

INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT
DISPUTES

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 In the matter of Arbitration :
 between: :
 :
 GRAMERCY FUNDS MANAGEMENT LLC AND :
 GRAMERCY PERU HOLDINGS LLC, :
 :
 Claimants, :
 : ICSID Case No.
 and : UNCT/18/2
 :
 REPUBLIC OF PERÚ, :
 :
 Respondent. :
 ----- -x Volume 8

VIDEOCONFERENCE:

HEARING ON JURISDICTION, MERITS AND QUANTUM

Tuesday, November 17, 2020

The hearing in the above-entitled matter
came on at 8:00 a.m. (EDT) before:

PROFESSOR JUAN FERNÁNDEZ ARMESTO, President

MR. STEPHEN L. DRYMER, Co-Arbitrator

PROFESSOR BRIGITTE STERN, Co-Arbitrator

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

Also Present:

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PRESIDENT FERNÁNDEZ ARMESTO: Very good.

Good morning to you.

This is the Final Hearing in the ICSID Case Number 18/2, UNCITRAL, Gramercy Funds Management LLC and Gramercy Perú Holdings LLC against the Republic of Perú.

On behalf of the Tribunal, I welcome you all: the Claimants, the Respondents, the Court Reporters, the Interpreters, and, of course, also the representatives of the Non-Disputing Party.

Before we start, I think our Secretary will give some explanations regarding confidentiality because, as you know, this Hearing will then be put on the website of ICSID and will be publicly available, but we have special procedures in place should there be confidential information.

Marisa, could I kindly ask you to explain and remind the Parties exactly how it works.

SECRETARY PLANELLS-VALERO: Yes. Thank you, Mr. President.

In accordance with Paragraph 33 of Procedural

1 Order Number 12, the Parties may orally alert the
2 Tribunal each time they intend to refer to protected
3 information and request that that part of the Hearing
4 be held in private. Following such a request, I will
5 be placing the representatives of the Non-Disputing
6 Party in the waiting room, and I will let the Parties
7 and the Tribunal know when that exercise has been
8 completed. The representatives of the Non-Disputing
9 Party will remain in the waiting room until the
10 confidential section of the presentation is over.
11 Then they will be placed back into the hearing room.

12 PRESIDENT FERNÁNDEZ ARMESTO: Excellent.

13 Mr. Friedman, can I kindly ask you if you
14 know whether we will today, since today you will be
15 the leading figure in the presentation, will you be
16 invoking confidentiality at any time?

17 MR. FRIEDMAN: Our plan is not to. We've
18 crafted today's arguments to try to avoid that
19 circumstance arising, so I could see it arising only
20 if there is a question from the Tribunal that takes us
21 into some of that evidence.

22 PRESIDENT FERNÁNDEZ ARMESTO: Excellent.

1 Excellent. So, we will also try to formulate our
2 questions in a way that we don't trigger this
3 complication.

4 Very good. Is there anything else
5 regarding--yes. I know.

6 That goes now basically for you,
7 Mr. Friedman, could you please speak slowly. You are
8 being interpreted into Spanish. There are two Court
9 Reporters pending on your very word, and we have time.
10 So, do speak slowly because otherwise it becomes very,
11 very difficult for our Court Reporters and the
12 Interpreters.

13 MR. FRIEDMAN: Yes. Thank you for that,
14 Mr. President. If, at any time, I or anybody else is
15 speaking too quickly, just give us a heads-up, and we
16 will slow down.

17 PRESIDENT FERNÁNDEZ ARMESTO: Yes. And the
18 Interpreters and the Court Reporters are welcome to
19 just shout in whenever they lose track of what is
20 happening because it is fundamental. Don't be shy.
21 It is fundamental that we have a good Transcript in
22 both languages, and it is fundamental that we do

1 things slowly. So, don't be shy if you need. Just
2 shout in. I had it recently in another hearing, and,
3 yes, I think it is the proper way.

4 Very good. Marisa, is there any--from the
5 point of view of the Secretariat, is there any other
6 issue you would like to raise before I give the floor
7 to the Parties?

