

BEFORE THE INTERNATIONAL CENTRE FOR THE SETTLEMENT  
OF INVESTMENT DISPUTES

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:
In the Matter of Arbitration between: :
:
FREEPORT-MCMORAN INC., :
:
Claimant, : Case No.
: ARB/20/8
v. :
:
REPUBLIC of PERÚ, :
:
Respondent. :
:
----- x Volume 4

HEARING ON JURISDICTION, MERITS, AND QUANTUM

Thursday, May 4, 2023

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

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

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President of the Tribunal
- MR. GUIDO SANTIAGO TAWIL  
Co-Arbitrator
- MR. BERNARDO M. CREMADES  
Co-Arbitrator

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P R O C E E D I N G S

PRESIDENT HANEFELD: Good morning. Welcome to Day 4 of our Hearing.

Before we continue with the examination of Ms. Chappuis, do the Parties have any housekeeping matters to address?

MR. PRAGER: Good morning, Members of the Tribunal. Nothing from the Claimant's side.

MR. ALEXANDROV: Nothing on our end, either. Thank you, Madam President.

PRESIDENT HANEFELD: Then I hand over to you for further cross-examination.

MARÍA CHAPPUIS CARDICH,  
CLAIMANT'S WITNESS, CALLED (continued)

MR. ALEXANDROV: Thank you very much.

CROSS-EXAMINATION (continuing)

BY MR. ALEXANDROV:

Q. Good morning, Ms. Chappuis.

Can we look at Tab 30 of your binder, which is CWS-5, Mr. Davenport's First Witness Statement? And if we can look at Paragraph 38, the first sentence, he says: "We were also aware that César

1 Polo, who then served as Vice Minister of Mines,  
2 expressed doubt about whether the Stability Agreement  
3 would apply to the Concentrator."

4 Do you see that?

5 You need to turn on the microphone, please.

6 Can you repeat your answer? My question  
7 was: Do you see that?

8 A. Yes. I'm reading it.

9 Q. Can we turn to Tab 14, CWS-11,  
10 Ms. Torreblanca's First Witness Statement? And we'll  
11 be looking at Paragraph 25.

12 And in the middle of that Paragraph 25--in  
13 the middle of that paragraph, she says: "Around the  
14 same time"--beginning in the fourth line--"I remember  
15 that Vice Minister of Mines César Polo had expressed  
16 doubts about whether the Stability Agreement would  
17 actually apply to our investment in the Concentrator."

18 So, my question to you is: Did you know at  
19 the time that Vice Minister Polo had expressed those  
20 doubts to Cerro Verde?

21 A. No.

22 Q. Thank you.

1           And, indeed, I think in your direct  
2 examination, which is the Transcript of yesterday--in  
3 English it's Page 837 at Line 22. I'll read it to you  
4 and we'll show it on the screen.

5           You were asked--it begins on Page 837, last  
6 line. The question: "Do you have any recollection as  
7 to whether at that time Mr. Polo mentioned that the  
8 scope of stability would be limited to an Investment  
9 Project?"

10           And you said what you told me today. You  
11 said: "No. Never. He never mentioned that." And  
12 then you added: "Moreover, had he mentioned it, I  
13 would have told him: 'You're crazy. You're totally  
14 wrong. That's impossible.'"

15           You see that, don't you?

16           A. Yes.

17           Q. Now, let us look at your First Witness  
18 Statement, Paragraph 53. And you say, beginning in  
19 Line 5: "Vice Minister Polo--Vice Minister Polo had a  
20 different view and was generally against Cerro Verde  
21 not paying Royalties for its Concentrator operations."

22           Do you see that?

1           A.    Yes.

2           Q.    So, you knew that Vice Minister Polo had a  
3 different view against Cerro Verde not paying  
4 Royalties for the Concentrator operations. Isn't that  
5 right?

6           A.    As I mentioned at the Sumitomo Hearing in  
7 February, I did not attend the meetings on the  
8 Royalties with the participation of Messrs. Polo,  
9 Isasi, and Tovar. I knew these comments because of  
10 third-party comments, but he never told me, directly  
11 to me, something like this.

12                    At the meetings we had, in my working team  
13 of engineers and attorneys, Engineer Tovar  
14 participated, and he never presented any objection to  
15 any of the things that we were deciding and reaching a  
16 consensus on. Had he told me that, if he had told me  
17 that, if Mr. Polo or Mr. Tovar had told me that, we  
18 would have first analyzed together the Law and the  
19 Regulations.

20                    And in those 10 years when neither Mr. Polo  
21 nor I were at the Ministry, they would have issued the  
22 list of the tax stability contracts that had already

1 been signed in the DGM, and what was the criterion of  
2 the DGM. So I would have told him this is the  
3 criterion, and, for me, from the mining point of view,  
4 it is correct. As DGM, I am going to act based on the  
5 consensus of my group of attorneys and engineers.

6 Q. Okay. So, you did not attend the meetings  
7 in the Ministry about royalties. You learned of  
8 Mr. Polo's views from third persons, and you mentioned  
9 that you discussed that in February.

10 So, let us look at your testimony at the  
11 February Hearing. And I ask that we look at Tab 6,  
12 which is C-1135, Day 3, at Page 895 in the English.

13 A. I apologize. What is the page number?

14 Q. In English, it is 895; in Spanish, it is  
15 891. And in Spanish, it begins Line 10, I believe; in  
16 English, Line 2 of 895.

17 And we'll show this on the screen.

18 A. I apologize. In Spanish, what page did you  
19 tell me?

20 Q. Tab 5. Did I say Tab 6? I'm sorry. Tab 5.

21 A. Okay. 5. What page?

22 Q. Spanish 891, Line 10. We have those on the

1 screen, if it helps, Ms. Chappuis.

2 A. Yes. I am reading.

3 Q. Okay. So, you mentioned in February that  
4 you had a general view against Royalties, and  
5 Arbitrator Garibaldi is asking you here: "What does  
6 it mean to have an opinion against Royalties? Against  
7 Royalties for stabilized companies?"

8 Your answer: "With the Administrative and  
9 Tax Administration for the entire mining sector. That  
10 is to say, I think Royalties are prejudicial for  
11 mining."

12 And then I followed up and I said: "Okay.  
13 So, just to be clear, your view generally about  
14 Royalties is that mining companies in Perú should not  
15 be paying Royalties?"

16 And your answer was: "In Perú, in Chile, in  
17 the United States, all over the world."

18 Do you see that?

19 A. Yes. At the Ministry we shared the opinion;  
20 the Minister, Polo, Tovar, we were all against the  
21 Royalties.

22 And Polo told me, "We need to find a way to

1 make it the least prejudicial for the industry." And  
2 I told him, "I think that we need to fight." And he  
3 told me, "Please understand me. The fight is lost  
4 already. We need to see how this can be not as  
5 harmful."

6 And I said: "I apologize, but I am no  
7 longer going to participate." I said, "I think that  
8 the Ministry should fight for that."

9 Q. Well, it is interesting that you say you had  
10 those discussions with Vice Minister Polo because, if  
11 we look at the Transcript--again, Tab 5. In Spanish,  
12 890, Line 6; in English, 893, Line 7.

13 A. Would you tell me, please, what document we  
14 are talking about?

15 Q. Same document. Tab 5, CE-1135.

16 A. Where?

17 Q. In Spanish, Page 890, Line 6.

18 A. That is at Tab 5.

19 Q. I'm sorry. It begins in page 889 in Spanish,  
20 Line 12. And in English, it's 893, Line 7. You see  
21 that on the screen.

22 So, what you said then was--and I quote from

1 the English: "I'm telling you that Vice Minister Polo  
2 and I did not discuss Royalties." Contrary to what  
3 you just said now.

4           You said then: "I'm telling you that Vice  
5 Minister Polo and I did not discuss Royalties." And  
6 then you continue: "Because, in the first meeting we  
7 had about Royalties, I opposed his position, and I  
8 said, 'I'm not going to come again to those Royalty  
9 meetings because I oppose Royalties.' And he said,  
10 'If you don't want to come to these meetings, don't  
11 come.' This is my opinion, my position. I don't  
12 agree with Royalties. And he said: 'Well, we'll  
13 continue to meet to discuss Royalties.' So, I kept  
14 abreast because people from my Directorate went to  
15 these meetings on the Royalties with the Vice  
16 Minister. But I did not discuss this directly with  
17 him, and least of all specifically on Cerro Verde."

18           And then if we can look at English Page 895,  
19 Line 18; and in Spanish, it's 892, Line 8.

20           A. In Spanish, what is the number--

21           Q. 892. You testify about that first meeting,  
22 and you say: "Engineer Polo said, 'I respect your

1 point of view, but this battle is already lost. We  
2 have to carry on in the hope that Congress doesn't  
3 approve the Royalties Law that can be very prejudicial  
4 for the sector.'" "

5           So, that's what you say Vice Minister Polo  
6 told you; correct?

7           A. I just told you the same that is here.  
8 Mr. Polo agreed with me that the Royalties were  
9 detrimental to mining, but that the battle was already  
10 lost, and my position was, let us continue to fight.  
11 And he said: "No more. We have already lost. Let's  
12 try to make it so that it is as least harmful as  
13 possible."

14           But we never talked about companies that had  
15 a Tax Stability Agreement, and the words "Cerro Verde"  
16 were never said.

17           If you read all of the Chilean newspapers  
18 today, they are talking about Royalties.

19           Q. Ms. Chappuis, I'm not asking about Chile--

20                   (Overlapping speakers.)

21           A. And they had removed all of the Tax  
22 Stability Contracts--

1 (Overlapping speakers.)

2 Q. I'm not asking about Chile, so let's  
3 continue with your testimony.

4 You confirmed that you said then what you  
5 said now. We will have Vice Minister Polo come and  
6 explain his view. Let's continue reading.

7 "So, I said"--you say--"'Don't invite me  
8 again to these Royalty meetings. I'm not going to  
9 come.' And he said: 'If you don't want to come,  
10 don't do so.'"

11 Now, then, if we look at Page 893 of the  
12 English, from the beginning of the page--in Spanish  
13 it's 890--the question is: "So, you're saying  
14 now"--I'm waiting for this to appear on the screen:  
15 "So, you're saying now that you testified in writing  
16 in Paragraph 53 of your Witness Statement that Vice  
17 Minister Polo's different view, you learned it from  
18 others. He never expressed to you directly this  
19 view."

20 I'm waiting for us to show this on the  
21 screen.

22 So, the question is: "So, are you saying

1 now that what you testified in writing in Paragraph 53  
2 of your Witness Statement about Vice Minister Polo's  
3 different view, you learned from others? He never  
4 expressed to you directly this view?" And you  
5 said: "I found out--rather, people, and I had too  
6 much work, quite simply, and I had decided not to go  
7 to these Royalty meetings where there was a lot of  
8 discussion, surely, on the Royalties and other issues.  
9 But I didn't go to those meetings. From the first  
10 meeting onwards, I said, 'I will not take part in  
11 these Royalty discussions.' And Engineer Polo said,  
12 'Well, I'm not going to make you come to these  
13 meetings.'"

14           And then I say: "Just to clarify, he was  
15 your boss, wasn't he?" And you say: "Yes. But the  
16 fact that he was my boss did not mean that I cannot  
17 have my own personal criteria on this."

18           So, your personal view on this did not seem  
19 to have been consistent with the view of your boss and  
20 the leadership of the Ministry; is that correct? This  
21 was your personal view.

22           A. You are confusing the facts. I heard

1 through third parties, in hallway conversations, of a  
2 very personal opinion Engineer Polo had about Cerro  
3 Verde. He did not communicate it to me directly.

4 A different issue was the Royalty draft  
5 bills that were in Congress, whereby everyone within  
6 the Ministry knew that it was harmful to mining.

7 In connection with those draft bills in  
8 Congress on Royalties, I told Polo: "Let us fight."  
9 But he told me: "The fight is lost." "Let's insist,"  
10 I said. And he told me: "We have already lost. Let's  
11 try for it --not to be as detrimental."

12 And I said: "Well, if there's not going to  
13 be a fight. Here, everyone has an opinion against  
14 Royalty, but everyone goes--then do not invite me, I  
15 have a lot of work."

16 Q. Understood. Thank you for the  
17 clarification.

18 ARBITRATOR TAWIL: Can I ask a question?

19 Good morning.

20 To better understand what you are saying,  
21 the meetings that you were not going to participate  
22 were the meetings on the discussion about the

1 conceptual aspect of Royalties, or how the Royalties  
2 were going to be applied to the mining companies?

3 THE WITNESS: Congress was looking into  
4 royalty draft bills. I think this was 2004. Then  
5 Mr. Polo started to convene us all, and at a meeting  
6 we all said "it is detrimental to mining. It's going  
7 to be harmful." Additionally, it would get us into a  
8 big problem with the companies, some companies that we  
9 had privatized, because those companies that we had  
10 privatized were already paying a 3 percent Royalty to  
11 the Government.

12 ARBITRATOR TAWIL: I apologize for the  
13 interruption. I do understand that. I'm asking you  
14 about the next stage, when we leave behind the  
15 conceptual discussion with Congress. Then there were  
16 meetings as to how the Royalties were going to be  
17 applied, in particular for the stabilized and non-  
18 stabilized companies.

19 Did the Ministry have those meetings?

20 THE WITNESS: Well, the Ministry--I no  
21 longer attended those meetings. It seems that they  
22 received all of the draft bills from Congress, and

1 they were trying to see how to control.

2 At the outset, there were some Royalties for  
3 sales, then to operational profits. There were many  
4 bills before Congress, and it was only in June 2004  
5 when the Royalty Law was passed by Congress. But  
6 immediately, the Ministry did not issue the  
7 Regulations.

8 Without a regulation, it is impossible to  
9 implement a law, and that law was appealed before the  
10 Constitutional Court that only issued a decision in  
11 late 2004. So, I left the Ministry in December 2004,  
12 when the Constitutional Tribunal, the Constitutional  
13 Court, had just issued a Decision, but during 2004, we  
14 were all at ease within the Ministry because we were  
15 waiting for the Constitutional Court's Decision.

16 ARBITRATOR TAWIL: Thank you.

17 BY MR. ALEXANDROV:

18 Q. Let's come back to the distinction you made  
19 between Royalties in general and the application of  
20 the Royalties to Cerro Verde.

21 And you said--and I'm looking at the  
22 Transcript at 9:45:49. You said: "I heard through

1 others of a very personal opinion Engineer Polo had  
2 about Cerro Verde."

3           So, when you heard from others about this  
4 opinion of Vice Minister Polo, that Cerro Verde should  
5 pay Royalties on the Concentrator Plant, did you go to  
6 Vice Minister Polo to say "You're wrong" or "You're  
7 crazy," as you said yesterday, or did you do nothing?

8           A. I was in charge of approving everything  
9 related to Tax Stability Contracts. I had a team, a  
10 legal team and engineers, who opined in a way, and  
11 they, over the last 10 years, when Polo or I were not  
12 there, had acted pursuant to the same criterion with  
13 all of the contracts that had been signed.

14           Q. Ms. Chappuis, can we focus on my question?

15           And my question was: When you heard through  
16 others that his view was that Cerro Verde should pay  
17 Royalties on the Concentrator Plant, did you go and  
18 talk to him to tell him he was wrong? Yes or no.

19           A. I just explained the Arbitrator--

20           (Overlapping interpretation and speakers.)

21           Q. Can we just say first, yes, or no and then  
22 explain--

1           A.    I just explained the Arbitrator that in  
2 2004, that was my last year with the DGM. This law  
3 was passed in June 2004, and it was sent to the  
4 Constitutional Court. So, we were not aware whether  
5 that law was going to be declared unconstitutional.

6           So, throughout 2004, there was a peaceful  
7 moment. We never talked about it. We were just  
8 waiting what the Constitutional Court was going to  
9 say--

10                   (Overlapping interpretation and speakers.)

11           Q.    Ms. Chappuis, I'm sorry. This is not a  
12 response to my question. My question was this, and I  
13 will repeat it. It's a simple question, a factual  
14 question.

15           You testified that had--yesterday and in  
16 your Witness Statement that had you--had Minister Polo  
17 told you that Cerro Verde should pay Royalties on the  
18 Concentrator Plant, you would have told him, you're  
19 crazy, that is wrong.

20           Now, you say he never told you. You learned  
21 about his view from third parties, and I'm asking you,  
22 when you learned about his view from third parties,

1 did you go to him to say, "You're wrong"?

2           And it requires really a yes-or-no answer.  
3 You either went to him and say, I heard what you think  
4 and you're wrong, or you did not.

5           MR. PRAGER: Mr. Alexandrov, you  
6 misrepresent the record. She did not say that, when  
7 Mr. Polo said that Cerro Verde has to pay Royalties,  
8 that "You're crazy." The comment was being made with  
9 regard to the drafting of Article 83.3, which was in  
10 1991, which was 13 years before.

11           BY MR. ALEXANDROV:

12           Q. Well, let's look at the Transcript. The  
13 Transcript says: "Do you have a recollection whether  
14 at that time Mr. Polo mentioned that the scope of  
15 stability would be limited to an investment project?"

16           Answer: "Never. He never mentioned that.  
17 Had he mentioned it, I would have told him: 'You're  
18 crazy.'"

19           MR. PRAGER: That time is 1991. We were  
20 discussing the drafting of the Mining Law.

21           MR. ALEXANDROV: That's fine. And then--

22           (Overlapping speakers.)

1 MR. PRAGER: It did not mention Cerro Verde.

2 MR. ALEXANDROV: Well, then Ms. Chappuis  
3 testifies that Vice Minister Polo--and I showed her  
4 the Witness Statements of Mr. Davenport and  
5 Ms. Torreblanca, and Ms. Chappuis herself testified  
6 she heard from third parties later on that Minister  
7 Polo believes that Cerro Verde should pay Royalties on  
8 the Concentrator Plant.

9 MR. PRAGER: Well, that's a different  
10 question.

11 MR. ALEXANDROV: Well, that is my question.  
12 And I'm asking--may I continue?

13 BY MR. ALEXANDROV:

14 Q. And I'm asking you, Ms. Chappuis, when you  
15 heard from third parties that Minister Polo believed  
16 Cerro Verde should pay Royalties on the Concentrator  
17 Plant, did you go and tell him, "César, you're wrong."

18 Yes or no?

19 A. When I heard that, it seemed strange because  
20 he was against charging Royalties. So, my first  
21 impression was just to listen and say, this person  
22 that comes with that gossip, piece of gossip, may be

1 wrong, and I did not attach any importance to it, and  
2 as I said, in 2004, royalties were not an issue. We  
3 were not talking about that because it was in the  
4 hands of the Constitutional Tribunal, and we were all  
5 waiting for the Stability Agreements to be respected.

6 All of us had the same expectations, so it  
7 was not something that I was going to go and tell  
8 Polo, "What do you think," or "What is it that you  
9 don't think?" It was not an issue. That law had been  
10 sent to the Constitutional Court. When the Court in  
11 late 2004 resolved this, I was leaving the Ministry.

12 Q. So, let me understand your testimony.

13 First, you're saying you heard about his  
14 view, but you thought it was gossip. Second, you're  
15 saying, "I didn't go and talk to him because this was  
16 not a topic for discussion." But it was very much a  
17 topic for discussion between Cerro Verde and MINEM in  
18 2004, wasn't it?

19 I mean, Mr. Davenport and Ms. Torreblanca  
20 have testified about numerous meetings at MINEM  
21 discussing this exact topic, and you're telling us now  
22 that this was not a topic for discussion; correct?

1           A.     With me, I don't know who Ms. Torreblanca  
2 and Mr. Davenport may have met with, but in the  
3 General Directorate on Mining, that I headed up, the  
4 position was always the same. The Agreement signed by  
5 the Peruvian Government is going to be complied with.  
6 The Peruvian Government is going to respect the  
7 Contracts that it signed.

8           Q.     Okay. Well, can we go to Tab 34, RE-198.  
9 That's an email you sent on June 11, 2004, to a number  
10 of people. The subject is "a meeting with Cerro  
11 Verde, new Stabilization Agreement."

12                     Let me ask you first who the addressees are.  
13 Who was Rosario Padilla?

14           A.     Legal Director. It's called Technical-Legal  
15 Director. She's the Head of Legal at DGM.

16           Q.     Who was Jaime Chávez?

17           A.     An attorney in the legal division. Today he  
18 is Vice Minister for Mining.

19           Q.     Oswaldo Tovar is?

20           A.     He's an engineer who is a witness in this  
21 proceeding.

22           Q.     Thank you. And who is Luis Saldarriaga?

1           A.    An engineer in charge of reviewing the  
2 studies of the Tax Stability Agreement.

3           Q.    And who is Luis Panizo?

4           A.    Attorney, General Directorate for Legal  
5 Affairs at the Ministry.

6           Q.    And so, the subject is--we established was  
7 "Meeting with Cerro Verde, new Stabilization  
8 Agreement."  And you're saying:  "Can you come to my  
9 office on Tuesday the 15th at 11:00?"

10          Matter:  "Request for inclusion of the Sulfides  
11 Project in the Stabilization Agreement of Cerro Verde.  
12 Is that legal?"

13                 So, you just said, and you've stated that in  
14 your Witness Statements, that from the very beginning,  
15 you and everybody believed that the 1998 Stabilization  
16 Agreement stabilized the whole--what you call the  
17 "mining unit."  But on June 11, you still have a  
18 question whether the inclusion of the Sulfides Project  
19 in the Stabilization Agreement is legal; isn't that  
20 right.

21          A.    It is not as you are describing it.  As I  
22 explained in the February Hearing, we had had lengthy

1 discussions, including with Minister Polo, because  
2 10 years had gone by and the companies were, once  
3 again, making large-scale investments. The companies  
4 had their Tax Stability Agreements and the Company  
5 Tintaya asked for what we called a succession of the  
6 Tax Stability Agreement because it was going to make a  
7 \$120 million investment. All of the discussions that  
8 we had had, lengthy ones, because of Tintaya, we had  
9 reached a consensus that Tintaya's Application did not  
10 proceed. They were asking to terminate the Stability  
11 Agreement they had and sign a new agreement to cover  
12 the investment they were going to make and that they  
13 be given an additional 15 years.

14           And after many meetings, we reached the  
15 consensus that that was illegal, that the law did not  
16 provide for it. It did not provide for any succession  
17 of tax stability agreements. So, once again, I found  
18 out that Cerro Verde was asking for a meeting because  
19 of the 800 million Concentrator. So, in my mind, my  
20 first reaction on Friday, 6:15 in the afternoon, when  
21 I'm scheduling meetings for the following week, I  
22 thought that Cerro Verde was also going to come with

1 the same request as Tintaya to terminate the Contract  
2 or Agreement they had and to ask for a new one to  
3 cover the next 15 years. That's why I asked "is this  
4 legal," because we had already done this with Tintaya.

5 Now, Tintaya was a case of secondary mining.  
6 It wasn't the same as Cerro Verde. So, the day of the  
7 meeting, Ms. Padilla came in, and she told me by way  
8 of greeting, "You're mistaken. Cerro Verde doesn't  
9 want a new tax stability agreement."

10 Q. Ms. Chappuis, the differences--your  
11 discussion of the differences between Tintaya and  
12 Cerro Verde are very interesting, and we'll come back  
13 to that. But with all due respect, what you're asking  
14 here is not about Cerro Verde's willingness, as you  
15 understood it, to terminate the existing contract and  
16 sign a new one. Let's look at the email. You say,  
17 request for inclusion of the Sulfides Project in the  
18 Stabilization Agreement of Cerro Verde. You are not  
19 asking whether it's legal to terminate the Contract,  
20 the existing Stabilization Agreement, and enter into a  
21 new one. You are asking, is it legal to include in  
22 the existing Stabilization Agreement the sulfide

1 project. Isn't that right?

2           There is nothing here in your email about  
3 terminating the existing Contract and signing a new  
4 one.

5           A. In the subject line, I clearly write or  
6 wrote "new Tax Stability Agreement." This was 2004,  
7 and Cerro Verde had had a contract for--or an  
8 agreement for five years. It had 10 more years, and  
9 they were making an \$800 million investment. So,  
10 naturally, one presumes that they are going to want  
11 15 years and not the 10 years that were remaining.  
12 That's why I made the mistake and I said "new," they  
13 are going to come in and ask for a "new" agreement.  
14 And Ms. Padilla, who was more familiar with the  
15 details said, no, you are mistaken, they don't want a  
16 new agreement, as Tintaya did. They are going to  
17 stick with the same Agreement they had already signed.  
18 For the next 10 years? Yes, for the next 10 years.  
19 Nothing more, not one more day.

20           Q. So, you've testified and witnesses from  
21 Cerro Verde, Ms. Torreblanca, Mr. Davenport have  
22 testified that they met with you in 2003, in 2004 to

1 discuss whether the existing 1998 Stabilization  
2 Agreement covered the Concentrator Plant, and you're  
3 saying that, until June 11 of 2004, you were under the  
4 erroneous impression that what they were asking was a  
5 new stabilization agreement.

6 Is that your testimony?

7 A. In 2003, I met with them because they came  
8 to ask me whether we were going to respect the tax  
9 benefit that they had, which was a reinvestment of  
10 profit without payment of Income Tax. This is in the  
11 record. We made a decision in December of 2003. We  
12 told them that even though that provision had been  
13 repealed three years earlier, we were going to respect  
14 what was set in the Tax Stability Agreement. That was  
15 in 2003.

16 Copper was at \$0.85. They came back in 2004  
17 when copper had gone up to \$1.20, and so there they  
18 were more positive and they thought that they could  
19 build that Concentrator by reinvesting the profits  
20 that they had obtained in the four previous years or  
21 the four coming years, or something like that.

22 Q. Okay. Let's leave the Reinvestment Program

1 aside for a moment. I understand you had meetings  
2 about that. Is it your testimony that until June 11,  
3 June 15, of 2004, you did not know that Cerro Verde  
4 was asking for a confirmation that the existing 1998  
5 Stabilization Agreement covered the Concentrator  
6 Plant. You did not know that until Ms. Padilla told  
7 you, "You've made a mistake."

8 Is that your testimony?

9 A. Mr. Alexandrov, we were talking about an  
10 \$800 million investment. Okay? \$800 million.

11 Q. Can you please answer my question? I know  
12 what we're talking about, \$800 million. I'm asking  
13 you a specific question. You said, when you sent this  
14 email on June 11, you thought they wanted to terminate  
15 the existing Agreement and enter into a new agreement  
16 that would cover the Concentrator Plant. You've also  
17 testified that you had meetings with them, so my  
18 question is, is it your testimony that until June 11,  
19 2004, you did not know that their position was the  
20 Concentrator Plant was covered by the existing  
21 agreement and they wanted a confirmation of that? You  
22 did not know that, and you thought they wanted a new

1 agreement.

2           Is that your testimony? I'm asking you to  
3 confirm, yes or no.

4           A. I had not met with them, and I did not know  
5 exactly what they were going to ask for, but  
6 Ms. Padilla already knew, and she told me they are not  
7 going to ask for a new agreement, as Tintaya did.  
8 They want it to be in the Contract, the Agreement that  
9 they already had, which had only 10 more years  
10 remaining.

11           Q. Thank you very much.

12           MR. ALEXANDROV: That concludes my  
13 cross-examination.

14           PRESIDENT HANEFELD: Any redirect, or do you  
15 want to--yeah, please.

16                           QUESTIONS FROM THE TRIBUNAL

17           ARBITRATOR CREMADES: The impression that  
18 Cerro Verde gives is that they wanted to ask in  
19 writing for a confirmation, and you had told them or  
20 insinuated to them that there was no need because it  
21 was covered by the '98 Agreement.

22           Is that right? Did you give them enough

1 reasons to think that? You assume the personal  
2 responsibility that it was not presented in writing  
3 despite their willingness to do so?

4 THE WITNESS: Yes, that is true. As I have  
5 said here, I worked for three years with the  
6 inspectors from the Ministry of Energy and Mines.  
7 When I was at Tintaya, I was on the other side of the  
8 table. I was the mining company, and I knew what the  
9 criteria was of the SUNAT and of the Ministry when it  
10 came to dealing with the investments that were made  
11 during the period covered by a tax stability  
12 agreement.

13 When I worked at Tintaya, when I was on this  
14 side of the table, I knew that all the investments  
15 made, whatever the amount, were included. There was  
16 no qualification process of the Ministry to determine  
17 whether this investment qualifies but this one  
18 doesn't; this one yes, this one no. There wasn't.  
19 You were given a time period and all the investments  
20 were covered. And I've also noted here that mining is  
21 very capital intensive, and on a constant basis, on a  
22 monthly basis, major investments are made.

1           So, I clearly understood what a tax  
2 stability agreement was about, and what both the  
3 Ministry and SUNAT think about that.

4           ARBITRATOR CREMADES: Nonetheless, you were  
5 telling us that there was gossip that there was a  
6 contradiction with your boss--excuse me, please--that  
7 there was a contradiction with Mr. Polo. Indeed, you  
8 say that you trusted that the Constitutional Court  
9 would resolve the issue in the direction that you  
10 thought was appropriate.

11           Wasn't there more than enough reason to,  
12 say, apply for it in writing and get the clarity of  
13 yes or no, rather than telling them, do not submit it?

14           THE WITNESS: Excuse me, but you are mixing  
15 up two different things. You're mixing up investments  
16 in a context of tax stability, which was the  
17 Concentrator--does the Concentrator fall within it or  
18 not?--and you're mixing it up with the Royalties Law,  
19 and in all parts of world, Tax Stability Agreements  
20 are respected. This was a matter that the  
21 Constitutional Court was just resolving, and it  
22 resolved it in an unprecedented manner.

1           In 2004 we were not discussing Royalties and  
2 how they were going to be handled because the matter  
3 had been forwarded to the Constitutional Court, and  
4 that's why I wanted to cite the example of now  
5 this--right now, this month, in Chile--that for the  
6 discussion of Royalties, they have separated all the  
7 companies that have tax stability agreements, and they  
8 are looking at them in another way and they are going  
9 to respect them up until 2024, 2025, 2027. States  
10 respect tax stability agreements, and they don't  
11 invent taxes or give them different names for them to  
12 not be included in a tax stability agreement.

13           ARBITRATOR CREMADES: Thank you very much.

14           PRESIDENT HANEFELD: I would like to ask a  
15 follow-up question, now, if you don't mind. We  
16 already discussed yesterday your views on the scope of  
17 the Stability Agreement, and yesterday you testified  
18 that it extends to the entire concession regardless of  
19 its exhibit to the Investment Plan and how that forms  
20 an integral part.

21           Let me now turn to Exhibit 1 of the  
22 Stability Agreement. And maybe you can put it on

1 screen, that it's easier for the Witness to discuss  
2 it.

3 THE WITNESS: What I'd like to clarify is  
4 that that Investment Plan is very summary, and even  
5 though it is very summary, it includes the stripping,  
6 the stripping away of all the Primary Sulfides.

7 PRESIDENT HANEFELD: I fully understand.  
8 So, let's now move to Exhibit 1, so the 1998 Stability  
9 Agreement. And there reference is made to the  
10 concession of beneficiation, and the Beneficiation  
11 Plant with a capacity of 33,000 MT/day. Is, in your  
12 view, this description of the capacity of 33,000  
13 MT/day important and in a way defines the scope of the  
14 Stability Agreement, or is it also irrelevant, in your  
15 view, for the scope of the Stability Agreement?

16 THE WITNESS: No. What it's saying there is  
17 that there is a Beneficiation Concession, which only  
18 has--because at that time that's all there was--a  
19 beneficiation plant with a capacity of 33,000 tons.

20 At that time, that Concession Beneficiation,  
21 which I was describing here, there was just one plant  
22 for 33,000 tons operating, and the small Concentrator

1 for 3,000 tons was at a standstill, and this Project,  
2 as the Oxides were removed as part of the stripping,  
3 so as to be able to reach the Primary Sulfides, were  
4 sent to a new plant, which no longer was--had a  
5 capacity of 33,000 tons, but, rather, 48,000 tons.

6 And so, they would remove this Oxide  
7 material and send it to that plant, which cost them  
8 \$50 million, because the other--well, the difference  
9 is in the crushing equipment and the trucks. So, they  
10 send it to that new plant.

