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Hon. L. Yves Fortier, CC, QC
c/o Ms. Natali Sequeira
ICSID – The World Bank Group
MSN J2-200, 1818 H Street, N.W.
Washington, D.C. 20433

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

Dear Members of the Tribunal:

Renco comments on the United States' Submission of October 11, 2015 and Peru's Submission of October 16, 2015 regarding the principle of severability.

I. The Principle of Severability is a General Principle of Law

The principle of severability is a general principle of law.[1] It can be applied in various contexts to sever invalid portions of an instrument without invalidating other portions if doing so is consistent with party intent.[2] Because Renco consents, if this Tribunal determines that any portion of Renco's waiver is invalid, it can sever that portion while upholding the rest of Renco's waiver.

Peru argues that "to the extent that severability has been applied, it has been applied in the context of State reservations to treaties, not investor-State disputes."[3] States are allowed to make reservations, Peru argues, whereas investors may not.[4] Peru also argues that severability

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1 **CLA-138**, *Case of Certain Norwegian Loans*, Separate Opinion of Sir Hersch Lauterpacht of Sept. 28, 1956: I.C.J. Reports 1956 at 56-57.

2 *Id.*

3 Peru's Post-Hearing Submission, Oct. 16, 2015 ¶ 14.

4 *Id.* ¶ 14.

has generally been limited to human rights matters and that particular reasons justifying its application in that context do not apply here.[5]

Peru's efforts to distinguish the authorities regarding treaty reservations are unavailing. The authorities dealing with severability in the context of treaty reservations concern invalid reservations—not reservations that are permissible under the relevant treaty. And the European Court of Human Rights applied the principle of severability for the same reason that this Tribunal can apply it in the present case—the reserving party consented to its application. For instance, in *Belios v. Switzerland*, after invalidating Switzerland's reservation, the European Court of Human Rights held, "[a]t the same time, it is beyond doubt that Switzerland is, and regards itself as, bound by the Convention irrespective of the validity of the declaration."[6] In other words, the Court held that the reserving State had consented to having its invalid reservation severed and still be deemed bound by the relevant treaty without the benefit of its reservation.

In its submission, the United States asserts that the "principle of severability," is not a generally accepted rule of international law or custom and that the principle of severability is therefore not an "applicable rule…of international law" under Article 10.22 of the U.S.-Peru TPA.[7] This is incorrect.

The principle of severability is a general principle of law. It has arisen in the context of invalid reservations in treaties, but it is not limited to that specific context.[8] The United States

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5 *Id*. ¶ 15.

6 **CLA-140**, *Belilos v. Switzerland*, Application No. 10323/83, Judgment of Apr. 29, 1988, ¶ 60.

7 Third Submission of the United States of America, Oct. 11, 2015 ¶ 5. As Renco noted at the Hearing on Waiver, and as Peru clearly understands, investment tribunals have declined to follow non-disputing Party submissions, and this Tribunal recognized in its Decision on Scope that the views of Peru and the United States are not binding: "The Tribunal credits the views of both Contracting Parties with the highest respect. However, the Tribunal is not bound by the view of either Party."[7] Rightly so. As stated by Professors Dolzer and Schreuer:

> States may strive to issue official interpretations to influence proceedings to which they are parties. However, a mechanism whereby a party to a dispute is able to influence the outcome of judiciary proceedings—by issuing an official interpretation to the detriment of the other party—is incompatible with principles of fair procedure and is hence undesirable. **CLA-099**, Dolzer and Schreuer, Principles of International Law 33 (2d ed. 2012).

8 In its Sept. 30, 2015 Submission, Renco cited Guideline 4.5.3 in the International Law Commission's 2011 Guide to the Practice of Reservations to Treaties as an authority that analyzed and consolidated prior authorities and endorsed the principle of severability, under specific circumstances, in the context of treaty reservations. The United States notes in its Third Submission that it criticized Guideline 4.5.3. That criticism did not question or criticize the principle that an invalid reservation can be severed if the reserving State clearly consents to that outcome. As the Special Rapporteur recounts in an article that the United States cited in its Submission, a deep divide developed between the International Law Commission, several States, and several human rights bodies. In particular, the U.N. Human Rights Committee had declared that the "normal consequence" of an invalid reservation was that the invalid reservation was severed and the

is correct when it observes that the Vienna Convention on the Law of Treaties does not address the severability of invalid treaty reservations, but the Vienna Convention recognizes the larger principle of severability. Article 44 sets forth conditions under which a party may denounce, withdraw from, or suspend particular treaty provisions without denouncing, withdrawing from, or suspending the entire treaty.[9] Professor Shaw characterizes Article 44 as "a cautious approach to the general issue of separability of treaty provisions," and Mark Villiger stated: "[A] treaty should not be brought to nothing on grounds relating in particular to provisions that were not an essential basis of the consent."[10]