8 SECRETARY PLANELLIS-VALERO: Thank you,
9 Mr. President.

10 The Interpreters have asked if the Claimants
11 could circulate only to the Interpreters and the Court
12 Reporters the speaking points of today's presentation.

13 MS. BIRKLAND: We have done so.

14 SECRETARY PLANELLIS-VALERO: Okay. Thank you
15 so much.

16 Also, just checking that everyone is able to
17 access the Transcript in Spanish and in English?

18 MR. FRIEDMAN: We are receiving it on
19 Claimants' end.

20 SECRETARY PLANELLIS-VALERO: Thank you,
21 Mr. Friedman.

22 PRESIDENT FERNÁNDEZ ARMESTO: Mr. Hamilton,

1 are you also satisfied with the--that you are getting
2 the Transcript?

3 MR. HAMILTON: Thank you very much,
4 Mr. President. Perú has access to the English and
5 Spanish-language Transcripts. And good morning and
6 good afternoon to all the Members of the Tribunal.

7 PRESIDENT FERNÁNDEZ ARMESTO: Very good. If
8 we were in a room, which would, of course, be much
9 nicer and I would have very much preferred, I would
10 now give the floor to Mr. Friedman and then to
11 Mr. Hamilton to present who is in the room.

12 Mr. Friedman, are you still able to do that,
13 or would you prefer that the Secretariat just calls
14 the role?

15 MR. FRIEDMAN: We're in your hands. I do
16 have a list of the participants that I understand are
17 currently on today's meeting. I could read that, if
18 you'd like.

19 PRESIDENT FERNÁNDEZ ARMESTO: Yeah, why don't
20 you do that, and we then ask Mr. Hamilton to do the
21 same?

22 MR. FRIEDMAN: There is myself, Mark

1 Friedman; my colleagues: Ina Popova, Carl Riehl,
2 Floriane Lavaud, Berglind Birkland, Guilherme Recena
3 Costa, Sarah Lee, Duncan Pickard, Julio Rivera Rios,
4 Mary Grace McEvoy, Eric Turqman. Those are all from
5 Debevoise & Plimpton; from Estudio Rodrigo: Francisco
6 Cardenas Pantoja; also, from Gramercy: James Taylor,
7 Rob Lanava, Josh O'Melia, and Nick Paolazzi.

8 I don't know if I've missed anybody. If I
9 did, I would invite them to add their name. But I
10 believe that is who is attending right now from the
11 Claimants' side.

12 PRESIDENT FERNÁNDEZ ARMESTO: Very good.

13 Mr. Hamilton, do you keep a track record on
14 who is attending on your side, or do you prefer that
15 the Secretary calls the role?

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

17 I'll be glad to introduce the team of the
18 Republic of Perú.

19 I'm Jonathan Hamilton of White & Case, and
20 it's my pleasure to introduce various representatives
21 of the Republic of Perú who are connected. They are
22 from the Embassy of Perú, the Ministry of Foreign

1 Affairs of Perú, and the Ministry of Economy and
2 Finance of Perú, as well as representatives of the
3 Special Commission for the Defense of the Peruvian
4 State. The representatives of Perú include Ambassador
5 Hugo de Zela, Minister Giovanna Zanelli, Alberto Hart,
6 Oliver Valencia, Ricardo Ampuero, Monica Guerrero, and
7 Shane Martínez.

8 In addition, we are joined by Mr. Bruno
9 Marchese of Estudio Rubio in Lima and by the following
10 colleagues by White & Case: Andrea Menaker in London,
11 Rafael Llano in Mexico City, Francisco Jijón in
12 Washington, D.C.; and the following additional
13 colleagues in Washington, D.C., Jonathan Ulrich, John
14 Dalebroux, Sandra Huerta, Sophia Castellero, Antonio
15 Nittoli, and myself.

16 Thank you very much, Mr. President, and
17 Members of the Tribunal.

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

20 And we have from the U.S. Department of
21 State--Marisa, we have some colleagues from the U.S.
22 Department of State. Do you know who is attending?