11 Now, as I explained yesterday, these Tax  
12 Stability Agreements set a time frame. These Tax  
13 Stability Agreements set a time frame in which you,  
14 the mining Companies, can make all the investments you  
15 deem advisable, and you can extract natural resources.

16 And so, you can't set or take note only of  
17 the size of this plant. So, what it says there is  
18 that the Beneficiation Concession, currently at the  
19 time it is signed, it only had a capacity of 33,000,  
20 which then became 48,000, and there, the Mining  
21 Concessions Cerro Verde 1, 2, and 3, as I commented  
22 yesterday, they were, say, this big, and they covered

1 7,000 hectares.

2           PRESIDENT HANEFELD: And when the  
3 Concentrator was built, what was then the capacity?

4           THE WITNESS: The Concentrator had  
5 the--Beneficiation Concession had an area of  
6 451-hectares, and this area had to be expanded because  
7 the Concentrator is very large and it was expanded to  
8 over 1,000 hectares, twice the size.

9           Now, what is this geographic area for?  
10 Well, it's simply for the geographic information  
11 systems at the Ministry.

12           Now, your question about the capacity has an  
13 environmental connotation as well, and you were right;  
14 the capacity increases and it is required to respect  
15 environmental provisions, environmental laws--

16           PRESIDENT HANEFELD: How much did the  
17 capacity increase? How much?

18           THE WITNESS: The capacity increased from  
19 48,000 tons per day. Well, the problem is that a  
20 plant--

21           PRESIDENT HANEFELD: How much did it  
22 increase?

1           THE WITNESS: Three or four times more,  
2 let's say. But, look, the thing is, we cannot  
3 measure--well, as we talk about how much is 48,000 per  
4 day, and it went to about four times as much, but it's  
5 a different type of process, but, well--now, here  
6 we're talking about the administrative issue, let's  
7 say. But that doesn't mean that Cerro Verde hasn't  
8 also delivered or submitted an Environmental Impact  
9 Study. With its new Concentrator Plant, it was  
10 required to conduct a new Environmental Impact Study.

11           PRESIDENT HANEFELD: My focus is not on the  
12 Impact Study. My focus is now on this increase by  
13 three to four times the capacity. And so, the  
14 original Beneficiation Concession, at the time the  
15 Stability Agreement was concluded, 1998, covered  
16 33,000 MT/d. Now we talk about a capacity of three to  
17 four times more.

18           Why did you think that, nevertheless, the  
19 Beneficiation Concession, valid at 1998, did not, in a  
20 way, limit or define the scope of the Stability  
21 Agreement, but the new Concession, which was rendered  
22 eight years later?

1           Why do we need to consider, in your view, a  
2 Concession which was only granted many, many years  
3 after the Stability Agreement was concluded?

4           Can you explain what your view on that is?

5           THE WITNESS: Because the mining Companies  
6 are continuously making investments to grow, because  
7 the content--we're talking about volumes, because the  
8 copper content is reduced over time. I don't know if  
9 you know what I mean--that is to say, when it was  
10 Oxide ore, then you have an ore coming in with a  
11 content of .7 percent copper.

12           But when it becomes Primary Sulfides, the  
13 content drops to .4. This requires you to have a  
14 larger plant because you need to increase the volume  
15 of ore that you remove extract in order to maintain  
16 the production of physical copper that needs to be the  
17 yield of that process.

18           Now, it was in Perú's interest for the  
19 mining companies to expand their capacity, their  
20 output for more physical copper to be produced. That  
21 is why these Tax Stability Agreements are entered  
22 into, so that the Company is able to make all the

1 investments, and so that it can increase its capacity.

2           That's why it was granted the Reinvestment  
3 of Profit, because if that benefit were not granted it  
4 wouldn't have been possible to build the Concentrator,  
5 which is the largest plant. It's larger because it  
6 processes ore with .3 or .4 percent copper; whereas,  
7 the Oxide Plant processes ore that is .7 or .8 percent  
8 copper.

9           PRESIDENT HANEFELD: So, just now to verify  
10 my understanding. So, your testimony is that the  
11 Stability Agreement covers whatever capacity is  
12 ultimately produced, regardless of what has been  
13 stated in Exhibit 1.

14           THE WITNESS: Yes.

15           PRESIDENT HANEFELD: Yes. Thank you.

16           And did you verify this understanding of  
17 yours when Cerro Verde came and wanted to build the  
18 Concentrator, thereby enlarging, significantly, three  
19 to four times the capacity? Did you verify with your  
20 legal team that this extended Beneficiation Concession  
21 would be, then, the decisive one under the Stability  
22 Agreement?

1 THE WITNESS: Yes. Perhaps, you may be  
2 confused about what a beneficiation concession refers  
3 to. And excuse me for telling you a bit of history.

4 When we were a Spanish Colony, King Carlos V  
5 imposed this beneficiation, or instituted  
6 beneficiation concessions, and imposed a rate--

7 PRESIDENT HANEFELD: Sorry. I will be happy  
8 not to listen, and we get to that, because I have  
9 questions on another extension of the Beneficiation  
10 Concession--

11 (Overlapping speakers.)

12 (Interruption.)

13 THE WITNESS: That's a rate that  
14 comes--dates to the times of the King of Spain, that  
15 is at the level of production--

16 PRESIDENT HANEFELD: Ms. Chappuis, I don't  
17 want to talk about the King of Spain now. I would  
18 really--just get a simple answer on my question of  
19 whether you have discussed the extension of the  
20 Beneficiation Concession by three to four times with  
21 your legal team, whether it would bring it under the  
22 scope of the Stability Agreement. This is my

1 question, and I would like your answer on that.

2 THE WITNESS: The Beneficiation Concession  
3 that Cerro Verde had, it was called the Cerro Verde  
4 Beneficiation Plant, was fully covered. There were no  
5 restrictions for extending the capacity or the  
6 geographical area, no legal provision imposed a  
7 restriction. Quite the opposite. There were  
8 expansions and they had our full support to extend the  
9 capacity or the surface area.

10 PRESIDENT HANEFELD: Then let us put again  
11 on screen this Exhibit RE-198, that Mr. Alexandrov  
12 already had referred to.

13 "Request for inclusion of the Sulfides  
14 Project in SA of Cerro Verde, so is this legal?"

15 What was discussed, then, in this meeting  
16 with your team on June 15? Did it challenge or  
17 discuss your views that the extension of the  
18 Beneficiation Agreement would bring the Concentrator  
19 under the Stability Agreement--or what did you  
20 discuss? On what did you seek legal advice?

21 I really just want to understand.

22 THE WITNESS: The subject says "meeting with

1 Cerro Verde, new Stability Agreement." I made a  
2 mistake. I thought that Cerro Verde was going to ask  
3 for a new Stabilization Agreement. To terminate the  
4 one that they had, because five years had elapsed and  
5 ask--they only had 10 years left. So, they were going  
6 to ask, I thought, the 15 years that they could ask.

7 10 years they still had remaining, but with  
8 a new Contract they would have gotten 15 years.

9 PRESIDENT HANEFELD: I understand. And when  
10 your misunderstanding was corrected by one of the  
11 email recipients, what happened then? Now, did you,  
12 nevertheless, discuss with them the request for  
13 inclusion of the Concentrator Project in the Stability  
14 Agreement, or did you not discuss?

15 Did you cancel the meeting? What happened?

16 THE WITNESS: We met, as we usually met, and  
17 we start from the premise that they were not asking  
18 for a new Agreement. They're not asking for a new  
19 Agreement. That would mean that the older Contract  
20 would be terminated, but they are not asking for that.  
21 The only thing that they are asking for is for this to  
22 be taken as an investment within the Agreement that

1 they already had.

2           PRESIDENT HANEFELD: And what was, then, the  
3 comment by your team members, by the lawyers? Did  
4 they confirm your view that the extension of the  
5 Beneficiation Concession would bring the Concentrator  
6 under the scope of the 1998 Stability Agreement?

7           Did the lawyers confirm that to you?

8           THE WITNESS: Yes, because it was fully  
9 protected. All investments were fully protected. We  
10 didn't have a single provision that said that, for new  
11 investment, you needed to qualify for them. All of  
12 the investments made within that 15-year period were  
13 included. They only had 10 years remaining, Cerro  
14 Verde did. All investments made in that Mining Unit.

15           PRESIDENT HANEFELD: Just again, because I  
16 just want to be precise on this point, so it was  
17 confirmed and discussed in this meeting that the  
18 extension of the Beneficiation Concession would bring  
19 the Concentrator under the protection of the Stability  
20 Agreement?

21           THE WITNESS: Yes, totally.

22           PRESIDENT HANEFELD: And who exactly

1 confirmed that to you? Was it Padilla Rosario--or who  
2 of the individuals?

3 THE WITNESS: No. As you can see, this  
4 meeting includes lawyers and engineers. Us engineers  
5 explained to the lawyers the technical issues, what  
6 was going to be done: It was a Concentrator, what was  
7 going to be processed, how many tons, all the  
8 technical matters. So, the lawyers had all the  
9 details, in connection with the laws and Regulations,  
10 and they would say whether things proceeded or not.

11 And they would say: "This can go ahead. In  
12 this technical case that you are narrating, this can  
13 go ahead, this is an investment within a Stabilized  
14 Mining Unit. This Stabilized Mining Unit had mining  
15 concessions and a beneficiation concession."

16 PRESIDENT HANEFELD: And do we have any  
17 minutes of this meeting in which you obtained this  
18 express confirmation by the lawyers?

19 THE WITNESS: No.

20 PRESIDENT HANEFELD: Any other record? No.  
21 It was just this meeting. So, you rely on this  
22 meeting on the 15th of June? This gave you the

1 comfort to give this assurance to Cerro Verde "you are  
2 safe."

3 THE WITNESS: Yes. This was not the only  
4 Company that had put a request like this to us. There  
5 were other mining Companies that received a benefit  
6 that was the same or similar to Cerro Verde's.

7 PRESIDENT HANEFELD: And so--and Mr. Tovar  
8 also attended the meeting; right?

9 THE WITNESS: That's right. And he never  
10 made any observation whatsoever. He knew what we were  
11 deciding within the DGM from June '04 onwards.

12 PRESIDENT HANEFELD: Thank you. This--yes.

13 ARBITRATOR CREMADES: You know there have  
14 been a number of Stabilization Contracts for Cerro  
15 Verde. The third one was made in 2012. In the 2012  
16 Contract, what you are saying was implicit is included  
17 expressly in the Stabilization Agreement. This new  
18 2012 Agreement, doesn't it entail a ratification that  
19 a mistake was made, and that is why things were  
20 rectified in 2012?

21 THE WITNESS: First, I wasn't there in 2012.  
22 Second, the provisions of '91 and '92, the ones that

1 we drafted with Mr. Polo, well, they were based on an  
2 Investment Promotion Law that was declared of national  
3 interest. The country was in ruins, and there was an  
4 internal war with a high level of terrorism.

5           Perhaps, you may think that these laws are  
6 very benevolent. But we have to look at the context  
7 of 1991 and 1992. Oftentimes, we didn't have  
8 electricity in our office because the terrorists had  
9 blown up the electricity grid in Lima. That is the  
10 context in which this Law was passed.

11           Now, if things were changed in 2012, well,  
12 the context was different.

13           ARBITRATOR CREMADES: Thank you very much.

14           PRESIDENT HANEFELD: So, please, Claimant,  
15 go ahead with your--and now redirect, and then we will  
16 probably continue with our questions.

17           MR. PRAGER: If you want, you can go ahead  
18 with the questions. We would need about couple of  
19 minutes just to confirm that I have the views of my  
20 team before I ask questions.

21           PRESIDENT HANEFELD: Okay. I think we are  
22 well in time. Maybe I continue with, now, my

1 questions, and then--and now you can consult.

2 I have studied overnight and now everything,  
3 again, relating to this extension of the Beneficiation  
4 Concession, and I note there was this Application in  
5 August 2004 by Cerro Verde, which is Exhibit CE-457,  
6 and I also noted that there is no mentioning of the  
7 Stability Agreement.

8 But, as we discuss, the extension of the  
9 Beneficiation Agreement has, in your view, a very,  
10 very--and a great effect. And so, I also looked at  
11 the approval of the extension of the Beneficiation  
12 Extension, and this is Exhibit CE-476. And so, maybe  
13 we can look together to this document that you can  
14 explain better to me why, in your view, it has this  
15 really enormous effect.

16 So, if I look to the signature lines, it  
17 appears that it was Hugo Mendieta Espinoza, an  
18 engineer, who suggested that the Director authorizes  
19 the construction and installation of the modification  
20 of the Beneficiation Concession, and that it was then  
21 countersigned by Oswaldo Tovar Jumpa.

22 Is this correct? It was not you? It was

1 Mr. Tovar who signed this document?

2 THE WITNESS: That was the procedure, that  
3 had to be signed by Mr. Tovar. But what is your  
4 question specifically? It says here that the  
5 installation and construction of a Beneficiation  
6 Concession for Cerro Verde is to be authorized. But  
7 specifically, ma'am, what is your question. This is  
8 signed by Mr. Tovar, indeed. Yes.

9 PRESIDENT HANEFELD: Exactly. And this is  
10 what I noted. And I thought, if you give the  
11 assurance to a Company that the extension of a  
12 Beneficiation Concession will give them the protection  
13 that they seek, I thought you may have been involved  
14 also in the extension of the Beneficiation Concession.  
15 But my understanding is--and this is what I just want  
16 to verify--that it was Mr. Tovar who gave the final  
17 approval or authorization--or were you involved?

18 THE WITNESS: Mr. Tovar, who's an engineer,  
19 was the person in charge of approving the extensions.  
20 To conduct approval on the file, he asked for the cash  
21 flows that showed exactly the tax regime. He also  
22 participated in all these meetings, at all times where

1 we said that the Concentrator was within the tax  
2 benefit granted to Cerro Verde. He never put any  
3 objection to me.

4 PRESIDENT HANEFELD: So, I read on the  
5 bottom of Page 2 that: "Based on the evaluation,  
6 Cerro Verde has complied with the ordinary procedure  
7 for Concession of Benefits stipulated in Articles 35  
8 and 36 of Executive Decree Number 18-92-FM."

9 What does this Executive Decree state?

10 THE WITNESS: It indicates the procedure to  
11 apply for a beneficiation concession, an extension of  
12 a Concession, or a change—it's a Regulations on  
13 Procedures.

14 PRESIDENT HANEFELD: And does this Executive  
15 Decree also discuss or address Stabilization  
16 Agreements?

17 THE WITNESS: The Stabilization Agreements  
18 have a specific set of Regulations that govern them.  
19 I remember the name. It is the Regulation of  
20 Articles XXXX. It has a specific Regulation. This is  
21 a Regulation, which is the Regulation of the General  
22 Mining Law, that includes the full range of procedures

1 that we had to go by.

2           PRESIDENT HANEFELD: But if I understand you  
3 correctly, you are the Expert on this Law, and these  
4 advocates--or this Executive Decree does not concern  
5 Stability Agreements. It's about all other aspects?

6           THE WITNESS: That's exactly right. But in  
7 the procedure, you need to establish the cash flows,  
8 and if you look at the application, the file submitted  
9 by Cerro Verde, you can see that Cerro Verde was  
10 already considering Tax Stabilization.

11           PRESIDENT HANEFELD: And this is because  
12 they also submitted the Feasibility Study, which was  
13 based on the assumption that it was stabilized.

14           Is this correct?

15           THE WITNESS: That's exactly right. Also,  
16 Mr. Tovar asked them to provide a lot of information.  
17 He met many times with them, many times.

18           PRESIDENT HANEFELD: Thank you. This would  
19 conclude my questions.

20           Do you have additional questions? No.

21           Then, please.

22           MR. PRAGER: If we could just have

1 two minutes. Thank you.

2 (Brief recess.)

3 MR. PRAGER: Ms. Chappuis, I have a couple  
4 of questions for you.

5 REDIRECT EXAMINATION

6 BY MR. PRAGER:

7 Q. The President asked you about whether the  
8 lawyers in your team, in the DGM, shared the view with  
9 you. Let me ask you that question.

10 In the internal meetings that you had  
11 discussing Cerro Verde's question regarding the  
12 Concentrator inclusion in the Stability Agreement, do  
13 you recall whether all lawyers in your team,  
14 Ms. Padilla and the others, were agreed that the  
15 inclusion of the Concentrator in an expanded  
16 Beneficiation Concession would mean that the  
17 Concentrator is stabilized?

18 A. Yes, they were in full agreement. There were  
19 no objections.

20 (Interruption.)

21 Q. Can you repeat the answer one more time?

22 A. Yes. All of them were in full agreement,

1 and none of them made any objections.

2 Q. And you have discussed that issue with them?

3 A. Yes. Also, they coordinated constantly with  
4 the Mining Council and with the Legal Advisor of the  
5 Ministry, and nobody placed an objection.

6 Q. And the President also pointed you to  
7 Annex I of the Stability Agreement, where the  
8 Beneficiation Concession is described in a specific  
9 capacity of the Beneficiation Concession.

10 In the practice of the DGM at the time that  
11 you were there, was it the view that the capacity as  
12 stated in the Stabilization Agreement limited the  
13 scope of Stability Guarantees?

14 A. No. Not at all. In other words, we didn't  
15 have--we did not make any qualification to the  
16 investments that could be covered during this 15-year  
17 period. There was no observation, no qualification  
18 whatsoever. All investments were welcome.

19 Q. And in the practice of the DGM, have you  
20 seen companies increase the--expand their  
21 beneficiation concession to include new investments?

22 A. Yes, we have seen that.

1 Q. Does this include also companies that have  
2 been stabilized, companies that--

3 A. Yes. All of the Companies were under a  
4 Stabilization Agreement. We had over 40 stability  
5 agreements.

6 (Overlapping interpretation and speakers.)

7 BY MR. PRAGER:

8 Q. What I was asking is whether you have  
9 observed in your practice at the DGM that companies  
10 that had Stabilization Agreements that included a  
11 beneficiation concession have expanded that  
12 beneficiation concession while the Stability Agreement  
13 was in force to include new investments?

14 (Overlapping interpretation and speakers.)

15 MR. ALEXANDROV: Is that part of the  
16 cross-examination? Do you--

17 MR. PRAGER: Yes. I'm just asking a  
18 question.

19 MR. ALEXANDROV: Well, I'm asking--you're  
20 doing redirect. I don't think I cross-examined her on  
21 that.

22 MR. PRAGER: This is in response to a

1 question that the President asked.

2 MR. ALEXANDROV: I'm not sure. I'll leave  
3 it in the hands of the President. I don't think the  
4 President asked about other companies.

5 MR. PRAGER: The President asked a specific  
6 question about Annex I, whether the 33,000 MT/d in the  
7 Beneficiation Concession limited the scope of the  
8 Beneficiation Concession, and I'm following up on that  
9 specific question.

10 PRESIDENT HANEFELD: Please go ahead.

11 BY MR. PRAGER:

12 Q. So, my question was whether, while you were  
13 at the DGM, in your experience, can you describe to us  
14 whether companies that had Stability Agreements that  
15 included a beneficiation concession expanded that  
16 beneficiation concession to include new investments?

17 A. Yes, many of them. Almost all of them.  
18 They were always making investments to expand  
19 capacity.

20 Q. And at the time that you were at the DGM,  
21 was it the DGM's view that those new investments in  
22 expanded beneficiation concessions that were

1 stabilized were also covered by the Stability  
2 Agreement?

3 A. Yes, they were covered. All of the  
4 investments that were made within the 15-year period,  
5 not a day more, all of the investments, all kinds of  
6 investments. There was no restriction.

7 Q. And when the beneficiation concessions for  
8 those Companies were expanded to include the new  
9 investments, did the beneficiation concession  
10 approvals mention Stability Agreements?

11 A. Indirectly. They have to attach the cash  
12 flows, and that shows the economic and tax structure.  
13 Indirectly, yes.

14 Q. I think--

15 MR. PRAGER: No further questions. Thank  
16 you very much.

17 PRESIDENT HANEFELD: Do you have one?

18 MR. ALEXANDROV: One question that actually  
19 follows up on one of your questions, Madam President.  
20 And the question was about the meeting on June 15 that  
21 was discussed in the email that Ms. Chappuis sent on  
22 June 11, and the presence of Mr. Tovar.

1           So, I want to show Ms. Chappuis the Second  
2 Witness Statement of Mr. Tovar, Paragraph 16 and 17,  
3 and we will put them on the screen, but I would like  
4 to read the English into the record.

5                           RE CROSS-EXAMINATION

6                   BY MR. ALEXANDROV:

7           Q.    So, it's Paragraph 16 first.

8                   And so, Mr. Tovar says: "What I do remember  
9 is that on June 11, 2004, Ms. Chappuis informed DGM  
10 officials--including MINEM's attorneys and Legal  
11 Advisors--that Cerro Verde was applying to include the  
12 Concentrator Project under the Stabilization  
13 Agreement. Specifically, Ms. Chappuis sent us an  
14 email with the subject line 'Meeting with Cerro Verde  
15 new CET,' whereby she called to a meeting on Tuesday,  
16 June 15 in her office informing us about a 'request  
17 for inclusion of the Sulfides Project in the  
18 Stabilization Agreement,' and asked us whether Cerro  
19 Verde's application to include the Concentrator  
20 Project under the Agreement was legal. It is clear  
21 from this email that Ms. Chappuis, one, knew that the  
22 Primary Sulfides Project was not included in the Tax

1 Stabilization Agreement, Contrato de Estabilidad  
2 Tributaria, and that she was passing along the  
3 Company's intent request to include it; and, two, she  
4 did not know if Cerro Verde's request was legal or  
5 not, so she had to consult with her team, including  
6 me."

7 He then reproduces the email and he  
8 continues on Paragraph--he continues in Paragraph 17.

9 "Given that I was the individual responsible  
10 for examining and approving the expansion of the area  
11 and installed capacity of the Beneficiation  
12 Concession, it would make little sense for  
13 Ms. Chappuis to have confirmed to Cerro Verde that,  
14 with the expansion of the Beneficiation Concession  
15 area, the effects of the Stabilization Agreement would  
16 be extended, without first discussing with me. I can  
17 confirm that this discussion never took place, and I  
18 never stated (nor could have stated) that this  
19 expansion could have included the Concentrator under  
20 the scope of the Stabilization Agreement."

21 Having seen that testimony, Ms. Chappuis, my  
22 question is: Do you believe that Mr. Tovar

1 misremembers what happened at the meeting and his  
2 testimony is incorrect?

3 A. As I have explained here, we were having all  
4 of these conversations regarding Tintaya. Tintaya  
5 wanted a new Tax Stability Contract, to terminate the  
6 one they had because they were making an investment  
7 for \$140 million. They wanted to initiate, to sign a  
8 new contract, and to have 15 additional years.

9 So, I was misinformed, and I thought that  
10 Cerro Verde, with their investment, wanted to do the  
11 same, because they had 10 years of stability. So, it  
12 was going to take four years to build. So, they would  
13 only have six years left with stability. So, I  
14 reasonably thought that they were going to ask us for  
15 a new CET, but Dr. Padilla told me, no, they are not  
16 going to request a new Tax Stability Agreement. They  
17 will remain with the same one.

18 Q. You are repeating your testimony, but the  
19 question was different. Is Mr. Tovar misremembering  
20 what happened on June 15, and is his testimony  
21 incorrect? That was my question.

22 A. I am not going to opine on other Witnesses.

1 MR. ALEXANDROV: Thank you, Madam President.

2 PRESIDENT HANEFELD: Thank you very much,  
3 Ms. Chappuis. This concludes your testimony, so you  
4 are now released as a Witness. Thank you.

5 THE WITNESS: I apologize. Oftentimes it  
6 may have been where I could have had better manners or  
7 been kinder in my answers. I thank you.

8 PRESIDENT HANEFELD: We thank you. Thank  
9 you.

10 (Witness steps down.)

11 PRESIDENT HANEFELD: So, our next Witness  
12 would be Claimant's Witness, Mr. Estrada; right?

13 (Comments off microphone.)

14 PRESIDENT HANEFELD: Okay. Sorry. Then we  
15 do a break now of 15 minutes, and then we continue  
16 with Mr. Estrada.

17 (Brief recess.)

18 LEONEL ESTRADA GONZALES,  
19 CLAIMANT'S WITNESS, CALLED

20 PRESIDENT HANEFELD: Welcome, Mr. Estrada.  
21 You have been called as a Witness in this Arbitration  
22 by Claimant. I may briefly introduce the Tribunal.

1 I'm here with my co-arbitrators, Professor Tawil and  
2 Dr. Cremades. My name is Inka Hanefeld.

3 Under Rule 35(2) ICSID Arbitration Rules,  
4 you are required to give a declaration. Can you  
5 please read it out? It should be on your desk.

6 THE WITNESS: Good morning.

7 I solemnly declare, upon my honor and  
8 conscience, that I shall speak the truth, the whole  
9 truth, and nothing but the truth.

10 PRESIDENT HANEFELD: Thank you very much.

11 Then we turn to your Witness Statements.

12 Do you have your Witness Statements, CWS-6  
13 and 17, in front of you?

14 THE WITNESS: Yes.

15 PRESIDENT HANEFELD: Can you confirm that  
16 these are your Witness Statements and they correspond  
17 to your recollection?

18 THE WITNESS: Yes. These are my Statements.

19 PRESIDENT HANEFELD: Thank you very much.

20 We turn to Claimant for the direct.

21 MR. RIVERA: Thank you, Madam President.

22 With your permission, I'm going to switch to Spanish.

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DIRECT EXAMINATION

BY MR. RIVERA:

Q. Thank you for being here, Mr. Estrada.

A. Thank you.

Q. I will be asking you some brief questions regarding your Statement.

Did you read the Statements presented by the President of the Tax Tribunal in this Arbitration, Ms. Olano?

A. Yes.

Q. You might have seen that Ms. Olano said that she appointed her personal assistant, Ms. Úrsula Villanueva, as substitute law clerk for Chamber 1 due to lack of personnel.

What do you opine about this? What is your opinion?

A. First, during my 14 years at the Tax Tribunal I never heard the term of substitute law clerk. There is not a position that we see in the manuals or in any rule of the Tax Tribunal. The first time that I heard of that term, was for this Arbitration.

1           Those who worked at the Tax Tribunal, we had  
2 law clerks, Chamber law clerks, and that category is  
3 very different from the position that this substitute  
4 law clerk had that was the *asesora de Presidencia*,  
5 Úrsula Villanueva.

6           The law clerks usually had to be accepted  
7 through a merit competition, and this was different  
8 from the *asesora de presidencia*, who was trusted staff  
9 of President Olano--that is to say, she was appointed  
10 directly by her without any other public competition.  
11 And law clerks also reported our work to the "vocales"  
12 and, regardless of the Chamber, Úrsula Villanueva did  
13 not do so. Her only boss was Dr. Olano, who was her  
14 right hand.

15           And the work, the main work by the Chamber  
16 law clerks, was to participate in the drafting of  
17 resolutions for our "vocales." But Úrsula Villanueva,  
18 as *asesor de presidencia*, only had to help with the  
19 tasks that Dr. Olano had, and none of those tasks was  
20 related at all with the issuance of Resolutions. That  
21 was a power that was the purview of the Chambers.

22           An additional difference is that Chamber law

1 clerks, whenever we became members of the Tax  
2 Tribunal, we had a specific term established in our  
3 contracts. In the case of Úrsula Villanueva, this was  
4 not, she as trusted staff could be removed at the will  
5 of Dr. Olano.

6 Also, Dr. Olano does not state the truth  
7 when she said that she appointed Úrsula Villanueva to  
8 work with the First Chamber. I have been there for  
9 14 years in the institution, and I never saw Úrsula  
10 Villanueva go to a Chamber as a law clerk.

11 What happened, in fact, was that the case  
12 files were actually removed from the Chamber and taken  
13 to the office of Úrsula Villanueva that was in front  
14 of Dr. Olano's office, and that's where she worked on  
15 the case files. But she never participated as a law  
16 clerk that was in person at one of the Chambers. This  
17 was even more irregular because, even though the Tax  
18 Tribunal reports to the Ministry of Economy and  
19 Finance, the various Chambers, when dealing with case  
20 law or resolving disputes, as the last administrative  
21 resort, had to be done exclusively within the chamber.  
22 And the fact of removing the case files and that they

1 were worked on by the *asesor de presidencia* definitely  
2 breached this principle of independence that should  
3 have been characteristic of the Tax Tribunal.

4           The "vocales" did not have any contact with  
5 the outside world or the Ministry of Economy. The  
6 only contact that the institution had with the  
7 Ministry of the Economy was through Dr. Olano, the  
8 President of the Tribunal. But the chambers had no  
9 contact. And making her own *asesora de presidencia*  
10 intervene in the decision-making process of case  
11 files, that was a completely irregular situation.

12           Dr. Olano justified this decision with two  
13 arguments. She said that she did so because there was  
14 no rule against it, and that is completely wrong.

15           In Perú, all public servants, such as  
16 Dr. Olano, have to observe the principle of legality.  
17 The principle of legality assumes that a public  
18 servant may only and exclusively do what is provided  
19 for under a rule or the law. There is no rule against  
20 it, but it was required to have a rule to empower her  
21 to do so, and there was no empowerment in the laws.

22           Dr. Olano also said that she did it because

1 there was a shortage of staff. In the 14 years that I  
2 was at the Tax Tribunal, we always had shortage of  
3 staff. We always needed law clerks, and given the  
4 shortage of staff, Dr. Olano, in full use of her  
5 powers, had to call for this public competition to  
6 have new law clerks come into the institution.

7 But if, because of an urgency or a situation  
8 or to resolve a file or record, they could not wait  
9 for this public competition based on merits, what  
10 should have been done, as she did, was to move around  
11 law clerks from one Chamber to the other one.

12 Dr. Olano in this arbitration presented two  
13 examples of that, and they are two proper examples,  
14 former colleagues of mine. Juan Regalado was one of  
15 them and I don't recall the name exactly of my other  
16 colleague. And she moved stuff from one chamber to  
17 the other. And I also was seconded to another Chamber  
18 to help with some concrete case files for a set period  
19 of time and after that I returned to my chamber.

20 So, what Dr. Olano said is completely  
21 irregular. It is irregular for her to appoint her  
22 only asesora to work on a case file, but it is even

1 more irregular for Dr. Olano to participate in the  
2 discussion, deliberations around that case file.

3 So, I think that what she says is incorrect.

4 Q. Thank you very much, Mr. Estrada.

5 In the last round Perú presented the witness  
6 statement by Mr. Sarmiento, who was a "vocal" of  
7 Chamber Number No. 10, which you did not have the  
8 opportunity to answer.

9 Now, he, Mr. Sarmiento, says that the  
10 2006-2007 Royalties case file was deliberated by  
11 Chamber 10. Could you give us your opinion about it?

12 A. I believe that Mr. Sarmiento's opinion is  
13 completely biased. Mr. Sarmiento from Chamber 10,  
14 which met in relation to this matter, there were three  
15 *vocales*. The other two *vocales*, Moreano Valdivia and  
16 Luis Cayo, are no longer members of the Tax Tribunal.  
17 They are engaged in private practice, and the only  
18 current *vocal* of that chamber is Mr. Sarmiento.

19 Now, as a current *vocal*, it is evident that  
20 he could not say something other than what he's  
21 saying. He could not say that, in effect, there  
22 wasn't a proper deliberation of the case file

1 before--or in Chamber 10, because that would imply  
2 that he would be committing an omission in his duties,  
3 and that has repercussions. An administrative  
4 proceeding against Mr. Sarmiento could be initiated on  
5 this ground.

6           Let us also recall that Mr. Sarmiento's  
7 direct boss is Ms. Olano. So, it's clear that his  
8 statement helps to bolster that of his direct  
9 superior, but she's not only his superior, but also  
10 Ms. Olano has a lot of weight in the process of  
11 ratification to which the members of the Tax Tribunal  
12 are subject every three years. So, to say something  
13 different than Mr. Sarmiento said could put at  
14 risk--well, he would be opposing his superior and it  
15 would place at risk his ratification process.

