Parties that the object and purpose of Article 10.20.4 and its companion Article 10.20.5 is to provide an efficient and cost-effective mechanism for respondent States to assert preliminary objections to dispose of claims at an early stage in the arbitration proceedings.”⁶

10. As set forth below, Peru’s Article 10.20.5 objection as to temporal jurisdiction calls for a straightforward application of established legal standards to a narrow set of facts that

¹ Vienna Convention on the Law of Treaties, May 23, 1969, Art. 31(1) (RLA-3).

² *The Renco Group v. Republic of Peru*, ICSID Case No. UNCT/13/1 (“*Renco I*”), Submission of Non-Disputing Party the United States of America, September 10, 2014, ¶ 12 (emphasis in original) (R-12). Peru is open to coordinating so that the Tribunal has access to the entire record of the First Arbitration. The pleadings and decisions are publicly available.

³ *Renco I*, First Arbitration, Claimant’s Reply on Scope of Article 10.20(4) Objections, May 7, 2014, at 1 (R-12).

⁴ See, e.g., *Renco I*, Decision As To The Scope Of The Respondent’s Preliminary Objections Under Article 10.20.4, December 18, 2014, ¶ 222 (RLA-20).

⁵ The United States has explained that, following its experience in *Methanex v. United States* – where “[t]he tribunal ultimately dismissed all of claimant’s claims for lack of jurisdiction, but only after three more years of pleading on jurisdiction and merits and millions of dollars of additional expense” – “[i]n all of its subsequent investment agreements concluded to date, the United States has negotiated expedited review mechanisms that permit a respondent State to assert preliminary objections in an efficient manner.” *Renco I*, Submission of Non-Disputing Party the United States of America, September 10, 2014 ¶¶ 2-3 (R-12).

⁶ *Renco I*, Decision As To The Scope Of The Respondent’s Preliminary Objections Under Article 10.20.4, December 18, 2014, ¶ 214 (RLA-20).

require dismissal of all claims – or, at the very least, that will efficiently narrow or clarify the scope of the proceeding going forward, further to the object and purpose of the provision.

B. Procedural Status

11. The procedural status of the dispute favors the prompt resolution of Peru’s temporal jurisdiction objections pursuant to Article 10.20.5 of the Treaty.

12. This is a dispute over the smelting and refining complex in La Oroya, Peru that stretches back well over a decade. Renco’s claims arise from an alleged investment and alleged measures that significantly predate the entry into force of the Treaty, Renco’s submission of claims to arbitration, or both. Renco made an alleged investment in 1997. By 2007, litigation brought by Peruvian children had arisen in U.S. courts in connection with environmental conditions. Already, by 2007, there was significant and routine interaction between Renco and Peru with respect to the circumstances in Peru and beyond.

13. After the Treaty entered into force in 2009, Renco took various steps related to La Oroya, notified Peru of a dispute in 2010, and initiated a Treaty proceeding in 2011 styled as *The Renco Group v. Republic of Peru*, ICSID Case No. UNCT/13/1 (“*Renco I*” or “First Arbitration”). In *Renco I*, Renco brought claims related to (i) alleged Treaty violations in connection with DRP’s environmental and investment obligations, and bankruptcy proceedings that allegedly had the “potential” to culminate in an expropriation; and (ii) alleged contractual violations in connection with indemnification against the third-party lawsuits brought against Renco and affiliates in U.S. courts.⁷

14. Peru raised concerns early on about procedural and jurisdictional issues.⁸ After a prolonged delay in the advancement of the proceeding, the case went forward and Peru notified three preliminary objections: (i) violation of the Treaty’s waiver requirement under Article 10.18; (ii) lack of jurisdiction *ratione temporis* under Articles 10.1.3 and 10.18.1; and (iii) failure of claims under the plain language of the contract. There were diverse procedural and substantive pleadings related to these issues, including with respect to the scope of preliminary objections available under Articles 10.20.4 and 10.20.5.

15. The tribunal in the First Arbitration ultimately did not reach Peru’s temporal objections, and it dismissed Renco’s claims exclusively on the jurisdictional ground that Renco had failed to comply with the Treaty’s mandatory waiver requirement. The conclusions of the tribunal include, *inter alia*:

- “[T]he provisions contained in Articles 10.20.4 and 10.20.5 provide for an efficient mechanism for disposing of claims at an early stage in the arbitral proceedings which is fully consonant with the object and purpose intended by the Parties.”⁹

⁷ See *Renco I*, Claimants’ Notice of Arbitration and Statement of Claim, April 4, 2011 (R-12).

⁸ Peru is open to coordinating on the production of correspondence in the record from *Renco I*, should the Tribunal request.

⁹ *Renco I*, Decision As To The Scope Of The Respondent’s Preliminary Objections Under Article 10.20.4, December 18, 2014, ¶ 222 (RLA-20).

- “The Treaty establishes several important conditions and limitations on Peru’s consent to arbitrate claims under the Treaty.”¹⁰
- Compliance with these conditions and limitations “is therefore an essential prerequisite to the existence of an arbitration agreement and hence the Tribunal’s jurisdiction.”¹¹
- “Renco has failed to comply with the formal [waiver] requirements . . . by including [a] reservation of rights in the waiver accompanying its Amended Notice of Arbitration.”¹²
- “The inevitable conclusion, therefore, is that no arbitration agreement ever came into existence. In the Tribunal’s opinion, given the unequivocal language of Art 10.18(2), *this is not a trivial defect which can be easily brushed aside – the defective waiver goes to the heart of the Tribunal’s jurisdiction.*”¹³

16. In the aftermath of the dismissal of all claims in July 2016, Renco declared once again that the Treaty’s waiver requirement was a mere “technical” issue, and sent new notices of arbitration to Peru on 12 August 2016. Renco also asked Peru to accept that time had stopped running for prescription purposes in 2011, when Renco filed its claims in the First Arbitration. Peru, under no obligation to grant the request, did not agree and has, at all times, maintained the continuous reservation of all rights, including its rights under the Treaty.

17. Further to Article 10.15 of the Treaty, which encourages resolution through consultation and negotiation, the Parties entered into a Consultation Agreement dated 10 November 2016, which established a period to engage in consultations (the “Consultation Period”).¹⁴ After extensive negotiations, the Parties reached agreement on a Framework Agreement dated 14 March 2017.¹⁵ Among other things, the Framework Agreement provided for the tolling of the prescription period during the Consultations Period. Once again, Peru also expressly reserved all rights, objections, and defenses.

18. At the conclusion of the Consultation Period, Renco filed two new cases in October 2018:

- Treaty case, the present proceeding, styled as *The Renco Group, Inc. v. The Republic of Peru*, PCA Case No. 2019-46 (“*Renco II*”).
- Contract case, styled as *The Renco Group, Inc. and Doe Run Resources, Corp. v. The Republic of Peru and Activos Mineros S.A.C.*, PCA Case No. 2019-47 (“*Renco III*”).

19. It bears noting that the other universe of proceedings against Renco in U.S. court remain pending. In recent months, the Parties have conferred and coordinated as to various procedural matters. Among other things, Peru invited weekly conference calls, and conferred with Renco regarding preliminary objections prior to the filing of its request pursuant to Article 10.20.5 on 3 December 2019.

¹⁰ *Renco I*, Partial Award ¶ 72 (RLA-24).

¹¹ *Id.* ¶ 73 (RLA-24).

¹² *Id.* ¶ 119 (RLA-24).

¹³ *Id.* ¶ 138 (RLA-24) (emphasis added).

¹⁴ See Consultation Agreement (as Amended), November 10, 2016 (R-9).

¹⁵ See Framework Agreement (as Amended), March 14, 2017 (R-10).

20. With respect to Peru’s longstanding objections, (i) the waiver objection was resolved in the First Arbitration; (ii) the temporal objection is now pending here in this Treaty arbitration; and (iii) the third objection regarding the contracts will be need to be addressed as well within the context of the contract case. These objections are without prejudice to other objections regarding the factually and legally meritless nature of Renco’s case on jurisdiction and on the merits that Peru may raise in due course.

III. The Treaty’s Temporal Requirements

A. The Treaty’s Preconditions To Consent To Arbitration

21. The Treaty provides mandatory preconditions that a claimant must meet in order to establish a Contracting Party’s consent to arbitrate under the Treaty. Among other requirements, Treaty Article 10.1 (“Scope and Coverage”) and Article 10.18 (“Conditions and Limitations on Consent of Each Party”) condition a Contracting Party’s consent to arbitrate on non-retroactivity and prescription requirements, respectively. These temporal requirements serve to delineate the scope of Treaty coverage and to prevent undue delay in recourse to dispute mechanisms.¹⁶ Failure to meet those requirements, as in this case, is fatal to a claim.

22. In the First Treaty Arbitration, the Contracting Parties confirmed their agreement that “failure . . . to comply with the conditions and limitations on consent” under the Treaty “results in lack of consent by the Party and the concomitant lack of jurisdiction of the tribunal with respect to that claim.”¹⁷ The tribunal ruled accordingly.¹⁸

23. More recently, in a subsequent arbitration under the Treaty, both Contracting Parties again confirmed their agreement that “[a] State’s consent to arbitration is paramount,” and that “the Parties to this Agreement have only consented to arbitrate investor-State disputes where an investor submits a claim in accordance with this Agreement.”¹⁹ Indeed, the Contracting Parties further affirmed that the Treaty’s “limitations period is a ‘clear and rigid’ requirement that is not subject to any ‘suspension,’ ‘prolongation,’ or ‘other qualification.’”²⁰

24. It has been observed that “[s]ubmitting a claim under a treaty is not a trivial matter. There is a responsibility when the arbitration mechanism is set in motion and the counterparty is forced to respond to the claim against it. The decision to resort to the arbitration procedure

¹⁶ See, e.g., *Berkowitz (formerly Spence International Investments and others) v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award (Corrected), 30 May 2017 (RLA-26) ¶ 208 (stating that similar temporal limitations under the DR-CAFTA are a “legitimate legal mechanism to limit the proliferation of historic claims,” reflecting the “policy choice of the parties to the treaty”) (RLA-26).

¹⁷ *Renco I*, Second Non-Disputing Party Submission of the United States, 1 September 2015 (RLA-36), ¶ 15.

¹⁸ *Renco I*, Partial Award on Jurisdiction, 15 July 2016 ¶ 73 (“Compliance with Article 10.18[] is therefore an essential prerequisite to the existence of an arbitration agreement and hence the Tribunal’s jurisdiction.”) (RLA-24); see also, e.g., *Corona Materials v. Dominican Republic*, ICSID Case No. ARB/AF/14/3, Award on the Respondent’s Expedited Preliminary Objections in Accordance with Article 10.20.5 of the DR-CAFTA, 31 May 2016 ¶ 280 (“The Tribunal decides that the Claimant not having satisfied the conditions required under DR-CAFTA Article 18.10.1, its request for arbitration was time-barred and the present Tribunal has no jurisdiction over the claims.”) (RLA-23).

¹⁹ *Gramercy Funds Management LLC and Gramercy Peru Holdings LLC v. The Republic of Peru*, Submission of the United States of America ¶¶ 2-3 (R-13).

²⁰ *Gramercy v. Peru*, Submission of the United States of America ¶ 6 (quoting *Grand River Enterprises Six Nations, Ltd. v. United States of America*, NAFTA/UNCITRAL, Decision on Objections to Jurisdiction dated 20 July 2006 ¶ 29) (emphasis added) (R-13).

must be taken in all seriousness and full awareness of its implications.”²¹ It is a fundamental principle of international law and arbitral practice that Renco must prove all elements of its case. As with any other jurisdictional element, Renco bears the burden of proving that it has complied with all requirements for submitting a claim under the Treaty.²² The governing UNCITRAL Rules expressly confirm these requirements as to the burden of proof.²³

25. Renco has failed to meet its burden with respect to the Treaty’s temporal limitations – and, indeed, cannot meet that burden, given the timeline from which its claims arise, as detailed below. Accordingly, Peru has not consented to arbitrate this dispute, and the Tribunal has no jurisdiction.

B. The Non-Retroactivity Requirement

1. The Requirement

26. Article 10.1.3 of the Treaty provides that, “[f]or greater certainty, this Chapter does not bind any Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force” of the Treaty.²⁴ The Treaty’s requirement is consistent with the fundamental principle that a State can only be internationally responsible for a breach of a treaty obligation if the obligation is in force at the time of the alleged breach.²⁵ Under the plain meaning of Article 10.1.3, the Treaty does not cover – and, thus, the Contracting Parties have not consented to arbitrate – any claim that is predicated on alleged acts or facts that took place before the Treaty entered into force. Tribunals interpreting analogous treaty provisions have repeatedly affirmed this manifest limitation.²⁶

²¹ *Isolux Corsán Concesiones S.A. v. Republic of Peru*, ICSID Case No. ARB/12/5 (formerly *Elecnor S.A. and Isolux Corsán Concesiones S.A. v. Republic of Peru*), Procedural Order No. 2, Discontinuance of the Proceeding, 8 August 2013 ¶ 22 (RLA-18).

²² See, e.g., *Corona Materials v. Dominican Republic*, ICSID Case No. ARB/AF/14/3, Submission of the United States of America, 11 March 2016 ¶ 7 (stating, with respect to identical preconditions under the DR-CAFTA, that, “because the claimant bears the burden to establish jurisdiction under Chapter Ten, including with respect to Article 10.18[], the claimant must prove the necessary and relevant facts”) (RLA-22); *SGS Société Générale de Surveillance S.A. v. The Republic of Paraguay*, ICSID Case No. ARB/07/29, Decision on Jurisdiction dated 12 Feb. 2010 ¶ 57 (“[T]he claimant must prove the facts necessary for the establishment of jurisdiction.”) (quotation omitted; emphasis in original) (RLA-16); *Phoenix Action, Ltd. v. The Czech Republic*, ICSID Case No. ARB/06/5, Award dated 15 Apr. 2009 ¶¶ 60- 61 (holding that a tribunal “cannot take all the facts alleged by the Claimant as granted facts,” and that “if jurisdiction rests on the existence of certain facts, they have to be proven”) (RLA-13).

²³ UNCITRAL Arbitration Rules 2013, Art. 27(1) (“Each party shall have the burden of proving the facts relied on to support its claims or defence.”).

²⁴ Treaty, Art. 10.1.3 (RLA-1).