1 SECRETARY PLANELLIS-VALERO: Thank you,
2 Mr. President.

3 I see Ms. Nicole Thornton from the U.S.
4 Department of State, Ms. Margaret Sedgewick from the
5 U.S. Department of State, Ms. Amanda Blunt from the
6 U.S. Department of State, Mr. Edward Rivera from the
7 U.S. Department of Commerce, Mr. John Daley from the
8 U.S. Department of State. I believe that's it at this
9 moment.

10 PRESIDENT FERNÁNDEZ ARMESTO: Very good. And
11 we have then our Court Reporters: Mr. Dante Rinaldi,
12 Ms. Dawn Larson. And we have the Interpreters:
13 Ms. Silvia Colla, Mr. Daniel Giglio, and Mr. Charles
14 Roberts. Thank you very much for helping us today.

15 So, is there any point of order before we can
16 give the floor to Mr. Friedman for his conclusions?

17 Mr. Friedman, is there any other issue? And
18 this is not an encouragement for you to bring up any
19 issue. Is there any issue which you would like to put
20 on the table before we start?

21 MR. FRIEDMAN: I'm very pleased to report to
22 you that there are no issues that we need to bring to

1 your attention at this time.

2 PRESIDENT FERNÁNDEZ ARMESTO: Very good.

3 Mr. Hamilton, what about you?

4 MR. HAMILTON: Thank you very much,

5 Mr. President.

6 The Republic of Perú wishes to welcome the
7 representatives of the Non-Disputing Party, the United
8 States of America, and hopes and anticipates that we
9 will have a rules-based proceeding, one that actually
10 follows the rules. Thank you very much.

11 PRESIDENT FERNÁNDEZ ARMESTO: As we have had
12 throughout all our Hearings. Mr. Hamilton, I hope you
13 agree with that.

14 Very good. So, Mr. Friedman, give us an
15 overview of how long your presentation will take, and
16 then let's speak about breaks.

17 MR. FRIEDMAN: Yes. I think we will take
18 close to the allotted time. We hope to be just a
19 little bit under it, and we have planned a break
20 partway through. Once I give the road map within the
21 framework of the speech that we have, I will indicate
22 to you when we expect to take a break. I would expect

1 that to be after about 90 minutes, if that's
2 acceptable to the Tribunal. We will--obviously, we
3 are in your hands.

4 PRESIDENT FERNÁNDEZ ARMESTO: No, no, no.
5 There are two points. First of all, this is more
6 tiring than being in a room for everyone and
7 especially also for Interpreters and Court Reporters.
8 So, we had made--we said maximum 150 minutes with a
9 15-minute break. So, whenever you feel that it is an
10 appropriate moment to make a break, you make a break.
11 If you even feel that you would like to make a second
12 break, that is perfectly acceptable, and I leave it in
13 your hands.

14 MR. FRIEDMAN: And, Mr. President, if the
15 Tribunal would prefer for us to have two breaks, we
16 could certainly structure it that way, but we really
17 are--I completely agree with you. This is more
18 difficult than being in person in many ways, and we
19 want to make sure that everybody is comfortable and
20 attentive. So, why don't we proceed as we had
21 planned, but if at any point you wish to indicate that
22 we should take and pause a little bit earlier than we

1 had anticipated, please just let us know and, of
2 course, we'll do that.

3 PRESIDENT FERNÁNDEZ ARMESTO: Very good.
4 Very good. And you have made a presentation, which I
5 think Ms. Birkland has sent to us, and we must give it
6 a numbering. And that would be H--who knows? Who is
7 faster?

8 Marisa, which H number do we have, or do we
9 have to look up?

10 SECRETARY PLANELLIS-VALERO: Let me see.

11 PRESIDENT FERNÁNDEZ ARMESTO: We will say it
12 in the break.

13 SECRETARY PLANELLIS-VALERO: Yes.

14 PRESIDENT FERNÁNDEZ ARMESTO: In the break we
15 will tell you exactly what.

16 MS. BAPTISTA: H-21, I think.

17 PRESIDENT FERNÁNDEZ ARMESTO: H-21. Very
18 good.

19 SECRETARY PLANELLIS-VALERO: Yes. Thank you.

20 PRESIDENT FERNÁNDEZ ARMESTO: H-21. Very
21 good.

22 Mr. Friedman, you have the floor.

1 CLOSING STATEMENT BY COUNSEL FOR CLAIMANTS

2 MR. FRIEDMAN: Thank you very much,
3 Mr. President, it's very good to see you; also you,
4 Madam Stern and Mr. Drymer. On behalf of Gramercy and
5 our entire Debevoise team, we must start by expressing
6 our gratitude to all of you for your attentive,
7 professional, and responsive conduct of this
8 Arbitration.