16           Now, Mr. Sarmiento holds--or upholds as  
17 evidence, in one way or another, that there was  
18 deliberation on that matter with only two documents.  
19 He presented session minutes, and he also presented as  
20 evidence the Resolution signed by the three *vocales*.

21           Now, in the session minutes, if you have  
22 occasion to review that document, it's a document that

1 doesn't prove whatsoever that there's been a  
2 deliberation. It is a document that is drawn up by  
3 the administrative secretary of the Chamber, and it  
4 contains only the result of the vote in a case file.

5 In the session minutes, they have the  
6 taxpayer's information, the number of the case file,  
7 the number of the resolution, the outcome of the vote,  
8 but it doesn't show that there's been any  
9 deliberation.

10 And the second document, which is the  
11 Resolution signed by the three *vocales*, doesn't show,  
12 either, that there's been deliberation because, if you  
13 take a look at that Resolution, it is identical to the  
14 Resolution that was issued by Chamber 1 three weeks  
15 earlier. It's impossible to think that three *vocales*  
16 in a different place, in a different Chamber, or,  
17 rather, in a different date, deliberate and have the  
18 exact same conclusion as another Chamber.

19 To make a simile of that situation, this  
20 arbitral procedure is being--unfolding before two  
21 different Tribunals. It would be the same logic to  
22 think that three arbitrators, despite the fact that

1 they conclude the same thing and have the same  
2 considerations for their Decision as the other three  
3 arbitrators who already looked at this case in  
4 February.

5           So, it is not justified--the fact that it  
6 has been signed by all three *vocales* doesn't justify  
7 or prove that there's been deliberation.

8           Q. Thank you very much.

9           MR. RIVERA: With that, we conclude the  
10 direct and yield to the attorneys for Perú.

11           MS. DURÁN: I will also turn to Spanish,  
12 with your permission.

13                           CROSS-EXAMINATION

14           BY MS. DURÁN:

15           Q. Good morning, Mr. Estrada.

16           It's nice to see you once again. We already  
17 know one another, but just so that it's in the record,  
18 I am María Carolina Durán, and I am a member of the  
19 team representing the Republic of Perú in this  
20 Arbitration.

21           As last time, we need to speak with pauses.  
22 This rule applies to you and to me. It's also very

1 important that we take a pause between my questions  
2 and your answers, and I do likewise when you conclude  
3 your answers. Please don't take my pause as an  
4 invitation to continue speaking. I'm just waiting for  
5 the interpretation into English to catch up with us.  
6 And, since we have little time, I would ask that you  
7 please answer my questions directly.

8           Mr. Estrada, have you seen the Transcript of  
9 the last Hearing?

10          A. Yes, I was able to see that.

11          Q. Of your Witness Statement?

12          A. Likewise.

13          Q. Excuse me. Did you see the Transcript of  
14 your testimony at that Hearing?

15          A. Yes, only that.

16          Q. And what about the Opening Arguments?

17          A. No.

18          Q. And the testimony by President Olano and  
19 Mr. Sarmiento, did you see those?

20          A. No, not at all.

21          Q. You are an attorney licensed since 2006;  
22 correct?

1 A. Yes, since 2006.

2 Q. And you began to work at the Tax Tribunal in  
3 2004; is that right?

4 A. That is right.

5 Q. So, you began to work at the Tax Tribunal  
6 before you ended your undergraduate degree in law;  
7 correct?

8 A. Yes.

9 Q. And you worked, as you said a moment ago, at  
10 the Tax Tribunal for 14 years; correct?

11 A. Yes, that is correct.

12 Q. And just to continue with the chronology,  
13 you left the Tribunal in 2018; correct?

14 A. Yes.

15 Q. During those 14 years, you held the position  
16 of law clerk, at the different levels; correct?

17 A. Yes, at all possible levels.

18 Q. But always as a law clerk; correct?

19 A. Yes, of course.

20 Q. Now, in those 14 years, you were never a law  
21 clerk for Chamber 1; correct?

22 A. Yes, I was, actually, a couple of times.

1 Not as the permanent law clerk, but with the exception  
2 of the Chamber on Customs, I went through all the  
3 different Chambers at some point in time.

4 Q. At the last Hearing--when I speak of the  
5 last Hearing, I'm talking about the Hearing in the  
6 case of SMM Cerro Verde--you said that you were in  
7 Chambers 2, 4, and 10.

8 Are you changing your testimony?

9 A. No. I also said that I had been in the  
10 other Chambers for some time, such as--for specific  
11 cases such as this case in Chamber 1.

12 Q. And in those cases, when you were in  
13 Chamber 1, was it because you were designated there  
14 temporarily just for a particular case?

15 A. Yes, for a specific time period or for a  
16 specific case.

17 Q. And in Chamber 1, when you were at  
18 Chamber 1, you were not involved in the Cerro Verde  
19 Cases; is that right?

20 A. No.

21 Q. And when you were in Chamber 10, you were  
22 not in the Cerro Verde Cases, either; is that correct?

1           A.    It is correct.

2           Q.    Then in your Witness Statement, you  
3 established that, since 2019, you've worked at a law  
4 firm called TS Asesores; correct?

5           A.    Yes.

6           Q.    Do you continue working there?

7           A.    Yes.

8           Q.    In which year was that law firm established?

9           A.    I think it was 2017.

10          Q.    And I was looking for information about this  
11 law firm, as I did the last time, and I did not find a  
12 website.

13                    Could you tell us, please, how many lawyers  
14 work at that law firm?

15          A.    The firm has three partners, four senior  
16 attorneys, and several legal assistants, depending on  
17 the workload, actually. I believe that about 12 to 20  
18 people work there.

19          Q.    Who are the partners?

20          A.    Jorge Mendoza, Iván Vera, and myself.

21          Q.    Now, just for clarification, why at the last  
22 Hearing did you tell me that, formally speaking, you

1 were not a partner at that law firm?

2 A. In the Articles of Incorporation, I'm not a  
3 partner, but I also noted that I am treated as a  
4 partner. I charge as a partner. I purchased the  
5 office where the law firm works out of as a partner.  
6 It's only in the Articles of Incorporation that I  
7 wasn't there, because I was working at that time in  
8 the public sector.

9 Q. And at your LinkedIn page, it appears that  
10 you also work at a law firm called Mendoza, Vera  
11 & Estrada. I understand this is the same as TS  
12 Asesores?

13 A. Yes, the same partners.

14 Q. At the February Hearing, you established  
15 that that law firm was not working, was not operating.  
16 Is that still the case?

17 A. Yes, it is.

18 Q. And that's why that law firm doesn't have a  
19 website, either?

20 A. Yes, that's right. It exists, and we don't  
21 intend to have a website.

22 Q. Now, at the Cerro Verde Hearing, you said

1 that Cerro Verde is a client of TS Asesores law firm  
2 in relation to the SMM Cerro Verde case; correct?

3 A. Yes.

4 Q. And you also said that when you said "Cerro  
5 Verde's lawyers," you're talking about the  
6 international lawyers of Cerro Verde--that is to say,  
7 the Debevoise firm; correct?

8 A. Correct.

9 Q. Is it correct to assume that the Debevoise  
10 lawyers are also clients of TS Asesores for the  
11 purposes of this Arbitration, Freeport?

12 A. No. The only client is Cerro Verde.

13 Q. So, that was just for the previous case?

14 A. Cerro Verde, I understand--I'm not all that  
15 familiar with arbitration--is the client of the law  
16 firm. There are two Shareholders--Cerro Verde has two  
17 Shareholders--but the client is SMCV.

18 Q. Okay, but now I'm a bit confused, because  
19 you told me the client was the Debevoise law firm.

20 A. In both cases.

21 MR. RIVERA: Would you mind taking him to  
22 the place where he said that in his Transcript? I

1 think that's not what he said, so I think we would be  
2 grateful if you could show him exactly what he said.

3 MS. DURÁN: Yes.

4 BY MS. DURÁN:

5 Q. We can turn to the Transcript, which is at  
6 Tab 3, at Page 1047 in the Spanish-language version.  
7 I don't have the number--the page number for the  
8 English-language version.

9 This is--it's 1043 of the English.

10 Do you see it?

11 A. Yes.

12 Q. So, the first question that I put to you is:  
13 "SMCV, which I will refer to as Cerro Verde, is or has  
14 been a client of TS Asesores?"

15 And your answer is: "It is the client of TS  
16 Asesores."

17 And then if we scroll down to Line 22 of the  
18 same page, it says--

19 (Comments off microphone.)

20 MR. RIVERA: I was just saying, if you could  
21 read the following line immediately after the one that  
22 you read, because I think it's important for context.

1 MS. DURÁN: I'm sorry. His questions, he  
2 can--those, he can do it on redirect. I don't think  
3 they give any context.

4 I will read it just for the record.

5 BY MS. DURÁN:

6 Q. The question is: "Does TS Asesores have any  
7 relationship with the Rodrigo law firm, which I  
8 understand is a local one?"

9 "None." That's what you said at that time.

10 And then I asked you: "On what do you  
11 advise SMCV?"

12 And you say: "In this case, I don't know if  
13 it's directly with Cerro Verde but, rather, with the  
14 attorneys for Cerro Verde."

15 Do you see that?

16 A. Yes.

17 Q. And then we have a similar exchange in which  
18 I'm a bit confused as to whether the client is the  
19 attorneys or the Company, Cerro Verde, and then you  
20 explain, and you say, at Line 12: "Let's see. The  
21 lawyers of the law firm for Cerro Verde contacted my  
22 partners--I understand that was in 2018," and then you

1 provide an explanation, which we'll get into in just a  
2 moment.

3 And then I ask you to clarify for me: "Just  
4 for clarification, the Cerro Verde lawyers are whom?"

5 And you say: "Debevoise."

6 Do you confirm your testimony?

7 A. Yes.

8 Q. Now, just to clarify, the contact with the  
9 lawyers at Cerro Verde, the international lawyers for  
10 Cerro Verde, you take that as a single case because  
11 it's the same facts?

12 A. Yes.

13 Q. But it's for purposes of both Arbitrations;  
14 correct?

15 A. I understand that that is the case.

16 Q. And as we just read, the attorneys from  
17 Debevoise made contact with your firm as of 2018-2019;  
18 correct?

19 A. I could specify that date on occasion of the  
20 last hearing, and, actually, the date is 2019.

21 Q. Okay. And you also established that, since  
22 2019, advisory services were being provided to the

1 attorneys for Cerro Verde and Cerro Verde in general,  
2 which entailed facilitating the location of former  
3 members of the Tax Tribunal for them to discuss the  
4 exact same thing that they discussed with you, which  
5 was regarding their experience at the Tax Tribunal; is  
6 that correct?

7 A. Correct. But there I must also add, because  
8 in light of your question, I checked that with my  
9 partners. They were informal calls that were never  
10 charged.

11 Q. They were never charged?

12 A. No.

13 Q. How many calls were they?

14 A. They were informal calls, two or three,  
15 nothing more than that, with them. The first contact  
16 with me came in September 2020, and it was as of 2021  
17 that charges began.

18 Q. Excuse me. Could you say once again when  
19 you began charging?

20 A. 2021.

21 Q. And I understand that, based on what you  
22 said last time, you signed a contract with Debevoise

1 based on your participation in this Arbitration?

2 A. The Contract was signed with Cerro Verde.

3 Q. When?

4 A. In 2021.

5 Q. 2021. Not 2020, as you said before?

6 A. 2021.

7 Q. What date in 2021?

8 A. I don't have the exact date, but it was when  
9 I agreed to be a Witness.

10 Q. You also explained to us that, as from your  
11 participation, there were a number of calls with the  
12 international lawyers, that there were several  
13 conversations regarding your experience in the Tax  
14 Tribunal.

15 Do you confirm your testimony?

16 A. Yes.

17 Q. And I understand that, in those calls, your  
18 partners also participated?

19 A. Yes, particularly in the first part.

20 Q. How much are you charging to participate in  
21 this Arbitration?

22 A. It's an hourly fee. I don't have a precise

1 estimate.

2 Q. At the last Hearing you said that you  
3 charged more or less \$420 or \$428; is that correct?

4 A. Yes, it is.

5 Q. And you also said that the hourly charge of  
6 your partners, Jorge and Iván--I understand they're  
7 your partners--that they charge the half of that; is  
8 that right?

9 A. Yes, it is.

10 Q. How many hours--at the last Hearing, you  
11 said that for your First Statement you had taken about  
12 20 to 26 hours.

13 Do you confirm your testimony?

14 A. Yes.

15 Q. For drawing up the First Witness Statement  
16 for this case, how many hours did you spend?

17 A. Well, I have only presented two Witness  
18 Statements, and they were presented in both cases, but  
19 it's just one Statement; in other words, the time that  
20 I devoted to it is just what I indicated to you, 20 to  
21 26 hours.

22 Q. When your First Statement was submitted in

1 this case, did you have an opportunity to review it?

2 A. Of course. I signed it. It's identical to  
3 the one that was presented in the previous case.

4 Q. Did you review it to see if any change had  
5 been made?

6 A. No. It's identical except for the  
7 introductory part.

8 Q. Did you review it?

9 A. Yes, of course. They're identical.

10 Q. And did you devote one hour to it?

11 A. I don't think so. I just reviewed it to  
12 sign it, but let's say one hour.

13 Q. Okay. For the Second Witness Statement in  
14 the SMCV Cerro Verde Case, you said that you had taken  
15 approximately 20 hours.

16 Do you confirm your testimony?

17 A. Yes.

18 Q. And I understand, then, that the Second  
19 Statement that was submitted in this case--

20 A. Same situation.

21 Q. Okay. In other words, you signed it,  
22 reading it through quickly, and that was that, and

1 then you submitted it.

2 Now, for the Hearing in the Cerro Verde  
3 Case, you told us that you had spent two days  
4 preparing in New York with the Debevoise lawyers;  
5 correct?

6 A. Correct.

7 Q. How much time have you dedicated to your  
8 preparation and participation in this Hearing?

9 A. Two days in Lima.

10 Q. In Lima?

11 A. Two days.

12 Q. Two days?

13 A. Yes.

14 Q. How many hours?

15 A. From 9:00 to 5:00. Seven or eight hours.

16 Q. For two days?

17 A. Yes.

18 Q. Mr. Estrada, in all, as you had an  
19 opportunity to review some points after the last  
20 Hearing, do you know how much your law firm has  
21 charged in all?

22 A. For what?

1 Q. I understand that for you this is two  
2 Witness Statements by you--well, it's really four--and  
3 participating twice in the Hearings. How much have  
4 you charged in all?

5 A. I don't have the exact amount. What I do  
6 understand clearly are the hours that I have devoted  
7 to it, but I don't handle the invoicing.

8 Q. You don't have any idea of a number?

9 A. Of hours, yes; but the total amount, well,  
10 one has to do the multiplication to number of hours  
11 times hourly charge.

12 Q. Of course. I did a rough calculation--but  
13 you can correct me if you think I'm wrong--of your  
14 first two Witness Statements. So, that's to say, 26  
15 plus 20 at \$420 yields a total of \$20,000. And we'd  
16 have to add the 16 hours, times two, for your  
17 participation in the Hearings; correct?

18 A. Correct.

19 Q. So, almost \$40,000, it could be?

20 A. Well, you've done the calculation. I'd have  
21 to check it, but if you say so.

22 Q. Well, it's already being verified. The

1 attorneys for the other side will be able to correct  
2 that if they think it's necessary.

3 Now, Mr. Estrada, just to confirm, in your  
4 Witness Statements, you do not establish anywhere your  
5 relationship with Cerro Verde, nor your relationship  
6 with the attorneys, nor the payment that you are  
7 receiving for being here; correct?

8 A. Correct.

9 Q. Thank you.

10 If we turn to Paragraph 2 of your Second  
11 Witness Statement--and I understand that that is at  
12 Tab 2, though I think you also have them in the small  
13 binders. It might be easier for you.

14 Are you there?

15 A. Yes.

16 Q. You indicate that: "Counsel for Freeport  
17 assisted me in preparing this Witness Statement";  
18 correct?

19 A. Correct.

20 Q. And, as I understand, based on the exchange  
21 we had at the last Hearing, the dynamic was that you  
22 would have calls with the Claimant's lawyers, then

1 they would send you a draft, you would review the  
2 draft, you would make the changes you considered  
3 necessary, and then it would go from there; correct?

4 A. Correct.

5 Q. And as we established a moment ago, in  
6 reviewing those witness statements your partners, Iván  
7 Vera and Jorge Mendoza also participated; correct?

8 A. Most of the calls, yes.

9 Q. And in your Witness Statements, you did not  
10 establish either that Jorge Mendoza and Iván Vera  
11 participated in the calls that you had with Cerro  
12 Verde's lawyers; correct?

13 A. I do not indicate it.

14 Q. Now, I can assume that the words that are  
15 contained in this Statement are yours?

16 A. Yes, of course.

17 Q. And I see that you included a number of  
18 footnotes. Is it correct to conclude that when you've  
19 put footnotes there, you do so in order to provide  
20 support for what you're saying in the Statement;  
21 correct?

22 A. Correct.

1 Q. When you considered it necessary to include  
2 them to support what you were saying, then you did so;  
3 correct?

4 A. Yes.

5 Q. Now, let's go to the first paragraph of your  
6 First Statement--of your Second Statement. I'm sorry.

7 A. Yes.

8 Q. You state that--you confirm that you have  
9 personal knowledge of the facts and matters that you  
10 then are to describe; correct?

11 A. Yes.

12 Q. In your First Witness Statement--that's the  
13 end of the first paragraph. Let's put it up on the  
14 screen.

15 A. Yes.

16 Q. In your Second Statement, you  
17 added: "Whenever I testify on subjects beyond my  
18 personal knowledge, I identify the source of the  
19 information and the basis for my  
20 understanding"; correct?

21 A. Correct.

22 Q. And you confirmed for us at the last Hearing

1 that you included this to indicate that there are some  
2 issues that go beyond your personal knowledge;  
3 correct?

4 A. Yes.

5 Q. The documents that you cite to were provided  
6 to you by the Debevoise lawyers; right?

7 A. Yes.

8 Q. Claimant's lawyers?

9 A. Umm-hmm.

10 Q. Perfect. Thank you.

11 Let us now look at your work as a law clerk.

12 In your First Witness Statement you say that as a law  
13 clerk, you provide assistance to the *vocales* of the  
14 Tax Tribunal in resolving the disputes presented by  
15 the taxpayers against SUNAT's resolutions; correct?

16 A. Correct.

17 Q. Just to contextualize this, if SUNAT  
18 determined that a taxpayer fails to pay a tax or it  
19 pays it insufficiently, the SUNAT issues  
20 assessments--that is to say, the determination and  
21 penalty resolutions?

22 A. Correct.

1 Q. And the taxpayer may challenge those  
2 decisions by SUNAT, first within the SUNAT itself and  
3 then to the Tax Tribunal; correct?

4 A. Correct.

5 Q. The Resolutions by the Tax Tribunal may be  
6 challenged to the courts of Perú?

7 A. Yes, in a contentious proceeding.

8 Q. They can go up to the Supreme Court of  
9 Justice; right?

10 A. Yes.

11 Q. To be clear, there are three instances at  
12 the judicial stage?

13 A. I'm not sure, I do not handle the judicial  
14 part very well.

15 Q. Okay. Fine. It is not your expertise. We  
16 can talk about that with other Experts. No problem.

17 So, the Tax Tribunal solves the  
18 controversies between the taxpayer and SUNAT,  
19 basically; right?

20 A. Amongst other administrations, yes.

21 Q. Those disputes are solved specifically by  
22 the Specialized Chambers; right?

1 A. Yes.

2 Q. There are cases that can go to the Plenary  
3 Chamber, but specifically, Specialized Chambers are  
4 the ones that solve those issues?

5 A. Yes.

6 Q. Within those Specialized Chambers, there are  
7 three *vocales*; right?

8 A. Correct.

9 Q. How many Chambers does the Tribunal have  
10 today?

11 A. 11. 12, rather. 12. My apologies.

12 Q. I'm sure you know the number better than I  
13 do, sir.

14 Once the appeal against a decision by SUNAT  
15 comes to the Tax Tribunal, it is assigned to one of  
16 those Specialized Chambers on the basis of the  
17 specialty of each Chamber; correct?

18 A. Correct.

19 Q. And within the Chambers, one of the three  
20 Tax Tribunal *vocales* is the "vocal ponente"; correct?

21 A. Correct.

22 Q. And that "vocal ponente," what he or she

1 does is to lead the Resolution of that case file. He  
2 prepares a draft of the Resolution that is discussed  
3 with the other *vocales*?

4 A. Yes. With the assistance of a law clerk.  
5 The *vocal* always works together with a law clerk. So,  
6 they draft a resolution, and it is submitted to the  
7 other Tax Tribunal *vocales*.

8 Q. Okay. They use a law clerk. The Tax  
9 Tribunal *vocales* always use law clerks?

10 A. That's a rule. Exceptionally, there were  
11 *vocales* that could not use law clerks, but the rule is  
12 that they use them.

13 Q. You say a "rule." Is it a rule based on  
14 regulations?

15 A. No, it's not in the regulations, but it is  
16 in the Manual of Procedures of the Tribunal.

17 Q. In your Witness Statement you said  
18 "generally," and now you are giving a more definitive  
19 answer.

20 A. Generally, but it is also included in the  
21 manual that the *vocal* may give the case file to a law  
22 clerk.

1 Q. May?

2 A. He may do it, but it is a rule that was  
3 applied in almost all cases.

4 Q. So, it wasn't always used?

5 A. In very exceptional cases, in very specific  
6 cases, a *vocal* did not have the assistance of a law  
7 clerk.

8 Q. Okay. Very well. You spoke about the  
9 procedural manual, and also we have the Manual of  
10 Organization and Functions of the Tribunal; correct?

11 A. Correct.

12 Q. And there we have the functions of the  
13 different officials within the Tax Tribunal, as we  
14 have in all of the entities where the functions are  
15 clearly established; correct?

16 A. Correct.

17 Q. In that manual, the function of the Tax  
18 Tribunal *vocales* is to decide the case files assigned  
19 to them, to attend the chamber's sessions where the  
20 members issue their votes on the matters in question,  
21 and also to have oral hearings, amongst other things;  
22 correct?

1 A. Yes, correct.

2 Q. The manual of organization is CA-186. It is  
3 behind Tab 5. I see that you're trying to look for  
4 it. Page 78 of this document indicates what you have  
5 said to me in summary form; is that correct?

6 A. Yes, that's correct.

7 Q. In connection with the oral hearings, the  
8 oral hearings are basically hearings; right?

9 A. Yes.

10 Q. The Parties present their arguments. SUNAT  
11 does so, the taxpayer does so, and the Tax Tribunal  
12 *vocales* of the Chamber are present there; correct?

13 A. Yes, correct.

14 Q. I understand that, from a regulatory  
15 viewpoint, two of the *vocales* that are going to be  
16 deciding the case have to be present during the oral  
17 report?

18 A. Yes, necessarily.

19 Q. Otherwise the hearing has to take place  
20 again ; correct?

21 A. Yes, correct.

22 Q. In your Witness Statement, you say at

1 Paragraph 28--I think it's your First Witness  
2 Statement.

3           You say that the law clerks try to be  
4 present during the oral hearings; correct?

5           A. Regularly, the law clerks were present. We  
6 were present during the oral hearings.

7           Q. But not always?

8           A. If it was a simple case that didn't really  
9 require the presence of the law clerk or if it was  
10 known that they were going to say something that was  
11 not novel, the law clerk was not there. But if there  
12 were cases that were a little more discussed or that  
13 needed more work from the law clerk, the law clerk was  
14 always present. Or when no law clerk was appointed to  
15 that case, well, of course there was no law clerk for  
16 the case.

17           Q. So, the oral hearings can take place without  
18 a law clerk?

19           A. That's the exception.

20           Q. But it can be done?

21           A. Yes, of course.

22           Q. But if the *vocales* are not present, no oral

1 hearing can take place?

2 A. That's right.

3 Q. In this Manual of Organization and Functions  
4 of the Tax Tribunal--we can show it on the screen if  
5 you wish.

6 A. Yes, please.

7 Q. It is behind Tab 5. It's on the screen.  
8 Here it talks about, for example, Taxation Specialist  
9 IV. That is one of the law clerk levels.

10 A. What page?

11 Q. Yes, excuse me. I'll tell you the page. It  
12 is Page 83 of the document.

13 A. Umm-hmm.

14 Q. So, Taxation Specialist IV is one of the  
15 kind of law clerk that we have; right?

16 A. Yes.

17 Q. The functions are studying requested cases,  
18 proposing the solution of a dispute submitted, they  
19 have to do research on case law if asked by the  
20 Tribunal *vocal*, they gather regulations, and also they  
21 prepare the Draft Resolution for each one of the files  
22 that was assigned to them; correct?

1 A. Yes, correct.

2 Q. And this you explained in your Witness  
3 Statement at Paragraph 29. You mention here what you  
4 call the "decision stage" that takes place after the  
5 oral hearing; correct?

6 A. Correct.

7 Q. Let's look at Paragraph 29 of your First  
8 Witness Statement. We are going to show it on the  
9 screen.

10 It says here, first the law clerk looks at  
11 the whole file and meets with the "vocal ponente" to  
12 discuss the Resolution; correct?

13 A. Yes, that's correct.

14 Q. And I'm reading out of your Witness  
15 Statement.

16 Then after this meeting, the law clerk  
17 prepares a draft resolution, the Draft Resolution,  
18 which is a draft of the Resolution; correct?

19 A. Correct.

20 Q. And that draft is first examined by the  
21 "vocal ponente"?

22 A. Yes, that's normally the case.

1 Q. And the "vocal ponente" may make changes of  
2 the draft?

3 A. Yes, they can do it.

4 Q. Once the "vocal ponente" is happy with the  
5 contents of the draft, it is sent then to the other  
6 *vocales* of the Tax Tribunal of the Chamber for it to  
7 be reviewed?

8 A. Yes.

9 Q. And those two other Tribunal *vocales* can, of  
10 course, make changes to the draft?

11 A. Yes, they can do so.

12 Q. The law clerks cannot oppose those changes  
13 to the Draft Resolution?

14 A. Well, if you're asked, you can justify why  
15 you are presenting a certain consideration, but if  
16 they insist, you cannot oppose to their statements.

17 Q. Of course.

18 And that Draft Decision is the subject of  
19 deliberation by the three Tax Tribunal *vocales* of that  
20 Chamber, and they decide the case; correct?

21 A. Yes.

22 Q. In general, during the deliberations amongst

1 the members, the law clerks are not present?

2 A. Generally, no, but sometimes we are called  
3 upon to explain something to the Chamber and we were  
4 present of course.

5 Q. Of course. The Decisions of the Tax  
6 Tribunal specialized chambers do not need to be  
7 unanimous?

8 A. No, they can be decided by a majority.

9 Q. If there is a *vocal* that disagrees with the  
10 Resolution, it can issue a dissenting opinion?

11 A. Yes. They usually do that amongst peers,  
12 yes.

13 Q. Of course. And the *vocal* that chooses to  
14 disagree and submits a dissenting opinion, does he or  
15 she use a law clerk?

16 A. It depends on the nature of the Opinion.  
17 Sometimes the "vocales" issued dissenting Opinions in  
18 a reiterated manner, in matters which for them were in  
19 a certain way, and the Tribunal had another Opinion,  
20 so they just copied another Opinion and they didn't  
21 really need a law clerk. If the vote was very short,  
22 it could be made by the *vocales*. But if the vote

1 needed some substantial modification, they used a law  
2 clerk.

3 Q. In your two Witness Statements, sir, you  
4 conclude--and you did so during your direct--you  
5 conclude that the President of the Tribunal and the  
6 assistant--I think you call her an "asesora"  
7 now--unduly influenced in the Resolutions of the  
8 Royalty Cases of '07, '06, and '08 of Cerro Verde;  
9 correct?

10 A. Correct.

11 Q. Just to confirm, you did not participate in  
12 any of those cases; correct?

13 A. Correct.

14 Q. You did not participate in the oral hearings  
15 related to those cases?

16 A. I did not participate in those either.

17 Q. You did not participate in any of the  
18 communications amongst the *vocales* in connection with  
19 those cases?

20 A. Correct. My conclusion, however, does not  
21 have to do with my direct participation. It has to do  
22 with the documents I was able to see after my

1 experience of being in the Tax Tribunal for 14 years.

2 Q. Right. You make reference to an email by  
3 Úrsula Villanueva with Ms. Olano; correct?

4 A. There are a few emails, I think.

5 Q. At Paragraph 40 of your First Witness  
6 Statement?

7 A. Yes, that's correct.

8 Q. I understand that you received that email  
9 for the first time between 2020 and 2021; right?

10 A. 2021.

11 Q. And that email was provided to you by  
12 Claimant's Counsel; right?

13 A. Correct.

14 Q. I understand that Claimant's Counsel  
15 obtained that email via the transparency proceedings?

16 A. Yes, requests for access to information.

17 Q. Did you verify where the email came from?

18 A. No.

19 Q. We had already said that this email, like  
20 the other ones that you cite, you obtained via the  
21 Claimant's Counsel in 2021; correct?

22 A. Correct.

1 Q. Just to set a timeline, as you indicated in  
2 our other Hearing, the email by Ms. Villanueva was  
3 sent before the oral hearings that were related to the  
4 Royalty Cases of '06, '07 and '08.

5 A. Before the oral hearings, but after the  
6 notification for the oral hearings--

7 Q. Yes, but before the oral reports as such; is  
8 that correct?

9 A. Yes.

10 Q. After the oral hearings, as we established,  
11 there are deliberations on the Draft Resolutions, and  
12 in those deliberations, the law clerks are not  
13 present?

14 A. Generally, they are not.

15 Q. At Paragraph 47 of your First Witness  
16 Statement, you say that evidence that Ms. Villanueva  
17 participated in the case of 2008 was the initials that  
18 appear under the signature in the Resolution; correct?

19 A. Her initials appear below the signature, and  
20 Ms. Olano also recognizes this in her Statements.

21 Q. Right. Just to understand, this Resolution  
22 with these initials, this was served on the taxpayer

1 when the resolution is notified; correct?

2 A. Correct.

3 Q. The practice, as I understand it and you  
4 explain it, is that the signatures, more or less,  
5 include the work route of who participated in the  
6 preparation of the Resolution in capital letters;  
7 correct?

8 A. Correct.

9 Q. And the lowercase initials are the ones of  
10 the Secretary of the Chamber?

11 A. Yes, the Administrative Secretary.

12 Q. Okay. Thank you for the correction.

13 To be clear, the first initials, "Z.D.," in  
14 this case, are the ones from the "vocal ponente," and  
15 then you have the rapporteur, which is not the law  
16 clerk--

17 A. Yeah, the rapporteur is not the law clerk.

18 Q. And then if you there is a law clerk, you  
19 write the initials?

20 A. Yes, the initials of the law clerk.

21 Q. I understand from your testimony in the  
22 last Hearing, that the initials of the law clerks are

1 not always included, although they may have  
2 participated?

3 A. There are some very rare exceptions. The  
4 unique exception in which a law clerk has participated  
5 and his initials are not in the Resolution is when the  
6 draft is so bad that the *vocal* had to redo it and the  
7 *vocal* of the Tribunal withdraws the initials of the  
8 law clerk.

9 Q. Okay. So, including these initials is a  
10 practice by the Tax Tribunal, but it's not the  
11 obligation of the Tax Tribunal?

12 A. I do not remember any Resolution without the  
13 initials in the 14 years I was there.

14 Q. That was not my question.

15 My question was, it is not a rule--it is not  
16 an obligation to include these initials?

17 A. If you're saying that it's not in the  
18 manual, it's not in the manual of procedures, but I do  
19 not remember a single resolution without the initials  
20 of the work route.

21 Q. Sometimes in the work route, perhaps a law  
22 clerk is not mentioned, even though the law clerk

1 participated in it; correct?

2 A. Yes, correct.

3 Q. To illustrate this point, if we go to  
4 Tab 7--

5 ARBITRATOR TAWIL: Excuse me. I do have a  
6 follow up question, rather, just to understand.

7 You said that the initials are there unless  
8 the draft is really bad and the draft has to be remade  
9 and the initials are withdrawn?