²⁵ See, e.g., Vienna Convention on the Law of Treaties, 23 May 1969, 1155 U.N.T.S. 331 (“Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.”) (RLA-3); ILC Articles on Responsibility of States for Internationally Wrongful Acts, 2001, Art. 13 (RLA-7).

²⁶ See, e.g., *Marvin Roy Feldman Karpa v. United States*, Interim Decision on Preliminary Jurisdiction Issues, (ICSID Case No. ARB(AF)/99/1, ¶ 67 (holding that, “[g]iven that NAFTA came into force on January 1, 1994, no obligations adopted under NAFTA existed, and the Tribunal’s jurisdiction does not extend, before that date,” and accordingly the tribunal “may not deal with acts or omissions that occurred before January 1, 1994”) (RLA-6); *Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Final Award, 11 October 2002 ¶ 70 (declining jurisdiction over acts and facts that predated the treaty’s entry into force because “the mere fact that earlier conduct has gone unremedied or unredressed when a treaty enters into force does not justify a tribunal applying the treaty retrospectively to that conduct”) (RLA-8).

27. At the same time, the non-retroactivity of the Treaty also encompasses later measures that are so intertwined with pre-Treaty acts and facts that they cannot be detached and adjudicated independently. For example, in *Berkowitz v. Costa Rica*, the tribunal confirmed that pre-entry into force acts and facts “cannot . . . form the foundation of a finding of liability even in respect of a post-entry into force, or a post-critical limitation date, actionable breach”; rather, “[t]o be justiciable, a breach that is alleged to have taken place within the permissible period . . . must, if it has *deep roots* in pre-entry into force or pre-critical limitation date conduct, be *independently actionable*.”²⁷

28. In that case, Costa Rica enacted a regulatory regime, prior to the treaty’s entry into force, that expropriated the claimants’ properties. The claimants presented a “seven-point matrix of alleged breaches” arising from the valuation procedures that were later applied to the properties under the local compensation regime.²⁸ The tribunal ruled that those later measures could not be separated from the pre-treaty measures that gave rise to them, and thus were not subject to its jurisdiction: “the [] allegations, in all of their various permutations . . . are all so deeply rooted in pre-entry into force conduct as not to be meaningfully separable from that conduct.”²⁹ Other tribunals have similarly rejected claims, ostensibly based on post-entry into force measures, where those measures were linked with pre-entry into force acts or facts.³⁰

2. The Relevant Date

29. The Treaty entered into force on February 1, 2009, and does not bind Peru in relation to any act or fact that took place before that date. Accordingly, the Tribunal does not have jurisdiction over any claim arising from alleged acts or facts that occurred before February 1, 2009. Moreover, the Tribunal does not have jurisdiction over any claim arising from alleged acts or facts that took place after February 1, 2009, if they are rooted in, and not independently actionable from, the earlier alleged acts or facts. As shown further below, Renco’s claims fail in both respects.

C. The Prescription Requirement

1. The Requirement

30. Under Article 10.18.1 of the Treaty, “[n]o claim may be submitted to arbitration . . . if more than three years have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the [Treaty] breach alleged . . . and knowledge that the

²⁷ *Berkowitz (formerly Spence International Investments and others) v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award (Corrected), 30 May 2017 ¶ 253 (applying identical provision under the DR-CAFTA) (emphasis added) (RLA-36).

²⁸ *Berkowitz v. Costa Rica* ¶¶ 228, 231-232 (RLA-26).

²⁹ *Berkowitz v. Costa Rica* ¶ 269 (RLA-26).

³⁰ See, e.g., *EuroGas Inc. and Belmont Resources Inc. v. Slovak Republic*, ICSID Case No. ARB/14/14, Award, 18 August 2017 ¶ 459 (“The State Parties . . . cannot have intended that [the non-retroactivity provision] be read and applied in a way that exposes them to claims from investors that could date from more than three years before the entry into force of the treaty, just because a certain dispute was not settled and/or might give rise to a follow-up action. Considering that the State’s refusal to overturn an existing alleged breach gives rise to a new dispute would open the floodgates to a possible complete disregard of the condition *ratione temporis* of the application of a BIT.”) (RLA-27).

claimant . . . has incurred loss or damage.”³¹ Peru has not consented to arbitrate, and the Tribunal has no jurisdiction over, any claim falling outside of this three-year period.

31. As Article 10.18.1 plainly provides, the Treaty requires that no more than three years may pass between when a claimant first knew or should have known of an alleged breach and damage, and the time when a claim is submitted to arbitration. Constructive knowledge, which occurs if “by exercise of reasonable care or diligence, the person would have known of that fact,” is thus sufficient to trigger the prescription period.³² Actual knowledge by the claimant is not required.

32. Nor, in a case where a claimant does possess some form of actual knowledge, is a high degree of specificity needed. Rather, the Contracting Parties have agreed that “a claimant may have knowledge of loss or damage even if the amount or extent of that loss or damage cannot be precisely quantified until some future date.”³³ Tribunals interpreting prescription provisions analogous to Article 10.18.1 likewise have held that “the plain language . . . does not require full or precise knowledge of loss or damage,”³⁴ and that “for the limitation period to begin to run, it is not necessary that a claimant be in a position to fully particularize its legal claims (in that they can be subsequently elaborated with more specificity).”³⁵ Further, “the limitation clause . . . is triggered by the *first appreciation* that loss or damage will be (or has been) incurred” – this “starts the limitation clock ticking.”³⁶

33. In addition, it is well established that a continuing course of alleged measures does not renew the prescription period. Thus, much as with the non-retroactivity requirement, a claimant cannot rely on an alleged breach within the required period when the claim is rooted in earlier alleged measures outside of that period. Relatedly, “an act can be complete even if it

³¹ Treaty, Art. 10.18.1 (RLA-1).

³² *Grand River Enterprises Six Nations, Ltd. v. United States of America*, UNCITRAL, Decision on Objections to Jurisdiction, 20 July 2006 ¶ 59 (adding that “[c]losely associated is the concept of ‘constructive notice.’ This entails notice that is imputed to a person, either from knowing something that ought to have put the person to further inquiry, or from willfully abstaining from inquiry in order to avoid actual knowledge”) (RLA-10); *see also, e.g., Berkowitz v. Costa Rica* ¶ 209 (“The ‘should have first acquired knowledge’ test in Article 10.18.1 is an objective standard; what a prudent claimant should have known or must reasonably be deemed to have known.”) (RLA-26).

³³ *Gramercy Funds Management LLC and Gramercy Peru Holdings LLC v. The Republic of Peru*, Submission of the United States of America ¶ 8 (RLA-13).

³⁴ *William Ralph Clayton and others v. Government of Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability, 17 March 2015 ¶ 275 (commenting on the analogous NAFTA provision that [t]o require a reasonably specific knowledge of the amount of loss would, however, involve reading into Article 1116(2) a requirement that might prolong greatly the inception of the three-year period and add a whole new dimension of uncertainty to the time-limit issue; it would have to be determined in each case not only whether there is actual or constructive knowledge of loss of damage, but whether the investor has knowledge that is sufficiently “actual” or “concrete”) (RLA-21).

³⁵ *Corona Materials v. Dominican Republic*, ICSID Case No. ARB/AF/14/3, Award on the Respondent’s Expedited Preliminary Objections in Accordance with Article 10.20.5 of the DR-CAFTA, 31 May 2016, ¶¶ 194, 217 (RLA-23); *see also, e.g., Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Final Award, 11 October 2002 ¶ 87 (“A claimant may know that it has suffered loss or damage even if the extent or quantification of the loss or damage is still unclear.”) (RLA-8); *Berkowitz v. Costa Rica* (“On the issue of whether the claimant must have a concrete appreciation of the quantum of that loss or damage . . . the limitation clause does not require full or precise knowledge of the loss or damage.”) (RLA-26); *William Ralph Clayton, and others v. Government of Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability of 17 March 2015 (RLA-21).

³⁶ *Berkowitz v. Costa Rica* ¶ 213 (emphasis added) (RLA-26); *see also id.* (confirming that its articulation of the prescription standard is in accord with “the approach adopted in *Mondev, Grand River, Clayton and Corona Materials*); *Rusoro Mining Ltd. v. Bolivarian Republic of Venezuela*, ICSID Case No. ARB(AF)/12/5, Award, 22 August 2016 ¶¶ 216-217 (holding that it was enough to show “*simple knowledge that loss or damage has been caused*, even if the extent and quantification are still unclear”) (emphasis added) (RLA-25).

has continuing ongoing effects.”³⁷ In this respect, too, the Contracting Parties have agreed that “subsequent transgressions by a Party arising from a continuing course of conduct do not renew the limitations period *To allow otherwise would permit an investor to evade the limitations period by basing its claim on the most recent transgression in that series, rendering the limitations provisions ineffective.*”³⁸ Tribunals likewise have held that “a continuing course . . . cannot without more renew the limitation period as this would effectively denude the limitation clause of its essential purpose,” which is “to draw a line under the prosecution of historic claims.”³⁹ Otherwise, “a claimant would be free to base its claim on the most recent transgression, even if it had knowledge of earlier breaches and injuries.”⁴⁰

2. The Relevant Date

34. Renco filed its Notice of Arbitration on 23 October 2018. Absent other considerations, the relevant date for the purposes of prescription under Treaty Article 10.18.1 would be 23 October 2015, *i.e.*, three years prior to the date of filing the claim.

35. As noted above, the Parties entered into a Consultation Agreement on 10 November 2016 and a Framework Agreement on 14 March 2017, under which they agreed to toll temporarily the prescription period. In particular, the Parties agreed to “waive their respective rights to assert any statute of limitations, laches or other limitations argument or defense based on the passage of time between 10 November 2016 and the end of the Consultation Period with respect to the claims asserted in each of the respective Notices.”⁴¹ The Parties further specified that, “[f]or clarity, this waiver is strictly limited as set forth herein and is only prospective, and does not impact the timeliness, or untimeliness, of any claims as of the date hereof or other rights or defenses, temporal or otherwise, except as set forth herein.”

36. The Consultations Period ended on 20 October 2018, after 709 days. Accounting for this time, the relevant date for purposes of the three-year prescription period is 13 November 2013 (*i.e.*, 709 days before the cutoff date of 23 October 2015 that would otherwise apply).

37. As shown below, because Renco first acquired (or should have acquired) knowledge of the alleged breach(es) and corresponding damage before 13 November 2013, its claims violate the prescription period, Peru has not consented to arbitrate the claims, and the Tribunal must dismiss the claims for lack of competence.

³⁷ *William Ralph Clayton and others v. Government of Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability, 17 March 2015 ¶ 268 (RLA-21).

³⁸ *Gramercy Funds Management LLC and Gramercy Peru Holdings LLC v. The Republic of Peru*, Submission of the United States of America ¶ 6 (emphasis added) (R-13).

³⁹ *Berkowitz (formerly Spence International Investments and others) v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award (Corrected), 30 May 2017 ¶ 208 (RLA-26); *see also Nissan Motor Co., Ltd. v. Republic of India*, PCA Case No. 2017-37, Decision on Jurisdiction, 29 April 2019 ¶ 324 (“There is no provision in [the limitations clause] for tolling the limitations period for subsequent acts by the State relating to the same underlying harm.”) (RLA-31).

⁴⁰ *Grand River Enterprises Six Nations, Ltd. and others v. United States of America*, UNCITRAL, Decision on Objections to Jurisdiction 20 July 2006 ¶ 38 (RLA-10).

⁴¹ Framework Agreement (as Amended), March 14, 2017 (R-10).

IV. Renco's Violations of the Temporal Requirements

38. Renco has failed to meet the Treaty's temporal requirements. The facts on which Renco relies all predate the relevant dates under the Treaty, with one single exception (the irrelevance of which is addressed below). Accordingly, the three claims are time barred and must be dismissed.

39. As discussed above, Renco bears the burden of establishing that it has complied with the Treaty's temporal requirements, along with all other jurisdictional requirements under the Treaty, which includes the burden of proving the factual elements necessary to establish jurisdiction.

40. Renco *chose* to designate its Notice of Arbitration as a Notice of Arbitration *and* Statement of Claim. Under the applicable rules, the Statement of Claim must include "[a] statement of the facts supporting the claim," and "should, as far as possible, be accompanied by all documents and other evidence relied upon by the claimant, or contain references to them."⁴² Instead, Renco filed a 26-page Statement of Claim, with only three exhibits and no witness or expert evidence whatsoever. Indeed, Renco has already signaled that it intends to produce some fuller version of its factual case in this proceeding at some undetermined point in the future. Renco's approach to its first principal submission cannot be a shield to cover up its still-obvious temporal flaws, which, in any case, are confirmed by the more comprehensive factual allegations that Renco previously set forth in the First Arbitration and other proceedings.

41. In any event, even taking the facts as Renco has alleged them – in the Statement of Claim and elsewhere – it is apparent that Renco cannot meet its burden of establishing compliance with the Treaty's temporal limitations.

A. Renco's Factual Allegations

42. As addressed above, the Treaty establishes temporal requirements, and Renco has the burden of showing that it has complied as to two relevant deadlines: February 3, 2009 (the date on which the Treaty entered into force) and November 13, 2013 (the prescription date under Treaty Art. 10.18 as adjusted in the manner most favorable to Renco pursuant to the Parties' agreement). Renco has failed to do so, as the facts Renco itself has plead demonstrate.

1. Events Prior to the Treaty's Entry Into Force

43. The first 10 pages of the Statement of Claim's 14-page "Factual Background" section refer to events that occurred prior to the Treaty's entry into force on February 1, 2009. This period covers both Renco's account of the Facility's history as well as the origins of the dispute:

⁴² See UNCITRAL Arbitration Rules 2013, Art. 20(2) (requiring that the statement of claim "shall include" a "statement of the facts supporting the claim," the "points at issue," the "relief or remedy sought," and the "legal grounds or arguments supporting the claim"); *id.* Art. 20(3) (requiring that "[a] copy of any contract or other legal instrument out of or in relation to which the dispute arises . . . shall be annexed to the statement of claim"); *id.* Art. 20(4) (requiring that the "statement of claim should, as far possible, be accompanied by all documents and other evidence relied upon by the claimant, or contain references to them").