In his Separate Opinion in the *South West African cases*, Judge Jessup also recognized severability as a principle that exits in treaty law beyond the context of invalid treaty reservations:

> The principle of severability is now accepted in the law of treaties, especially with reference to multipartite treaties, although the older classical writers tended to reject it. It is a doctrine which exists in municipal contract law (sometimes under the label of "divisibility") and in the law governing the construction of statutes.

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reserving State was bound by the treaty without the benefit of its reservation. **CLA-163**, Alain Pellet, *The ILC Guide to Practice on Reservations to Treaties: A General Presentation by the Special Rapporteur*, 24 EUR. J. INT'L L. No. 4, 1092-93 (2013). That is not the principle of severability that Judge Lauterpacht articulated. Judge Lauterpacht maintained that an invalid reservation could only be severed if doing so was consistent with the consent and the intent of the reserving State. **CLA-138**, *Case of Certain Norwegian Loans*, Separate Opinion of Sir Hersch Lauterpacht of Sept. 28, 1956: I.C.J. Reports 1956 at 56-57. In contrast, the U.N. Human Rights Committee had moved beyond that traditional understanding and several States and the International Law Commission itself disagreed with that new position. In an effort to find common ground between these two positions, Guideline 4.5.3 maintains the key element of consent and intent ("[t]he status of the author of an invalid reservation in relation to a treaty depends on the intention expressed by the reserving State…"), but proposes a rebuttable presumption in favor of severability ("[u]nless the author of the invalid reservation has expressed a contrary intention or such an intention is otherwise established, it is considered a contracting State or a contracting organization without the benefit of the reservation."). **CLA-142**, Report of the International Law Commission, UNGAOR, 63rd Sess, Supp No. 10, UN Doc A/63/10, Guideline 4.5.3 (2011). the United States criticized Guideline 4.5.3 on the grounds that the "United States has consistently maintained that 'a reserving state…cannot be bound to a treaty without the benefit of its reservation" and that Guideline 4.5.3 conflicted with the principle that "a state should only be bound to the extent it expressly accepts a treaty obligation." Third Submission of the United States of America, Oct. 11, 2015 ¶ 5 n.3. In other words, the United States was concerned that tribunals might rule that a party is bound by an obligation without the benefit of a condition that was a *sine qua non* of that party's consent to be bound by that obligation. That concern is not present in this case.

[9] **CLA-083**, Vienna Convention on the Law of Treaties art. 44; **CLA-117**, *The Government of Sudan v. The Sudan People's Liberation Movement/Army* (*Abeyi* Arbitration), Final Award, July 22, 2009 ¶¶ 419 (H.E. Judge Awn Al-Kasawneh, Gerhard Hafner, W. Michael Reisman, Stephen M. Schwebel, Pierre-Marie Dupuy (President).

[10] **CLA-143**, Malcolm Shaw, International Law 939 (6th ed., 2008).

> In treaty law the principle is evidenced in connection with the effect of war on treaties, and by the admission of reservations to treaties, since reservations essentially constitute the separation of a part of a treaty from the whole in order to exempt the contracting party from obligation under the separated part. Numerous examples of separability in the practice of States are to be found in such monographs as Tobin, *Termination of Multipartite Treaties* (1933); Stephens, *Revisions of the Treaty of Versailles* (1939); Hoyt, *The Unanimity Rule in the Revision of Treaties; a Reexamination* (1959). The Permanent Court of International Justice recognized the separability principle in the *Free Zones* and in *The Wimbledon* cases. From the standpoint of international law, part of the Mandate Treaty may have remained in force although other parts did not.[11]