10 THE WITNESS: When a law clerk participated  
11 and the initials are withdrawn, it could be the  
12 situation that I mentioned, which is because the work  
13 has not been done properly. The other situation is  
14 when there was no participation also by a law clerk,  
15 so there are no initials by the law clerk, but that's  
16 in very rare cases.

17 ARBITRATOR TAWIL: Would it be reasonable to  
18 think that internally, within the Tax Tribunal, the  
19 fact that the initials are there is like a recognition  
20 of the work done by the law clerk, and when the  
21 initials are removed is a recognition that the work  
22 has not been done properly?

1           THE WITNESS: In principle, yes, but the  
2 idea of the work route is that the Administrative  
3 Secretary of the Chamber can always take the latest  
4 version corrected by the *vocales*.

5           ARBITRATOR TAWIL: Okay. Thank you.

6           BY MS. DURÁN:

7           Q. Okay. Let us move to Tab 7. This is RE-2  
8 58. Let us look at the signature portion of this, the  
9 last page. I see that you have it on the screen as  
10 well.

11          A. Yes.

12          Q. You can see the number of the Resolution,  
13 213-10-2018. And "10" means that it comes from  
14 Chamber 10; correct?

15          A. Yes, correct.

16          Q. And when we look at the signature, first you  
17 have "G.C.," Guarníz Cabell. He was the "vocal  
18 ponente" in that case?

19          A. Yeah, she was. She was the "vocal ponente."

20          Q. And then it says T.S., which is the  
21 rapporteur clerk?

22          A. In this case, Claudia, yes.

1 Q. Toledo Sagástegui?

2 A. Correct.

3 Q. And then we have lowercase initials, which  
4 are the Administrative Secretary's initials?

5 A. Yes, correct.

6 Q. Thus, it is one of those cases in which or  
7 there was no law clerk or there was a law clerk, but  
8 he or she was penalized?

9 A. Yes. This is a typical case, in which  
10 normally a *vocal* could not use a law clerk. These  
11 were very specific cases, typically when the draft  
12 Resolution was very, very simple, like this, very  
13 straightforward.

14 This is a case related to Payment Orders.  
15 Payment Orders in Perú are only issued on the basis of  
16 your own tax return. So, the work of a Tax Tribunal  
17 *vocal* or a law clerk in this case is only to verify  
18 that the amount of the Payment Order is the same  
19 amount in the tax return. So, it's very short.

20 Another case where no law clerk was used is  
21 when the members that made the Resolutions--well,  
22 there were many members in the Tax Tribunal that had

1 had many years of experience as law clerks of the Tax  
2 Tribunal, so they knew how to draft this very well.  
3 They were very familiar with the drafting of these  
4 things, so they could prepare their Resolutions  
5 without using a law clerk.

6 Q. Tab 8, please. This is RE-257, for the  
7 record. This Decision is numbered 12478-1-2019, and  
8 "1" says that it belongs to Chamber 1?

9 A. Yes, that's correct.

10 Q. Let's look at the last page please, at the  
11 signature section, and we have two signatures up top.  
12 The rapporteur clerk, and then we have the dissenting  
13 opinion; correct?

14 A. Correct.

15 Q. So, in this Resolution, we have a 2:1 ratio?

16 A. Not for the full Resolution. The dissenting  
17 opinion has to do with just one aspect of this  
18 Resolution.

19 Q. The initials here, we have two types of  
20 initials: "M.V.," which is Moreano Valdivia, he is a  
21 Tax Tribunal *vocal*--it is under the rapporteur clerk  
22 and under the dissenting opinion of *vocal* Moreano

1 Valdivia--and then the initials of the Administrative  
2 Secretary?

3 A. Yes, in this case they didn't include the  
4 ones from the Secretary rapporteur of the Chamber.

5 Q. Yes, but you said it was part of the custom?

6 A. Well, what I said is that there shouldn't be  
7 a single resolution without a work route.

8 Q. But it sometimes happens; right?

9 A. Without a work route? No, I've never seen a  
10 Decision without a work route. The one that you're  
11 showing to me has a work route.

12 Q. So, the rapporteur did not participate in  
13 this Resolution, or is it incomplete? Is the work  
14 route incomplete?

15 A. Well, the work route came from the latest  
16 draft, which is from the folder of Mr. Moreano.

17 ARBITRATOR TAWIL: That's the capital  
18 letters. What about the lowercase letters here?

19 THE WITNESS: That would be the  
20 Administrative Secretary of the Chamber.

21 BY MS. DURÁN:

22 Q. To be clear, we have three different

1 individuals: The rapporteur clerk, the administrative  
2 secretary, and the law clerks?

3 A. Yes, of course.

4 Q. Their roles are completely different; right?

5 A. The rapporteur is a lawyer, the  
6 administrative secretary is an administrative  
7 assistant, or executive assistant, I think it is  
8 called, and the law clerks--all of us were lawyers.

9 Q. And the Resolutions should always bear the  
10 signature of the three members that made the  
11 Resolution?

12 A. Yes, necessarily.

13 Q. You say that in the Cerro Verde Cases, it is  
14 irrelevant that the Resolutions were signed because  
15 they were going to be signed anyways because of the  
16 influence of Ms. Olano; correct?

17 A. Correct.

18 Q. Your testimony, then, is that the Tax  
19 Tribunal *vocales* agreed to sign just to please the  
20 President?

21 A. I don't know if just to please the  
22 President, but they signed a Resolution that was

1 identical to the one issued before in connection with  
2 which they opposed, via a series of emails. They said  
3 that there was lack of coordination, or irregular  
4 conduct of Chamber 1, but then they signed this  
5 identical Resolution without any kind of change, the  
6 three *vocales* did.

7 Q. You're talking about Chamber 10, but in  
8 connection with Chamber 1, there were three different  
9 Tribunal *vocales* that signed it as the Resolution that  
10 was issued. Those three Tribunal *vocales* were also  
11 under the influence of Ms. Olano, that's why they  
12 signed the Resolution?

13 A. Well, the Draft Resolution out of Chamber 1  
14 was worked on by Úrsula Villanueva, and it was also  
15 deliberated with Ms. Olano. There was a same kind of  
16 pressure that Chamber 10 *vocales* had.

17 Q. You did not really live through any of these  
18 events?

19 A. It's not necessary for me to live through  
20 them.

21 Q. My question is different. You didn't live  
22 through any of these events?

1           A.    To reach my conclusion, I don't have to be  
2 present.  I concluded what I concluded on the--based  
3 on the documents that I was shown, and of the 14 years  
4 that I was working in that same institution.

5           Q.    Sir, please reply to my question.

6                    You did not live through any of these  
7 events?

8           A.    Again, I wasn't present.  I already said  
9 that.

10          Q.    Thank you.

11                   As we have seen, you also present a series  
12 of allegations.  They are quite serious against  
13 President Olano.  And you say at Paragraph 33 of your  
14 First Witness Statement--we can look at it on the  
15 screen.

16          A.    Please go ahead.

17          Q.    Towards the end of that paragraph, you  
18 say:  "However, during my time at the Tax Tribunal, I  
19 witnessed how President improperly intervened to  
20 influence the resolution of cases of high interest to  
21 her, with the help of her assistants"; correct?

22          A.    Correct.

1 Q. You do not have any citation to support your  
2 assertion; correct?

3 A. No. It is just my conviction.

4 Q. And is that what you lived during 14 years  
5 that you were at the Tax Tribunal?

6 A. I don't know if I lived this during  
7 14 years, but I saw this starting a specific year.

8 Q. Did you ever present any claim?

9 A. No.

10 Q. And you do not either refer to any  
11 administrative proceeding against President Olano  
12 throughout the 14 years; correct?

13 A. Correct.

14 Q. Now, we move on to the next paragraph of  
15 your First Witness Statement. In there, you explain  
16 how you believe that there was an intervention in the  
17 resolution of the cases; correct?

18 A. Correct.

19 Q. In the first five phrases, you do not cite  
20 any document?

21 A. Correct.

22 Q. And then you state that, at the same

1 paragraph, that Dr. Olano supposedly influenced the  
2 process because she had a lot of power to ratify the  
3 "vocales"?

4 A. Yes. She was the person who was mainly  
5 responsible for it.

6 Q. And you state--I have the impression that  
7 the "vocales" would reject the draft resolutions that  
8 supposedly came from Presidency. That was your  
9 impression?

10 A. Could you say that again?

11 Q. In the last phrase of Paragraph 34--and in  
12 English it should be on the next page.

13 Do you see it?

14 A. Yes.

15 Q. But you never made any claims against it  
16 during your 14 years at the Tribunal?

17 A. No.

18 Q. Mr. Estrada, did you ever participate of the  
19 Ratification Commission?

20 A. As a member of the Commission or as a vocal  
21 to be ratified, no, but I am familiar with the process  
22 because we helped our vocales throughout this process.

1 Q. Just to clarify, in connection with the  
2 Ratification Commission that assesses the "vocales"  
3 who are seeking to be ratified. In those sessions of  
4 that Commission, did you ever participate or not?

5 A. No. Only members of the Commission  
6 participated of those meetings.

7 Q. And if I recall correctly, in your Statement  
8 in February, the answer was "no, never"?

9 A. Yes. Clearly, as a member of the Commission  
10 or as a "vocal" to be ratified no, but I am familiar  
11 with the processes, because the "vocales" always just  
12 asked us for help. There is a lot of administrative  
13 work to be done and documents to be completed. So, we  
14 did help the "vocales."

15 Q. So, you were helping the "vocales" that were  
16 trying to get ratified?

17 A. Yes.

18 Q. And you are saying that it required a lot of  
19 documentation, because it required to file their  
20 resumes, resolutions they had issued, among others?

21 A. Well, the typical thing that a vocal asked  
22 you for, the "vocal" had to present three Resolutions

1 from the last three years, and we search what we  
2 thought were their best Resolutions. We discussed  
3 them with them. We chose them together, and then we  
4 had more of the administrative portion, sort  
5 documents. There was a lot of paperwork.

6 Q. Those three Resolutions that you looked for  
7 is because you assess the quality of the Resolutions  
8 issued; correct?

9 A. It assesses the quality of the Resolutions.  
10 There are two Assessments that are related to the  
11 President of the Tribunal. One is presented by the  
12 vocal, and another evaluation is on the resolutions  
13 that they have randomly found of the vocal.

14 Q. And those others, are they randomly  
15 selected?

16 A. Yes. Usually, what the Tax Tribunal did was  
17 hire a notary to do the random selection, and then we  
18 analyze their randomly selected Resolutions.

19 Q. Random means randomly?

20 A. Randomly.

21 Q. Fine. Now, on the Ratification Commission,  
22 you have four members; correct?

1           A.    Yes.

2           Q.    Who are those members?

3           A.    We have the President of the Tax Tribunal, the  
4 Dean of the oldest public law school of Perú, the Dean  
5 of the oldest private law school of Perú, and a member  
6 of the Ministry of Economy and Finance.

7           Q.    And the member of the Ministry of Economy  
8 and Finance has the deciding vote; correct?

9           A.    In case of a tie, yes.

10          Q.    Sure, because there are four members,  
11 they need someone to decide if there is a  
12 tie, right?

13          A.    Yes.

14

15          Q.    And the Deans of those universities, I  
16 understand that they are respected universities in tax  
17 matters and law, and they are the ones that  
18 participate in these commissions; correct? Academics?-

19          -

20          A.    Well, I do not know whether they have  
21 specific Tax Expertise necessarily, but they are the  
22 deans of the oldest law schools. Whether they have

1 tax expertise, I do not recall. I do not recall any  
2 Law Dean that has been an Expert on taxes.

3 Q. But when you're saying that they are the  
4 oldest ones, are they the most important universities  
5 in Perú?

6 A. Yes.

7 Q. Now, if we look at Tab 12, CE-667.

8 A. Okay.

9 Q. That document is a document that you cite  
10 several times to allege the influence by the President  
11 of the Tax Tribunal; correct?

12 A. Yes.

13 Q. And this is an interview to a former "vocal"  
14 of the Tax Tribunal, Ms. Ana Maria Cogorno? Correct?

15 A. Correct. Former vocal.

16 Q. Yes, she was. And she gave this interview  
17 once she left the Tax Tribunal, correct?

18 A. Yes.

19 Q. If we can look at Page 2. I do not know if  
20 your version will have a page number, apologies, but  
21 it is question 16.

22 A. I don't have numbered questions in Spanish.

1 Q. Apologies, it is a printing problem. We can  
2 put it on the screen so it can be located.

3 Here, the question is: "Would you recommend  
4 a young professional to join the Tax Tribunal?"

5 Are you there?

6 A. I'm looking for it.

7 MR. RIVERA: Sorry. Can the witness have the  
8 complete document? It's not in his binder. And also,  
9 I mean, I think it would be good for him to have a  
10 reference.

11 MS. DURÁN: You're saying that you don't  
12 have the complete document?

13 MR. RIVERA: I'm saying that the complete  
14 document is not in his binder; right? I mean, he just  
15 said that numeration is off. So, can he--

16 MS. DURÁN: No, it's not that numeration is  
17 off. The printing, when you print it, unfortunately,  
18 the numbers of the questions do not appear, but it's  
19 on the screen.

20 THE WITNESS: I found the question.

21 MS. DURÁN: And I understand that the  
22 Witness found what we are asking him about.

1 BY MS. DURÁN:

2 Q. The question is, would you recommend a young  
3 professional to join the TF. TF is the Tax Tribunal;  
4 correct?

5 A. Yes.

6 Q. And her answer is "yes," correct?

7 A. "Yes, but."

8 Q. So, we can read the "but" if you want. It  
9 says: "But I would tell him that you have to have a  
10 calling"?

11 A. Yes. It is a remark.

12 Q. So, in general to work in the public sector,  
13 you need to have the vocation for it; correct? A call  
14 to that type of work; correct?

15 A. Yes. That's what I mean in that answer with  
16 the "but."

17 Q. If you want, we can continue to read it.

18 "So, that is the recommendation. It is not  
19 just about getting a job. You have to be a good  
20 technician and have an interest in public service to  
21 be in the Tax Tribunal"; correct?

22 A. Yes.

1 Q. And if we now look at Page 6. I am afraid  
2 you will to have count the Pages. I apologize. That  
3 is the last page of the interview, and the  
4 second-to-last answer to the question that says--take  
5 some time.

6 A. Okay.

7 Q. Are you there?

8 A. Yes.

9 Q. This is an answer that you cite in your Witness  
10 Statement to say that, because of the influence of the  
11 President of the Tax Tribunal on the ratification,  
12 correct? Do you remember?

13 A. Yes. This is a question that is highly  
14 related to other questions answered by Dr. Cogorno in  
15 this case, but I am citing this, indicating that she  
16 indicated her unhappiness with the ratification  
17 process.

18 Q. What she said, the question is: "Take some  
19 time to think about your new occupations." They are  
20 saying to her: "well, what comes for the future.  
21 Correct? And many people look to you as an example."  
22 And she says, "I would like to teach and be a

1 consultant now"; correct?

2 A. Yes.

3 Q. And then she said it's great to be  
4 absolutely free, and not to be wondering if there will  
5 be ratifications or not, whether they liked it or not.  
6 And then she continues.

7 And you did not quote what follows: "But  
8 I'm still happy, and I'm very grateful for the Tax  
9 Tribunal for all that time, because I learned a lot  
10 and I met very valuable people"; correct?

11 A. Yes. She's happy to leave the institution.

12 Q. She's thanking the institution?

13 A. When one reads that answer, and reads that  
14 with the previous answers to this question, the  
15 deepest question by Dr. Cogorno had to do with the  
16 pressure at the time of ratifying a "vocal." So,  
17 she's happy. She doesn't need to be part of a process  
18 that she thought was completely unfair and unnecessary  
19 every three years.

20 Q. First of all, she does not use the words  
21 "unfair"; correct?

22 A. If we look at a previous question, she does

1 not say "unfair," but she says that it is a pressure  
2 mechanism.

3 Q. You can look at this later on with your  
4 attorney, but it says "I am happy," and she thanks the  
5 Tax Tribunal; correct?

6 A. But I understand that "happy" is because she  
7 left the institution, and she is thanking the Tax  
8 Tribunal--not the Tax Tribunal but for all her time  
9 there. She learned a lot and she met very valuable  
10 people. I do not think she's thanking the  
11 institution. Just the time she was there, and also  
12 the people that she met while being there.

13 Q. Yes, because she appreciates whoever she  
14 met. So, she thinks that they were very valuable  
15 people. So, in this interview, Mr. Estrada,  
16 Dr. Cogorno does not mention the President at any  
17 time; correct?

18 A. Well, she discusses quite a bit the position  
19 of Dr. Olano and there are no more than two  
20 Presidents. There is only one. So, when she  
21 questions the position of the Tax Tribunal President,  
22 she does not mention Dr. Olano directly, but, clearly,

1 Dr. Olano was the President back then.

2 Q. Just to confirm, in spite of all of these  
3 alleged disagreements, that Ms. Cogorno had, she  
4 recommended a young person with a vocation to go to  
5 work at the Tax Tribunal; correct?

6 A. Yes, but also with a caveat saying "but."

7 Q. Regarding having vocation?

8 A. Yes.

9 Q. And she thanks the very valuable people that  
10 she met there?

11 A. Again, to the people that she met. I don't  
12 think that she's thanking the institution.

13 Q. Dr. Cogorno--did she ever put a claim against  
14 Dr. Olano?

15 A. Only in this interview she expressed her  
16 disagreement. I believe, I understand that the  
17 "vocales" could not offer any interviews while they  
18 were *vocales*.

19 Q. That's why I'm asking you about Dr. Cogorno,  
20 when she left. Did she present any claims against  
21 President Olano?

22 A. I do not recall anything beyond this

1 interview, but in this interview, she criticizes.

2 Q. Mr. Estrada, in your Second Witness  
3 Statement--I think you do it in both, but in the  
4 Second one you refer to a culture change, when  
5 allegedly there was a change in the tradition when  
6 Legislative Decree 1115 was passed for giving a bonus  
7 on the performance on the "vocales" of the Tax  
8 Tribunal. Correct?

9 A. Can you show me that?

10 Q. Yes. This will be Paragraph 15 of your  
11 Second Statement.

12 A. Did you say second?

13 Q. Yes.

14 Are you there?

15 A. Yes.

16 Q. There, it refers to the efficiency or the  
17 performance bonus. In that same paragraph, you also  
18 say that that the bonus was never implemented?

19 A. Yes. That's why it was negative incentives,  
20 since it was never implemented.

21 Q. Mr. Estrada, the 1115 Legislative Decree  
22 says that there is an authorization to pay the bonus.

1 Correct?

2 A. It is saying that it will be regulated through  
3 the Ministry of Economy, and authorizing the MEF to  
4 pay that bonus.

5 Q. Sure, precisely. And here it says, clearly,  
6 that it had to be authorized by the MEF before making  
7 any payment. Correct?

8 A. Well, there should be a rule. The  
9 Legislative Decree refers its regulation to a Supreme  
10 Decree that was never issued. That's why it was so  
11 perverse, so negative.

12 Q. But if the Legislative Decree only says "do  
13 it," you cannot wait until it is actually regulated to  
14 be paid?

15 A. When a rule, such as a law or legislative  
16 decree, refers its regulation to a law of a lower  
17 hierarchy, what is normal, what is correct and what  
18 should always happen is that this law has to exist.  
19 The exception is what happened in this case. That is,  
20 that the Ministry of Economy in 2013-2014 years and  
21 onwards did not regulate, did not implement the  
22 bonuses, but that was a perverse aspect of these

1 bonuses, because the only reason why a Ministry of  
2 Economy and Finance is not regulating an expense is  
3 because they do not have the resources.

4 In the understanding of the *vocales* in that  
5 moment, it was to facilitate the existence of  
6 resources in favor of the MEF so that they no longer  
7 had the pretext of not regulating the bonuses due to  
8 lack of resources. If they had implemented this bonus  
9 immediately after the law was passed, it would have  
10 been less harmful the effect that it caused than the  
11 fact that it was not regulated.

12 Q. But the truth is that it was never  
13 regulated?

14 A. Correct.

15 Q. It could never be expected to be paid?

16 A. But, once again, you need to wait for a  
17 regulation that refers back to another one to be  
18 regulated, to be actually regulated. The  
19 extraordinary thing is what happened here, and that is  
20 what generated a perverse incentive for all the  
21 *vocales* during the first years. At a certain point, I  
22 understand that the *vocales* must have gotten tired of

1 waiting for the regulation, but for at least the two  
2 or three years immediately after the issuance of  
3 Legislative Decree 1115 there was a lot of expectation  
4 from the *vocales* in the sense that it would be  
5 regulated.

6 MS. DURÁN: Can I take 30 seconds?

7 (Pause.)

8 MS. DURÁN: I have no further questions.

9 Thank you.

10 PRESIDENT HANEFELD: Thank you very much.

11 Any questions in redirect?

12 MR. RIVERA: Yes, we do have several. We  
13 would be--

14 PRESIDENT HANEFELD: Several.

15 MR. RIVERA: Yes. We would be grateful if  
16 we could break for lunch, and then come back and do  
17 the redirect, Madam President.

18 PRESIDENT HANEFELD: Yeah. We would prefer  
19 the questions now. Just in order to--and now for the  
20 further planning, we have to end the Hearing today at  
21 5:30 our time, and I think Mr. Isasi is waiting on his  
22 remote testimony.

1           So, how much time do you need for your  
2 questions?

3           MR. RIVERA: I hope to be brief,  
4 Madam President, hopefully 10-15 minutes.

5           PRESIDENT HANEFELD: Then we would like to  
6 conclude.

7           MR. RIVERA: Okay. Can we have  
8 three minutes just to--

9           PRESIDENT HANEFELD: Sure. Sure.

10          MR. RIVERA: Okay. Thank you.

11          (Pause.)

12          PRESIDENT HANEFELD: So, we continue with  
13 the redirect.

14          MR. RIVERA: Thank you, Madam President.  
15 Yes, we're ready. I'll switch to Spanish again.

16                           REDIRECT EXAMINATION

17           BY MR. RIVERA:

18           Q. As you heard, we are short of time, so I am  
19 going to ask you some questions about your Statement  
20 and the questions by the attorney on behalf of Perú.  
21 Please respond as briefly, but as specifically, as  
22 possible.

1 A. Very well.

2 Q. Perú's Counsel mentioned that you were not  
3 in attendance in Chamber 1 and Chamber 10, that you  
4 did not participate in the Resolution of case files  
5 for the 2006, '07, and '08 Royalty Cases.

6 Do you recall that?

7 A. Yes.

8 Q. And you said that you did not need to be  
9 present to offer your Statement on the irregularities  
10 that were presented in general at the Tax Tribunal and  
11 in this specific case?

12 A. Correct.

13 Q. My colleagues showed you the email that you  
14 referred to to indicate the irregularities. This is  
15 the email that Úrsula Villanueva sent to the President  
16 Olano.

17 Do you recall that?

18 A. Correct.

19 Q. My question here is: Do you think that this  
20 is a familiar email, or why is it that you can  
21 identify this email based on your experience?

22 A. One second, please. Could you please show

1 the email on the screen?

2 Q. Yes.

3 MR. RIVERA: Could you help us?

4 BY MR. RIVERA:

5 Q. I think it is in your Statement.

6 A. Yes. I have it here.

7 Q. Based on your experience that you mentioned,

8 were this the type of emails that you saw frequently?

9 Or what type of email was this?

10 Did you usually see it?

11 A. Well, this is a typical type of

12 communication between a law clerk and the "vocal

13 ponente." In other words, I must have sent 50 emails

14 like this one for different reasons to a "vocal" I was

15 working with.

16 This is an email for coordination purposes,

17 and it is not only recognized by Ms. Olano in her

18 Statement, but it is also signed by Úrsula Villanueva

19 in the Resolution.

20 It is a typical email when a law clerk has

21 reviewed the case file, and in this case, Úrsula

22 Villanueva, because she says: "I sent you the

1 arguments of both Parties," and this is because she  
2 has had the case file at hand. She also said that she  
3 sent "as well as the main clauses of the Stability  
4 Agreement." That is related to all of the Cerro Verde  
5 disputes.

6 "There are arguments for both sides." That  
7 means that she has a position, and "I am more or less  
8 leaning to one side" to make a comment, and --then she  
9 says: "When you can, read the arguments and we can  
10 discuss it."

11 This is a typical email sent by the chamber  
12 law clerk to the "vocal ponente" to deliberate a case  
13 file later.

14 Q. Thank you. You were also asked about  
15 irregularities that you witnessed. What types of  
16 irregularities, briefly, did you witness? When did  
17 you start seeing them?

18 A. As of 2012 and up to--or between 2004 and  
19 2012, when I was with the Tax Tribunal, workload  
20 increased significantly, but the Chamber would usually  
21 solve--resolve these files based on the oldest one  
22 presented.

1           As of 2012, when the Legislative Decree  
2 related to the bonuses was published and there was a  
3 new administration in Perú. We started to see news  
4 indicating that there was a large amount of money that  
5 was being litigated at the Tax Tribunal.

6           So, starting then, Ms. Olano started to send  
7 some information and some lists that included the  
8 files of the Tribunal, that included from the highest  
9 to the lowest amounts, but they broke away from this  
10 principle to resolve the issues based on seniority or  
11 the oldest case files presented. That initiated in  
12 2012 and continued all the time.

13           Q.    So, was Cerro Verde part of these lists?

14           A.    Yes. Cerro Verde's case files were in these  
15 lists.

16           Q.    So, if I understand you correctly, Cerro  
17 Verde was included in these lists because of the  
18 amount?

19           A.    Yes, because of the amount that has been in  
20 dispute before the Tax Tribunal.

21           Q.    In addition, my colleague took you to a  
22 document, which is the document at Tab 12, which is

1 the interview with Ms. Cogorno.

2 A. Correct.

3 Q. Who was Dr. Cogorno, very briefly?

4 A. Ms. Cogorno was a vocal of the Tribunal who  
5 served as a vocal of the Tax Tribunal for about  
6 20 years. She was the presiding vocal of Chamber 1  
7 when I came in. She retired because she hit the age  
8 limit.

9 Q. By age limit. When did she retire? Do you  
10 remember more or less?

11 A. I don't remember exactly, but it must have  
12 been about 2013.

13 Q. That is, more or less around the date the  
14 royalty case was resolved.

15 A. Yes.

16 Q. Now, the next page at the top is the  
17 question that begins: "What is your opinion about  
18 ratification of the *vocales* of the Tribunal?"

19 A. All right.

20 Q. It seems to me this is one of questions that  
21 you were referring to in your response.

22 Could you explain more or less what

1 Ms. Cogorno is saying here? It's Question Number 32.

2 Could you read the question, please?

3 A. "What is your opinion of the ratification of  
4 the *vocales*? It seems to me a bad idea that they  
5 ratify the *vocales*. It's a form of indirect pressure.  
6 There are sufficient grounds for removal in the Tax  
7 Code because ratification may be impartial or a means  
8 of pressuring, even more so now that it has to be done  
9 every three years."

10 Q. So, here Ms. Cogorno is saying that it is a  
11 means for bringing pressure to bear.

12 Did you hear this from other members?

13 (Interruption.)

14 (Stenographer clarification.)

15 (Comments off microphone.)

16 MR. RIVERA: I will just rephrase the  
17 question again.

18 BY MR. RIVERA:

19 Q. Did you hear what Ms. Cogorno said, that it  
20 was a way of bringing pressure from the other *vocales*?

21 A. Yes. There's no vocal who wants to be  
22 ratified in his functions every three years,

1 especially because the criteria for ratifying the  
2 *vocales* of the Tribunal--well, there were objective  
3 criteria, such as their CV, a psychological  
4 evaluation, but those two components accounted for  
5 only 10 or 20 percent. The lion's share of the  
6 criteria for ratification, 60 percent, depended  
7 entirely on Ms. Olano.

8 Q. And can you read the next question that  
9 begins: "Do you trust the Ratification Commissions"?  
10 And could you read the question first, please?

11 A. "Do you trust the Ratification Commissions?"  
12 And her answer is: "I don't know what the  
13 criteria are under which each of the members of the  
14 Commissions acts. I would prefer to have the Ministry  
15 of Economy and Finance make changes based on the  
16 grounds of Tax Code."

17 Q. So, is she saying she trusts?

18 A. No. In reality, no one trusts the  
19 Ratification Commissions. What they wanted--the Tax  
20 Code had specific grounds for removal of a member of  
21 the Tribunal.

22 So, a ratification process, when you had not

1 engaged in any of the grounds, were political pressure  
2 with respect to how they would act.

3 Q. Thank you very much, Mr. Estrada. My  
4 colleague from the other Party also mentioned the  
5 bonds--or the bonuses, rather. This was an  
6 expectation and that nobody expected them.

7 If we could turn to Question 56 of this  
8 article. It's the next-to-the-last question. It  
9 begins with "bad things, what do you mean?" Do you see  
10 that?

11 A. Okay.

12 Q. Could we begin on the last word of that  
13 page, the last word of that page, where it begins with  
14 the word "tampoco"? If you can read the question and  
15 start with "tampoco."

16 A. "Bad things? What do you mean? Neither  
17 have they paid us the bonus created by Legislative  
18 Decree 1115, which had to be paid on a quarterly  
19 basis, according to that rule. From July 2012 onwards  
20 and until this date, the Supreme Regulatory Decree has  
21 not been issued, and that's why they do not pay. In  
22 any case, they owe it to me as from July 2012."

1 Q. So, it was an expectation.

2 A. All of the *vocales* evidently expected it.

3 Q. Now, moving on to another topic: These  
4 irregularities that you witnessed in the Tax Tribunal  
5 that you mentioned in answering the lawyers' questions  
6 from the other Party, she spoke of the deliberation  
7 and decision-making process within the Tax Tribunal.  
8 When irregularities such as this came up on the part  
9 of President Olano, was there any possibility of a  
10 discussion--or deliberation, that is to say, or  
11 dissenting votes?

12 A. Well, as I told the attorney, the  
13 possibility of dissenting votes, especially from  
14 Mr. Moreano was always with his peers. When a draft  
15 had been prepared upon by the Presidency, obviously,  
16 then that diminished a lot that possibility. I never  
17 saw a dissenting vote when Villanueva had worked up  
18 the draft. Thus, yes it was pressure. So, what was the  
19 capacity for deliberation? Well, this is a Draft  
20 Decision from the boss. It is difficult to oppose  
21 that when, that same year or the next year, you're to  
22 be ratified.

1 Q. Now, you mentioned Mr. Moreano.

2 Mr. Moreano, in fact, was bothered upon receiving this  
3 draft, the draft from Chamber 1. Mr. Moreano was  
4 upset. Why was Mr. Moreano upset?

5 MS. DURÁN: I'm sorry--

6 MR. RIVERA: You're asking about a specific  
7 resolution from Moreano, so I'm asking the question  
8 about Moreano. And also, you asked him about the  
9 resolution process, so this is a question about the  
10 resolution process. I'm sorry. It is. I'm just  
11 asking about--

12 MS. DURÁN: No, you're asking about the  
13 coordination.

14 MR. RIVERA: I'm asking about the  
15 Chamber 10.

16 PRESIDENT HANEFELD: Please go ahead.

17 MR. RIVERA: Okay. Thank you.

18 Excuse me. I'm going to try to speak a  
19 little more slowly.

20 BY MR. RIVERA:

21 Q. You mentioned--it was mentioned the  
22 deliberative process in Chamber 10, or the

1 deliberative process in general?

2 A. Yes.

3 Q. Also, a Resolution by vocal Moreano was  
4 mentioned. When you speak of Mr. Moreano, and you're  
5 also talking about this Resolution process, why do you  
6 believe that Mr. Moreano was upset for having received  
7 a Resolution that already resolved a matter that was  
8 before their Chamber? Shouldn't he be happy that a  
9 complex case was already resolved?