44. **Section III(A)** alleges that “the Peruvian Government Operated One of the Most Polluted Smelter Sites in the World.” Renco alleges that these events took place from “1992 through the 1990s,”⁴³ and “from the Early 1970s to the Early 1990s.”⁴⁴

45. **Section III(B)** alleges that “No One was Interested [in the Facility] Because of the Environmental Liabilities.” Renco alleges that these events took place from the “Early 1990s,”⁴⁵ and “in 1994.”⁴⁶

46. **Section III(C)** refers to Peru’s alleged agreement “to Assume Substantial Environmental Obligations” and the development of the Environmental Remediation and Management Program (“PAMA”) for the Facility. Renco alleges that these events took place from “in 1995,”⁴⁷ “in 1996,”⁴⁸ and “in 1997.”⁴⁹

47. **Section III(D)** refers to DRP’s efforts to comply with environmental obligations following its acquisition of the Facility. Renco alleges that these events took place from “1999 and 2000,”⁵⁰ “the end of 2001,”⁵¹ and in “2003.”⁵² In particular, Renco alleges:

- “Between 1998 and 2002, Doe Run Peru’s engineering and design studies showed that Centromin had severely underestimated the cost and complexity of updating the Complex.”⁵³
- “MEM also repeatedly asked DRP to add new PAMA projects. For instance, in October 1999, MEM approved DRP’s request to add more PAMA tasks, which increased the originally anticipated PAMA investment amount by US\$ 60,767,000 to total of US\$ 168,342,000.”⁵⁴
- “In 2002, MEM asked DRP to engage in eight new emissions reduction projects”⁵⁵

48. **Section III(E)** refers to actions taken by DRP alleged to have taken place “by 2006.”⁵⁶

49. **Section III(F)** refers to DRP’s need for a PAMA extension and alleges that “MEM Granted a Unreasonably Short Extension and Imposed New Obligations.”⁵⁷ In particular, Renco alleges:

⁴³ Statement of Claim ¶ 11 (emphasis added)

⁴⁴ *Id.* § IIIA (emphasis added).

⁴⁵ Statement of Claim § IIIB (emphasis added).

⁴⁶ *Id.* ¶ 14 (emphasis added).

⁴⁷ *Id.* ¶ 18 (emphasis added).

⁴⁸ *Id.* ¶ 19 (emphasis added).

⁴⁹ *Id.* ¶ 19 (emphasis added).

⁵⁰ *Id.* ¶ 26 (emphasis added).

⁵¹ *Id.* ¶ 25 (emphasis added).

⁵² *Id.* ¶ 27 (emphasis added).

⁵³ *Id.* ¶ 21 (emphasis added).

⁵⁴ *Id.* ¶ 21 (emphasis added).

⁵⁵ *Id.* ¶ 22 (emphasis added).

⁵⁶ *Id.* ¶ 31 (emphasis added).

⁵⁷ *Id.* § IIIE (emphasis added).

- “DRP realized as early as 2005 that the La Oroya Complex would not meet the current regulatory standards for lead without significantly more work.”⁵⁸
- That DRP had an obligation to construct two sulfuric acid plants “beginning in 2003 and ending in 2006,” and discovered three separate plants were needed.⁵⁹
- “Under these circumstances, DRP requested a five-year extension to complete the PAMA. MEM granted DRP only two years and ten months,” and “MEM imposed on DRP 14 new projects.”⁶⁰

50. **Section III(G)** refers to DRP having “Completed All PAMA Projects Except for One.” Renco dates these events to as occurring “[b]y January 2007,”⁶¹ “[b]y January 2008”⁶² and “[b]y December 2008.”⁶³

51. As addressed above, events alleged to have occurred prior to the Treaty’s entry into force were the start of Renco’s dispute with Peru, including the alleged measures by MEM in granting the PAMA extension in 2006, as well as DRP’s failure to complete all of its environmental obligations under the PAMA by 2007.

2. Events Prior to the Prescription Date

52. The remainder of the events alleged by Renco occurred in the period between the Treaty’s entry into force on February 1, 2009 and November 13, 2013 (that is, well before October 23, 2015), with one exception addressed below. This period covers Renco’s allegations regarding the bankruptcy and other measures by Peru:

53. **Section III(H)** refers to events that “Prevented DRP from Finishing the Last PAMA Project by October 2009,” and allegations that “Peru Responded by Undermining DRP’s Ability to Obtain Financing thereby Pushing it into Bankruptcy.” In particular, Renco alleges:

- “In February 2009, DRP lost its US\$ 75 million revolving line of credit.”⁶⁴
- “DRP asked MEM for an extension on March 5, 2009.”⁶⁵
- “In May 2009, Peruvian Government officials made public comments declaring DRP would not receive any PAMA extension, and in June 2009 DRP was forced to suspend operations at the Complex.”⁶⁶

⁵⁸ *Id.* ¶ 32 (emphasis added).

⁵⁹ Statement of Claim ¶ 34 (emphasis added).

⁶⁰ *Id.* ¶ 34 (emphasis added).

⁶¹ *Id.* ¶ 36.

⁶² *Id.* ¶ 37.

⁶³ *Id.* § III G.

⁶⁴ *Id.* ¶ 44 (emphasis added).

⁶⁵ *Id.* ¶ 45 (emphasis added).

⁶⁶ *Id.* ¶ 46 (emphasis added).

- “[I]n September 2009, the Peruvian Congress passed a law granting DRP an extension,” which allegedly “soon became illusory and ineffective because MEM passed implementing regulations that undermined the new law’s benefits.”⁶⁷
- “[I]n February 2010” DRP was “placed into involuntary bankruptcy.”⁶⁸

54. **Section III(I)** refers to Renco’s allegation that “Peru Barred DRP from Restructuring and Forced its Liquidation.” In particular, Renco alleges:

- “After DRP went into bankruptcy [in 2010], Peru asserted a patently improper claim for US\$ 163 million.”⁶⁹
- “DRP opposed MEM’s credit, and, in February 2011, the INDECOPI Bankruptcy Commission rejected the credit.”⁷⁰
- “[I]n November 2011, the INDECOPI Tribunal issued a resolution reversing the INDECOPI Bankruptcy Commission’s prior resolution.”⁷¹

3. The Local Proceedings

55. In its entire Statement of Claim, Renco alleges only a single event that occurred after the adjusted Treaty Article 10.18 prescription date of November 13, 2013. Specifically, Renco alleges that “[o]n November 3, 2015, the Supreme Court summarily rejected DRP’s appeal.”⁷² Renco acknowledges that the Supreme Court’s decision was the culmination of a series of local proceedings, through which Renco’s affiliates sought to challenge the 2011 recognition of the MEM’s credit in the DRP bankruptcy. Specifically, the Statement of Claim refers to DRP challenge of the INDECOPI Tribunal’s 2011 resolution, the Fourth Administrative Court’s denial of DRP’s request, the affirmation of this decision by a special chamber of the Superior Court of Lima, and DRP’s appeal to the Supreme Court.⁷³ The Statement of Claim notably omits to provide the dates for these events.⁷⁴

B. Renco’s Claims and the Consequences of Temporal Violations

56. Given the foregoing, it is apparent that Renco has not met the Treaty’s strict temporal requirements and the relevant facts alleged by Renco do not satisfy its burden of showing jurisdiction with respect to any of the three claims it has submitted in this proceeding:

- (i) *Unfair Treatment*. Renco’s claim is predicated on a dispute on DRP’s compliance with its environmental obligations that predates the entry into

⁶⁷ *Id.* ¶¶ 48-49 (emphasis added).

⁶⁸ Statement of Claim ¶ 50 (emphasis added).

⁶⁹ *Id.* ¶ 51 (emphasis added).

⁷⁰ *Id.* ¶ 52 (emphasis added).

⁷¹ *Id.* ¶ 54 (emphasis added).

⁷² *Id.* ¶ 56. Peru notes Renco has failed to state that the Supreme Court’s decision is dated 6 July 2015.

⁷³ *See* Statement of Claim ¶ 55.

⁷⁴ Renco previously indicated that DRP challenged the INDECOPI Tribunal’s resolution on January 18, 2012; that the Fourth Administrative Court’s denied DRP’s request on October 18, 2012; that this decision was affirmed in the Superior Court of Lima on July 25, 2014; and that DRP appealed to the Supreme Court on August 21, 2014. *See Renco I*, Renco’s Counter-Memorial Concerning Peru’s Objections dated 10 August 2015 ¶¶ 96, 103 (R-12).

force of the Treaty, and Renco has not alleged any measures in this regard later than 2009. Renco already submitted this claim in the First Arbitration: it was time-barred then and it remains time-barred now.

- (ii) *Indirect Expropriation.* Renco's claim is predicated on allegations related to DRP bankruptcy in 2009, the recognition of a MEM credit, and the decision by a committee of creditors to reject restructuring and place DRP in liquidation, which occurred in 2012. Renco already anticipated this claim in the First Arbitration, and it is time-barred.
- (iii) *Denial of Justice.* Renco's claim is predicated on decisions by the Peruvian Judiciary in a series of local proceedings in which Renco affiliates challenged the recognition of the MEM credit in the DRP bankruptcy. While Renco provides dates the final decision, it omits the dates of prior rulings that show that the claim materialized prior to the relevant prescription deadline and is therefore time-barred.

57. Renco's failure to submit claims that comply with the Treaty is illustrated in the summary timeline, which includes the key facts on which Renco relies. **Figure A.** A comprehensive timeline of Renco's allegations is annexed hereto. **Figure B.**

FIGURE A

OVERVIEW OF TEMPORAL RESTRICTIONS UNDER THE TREATY AND RENCO'S ALLEGATIONS IN ITS STATEMENT OF CLAIM

The following table sets forth the dates related to temporal restrictions under the Treaty, in relation to Renco's factual allegations in its Statement of Claim. Attached as Figure B is a detailed timeline of Renco's factual allegations.

<u>Date</u>	<u>Claimant's Allegations</u>	<u>Source</u>
Prior to February 1, 2009	Varied allegations (included in detail in Figure B)	<i>See Annex A; SOC</i>
February 1, 2009	TREATY ENTRY INTO FORCE	RLA-1; RLA-2
February 1, 2009 to November 13, 2013	Varied allegations (included in detail in Figure B)	<i>See Annex A; SOC</i>
November 13, 2013	ADJUSTED TREATY PRESCRIPTION DATE (Adjusted in the manner most favorable to Claimant) Renco's limited allegations after this date are included below.	<i>See SOC; Section III.C.2 herein</i>
August 25, 2014	<i>DRP files an appeal in a local proceeding</i> "DRP appealed that decision to the Supreme Court of Justice, the highest judicial body in the Peruvian judiciary."	SOC ¶ 55; Renco's Aug. 2015 Submission in First Arbitration ¶ 103
October 23, 2015	TREATY PRESCRIPTION DATE (Based on the Treaty pursuant to Article 10.18)	<i>See Section III.C.2 herein</i>
2015	<i>DRP loses the appeal in the local proceeding</i> "On November 3, 2015, the Supreme Court summarily rejected DRP's appeal. Instead of ruling on the merits of DPR's argument, the Supreme Court held that DRP (and Doe Run Cayman, which also participated in the appeal) had articulated why it considered the lower court's ruling to be incorrect, but that it had failed to offer a proposed rule that the Supreme Court could accept or reject and that DRP's appeal lacked 'clarity and precision.' The Court did not explain why DRP's position that "a breach of the PAMA does not create a credit in favor of the MEM" was insufficiently clear. With the Supreme Court's rejection of DRP's appeal, DRP exhausted all local remedies under Peruvian law against the MEM credit. If the Supreme Court had granted DRP's appeal and nullified the MEM credit, consistent with the initial ruling by INDECOPI Commission, all of MEM's votes in the bankruptcy proceedings would have been declared invalid and DRP then could have attempted to restructure instead of liquidate (and do so without the US\$ 163 million MEM credit, which is the largest credit in DRP's bankruptcy). In other words, when the Supreme Court rejected DRP's appeal in November 2015, Renco lost any chance of regaining control of its investment and avoid DRP's liquidation. As a result, Renco lost permanent control of its investment and the economic value of its investment in Peru."	SOC ¶ 56
July 15, 2016	PARTIAL AWARD IN FIRST ARBITRATION	<i>Renco I (UNCT/13/1)</i>

1. Renco's Unfair Treatment Claim Is Time-Barred

58. Renco's claim that "Peru's Pattern of Unfair and Inequitable Treatment of DRP Violates Article 10.5 of the Treaty" fails to comply with the Treaty's temporal requirements.⁷⁵ All of the facts alleged by Renco relevant to this claim either predate the Treaty's entry into force or are deeply rooted in pre-entry into force acts and facts; and, Renco acquired knowledge of any alleged breach and loss or damage before the relevant prescription date.

59. Renco's own submissions in the First Arbitration are dispositive of the existence of a time bar. Specifically, Renco's articulation of this claim in its Statement of Claim is practically identical to a claim submitted by Renco in its Notice of Arbitration and Statement of Claim submitted dated August 9, 2011. Indeed, the only differences between the claim submitted in 2011 and the one submitted in 2018 are (i) Renco's deletion of three footnotes that specify dates in 2010; (ii) Renco's deletion of a paragraph relating to the Missouri Lawsuits, as to which Renco is now pursuing claims in the Contract Case; and (iii) minimal edits, including as to word order. For the Tribunal's convenience, the totality of Renco's edits can be seen in the redline showing the changes from the Unfair Treatment section in its 2011 Statement of Claim (¶¶ 46-51) to the corresponding Unfair Treatment section in its 2018 Statement of Claim (¶¶ 62-66). **Figure C.**

60. In any event, Renco's "unfair treatment" claim is predicated on alleged events that do not meet the Treaty's strict temporal requirements. In particular, Renco claims that Peru breached the Treaty by "imposing on DRP additional environmental projects and requirements, which increased the amount of time and money that DRP was required to spend, while simultaneously and improperly refusing to timely grant DRP the additional time needed to fulfill these obligations."⁷⁶ Even if Renco's allegations are assumed to be true, the claim is time barred as each of the elements of Renco's claims predate the relevant dates:

61. *Allegations Regarding the Initial Extension and New Environmental Obligations.* Renco argues that Peru is in breach because "the actual environmental infrastructure that existed at La Oroya at the time of the transfer caused DRP to spend additional sums and to do additional projects that were not originally anticipated, which became mandated by the government through resolutions. When DRP reasonably sought an extension of time in light of the changes required by Peru, Peru granted only a limited extension and imposed additional and onerous obligations upon DRP."⁷⁷ With regards to the dates relevant to such claim Renco has made the following factual allegations:

- "[I]n October 1999, MEM approved DRP's request to add more PAMA tasks."⁷⁸
- "In 2002, MEM asked DRP to engage in eight new emissions reduction projects."⁷⁹
- "DRP requested a five-year extension to complete the PAMA. MEM granted DRP only two years and ten months [...] At the same time, MEM imposed on DRP 14 new

⁷⁵ Statement of Claim, Section IV.A (emphasis added).