9 And we also want to express our gratitude for
10 giving us the opportunity today to engage with you on
11 Oral Closing Submissions and your fortitude in doing
12 so, in making this work, despite the global pandemic
13 that has, of course, reshaped our world since the last
14 time we were all together in February, right before
15 all of this lockdown hit and it seemed that this virus
16 was something on the distant horizon.

17 PRESIDENT FERNÁNDEZ ARMESTO: It is amazing,
18 Mr. Friedman, how the world has changed since we last
19 met.

20 MR. FRIEDMAN: Yeah.

21 PRESIDENT FERNÁNDEZ ARMESTO: It is a really
22 surprising development, yes.

1 MR. FRIEDMAN: It is.

2 PRESIDENT FERNÁNDEZ ARMESTO: And so is the
3 fragility of many things we take for granted.

4 MR. FRIEDMAN: It does. And I remember the
5 sort of anxious conversations that we had outside the
6 hearing room about what was happening, and I don't
7 think any of us really could have anticipated we would
8 be in something this widespread, this deep, this sort
9 of affecting everybody in such the way that it is.
10 So, we really do appreciate everybody in the
11 international arbitration community and you getting on
12 with business and making it possible to continue to
13 progress cases.

14 For this case, as you know, Gramercy has
15 always considered it regrettable that Perú's obstinate
16 and unlawful conduct has made this Arbitration
17 necessary at all. Gramercy invested in Peruvian Bonds
18 because it believed in Perú. It believed in Perú's
19 renaissance. It admired how responsibly Perú had
20 worked with its creditors to resolve all other legacy
21 debt, pull its economy out of the abyss, rejoin the
22 international financial community, and attract foreign

1 capital like Gramercy's to return to the country.

2 Now, Gramercy understood that receiving
3 payment on the Bonds would likely take time and
4 effort. It might require consensus building and
5 compromise and, perhaps, even assertion of legal
6 rights associated with the Bonds. But as you heard
7 from Mr. Koenigsberger, Gramercy always expected that
8 Perú would ultimately pay this indisputable sovereign
9 obligation as Perú's Constitution and law require.

10 Perú has had countless opportunities over the
11 years to do so. Gramercy itself repeatedly proposed
12 to discuss a concessional arrangement that could have
13 benefited everyone, the Bondholders and State alike.
14 Even after the Constitutional Tribunal issued its
15 order in 2013, but before the Ministry promulgated the
16 value-destroying formulas that we will look at again
17 later, Mr. Koenigsberger wrote to Perú requesting
18 collaboration in the search for a solution to the
19 problem posed by the Land Reform Bonds and offering to
20 help broker a deal that would, in his words, "benefit
21 all parties involved and resolve the debt" while also,
22 in his words, "mitigating the impact of Perú's

1 immediate budgetary priorities."

2 And that is CE-185.

3 But Perú instead chose a different path. It
4 took measures to wipe out Gramercy's investment in
5 Peruvian sovereign Bonds through unlawful means,
6 including an arbitrary and irrational bondholder
7 process. Instead of fairly resolving the debt, Perú
8 breached the U.S.-Perú Trade Promotion Agreement.

9 In our time with you today, we will proceed
10 as follows: I will first summarize the evidence and
11 arguments proving that Gramercy had a clear legal
12 entitlement to be paid current value plus interest on
13 the Bonds and that Perú breached the Treaty by
14 refusing to do so and extinguishing the debt instead.
15 Mr. Recena Costa and Ms. Lavaud will contribute to
16 that argument. And I think, Mr. President, after that
17 segment we should propose to take a break.

18 Mr. Riehl will then explain why Gramercy
19 should be compensated based on the intrinsic value of
20 Gramercy's Land Bonds. That requires a payment of a
21 sum of at least \$840 million as of May 2018, which, of
22 course, will be greater now because of the continued

1 accumulation of interest since that time.