10 A. Well, not actually. What should have  
11 happened at the Tax Tribunal, and what was done when  
12 the Chambers had either the same case or very similar  
13 cases, they should coordinate first before issuing  
14 even a draft. What would happen, in fact, would be  
15 that one would advise a law clerk--or rather, name a  
16 law clerk from Chambers 10 and 1, and then they would  
17 sit down together and we would begin discussing with  
18 our *vocales* the matter. Moreano was upset not because  
19 the work had been done, but rather because he did his  
20 work in vain. Let us recall that the case file before  
21 Chamber 10 had an oral hearing one month before the  
22 one before Chamber 1.

1           Normally in the Chambers when the case file  
2 is submitted for oral hearing there's already a draft  
3 resolution because there needs to be something to show  
4 the *vocales* when the Parties present their arguments  
5 so that the *vocales* have knowledge of the case that is  
6 being presented, the "vocal ponente" presents an  
7 initial draft.

8           Obviously, the fact that Chamber 1 had  
9 issued the Resolution with no coordination, because  
10 that's what the complaint is about, not that they are  
11 working on it, but that the Resolution was issued,  
12 throws out all the work that Chamber 10 had done in  
13 this case.

14           Q.   Very briefly, Mr. Estrada. Now, answering  
15 the questions by Perú's lawyers, you spoke about the  
16 work of the law clerks.

17                   Why do you think it was unlikely that vocal  
18 Cayo had worked on this case file without a law clerk?  
19 I'm talking about the case file regarding the  
20 2006-2007 Royalties.

21           A.   I don't think it's unlikely. I think it's  
22 impossible for him to work on it alone. Mr. Cayo, all

1 the time I was in Chamber 10 I worked with him.  
2 Mr. Cayo came into the Tax Tribunal, but his own only  
3 expertise was that he was an accountant. He obtained  
4 his law degree the same year that he came into the Tax  
5 Tribunal.

6 As accountant, well, accountants have many  
7 difficulties when it comes to writing particularly  
8 such complex or technical writing as the Tax Tribunal  
9 has to do.

10 So, Mr. Cayo, in the cases that were simpler  
11 than this, and really any case, he would always turn  
12 to a law clerk. The Cerro Verde case file was a  
13 particularly complex one. It was a controversy that  
14 had not been decided by the Tax Tribunal. It was a  
15 very voluminous case. I knew that because I handled  
16 it. It involved about five volumes, each volume has  
17 500 pages and the controversy involved a significant  
18 amount.

19 So, it is impossible for him to have worked  
20 on it alone unless, as I understand that occurred, he  
21 took the Resolution or the case file from Chamber 1  
22 and then just copied it and adjusted the data.

1 Q. Thank you very much.

2 MR. RIVERA: That is all the questions,  
3 Madam President.

4 PRESIDENT HANEFELD: Thank you.

5 A question on recross?

6 MS. DURÁN: Unfortunately, yes, Madam  
7 President. I will be very brief.

8 RECCROSS-EXAMINATION

9 BY MS. DURÁN:

10 Q. Mr. Estrada, you say in response to one of  
11 the questions put by the lawyer for the Company that  
12 as of 2012, the culture at the Tax Tribunal changed;  
13 right?

14 A. In the terms of resolving the matters on a  
15 first-come, first-serve basis.

16 Q. You left in 2018; correct?

17 A. Correct.

18 Q. For six years, did you denounce--during  
19 those six years, did you denounce any of the  
20 irregularities that you are discussing here?

21 A. No, I was a law clerk for a Chamber. It's  
22 the vocal who is most prejudiced by the conditions.

1 I, as a law clerk, would do what the vocal would ask  
2 me to.

3 Q. But you saw irregularities, and you did not  
4 denounce them to anyone?

5 A. The irregularities did not involve me. They  
6 did not involve my work, so I did not.

7 Q. Now, you spoke about the ratification  
8 process with the lawyer for Freeport.

9 If we could--and you spoke of the  
10 percentages or scores that were assigned to the  
11 members who were seeking ratification. If we could  
12 turn to Tab 11, please.

13 For the record, that is Exhibit CA-232. And  
14 if you can turn to Article 17, please.

15 A. I'm there.

16 Q. You're there.

17 Article 17, you're there?

18 A. Yes.

19 Q. There's a table that shows the scores, and  
20 it also--it speaks of CV, quality evaluation,  
21 evaluation of effectiveness and efficiency, and the  
22 psychological evaluation, and there's a personal

1 interview.

2           And I'm told there's no  
3 interpretation--there is no translation of this  
4 document, so--for which I apologize.

5           So, I will read it in Spanish.

6           So, it shows the different scores for the  
7 different criteria that are the basis for evaluation  
8 of the *vocales*; correct?

9           A.    Correct.

10          Q.    The quality evaluation has a 30 percent  
11 weight; correct?

12          A.    Yes.

13          Q.    Now, if we can look at or turn to  
14 Article 22.  And I'm so sorry because there is no  
15 translation for this either.  Are you there?

16                It says, at 22.1 it says:  "At the meeting  
17 called by the President of the Commission, each member  
18 thereof shall evaluate and grade, based on the  
19 conscience and exercising the principle of freely  
20 evaluating the CVs of the specialized Chamber members,  
21 the quality of the Decisions," that we had already  
22 established that some are chosen randomly, "presented

1 by the members and provided by the President of the  
2 Tribunal," but when it says "provided by the President  
3 of the Tax Tribunal" it's through that random process;  
4 correct?

5 A. There are two aspects where the President of  
6 the Tax Tribunal steps in.

7 Q. No, but that's not my question.

8 A. To answer your question, I need to tell you  
9 that she prepares two Reports: One for the quality  
10 evaluation, a report is done on the Resolutions  
11 proposed by the *vocales*; and in terms of effectiveness  
12 and efficiency, a report is drawn up on the  
13 Resolutions that have been randomly chosen by those  
14 *vocales* who are subject to ratification.

15 Q. And if we look at 22.2, it says "for  
16 evaluating quality, the Commission may draw on the  
17 services of a specialized third person"; correct?

18 A. Correct.

19 Q. Those Resolutions can be turned over to a  
20 third person to independently evaluate the quality of  
21 the Resolutions, correct?

22 A. Now, in all the years I've been at

1 Tribunal--and I've seen many ratification processes of  
2 the *vocales* I work with--the only third-party who  
3 would be brought in from the outside was a notary who  
4 would choose the Resolutions. I've never seen them  
5 call in a third person to evaluate the quality of  
6 those Resolutions.

7 Q. But it could be, right?

8 A. It is in the rule as a power, but I've not  
9 known of them to have exercised it.

10 Q. Now, you spoke about the email from  
11 Mr. Moreano, and you said what Mr. Moreano meant to  
12 say there. Did you speak with Mr. Moreano about what  
13 he meant to say?

14 A. We can read what it says. It's not necessary  
15 to interpret what it says. He says--it's clear what  
16 he says.

17 Q. No, I meant--that's not my question. My  
18 question is if you talked with him?

19 (Comments off microphone.)

20 MR. RIVERA: So, if you're asking about the  
21 email, it's just fair that you show him the email.

22 MS. DURÁN: Madam President, I'm not asking

1 about the email. My question is simply if he talked  
2 to "Vocal" Moreano about that email.

3 MR. RIVERA: Which email? So, can  
4 you--you're referring to an email, so he should have  
5 the document available.

6 MS. DURÁN: You asked him in redirect about  
7 an email. He knows perfectly well what email I'm  
8 talking about.

9 MR. RIVERA: Sorry, there were various  
10 emails. So, which one are you talking about?

11 MS. DURÁN: I will rephrase my question.

12 BY MS. DURÁN:

13 Q. Mr. Estrada, did you speak with Mr. Moreano  
14 about correspondence or emails that he's written?

15 A. This email, no, but we would always discuss  
16 any correspondence that Mr. Moreano would have issued.  
17 He was my boss for several years.

18 Q. But you did not discuss this email with him?

19 A. No.

20 Q. Now, you make a number of assertions that  
21 six *vocales*, including your former boss, Mr. Moreano  
22 signed because a decision came from the President of

1 the Tax Tribunal. Did you at any time denounce them  
2 for having signed something that they had not decided?

3 A. I have only learned that they signed  
4 something that they did not write on occasion of this  
5 Arbitration. I did not know that when I was at the  
6 Tax Tribunal.

7 MS. DURÁN: Okay. I have no further  
8 questions.

9 PRESIDENT HANEFELD: Thank you very much.  
10 If the Tribunal has no--

11 (Comments off microphone.)

12 PRESIDENT HANEFELD: So, we do not have any  
13 questions to you, so you are released as a Witness.  
14 Thank you so much.

15 (Witness steps down.)

16 PRESIDENT HANEFELD: Let us now discuss the  
17 afternoon.

18 Our next Witness will be Mr. Herrera; right?  
19 And can the Parties already estimate how long this  
20 will take? Do we need to inform Mr. Isasi?

21 MS. HAWORTH McCANDLESS: Madam President, I  
22 will be doing the cross-examination of Mr. Herrera,

1 and having not initiated the cross-examination nor  
2 heard his answers I can't say exactly how long. I  
3 don't necessarily anticipate it being, ideally, more  
4 than an hour and a half.

5 PRESIDENT HANEFELD: Okay. And so, you will  
6 keep Mr. Isasi informed--

7 MS. HAWORTH McCANDLESS: Yes.

8 PRESIDENT HANEFELD: --so he would be at our  
9 disposal?

10 And what about--we could shorten the lunch  
11 break, if the Parties agree. Then we could resume  
12 already at 2:00. Would this be an option?

13 MS. DURÁN: Yes. We are in your hands.

14 PRESIDENT HANEFELD: Okay. Then we will do  
15 so. See you at 2:00 p.m.

16 (Whereupon, at 1:17 p.m., the Hearing was  
17 adjourned until 2:00 p.m., the same day.)

18 AFTERNOON SESSION

19 CARLOS ALBERTO HERRERA PERRET,

20 CLAIMANT'S WITNESS, CALLED

21 PRESIDENT HANEFELD: Welcome back.

22 We will now hear our next Witness,

1 Mr. Herrera.

2 Welcome, Mr. Herrera.

3 To introduce us briefly, this is our  
4 Tribunal in this case. I'm sitting here with  
5 Professor Tawil and Dr. Cremades. My name is Inka  
6 Hanefeld. You have been called as Witness in these  
7 proceedings by Claimant, so I need to ask you to read  
8 out the Declaration under 35(2) of the ICSID  
9 Arbitration Rules, which should be in front of you.

10 Could you be so kind to read it out to us?

11 THE WITNESS: Good afternoon.

12 I solemnly declare, upon my honor and  
13 conscience, that I shall speak the truth, the whole  
14 truth, and nothing but the truth.

15 PRESIDENT HANEFELD: Thank you very much,  
16 Mr. Herrera. Now, we come to your Witness Statements.  
17 Do you have your Witness Statements, CWS-12 and 22, in  
18 front of you?

19 THE WITNESS: I do have both Witness  
20 Statements before me.

21 PRESIDENT HANEFELD: And can you confirm  
22 that these are your Witness Statements and that they

1 correspond to your recollection?

2 THE WITNESS: Yes, these are my Statements.  
3 They have been prepared on the basis of my  
4 recollection.

5 PRESIDENT HANEFELD: Thank you very much.

6 Then we hand over to Claimant, who will ask  
7 you some questions. Then the Respondent will ask some  
8 questions, and we may have questions at a later stage.  
9 Thank you.

10 DIRECT EXAMINATION

11 BY MS. HUANG:

12 Q. Good afternoon, Mr. Herrera. Thank you so  
13 much for joining us. I'm going to ask you a couple of  
14 questions.

15 Could you please describe your role and your  
16 involvement in the negotiations of the U.S.-Perú TPA?

17 A. In the negotiations of the trade agreement  
18 with the U.S., I was appointed as leader of the  
19 negotiating team for the investment chapter. The team  
20 was made up of officials from different agencies. I  
21 came through ProInversión. There were people from the  
22 Ministry of Economy, the Ministry of Trade, from the

1 Ministry of Foreign Affairs. There were lawyers and  
2 economists. Behind us we had a team of lawyers that  
3 supported us at all times. I participated in all of  
4 the negotiation rounds except for the last one,  
5 because at that time the negotiation of the chapter  
6 was almost closed.

7 I also participated in coordination meetings  
8 with the Andean countries and in the virtual meetings  
9 that were held with the United States for coordination  
10 purposes and also some negotiations that we had in the  
11 interim.

12 Q. Can you explain how the negotiations  
13 progressed from multilateral to bilateral?

14 A. Initially, indeed, the negotiations were  
15 multilateral in nature, with Ecuador and Colombia. We  
16 held coordination meetings to define a negotiation  
17 strategy. On that basis we found common interests,  
18 and we also saw that there were some discrepancies,  
19 and some internal discrepancies, amongst us.

20 So, from the very beginning, we understood  
21 that there would come a time during the negotiation  
22 when the countries could start bilateral negotiations.

1 That is what happened, indeed, and Perú at one point  
2 in time deemed necessary that, to be able to end the  
3 negotiations in a timely manner, it was important to  
4 have bilateral negotiations.

5 Q. In your Witness Statements, you testify  
6 about your understanding of several provisions of the  
7 TPA. Based on your understanding and experience, when  
8 does the limitations period under Article 10.18.1  
9 begin to run?

10 A. The limitations period, the three-year  
11 limitations period starts to run when the investor  
12 gains knowledge of the fact that a violating measure  
13 has been applied and that that measure has caused  
14 damage. Each measure may create a specific damage,  
15 and for each independent damage, there is a specific  
16 limitations period applied to it.

17 Q. You also testify about the fork-in-the-road  
18 provision in Article 10.18.4 for Investment Agreement  
19 Claims.

20 Could you explain the U.S. and Perú's  
21 initial negotiation positions and how they came to  
22 eventual agreement on the language "same Alleged

1 Breach" in the provision?

2       A.     The fork-in-the-road provision, or  
3 bifurcation, as it's also known, was a mechanism that  
4 the Andean countries sought from the very beginning.  
5 Our concern was that we could face in international  
6 tribunals the same claim that could have been  
7 submitted previously in local courts. This was shown  
8 in one of the draft texts of the chapter, and this was  
9 kept during a period of time, where we asked for an  
10 election of forum that would be exclusive and  
11 definitive, and also, the idea of res judicata was put  
12 to the negotiation. But the U.S. never accepted this.

13             The U.S. said that it wanted to provide the  
14 most protection possible and access to international  
15 arbitration to its investors, and when we were  
16 negotiating the acceptance of this idea of an  
17 Investment Agreement, the United States restricted the  
18 concept of fork-in-the-road to avoid only that the  
19 same violation claimed before local courts could then  
20 be submitted to an Arbitral Tribunal.

21       Q.     Could you explain what kind of adjudicative  
22 bodies the fork-in-the-road provision covers when it

1 mentions Administrative Tribunals and other binding  
2 dispute settlement procedures?

3       A.     When we were discussing the fork-in-the-road  
4 concept, we had a concern, a concern that both Parties  
5 had, which was for the local fora to have the same  
6 level of independence that the International Arbitral  
7 Tribunal would have. On the other hand, when dealing  
8 with the possibility of violation of a contractual  
9 obligation, what was sought was for the fora looking  
10 at these disputes would be capable to resolve issues  
11 related to contract violation.

12             The natural challenge was a Civil Court, we  
13 thought, but we also thought that a contentious  
14 administrative Tribunal could be an alternative for  
15 some cases to be put to it and solved by it.

16             We also thought that there was a need to  
17 preserve the possibility that the investor may have to  
18 go to settlement dispute resolution mechanisms that  
19 were already included in the Agreements entered into  
20 between the State and the investor--that is to say,  
21 commercial arbitration under Peruvian law.

22       Q.     Can you please explain the negotiation

1 history behind the nonretroactivity provision in  
2 Article 10.1.3 and the Parties' understanding of the  
3 final provision?

4       A. From the outset, the Andean countries were  
5 seeking to have the investment chapter, specifically  
6 the dispute resolution mechanism, to be applied only  
7 to disputes derived from acts or events that took  
8 place after the Treaty had entered into force. The  
9 U.S. was not in agreement. The U.S. was saying that  
10 if the investment chapter, as established by  
11 Article 1. Well, if the investment chapter is to be  
12 applied to measures taken by the State, then the  
13 dispute-resolution mechanism had to be applied to the  
14 measures taken after the Treaty entered into force and  
15 that caused damage after the Treaty entered into  
16 force.

17               There was a lot of discussion on the  
18 language of that paragraph, and then the final  
19 conclusion reached was that the best thing to do was  
20 to apply the provisions of the Vienna Convention.

21       Q. In your Witness Statements, you explain that  
22 you discussed the reliance requirement in the

1 Investment Agreement provision, Article 10.16.1. You  
2 discussed this with the U.S. delegation because they  
3 initially proposed the language in that provision.

4 Can you describe Perú's understanding of the  
5 provision after that conversation with the U.S.?

6 A. Indeed. Everything related to the Trade  
7 Agreement was very important for us. That is why we  
8 sent an email to the U.S. delegation for them to  
9 explain to us in a detailed manner how that paragraph  
10 would apply. The reply was that the paragraph was to  
11 be understood by reading it in a comprehensive manner  
12 under the definition of "Investment Agreement" and  
13 under the definition of "Covered Investment."

14 Our conclusion was that the Investment  
15 Agreement may be signed by an investor or by a  
16 company, by a local company. That was the most common  
17 case for Perú.

18 Secondly, the reliance requirement could be  
19 met by the investor or by the Company. The important  
20 thing that was highlighted was that the Claim had to  
21 be directly related to the investment and the Damages  
22 caused to the investment that was carried out in

1 reliance of the Investment Agreement.

2 Q. And based on your understanding, is there a  
3 temporal limitation in Article 10.16.1?

4 A. There isn't. No mention was made of any  
5 temporal limitation under 10.16.1. This was of great  
6 concern to us because we always understood, and the  
7 U.S. always put this to us, that the coverage on  
8 Investment Agreements had to do with those agreements  
9 entered into when the Treaty came into force and also  
10 had to apply to the Investment Agreements, or  
11 contracts that may qualify as Investment Agreements,  
12 subscribed before the Treaty entered into force.

13 Perú at one point in time during the  
14 negotiation suggested that perhaps a waiver could be  
15 included so that the chapter would only include the  
16 Investment Agreement signed two years after. Chile  
17 had done something like that.

18 The U.S. said no, and there was a parallel  
19 negotiation with the Central American countries that  
20 the U.S. was having parallelly and they were  
21 considering the possibility for the chapter to only  
22 apply to agreements entered into from the entry into

1 force of the Treaty. Well, in the case of the Andean  
2 countries, and specifically in the case of Perú, they  
3 said, no, it's impossible.

4 All of the existing agreements need to be  
5 covered. The problem was that at that point in time,  
6 there were contingencies related to some contracts  
7 made by the Government with U.S. investors, so the  
8 investors were worried, and this was a worry that was  
9 taken up by the negotiator.

10 Q. Thank you very much, Mr. Herrera.

11 MS. HUANG: Madam President, I have no  
12 further questions.

13 PRESIDENT HANEFELD: Thank you.

14 CROSS-EXAMINATION

15 BY MS. HAWORTH McCANDLESS:

16 Q. Good afternoon, Mr. Herrera. My name is  
17 Jennifer Haworth McCandless, I'm part of the team that  
18 represents the Republic of Perú in this Arbitration.

19 I think we have met before in Perú, because  
20 you're a member of the commission, the Special  
21 Commission that represents Perú. I think at one point  
22 in time I remember meeting you in Lima. And I am

1 going to be asking some questions about your Witness  
2 Statements, obviously I'll be asking them in English,  
3 and you, I understand, will continue testifying in  
4 Spanish. So, we will need to both take a pause, but  
5 you were doing an excellent job with Counsel for  
6 Claimant with respect to not talking over her, so you  
7 and I may be able to accomplish this if I pause after  
8 I do my questions and you pause before your give your  
9 answers and if we both have the translation, so we  
10 will both be able to understand when the translation  
11 has stopped. But you are in agreement with acting  
12 accordingly?

13 A. Good afternoon, Jennifer. It's a pleasure  
14 to see you. Yes, of course.

15 Q. And similarly, if I pause, as I will, in  
16 order to allow for the translation to finish, I am not  
17 inviting you to continue with an explanation. I am  
18 just waiting for the translation to finish. Okay?

19 A. Very well.

20 Q. We are passing out--you should have a binder  
21 in front of you with some of the documents to discuss  
22 during this cross-examination.

1           So, I want to first talk about the process  
2 that you undertook in writing your Witness Statements.

3           Did you yourself write your Witness  
4 Statements?

5           A.    Yes, I wrote my Statement.

6           Q.    You state in Paragraph 2 of your First  
7 Witness Statement--I think it is also in your Second  
8 Witness Statement, but I'll read the First Witness  
9 Statement.  You say:  "Counsel for Freeport and  
10 Sociedad Minera Cerro Verde assisted me in preparing  
11 this Statement."

12           So, what you stated just now, that you wrote  
13 your Witness Statement, is inconsistent with that  
14 statement that Counsel for Claimant assisted you.

15           Is it that you wrote your Statement, or did  
16 you work with Counsel for Claimant to write your  
17 Statement?

18           A.    Yes, indeed.  I prepared my Statement with  
19 the assistance of Counsel.

20           Q.    How did they assist you?  How did you work  
21 cooperatively with Counsel for Claimant?

22           A.    Counsel for Claimant provided documents to

1 me for me to be able to prepare my Statement. I was  
2 given a binder with documents on the Ministry of Trade  
3 reports, for example; also a number of drafts of the  
4 investment chapter; some emails that had existed  
5 during the negotiation back then; and some other  
6 documents that were submitted by Perú as well.

7 Q. And we'll talk about those documents that  
8 Counsel for Claimant gave to you, but I was talking  
9 more about the process of writing the Witness  
10 Statements.

11 Could you please explain that process,  
12 please?

13 A. Yes, of course. I prepared drafts of the  
14 Statement, and I sent those drafts over to the law  
15 firm, and we came to a final language.

16 (Overlapping interpretation and speakers.)

17 Q. And you were the primary author, then, of  
18 the--of your written Statements, and you gave it to  
19 Claimant, or did they write a draft and give it to you  
20 to review?

21 A. I prepared my comments in connection with  
22 each one of the points. They formatted everything,

1 and I reviewed the final version.

2 Q. You have stated in Paragraph 12 that you're  
3 an economist; is that correct?

4 A. Yes. Yes. I'm an economist.

5 Q. All right. So, you're not a lawyer;  
6 correct?

7 A. I'm not a lawyer, no.

8 Q. In Paragraph 4 of your First Witness  
9 Statement, you make a reference. You say: "I  
10 understand that a treaty must be interpreted in good  
11 faith in accordance with the ordinary meaning to be  
12 given to its terms in their context and in light of  
13 the Treaty's object and purpose, and that in certain  
14 circumstances a treaty may resort to supplementary  
15 means of interpretation, including the preparatory  
16 works to the Treaty and the circumstances of its  
17 execution."

18 Did you write that?

19 A. Not really, no, I did not write that phrase,  
20 but that is a phrase that sounded to me as a very  
21 common phrase because of my experience in  
22 negotiations, negotiations with the United States in

1 connection with this Treaty and also other investment  
2 chapters that I assisted with other--in negotiation  
3 with other countries.

4 Q. Yes. It sounded rather lawyerly-like, so  
5 since you're economist, I thought perhaps you didn't  
6 write that text, and you confirmed that.

7 You say that you carefully reviewed the  
8 final Spanish versions of your Witness Statements, and  
9 you confirmed that they reflect your independent  
10 memory and understanding; is that correct?

11 You stated that, I believe, in Paragraph 2.

12 A. Yes. Indeed, this document reflects my  
13 recollection and understanding of the negotiation  
14 process.

15 Q. And I assume that when you state something  
16 in your Witness Statement that you--for which you have  
17 contemporaneous documentary support, that you cite to  
18 it in support of that; correct?

19 A. Yes, indeed. This statement reflects my  
20 recollection. When I prepared the first drafts, I  
21 reflected in their--my recollection and I supported  
22 that on documents provided to me by Counsel, as I

1 mentioned, when I had certain doubts.

2 Q. Because you state in Paragraph 1 that  
3 whenever you testify on subjects beyond your personal  
4 knowledge, you identify the source of the information  
5 and the basis of your understanding; correct?

6 And you stated that, I think, also in your  
7 Second Witness Statement.

8 You have to answer.

9 A. Yes. Yes, of course. As I said, when I had  
10 a doubt, I went to the documents that were given to  
11 me.

12 Q. So, to be clear, you are admitting and you  
13 admit in your Witness Statements that you are  
14 testifying on issues, in some circumstances, beyond  
15 your personal knowledge; is that correct?

16 A. My statements are based on my recollection  
17 and everything that I went through during the  
18 negotiation as the head of the negotiating team.  
19 Undoubtedly, there are some concepts that I wasn't  
20 really an expert on during the negotiation process. I  
21 was not a lawyer, and we had lawyers that were  
22 specialists and provided support to us in that regard.

1           So, in the Proinversión team, we had a  
2 lawyer that was a specialist in international law, for  
3 example.

4           Q.    So, is--the statement that you have in your  
5 Witness Statement is correct that you are sometimes  
6 testifying on subjects beyond your personal knowledge  
7 in this Witness Statement--is that correct?--or do you  
8 wish to change your Witness Statement?

9           A.    No, I don't want to do it anyway.

10                   (Overlapping interpretation and speakers.)

11           Q.    So, in answer to the question, does--your  
12 Witness Statement includes you--you talk about  
13 subjects that are beyond your personal knowledge;  
14 correct?

15           A.    I narrate situations that contain facts that  
16 go beyond my personal and professional domain.

17           Q.    Okay.  So, the answer, I think, is yes.

18                   And in that case, when you say that  
19 you--when you're talking about issues that are beyond  
20 your personal knowledge, you identify the source of  
21 that information and the basis of your understanding  
22 by citing to those documents, but if you also, as you

1 testified shortly before, cite to documents on which  
2 you have--on situations or statements in which you do  
3 have personal knowledge, how is a reader supposed to  
4 understand if the documents that you're using are  
5 based on your personal knowledge or not based on your  
6 personal knowledge?

7 A. The document is based on my personal  
8 knowledge and the recollections I have of the  
9 negotiation.

10 Q. But on topics on which you don't have a  
11 personal knowledge you're citing, and on topics that  
12 are your personal knowledge you're citing, so how is  
13 one supposed to derive whether or not the Statements  
14 are based on your personal knowledge or not?

15 A. There are specific aspects that,  
16 undoubtedly, I am not an expert on. There are legal  
17 aspects that I'm not an expert on. I refer to those  
18 in a general manner. I do not really discuss them in  
19 depth. It would be unethical. I don't have the  
20 ability to discuss those things, but I do make  
21 reference to them because they are part of my  
22 recollection, and the memories I have of the

1 negotiation.

2 Q. Okay. I'm not sure I'm going to get the--a  
3 clarity on that, but, perhaps, when you say "I"--when  
4 you discuss things in your--like "I recall" or "I  
5 understood," maybe that's reflecting your own personal  
6 recollection, and when you're saying something more  
7 general, then that's, perhaps, not your personal  
8 recollection.

9 Would that be fair?

10 A. I think that you are understanding this in a  
11 very convoluted manner. Indeed, there are times where  
12 I refer only to what I recall, and I don't really  
13 delve into legal issues.

14 Q. Okay. Thank you.

15 And you state in Paragraph 5 of your First  
16 Witness Statement and also in your Second Witness  
17 Statement, that you relied--and you discussed it also  
18 just a few minutes ago--that you relied on  
19 contemporaneous summaries of the TPA negotiation  
20 rounds prepared by the Ministry of Foreign Trade and  
21 Tourism, or MINCETUR, and emails between U.S.  
22 negotiators and yourself, and the drafts of the

1 U.S.-Andean Free Trade Agreement and the TPA.

2           And we will discuss in a few minutes those  
3 documents, but I wanted to confirm that these were  
4 documents on which you relied in writing your Witness  
5 Statements; is that correct?

6           A.    Yes, indeed.

7           Q.    And you state in Paragraph 7 of your First  
8 Witness Statement that you worked as a Government  
9 official in Perú from 1976 to 2001; is that correct?

10          A.    I'm sorry.  Where do I say that?  At which  
11 paragraph.

12          Q.    In Paragraph 7 of your first Witness  
13 Statement.  You state that you worked as a Government  
14 official in Perú from 1976 to 2017; is that correct?

15          A.    Yes, until 2017.

16          Q.    I didn't think that was going to be a  
17 complicated question, but that's okay.  It's a long  
18 period of time to remember.

19                And you state in Paragraph 10 of your First  
20 Witness Statement that, from 1997 to 2013, you were  
21 the leader of the Peruvian delegation negotiating  
22 bilateral Investment Agreements and investment

1 chapters of the TPA; is that correct?

2 A. Yes. In effect, I was in charge of the  
3 negotiation as team leader in many cases, and in some  
4 others I was a member of the negotiating team in  
5 several meetings and in several Investment Agreements  
6 or Investment Treaties.

7 Q. And you held that role in your capacity  
8 working as ProInversión--at ProInversión as its  
9 representative to the Negotiating Commission for  
10 Investment Promotion and Protection; correct?

11 A. Yes, that is correct. Actually, my  
12 experience with respect to negotiation of  
13 International Investment Agreements comes from before  
14 my time in ProInversión, when I would participate at  
15 the National Commission of Foreign Investment and  
16 Technology, which is when Perú began to negotiate  
17 Bilateral Investment Treaties.

18 Q. Yes. And in Paragraph 14, you're saying  
19 that: "As ProInversión's representative to the  
20 negotiating Commission, I lead the Peruvian delegation  
21 in the negotiations of the investment chapter."

22 So, that's how you've characterized it.

1           Can you please describe the internal process  
2 conducted in Perú to adopt an official position in the  
3 negotiating process?

4           A.    Yes, of course.

5           Q.    Briefly.  Sorry.

6           A.    As I indicate there, a negotiating  
7 commission had been established for negotiating  
8 International Investment Agreements, both bilateral,  
9 and when it was decided to begin the negotiation with  
10 the United States, also the Free Trade Agreement in  
11 the investment chapter.  As I mentioned, initially,  
12 the team was made up of representatives of the  
13 Ministry of Economy, the Ministry of Trade, the  
14 Ministry of Foreign Affairs, and ProInversión, which  
15 presided over the--or chaired the Commission.

16           So, we had internal coordination, but also  
17 coordination with other sectors, particularly for the  
18 negotiation of the Treaty with the United States to  
19 determine the nonconforming Measures that we would  
20 have to address.

21           Q.    So, it was an interagency process.  Is that  
22 how you're describing it?  It's an interagency

1 process, and it involved more than just one agency;  
2 correct?

3 A. Yes, in effect, there was coordination among  
4 the different agencies.

5 Q. And it's possible that members of that  
6 interagency, the interagency representatives, they  
7 might disagree with something say that you were  
8 negotiating or that your team were negotiating. It's  
9 possible there were disagreements among the members of  
10 different ministries in the interagency process;  
11 correct?

12 A. Yes, indeed, on some occasion, let's say  
13 that I was too careful or cautious on issues in  
14 respect of which other institutions wanted to yield  
15 more quickly in the negotiation.

16 Q. And was the Ministry of Economy and Finance  
17 the lead agency in charge of the investment chapter of  
18 the TPA?

19 A. Yes. Actually, the Ministry of Economy was  
20 a coordinating entity for the negotiation of several  
21 chapters that were within the scope of its competence.  
22 One of these investments, also financial services and

1 others.

2 Q. And the MEF, Ministry of Economy and  
3 Finance, formed the negotiating Commission for  
4 Investment Promotion and Protection, and that's what  
5 you chaired; correct? So, you were working underneath  
6 the umbrella of the MEF, the Ministry of Economy and  
7 Finance?

8 A. Yes, that's right.

9 Q. And did you personally make the final  
10 decisions regarding Perú's official position in the  
11 negotiation, or did you report to somebody at the  
12 Ministry of Economy and Finance?

13 A. All of the positions were coordinated among  
14 the different agencies, and specifically in the case  
15 of the Investment Agreement, there was direct  
16 coordination with Minister Zavala and also with  
17 Minister de la Flor--I'm sorry, Ministry of Trade.