⁷⁶ *Id.* ¶ 62.

⁷⁷ *Id.* ¶ 63.

⁷⁸ *Id.* ¶ 21.

⁷⁹ *Id.* ¶ 22.

FIGURE C

RENCO'S ALLEGATIONS IN RELATION TO UNFAIR TREATMENT UNDER THE TREATY

The following is a comparison between the unfair treatment sections in Renco's Amended Notice of Arbitration and Statement of Claim filed on August 9, 2011 in the First Arbitration and in Renco's Notice of Arbitration and Statement of Claim on October 23, 2018 in this Arbitration.

62. Peru has engaged in a pattern of ~~conduct of~~ unfair and inequitable treatment in violation of Article 10.5 of the Treaty by, *inter alia*, imposing on DRP additional environmental projects and requirements, which increased the amount of time and money that DRP was required to spend, while simultaneously and improperly refusing to timely grant DRP the ~~needed~~ additional time needed to fulfill these ~~new~~ obligations

63. Indeed, in addition to the actual project costs vastly exceeding Peru's initial estimates in 1997, the actual environmental infrastructure that existed at La Oroya at the time of the transfer caused DRP to spend additional sums and to do additional projects that were not originally anticipated, which became mandated by the government through resolutions. When DRP reasonably sought an extension of time in light of the changes required by Peru, Peru granted only a limited extension and imposed additional and onerous obligations upon DRP.

64. In part due to this short time-frame and these additional projects, DRP was understandably unable to complete the final PAMA project and reasonably sought a second extension in 2009, which the Ministry of Energy and Mines unreasonably refused. When the Congress of the Republic of Peru finally granted the extension by passing Law 29410, the Ministry of Energy and Mines improperly deprived DRP of the full benefits of the law by issuing harassing and onerous implementing regulations targeted at DRP that DRP could not possibly meet.

65. Moreover, during all of this time, Peru engaged in a smear campaign in the press against Renco and DRP. For example, during a time in which Peru knew that DRP was attempting to negotiate agreements with creditors and obtain financing, Peruvian President Alan Garcia stated in the press that he intended to cancel DRP's license to operate, stating that, "A company that abuses the country or plays games like Doe Run should be stopped."³² Regarding negotiations between DRP and the government over reopening the Complex, Garcia was quoted as saying that the government "will not allow a firm to blackmail the country."³³ Moreover, Peruvian Minister ~~for Mining and of~~ Energy, and Mines, Pedro Sanchez stated that, regardless of media statements made by the company, it "should be clear that they will not re-contaminate La Oroya as they have done before."³⁴ Peru's statements to the press were intended to create an erroneous public opinion that DRP was responsible for the contamination of La Oroya and remiss in its remediation obligations.

66. Peru's unfair refusal to timely grant reasonable PAMA extensions and its disparaging public campaign against Renco and DRP have created a hostile investment environment and ~~have~~ prevented DRP from securing new financing necessary to resume operations of the Complex.

~~In addition, and as discussed more fully below, Peru and Activos Mineros refused to honor their commitment to appear in and defend and assume responsibility and liability for the Lawsuits. Renco and DRP relied on this contractual commitment when they agreed to purchase the Company. As Centromin and Peru were well aware, the sale transaction would not have occurred without this critically important commitment by Centromin and Peru. The refusal by Peru and Activos Mineros to honor this commitment is a breach of Renco's and DRP's legitimate expectations when they made their substantial investment in Peru and constitutes yet another example of the unfair and inequitable treatment that they have experienced at the hand of Peru~~

~~³². See Reuters, July 28, 2010, "Peru Garcia says Doe Run license being canceled."~~

~~³³. See Living in Peru, July 28, 2010, "Peru cancels permit for US-owned smelter over pollution."~~

~~³⁴. See Dow Jones Commodities News, August 5, 2010, "Peru Minister: Doe Run Peru Can't Reopen Plant without Upgrade."~~

projects regarding fugitive emissions and converted over 60 voluntary public health projects into mandatory obligations.”⁸⁰

62. *Allegations Regarding Denial of an Additional Extension.* Renco argues that Peru is in breach because “DRP was understandably unable to complete the final PAMA project and reasonably sought a second extension **in 2009**, which the Ministry of Energy and Mines unreasonably refused,” and “[w]hen the Congress of the Republic of Peru finally granted the extension by passing Law 29410, the Ministry of Energy and Mines improperly deprived DRP of the full benefits of the law by issuing harassing and onerous implementing regulations targeted at DRP that DRP could not possibly meet.”⁸¹ With regards to the dates relevant to such claim, Renco alleges that “DRP asked MEM for an extension on March 5, 2009,”⁸² that “[a] few months later, in September 2009, the Peruvian Congress passed a law granting DRP an extension of 30 months to complete construction of the last remaining environmental project,”⁸³ and “[t]his important extension soon became illusory and ineffective because MEM passed implementing regulations that undermined the new law’s benefits.”⁸⁴

63. *Allegations Regarding Public Comments.* Renco argues Peru is in breach because “**during all of this time**, Peru engaged in a smear campaign in the press against Renco and DRP. For example, during a time in which Peru knew that DRP was attempting to negotiate agreements with creditors and obtain financing, Peruvian President Alan Garcia stated in the press that he intended to cancel DRP’s license to operate, stating that, ‘A company that abuses the country or plays games like Doe Run should be stopped.’ Regarding negotiations between DRP and the government over reopening the Complex, Garcia was quoted as saying that the government ‘will not allow a firm to blackmail the country.’ Moreover, Peruvian Minister of Energy and Mines, Pedro Sanchez stated that, regardless of media statements made by the company, it ‘should be clear that they will not re-contaminate La Oroya as they have done before.’ Peru’s statements to the press were intended to create an erroneous public opinion that DRP was responsible for the contamination of La Oroya and remiss in its remediation obligations.”⁸⁵

64. With regards to the dates relevant to such claim, Renco alleges that , “[i]n May 2009, Peruvian Government officials made public comments declaring that DRP would not receive any PAMA extension.”⁸⁶ Renco has chosen not to include sources with dates for the quotes themselves in the Statement of Claim, and in fact deleted the footnotes sourcing each quote

⁸⁰ Statement of Claim ¶ 35; *see also Renco I*, Renco’s Memorial on Liability, 20 February 2014, at ¶¶ 132-33 (“On May 25, 2006, the Ministry of Energy & Mines granted Doe Run Peru an extension of two years and ten months beyond the original ten-year PAMA period, for Doe Run Peru to complete the PAMA [which] was disappointing,”) (R-12); *id.*, at ¶ 317 (“Doe Run Peru’s undertaking to improve the Complex’s environmental performance and the health of the local population was radically transformed during the period from 1997 to 2009,” because of “the adoption of major design and engineering changes, the addition of numerous new environmental and public health projects, and the imposition on Doe Run Peru of more stringent environmental standards.”) (R-12).

⁸¹ Statement of Claim ¶¶ 63-64 (emphasis added).

⁸² *Id.* ¶ 45.

⁸³ *Id.* ¶ 48.

⁸⁴ *Id.* ¶ 49; *see also Renco I*, Renco’s Memorial on Liability dated 20 February 2014, at ¶ 184 (stating that “MEM moved quickly” to pass the implementing regulations, and issued Executive Decree No. 075-2009-EM on October 29, 2009.) (R-12).

⁸⁵ Statement of Claim ¶ 65 (emphasis added).

⁸⁶ *Id.* ¶ 47.

that were included in the 2011 Statement of Claim. According to those footnotes, the quotes were published in articles dated July 28, 2010 and August 5, 2010.⁸⁷

65. As these arguments and alleged facts demonstrate, Renco's unfair treatment claim fails to comply with Article 10.1.3 and 10.18.1 of the Treaty. In accordance with the clear and explicit terms on Article 10.1.3, Peru is not bound in relation to any of the alleged facts that took place prior to the Treaty's entry into force. In addition, Peru is not bound with respect to alleged measures that have deep roots in the pre-entry conduct, as was the case in *Berkowitz v. Costa Rica*.

66. Because the Treaty does not bind Peru in relation to the alleged facts that took place or has deep roots in conduct that took place prior to the Treaty's entry into force, Renco's "unfair treatment" claim cannot be heard under this Treaty. As demonstrated above, the allegations regarding the initial extension and new environmental obligations took place before the Treaty's entry into force in February 1, 2009. Moreover, it was apparent before the Treaty entered into force that DRP would not meet its obligation and contemplated seeking an extension, which DRP requested one month after the Treaty entered into force. The denial of the 2009 PAMA extension and public statements by officials are intrinsically linked to Peru's efforts of more than a decade to enforce DRP's compliance with the obligations it acquired in 1997. Renco's own characterization of Peru's conduct as a "pattern" confirms that the claim has deep roots in prior conduct, which in this case relates to conduct that took place well before the Treaty's entry into force. This deficiency has plagued Renco's claims since it launched its Treaty dispute nearly a decade ago. Renco's nearly identical claim as set out in its 2011 Statement of Claim was barred for the same reason, among others.

67. Renco's claim is also barred by Article 10.18.1. As demonstrated above, the most recent conduct on which Renco relies in support of its Minimum Standard claim took place in 2009, years before the prescription date. That Renco first submitted the practically identical "unfair treatment" claim against Peru in 2011 in the First Arbitration underscores that Renco had acquired knowledge concerning the alleged breach and loss or damage years before the relevant prescription date.

68. Accordingly, Renco's "unfair treatment" claim does not meet the requirements of either Article 10.1.3 or Article 10.18.1, Peru has not consented to arbitrate them, and the Tribunal does not have jurisdiction to hear them.

2. Renco's Indirect Expropriation Claim is Time-Barred

69. Renco's claim that "Peru Indirectly Expropriated Renco's Investment Through Measures Tantamount to Expropriation" likewise fails to comply with the Treaty's temporal requirements.⁸⁸ The facts alleged by Renco relevant to this claim predate or are deeply rooted in facts that predate the Treaty's entry into force, and any alleged breach and corresponding loss or damage was known before the relevant prescription date.

70. *Extensions, New Environmental Obligations, and Public Comments.* Renco claims Peru is in breach because "Peru repeatedly imposed new and expensive environmental obligations on DRP at the same time that it refused to grant DRP reasonable extensions to complete those environmental projects and undermined the few extensions that Peru belatedly

⁸⁷ *Renco I*, Renco's Amended Notice of Arbitration and Statement of Claim, 9 August 2011, nn. 32-34 (R-12).

⁸⁸ Statement of Claim, Section IV.B.

granted. At the same time, Peru publically disparaged DRP's reputation and frustrated its ability to obtain needed financing. All of these acts placed DRP in a precarious, unnecessary, and unwarranted financial condition, which put it at risk of bankruptcy.”⁸⁹ Renco purports to support its argument based on the same factual allegations as for Renco’s unfair treatment claim, addressed above.

71. *Bankruptcy.* Renco argues Peru is in breach because “[a]fter one of DRP’s creditors placed DRP in bankruptcy, Peru asserted large and baseless credits that gave it unjustified, creditor voting rights in DPR’s bankruptcy proceeding. Peru used that improper influence to defeat DRP’s reasonable, restructuring plans and to support a subsequent vote to liquidate DRP. As a result, Renco lost control of its investment, indirect ownership of its investment’s assets, and the entire economic value of its investment in Peru. That constitutes an indirect expropriation in violation of Article 10.7 of the Treaty.”⁹⁰

72. With regards to the dates bankruptcy, Renco alleges that “in February 2010” DRP was “placed into involuntary bankruptcy,”⁹¹ and that “After DRP went into bankruptcy [in 2010], Peru asserted a patently improper claim for US\$ 163 million,”⁹² and these were recognized in “November 2011.”⁹³ Renco has chosen not to specify the date of the defeat of DRP’s restructuring plans in the Statement of Claim,⁹⁴ or the vote to liquidate DRP.⁹⁵ As these arguments and alleged support demonstrate, Renco’s indirect expropriation claim fails to comply with either Article 10.1.3 or 10.18.1 of the Treaty.

73. With respect to Article 10.1.3, the factual basis of Renco’s argument – *i.e.*, that extensions, new environmental obligations, and public comments resulted in an indirect expropriation – is the same as the alleged basis for Renco’s Unfair Treatment claim, which has been shown to be time-barred. Renco’s statement that these actions put DRP at risk of bankruptcy reinforces that the events relevant to the claim are deeply rooted in pre-entry into force conduct.

74. Renco’s indirect expropriation claim similarly fails to comply with Article 10.18.1 of the Treaty. Renco knew or should have known of the alleged breach and harm no later than February 2010, when Renco states that DRP was “placed into involuntary bankruptcy.”⁹⁶ Moreover, Renco’s indirect expropriation claim was already anticipated in the First Arbitration, in which Renco submitted a claim that Peru’s treatment of DRP “has the potential to culminate in an expropriation,” and described Peru’s assertion of a credit in the DRP bankruptcy as “patently bogus.”⁹⁷ Consequently, at minimum, Renco should be deemed to have had knowledge of the alleged breach by August 2011 because the limitations period is triggered by

⁸⁹ Statement of Claim ¶ 68.

⁹⁰ *Id.* ¶ 68.

⁹¹ *Id.* ¶ 50.

⁹² *Id.* ¶ 51.

⁹³ *Id.* ¶ 54.

⁹⁴ See *Renco I*, Renco’s Memorial on Liability, 20 February 2014, at ¶ 200 (stating that “[o]n April 12, 2012, the Creditors Committee rejected the amended restructuring plan,”⁹⁴ and referring to the “veto” of another amended restructuring plan on “June 26, 2012.”) (R-12).

⁹⁵ See also *Renco I*, Renco’s Memorial on Liability, 20 February 2014, at ¶ 201, note 481 (“In April [2012], Doe Run Peru was declared by its creditors to be in a process of ‘operational liquidation.’”) (R-12).

⁹⁶ Statement of Claim ¶ 50.

⁹⁷ *Renco I*, Notice of Arbitration and Statement of Claim, 9 August 2011 ¶¶ 58, 60 (R-12).

the first appreciation that loss or damage will be incurred.⁹⁸ Moreover, as detailed above, it is well established that a claimant can only be first aware of an alleged breach once, and cannot circumvent temporal requirements by relying on subsequent measures in order to renew a limitations period.⁹⁹ Given the foregoing, Renco cannot (credibly) deny that it acquired knowledge of the alleged breach and loss or damage by 2011 at the latest, *i.e.* before the relevant Article 10.18 prescription date.