The *Abyei* Tribunal cited several international authorities, including *The Orinoco Steamship Company Case*, the *Case Concerning the Arbitral Award of 31 July 1989*, the Annulment Decision in *Vivendi v. Argentina*, the Vienna Convention on the Law of Treaties, the New York Convention, the 1961 European Convention on International Commercial Arbitration, the 1975 Inter-American Convention on International Commercial Arbitration, the 1966 European Convention providing a Uniform Law of Arbitration, and the *1987 Convention Arabe d'Amman sur l'Arbitrage Commerical* as evidence that "there is a presumption that bodies of review are both authorized and expected to sever 'deficient' parts from 'non-deficient' parts of a decision, provided that this exercise does not lead to the separation of 'fundamentally interrelated elements."[12]

Various investment-treaty tribunals have cited the principle of severability when discussing the separateness between an arbitration agreement and the rest of a contract such that an invalid contract does not necessarily invalidate the arbitration agreement within it.[13] The principle of severability also has arisen in the context of investment disputes because parties included a severability provision in a contract or because the applicable, domestic civil code provided that the principle applies in certain contexts.[14] Several countries, including

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[11] **CLA-144**, *South West Africa* (*Liberia v. South Africa*), Preliminary Objections, Separate Opinion of Judge Philip Jessup, 1962 I.C.J. REP. 408.

[12] **CLA-117**, *The Government of Sudan v. The Sudan People's Liberation Movement/Army* (*Abeyi* Arbitration), Final Award, July 22, 2009 ¶¶ 416-24 (H.E. Judge Awn Al-Kasawneh, Gerhard Hafner, W. Michael Reisman, Stephen M. Schwebel, Pierre-Marie Dupuy (President).

[13] **CLA-145**, *Daimler Financial Services AG v. Argentina*, ICSID Case No. ARB/05/1, Award, Aug. 22, 2012 ¶ 221; **CLA-146**, *Impregilo S.p.A. v. Argentina*, ICSID Case No. ARB/07/17, Concurring and Dissenting Opinion of Prof. Brigitte Stern, June 21, 2011 ¶ 31; **CLA-147**, *ICS Inspection and Control Services Ltd v. Argentina*, PCA Case No. 2010-09, Award on Jurisdiction, Feb. 10, 2012 ¶ 290; **CLA-148**, *CCL v. Kazakhstan*, SCC Case No. 122/2001, Jurisdictional Award, Jan. 1, 2003 ¶ 29.

[14] **CLA-149**, *William Ralph Clayton, William Richard Clayton, Douglas Clayton, Daniel Clayton, and Bilcon Delaware v. Canada*, PCA Case No. 2009-04, Statement of Claim, Jan 30, 2009 at Exhibit 3; **CLA-150**, *Sanum Investments Ltds v. Laos*, PCA Case No. 2013-13, Settlement Agreement, June 15, 2014 ¶ 36; **CLA-151**, *Frank Charles Arif v. Moldova*, ICSID Case No. ARB/11/23, Award, Apr. 8, 2013 ¶ 309; **CLA-152**,

Australia, Malaysia, India, and the United States apply the doctrine of severability to sever unconstitutional portions of legislation that otherwise is constitutional, provided that the legislation at issue, absent the offending provisions, would still be consistent with the legislature's intent.[15] And federal courts in the United States have applied the principle of severability to sever defective, non-essential terms of arbitration agreements instead of invalidating the entire arbitration agreement.[16]

These authorities confirm Judge Lauterpacht's analysis. He did not assert that the principle of severability is an accepted State practice or international custom. He asserted that it is a general principle of law:

> That general principle of law is that it is legitimate—and perhaps obligatory—to sever an invalid condition from the rest of the instrument and to treat the latter as valid provided that having regard to the intention of the parties and the nature of instrument the condition in question does not constitute an essential part of the instrument.[17]

Under the ICJ Statute, general principles of law are an accepted source of international law.[18] Thus, contrary to the assertion by the United States, the principle of severability is an

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William Nagel v. Czech Republic, SCC Case No. 49/2002, Final Award, Sept. 9, 2003 ¶¶ 315-320; **CLA-153**, *Trans-Global Petroleum, Inc. v. Jordan*, ICSID Case No. ARB/07/25, Consent Award, Apr. 8, 2009 ¶ 17.