18 Q. And did you--do you know Javier Illescas?  
19 He's the Director of International Economy. Did you  
20 report to him?

21 A. Yes, I've known Javier Illescas for a long  
22 time. I have not worked under him at any time, but

1 Javier Illescas was part of the negotiating team. He  
2 was the coordinator for the MEF, of the discussion  
3 tables that were under--of its competence, but was not  
4 participating directing in the negotiations at any  
5 time, at least not on investments.

6 But, yes, there was a representative from  
7 the MEF.

8 Q. But did you discuss with him? Did you  
9 report to him on issues that you negotiated--you were  
10 negotiating?

11 A. All of the coordination, or most of the  
12 coordination was through the MEF representative on the  
13 team, but, on occasion, I did have direct meetings  
14 with Javier Illescas.

15 Q. And did the negotiating commission keep its  
16 own Meeting Minutes or notes or writings or--about  
17 the--regarding the negotiating rounds for the TPA?

18 A. There were never official minutes of the  
19 meeting, but the members, the negotiating team, we  
20 would generally take notes, which were then compared,  
21 plus each one would provide a Report on their own  
22 participation in the round, that was forwarded

1 internally to their own agency, and then it was all  
2 consolidated by the Ministry of Trade.

3 Q. So, did you--you probably don't, but do you  
4 have access to any of those documents, the more--the  
5 ones that weren't necessarily fed up to the MINCETUR,  
6 but the documents that reflected the more immediate  
7 notes or--informal. You said it wasn't formal, but of  
8 the--that you would have taken, perhaps, in the  
9 negotiations?

10 A. Yes. We would generally exchange the notes  
11 that we would take, so I have some of the notes  
12 because I actually lost a lot of files because of a  
13 computer problem at one point in time.

14 Q. So, you have those in--like, personally, you  
15 have those? Like, I mean, you are no longer working  
16 for the Government. But you have copies of those  
17 notes. Is that what you're testifying?

18 A. I have the archives of notes that I  
19 personally took that stayed in my computer. They are  
20 not official notes. They were used for me to draw up  
21 the official Reports that were presented to  
22 ProInversión, Ministry of Economy, and Ministry of

1 Trade.

2 Q. And did you review those notes prior to  
3 writing your Witness Statements here for this  
4 arbitration?

5 A. Yes. On some occasion, I reviewed the notes  
6 because, as I mentioned, sometimes you might remember  
7 things one way, but you're not certain, and so I  
8 looked to see if I had any notes in regard to certain  
9 issues, so as to be able to confirm my recollections.

10 Q. But I don't recall seeing anything like that  
11 cited in your Witness Statement.

12 Did you cite to any of those, or did you put  
13 them--have them placed on the record?

14 A. No. Actually, I did not because, as I say,  
15 these are notes that have no official value, and the  
16 summaries that were provided to me from the Ministry  
17 of Trade already have the comments of those notes.

18 Q. They are not official notes, but  
19 nevertheless, you said you consulted them to write  
20 your Witness Statement. So, why didn't you give those  
21 notes to Counsel for Claimant to add them to the  
22 record?

1           A.    I did send the notes that I had to the  
2 lawyers.

3           Q.    Oh, sorry.  I should have asked the first  
4 question that you gave it to your Counsel.  I assumed  
5 that you hadn't.

6                    Okay.  So, you gave notes to the Counsel for  
7 Claimant, but they're not on the record.  And you said  
8 in Paragraph 5 of your Witness Statement, that in  
9 preparing your Witness Statement, you relied on, and  
10 you itemize it--contemporaneous summaries of the TPA  
11 negotiation rounds by the Ministry of Foreign Trade  
12 and Tourism, posted on the Ministry's website, emails  
13 between the U.S. negotiators and myself, and drafts of  
14 the U.S.-Andean Free Trade Agreement and the TPA.

15                   And you don't state that you relied on your  
16 own notes, and you were--you don't even qualify this  
17 by saying "among other things."

18                   So, do you want to amend that testimony in  
19 your Witness Statement in Paragraph 5, to indicate  
20 that you referred to other documents that are not on  
21 the record, in preparing your Witness Statements?

22           A.    Personally, I don't think it's necessary

1 because, as I say, those are nonofficial notes, and  
2 they're already reflected in the summaries of the  
3 Ministry of Trade.

4 Q. It just states that in preparing your  
5 Witness Statement, you list three different sources.  
6 It's not--the fact that they're your own personal  
7 notes and not official is irrelevant to the question  
8 of what you relied on when you wrote your Witness  
9 Statement.

10 Do you wish to amend your Witness  
11 Statements, and state that you relied on additional  
12 documents in preparing your Witness Statements?

13 A. I really don't. As I said, the Statement  
14 mainly reflects my memories of the negotiation  
15 process, the process in which I was involved  
16 completely. And those notes, at any rate, I've not  
17 taken anything from those notes that would not be  
18 reflected in the official documents. It was just to  
19 confirm some of my recollections.

20 Q. Well, unfortunately, we won't be able to  
21 test that because we haven't seen those.

22 In Paragraph 4 of your First Witness

1 Statement and in Paragraph 5 of your Second Witness  
2 Statement, you state that it's--your Statements are  
3 based on your personal experience as a negotiator of  
4 the TPA on behalf of the Peruvian Government; correct?

5 A. Yes, that is correct.

6 Q. And you also state that you do not quote in  
7 paragraph--same paragraph. Sorry. Yes.

8 That you do not purport to speak on behalf  
9 of Perú in preparing--in your Witness Statements;  
10 correct?

11 A. Clearly, I'm not speaking on behalf of Perú.  
12 I am reflecting what I experienced in the negotiation  
13 process as the Head of the Negotiating Team.

14 Q. But you are testifying in your Witness  
15 Statements about what happened in the discussions with  
16 the United States, when you were negotiating the TPA;  
17 correct?

18 A. Yes, indeed.

19 Q. And you are discussing what you did as a  
20 Government official on behalf of Perú during the  
21 course of the negotiations.

22 Did I get that right?

1 A. Yes.

2 Q. And did you consult with your former  
3 employer to get permission to testify regarding the  
4 negotiations with the United States regarding the TPA?

5 A. No, I have not asked for permission from the  
6 Government to provide testimony. As far as I know,  
7 there's nothing that would impede me from doing so.

8 Q. Did you think about whether you needed to  
9 get permission?

10 A. Actually, at some point in time I said,  
11 well, I've worked for the State. I'm going to provide  
12 a Witness Statement. The Witness Statement is based  
13 on my recollections as a public official at that time.  
14 I am going to say what I saw. I'm going to reveal  
15 what was discussed, and I didn't have any reason to  
16 seek permission.

17 Q. Did you consult with someone about whether  
18 you needed to get permission?

19 A. No, I did not consult anyone, but I did tell  
20 some officials that I was being hired by Freeport's  
21 lawyers.

22 Q. And so, how did you reach your conclusion

1 that you were free to testify about the negotiations  
2 between Perú and the United States regarding the TPA?

3 A. Because there is nothing that establishes  
4 such a limitation in Perú.

5 Q. Are you aware of a provision in the text of  
6 Unico Coronado of the Law 27806, which is a law on  
7 transparency and access to public information?

8 MS. HUANG: Objection. The document is not  
9 on the record?

10 MS. HAWORTH McCANDLESS: It's not on the  
11 record, but I'm asking him his knowledge of it. I'm  
12 not asking about the content. I'm just asking if he's  
13 aware of this, and that's a perfectly--

14 (Overlapping speakers.)

15 MS. HAWORTH McCANDLESS: --to ask.

16 MS. HUANG: Perhaps, it would be helpful to  
17 show him the document then.

18 MS. HAWORTH McCANDLESS: I would just want  
19 to ask his knowledge, if he's aware of it. That's my  
20 question. So--but I want to go through and say what  
21 the document says.

22 MR. UKABIALA: If Claimant could just be

1 heard very briefly on this.

2 (Tribunal conferring.)

3 PRESIDENT HANEFELD: As you may imagine, I  
4 also do not know this at all and these provisions, so  
5 please keep in mind that you also have to keep us with  
6 you.

7 MS. HAWORTH McCANDLESS: Yes. It's just a  
8 simple, single question.

9 BY MS. HAWORTH McCANDLESS:

10 Q. Are you aware of a provision in the Texto  
11 Unico Coronado, which is Law Number 27806, which is  
12 the Law on Transparency and Access to Public  
13 Information, which provides exceptions for the right  
14 to have access to information held by public entities,  
15 including elements of international negotiations or  
16 disclosure of this information would harm the  
17 negotiating process or alter the adopted position of  
18 the State.

19 Are you aware of that Law and that specific  
20 provision?

21 A. No. As I have said, those notes are not  
22 official. I am not keeping any official document of

1 Perú from the time of the negotiation process. They  
2 are personal comments regarding my personal  
3 understanding.

4           Moreover, what one can find in my Statement  
5 is only what is reflected in my personal  
6 documents--that is to say, the official documents from  
7 the Ministry of Trade and the negotiating history,  
8 which is in the different draft versions in the  
9 emails. That is what is in my Statement, and it is  
10 cited very meticulously.

11           Q. And are you aware that by testifying in a  
12 manner inconsistent with the State's official  
13 position, that there is a risk that that testimony  
14 might alter the adopted position of the State and,  
15 therefore, disclose information that might be  
16 prohibited?

17           MR. PRAGER: Madam President, if there were  
18 any concerns about that, that should have been raised  
19 before. I mean, what's happening here is that the  
20 Witness is being intimidated, and that's entirely  
21 inappropriate.

22           MS. HAWORTH McCANDLESS: The Witness is not

1 being intimidated, I'm just asking him some questions.

2 (Overlapping speakers.)

3 MR. PRAGER: Respondent knew for several  
4 months, in fact, more than a year and several months,  
5 that Mr. Herrera is testifying. If there were any  
6 concerns, they should have been raised appropriately,  
7 and not when the Witness is sitting here. What's  
8 happening here is Witness intimidation, and it's  
9 entirely inappropriate, and I object in the strongest  
10 terms against it.

11 PRESIDENT HANEFELD: We have taken note.

12 Mr. Prager, what is your comment on that?

13 MS. HAWORTH McCANDLESS: Oh, I obviously  
14 disagree. Respondent has called Mr. Herrera here to  
15 cross-examine him, and this is the point in which  
16 we're cross-examining and probing the--what his  
17 testimony is about, and whether he's appropriately  
18 here to be testifying on behalf of Perú or not.

19 It's a perfectly appropriate line of  
20 questions for someone who submitted a Witness  
21 Statement, who was a former Government official, and  
22 is now testifying against the State, and to probe

1 whether or not what he's actually testifying about,  
2 and whether he is aware that that is potentially  
3 inconsistent with Perú's official position in this  
4 Arbitration.

5 PRESIDENT HANEFELD: The Tribunal will  
6 briefly consult and then come back to the room.

7 MR. PRAGER: I just wanted to add that he's  
8 not here on behalf of Perú. So, I wanted to have that  
9 clarified.

10 MS. HAWORTH McCANDLESS: But he's testifying  
11 on the negotiations when he was an official of the  
12 Government of the Perú in those negotiations. It's  
13 hard to separate those two.

14 (Tribunal conferring outside the room.)

15 PRESIDENT HANEFELD: Mr. Herrera, I  
16 apologize for this short break, but we just wanted to  
17 now reach consensus on how we want to proceed.

18 We have heard what your concern was on  
19 Respondent's side. We have heard your objection,  
20 Mr. Prager. We would like you to move on with the  
21 next topic.

22 MS. HAWORTH McCANDLESS: Absolutely, Madam

1 President.

2 MR. PRAGER: Madam President, if I might  
3 still, just for the purpose of the record, at no point  
4 has Respondent requested that his testimony or his  
5 Witness Statement be treated as protected information  
6 under this--in this proceeding, under the TPA, and  
7 they would have had the opportunity to do that.

8 PRESIDENT HANEFELD: You make your point  
9 really clear, and I will have understood that.

10 And, Mr. Herrera, I hope you feel still  
11 comfortable testifying.

12 Do you?

13 THE WITNESS: Yes, ma'am. Thank you very  
14 much.

15 PRESIDENT HANEFELD: Perfect. Then we  
16 proceed with the next line of questions.

17 MS. HAWORTH McCANDLESS: Thank you, Madam  
18 President.

19 BY MS. HAWORTH McCANDLESS:

20 Q. And as you discussed in Paragraph 5 of both  
21 your Witness Statements, and as we discussed a little  
22 bit earlier today, you state that, in preparing your

1 Witness Statements, you relied on contemporaneous  
2 summaries of the TPA negotiation rounds prepared by  
3 MINCETUR, and also on emails and drafts of the  
4 negotiations provided by Counsel for Freeport;  
5 correct?

6 A. Yes, that's correct.

7 Q. And then in Paragraph 5 of your Witness  
8 Statement, you also indicate that you understand that  
9 those emails and those negotiations--drafts and  
10 negotiations were obtained through requests under the  
11 U.S. Freedom of Information Act; is that correct?

12 A. Yes, that's what I was told by the lawyers.

13 Q. And with respect to the documents that you  
14 received from Counsel for Freeport, did you talk with  
15 Counsel before they submitted their FOIA request to  
16 the U.S. Government to give input on what they should  
17 be asking for in order to make sure that the documents  
18 they received reflected the--your negotiations?

19 MR. UKABIALA: I'm sorry. We would just  
20 object to the grounds that opposing Counsel is asking  
21 the Witness to reveal privileged communications  
22 between--between the Witness and Counsel. And there

1 is actually a privilege protocol agreed between the  
2 Parties in this proceeding that protects precisely  
3 that information.

4 MS. HAWORTH McCANDLESS: Madam President,  
5 this is not asking anything that's privileged. I'm  
6 asking whether he was consulted by the lawyers before  
7 they submitted their FOIA request. That's hardly  
8 privileged information.

9 It's just, did he have any input in  
10 the--when they were submitting their FOIA request and  
11 identifying what the FOIA request scope was, did he  
12 have any input? That's not privileged information.

13 MR. UKABIALA: That goes directly to  
14 Counsel's legal strategy in developing the evidence to  
15 be submitted in this proceeding.

16 MS. HAWORTH McCANDLESS: I'm not asking  
17 about the content. I'm just asking if he provided any  
18 input.

19 PRESIDENT HANEFELD: So, it's just about the  
20 question of whether there was some communication and  
21 not about the content?

22 MS. HAWORTH McCANDLESS: Whether he was--he

1 gave any input to determine the scope of the FOIA  
2 request. That's it. That's my only question.

3 MR. UKABIALA: Madam President, if I could  
4 just read to you from the privilege protocol that was  
5 agreed to between the Parties in this proceeding.

6 It says--Counsel is asking communications  
7 between Witness and Counsel and, pursuant to  
8 Section 3.1, those communications shall not be  
9 disclosable in the Arbitration.

10 MS. HAWORTH McCANDLESS: Madam President,  
11 I'm not asking for the actual content of the  
12 communication, just the fact of whether he was  
13 consulted. That's my only question on that issue.

14 PRESIDENT HANEFELD: So, can you now put  
15 this provision on screen? Because my Transcript is  
16 not complete enough. When we have to make a Decision  
17 on whether this question is legitimate or not, I need  
18 to see the legal basis for our Decision.

19 MR. UKABIALA: If you could give us a  
20 moment, we can print out copies of it; otherwise, we  
21 would need control of the--of the--

22 PRESIDENT HANEFELD: And, to be honest, it's

1 really unfortunate. We want now to avoid such debates  
2 in the Hearing room in front of the Witness. We want  
3 to hear what the Witness has to testify.

4 So, do both Parties wish to continue this  
5 debate, or can we avoid it by permitting the question  
6 of whether there was a conversation? Yes? No? Go on  
7 to the next topic?

8 MS. HAWORTH McCANDLESS: That's fine from  
9 Respondent's perspective.

10 MR. UKABIALA: We're in your hands, Madam  
11 President. We would prefer for opposing Counsel to  
12 move on from this line of questioning.

13 MS. HAWORTH McCANDLESS: I don't have--it's  
14 not a line. It's a single question. And I will move  
15 on after I hear his answer.

16 PRESIDENT HANEFELD: Yes, please, move on.  
17 Let us avoid such debate.

18 BY MS. HAWORTH McCANDLESS:

19 Q. Yes, after I hear your answer. If you  
20 would, please answer the question; then I will move  
21 on.

22 A. Quite sincerely, I don't recall that I told

1 them, "Ask for this or that information." What is  
2 true is that the summaries, for example, from the  
3 Ministry of Foreign Trade, well, I've seen them at  
4 some point in time on the website of Ministry. I  
5 don't know if they're still there, but at some point  
6 in time I recall they were at the Ministry's website.  
7 Yes, it says "published at the Ministry's website."

8           Drafts of the FTA--well, I've been provided  
9 with some of these. I recall that there were many  
10 more, but, but I have not asked that they specifically  
11 give me this or that document. It would be  
12 impossible. I cannot have such a specific  
13 recollection.

14           Q. Thank you.

15           And as we discussed earlier, from 1976 to  
16 2017, you held various positions with the Government  
17 of Perú, and now do I understand it correctly that you  
18 work as an independent consultant since July of 2017?

19           A. Yes, that is correct.

20           Q. And on what types of matters have you been  
21 engaged as a consultant?

22           A. Those are consultancies at the personal

1 independent level. I do not have a consulting company  
2 behind me. I was working with a legal firm on some  
3 issues. It is not the legal firm that is here with  
4 the mining company. It is a different legal firm in  
5 connection--a different law firm in connection with  
6 the treatment of foreign investment in the country,  
7 trying to support them with some steps, processes that  
8 need to be complied with.

9           And also I have worked with a British  
10 consultancy firm for promoting investment on  
11 information technology in Central America. And I also  
12 worked with a local consulting firm on a program of  
13 the Ministry of Trade at a different point in time.

14           On the other hand, I am also an advisor. I  
15 provide some sort of advisory services at meetings  
16 with embassies that are credited to being in the  
17 country, and they call me to ask for opinion on  
18 various issues in connection with national events.

19           Q. Do you get paid? Do you get paid by the  
20 hour for your consultancy work, or how does it--how do  
21 you get paid?

22           A. Yes. Yes. That's the way it is. I usually

1 work on an hourly basis.

2 Q. And approximately how much do you get paid  
3 per hour?

4 A. In general, 200 dollars an hour.

5 Q. And were you engaged to provide Witness  
6 testimony in this Arbitration? Were you paid?

7 A. Yes. I have a contract, indeed, for my work  
8 in this Arbitration.

9 Q. And you were paid for preparing your two  
10 Witness Statements and also for  
11 participating--preparing for and participating in this  
12 Hearing?

13 A. Yes, indeed.

14 Q. And what is your hourly rate? Are you being  
15 paid for this?

16 A. In this case, I am paid \$250 an hour.

17 Q. Is it 250?

18 A. That is correct.

19 Q. So, slightly above your typical rate?

20 A. Yes.

21 Q. And you don't--I didn't find, but correct me  
22 if I'm wrong, did you indicate that you are being paid

1 for presenting your Witness Statements and testifying?

2 Did you indicate that in either of your  
3 Witness Statements?

4 A. I don't think I have mentioned that.

5 Q. In Paragraph 11 of your First Witness  
6 Statement, you state that you appeared on behalf of  
7 Perú in different arbitrations, including Duke  
8 Energy v. Perú; is that correct?

9 A. Yes, that is correct.

10 Q. And you provided two Witness Statements in  
11 that case; is that right?

12 A. I remember attending the Hearing, the Duke  
13 Hearing, and I also remember very well who prepared  
14 me.

15 Q. And you state in your Witness Statement in  
16 this submission that you testified in that case about  
17 the negotiation and execution of Judicial Stability  
18 Agreements; correct?

19 A. Yes, that is correct.

20 Q. And in this case, you're not talking about  
21 or testifying about scope of Stability Agreements, are  
22 you?

1           A.    No, I wasn't asked about the scope of the  
2 Legal Stability Agreements.

3           Q.    Is that because in Duke you testified that  
4 the scope of the Legal Stability Agreement is strictly  
5 limited to specific investments mentioned in each  
6 agreement?  Could that be the reason why you're not  
7 testifying here on that issue.

8           MR. UKABIALA:  I'm sorry.  We will just have  
9 to intervene.  The Witness is being asked to testify  
10 on matters that are beyond the scope of his Witness  
11 Statements, and that has been clearly established in  
12 PO4.

13           PRESIDENT HANEFELD:  Can you rephrase your  
14 question, please?

15           MS. HAWORTH McCANDLESS:  Sure.

16           BY MS. HAWORTH McCANDLESS:

17           Q.    In his Witness Statement, he mentions that  
18 he was testified--submitted a witness statement in  
19 Duke Energy v. Perú regarding the negotiation,  
20 execution of Juridical Stability Agreements.

21                   My question is, you are not testifying here  
22 about the scope of stability agreements.  Is it

1 potentially because there's an inconsistency in what  
2 you stated in that Witness Statement versus what is  
3 being testified here about the scope of stability  
4 agreements?

5 MR. UKABIALA: This is not a rephrasing of  
6 the question--I'm sorry, this is not a change in the  
7 question. It's just a rephrasing of the same  
8 question. The Witness does not testify about the  
9 scope of stability agreements In this proceeding or  
10 about Duke Energy, except to mention that he gave  
11 testimony in that case.

12 MS. HAWORTH McCANDLESS: I'll move on, Madam  
13 President.

14 BY MS. HAWORTH McCANDLESS:

15 Q. Turning to the TPA negotiations regarding  
16 the limitations period, in Paragraph 22 of your First  
17 Witness Statement, you stated that: "Based on the  
18 discussions in the U.S., with the U.S. team, it was  
19 clear to the Peruvian delegation that Article 10.18.1  
20 referred to actual or constructive knowledge of past  
21 events--that is, for example, based on loss or  
22 knowledge"--I'm sorry--"loss or damage that has been

1 incurred and not loss or damage that could develop  
2 sometime in the future"; correct?

3           It is Paragraph 22 of your First Witness  
4 Statement, which is behind Tab 1, if you want to look  
5 at the document.

6           A.    Yes, indeed.  The understanding that we had  
7 and also the way in which we discussed this with the  
8 U.S. was that the prescription, the statute of  
9 limitations period had to do with the real knowledge  
10 of events that have occurred.

11           Q.    And with respect to loss or damage, you're  
12 saying that your understanding was that 10.18.1 of the  
13 TPA required actual loss; right?

14                    You say "loss or damage" in the center of  
15 that paragraph, "loss or damage that has been  
16 incurred."  So, in your view it was loss that was  
17 actual loss, that 10.18.1 of the TPA requires actual  
18 loss; is that correct?

19           A.    Yes, indeed.  There needs to be damage, the  
20 damage must have occurred.

21           Q.    And in your view, that's what the U.S.  
22 delegation also understood "incurred" meant, because

1 at the beginning of that sentence you say, "based on  
2 discussions with the U.S. team."

3 So, I assume that your understanding was  
4 that was the U.S. delegation's understanding as well;  
5 is that correct?

6 A. Yes, indeed. We always talked about damages  
7 that have occurred.

8 Q. Are you aware that the U.S. Government has  
9 submitted a Non-Disputing Party submission in this  
10 case, in which it states that for there to be a loss  
11 or damage--for loss or damages incurred in  
12 Article 10.18.1 of the TPA, the Claimant does not have  
13 to actually have sustained a loss. If you look at  
14 Tab 4 where it's the U.S. Non-Disputing Party  
15 submission--

16 MR. UKABIALA: Yeah, we would just ask that  
17 you read what the U.S. actually wrote in the  
18 submission, because I believe that's a  
19 mischaracterization of the U.S. submission.

20 MS. HAWORTH McCANDLESS: I'm going to show  
21 him the paragraph right now. It is Paragraph 11,  
22 behind Tab 4. And this is the U.S. Non-Disputing

1 Party submission, and in the second sentence it  
2 says: "Moreover, the term 'incurred' broadly means  
3 'to become liable or subject to.'"

4 And there's a Footnote 16 that refers to a  
5 case, United States v. Laney, in which the  
6 parenthetical states: "Finding that 'to incur' means  
7 'to become liable or subject to,' and that a person  
8 may become 'subject to' an expense before she actually  
9 disburses any funds."

10 Do you see that text?

11 A. Yes, I see it, and I believe that this is  
12 not in opposition to what we discussed in the  
13 negotiation with the U.S. delegation. The fact that  
14 there is no disbursement, no financial disbursement  
15 does not imply that there was no damage.

16 BY MS. HAWORTH McCANDLESS:

17 Q. Well, it says "before actual disbursement of  
18 any funds." If we look at the next sentence, it says,  
19 in Paragraph 11: "Therefore an investor may have  
20 incurred loss or damage even if the financial impact  
21 of that loss or damage is not immediate," and there's  
22 a footnote, Footnote 17, which refers to the Berkowitz

1 Case, and in parentheses that states "finding the  
2 date on which the Claimant first acquired actual or  
3 constructive knowledge of the loss or damage incurred  
4 in consequence of the breach implies that such  
5 knowledge is triggered by the first appreciation that  
6 loss or damage will be or has been incurred--will be  
7 incurred."

8 Do you see that text as well?

9 A. Yes. Yes, indeed. I see it.

10 MS. HAWORTH McCANDLESS: Just one moment.

11 Madam President, I have no further  
12 questions.

13 PRESIDENT HANEFELD: Thank you.

14 Any questions in redirect?

15 MS. HUANG: No further questions. Thank  
16 you.

17 PRESIDENT HANEFELD: Mr. Herrera, we also do  
18 not have questions. So, you are hereby released as a  
19 witness. Thank you very much.

20 THE WITNESS: I thank the Tribunal and  
21 everyone in attendance and my dear friend Stanimir.

22 (Comments off microphone.)

1 THE WITNESS: I thank you, and I just hope  
2 that my Statement is useful to get to a good  
3 resolution of the case.

4 PRESIDENT HANEFELD: Thank you.

5 (Witness steps down.)

6 PRESIDENT HANEFELD: So, do the Parties wish  
7 a short break before we continue? Probably we need a  
8 break?

9 MR. ALEXANDROV: Before we do that, Madam  
10 President, can I raise a procedural point? We saw a  
11 situation where one lawyer defending the Witness,  
12 Ms. Huang, ceded the floor to Mr. Ukabiala and  
13 Mr. Prager and back to Mr. Ukabiala making procedural  
14 objections during the examination of Mr. Herrera.

15 We are a bit reluctant to agree that this  
16 should be the practice where you have a role of  
17 lawyers and one after the other after the other raises  
18 procedural objections. We need to understand what the  
19 position of the Tribunal is. If the Tribunal is fine  
20 with that, that's fine. With us, we will then use the  
21 same practice. We have been sticking to the practice  
22 of, whoever is at the microphone, either conducting

1 the direct examination or the cross-examination, is  
2 the one to raise procedural objections in relation to  
3 the examination of that witness.

4 If the view of the Tribunal is that the  
5 practice of having one, two, three lawyers raising  
6 objections one after the other, that's fine. We just  
7 need clarity going forward.

8 PRESIDENT HANEFELD: I think we made it  
9 clear that we hope not to receive any further multiple  
10 objections, so hopefully the problem will not arise  
11 again.

12 PRESIDENT HANEFELD: How long do you need to  
13 get Mr. Isasi?

14 MS. HAWORTH McCANDLESS: I think a 15-minute  
15 break is appropriate at this moment, if that's okay.

16 PRESIDENT HANEFELD: Okay. Then we do a  
17 15-minute break and meet again at half past 3:00 p.m.

18 (Brief recess.)

19 FELIPE ISASI CAYO, RESPONDENT'S WITNESS, CALLED

20 (appearing remotely)

21 PRESIDENT HANEFELD: Good afternoon,  
22 Mr. Isasi.

1 Can you hear and see us well?

2 THE WITNESS: Yes. I'm hearing well.

3 PRESIDENT HANEFELD: Thank you. Then we  
4 welcome you as Witness in these proceedings.

5 I briefly introduce the Tribunal. My name  
6 is Inka Hanefeld. I'm the presiding arbitrator in  
7 this Arbitration. I'm here with my co-arbitrators,  
8 Professor Guido Tawil and with Dr. Bernardo Cremades.

9 Can you hear me?

10 THE WITNESS: There's echo. I hear an echo  
11 in here as well, but please go on, ma'am. I think I'm  
12 going to be okay. I think what I'm going to do is  
13 turn the volume down and perhaps things are going to  
14 be a little better.

15 Okay. Go ahead. Please go ahead.

16 Good afternoon. Good afternoon, Madam  
17 President, Members of the Tribunal.

18 PRESIDENT HANEFELD: Mr. Isasi, you have  
19 been called as a Witness in these proceedings by the  
20 Respondent. As such, you need to make a Declaration  
21 under Article 35(2) of the ICSID Arbitration Rules in  
22 which you declare that you will state the truth and

1 nothing but the truth.

2           So, could someone be so kind to give  
3 Mr. Isasi this Declaration?

4           Otherwise, I can also read it out to you.

5           (Comments off microphone.)

6           THE INTERPRETER: He's talking to someone  
7 else.

8           THE WITNESS: You need to give me the text  
9 of the Declaration, the oath. Last time I was given a  
10 sheet of paper with it. Please, the oath. Give me  
11 the Witness Declaration.

12           Perhaps if you show it on the screen, I can  
13 read it, but I don't see it here.

14           PRESIDENT HANEFELD: Okay. It will be put  
15 on the screen for you in just a minute.

16           THE WITNESS: Shall I read it?

17           I solemnly declare, upon my honor and  
18 conscience, that I shall speak the truth, the whole  
19 truth, and nothing but the truth.

20           PRESIDENT HANEFELD: Thank you very much.

21           And then we get to your Witness Statements.

22           Do you have a clean copy of your Witness

1 Statements, RWS-2 and 9, in front of you?

2 THE WITNESS: RWS-2 and RWS-9. Yes, I do.

3 PRESIDENT HANEFELD: And can you confirm  
4 that these are your Witness Statements and that they  
5 correspond to your recollection, or do you have  
6 anything you want to correct?

7 THE WITNESS: I'm sorry. Is the member of  
8 Tribunal speaking to me, or is a Party lawyer speaking  
9 to me?

10 PRESIDENT HANEFELD: No, I'm the President  
11 of the Tribunal. I hope you see me and you hear me.

12 THE WITNESS: I cannot hear you.

13 PRESIDENT HANEFELD: You cannot hear me or  
14 you can't see me? Then we have an issue that needs to  
15 be resolved right away.

16 THE WITNESS: I can't hear Madam President.  
17 I only hear the interpreter, and that is why it's  
18 confusing. I don't know if the President is speaking  
19 or if the interpreter is speaking or a counselor is  
20 speaking.

21 (Comments off microphone.)

22 PRESIDENT HANEFELD: But can you--you do not

1 see me now? You should see me.

2 THE WITNESS: Now I can see you, Madam  
3 President.

4 PRESIDENT HANEFELD: So, I was the one  
5 talking, but I'm only in command of English, but it  
6 needs to be translated. And you hear the translator.

7 THE WITNESS: That's right.

8 PRESIDENT HANEFELD: So, coming back to your  
9 Witness Statements, do you have anything to amend or  
10 correct?

11 THE WITNESS: I do not. No rectification  
12 whatsoever.

13 PRESIDENT HANEFELD: Perfect. Then we can  
14 proceed. You will now first be questioned by the  
15 Respondent's counsel, and then be cross-examined by  
16 Claimant's Counsel, and we as a Tribunal may also have  
17 additional questions.

18 THE WITNESS: Very well. Thank you.

19 DIRECT EXAMINATION

20 BY MS. HAWORTH McCANDLESS:

21 Q. Good afternoon, Mr. Isasi.

22 The President of the Tribunal showed you--or

1 referenced your Witness Statements, and you have them  
2 in front of you.

3 Do those Statements--are they based on your  
4 personal knowledge and experience?

5 A. Yes.

6 Q. Could you please describe your educational  
7 background?

8 A. I am a lawyer. I graduated from the  
9 Catholic University of Perú in 1976. I also have done  
10 studies at the master's degree level in public  
11 administration at the Instituto Ortega y Gasset within  
12 the Universidad Complutense de Madrid.