75. Accordingly, Renco's indirect expropriation claim does not meet the requirements of either Article 10.1.3 or Article 10.18.1, Peru has not consented to arbitrate them, and the Tribunal does not have jurisdiction to hear them.

3. Renco's Denial of Justice Claim Is Time-Barred

76. Renco's claim that "The Peruvian Judiciary's Failure to Nullify a Patently Improper Credit by MEM Constitutes Both a Denial of Justice and a Breach of Article 10.5," fails to comply with the Treaty's temporal requirements.¹⁰⁰ Renco first knew of any alleged breach and loss or damage before the relevant prescription date in 2013. Renco cannot rely on the later 2015 Supreme Court decision to circumvent this limitation because the claim did not materialize with this outlier event.

77. Renco's entire argument regarding its Denial of Justice claim is a single conclusory paragraph that states:

The credit that MEM asserted in DRP's bankruptcy is patently absurd. When DRP failed to complete its last PAMA project before the deadline that MEM improperly failed to extend, MEM did not incur any obligation to complete that project itself. The best evidence of that is that to this day – some several years after asserting the credit – MEM has not taken a single step towards completing the last sulfuric acid plant. Judicial reasoning that is so incoherent that it can only be explained by either incompetence or improper bias constitutes a denial of justice under customary international law. International legal authorities uniformly recognize that denials of justice violate the fair and equitable treatment standard.¹⁰¹

78. With regards to the dates relevant to such claim Renco has made the following factual allegations:

- "DRP opposed MEM's credit, and, in February 2011, the INDECOPI Bankruptcy Commission rejected the credit holding that MEM's claims were not a "debt" of DRP and therefore not a claim that could be recognized in the bankruptcy process."¹⁰²

⁹⁸ See, e.g., *William Ralph Clayton and others v. Government of Canada*, PCA Case No. 2009-04, Award on Jurisdiction and Liability of 17 March 2015 (RLA-21); *Berkowitz v. Republic of Costa Rica*, ICSID Case No. UNCT/13/2, Interim Award (Corrected), 30 May 2017 ¶ 213 (RLA-26).

⁹⁹ *Berkowitz v. Costa Rica* ¶ 213 (holding that the limitation clause "is triggered by the first appreciation that loss or damage will be (or has been) incurred" and this "starts the limitation clock ticking.") (RLA-26).

¹⁰⁰ Statement of Claim, Section IV.B.

¹⁰¹ *Id.* ¶ 67.

¹⁰² *Id.* ¶ 53.

- “DRP challenged the INDECOPI Tribunal’s resolution in an administrative action before the Peruvian judiciary, which assigned the case to the Fourth Transitory Administrative Court of Lima. The Fourth Administrative Court denied DRP’s request for annulment of the INDECOPI Tribunal’s resolution and therefore admitted MEM’s \$163 million bankruptcy credit. A special chamber of the Superior Court of Lima affirmed this decision in a 3-2 vote even though Peru’s Attorney General’s Office submitted an Opinion supporting DRP’s position. DRP appealed that decision to the Supreme Court of Justice, the highest judicial body in the Peruvian judiciary.”¹⁰³
- “On November 3, 2015, the Supreme Court summarily rejected DRP’s appeal. Instead of ruling on the merits of DPR’s argument, the Supreme Court held that DRP (and Doe Run Cayman, which also participated in the appeal) had articulated why it considered the lower court’s ruling to be incorrect, but that it had failed to offer a proposed rule that the Supreme Court could accept or reject and that DRP’s appeal lacked ‘clarity and precision.’ The Court did not explain why DRP’s position that “a breach of the PAMA does not create a credit in favor of the MEM” was insufficiently clear. With the Supreme Court’s rejection of DRP’s appeal, DRP exhausted all local remedies under Peruvian law against the MEM credit.”¹⁰⁴

79. Any breach relating to the judicial process to which Renco refers materialized before the relevant prescription date. As detailed above, Renco’s Statement of Claim states that Peru’s claim in DRP’s bankruptcy was recognized in “November 2011.”¹⁰⁵ According to Renco, DRP repeatedly challenged the recognition of the MEM’s credit in Peruvian Courts before resorting to the Supreme Court.¹⁰⁶ While Renco’s Statement of Claim does not specify the dates of DRP’s losses in each instance, Renco previously indicated that the dates of these decisions were October 18, 2012, and July 25, 2014.¹⁰⁷

80. To the extent that recognizing the MEM’s credit is “patently absurd” and “can only be explained by either incompetence or improper bias,” in Renco’s words, then the breach would have materialized and been known by the time of the first decision. Accordingly, measures that form the foundation of the Treaty breaches alleged – indeed, the essence of the dispute itself – considerably predate the limitations period. As the tribunals in *ATA v. Jordan* and *Mondev v. Unites States* ruled with respect to similar allegations, the moment in time that is relevant to the prescription analysis for a denial of justice claim is when the dispute arose, not when remedies were exhausted.¹⁰⁸ In this case, the dispute arose in 2010, when Renco’s

¹⁰³ Statement of Claim ¶ 55; *Renco I*, Renco’s Counter-Memorial Concerning Peru’s Objections dated 10 August 2015 ¶ 103 (confirming date: “On **November 6, 2012**, Doe Run Peru, represented by Right Business and legal counsel appointed by Right Business, appealed the October 18, 2012 decision of the Fourth Administrative Court upholding the US\$ 163 million MEM credit.¹³⁵ On **July 25, 2014**, in a 3-2 split decision, the Eighth Contentious Administrative Chamber Specialized in INDECOPI- related matters of the Superior Court of Lima, issued Resolution 38 confirming the **October 18, 2012** decision of the Fourth Administrative Court upholding the MEM credit.¹³⁶ Thereafter, on **August 25, 2014**, Doe Run Peru filed an appeal writ to the Peruvian Supreme Court (as did Doe Run Cayman as co-adyuvante) and, to date, the Supreme Court has not ruled whether it will accept the appeal writ.”) (emphasis in the original) (R-12).

¹⁰⁴ Statement of Claim ¶ 56.

¹⁰⁵ *Id.* ¶ 54 (emphasis added).

¹⁰⁶ *See id.* ¶ 55.

¹⁰⁷ *See Renco I*, Renco’s Counter-Memorial Concerning Peru’s Objections dated 10 August 2015 ¶ 103 (R-12).

¹⁰⁸ *ATA Construction v. Hashemite Kingdom of Jordan*, ICSID Case No. ARB/08/2, Award, 18 May 2010 par. 107 (finding that when “an objection to jurisdiction *ratione temporis* is lodged, the determination of this particular moment in time . . . is not when have domestic remedies been exhausted, but with respect to which dispute has the denial of

affiliate(s) opposed the recognition of the MEM's credit before INDECOPI and filed a constitutional claim against the threat of INDECOPI's recognition of that credit.¹⁰⁹ In any event, the latest date on which the dispute could be deemed to have arisen is when the Renco's affiliate(s) initiated and pursued the contentious administrative challenge in 2012.¹¹⁰ Accordingly, Renco should have known, and indeed knew, of the alleged breach since 2010, *i.e.*, more than three years prior to the critical date under the applicable limitations period.

81. Moreover, there is no basis for treating the alleged denial of justice as distinct from Renco's claim that the MEM's credit corresponding to DRP's failure to do so should not have been recognized in the first place. DRP opposed the recognition of the MEM's credit before INDECOPI arguing that the MEM should not be a creditor because the PAMA does not create a quantifiable obligation.¹¹¹ After INDECOPI recognized MEM's credit, DRP and Doe Run Cayman ("DRC") sought its annulment in a judicial proceeding. This is consistent with *Corona Materials*, where the tribunal found there was no basis for treating the denial of justice as distinct from the non-issuance of the environmental license.¹¹² There, claimant initially submitted a "unified presentation" of respondent's alleged treaty breach in connection with in the environmental licensing process.¹¹³ Subsequently, argued that an administrative agency's failure to reconsider the non-issuance of a license "should be treated as an autonomous breach of international law, constitutive in itself of a denial of justice," thereby taking the claim to a date after the prescriptions period.¹¹⁴ The tribunal endorsed respondent's that "[a]ll of the alleged breaches relate to the same theory of liability, which is predicated on the notion that 'the DR refused to permit Corona Materials to proceed with its mining project for reasons that are not legitimate.'" ¹¹⁵ For similar reasons, Renco's alleged denial of justice is not distinct from the other claims, given that it relates to the same theory of liability: that the MEM's credit is not legitimate. Notably, Renco has commented on the adequacy of Peru's judiciary before the courts of the United States in related proceedings.¹¹⁶

82. Accordingly, Renco's claims do not meet the requirements of Article 10.18.1, Peru has not consented to arbitrate them, and the Tribunal does not have jurisdiction to hear them.

justice taken place."); *Mondev International Ltd. v. United States of America*, ICSID Case No. ARB(AF)/99/2, Final Award, 11 October 2002 ¶ 70.

¹⁰⁹ *Renco I*, Renco's Claimant's Counter-Memorial Concerning Peru's Waiver Objections dated 10 August 2015 ¶ 81 ("[O]n November 22, 2010, because the proposed MEM credit had not yet been recognized, and in conjunction with its challenge of the proposed credit before INDECOPI, Doe Run Peru filed a defensive constitutional amparo action requesting that the Ministry be prevented from having its US\$ 163 million credit claim recognized before INDECOPI.") (R-12).

¹¹⁰ Renco previously described this as "the equivalent of an appeal of the INDECOPI Tribunal's decision and . . . merely the continuation of Doe Run Peru's defense of the bankruptcy estate and the rights of the creditors." *Renco I*, Renco's Claimant's Counter-Memorial Concerning Peru's Waiver Objections dated 10 August 2015 ¶ 96 (R-12).

¹¹¹ See *Renco I*, Renco's Claimant's Counter-Memorial Concerning Peru's Waiver Objections dated 10 August 2015 ¶ 80 (R-12).

¹¹² *Corona Materials v. Dominican Republic*, ICSID Case No. ARB/AF/14/3, Award on the Respondent's Expedited Preliminary Objections in Accordance with Article 10.20.5 of the DR-CAFTA, 31 May 2016, ¶ 206.

¹¹³ *Id.* ¶ 209.

¹¹⁴ *Id.*

¹¹⁵ *Id.* ¶ 210.

¹¹⁶ See *A. et al. v. Doe Run Resources Corp., et. al.*, (E.D. Mo. Case No. 4:11-cv-00044-CDP), Motion to Dismiss dated 12 May 2017 ("U.S. courts have specifically recognized that Peru provides an adequate forum for litigation of cases involving injuries due to environmental contamination.") (R-14).

C. Renco's Efforts to Evade the Treaty

83. The Treaty's temporal restrictions are clear and rigid. Application of those restrictions to Renco's factual allegations is straightforward. Nonetheless, Renco has already suggested that its prior violation of the Treaty's waiver requirements should somehow excuse its current violation of the Treaty's temporal requirements. Renco also has attempted to deny Peru the opportunity even to brief its objections under the mandatory procedure of Article 10.20.5. In both respects, Renco's efforts to evade the Treaty once again are unfounded.

1. Renco's Reliance on Prior Treaty Violations

84. There can be no doubt that Renco has long been aware of the Treaty's rigid preconditions to arbitration, as well as the fundamental temporal flaws in Renco's case. Indeed, as addressed above, temporal objections, among other preliminary objections, were raised and briefed during the First Arbitration.¹¹⁷ The tribunal in that case did not decide Peru's temporal objections because it dismissed Renco's claims exclusively on the jurisdictional ground that Renco had failed to comply with another of the Treaty's mandatory preconditions (*i.e.*, waiver).

85. Renco's conduct since the dismissal of all of its claims, as also addressed above, only underscores that Renco is well aware of the temporal flaws in its case. For example, in the immediate aftermath of the dismissal of the First Arbitration in July 2016, Renco asked Peru to accept that time had stopped running for prescription purposes in 2011, when Renco filed its claims in that case. Thereafter, in the context of consultations, Renco asked Peru to agree to toll the running of the prescription period during the Consultations Period. While Peru did agree to a temporary freeze of the prescription clock, Peru also has maintained, at all times, the continuous reservation of all rights, including with respect to the Treaty's temporal restrictions.

86. In its October 2018 Statement of Claim, again mindful of temporal flaws, Renco appears to raise its own prior disregard for the Treaty's waiver requirement as a purported basis to now disregard the Treaty's temporal requirements. Renco quotes at length from *dicta* in the First Arbitration where the tribunal acknowledged, in part, that dismissal could have prescription-period implications for future claims, and expressed a view that "justice would be served if Peru accepted that time stopped running for the purposes of Article 10.18(1) when Renco filed its Amended Notice of Arbitration on August 9, 2011."¹¹⁸ While Renco offers no argument to accompany its lengthy quotation from the prior decision (stretching across three of the Statement of Claim's twenty-five pages), Renco appears poised to raise responses to its temporal violations on that basis. Any such attempt would be entirely without merit.

87. The First Arbitration tribunal's incidental comments on issues that were not arbitrated have no binding, let alone preclusive, effect in the present proceeding.¹¹⁹ Indeed, the tribunal

¹¹⁷ See, e.g., *Renco I*, Peru's Notification of Preliminary Objections, 21 March 2014 at 5 (R-12); Renco's Submission Challenging the Scope of Preliminary Objections, 3 April 2014 at 1 (R-12); Renco's Reply on Scope of Respondent's Article 10.20(4) Objections, 7 May 2014 at 27 (R-12); Peru's Submission on the Scope of Preliminary Objections, 23 April 2014 ¶ 26 (R-12).

¹¹⁸ Partial Award ¶¶ 187-188 (RLA-24); see also Statement of Claim ¶ 79 (quoting Partial Award ¶¶ 123, 180-88).