15 **CLA-154**, *Champlin Refining Co. v. Corp. Commission of Oklahoma*, 286 U.S. 2010, 234 (1932) (Supreme Court of the United States held that "[t]he unconstitutionality of a part of an act does not necessarily defeat or affect the validity of its remaining provisions. Unless it is evident that the Legislature would not have enacted those provisions which are within its power, independently of that which is not, the invalid part may be dropped if what is left is fully operative as law."); **CLA-155**, *Free Enterprise Fund v. Public Co. Accounting Oversight Board*, 130 S. Ct. 3138 (2010) (Supreme Court of the United States synthesizing decades of case law on the severability doctrine); **CLA-156**, Acts Interpretation Act 1901, Section 15A (pronouncing that, under Australian law, "[e]very Act shall be read and construed subject to the Constitution, and so as not to exceed the legislative power of the Commonwealth, to the intent that where any enactment thereof would, but for this section, have been construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power."); **CLA-157**, *Malaysian Bar & Anor v. Government of Malaysia*, 1987 [SC] (adopting and applying the principle of severability to the Malaysian Legal Profession Act 1976); **CLA-158**, Indian Constitution, Article 13 (adopting the principle of severability in the legislative context); **CLA-159**, *Pannalal Binjraj v. Union of India*, (1957) SCR 233 (holding that the doctrine of severability under Article 13 of the Indian Constitution has retroactive effect); **CLA-160**, *RMDC v. Union of India*, AIR 1957 SC 628 (delineating the doctrine of severability under Indian law).

16 **CLA-161**, *Zechman v. Merrill Lynch*, 742 F. Supp. 1359, 1364 (N.D. Ill. 1990); **CLA-162**, *Veliz v. Cintas Corp.*, No. C03-1180, 2004 WL 2452851, at *24-40 (N.D. Cal. Apr. 5, 2004).

17 **CLA-138**, *Case of Certain Norwegian Loans*, Separate Opinion of Sir Hersch Lauterpacht of Sept. 28, 1956: I.C.J. Reports 1956 at 56-57.

18 **CLA-122**, Statute of the International Court of Justice, Article 38.

"applicable rule…of international law" under Article 10.22 of the U.S.-Peru TPA that may serve as a rule of decision in this case.

The relevant question is whether applying the principle in a particular instance would be consistent with the intent of the party that made the allegedly improper reservation. Peru argues that "Renco cannot now claim that its reservation of rights is non-essential, when in fact it included the reservation" in its Notices of Arbitration.[19] Yes it can. As Judge Lauterpacht explained, the key inquiry in determining whether it is appropriate—and perhaps obligatory—to sever an invalid condition in an instrument is the intent of the parties and the nature of the instrument. [20] By Peru's logic and argument, *every* condition is *always* essential by virtue of the fact that the reservation was made, and the principle of severability thus would never apply in any context. This clearly is the law. Renco's reservation is not essential because it is not a critical component of the arbitration agreement, and Renco has made clear that it is not a *sine qua non* of its consent to arbitrate under the terms and conditions of the Treaty.

Renco's consent to severability is a critical factor here. In *Norwegian Loans* and *Interhandel*, Judge Lauterpacht considered that the reservations of France and the United States were *sine qua nons* to their consent and, for that reason, he would not have severed their reservations. And if an investor stated clearly that its reservation is a *sine qua non* of its consent and a tribunal in that instance determined that the reservation was incompatible with the terms of the offer to arbitrate in the relevant treaty, then it would not be appropriate to sever that reservation. In contrast, precisely because Renco has stated that its reservation is not a *sine qua non* of its consent, the principle of severability is an option available to this Tribunal.

II. Applying the Principle of Severability Would Be Consistent with the Treaty's Object and Purpose and, in particular, the Object and Purpose of the Waiver Provision

The United States and Peru assert that applying the principle of severability in this case would "alter" the conditions of the respondent's offer to arbitrate.[21] This is incorrect. Severing an invalid reservation would not alter the conditions of a respondent's offer to arbitrate. In fact, it does exactly opposite. The reservation is severed because it is found to be inconsistent with the conditions of the standing offer. By severing the reservation, the conditions of the standing offer are maintained and given effect.

The United States and Peru assert that applying the principle of severability in this case would conflict with the waiver's object and purpose. According to the United States, applying the principle of severability would "deprive the waiver provision of its intended purpose,

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[19] Peru's Post-Hearing Submission, Oct. 16, 2015 ¶ 16.