13 It doesn't have any official validation. It  
14 wasn't a course of studies here in Perú by the  
15 Continental University.

16 I also have received training in corporate  
17 management from ESUN, the Escuela de Selección de  
18 Universidad de Centroamerica, among others.

19 Q. What is your current position?

20 A. I am a partner of the Fernando Sánchez  
21 Abogados.

22 Q. What positions did you hold at the Ministry

1 of Energy and Mines?

2 A. You mean currently or previously?

3 Q. No, previously.

4 A. I understand that you're asking me about the  
5 Ministry.

6 Q. What positions did you hold at the Ministry  
7 of Energy and Mines when you worked there?

8 A. Okay. I was the General Director of Legal  
9 Advisory of the MINEM between 2004 and 2007. I was  
10 the Vice Minister of Mines between '07 and '09, June  
11 '09.

12 Q. And you wrote an opinion in April of 2005  
13 about Mining Stabilization Agreements.

14 Could you please explain briefly why you  
15 wrote that opinion?

16 A. Are you making reference of the 14  
17 April 2005 Report that was issued by my office at the  
18 request of the National Superintendents of Tax  
19 Administration to answer inquiries in connection with  
20 the scope of legal Stabilization Agreements entered  
21 into by Perú. This in connection with the application  
22 or nonapplication of the Royalties Law to mining

1 concession titleholders under those Agreements.

2           Just to clarify, I want to say that this was  
3 also done to clarify the Constitutional Court Judgment  
4 in connection with the legality of the Royalties,  
5 Mining Royalties Law. The Claimants had said that  
6 this law violated taxability. The Constitutional  
7 Tribunal said that Royalties are not a tax and,  
8 therefore, it is not protected by the Stabilization  
9 Agreements, and that is why all mining concession  
10 titleholders had to pay Mining Royalties.

11           If you wish, I can explain further, or if  
12 you ask me questions, I can talk about the core of my  
13 Report.

14           Q. What is it that you concluded in your  
15 Report?

16           What did you conclude in your Report?

17           A. I can't hear the translation. I cannot hear  
18 the translation.

19           Q. Can you hear me now?

20           A. I can't hear the first word.

21           THE INTERPRETER: Madam President, maybe if  
22 Counsel waits three or four moments before asking the

1 question, that may help. There's a delay.

2 BY MS. HAWORTH McCANDLESS:

3 Q. I will repeat my question.

4 What was the conclusion--what did you  
5 conclude in your Report?

6 A. My Opinion was that, although it is true,  
7 all of the mining concession holders, as the  
8 Constitutional Court said, must pay the royalty for  
9 mining because royalties are not taxes. It is also  
10 true that Stabilization Agreements entered into by  
11 Perú in the mining sector had a specific provision for  
12 administrative stabilization.

13 As an exception, those Mining Titleholders  
14 that had made these agreements were protected in their  
15 investment projects which is circumscribed by a  
16 feasibility agreement under the Contract. When  
17 calculating the Mining Royalty for the basis of  
18 calculation of the royalty and the application of that  
19 royalty, they had to bring in the amount corresponding  
20 to the stabilized project within the limits of the  
21 Contract, the Agreement.

22 Q. And the Opinion--in the Opinion that you

1 expressed in the Report of April 2005--I'm sorry--is  
2 that consistent with MINEM's view of the scope of  
3 Mining Stabilization Agreements during the time you  
4 worked at MINEM?

5 A. That's right. The institutional opinion by  
6 the Ministry has always been that Stabilization  
7 Agreements only protect the company within the limit  
8 of the investment project. You have a specific  
9 investment project, and the purpose of it is that the  
10 Rate of Return expected by the investor is not  
11 distorted by an act of the prince, by a supervening  
12 act.

13 Q. Thank you, Mr. Isasi.

14 MS. HAWORTH McCANDLESS: I have no further  
15 questions.

16 PRESIDENT HANEFELD: Then we hand over to  
17 Claimant for cross-examination.

18 MR. PRAGER: Madam President, given the  
19 technical difficulties and the Hearing issues and  
20 where we stand in the schedule, we will forego the  
21 cross-examination of Mr. Isasi and, instead, focus on  
22 witnesses who actually came here to New York.

1           PRESIDENT HANEFELD: Okay. This is noted.

2 Then we will also not have recross.

3           MS. HAWORTH McCANDLESS: My only recross is  
4 we are in D.C., as opposed to New York, but that's a  
5 very small point.

6           MR. PRAGER: That's a good point.

7           PRESIDENT HANEFELD: Mr. Isasi, we take the  
8 opportunity to ask one or the other question. Now, to  
9 you, with the permission of my co-arbitrators, I just  
10 start, and you will jump in, if necessary.

11                           QUESTIONS FROM THE TRIBUNAL

12           PRESIDENT HANEFELD: So I follow the  
13 chronology of your--

14           THE WITNESS: I can't hear you very well,  
15 Madam President. It's distorted. The voice of the  
16 interpreter is distorted.

17           PRESIDENT HANEFELD: Mr. Isasi, I was  
18 informed that the Zoom technician is trying to solve  
19 it because we can hear and see you perfectly well. So  
20 it seems to be a problem of the Zoom connection, and  
21 we hope to solve it quickly.

22           THE WITNESS: Thank you.

1 (Comments off microphone.)

2 PRESIDENT HANEFELD: Then we can proceed. I  
3 will speak very slowly so that the translator can  
4 follow.

5 And I will also make sufficient breaks so  
6 that we should not encounter difficulty. But if you  
7 have difficulty to understand me, please say so.

8 THE WITNESS: Thank you very much.

9 PRESIDENT HANEFELD: My first question  
10 relates to Paragraph 6 of your First Witness  
11 Statement, where you state: "MINEM's position was  
12 always that Cerro Verde had to pay Royalties on the  
13 sales arising from the Primary Sulfides."

14 We have heard in this Arbitration different  
15 testimony by Ms. Chappuis who testified that in a  
16 meeting on the 15th of June 2004, so shortly before  
17 you joined MINEM, there was consensus that Cerro Verde  
18 with its whole concession would be exempted from  
19 Royalties.

20 Have you been informed about such meeting?

21 THE WITNESS: What is the date again, ma'am?

22 PRESIDENT HANEFELD: The date is the 15th of

1 June 2004, so shortly before you joined MINEM in your  
2 position.

3 THE WITNESS: I don't have any news in  
4 connection with that statement. All of the evidence I  
5 have points to the fact that, from the very beginning,  
6 when I started working at the Ministry of Energy and  
7 Mines, there was a clear consensus that the  
8 Stabilization Agreements only protected in connection  
9 with the subject matter of the Contract.

10 This had to do with the theory of contracts.  
11 We didn't have any specific laws stating that.  
12 Article 61 of the Constitution protects the subject  
13 matter of the Contract, the purpose of the Contract  
14 that cannot be modified by external agents, external  
15 factors. That's the idea.

16 We were always aware that the Stabilization  
17 Agreement only protected the purpose of the Contract.  
18 If you're talking about Cerro Verde, the purpose of  
19 the Contract was a Leaching Project that was clearly  
20 circumscribed under the Feasibility Agreement, and  
21 under the Contract it is an integral part of the  
22 Agreement. That is the scope of protection; nothing

1 beyond that. Anything outside the Contract is not  
2 part of this.

3 PRESIDENT HANEFELD: Then I would like to  
4 put on the screen the document RE-198 and discuss it  
5 briefly with Mr. Isasi. This is an email by  
6 Ms. Chappuis of 11th of June 2004.

7 Can we put it on screen for the witness  
8 please?

9 THE WITNESS: It is too small. I can't see  
10 it.

11 PRESIDENT HANEFELD: It is an email by  
12 Ms. Chappuis of June 11, 2004.

13 Can you read the recipients to which this  
14 email was directed? Can you see it?

15 THE WITNESS: Rosario Padilla, Jamie Chávez  
16 Riva, Oswaldo Tovar, Luis Saldarriaga Colona, and Luis  
17 Panizo, Director of Legal Affairs, my predecessor. I  
18 wasn't there at that opportunity.

19 PRESIDENT HANEFELD: So, when you started in  
20 July 2004, these people had already left?

21 THE WITNESS: Let's see. Luis Panizo was  
22 part of the Mining Council. Rosaria Padilla, perhaps,

1 yes. Perhaps, she was there at the DGM still. Jamie  
2 Chávez Riva, I think he was the advisor to the Vice  
3 Minister, Vice Minister Polo. He was seconded by the  
4 Institute of Mining Concessions. Oswald Tovar was the  
5 Director of Mining Promotion.

6 PRESIDENT HANEFELD: And the email states  
7 "Matter: Request for"--for me the English version,  
8 can you also enlarge it?

9 The email states as: "Matter: Request for  
10 inclusion of the Sulfides Project in Stability  
11 Agreement of Cerro Verde - is this legal?"

12 Is this a question that was also raised to  
13 you at the time--

14 (Overlapping interpretation and speakers.)

15 THE INTERPRETER: Please continue.

16 PRESIDENT HANEFELD: Is this a question that  
17 was posed to you at the time, or would you have  
18 expected that it would have been posed to you at the  
19 time?

20 THE WITNESS: Not at that time, no, I don't  
21 think so. I don't recall that a question was posed to  
22 me in connection with this specific matter at that

1 time.

2 Now, at some point in time, I have become  
3 aware of certain discrepancies that Mr. Polo, Vice  
4 Minister of Mines, had with Ms. Chappuis. She was the  
5 DGM, but I wasn't able to understand the scope of  
6 those discrepancies.

7 I do recall that, on one occasion, César  
8 Polo, as Vice Minister of Mining, asked me a question  
9 as to my opinion regarding the protection provided by  
10 the Stability Agreement.

11 I don't recall that it had to do  
12 specifically with Primary Sulfides, but I do recall  
13 quite clearly that the Minister at that time,  
14 Kahaundria (phonetic) told César Polo: "Don't worry  
15 about that. Let the one who has a fresh mind here  
16 analyze the topic and give his opinion."

17 And I clearly stated my opinion sharing the  
18 opinion of Jaime Chávez Riva--I'm sorry, of César  
19 Polo, an opinion that shared by Jaime Chávez Riva, I  
20 understand, and also the attorneys at the DGM.  
21 Rosaria Padilla was one of those.

22 All of us thought that the Stabilization

1 Agreement was limited exclusively to the investment  
2 project that was delimited by the Agreement.  
3 Therefore, the Primary Sulfides Contract was not  
4 included in the Leaching Agreement.

5           As I say, I do recall that at some point in  
6 time afterwards that issue was raised with me. I  
7 always said that Primary Sulfides was not encompassed  
8 in the protection afforded by the Stability Agreement  
9 for the Leaching Project.

10           ARBITRATOR TAWIL: Hello. I'm one of the  
11 arbitrators.

12           You just mentioned that you came to learn or  
13 you knew that there were discrepancies between César  
14 Polo and Ms. Chappuis.

15           Could you explain to us what were those  
16 discrepancies and what you knew about them at the  
17 time?

18           THE WITNESS: No. No. I felt that there  
19 was some tension in the relationship between those two  
20 persons. I wasn't concerned to find out because these  
21 were matters that didn't involve my office.

22           ARBITRATOR TAWIL: And you didn't know what

1 the position of the Director General for Mining was?

2 THE WITNESS: The truth is, I don't recall  
3 what her position might have been.

4 I assume, that there was a discrepancy  
5 between them, but I wouldn't be able to explain to you  
6 just what it was, about what subject matter it  
7 revolved around, so much so that Ms. Chappuis retired  
8 from the Ministry a short time thereafter.

9 PRESIDENT HANEFELD: And then let me turn to  
10 the next item, which is the application and extension  
11 of the Beneficiation Concession.

12 Were you involved in this extension of the  
13 Beneficiation Concession which took place on the 28th  
14 of October 2004?

15 Were you consulted on this issue by any  
16 means?

17 THE WITNESS: The expansion.

18 PRESIDENT HANEFELD: Yes. And the  
19 Application for that was in August 2004, and the  
20 Decision was rendered in October, end of October 2004.  
21 This was the extension of the Beneficiation Concession  
22 to the Concentrator.

1           Have you been involved in this issue?

2           THE WITNESS: No. Because--well, let me  
3 explain. In the structure of the Ministry of Energy  
4 and Mines, each General Directorate had its own legal  
5 counsel office and its own technical personnel, and  
6 matters such as those would be resolved there.

7           The General Directorate for Legal Advisory  
8 Services is an office of legal counsel for the top  
9 level management, the Minister, the Vice Ministers,  
10 and the Secretary General. So, I did not have to be  
11 involved in that issue.

12           PRESIDENT HANEFELD: And if the extension of  
13 the Beneficiation Concession had the effect of  
14 bringing the Concentrator under the protection of the  
15 1998 Stability Agreement, would this have been an  
16 issue in which you would have been involved? Was it  
17 of such an importance or significance that then you  
18 would have been involved, or do you only come in when  
19 the Minister calls you to come in?

20           THE WITNESS: Well, let's see. How can I  
21 explain it to you? The expansion of operations,  
22 mining operations and the--well, the only effect is to

1 authorize that one carry out the activity. But one  
2 cannot amend the Agreement. One would have had to  
3 have incorporated that expansion in order for it to  
4 enjoy stability. It would have had to have been  
5 included in the Agreement. And, on that, no doubt  
6 they would have had to consult with me because in that  
7 case, they would be compromising--or involving the  
8 Minister of the sector, and it's likely that I would  
9 have been consulted. But that's not what happened  
10 because, as I say, the Leaching Project was clearly  
11 definable and distinguishable from the Primary  
12 Sulfides Project.

13           If you read in the Claim, Cerro Verde says  
14 that at a given point in time before deciding to make  
15 the investment they thought about including the  
16 Primary Sulfides Project, yet they discarded that.  
17 Why? Because it wasn't profitable. That was a  
18 business decision.

19           Had they wished to incorporate it in a  
20 stability agreement, they would have had to have made  
21 a mutual commitment to make a greater investment on a  
22 project which at that time they considered would not

1 be profitable. The thing is, many years afterwards,  
2 the mineral prices shot upwards, and so, it turned out  
3 that the Sulfides Project could at that point be  
4 profitable. So, they would have had to have asked for  
5 a new stability agreement for that project.

6 The thing is they did not do so because the  
7 Law on Royalties had been approved, so it no longer  
8 protected them against anything.

9 PRESIDENT HANEFELD: Then I come to a  
10 different question, relating to Paragraph 20 of your  
11 Second Witness Statement, where you describe Cerro  
12 Verde as a specific case where both a stabilized  
13 project and a nonstabilized project coexists within a  
14 single concession.

15 Do you know of any other such cases that  
16 arose at your time during office and how the question  
17 of Royalties was handled in that case, so the specific  
18 scenario that you had a stabilized project and  
19 nonstabilized project within one concession, or are  
20 you not aware of other cases?

21 THE WITNESS: Can you tell me where I said  
22 that? Because at Paragraph 20 of which, the Second

1 Statement?

2 PRESIDENT HANEFELD: Yes. It should be the  
3 Second Statement, RWS-9. Let me check again. There,  
4 at Paragraph 20. There you state: "Furthermore"--

5 (Overlapping interpretation and speakers.)

6 THE WITNESS: It doesn't say anything.

7 There's a problem here.

8 PRESIDENT HANEFELD: I read: "Furthermore,  
9 as I explained in my First Witness Statement"--

10 THE WITNESS: Yes, go ahead. Read it to me,  
11 please.

12 PRESIDENT HANEFELD: "Furthermore"--

13 (Overlapping speakers.)

14 THE WITNESS: As I explained in my First  
15 Witness Statement--

16 PRESIDENT HANEFELD: Exactly.

17 (Overlapping speakers.)

18 THE WITNESS: The Report of April 2005 was  
19 not referring to specific cases like Cerro Verde,  
20 where both a stabilized project and a non-stabilized  
21 project coexist within a single concession. I don't  
22 know of other cases. I haven't mentioned other cases.

1 I was raising a hypothesis. The matter is quite  
2 clear, as I see it.

3 A mining concession covers a very large area  
4 from anywhere from 100 to 1,000 hectares, each  
5 concession. In this case they have three concessions.

6 Well, a project is carried out on part of  
7 the concession. Over a delimited area of the  
8 Concession, an investment project. So, it may happen,  
9 for example, that a company has two pits within the  
10 same concession. One pit develops a leaching project  
11 and enters into a stability agreement. And the other  
12 pit is going to extract only concentrates, and it  
13 doesn't enter into a stability agreement. It's two  
14 different objectives. There are two totally different  
15 projects. The one enjoys stability, it has a  
16 stability agreement. That one is protected. The one  
17 that does not have a stability agreement is not  
18 protected. And they are in the same concession.

19 Now, in the case of Cerro Verde, it's the  
20 same situation. It's just that in--successively  
21 within the same concession, there's an initial stage  
22 where they say, my objective is to get to the copper

1 cathode, and I'm going to leach. The objective was  
2 leaching, to finance the Leaching Project. That  
3 ended. And they had discarded continuing to work  
4 because they considered it wasn't profitable.

5           Years later, they consider that it is  
6 profitable. So, at that moment, they should have  
7 sought a new stability agreement for that project.  
8 There was a possibility--in Peruvian law there was a  
9 possibility such that, even if the Leaching Project  
10 was being carried out and had not yet ended--this is  
11 what the Agreement states specifically--the Primary  
12 Sulfides Project could have been incorporated in  
13 timely fashion within the original project, for which  
14 one would have had to have amended the Agreement and  
15 with which the investor would have had to make a new  
16 investment. But that had a time frame, and that time  
17 frame was prior to execution of the Leaching Project.  
18 Now, that time passed for them, and they never asked  
19 for a stability agreement, nor that the Primary  
20 Sulfides Project, as far as I understand it, be  
21 incorporated into the Leaching Project.

22           So, it's the exact same thing of the example

1 I gave of two pits, two operating areas in a single  
2 concession, one protected, the other not. Where it is  
3 by stages, vertically speaking. In one case it is  
4 horizontal, in the other case it is vertical; one  
5 protected and the other not.

6 PRESIDENT HANEFELD: And then I would have  
7 one final follow-up question to you, Mr. Isasi, from  
8 my side. This relates to Paragraph 23 of your Second  
9 Witness Statement, RWS-9. And there you make  
10 reference to a list of agreements of guarantees and  
11 measures for the promotion of investments. This is in  
12 Exhibit RE-175.

13 Maybe we can put this list on screen. And I  
14 would kindly request you to explain, now, what this  
15 list means, what this is supposed to tell the  
16 Tribunal, what was the background of this list.

17 THE WITNESS: I have to read to be able to  
18 remember, but it says clearly there--ah, yes, of  
19 course. The inquiry of April of 2005, as I told you,  
20 was an inquiry by SUNAT where we were asked for an  
21 opinion regarding the scope of protection provided by  
22 Stability Agreements.

1           And they also asked for a list of all the  
2 Contracts or Agreements that had been entered into, so  
3 that SUNAT could evaluate whether they were or were  
4 not protected.

5           So, we in the Office of Legal Counsel  
6 received a list from DGM, which was the one that had  
7 the authority it maintain those lists, and together  
8 with my Report, I submitted the list that I had  
9 received from DGM to the SUNAT, and there it clearly  
10 says "Cerro Verde Leaching Project," not "Primary  
11 Sulfides."

12           PRESIDENT HANEFELD: So, you refer to  
13 Line 18, where you say, okay, this is Cerro Verde and  
14 the project is the Leaching Project. And the  
15 investment was 237 million, and you say this is the  
16 expression from MINEM that only this Leaching Project  
17 was stabilized.

18           Do I understand you correctly?

19           THE WITNESS: That is right.

20           PRESIDENT HANEFELD: Then let us just, and  
21 I'll go through two other examples so that I better  
22 understand.

1           If we go to Line 9, there the company name  
2 is "Southern Perú Limited." And then as a project in  
3 Line 9 it states: "Electrowon Leaching, Investment,  
4 118 million." So, it's your position that it was  
5 MINEM's and then SUNAT's official position that, for  
6 Southern Perú Limited, also only a leaching project  
7 called "Electrowon" with an investment of 118 million  
8 was stabilized?

9           THE WITNESS: I haven't studied that case,  
10 so I couldn't tell you. What I can tell you is that  
11 the list did not imply an a priori pronouncement on  
12 the part of the DGM or on the part of the Office of  
13 Legal Counsel at the Ministry regarding the scope of  
14 the agreements.

15           We would send the agreements to the SUNAT  
16 because they asked us for a complete list of  
17 agreements that had been entered into. The  
18 methodology, as I said in my statements and in my  
19 presentations on multiple occasions to Congress, was  
20 that the competence for delimiting or not delimiting  
21 and how much to delimit, or rather, to the assessment  
22 or non-assessment or how much to assess Royalties on

1 these investments was that SUNAT had to review each  
2 case and review each agreement to determine whether  
3 there was an administrative stability clause that  
4 protected it because there are some agreements that  
5 don't have the administrative stability clause and  
6 they are not protected vis-à-vis Royalties.

7           So, each agreement had to be reviewed, and  
8 on that basis, one would determine the basis for  
9 calculating the Royalty. If it had the administrative  
10 stability clause, then from those mineral resources or  
11 concentrates that were extracted from that mining  
12 investment would be subtracted from the basis of  
13 calculation, and one would pay the difference.

14           I stated this on multiple occasions to the  
15 Congress and in my statements and in my opinions.

16           The thing is that when the inquiry came in  
17 the month of April of 2005, it was a general inquiry.  
18 We were not asked about who pays and who doesn't pay.  
19 We were simply asked, what is the scope of the  
20 stability agreements in general with respect to Mining  
21 Royalties, because there had been a judgment by the  
22 Constitutional Court that it was thought wasn't

1 sufficiently clear.

2           For example, when SUNAT inquired on 30  
3 March 2005, the Judgment of the Constitutional Court  
4 had not yet been adopted, and they were drawing up the  
5 inquiry. Why? Because the members of the  
6 Constitutional Court had been making contradictory  
7 statements regarding the legal nature of Mining  
8 Royalties, whether or not it was a tax, whether it was  
9 protected by stability. So, when I received the  
10 inquiry from SUNAT, the Judgment had been adopted, and  
11 likewise the clarification of the Judgment had been  
12 adopted. So, I made a general statement, not  
13 regarding any specific project, but in general terms  
14 about, well, while that--while what the Constitutional  
15 Court said is true, which is to say that all mining  
16 concessions, all Mining Titleholders are under the  
17 obligation to pay Mining Royalties because Mining  
18 Royalties are not a tax and they are not protected by  
19 Tax Stability Agreements.

20           Nonetheless, I said, on an exceptional  
21 basis, these specific projects--not the concessions,  
22 not the companies--these specific projects should be

1 respected insofar as they have an administrative  
2 stability Clause. Why? Because the Mining Royalty,  
3 if it's not a tax, is consideration for the extraction  
4 of the ore, which belongs to the State. Therefore,  
5 they're administrative in nature, not tax in nature.  
6 If there's an administrative stability clause, then  
7 they are protected, but only with the respect to the  
8 scope of the investment project.

9 I said this clearly at Number 17 and in the  
10 conclusion of my April 5, 2005, Report.

11 PRESIDENT HANEFELD: Thank you very much,  
12 Mr. Isasi.

13 We have no further questions.

14 MR. PRAGER: Madam President, I have now a  
15 few follow-up questions I want to ask.

16 MS. HAWORTH McCANDLESS: Sorry, Madam  
17 President, Respondent would object to Claimant's  
18 Counsel asking any questions at this point. They  
19 waived their right to cross-examine Mr. Isasi.

20 MR. PRAGER: No, no, no. Everybody has the  
21 right to ask follow-up questions if the Tribunal asks  
22 questions. I waived my right to my primary

1 cross-examination.

2 MS. HAWORTH McCANDLESS: We maintain our  
3 objection. We are in the hands of the Tribunal.

4 PRESIDENT HANEFELD: Please go ahead,  
5 Mr. Prager.

6 ADDITIONAL EXAMINATION

7 BY MR. PRAGER:

8 Q. Mr. Isasi, first of all, good afternoon.  
9 Buenas tardes.

10 My name is Dietmar Prager. It's a pleasure  
11 to meet you, although remotely.

12 You--

13 (Overlapping interpretation and speakers.)

14 A. Likewise. Good afternoon.

15 Q. You answered in response to a question by  
16 the President that it has always been the position of  
17 MINEM that stability benefits are limited to an  
18 Investment Project. So, I wanted to ask you whether  
19 the Mining Council forms part of MINEM?

20 A. The Mining Council is an autonomous  
21 administrative organ, technically speaking, that is  
22 part of the Ministry of Energy and Mines. It's part

1 of the administrative structure because people are  
2 paid by the Ministry of Energy and Mines, but it is an  
3 autonomous collegial body.

4 Q. And would you agree with me that the Mining  
5 Council is the last administrative instance in mining  
6 matters?

7 A. I don't think that that question has a  
8 yes-or-no answer because, of late, the powers of the  
9 Mining Council have been reduced, and it has very  
10 limited functions. I wouldn't be able to tell you  
11 this with any precision because it's 20 years since  
12 I've been involved in that issue.

13 Q. But sitting here today, you do not remember  
14 whether in 2004 the Mining Council was the last  
15 administrative instance for appeals in mining matters.  
16 Is that your testimony?

17 A. In general it was the final administrative  
18 instance in mining matters, but delimited to certain  
19 spheres.

20 In the case of Mining Royalties, no, because  
21 in the case of Mining Royalties, well, that was  
22 entrusted by law expressly to the SUNAT and the

1 Ministry of Economy and Finance and the Tax Tribunal  
2 and the Supreme Court in terms of the administrative  
3 litigation aspect.

4 Q. But in your recollection, would you agree  
5 with me that the Mining Council was the--in 2004--is  
6 it your recollection now that in 2004 the Mining  
7 Council was the last administrative instance in mining  
8 matters other than Royalties?

9 MS. HAWORTH McCANDLESS: Madam President,  
10 he's asked that question before. Mr. Isasi just  
11 answered it.

12 MR. PRAGER: Fine.

13 BY MR. PRAGER:

14 Q. Let me ask you the next question.

15 Before you came to your conclusion that the  
16 position of MINEM has always been that investment  
17 projects are limited to--

18 (Overlapping speakers.)

19 A. You're putting words in my mouth. Excuse  
20 me. I have not said what you just said. So, I would  
21 ask that you please not put words in my mouth, because  
22 I have come here with the very positive goodwill to be

1 a Witness as to the truth. I have no interest in one  
2 Party or the other winning in this proceeding. I'm a  
3 Witness as to the truth, and that's what I have sworn  
4 to do.

5 What I would say is that the Mining Council  
6 was the last administrative instance in certain  
7 mining-related subject matter. The scope of that  
8 competence, I am not familiar with, and I have no  
9 reason to know that. It's part of the procedure  
10 that's in my Statement.

11 Q. Mr. Isasi, I was about to ask you a  
12 question, and the question was, before you came to the  
13 conclusion that a position of MINEM has always been  
14 that investment projects--that Stability Guarantees  
15 only apply to investment projects.

16 Did you review the Decisions of the Mining  
17 Council on matters of Stability Agreements?

18 MS. HAWORTH McCANDLESS: I'm sorry. I  
19 object to the line of questioning, I'm not sure how  
20 that follows on the questions of the President.

21 MR. PRAGER: Well, I can tell you how that  
22 follows to the question of the President. Because if

1 he answered in response to the question, that it has  
2 always been the practice of MINEM. So, I'm testing on  
3 what he bases that, what--on what kind of information  
4 he bases that statement.

5 PRESIDENT HANEFELD: Yes, please go ahead.

6 BY MR. PRAGER:

7 Q. Mr. Isasi, do you need me to repeat the  
8 question--

9 (Overlapping interpretation and speakers.)

10 A. May I answer?

11 Q. So, let me reask the question.

12 A. I understood the question perfectly well.

13 And what I can tell you is that I reiterate that the  
14 Mining Council was an autonomous body. I reiterate  
15 that when I refer to the institutional position of the  
16 Ministry, I'm referring to the Ministry. The Ministry  
17 of Energy and Mines, mining sector, was structured  
18 with two subsectors: Energy and Mining.

19 A vice Minister for Mining and, below them,  
20 certain General Directorates. And the Mining Council  
21 is not there. And in the Ministry, we debated that.  
22 Many times, we discussed the matter. Many times, the

1 institutional position was always the one that I have  
2 upheld.

3 Q. Mr. Isasi, you didn't answer my question.

4 Did you look at the practice of the Mining  
5 Council before you came to that conclusion?

6 Did you or did you not?

7 A. No, that is not in my Report.

8 Q. That is correct, it is not in your Report,  
9 but I wanted to ask you, did you consider or look at  
10 the practice of the Mining Council before you came to  
11 your conclusion that investment projects are  
12 only--that the stability benefits are only limited to  
13 investment projects?

14 A. No. I did not review. I did not review  
15 Resolutions by the Mining Council. I reviewed the  
16 law. I reviewed the Constitution and all of the legal  
17 citations in that Report. That's what I recall. This  
18 is 20 years after.

19 Q. Let me ask it to you another question that  
20 the President asked you, and that was with regard to  
21 Paragraph 23 of your Second Report, where there is the  
22 list of the Stability Agreements that was sent, that

1 you said were sent to SUNAT. And I just wanted to  
2 make sure that I understood you correctly. And you  
3 correct me.

4           Were you saying, when you were asked about  
5 the various titles, that the title of the Stability  
6 Agreement, which is reflected here in the second  
7 column--that the title of the Stability Agreements--

8           (Overlapping speakers.)

9           MR. PRAGER: --scope of the Stability  
10 Agreements?

11           MS. HAWORTH McCANDLESS: I'm sorry. That's  
12 a mischaracterization. That's not--we were--I will  
13 object because the assertion in his question is  
14 erroneous, as a fact, matter of fact. He said that's  
15 listed as the title of the Stability Agreement.

16           PRESIDENT HANEFELD: Let us put the list  
17 again on screen, and then we all see what it states.

18           MR. PRAGER: Exactly.

19           If somebody could put that on the screen  
20 again. It is a--here we go.

21           BY MR. PRAGER:

22           Q. Mr. Isasi, let me take it slowly.

1 Do you see the list here that says

2 "Project"?

3 A. The Project that is stabilized. The Cerro  
4 Verde Project has stabilized. And that goes--that is  
5 defined under the Contract as a Cerro Verde Leaching  
6 Project, and it is limited by a Feasibility Study. I  
7 do not know what your question is. At any rate, that  
8 list shows the Contract on guarantees and investment  
9 Measures as required by SUNAT, and sent by the office,  
10 the General Office of Mining.

11 And as Director General, I conveyed this,  
12 together with the Report. I do not see the doubt, the  
13 follow-up doubt that Counsel has.

14 Q. Well, Mr. Isasi, you don't know what the  
15 question is, because you were not waiting until I  
16 asked you the question.

17 So, here comes my question.

18 Would you agree that the second column  
19 that's listed as "Project" contains the titles that  
20 you can find in Clause 1.1 of each Stability  
21 Agreement?

22 A. I do not understand your question.

1 Q. Let me ask you that way.

2 What is your understanding what the column  
3 entitled "Project" shows? Does it show a title of the  
4 Stability Agreement, the name of the Project? What is  
5 your view on what this column shows?

6 A. As a matter of fact, the question should be  
7 asked to the General Director of Mining that sent this  
8 information. I see the list of Agreements, of  
9 guarantees and Measures for Investment Promotion.  
10 This is just a list of Contracts, Agreements. What I  
11 see is that the General Director has identified a  
12 Company or a Leaching Project, Cerro Verde, for  
13 237 million, and that agrees with the Leaching Project  
14 that is part of the Contract, and that is already  
15 delimited by a Feasibility Study.

16 I cannot tell you beyond that whether there  
17 is a mistake by the Director, and he assigned a  
18 project name to a company or a company to something  
19 else. I do not know. That is the list of all of the  
20 Contracts with guarantees and Measures for Investment  
21 Promotion for SUNAT to do their work, and, as I  
22 understand, they did it.