¹¹⁹ See, e.g., *Caratube Int'l Oil Co. and Devinci Salah Hourani v. Republic of Kazakhstan*, ICSID Case No. ARB/13/13, Award, 27 September 2017 ¶ 467 ("[A] jurisdictional issue can only have preclusive effect in further or other arbitration proceedings if that jurisdictional determination was fundamental to the prior award on jurisdiction and only if the identical jurisdictional issue arises again in the further or other proceedings.") (RLA-28); International Law Association Resolution No. 1/2006, Annex 2: Recommendations on Res Judicata and Arbitration, Recommendation No. 4 (providing that "[a]n arbitral award has conclusive and preclusive effects in the further

expressly noted in the same context that “*this Tribunal cannot prevent Peru from exercising in the future what it then considers to be its legal rights.*”¹²⁰ Further, while Renco had asserted that “Peru is seeking to evade its duty to arbitrate Renco’s claims under the Treaty,” the tribunal 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.*”¹²¹ The tribunal rejected Renco’s “contention that Peru’s waiver objection is tainted by an ulterior motive,” and further observed that “[i]ndeed, *Peru has no duty to arbitrate Renco’s claims under the Treaty unless Renco submits a waiver that complies with Article 10.18(2)(b).*”¹²²

88. In any event, Renco’s contention in the First Arbitration that Peru somehow abusively sought to “evade” a “duty” under the Treaty is repudiated by the procedural history of that case. It was Renco that was intent on denying Peru the opportunity to have its waiver objection heard as a preliminary question. Despite having no obligation to do so, Peru sought an efficient and expedient determination of Renco’s failure to comply with a number of Treaty requirements:¹²³

- *Peru’s Preliminary Response.* 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. Renco subsequently chose to submit an Amended Notice of Arbitration and Statement of Claim that removed DRP as a named claimant and maintained the non-compliant waiver, modifying it only by carving out the now-removed DRP.
- *Peru’s Preliminary Objections.* Peru notified its objections under Article 10.20(4) on 21 March 2014. Among other objections, Peru stated that “*Renco has presented an invalid waiver.*” 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.”
- *Peru’s Objection to Ongoing Violations.* In 2015, after the tribunal had ruled that it would not hear Peru’s waiver objections as a preliminary objection, Peru alerted the tribunal of its concerns regarding ongoing waiver violations and reiterated its request that the tribunal exercise its discretion to decide Peru’s waiver objections in a preliminary phase.

89. Peru was not required to raise an objection to Renco’s violation of the waiver requirement until its Counter-Memorial on Liability.¹²⁴ In light of the nature of Renco’s violation and for the sake of efficiency, however, Peru chose to raise the issue sooner. Renco,

arbitral proceedings as to [...] issues of fact or law which have actually been arbitrated and determined by it, provided any such determination was essential or fundamental to the dispositive part of the arbitral award.”) (RLA-11); *Amco Asia Corporation and others v. Republic of Indonesia*, ICSID Case No. ARB/81/1 Resubmitted Case Decision on Jurisdiction, 10 May 1988 ¶ 32 (“It is by no means clear that the basic trend in international law is to accept reasoning, preliminary or incidental determinations as part of what constitutes *res judicata*.”) (RLA-4).

¹²⁰ Partial Award ¶ 188 (emphasis added) (RLA-24).

¹²¹ Partial Award ¶ 186 (emphasis added) (RLA-24).

¹²² Partial Award ¶ 186 (emphasis added) (RLA-24).

¹²³ See *Renco I*, Peru’s Submission on Costs, August 15, 2016 (R-12).

¹²⁴ See *Renco I*, Procedural Order No. 1 dated 22 Aug. 2013, Annex A (R-12); 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.”).

in contrast, opposed Peru's efforts at every juncture and, instead, advocated for a protracted proceeding:¹²⁵

- *After Peru's Preliminary Response.* After Peru's preliminary response, Renco maintained its non-compliant waiver, modifying it only by carving out DRP. After the constitution of the Tribunal, 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) .
- *After Peru's Preliminary Objections.* Renco opposed Peru's attempt to be heard on the waiver objection after Peru's notification of preliminary objections.
- *After Peru's Objections As 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 and, instead, argued that the waiver objection should be resolved years after. 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.

90. Renco's preferred approach was that Peru's waiver objection be adjudicated years after – 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 years later.¹²⁶

91. Further to Peru's objections to ongoing violations, the tribunal decided to hear Peru's waiver objection in an expedited, preliminary phase, pursuant to the UNCITRAL Rules. Ultimately, the First Arbitration was dismissed because *Renco*, not Peru, had evaded its obligations under the Treaty. While Renco now suggests that dismissal was on a mere "technical jurisdictional ground,"¹²⁷ in reality, the tribunal expressly held that Renco's failure to comply with the waiver requirement was "not a trivial defect which can be easily brushed aside – the defective waiver goes to the heart of the Tribunal's jurisdiction."¹²⁸

92. Indeed, the same can be said of the temporal requirements that Renco, with continued disdain for the Treaty, now hopes to circumvent. As Bin Cheng confirms, a party that "asks for redress must present himself with clean hands."¹²⁹ Renco's prior violation of obligations under the Treaty (*e.g.*, the waiver provision) cannot justify or excuse its ongoing violation of still other Treaty requirements (*e.g.*, the temporal provisions). Any contention to that effect by Renco should be summarily rejected.

¹²⁵ See *Renco I*, Peru's Submission on Costs, August 15, 2016 (R-12).

¹²⁶ See *Renco I*, Peru's Submission on Costs, August 15, 2016 (R-12).

¹²⁷ Statement of Claim ¶ 74.

¹²⁸ *Renco I*, Partial Award ¶ 138 (RLA-24).

¹²⁹ BIN CHENG, GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS 156 (1987) (RLA-5).

2. Renco's Ongoing Efforts to Defer the Temporal Objections

93. On December 3, 2019, Peru requested that the Tribunal decide temporal jurisdiction objections on an expedited basis pursuant to Article 10.20.5. Peru thus triggered mandatory application of the Treaty's expedited mechanism. The time to resolve Peru's objections is now.

94. Nonetheless, as it has done throughout this long-running and multi-pronged dispute, Renco yet again seeks to prolong the pacing of objections for its own tactical purposes. In particular, Renco has requested that this Tribunal "find that Peru has failed to – and can no longer – invoke the expedited review mechanism under Article 10.20.5 of the Treaty," and, in the alternative, that the Tribunal allow only "one round of briefing" for the objections. Renco should not be allowed to circumscribe Peru's Treaty rights.

95. The Tribunal correctly rejected Renco's unfounded request to deny Peru any opportunity to brief its objections under the expedited Article 10.20.5 mechanism.¹³⁰ Renco's request to limit briefing to only one round, and thus to limit Peru's opportunity to be heard, remains pending. Further to the Tribunal's invitation,¹³¹ and for the avoidance of doubt, Peru underscores herein that its Article 10.20.5 objections are admissible. Renco's attempts to characterize them otherwise are unfounded.

96. The Treaty mandates at Article 10.20.5 that, "[i]n the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis . . . any objection that the dispute is not within the tribunal's competence." Article 10.20.5 refers to a "request" by the respondent for an expedited decision on any competence objection. Peru duly submitted a request stating: "Respondent hereby notifies its request for the Tribunal to decide on an expedited basis certain objections that the dispute is not within the Tribunal's competence," and, in particular, that "Claimant's claims do not meet the Treaty's temporal requirements" under Articles 10.1.3 and 10.18.1 because "the measures that Claimant alleges to have breached the Treaty occurred before the Treaty's entry into force and Claimant first acquired or should have first acquired, knowledge concerning a breach and loss or damage arising therefrom before the relevant prescription period."

97. Renco has suggested that the word "request" under Article 10.20.5 means that a respondent must submit a full brief in the first instance and, accordingly, that Peru did not successfully trigger the expedited mechanism. This is contrary to the unambiguous Treaty text, which says no such thing. Renco states that Peru "misdirects the Tribunal by focusing on the term 'request' in Article 10.20.5." This is not misdirection; it is the relevant word in the governing provision. Commentary on that provision in the context of similar treaties refers to a respondent "request[ing]," rais[ing]," or "applying" – and not briefing – an objection:

- *"If the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide the objection on an expedited basis," and "suspend any proceedings on the merits;"*¹³²

¹³⁰ See Letter from PCA to the Parties, December 17, 2019 (acknowledging Parties' correspondence and ordering briefing on Peru's Article 10.20.5 objections).

¹³¹ Letter from PCA to the Parties dated 17 December 2019 (inviting the Parties to include in their submissions any further argument that the Parties may wish to make on the admissibility of the objections).

¹³² See, e.g., Kenneth J. Vandeveld, U.S. INTERNATIONAL INVESTMENT AGREEMENTS 607-08 (2009) (commenting that the provision analogous to Article 10.20.5 in the U.S. Model BIT) (RLA-14).

- “[I]f a respondent *raises* such an objection within 45 days after the tribunal has been constituted, the tribunal is required to suspend any proceedings on the merits and issue a decision or award on the objections within 150 days;”¹³³
- “[A]n objection that the dispute is not within the tribunal’s competence could be decided on an expedited basis, *if an application is made within 45 days* of the constitution of the tribunal.”¹³⁴

98. Indeed, in the First Arbitration, Renco itself specified that “Article 10.20(5) *requires* a tribunal to decide an objection to its competence on an expedited basis *if the respondent so requests* within 45 days after the tribunal is constituted.”¹³⁵ Renco did not argue then, as it does now, that a “request” under the Treaty purportedly requires full briefing of objections.

99. Renco also has challenged Peru’s request on the basis that Peru has had “more than a year” to raise preliminary objections since Renco filed the Statement of Claim. This is irrelevant. The Treaty sets the applicable timeframe – which turns on the date of constitution of the Tribunal, not the Statement of Claim. While also alleging that Peru’s December 3 request was “vague,” Renco offered no response to the fact the temporal objections have been in play and subject to prior briefing for years, as discussed above. Renco’s purported surprise is inconsistent with the record.

100. Nor has Renco responded to the fact, highlighted by Peru in prior submissions, that the Parties conferred on procedural issues up to and immediately prior to Peru’s December 3 notice. Over the past two months, Peru ensured that the joint letter confirming agreement on the Presiding Arbitrator provided that the Parties could coordinate as to the date for the constitution of the Tribunal in order to provide an opportunity for procedural coordination.¹³⁶ In addition, Peru invited weekly conference calls; when such calls were deferred for two weeks in a row, Peru wrote to confirm the procedural status and encourage coordination, and Peru participated in two calls immediately prior to filing its request and confirmed that the Parties would continue procedural discussions, which is exactly what Peru did.¹³⁷ Renco’s effort to impede Peru from being heard pursuant to Article 10.20.5 was thus unexpected and unwarranted.

101. Renco purports to rely on the practice of respondents in other treaty cases to rewrite the plain meaning of this Treaty. In fact, cases cited by Renco contradict its position. For example, Renco initially represented that *RDC v. Guatemala* was a case in which the respondent “fully brief[ed] its objections” within the 45-day period. Rather, Guatemala filed a three-page letter “request[ing] that the Tribunal consider on an expedited basis an objection . . . to the Tribunal’s competence,” and “reserv[ing] the right to modify and/or supplement this challenge.”¹³⁸ Guatemala later filed a full brief as part of the ordered briefing schedule. In

¹³³ Lee M. Caplan & Jeremy K. Sharpe, Commentary on the 2012 U.S. Model BIT, in COMMENTARIES ON SELECTED MODEL INVESTMENT TREATIES 755, 835 (Chester Brown ed., 2013) (commenting on the analogous U.S. Model BIT provision) (RLA-19).

¹³⁴ Ucheora Onwuamaegbu, The Future of Investment Arbitration, Chapter III: Using Treaties to Define Rules of Procedure in Investor- State Arbitration: the CAFTA Example, 82, Catherine Rogers et al eds., 2009 (commenting on the analogous CAFTA provision) (RLA-15).

¹³⁵ *Renco I*, Claimant’s Reply on Scope of Article 10.20(4) Objections, May 7, 2014, at 1 (emphasis added) (R-12).

¹³⁶ Letter from the Parties to the Presiding Arbitration, 17 October 2019 (R-17).

¹³⁷ Materials Related To Coordination (R-18).

¹³⁸ *Railroad Development v. Guatemala*, ICSID Case No. ARB/07/23 (DR-CAFTA), Letter from Guatemala to ICSID dated 29 May 2008 at 1, 3 (RLA-12). Likewise, in *Jin Hae Seo v. Korea*, the respondent filed an initial application

response to that important point, Renco described the request in *RDC* as “sufficiently well articulated.” This shifting characterization cannot change the fact that the alleged “full brief” was no more than a three-page letter, followed by subsequent briefing by both parties in multiple rounds of submissions.

102. Renco also has directed the Tribunal to *Feldman v. Mexico* for the proposition that “the delivery of a notice of intent to submit a claim to arbitration does not satisfy the requirement of having to ‘make a claim.’” That authority has no bearing here, because it refers to a claimant’s notice of intent and actual submission of a claim – not a respondent’s objections, let alone objections pursuant to an expedited procedure. This, like Renco’s prior submissions, cannot change the plain language or meaning of Article 10.20.5.

103. Renco claims that Peru “is not interested in efficiency or cost-effectiveness.” To the contrary, as detailed above, both Peru and the United States have confirmed their agreement that the Treaty’s expedited review mechanism serves to efficiently and cost-effectively address preliminary objections that may narrow the scope of claims or result in dismissal of all claims.¹³⁹ Indeed, this also was “common ground” between Peru and Renco in the First Arbitration.¹⁴⁰ Renco’s denied request that the Tribunal reject Peru’s objections due solely to the formulation of its “request” would have done just the opposite – postponing consideration of the temporal jurisdictional objections until later in the case, at needlessly greater time and expense for all.¹⁴¹

104. Indeed, determining these threshold objections now may serve to resolve the claims outright – or, in the alternative, to clarify the scope of issues to be decided at a later stage. Delaying the resolution of any of the objections would unduly prolong this dispute. Reasons of economy and efficiency weigh heavily in favor of hearing the objections during the preliminary phase. The Tribunal has the authority to decide the issue and proceed now, notwithstanding Renco’s efforts to limit Peru’s Treaty rights.

within the 45-day period, and later amended its application before further briefing. See *Jin Hae Seo v. Korea*, Case No. HKIAC/18117, Respondent’s Application for Preliminary Objections dated 26 Feb. 2019 (RLA-29); Respondent’s Amended Application for Preliminary Objections dated 12 April 2019 (RLA-30).

¹³⁹ See, e.g., *Renco I*, Non-Disputing Party Submission of the United States dated 10 September 2014, ¶ 3 (stating that “the United States has negotiated expedited review mechanisms that permit a respondent State to assert preliminary objections in an efficient manner.”) (R-12).