[20] **CLA-138**, *Case of Certain Norwegian Loans*, Separate Opinion of Sir Hersch Lauterpacht of Sept. 28, 1956: I.C.J. Reports 1956 at 56-57.

[21] Third Submission of the United States of America, Oct. 11, 2015 ¶ 7.

thereby exposing the respondent to the risk of having to litigate, even temporarily, concurrently in multiple fora."[22] According to Peru, applying the principle of severability would keep "respondent States in limbo" until a tribunal decided whether to sever the invalid waiver and "invite[] gamesmanship and [make claimants] more likely to submit defective waivers."[23]

This also is incorrect. The present issue concerning the principle of severability exclusively concerns an alleged formal breach of the Treaty's waiver obligation, not a material breach. Renco has not initiated or continued any proceeding that could even potentially conflict with the Treaty's waiver obligation. Nor could it, because the additional language in the waiver provision would not even be triggered unless and until the Tribunal finds that it lacks jurisdiction. If this Tribunal were to conclude that some aspect of Renco's waiver is invalid and then severed that portion from the rest of Renco's waiver, Peru will not have faced any risk of having to litigate, even temporarily, concurrently in multiple fora. And Peru will not have been in any more "limbo" than any State is when it is awaiting the outcome of a tribunal's ruling on its jurisdictional objections.

Nor would applying the principle of severability incentivize future claimants to submit defective waivers, as Peru argues. If this Tribunal determines that the additional language in Renco's waiver violates the Treaty and severs it, future claimants will be reluctant to reserve any rights no matter how superfluous (*e.g.*, a claimant reserving the right to prove the merits of their claims). Peru's argument assumes that claimants wish to submit waivers that they know are defective, and later seek to sever violative language. This makes no sense. It stands much more to reason that Claimants wish to submit effective waivers. In reality, Peru's charge of "gamesmanship" is a bogey-man, floodgate argument that Peru is using to justify its request for a draconian, unjust, and unnecessary sanction.

III. Peru's Objection to Severability is an Abuse of Rights

Peru's arguments and conduct in its waiver objection constitute an abuse of rights. The "abuse of rights" and "abuse of process" doctrines proscribe the use of a legitimate legal right for improper or abusive purposes or to evade an obligation. In his well-known treatise on principles of public international law, Bin Cheng stated: "[t]he reasonable and bona fide exercise of a right implies an exercise which is genuinely in pursuit of those interests which the right is destined to protect and which is not calculated to cause any unfair prejudice to the legitimate interests of another State."[24]

Numerous authorities have recognized the abuse of rights doctrine as a general principle of international law, and respondents have raised "abuse of rights" or "abuse of process"

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22 *Id.*

23 Peru's Post-Hearing Submission, Oct. 16, 2015 ¶ 12.

24 **CLA-126**, Bin Cheng, *General Principles of Law as Applied by International Courts and Tribunals* at 131-32 (1987).

objections in various arbitrations.[25] In *Phoenix Action v. Czech Republic*, the Tribunal found that the claimant made its investment for an improper purpose (namely, for the purpose of initiating an investment arbitration).[26] The Tribunal dismissed the claim as an abuse of process reasoning, that "[i]t is the duty of the Tribunal to protect against such an abusive manipulation of the system of international investment protection under the ICSID Convention and the BITs."[27] In *European Cement v. Turkey*, the Tribunal held that the claimant engaged in an abuse of process because it asserted a claim based on the false assertion of ownership in an investment.[28] Similarly, the Tribunal in *Cenentownia "Nowa Huta" v. Turkey* dismissed the case holding that the claimant engaged in an abuse of process by intentionally and in bad faith purporting to be an investor when it knew it was not.[29]

Finally, Respondent successfully invoked the abuse of rights doctrine in *Renée Rose Levy and Gremcitel S.A. v. Peru*. That Tribunal dismissed the entire case holding that the claimant's corporate restructuring constituted an abuse of process because its sole purpose was to internationalize a soon-to-be-crystallized, domestic dispute.[30]

Peru's abuse of rights is clear. Peru suffers no prejudice as a result of the additional language in Renco's waiver. In fact, at the Hearing on Wavier, the Tribunal asked Peru whether it would suffer any prejudice in this case if the Tribunal were to "write [the additional