2 Ms. Popova and Ms. Birkland will then show
3 why Perú's jurisdictional objections all fail, and I
4 will offer a few brief closing words.

5 Because our time is limited and we want to
6 speak slowly in a comprehensible rate for the
7 Tribunal, we will not today address every point we
8 presented in our written submissions. That does not
9 mean that we abandon those points; we do not. It
10 simply means that we are trying to focus today on
11 certain issues that we think will be most important to
12 you. We, of course, invite your questions. We are
13 here for you to make your job easier, so if something
14 is on your mind, please give us the opportunity to
15 address it, and we will.

16 So, I begin by establishing Gramercy's
17 entitlement. And it is clear that Gramercy had a
18 valuable asset when it bought Peruvian Land Bonds. In
19 fact, if there's a single central issue in this case,
20 it is this: that Gramercy's Land Bonds were highly
21 valuable sovereign obligations and not just worthless,
22 old and, even, as Perú has put it, "smelly pieces of

1 paper."

2 That is the central issue because it is at
3 the heart of both Parties' respective arguments.
4 Perú's primary defense is that Gramercy really has
5 nothing to complain about. Whatever crumbs the
6 Ministry offered it are better than nothing.

7 According to Perú, notwithstanding the
8 Constitutional Tribunal's 2001 Landmark Decision, the
9 Land Bonds were worthless when Gramercy bought them.
10 Perú's Valuation Experts similarly assumed that the
11 debt had no value other than its denuded face value,
12 such that offering anything more than \$.20 for
13 Gramercy Bonds, \$.20, was a hair extension for which
14 bondholders should basically say "thank you" and stop
15 complaining.

16 But if Gramercy is right on this point, and
17 the Bonds actually had significant value, then Perú
18 has really no defense. It is practically self-evident
19 that the Bondholder Process is expropriatory and
20 unlawful, that it imposed a massive haircut, and that
21 it simply is an elaborate mechanism for the State to
22 extinguish its significant obligation for a pittance.

1 Now, on the central issue, we submit to you,
2 Gramercy is right, overwhelmingly, and Perú simply
3 continues to fight a battle that the MEF lost nearly
4 two decades ago.

5 You have seen the evidence and heard now from
6 both Parties' Experts, and all of that shows that,
7 from 2001 at the latest, Peruvian law was clear: The
8 Land Bonds were not worthless, as they would have been
9 at their nominal or face value. To the contrary,
10 Perú's Constitutional Tribunal held in 2001 that Perú
11 could not pay the Land Bonds at nominal value. It had
12 to pay them at current value. It stated: despite the
13 fact that using the Bonds as a means of payment was
14 not unconstitutional, the payment system to which said
15 procedure was subject was, and continues to be,
16 unconstitutional.

17 So, there should be no doubt that the Land
18 Bonds are debts of value that, under Perú's
19 Constitution, must be paid at their current value.
20 Justice Revoredo, who was a member of the
21 Constitutional Tribunal in 2001, told you that. And
22 so did Professor Mario Castillo, Perú's foremost

1 Expert on the law of obligations, whose work even
2 Respondent's Expert had cited as authoritative. And
3 while Respondent's Expert Dr. Hundskopf had initially
4 said something else in his Report, on
5 cross-examination he agreed that the Land Bonds are
6 obligations of value under the Peruvian Constitution
7 and the Civil Code and that the Constitutional
8 Tribunal was correct to hold that they were.

9 So, when Perú tells you, even in its
10 Post-Hearing Brief, that the Land Bonds are examples
11 of debt to pay money, rather than debts of value, it
12 does so not only without the support of its own Legal
13 Expert, but in contradiction to that Expert's own
14 testimony on the stand.

15 Moreover--and this is very important--this
16 current value requirement was not empty and
17 meaningless, as Perú's arguments all imply. Perú
18 basically says: Okay, maybe we had to pay current
19 value, but it didn't really mean anything. You
20 couldn't attach any significance to it. It means only
21 what the Constitutional Tribunal in 2013 and the MEF
22 in its Supreme Decree said it means.