¹⁴⁰ *Renco I*, Decision As To The Scope Of The Respondent’s Preliminary Objections Under Article 10.20.4, 18 December 2014, ¶ 214 (“It is common ground between the Parties that the object and purpose of Article 10.20.4 and its companion Article 10.20.5 is to provide an efficient and cost-effective mechanism for respondent States to assert preliminary objections to dispose of claims at an early stage in the arbitration proceedings.”) (RLA-20).

¹⁴¹ As Renco itself acknowledges, Peru would retain the right to raise any and all objections, either under Article 10.20.4 of the Treaty or Article 23 of the UNCITRAL Rules. It is mandated by the Treaty and within the power of the Tribunal, in any event, to proceed now.

V. Request for Relief

105. Peru's Memorial on Preliminary Objections has established the standards for preliminary objections under Article 10.20.5 of the Treaty; delineated the temporal requirements of the Treaty with respect to non-retroactivity and prescription; identified Renco's factual allegations in its Statement of Claim; and applied the foregoing elements and allegations with respect to Renco's particular claims before the Tribunal.

106. Based on the foregoing, Renco has once again violated the Treaty and failed to establish the requirements for Peru's consent to arbitrate under the Treaty. Renco's claims accordingly must be dismissed for lack of jurisdiction.

107. The Republic of Peru respectfully requests that the Tribunal render an award dismissing Renco's claims, with an award of costs in favor of Peru, and such further and other relief as the Tribunal may deem appropriate.

Respectfully submitted,



WHITE & CASE

Counsel to the Republic of Peru

December 20, 2019

FIGURE B

RENCO'S FACTUAL ALLEGATIONS IN RELATION TO TEMPORAL RESTRICTIONS ARISING UNDER THE TREATY

The following table sets forth all factual allegations, with corresponding dates, in Renco's Statement of Claim¹

<u>Date</u>	<u>Claimant's Allegations</u>	<u>Source</u>
1922-1990s	"From 1922 through the 1990s, Peru's mining sector operated with little or no regulatory oversight. Mining companies were not required to control their emissions nor were they required to remediate environmental impacts. During the more than seventy years that Cerro de Pasco and Centromin owned and operated the Complex, they caused significant environmental contamination in and around the town of La Oroya."	Statement of Claim ("SOC") ¶ 11
1970s	"The Peruvian government publically recognized in the 1970s that the La Oroya Complex was one of the worst polluters in the country, but during the ensuing twenty years under Centromin's control, Centromin continued to contaminate the soil and waters in and around the town of La Oroya, with little or no environmental oversight or State regulation."	SOC ¶ 12
1994	"In 1994, Newsweek reported: 'Richard Kamp figured he had seen the worst wastelands the mining industry was able to create. But that was before the American environmentalist – a specialist on the U.S.-Mexican border area – laid eyes on La Oroya, home to Centromin, Peru's biggest state-owned mining company. Last month, as his car rattled toward the town through hills that once were green, Kamp fell silent. Dusted with a whitish powder, the barren hills looked like bleached skulls. Blackened slag lay in heaps on the roadsides. At La Oroya, Kamp found a dingy cluster of buildings under wheezing smelter smokestacks. Pipes poking out of the Mantaro River's banks sent raw waste cascading into the river below. 'This,' he said, 'is a vision from hell.'"	SOC ¶ 13
Early 1990s	"Peru then considered closing the La Oroya Complex because of its environmental problems, but decided that the facilities needed to keep operating. The Complex was a major employer in the region and also provided health care and educational services to the local population. In addition, the Complex was the only facility in the region that could process complex polymetallic concentrates produced at surrounding mines, meaning that those mines, which were also a crucial source of employment, would suffer serious economic difficulties if Peru closed the Complex. Thus, Peru recognized that it needed to both remediate the Complex's historical impacts and modernize the Complex to reduce its ongoing impacts while at the same time preserving the economic viability of its operations."	SOC ¶¶ 15-16
1990s	"Given the obsolete condition of many of Peru's mining facilities, Peru enacted new environmental regulations that created a transitional regime for existing operations. During that phase, companies had to prepare a preliminary environmental study identifying issues and proposing a program of projects intended to reduce pollutants and bring the company into compliance with current standards. These programs were referred to as a "PAMA," which was an acronym of Programa de Adecuación y Manejo Ambiental. MEM would approve a PAMA, and a company performing PAMA projects would be deemed in compliance with environmental regulations."	SOC ¶ 17
1995	"In 1995, Centromin submitted to MEM both a preliminary environmental study and a proposed PAMA for the La Oroya Complex."	SOC ¶ 18

¹ Peru takes no position herein on the veracity, or not, of Renco's factual allegations, which violate the Treaty's temporal restrictions even if assumed to be true.

<u>Date</u>	<u>Claimant's Allegations</u>	<u>Source</u>
1995	“The study highlighted a number of significant issues, including substantial lead, arsenic, and other heavy metal contamination of nearby rivers through leakage and direct discharges as well as particulate emissions into the air of lead and other heavy metals throughout the plant. Peru’s Privatization Committee then retained an expert environmental consulting group to provide an independent assessment of the La Oroya Complex and assess Centromin’s proposed PAMA program.”	SOC ¶ 18
1995	“These experts opined that there was insufficient quality data and engineering studies to list specific actions required to bring the Complex into compliance with current regulatory standards. In fact, these experts questioned whether the facilities would ever be able to comply and thus recommended considerable flexibility in the implementation and application of new standards if La Oroya is to continue as an economically viable operation and that continued long-term operation of the smelter and progress on privatization can be achieved only if La Oroya is subject to realistic requirements to gradually reduce emissions.”	SOC ¶ 18
1996-1997	“In late 1996, Centromin submitted its final PAMA, which MEM approved on January 14, 1997. The PAMA set forth sixteen projects and estimated the total cost to complete all of them at US\$ 129 million. These sixteen projects were intended to address four categories of environmental impact: (i) air emissions and air quality, (ii) soil remediation, (iii) control of liquid effluents, and (iv) management of slag and other waste deposits. The PAMA set forth a ten-year deadline to complete all sixteen projects. Ten days after MEM approved the PAMA, Peru again called for privatization of the Complex and issued a Public International Bidding No. PRI-16-97.”	SOC ¶ 19
1997	“Peru awarded the bid to a consortium that included Renco. Renco and its affiliates own some of the largest mining, metals, and manufacturing companies in the world, and they have a strong track record of achieving high environmental standards of operations and developing innovative new environmental technologies. The consortium assigned its rights to a Peruvian subsidiary of Renco, DRP, as required, authorized, and approved by the relevant Peruvian authorities.”	SOC ¶ 20
1997	“On October 23, 1997, DRP, Doe Run Resources Corp., Renco, and Centromin executed the Stock Transfer Agreement, under which DRP acquired the majority shares of Empresa Metalurgica La Oroya S.A. (“Metaloroya”) for US\$ 121.4 million. DRP later invoked its rights to acquire the remaining shares for US\$ 126.4 million.”	SOC ¶ 20
1998-2002	“Between 1998 and 2002, Doe Run Peru’s engineering and design studies showed that Centromin had severely underestimated the cost and complexity of updating the Complex. As a result, DRP made multiple requests to expand the scope of its PAMA obligations, and MEM also repeatedly asked DRP to add new PAMA projects. For instance, in October 1999, MEM approved DRP’s request to add more PAMA tasks, which increased the originally anticipated PAMA investment amount by US\$ 60,767,000 to total of US\$ 168,342,000. Similarly, DRP and MEM increased the amount needed for projects to improve an industrial liquid effluents treatment plant from an initial US\$ 2,500,000 to US\$ 33,600,000.”	SOC ¶ 21
2002	“In 2002, MEM asked DRP to engage in eight new emissions reduction projects. In particular, MEM asked DRP to do the following: (1) separate treatment for dusts to eliminate recirculation; (2) encapsulate the concentrates during warehousing; (3) an environmental management plan for the Huanchan deposit; (4) ongoing cleaning program for the plant; (5) establish self-limitations on the treatment of concentrates with high contents of arsenic and cadmium with the aim of reducing the levels of emission to acceptable national and international levels; (6) better the plant maintenance in order to reduce the emission of gasses and dust; (7) design a system of alert to prevent the occurrence of emission peaks; and (8) coordinate with the civil society the relocation of the educational centers of La Oroya Antigua, including transportation of the students.”	SOC ¶ 22

<u>Date</u>	<u>Claimant's Allegations</u>	<u>Source</u>
2002-2007	“In response, DRP added the new projects to its growing list of projects that it was required to undertake and complete within the original ten-year timeframe of the PAMA.”	SOC ¶ 22
2000s	“DRP also engaged in numerous activities beyond the scope of the PAMA projects to reduce lead contamination and to address public health concerns related to lead exposure for both workers and the community. These efforts included (among other things) the mandated use of respirators and the change room (where workers start and end each day in a clean set of clothes), the use of spray trucks to reduce dust, and frequent medical check-ups. When DRP acquired the Complex, the blood lead levels of workers averaged 51.1 µg/dl. By 2002, the workers’ blood lead levels had fallen below the World Health Organization’s recommended worker levels of 40 µg/dl for men and 30 µg/dl for women. By 2005, these average numbers had dropped to 32.18 µg/dl. DRP also dramatically reduced accidents at the Complex, and received awards for its safety record.”	SOC ¶ 23
2000s	“DRP also constructed on-site change-houses, routinely washed trucks before they left the facility, and mandated that workers shower and change clothes after their shifts. These measures, which were not included in the original PAMA, prevented the transmission of contaminants to the workers’ homes.”	SOC ¶ 24
2000s	“DRP also enacted measures to reduce emissions from the main stack and to control fugitive emissions (which were the main sources of lead and other heavy metal emissions). Such measures included: a) installing a television system in an environmental control center to monitor and immediately address visible fugitive emissions, b) introducing portable radios to facilitate real-time communications on the Complex, c) repairing flues to improve dust recovery, and d) changing filter bags in 27 bag houses thereby increasing dust recovery from 96.5 percent to 98.1 percent. By the end of 2001, DRP had reduced the amount of particulate matter emitted from the main stack by 27.6 percent.”	SOC ¶ 25
1999-2000s	“In 1999 and 2000, the Peruvian Ministry of Health and an NGO separately reported studies showing higher than normal blood-lead levels in people living in La Oroya. In response, DRP performed a follow-up blood-lead level study on 5,000 residents and created the Hygiene and Environmental Health Program to carry out a series of actions based on the general recommendations of the United States Centers for Disease Control and Prevention and the World Health Organization. These actions included: (1) evaluating and monitoring the physical and psychological well-being of the children of La Oroya; (2) utilizing social workers to evaluate the family situation and potential risk factors for high blood lead levels in the home; (3) providing personalized training in hygiene and nutrition during house visits, including training in hand washing and bathing and training in proper cleaning of the house; (4) creating leaders in health and hygiene through community workshops; (5) sponsoring presentations on health and hygiene in local schools, including an educational puppet show and children’s book; and (6) sponsoring a campaign to clean the schools, roads, and neighborhoods on a weekly basis, for which Doe Run Peru provided cleaning supplies and pressurized water from a water truck.”	SOC ¶ 26
2003	“In 2003, at DRP’s insistence, the Peruvian Ministry of Health entered into an agreement with DRP to support a public health program. Through this agreement, DRP provided the Peruvian Ministry of Health financial support to achieve the following objectives: (1) establishing a culture of prevention in the population with the adoption of healthy habits that reduce exposure to dust; (2) establishing a safer water system, a program for potable water, monitoring programs for the soil, crops, wild vegetation and animals, and air quality, and monitoring of blood lead levels; (3) gradually reducing blood lead levels; (4) creating a program to treat children and pregnant women with high blood lead levels; and (5) signing cooperation agreements with various local authorities and agencies. Before 2006, when MEM mandated its continuance, DRP provided US\$ 1 million a year for this program on a voluntary basis.”	SOC ¶ 27

<u>Date</u>	<u>Claimant's Allegations</u>	<u>Source</u>
2000s	“In another voluntary effort to reduce blood lead levels in the community, DRP hired the consulting firm Gradient Corporation to perform a study on the human health risks in La Oroya. Based on Gradient’s conclusions, Doe Run Peru began a series of complementary projects to reduce lead (and other particulate) emissions from the facility. The additional projects to reduce lead (and other particulate) emissions through chimneys or stacks included (1) installation of baghouse filters for the lead furnaces, the arsenic kitchen, and the lead foam reverberator furnace, (2) preparation of units 1, 2 and 3 of the Cottrell Process for the sintering plant, and (3) reducing particulate material from copper converters and from the Cottrell Process in the anode residue plant. Doe Run Peru also added an electrostatic precipitator to the Cottrell Central, which reduced particulate emissions by 23 percent. Combined with stopping one line roasters in the Zinc Circuit, the project created a 35 percent reduction in particulate emissions from the chimney.”	SOC ¶ 28
2000s	“The projects to reduce lead (and other particulate) fugitive emissions, in turn, included (1) repowering of ventilation systems A, B, C and D of the lead sintering plant, (2) closure of lead furnace buildings and foam plant, (3) management of lead plant fusion beds, (4) management of copper plant fusion beds, (5) management of nitrous gases at the anode residue plant, (6) a new ventilation system for the anode residue plant building, (7) reduction of recirculating fines and (8) restriction on entry of concentrates. Doe Run Peru also added industrial sweepers and paved the roads to the different plants.”	SOC ¶ 29
2000s	“DRP implemented these complementary projects alongside its rapidly expanding PAMA projects, with the twin goals of better environmental performance at the Complex and reducing blood lead levels in its workers and the community.”	SOC ¶ 30
2000s	“In addition to mandated and voluntary measures to reduce the Complex’s environmental impact on the local community, DRP spent more than US\$ 30 million on quality-of-life projects becoming one of the first companies in Peru to implement this type of voluntary corporate social responsibility program. DRP’s social programs included: [listing programs].”	SOC ¶ 31
1990s-2000s	“The original PAMA was based on limited data and engineering studies and MEM’s own independent consultants had advised it that the PAMA would need to be implemented in a slow and flexible manner if the Complex was to remain economically viable. And from the beginning, DRP endeavored to implement the original PAMA and design and implement additional projects that DRP identified as necessary to modernize the Complex and reduce its environmental impact.”	SOC ¶ 32
2004	“Despite expending financial and technical resources far beyond what Centromin and the MEM had originally projected, DRP realized as early as 2004 that the La Oroya Complex would not meet the current regulatory standards for lead without significantly more work, investment, and time.”	SOC ¶ 32
2000	“Lead was the most immediate and urgent health issue. A consultant that DRP retained, Gradient, had identified soil and particulate emissions, especially fugitive emissions (i.e., emissions leaving the plant from random points, such as leaky pipes or open windows, as opposed to from the stack) as the two primary sources of lead exposure. Under the Stock Transfer Agreement, Centromin was responsible for soil, and the original PAMA did not allocate funds or identify projects to reduce fugitive emissions. DRP thus emphasized the need to refocus its resources on reducing fugitive emissions.”	SOC ¶ 33
2003-2006	“At the same time, DRP was on track to complete all of the projects in the original PAMA with the exception of constructing three sulfuric acid plants, which would help reduce SO2 emissions. Although an important pollutant, SO2 does not have the same negative impact on human health as lead. Developing sulfuric acid plants is a very time-intensive and expensive project..”	SOC ¶ 34