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[25] *See, e.g.*, **CLA-164**, Irina Petrova, *Stepping On The Shoulders of a Drowning Man, the Doctrine of Abuse of Rights as a Tool for Reducing Damages For Lost Profits: Troubling Lessons From the Patuha and Himpurna Arbitrations*, 35 GEO. J. INT'L L. 455, 468 (2007); **CLA-165**, Michael Byers, *Abuse of Rights: An Old Principle, A New Age*, 47 MCGILL L.J. 389, 397-98 2002 ("A number of states have argued for the applicability of abuse of rights in state-to-state litigation and arbitration, including the United Kingdom in the Fisheries Jurisdiction Cases, Liechtenstein in the Nottebohm Case, Norway in the Norwegian Loans Case, Liberia and Ethiopia in the South West Africa Cases, Belgium in the Barcelona Traction Case, and Australia in the Nuclear Tests Case. Greece made an abuse of rights argument in the Ambatielos Case, as did Nauru in the Nauru Case and the Federal Republic of Yugoslavia in the Genocide Case."); **CLA-022**, *CME v. Czech Republic*, UNCITRAL, Partial Award, Sept. 13, 2001 ¶ 412; **CLA-166**, *Bayindir Insaat Turizm Ticaret Ve Sanayi A.S. v. Pakistan*, ICSID Case No. ARB/03/29, Decision on Jurisdiction, Nov. 14, 2005 ¶¶ 171-73; **CLA-167**, *Quiborax v. Bolivia*, ICSID Case No. ARB/06/2, Decision on Jurisdiction, Sept. 27, 2012 ¶ 298.

[26] **CLA-168**, *Phoenix Action, Ltd. v. Czech Republic*, ICSID Case No. ARB/06/5, Award, Apr. 15, 2009 ¶¶142-44.

[27] *Id*. ¶ 144.

[28] **CLA-169**, *Europe Cement Investment & Trade S.A. v. Turkey*, ICSID Case No. ARB(AF)/07/2, Award, Aug. 13, 2009 ¶ 175.

[29] **CLA-170**, *Cementownia Nowa Huta" S.A. v. Turkey*, ICSID Case No. ARB(AF)/06/2, Award, Sept. 17, 2009 ¶ 179.

[30] **CLA-171**, *Renée Rose Levy and Gremcitel S.A. v. Peru*, ICSID Case No. ARB/11/17, Award, Jan. 9, 2015 ¶¶ 191-95.

language] out, in effect, make it disappear."[31] Peru responded that the Tribunal lacked the power to do that, but it did not articulate any prejudice that it would suffer.[32]

Renco has previously noted that while Peru complained to Renco years ago that the bankruptcy proceedings violated the Treaty's waiver obligation, Peru did not raise any specific objection to the additional language in Renco's wavier until its Memorial on Waiver filed in July 2015 (*i.e.*, nearly four years after Renco filed its Amended Notice of Arbitration).[33] Renco has made it clear that it is estopped from relying on that language in any future proceeding to expand the scope of the Treaty's wavier requirement. Renco has offered to strike and sever the additional language from its waiver. And Renco has consented and stated that this Tribunal may sever and declare the additional language invalid if it disagrees with Renco and agrees with Peru that the additional language conflicts with the terms of the Treaty. There simply is no scenario in this case in which the additional language prevents the waiver provision in the Treaty from having its full force and effect.

Under these circumstances, Peru's continuing objection to severability illustrates that its true motive is not to ensure that its waiver rights are respected or that the waiver provision's objectives are served. Rather, Peru's motive is to evade its duty to arbitrate Renco's claims under the Treaty. Because that it is an improper motive, Peru's objection to the principle of severability is an abuse of rights.

Renco requests that the Tribunal issue a Partial Award holding that Renco has complied with the Treaty's waiver requirement, and granting Renco its fees and costs for this waiver proceeding.

Very truly yours,

Edward G. Kehoe

cc: Mr. Jonathan C. Hamilton
Ms. Andrea J. Menaker

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[31] Hearing on the Waiver Requirement of Article 10.18 of the United States-Peru Trade Promotion Agreement, Sept. 2, 2015 at 63:10-16.

[32] *Id*. at 63:18-66:2.

[33] *Id*. at 122:15-123:9.