1 Q. Mr. Isasi, if you look at the third line,  
2 Minera Yauricocha, the Project is described as  
3 "Centromín Perú."

4 Is it your position that the stability  
5 benefits applied to the entire Centromín Perú Company?

6 A. I am not here to speak about Centromin, I do  
7 not know what the legal situation with Centromín is.

8 Q. What about Line 11?

9 Do you see that? Sociedad Minera De Zinc De  
10 Cajamarquilla, is it your position that the Stability  
11 Guarantees applied also to "Others," and if so, would  
12 the "Others" be identified?

13 A. Once again, I am here to speak about the  
14 specific Cerro Verde Case. I have not been in the  
15 mining sector for 20 years, and I have not reviewed  
16 the cases of the other companies whose names are there  
17 on the screen. I cannot offer you an opinion as  
18 you're asking me to do.

19 Q. Thank you. Mr. Isasi.

20 MR. PRAGER: I don't have any other  
21 questions.

22 MS. HAWORTH McCANDLESS: Respondent has no

1 further questions. Thank you.

2 (Overlapping interpretation and speakers.)

3 PRESIDENT HANEFELD: Mr. Isasi, then there  
4 are no further questions. We thank you very much for  
5 being available by a video screen, and you are now  
6 released as a Witness. Thank you.

7 THE WITNESS: I thank you. Thank you. Good  
8 afternoon.

9 (Witness steps down.)

10 MR. PRAGER: Thank you.

11 MS. HAWORTH McCANDLESS: Thank you.

12 PRESIDENT HANEFELD: I suggest that we have  
13 now a break.

14 MR. ALEXANDROV: Madam President, may I be  
15 heard for a moment?

16 PRESIDENT HANEFELD: Sure.

17 MR. ALEXANDROV: We strongly object to this  
18 conduct of Counsel for Claimant, essentially waiving  
19 their right to cross-examine a Witness, and then  
20 spending no less than 15, 20 minutes asking questions  
21 allegedly arising out of the Tribunal's questions, and  
22 we reserve our rights in that regard.

1           MR. PRAGER:  If I may respond to that, it is  
2 common practice that, if the Tribunal asks questions,  
3 the Parties have a right to ask follow-up questions.  
4 My questions were clearly based on questions that you  
5 asked and answers that Mr. Isasi gave in response.

6           So, there is, in our view, absolutely no  
7 basis for the objection, and I think it's a practice  
8 that our--that the other side has also used to follow  
9 up on Tribunal's questions.

10           MR. ALEXANDROV:  Madam President, I'm not  
11 asking for a ruling, and this statement is  
12 unwarranted.  I was just reserving Respondent's  
13 rights.

14           PRESIDENT HANEFELD:  This is noted.

15           The Tribunal's suggestion on how to proceed  
16 would be that we now start with Mr. Polo, if this is  
17 possible, and I'm fine with the Respondent.  But as we  
18 have to end the Hearing today, really at sharp 5:30,  
19 it may well be that we start then with the  
20 cross-examination only tomorrow.

21           So, it will be the introduction of the  
22 Witness and the direct, and then you start with

1 cross-examination tomorrow. Is this fine?

2 MS. HAWORTH McCANDLESS: Madam President, I  
3 don't have a very long direct with Mr. Polo, so I  
4 assume, within the time frame between now and 5:30, we  
5 could start on the cross.

6 PRESIDENT HANEFELD: Okay. Then we do that,  
7 but I just need to say, we need to stop sharp at 5:30.

8 You already have an estimate, how long your  
9 cross-examination of Mr. Polo will be?

10 MR. PRAGER: Well, if experience from the  
11 previous arbitration counts, unless Mr. Polo  
12 fundamentally changed his character, he's a very  
13 talkative guy.

14 (Overlapping speakers.)

15 MR. ALEXANDROV: Madam President, I object.  
16 We cannot characterize the conduct of a Witness based  
17 on a previous hearing. This is inappropriate.

18 PRESIDENT HANEFELD: Yeah. So, we just keep  
19 it simple.

20 MR. PRAGER: Yeah. Keeping it simple, is,  
21 we will surely continue tomorrow, and my estimate,  
22 right now, is that we're going to--it's probably going

1 to extend into the late morning, depending on how  
2 things are going.

3           PRESIDENT HANEFELD: Okay. This is noted.  
4 Then I would suggest that we right away start with  
5 Mr. Polo's testimony and then continue tomorrow.

6           (Brief recess.)

7           PRESIDENT HANEFELD: Can the Witness stay in  
8 the room, or do you...

9           MR. ALEXANDROV: I don't think it matters.

10          PRESIDENT HANEFELD: Okay.

11          MR. ALEXANDROV: Madam President,  
12 Ms. Torreblanca is listed as a Witness. She's not  
13 listed as a Party representative or a member of the  
14 legal team. So, she has no role to play in the  
15 cross-examination of the Witnesses. We see that she's  
16 sitting next to the cross-examiner, and we believe  
17 that is inappropriate.

18                 She can stay in the room, but, again, she  
19 has no role to play in the cross-examination of  
20 Witnesses. So, we invite her to sit somewhere else,  
21 not where she'll be whispering in the ears of the  
22 cross-examiner or passing notes. Thank you.

1 MR. PRAGER: Ms. Torreblanca represents  
2 Cerro Verde, but the fact that she's sitting next to  
3 me right now is purely fortuitous, and not intended to  
4 be my whisperer, but I think she will be happy to go  
5 somewhere else.

6 (Comments off microphone.)

7 MR. ALEXANDROV: For the record, she does  
8 not represent Cerro Verde because she's listed in the  
9 List of Participants as a witness only. So, we ask  
10 that she moves where she was.

11 (Comments off microphone.)

12 PRESIDENT HANEFELD: Thank you very much for  
13 your cooperation. The problem is solved.

14 CÉSAR AUGUSTO POLO ROBILLIARD,

15 RESPONDENT'S WITNESS, CALLED,

16 PRESIDENT HANEFELD: Then we can turn to  
17 you, Mr. Polo.

18 Welcome. Thank you very much for being  
19 here.

20 I introduce, briefly, the Tribunal. My name  
21 is Inka Hanefeld. I'm the presiding arbitrator in  
22 this Arbitration. I'm here with my co-arbitrators,

1 Professor Guido Tawil and Dr. Bernardo Cremades.

2           You have been called as Witness by the  
3 Respondent, by Perú in these proceedings, so I need to  
4 ask you to make a Declaration under Article 35 of the  
5 Arbitration Rules, that you will speak the truth, and  
6 I kindly request you to read it out.

7           THE WITNESS: I solemnly declare, upon my  
8 honor and conscience, that I shall speak the truth,  
9 the whole truth, and nothing but the truth.

10           PRESIDENT HANEFELD: Thank you very much.

11           Do you have your Witness Statement, RWS-1  
12 and 8 in front of you?

13           THE WITNESS: Yes.

14           PRESIDENT HANEFELD: Can you confirm that  
15 these are your Witness Statements, and that they  
16 correspond to your recollection, or is there anything  
17 you wish to amend or correct?

18           THE WITNESS: No. My Statements are signed.

19           PRESIDENT HANEFELD: Thank you. Then we  
20 will turn to the Respondent, who will ask you some  
21 questions in direct, then later on you will be  
22 questioned by the Claimant. We will not manage to

1 complete your testimony today because we have to end  
2 the Hearing day today at sharp 5:30, so your testimony  
3 will continue tomorrow, and then also we have the  
4 opportunity to ask you some questions.

5 So, I turn to Respondent.

6 MS. HAWORTH McCANDLESS: Thank you, Madam  
7 President.

8 DIRECT EXAMINATION

9 BY MS. HAWORTH McCANDLESS:

10 Q. Good afternoon, Mr. Polo.

11 You have the two Witness Statements in front  
12 of you, and you confirmed that they had your  
13 signatures.

14 Are the Statements based on your personal  
15 knowledge and experience?

16 A. Yes.

17 Q. Could you please describe your formal  
18 education?

19 A. I'm a civil engineer. I graduated in 1967  
20 at the National Engineering School of Perú. I am a  
21 civil engineer from the National Engineering  
22 University of Perú. I graduated in 1967. I'm also a

1 graduate with honors of the Pacific University with a  
2 master's degree in business management, with  
3 specialization in finance.

4           Those would be graduate studies, and I have  
5 also studied economics of development in France as  
6 postgraduate studies and planning of development in  
7 Perú as postgraduate studies, and also some other  
8 minor studies.

9           Q.    What is your current position?

10          A.    I am retired.

11          Q.    What positions did you hold before you  
12 retired, particularly in the Ministry of Mines and  
13 Energy?

14          A.    I was Vice Minister of Mines, twice, for a  
15 total of almost six years as Vice Minister under two  
16 different administrations, and I also worked with four  
17 Ministers and I renewed the trust twice--that is to  
18 say, five different people entrusted that position to  
19 me during two different Administrations with  
20 Mr. Fujimori and Mr. Toledo.

21          Q.    Could you please explain, briefly, what the  
22 Minister of Mines, Mr. Fernando Sánchez Albavera,

1 asked you to do when you were Vice Minister with  
2 respect to the creation of Decree 708?

3 A. The Minister, Fernando Sánchez Albavera and  
4 myself trained together at the planning institute, and  
5 we were familiar with each other, and he told me,  
6 given your experience with investment project and your  
7 working in the mining sector, in addition to the  
8 academic background, I'd like for you to propose some  
9 stable rules to promote investments in the mining  
10 sector, which is what--which is one of our strengths.

11 This would entail guarantees, benefits, and  
12 to promote long-term projects, or projects with a long  
13 maturation period.

14 Q. In your experience as Vice Minister of  
15 Mines, what is the scope of a Stability Agreement?

16 A. The Stability Agreement is thought--or  
17 designed to give clear instructions and rules for  
18 investment projects, and also for expansions of  
19 Projects, specifically linked to the Project.

20 This is not for the mine titleholder, the  
21 Concession, or the Administrative mining unit. The  
22 idea was to promote new investments that entailed

1 stable, clear and promotion rules.

2 Q. When you were Vice Minister of Mines for a  
3 second time, the Mining Royalty Law was enacted.

4 In your view, what is the relationship  
5 between the obligation to pay Royalties and  
6 Stabilization Agreements?

7 A. The Stability Agreements stabilized based on  
8 the approval of Feasibility Studies, which were  
9 attached to the Agreements, prevent or protects any  
10 impact from the Royalties of the new law. This is a  
11 shield, because there is a stabilization of the rules  
12 of the game, and this was at Decree 708.

13 Q. Thank you.

14 MS. HAWORTH McCANDLESS: Madam President, I  
15 have no further questions.

16 CROSS-EXAMINATION

17 BY MR. PRAGER:

18 Q. Hello, good afternoon, Mr. Polo. It's a  
19 great pleasure to meet you again.

20 I will be asking you, again, a series of  
21 questions. If you do not understand a question,  
22 please ask me to clarify it, and we both have to be

1 careful to respect the translation time and not to  
2 talk over ongoing translation. I will do my best.

3 MS. HAWORTH McCANDLESS: Do you have--have  
4 you handed out cross binders for at least the Witness  
5 but also for us and, perhaps, the Tribunal as well?

6 PRESIDENT HANEFELD: We have them already.

7 MS. HAWORTH McCANDLESS: Oh, well, you gave  
8 it to the right people, but I believe the Witness  
9 might also want it.

10 MR. PRAGER: The Witness may want to have  
11 one as well. Yes.

12 PRESIDENT HANEFELD: Apologies. We only  
13 have for the direct, sorry, not for the cross.

14 MR. PRAGER: It has been a long day.

15 BY MR. PRAGER:

16 Q. I think everyone has the binder. So, let's  
17 start.

18 Mr. Polo, you testified at the Hearing in  
19 the SMM Cerro Verde v. Perú Case in February; right?

20 A. Yes, that is true. And it is also a  
21 pleasure to see you again.

22 (Comments off microphone.)

1 Q. Did you review the Transcript of your  
2 testimony in the SMM Cerro Verde v. Perú Hearing in  
3 preparation of this Hearing?

4 A. Yes, recently.

5 Q. Did you review the Transcript of the  
6 testimony of any other Witness or Expert in the  
7 SMM Cerro Verde v. Perú Hearing?

8 A. Not at all. Which translates as no.

9 Q. Okay. Did you review the Transcript of the  
10 Opening Statements of the Parties in the SMM Cerro  
11 Verde v. Perú Case, or in this Case?

12 A. I reviewed everything very quickly.

13 Q. Let me take it part by part because I asked  
14 you two things at once.

15 Did you review the Transcript of the Opening  
16 in the SMM Cerro Verde v. Perú case?

17 A. Are you talking about the whole document?  
18 Are you talking about all the document in the--of the  
19 Transcript.

20 MS. HAWORTH McCANDLESS: I'm not sure he  
21 understands the question.

22 MR. PRAGER: Okay.

1 MS. HAWORTH McCANDLESS: You might want to  
2 explain what that is because that's a term that we  
3 know, but I'm not sure he knows.

4 BY MR. PRAGER:

5 Q. Well, let me ask it that way. You told us  
6 that you reviewed the Transcript of your testimony in  
7 the SMM Cerro Verde Case.

8 Did you review any other parts of the  
9 Transcript in the SMM Cerro Verde Hearing, other than  
10 your testimony?

11 A. Just your questions and my answers.

12 Q. Okay. So, you did not review, for instance,  
13 a Transcript of the Opening Statements that the  
14 attorneys made at the outset of the Hearing?

15 A. I did not, no. No, the Statements no, the  
16 questions you asked me, the answers are provided. The  
17 intervention by Respondent's Counsel, at some point.  
18 So, that's all I've read.

19 Q. Can I also ask you--before you signed your  
20 Witness Statements, did you review the Witness  
21 Statements of any of Perú's Witnesses?

22 A. I do not know of any other Witness

1 Statement, of anyone else.

2 Q. Let me ask you specifically: Did you review  
3 the Witness Statements of Mr. Tovar?

4 A. I'm not a lawyer. Perhaps some of the terms  
5 are legal and they may confuse me. I knew of the  
6 testimonies that were in a binder for the case, and I  
7 saw where they opined. I saw those testimonies, but I  
8 didn't read them all because it was overwhelming,  
9 really. I just saw some of them, only some.

10 And I got an idea--I have my own idea, and I  
11 think that that was enough. I didn't go in depth in  
12 connection with the testimonies of the Respondent or  
13 the Claimants. Well, I looked at some of the things  
14 that the Claimants--rather, the Respondents said, the  
15 Respondent said, but I focused on my own things. That  
16 was quite enough.

17 Q. I will try not to use any terms that are too  
18 much lawyer-like, so please tell me if I do.

19 But can you explain me, when you reviewed  
20 the Witness Statements of some of Perú's Witnesses?

21 A. Before February. Before I went to the  
22 February Hearing. So, the testimonies are the sort of

1 documents that were given to me, similar to my own  
2 testimony. I reviewed some of them, and I think one  
3 by Mr. Isasi, Mr. Flury, I worked with Mr. Flury, and  
4 also some documents related to your Expert, the female  
5 lawyer, and also from the constitutional Experts. But  
6 some things, not everything. It was too much to read.  
7 Not everything. It was impossible to read everything.

8 Q. So, when you say you reviewed those Witness  
9 Statements of, for instance, Mr. Isasi, or the  
10 Constitutional Expert, did you review them in  
11 preparation of the SMM Hearing?

12 Did I understand you correctly?

13 A. I did it to get information about that. I  
14 was sent all of the testimonies and I looked at mine  
15 in detail, of course, and some other things, that's  
16 it. Just to have some idea of things. At the time I  
17 didn't even know that I was going to become a witness.  
18 Simply, I looked at what I did, what others did. I  
19 reviewed that. That's all.

20 Q. Okay. I'm a little bit confused. You said  
21 this February, but this February you knew that you  
22 were a witness. Were you referring to February of

1 this year or to February of a previous year?

2 A. The testimonies, I would have had to review  
3 them before February. I think I didn't know--before  
4 February, of course, before the first Hearing--I think  
5 I didn't even know that I was going to be a witness.  
6 I just reviewed that, and then I came to know that I  
7 was going to be a witness, and I'm not certain, I'm  
8 not sure.

9 Q. Mr. Polo, are you saying that you reviewed  
10 those Witness Statements before you signed your own  
11 First Witness Statement?

12 A. No. My Witness Statement had been signed  
13 before. After I looked at the other ones that I  
14 received, and I'm sure that was the case for the other  
15 ones as well. That's what I recall.

16 I wouldn't have been able to prepare my  
17 testimony by studying the testimony by others. But if  
18 you want me to say that, no, that was not the case.

19 Q. It was at some point after you submitted  
20 your First Witness Statement.

21 Did you review them before you submitted  
22 your Second Witness Statement? Did you review--just

1 to be precise, did you review the Witness Statements  
2 of Mr. Isasi and the Constitutional Expert before you  
3 submitted your Second Witness Statement?

4 A. I don't think so. I have received advice  
5 from Respondent's Counsel, Perú, and I have acted  
6 always, always in accordance with their advice, and  
7 that's how I have managed things. I have followed the  
8 procedure. That's all.

9 Q. You mentioned specifically the Witness  
10 Statement of Mr. Isasi.

11 Do you recall also having reviewed the  
12 Witness Statement of Mr. Tovar?

13 A. I don't think so. I do not recall having  
14 reviewed Mr. Tovar's. I know them both very well.  
15 I've worked with them. I was trying to remember in  
16 connection with Isasi's testimony--I know you will  
17 recall that I was Vice Minister 31 years ago. I was  
18 trying to remember what I recalled and to look at it  
19 with Isasi.

20 Q. So, if I understand you, sitting here today,  
21 you do not recall whether you reviewed Mr. Isasi's  
22 Witness Statement before you wrote your Second Witness

1 Statement or after you wrote your Second Witness  
2 Statement?

3 A. Let me tell you, I followed the instructions  
4 given to me by Counsel and in the order I was given  
5 the documents and at the right time. I didn't pay  
6 attention to those things.

7 Q. Mr. Polo, when you prepared for this  
8 Hearing, I assume you spent some time with your  
9 lawyers to prepare; is that right?

10 A. That's correct.

11 Q. And I think when you prepared for the SMM  
12 Hearing, the same is true? You spent some time with  
13 your lawyers to prepare for the Hearing; right?

14 A. That's correct. I had never been involved  
15 in Hearings such as this, so this was completely new  
16 to me. I was explained the procedure, they explained  
17 things to me by the Tribunal, et cetera.

18 Q. Can you tell us how many hours approximately  
19 you have spent preparing for each of the two Hearings?

20 A. It's a lot. I wouldn't be able to tell you.  
21 Quite a lot. I study like a maniac.

22 Q. "Muchisimo" meaning more than 20 hours for

1 each Hearing?

2 A. Much more than that. What you want to do,  
3 imagine, is to do your best, to be faithful to what  
4 you do and to--or what you did, rather, and to  
5 remember everything. Well, 200 hours, I would think,  
6 easily to the two Hearings; right? 200 hours.

7 Q. 200 hours for each Hearing or together?

8 A. Together. The second Hearing had some more  
9 hours because it's the second one, and one wants to  
10 recall what one said at the first Hearing, what you  
11 admitted, what you wanted to clarify, what you wanted  
12 to ratify, you wanted to understand the concerns of  
13 both Parties more and to say, you know, your own  
14 truth, what is correct.

15 Q. And to be clear the 200 hours were spent  
16 preparing for the Hearing and not also writing the  
17 Witness Statements?

18 A. No. The procedure for the Witness  
19 Statements, I can explain it to you, what it was, if  
20 you wish.

21 Q. No. I was just asking you specifically  
22 whether the 200 hours include the time that you spent

1 preparing the Witness Statements, or whether they were  
2 just preparing for the Hearing?

3 A. The preparation of the testimony,  
4 that's--that takes a long time. So, I prepared for  
5 the Hearings on the basis of my Witness Statements and  
6 also on the basis of some explanations as to what the  
7 procedure is like, and also Counsel for Respondent  
8 asked a few questions, and I answered the questions as  
9 I always do.

10 Q. Did Mr. Isasi participate in any of those  
11 preparation meetings that you described?

12 A. He did not. I worked with Counsel, and we  
13 did this virtually. At the beginning I was sharing  
14 with them my experience to see whether I was going to  
15 become a witness or not, if they were interested in  
16 me, then I provided more information as I recollected  
17 things and as I added things. And then I found out I  
18 was going to be a witness.

19 Q. Did Mr. Tovar participate in any of the  
20 preparation meetings?

21 A. He did not. I dealt directly with Counsel.

22 Q. Did you discuss with Mr. Isasi or with

1 Mr. Tovar the case before you came to testify in this  
2 Hearing?

3 A. I did not. Isasi worked closely with me up  
4 until 2005. There are some things that he and I dealt  
5 with together, and those were very clear in my mind,  
6 the presentations to Congress, to the Constitutional  
7 Tribunal, and some public presentations as well.

8 Q. Well, did you ever discuss some of those  
9 facts with Mr. Isasi when you prepared for your  
10 testimony, to refresh your memory?

11 A. No. I just wanted to ask him because I was  
12 confused as to the date in connection with a  
13 presentation made by Isasi. It was very clear to me  
14 that I had been with him at the Congress, and he said,  
15 no, you were no longer the Prime Minister. And he  
16 clarified that to me.

17 Q. And how did that happen? Did you call him,  
18 or did you meet or...

19 A. It was a phone call. I first spoke to his  
20 second in command and I said, okay, that colorful  
21 presentation that is very clear that was prepared  
22 about profit reinvestment, was I the Vice Minister

1 then, when that presentation was made or not? I don't  
2 think I was the Vice Minister, but I thought I was.

3           And he said: "No, you were no longer the  
4 Vice Minister." Zegarra said. And Isasi confirmed:  
5 "You were no longer the Vice Minister." So, that was  
6 something that was strange. After being Vice  
7 Minister, the Minister asked me to go on as his  
8 consultant, as his advisor, so I was just his advisor.

9           And perhaps I thought I participated in that  
10 capacity in that presentation, but many, many years  
11 have gone by, so you can't really ask me to ascertain  
12 those things that I cannot really recall.

13           Q. Which presentation was that that you're  
14 referring to now?

15           A. It was a presentation that had to do with  
16 Mining Royalties. It had to do with profit  
17 reinvestment. There were some Congress people that  
18 wanted everyone, all of the companies, without any  
19 distinction, to pay Royalties. The Ministry--Isasi,  
20 Chappuis, myself, the Minister--we all said that the  
21 investment projects that had a stabilization agreement  
22 were protected, and they should pay no Royalties. We

1 said that at the Congress, at the Constitutional  
2 Tribunal, and we proposed this in a draft communique.  
3 We also discussed this at the offices of the Minister  
4 of the Economy and with--people of SUNAT were there.  
5 I was also part of the MINEM, and other people were  
6 present there at that meeting, the Ministry of the  
7 Economy people were there. They presided over the  
8 meeting.

9 Q. Other than a conversation with Mr. Isasi  
10 about that meeting, anything else that you discussed  
11 with him to refresh your memory?

12 A. No, but we both knew that we could not  
13 speak.

14 Q. What about with Mr. Tovar? Did you have any  
15 discussion about Mr. Tovar about your testimony?

16 A. Not at all. I do not know what I said, and  
17 he doesn't know what I said; I do not know what he  
18 said.

19 Q. And I asked you about the preparation for  
20 this Hearing. When you prepared for the SMM Hearing,  
21 did you--when you had preparation meetings, was  
22 any--was Mr. Isasi, was Mr. Tovar present at any of

1 those meetings?

2 A. No. With Counsel.

3 Q. So, you were exclusively preparing with the  
4 lawyers--

5 (Interruption.)

6 Q. So, you were exclusively preparing with your  
7 lawyers for the meeting? Is that your testimony?

8 A. Yes, with the lawyers in Lima. We had a  
9 meeting.

10 Q. Did you have a meeting here in Washington  
11 with the lawyers as well?

12 A. For this Hearing and for the other Hearing?  
13 Yes. Yes. With Counsel. I always met with them when  
14 dealing with these issues.

15 Q. And at the meeting with your lawyers  
16 preparing for the SMM Case--right?--here in  
17 Washington, were any--was Mr. Isasi or Mr. Tovar  
18 present?

19 A. I don't think Isasi was present. I knew  
20 that Tovar was present, just him.

21 Q. So, when you said Mr. Tovar was present, are  
22 you saying that he was present at the preparation

1 meeting that you attended?

2 A. No.

3 Q. You're referring to Mr. Tovar testifying  
4 here in Washington?

5 A. Yes. I knew that that's what he did.

6 Q. Mr. Polo, I will very briefly start to ask  
7 you questions about your background. We have to break  
8 in 10 minutes. So, let me start a little bit about  
9 your general background.

10 You became--I think you mentioned it  
11 earlier--for the first time Vice Minister for Mines in  
12 August 1990; right?

13 A. The first time, yes, August 1990, correct.

14 Q. And the Government appointed you to that  
15 position on proposal of Mr. Fernando Sánchez Albavera,  
16 who was then Minister of Energy and Mines; right?

17 A. He recommended that I take that position,  
18 yes.

19 Q. And Mr. Sánchez Albavera was the first  
20 Minister of Energy and Mines under the Government of  
21 Mr. Fujimori; right?

22 A. Correct.

1 Q. So, at that time, if we put ourselves  
2 back--that was in 1990, by the way; right?

3 A. August 1990.

4 Q. So, putting ourselves back in time to  
5 August 1990, is it fair to say that Perú's economy was  
6 going through significant economic turmoil?

7 A. Yes. There was a very serious economic  
8 crisis at the end of the previous administration.

9 Q. I think you mentioned at the last Hearing  
10 that there was inflation reaching 7,000 percent?

11 Is that your recollection?

12 A. Yes. I have read my Statements. Depending  
13 on the period you're looking at, you can have enormous  
14 inflation rates. They were all enormous. The last  
15 two years were terrible. I read about enormous  
16 inflation rates out of the Statement made by former  
17 Minister.

18 Q. And is it fair to say that international  
19 financial organizations deemed Perú to be an  
20 ineligible borrower?

21 A. It was ineligible because it was in default,  
22 it defaulted its payments.

1 Q. And Perú was also suffering from domestic  
2 terrorism at that time; right?

3 A. That is true.

4 Q. And for sure, terrorists attacks, you know,  
5 killed thousands of Peruvians, but they also targeted  
6 mining Companies; right?

7 A. That is correct, yes. I was threatened  
8 twice.

9 Q. Why did terrorism focus also on Mining  
10 Projects?

11 A. Well, they acted in the Andean areas, in the  
12 high areas, and the most important economic force was  
13 the mining Companies, and also they provided  
14 explosives; right? And they considered that all of  
15 the workers there were traitors to the cause. They  
16 killed them. They stole the explosives, et cetera.

17 Q. So, the--is it fair to say that the  
18 combination of the financial crisis and of the  
19 terrorist attacks had a significant impact on private  
20 investment in the mining sector?

21 A. That is correct. Also, it had to do with  
22 the policy of the former administration.

1 Q. When you say it also had to do with the  
2 policy of the former administration, what do you mean?

3 A. Alan García's Administration. Initially, he  
4 created a discriminatory system for the handling of  
5 the exchange rate and foreign currency, in spite of  
6 the fact that there was a Legislative Decree 109 that  
7 supposedly provided for stability.

8 Q. I think you mentioned at the SMM Hearing  
9 that the last important investment in the mining  
10 sector was made towards the end of the military  
11 Government at the end of the '70s, in the Cuajone  
12 Project.

13 Is that still your recollection?

14 A. I was thinking about this, and it was signed  
15 at the beginning of the military Government, and the  
16 investment began at the end of the military  
17 Government. I think the Contract was signed in '69,  
18 and then production begun in 1977. I think so, around  
19 that time.

20 Q. By the time you started as a Vice Minister,  
21 that was the last important investment in the mining  
22 sector, the Cuajone Investment in the '70s; is that

1 right?

2 A. Private. Private mining sector. There were  
3 some investments that were made in the State-run  
4 Companies such as Tintaya, and Minero Perú, some of  
5 them that were related to Cerro Verde.

6 Q. And you mentioned the Government-owned  
7 sector.

8 I recall that you used to work for about  
9 10 years in the 1980s for a Company called Centromín;  
10 right?

11 A. Yes. 20 years in total. I had a first  
12 period as Vice Minister, and then I worked for  
13 Centromín later on as well. 20 years in total.

14 Q. Can you explain to the Tribunal what  
15 Centromín was?

16 A. Centromín was born after the expropriation  
17 of Cerro De Pasco Corporation. It was a foreign  
18 company that existed in the certain area of Perú, and  
19 the largest mining Company of Perú. It was  
20 expropriated. It went to the hands of the State, and  
21 Centromín was created.

22 Q. So, it was a State-owned Company?

1           A.    Yes, it was a State-owned Company.  Yes.

2   That's right.  It was the property of the State.

3           Q.    And I think you mentioned that Centromín was  
4   operating a number of mining units?

5           A.    Yes.  Seven mining units with their  
6   Concentrators and the whole logistics around it.  
7   Under a single unit, that was called Centromín.  That  
8   was the Company.

9           Q.    And that was the case in 1990, when you're  
10   trying to--as the Ministry, as Vice Minister; right?

11                    Just so, that we place it in time.

12           A.    Yes, that's true.

13           Q.    And did Centromín also own companies that  
14   were not active in the mining sector?

15           A.    It had some Projects, Toromocho, for  
16   example, I recall.  It wasn't a mine yet, but it was a  
17   Project that was there, and then there were others  
18   that I cannot recall at this point in time.

19           Q.    But my question was specifically whether  
20   Centromín also owned companies that were not active in  
21   mining, in the mining sector, non-mining activities.

22           A.    Yes.  There were some activities that were

1 carried out by Centromín, but there were related  
2 companies: Renasa, Explosivos Exsa, Reactivos  
3 Nacionales, COMSA, which was a construction company in  
4 the mining sector. We're talking about 30 some years  
5 that have gone by already.

6 Q. And I recall you mentioned--and you correct  
7 me if I say this wrong--but when you worked as Vice  
8 Minister, you were on loan from Centromín?

9 A. Yes. That's right. It was a very, very--a  
10 very usual thing. They did that to reinforce the  
11 people who worked in the central Government.

12 Q. And that means that Centromín was paying  
13 your salary; is that correct?

14 A. Yes. I received my salary from Centromín,  
15 the same salary that I had without being the Vice  
16 Minister.

17 Q. And after you concluded your first term as  
18 Vice Minister, you went back to Centromín as an  
19 advisor to the President; is that correct?

20 A. That is correct.

21 Q. Is it--

22 MR. PRAGER: I'm conscious of the time, no

1 worries.

2 BY MR. PRAGER:

3 Q. Is it also correct that Centromín in--let me  
4 place again in a time--in 1990, 1991, was  
5 intending--sorry, let me rephrase that.

6 Is it correct that in 1991, the Government  
7 intended to privatize Centromín's assets in a  
8 comprehensive sale?

9 A. At the beginning, it wasn't comprehensive in  
10 nature. I think there was a Project, 647, or  
11 something like that. It was a draft law, and the  
12 initial position was for the takeover to include the  
13 majority of things. We hoped to have majority private  
14 participation via a capital contribution.

15 MR. PRAGER: Thank you very much. I will  
16 stop for today, conscious of the time.

17 PRESIDENT HANEFELD: Thank you very much.

18 So, we will see you again tomorrow.

19 Do the Parties have any issues to raise  
20 before we conclude?

21 MR. PRAGER: None on behalf of Claimant.

22 MS. HAWORTH McCANDLESS: Not on behalf of

1 Respondent.

2           PRESIDENT HANEFELD: Thank you very much.

3 Then we conclude the day and see you tomorrow morning.

4           (Whereupon, at 5:27 p.m., the Hearing was

5 adjourned until 9:30 a.m. the following day.)

CERTIFICATE OF REPORTER

I, Dawn K. Larson, RDR-CRR, Court Reporter, do hereby certify that the foregoing English-speaking proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the English-speaking proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

  
Dawn K. Larson