<u>Date</u>	<u>Claimant's Allegations</u>	<u>Source</u>
2003-2006	“The original PAMA called for constructing two sulfuric acid plants. Under the PAMA schedule, this project was to be last, with construction beginning in 2003 and ending in 2006. During the planning and design process, DRP engineers discovered that the only design that could meet regulatory standards required constructing three separate sulfuric acid plants for three different circuits in the Complex. Constructing three separate plants would require more work, more money, and more time.”	SOC ¶ 34
2004-2006	“Under these circumstances, DRP requested a five-year extension to complete the PAMA. MEM granted DRP only two years and ten months. Even MEM’s own experts advised it that this schedule was “very aggressive.” At the same time, MEM imposed on DRP 14 new projects regarding fugitive emissions and converted over 60 voluntary public health projects into mandatory obligations.”	SOC ¶ 35
2007	“By January 2007, the original PAMA deadline, DRP had completed almost all of the PAMA projects, including the new projects that MEM had imposed as a condition of receiving the extension.”	SOC ¶ 36
2008	“By the end of 2008, DRP’s total investment on the PAMA and related projects had increased to more than US\$ 300 million—more than double the costs that Centromin and MEM had projected when they sold the Complex.”	SOC ¶ 36
2008	“By late 2008, the only PAMA project remaining to be finished was the sulfuric acid plants, which had been totally redesigned in 2006. DRP worked diligently on this project, spending almost US\$ 160 million on it in 2007 and 2008.”	SOC ¶ 37
2008	“By Fall 2008, DRP had completed the sulfuric acid plants for two of the Complex’s three primary circuits. In addition, DRP had made good progress on the last sulfuric acid plant, which had required DRP to substantially redesign and overhaul its entire copper smelting process. DRP had completed the detailed engineering work for the redesign of its copper smelting operations, issued more than 90 percent of the purchase orders for the work on this project, including an order for a new state-of-the-art furnace, and had contracts for all of the preliminary and structural work. DRP also had issued requests for proposal for the final installation of the remaining mechanical and electrical equipment. By this point, DRP had completed more than 25 percent of the total construction work, including about 55 percent of the site work and almost 40 percent of the structural work.”	SOC ¶ 37
2008	“At the same time, DRP was continuing work on the construction of the last sulfuric acid plant. This was also a complicated engineering task, requiring DRP to design essentially two separate facilities—one to clean the process gas (that is, to remove the particulate matter, heavy metals, and acid gases) and a second “gas contact and sulfuric acid production system” to convert the cleaned gas into commercial grade sulfuric acid. Here, again, DRP was making good progress: the detailed engineering work was virtually complete, more than three quarters of the contracts had been let, site work was more than 85 percent complete, and fully one-third of the mechanical and structural construction work had been completed.”	SOC ¶ 38
1970s-2000s	“DRP’s efforts yielded remarkable environmental results when compared to the situation that it inherited from Centromin in 1997. For nearly 20 years, Peru had invested few, if any, resources to limit the Complex’s environmental impacts. Highly contaminated wastewater poured from the facility into the Mantaro and Yauli Rivers. Many of the smokestacks at the Complex lacked pollution control equipment, venting huge amounts of lead, arsenic, selenium, zinc, cadmium, SO ₂ and other pollutants into the environment. What little pollution control equipment did exist was poorly maintained and badly needed repairs. More than 80 uncontrolled sources of fugitive emissions released additional pollution at low altitudes, causing concentrated particulate matter containing lead and other heavy metals to settle quickly over the inhabited areas surrounding the Complex.”	SOC ¶ 39

<u>Date</u>	<u>Claimant's Allegations</u>	<u>Source</u>
2000s	“The industrial wastewater treatment plant and storm water systems that DRP constructed had effectively eliminated liquid effluent discharges to the Yauli River and it brought other discharges into compliance with Peru’s Class III water standards. At the same time, DRP dramatically reduced air emissions, bringing the emissions from significant emission control points (i.e., stacks) into regulatory compliance. To put these results in context, DRP reduced particulate matter emissions from the main stack by 78 percent compared to 1997 levels. It reduced lead emissions from the main stack by 68 percent, and arsenic emissions decreased by 93 percent over the same period. Even SO2 emissions had been reduced by 52 percent, even though the final SO2 plant had not yet been completed.”	SOC ¶ 40
2008-2009	“During the Global Financial Crisis, the price for copper and other metals collapsed. The crash in metal prices wiped out the profits that DRP used to finance the PAMA projects. At the same time, DRP’s lenders, themselves reeling from the financial crisis, refused to provide financing because of concerns about the tight PAMA deadline and because the government had launched a negative media campaign against DRP.”	SOC§ 42
February 1, 2009	TREATY ENTRY INTO FORCE	
Feb. 2009	“In February 2009, DRP lost its US\$ 75 million revolving line of credit that provided day-to-day liquidity for its operations because DRP’s lenders would not extend the credit agreement unless DRP obtained a formal extension of the October 2009 deadline to complete the final PAMA project.”	SOC§ 44; <i>see also</i> Memorial on Liability ¶ 169.
2009	“Given that it was entitled to an extension under the Stock Transfer Agreement’s economic force majeure provision and recognizing that it would be impossible to complete the last sulfuric acid plant before October 2009, DRP asked MEM for an extension on March 5, 2009. DRP also advised MEM that its concentrate suppliers would freeze shipments if DRP could not obtain an extension. Without concentrate, DRP would need to reduce operations at the Complex, which would only exacerbate DRP’s financial condition.”	SOC ¶ 45
2009	“Even though DRP was entitled to an extension under the economic force majeure provision, MEM demanded that DRP’s debt of US\$ 156 million to its parent, Doe Run Cayman, be 100 percent capitalized, and that Doe Run Cayman pledge 100 percent of its shares to DRP before MEM would even consider extending the October deadline.”	SOC ¶ 46
2009	“DRP and Doe Run Cayman agreed to these conditions in a Memorandum of Understanding (“MOU”) if MEM would grant it an adequate extension, but MEM refused to sign the MOU. By now, Renco was concerned that Doe Run Cayman would capitalize the debt and pledge the shares and MEM then would grant only an unreasonably short deadline that would not prevent DRP from falling into bankruptcy. In that scenario, without its debt and having pledged its shares, Doe Run Cayman would lose all of its voting rights in the bankruptcy proceeding.”	SOC ¶ 46
May 2009	“In May 2009, Peruvian Government officials made public comments declaring that DRP would not receive any PAMA extension, and, in June 2009, DRP was forced to suspend operations at the Complex. Without an extension, DRP could not obtain financing, without which DRP could not pay its concentrate suppliers. Without concentrate, the Complex could not operate.”	SOC ¶ 47
June 2009	“After DRP ceased operations at the Complex, the Peruvian Government appointed a Technical Commission. That Commission concluded that a minimum 20-month extension was needed to complete the last sulfuric acid plant and that additional time on top of that was required to obtain financing.”	SOC ¶ 48
Sept. 2009	“A few months later, in September 2009, the Peruvian Congress passed a law granting DRP an extension of 30 months to complete construction of the last remaining environmental project.”	SOC ¶ 48

<u>Date</u>	<u>Claimant's Allegations</u>	<u>Source</u>
2009	“This important extension soon became illusory and ineffective because MEM passed implementing regulations that undermined the new law’s benefits. For example, the regulations required DRP, inter alia, to pay 100% of its gross proceeds into a trust that would only release funds after securing three months’ worth of PAMA schedule obligations, thus making it virtually impossible for DRP to pay its workers or suppliers, or generally to operate the Complex.”	SOC ¶ 49
2010	“Then, in February 2010, one of DRP’s unpaid concentrate suppliers placed it into involuntary bankruptcy.”	SOC ¶ 50
2010	“After DRP went into bankruptcy, Peru asserted a patently improper claim for US\$ 163 million. After DRP went into bankruptcy, Peru asserted a patently improper claim for US\$ 163 million. MEM alleged that because DRP failed to complete last sulfuric acid plant within the timeframe that Peru and MEM had improperly refused to extend, MEM itself would be required to complete those projects. MEM further alleged, also improperly, that the amount of money estimated to complete the outstanding PAMA project constituted a “debt” of DRP to MEM and was accordingly a bankruptcy credit in the bankruptcy proceeding before INDECOPI.”	SOC ¶ 51
2010	“That credit gave Peru nearly one third of all voting rights on the bankruptcy’s creditors’ committee. It also gave Peru the right to recover a large portion of DRP monies that should have gone to legitimate creditors, and it severely complicated DRP’s efforts to address the obligations it owed to its legitimate creditors. Throughout the bankruptcy proceedings, Peru used its creditor voting rights to DRP’s detriment by, among other things, voting against reasonable restructuring plans, including one proposed by Renco, and supporting a subsequent vote to liquidate DRP.”	SOC ¶ 52
December 29, 2010	NOTICE OF INTENT First Arbitration	Claimant’s Notice of Intent to Commence Arbitration Under the Treaty
2011	“DRP opposed MEM’s credit, and, in February 2011, the INDECOPI Bankruptcy Commission rejected the credit holding that MEM’s claims were not a ‘debt’ of DRP and therefore not a claim that could be recognized in the bankruptcy process. The INDECOPI Commission correctly explained that the regulatory objective of the PAMA is to cause the owner of mining activity to implement steps needed to reduce or eliminate emissions. The INDECOPI Commission further held that if the owner of the La Oroya Complex does not complete a PAMA project, then the applicable legislation does not provide for—much less obligate— MEM to complete that PAMA project. It therefore cannot constitute a bankruptcy credit.”	SOC ¶ 53
February 2011	“MEM appealed the INDECOPI Commission’s Resolution to the Bankruptcy Chamber of INDECOPI’s Free Competition Tribunal (the “INDECOPI Tribunal”), the appellate body within INDECOPI.”	SOC ¶ 54
April 4, 2011	NOTICE OF ARBITRATION AND STATEMENT OF CLAIM First Arbitration	Claimants’ Notice of Arbitration and Statement of Claim
September 9, 2011	AMENDEND NOTICE OF ARBITRATION AND STATEMENT OF CLAIM First Arbitration	Claimant’s Amended Notice of Arbitration and Statement of Claim

<u>Date</u>	<u>Claimant's Allegations</u>	<u>Source</u>
November 2011	“[I]n November 2011, the INDECOPI Tribunal issued a resolution reversing the INDECOPI Bankruptcy Commission’s prior resolution reasoning that the nonfulfillment of the single remaining PAMA project “generated a direct and immediate damage” and that the estimated costs needed to complete the PAMA projects were an appropriate estimate of that damage	SOC ¶ 54
2011	“This decision drew a sharp dissent from one of the INDECOPI Tribunal’s members who explained that the estimated investment necessary to complete the PAMA at some future date does not constitute a valid bankruptcy credit, but that such noncompletion merely permitted MEM to impose (i) pecuniary sanctions upon the mining company and/or execute the performance bonds constituted to guarantee the fulfillment of the project contained in the PAMA; and, (ii) should non-compliance persist, the provisional closure and, eventually, definitive closure of the mining deposit.”	SOC ¶ 54
2012	“DRP challenged the INDECOPI Tribunal’s resolution in an administrative action before the Peruvian judiciary, which assigned the case to the Fourth Transitory Administrative Court of Lima. The Fourth Administrative Court denied DRP’s request for annulment of the INDECOPI Tribunal’s resolution and therefore admitted MEM’s \$163 million bankruptcy credit. A special chamber of the Superior Court of Lima affirmed this decision in a 3-2 vote even though Peru’s Attorney General’s Office submitted an Opinion supporting DRP’s position.”	SOC ¶ 55
November 13, 2013	ADJUSTED TREATY PRESCRIPTION DATE Adjusted in the manner most favorable to Claimant	Treaty, Art. 10.18; SOC of Oct. 23, 2018; Framework Agreement of March 14, 2017; Consultation Agreement of Nov. 10, 2016
2014	“DRP appealed that decision to the Supreme Court of Justice, the highest judicial body in the Peruvian judiciary.”	SOC ¶ 55
October 23, 2015	TREATY PRESCRIPTION DATE Based on the Treaty pursuant to Article 10.18	Treaty, Art. 10.18; SOC dated October 23, 2018
2015	“On November 3, 2015, the Supreme Court summarily rejected DRP’s appeal. Instead of ruling on the merits of DPR’s argument, the Supreme Court held that DRP (and Doe Run Cayman, which also participated in the appeal) had articulated why it considered the lower court’s ruling to be incorrect, but that it had failed to offer a proposed rule that the Supreme Court could accept or reject and that DRP’s appeal lacked ‘clarity and precision.’ The Court did not explain why DRP’s position that “a breach of the PAMA does not create a credit in favor of the MEM” was insufficiently clear. With the Supreme Court’s rejection of DRP’s appeal, DRP exhausted all local remedies under Peruvian law against the MEM credit. If the Supreme Court had granted DRP’s appeal and nullified the MEM credit, consistent with the initial ruling by INDECOPI Commission, all of MEM’s votes in the bankruptcy proceedings would have been declared invalid and DRP then could have attempted to restructure instead of liquidate (and do so without the US\$ 163 million MEM credit, which is the largest credit in DRP’s bankruptcy). In other words, when the Supreme Court rejected DRP’s appeal in November 2015, Renco lost any chance of regaining control of its investment and avoid DRP’s liquidation. As a result, Renco lost permanent control of its investment and the economic value of its investment in Peru.”	SOC ¶ 56
July 15, 2016	PARTIAL AWARD IN PRIOR TREATY CASE	<i>Renco v. Peru</i> (UNCT/13/1)