1 That is simply wrong. The idea of current
2 value, the principle of it, was and remains a
3 well-established principle rich with content. Its
4 basic idea--basic idea, is so straightforward that
5 even Minister Castilla acknowledged that it means
6 restoring the amount's original purchasing power.
7 That's the principle. And that's not abstract
8 or--there may be questions about means of doing so,
9 but it's not an empty concept.

10 Now, in addition to preserving the purchasing
11 power of the Land Bonds' principal, the legal
12 obligation to pay compensatory interest on those
13 amounts is equally straightforward and uncontroversial
14 in Peruvian law as it existed prior to the time
15 Gramercy invested. Again, as Dr. Hundskopf
16 acknowledged, the 2004 Constitutional Tribunal
17 Decision confirmed that the bondholders had a right to
18 payment of the updated debt plus interest.

19 As I will discuss at greater length also in a
20 few minutes, the Constitutional Tribunal, again, in
21 2013 and 2015, and the Supreme Court in multiple
22 Decisions since 2013, have likewise confirmed that the

1 entitlement to interest exists as well as and on top
2 of the updating.

3 Consequently, there can be no serious dispute
4 if you take seriously what Peruvian law was about the
5 two core components of Gramercy's legal entitlement:
6 An updated principal amount that restores the Bonds'
7 original purchasing power plus compensation for time
8 value of money in the form of interest. Current value
9 plus interest. That's what Perú's Constitution and
10 law plainly required and what Gramercy correctly
11 understood and legitimately expected at the time of
12 its investment.

13 Moreover, it was also evident what that
14 entitlement meant in practical terms. Again, not some
15 abstract, fluid concept that can mean anything. When
16 bondholders went to court to enforce their Land Bonds,
17 the Courts of Perú regularly updated the principal
18 using CPI, the Consumer Price Index, and then added
19 interest. Over a decade-long period following the
20 2001 Constitutional Tribunal Decision, the law was, in
21 fact, so clear that in 2011, the Peruvian Congress in
22 a formal report recognized a "uniform jurisprudence"

1 in this area. As Vice Minister Sotelo confirmed,
2 bondholders routinely obtained court judgments against
3 Perú reflecting precisely that uniform jurisprudence.

4 And you know what? It is no surprise that
5 the courts followed this approach. As Professor
6 Castillo explained, there must be a logical
7 correspondence between what we update and how we
8 update it. If you're trying to establish the current
9 value of a quantity of gold whose value must be
10 restored, you, of course, would look at the price of
11 gold and gold indices. Of course, it's the right
12 thing. You wouldn't look at the price of cattle. It
13 doesn't make any sense.

14 So, if you need to measure inflation, which
15 is the thing that had to be erased and updated for,
16 well, then you use an inflation index, which is, of
17 course, an index that is regularly published and
18 maintained by Perú's own authorities, and it's called
19 the Consumer Price Index, the CPI, as both Professor
20 Castillo and Justice Revoredo explained.

21 So, while CPI is not the only way of applying
22 the current value in the abstract, it wouldn't be the

1 right way of applying the current value--finding the
2 current value of a quantity of gold. It is the only
3 conceptually correct way of applying it to the Land
4 Bonds, and so, the value of the Land Bonds at current
5 value is legitimately the value of CPI updating.

6 Now, Perú, nevertheless, despite the evidence
7 even of its own Expert in these proceedings,
8 nevertheless contends that the whole situation was
9 plagued by massive uncertainty lasting over a decade
10 and that, therefore, Gramercy's rights or the rights
11 of any other bondholder were basically meaningless.

12 Now, in general, you know that argument must
13 be wrong. I mean, as we just saw, Perú's own courts
14 were able to apply the law consistently without
15 drowning in this alleged sea of uncertainty. They
16 didn't have problems figuring it out. But Perú's
17 argument is also wrong in each of its particulars.
18 None of the arguments establishes any genuine
19 uncertainty over Gramercy's fundamental rights or
20 expectations. So, let's look at those arguments Perú
21 makes on this point.

22 First, Perú says that some courts in Perú

1 apply different CPIs, such as regional CPIs or the
2 Central Bank Automatic Adjustment Index, but, as
3 Professor Castillo explained, all of these indices are
4 CPIs, including the Central Bank Index, which is
5 simply Lima CPI measured with one month's delay.

6 In contrast, Perú has not adduced a single
7 example, not a single example, of Peruvian Courts
8 applying a method other than CPI to the Land Bonds
9 before 2013. Not a single example. And they would
10 have been party to every case involving the Land
11 Bonds. Its Expert resisted giving a straight answer
12 initially but eventually accepted that he wasn't aware
13 of any such Decisions before 2013.

14 And Perú's disingenuous claim that some
15 courts had applied dollarization was short-lived
16 because, you will recall, Mr. President, that on
17 questions from the Tribunal, Counsel for Perú had to
18 concede that none of those cases that Perú invoked
19 involved the Land Bonds. Moreover, there was also no
20 uncertainty caused by the so-called "adjusted CPI."
21 That was an index that the Ministry of Economy and
22 Finance made up at some point along the way that was

1 never applied by anybody, never used in court, and
2 which Professor Castillo rightly called out as a
3 "cheeky" attempt to skip over hyperinflation to simply
4 reduce the debt. It was just a made-up way of getting
5 rid of the debt. So, there was no uncertainty at the
6 time, none, that, at least if you went to court, the
7 current value of the Land Bonds meant their CPI
8 adjusted value.

9 Second, Perú says that courts applied
10 different interest rates. In fact, the courts
11 routinely affirmed bondholders' right to interest at
12 the stated coupon rates at least, and it did so, in
13 many, many, many cases, overwhelmingly.

14 Now, Perú's Quantum Experts conceded that in
15 the few cases that were exceptions to that, when
16 courts, on occasion, departed from the face rate of
17 the coupons, they did so to award higher, not lower,
18 interest amounts. The Saavedra Court, for instance,
19 awarded interest at a legal rate that was as high as
20 300 percent at some points, which resulted in an
21 interest award 20 times greater than the principal.
22 And the Luna Judgment awarded additional default

1 interest, default interest of almost 4 percent on top
2 of compensatory interest at the 4 percent, 5 percent,
3 6 percent coupon rates. So, there was also no
4 uncertainty about interest, at least at the stated
5 coupon rates. None.

6 Third, Perú points to various legislative
7 bills that did not become law. And I want to comment
8 on this.

9 As Gramercy previously showed, with the
10 exception of one lone bill that never went anywhere
11 and the MEF's own efforts, the reports and bills that
12 Congress actually passed and studied carefully
13 actually converged on CPI updating. They all had CPI
14 updating in them and they provided, if anything,
15 further evidence supporting CPI updating plus
16 interest. But that's not the main point because, even
17 putting that fact completely aside, even if the bills
18 had been much more diverse and had methods like the
19 price of cattle as the updating method, it wouldn't
20 have mattered because these bills just don't support
21 Perú's uncertainty claim in this Arbitration.

22 All they show is that Perú did not succeed in

1 creating an administrative payment scheme that could
2 have provided an alternative to enforcing legal rights
3 in court. So, at most, they would show that there was
4 uncertainty about whether Perú would create such an
5 administrative scheme. That in no way diminishes the
6 certainty of the constitutional and legal rights
7 Gramercy had and that it could enforce in the court
8 system, as, Mr. Koenigsberger told you, Gramercy had
9 always expected.

10 And that is also why Vice Minister Sotelo had
11 to concede that, despite the failure of the
12 legislative and executive branches to enact a Land
13 Bond payment scheme, bondholders always had the
14 right--and this was the existing legal framework in
15 Perú, as she conceded--bondholders always had the
16 right to vindicate CPI-based current value plus
17 interest in court. So, the fact that none of the
18 bills became law also does not establish any
19 uncertainty about Gramercy's legal entitlement to CPI
20 updating plus interest.

21 Yes. May I pause for just a moment,
22 Mr. President, and just point out--yes. There we are.

1 Madam Stern, I'm sorry, the camera had fallen down and
2 was looking at your notes, which we saw you were
3 diligently taking, but we would rather see your face.

4 I briefly also just want to mention one other
5 minor point, I think, which Perú apparently has
6 abandoned. That is its misguided reliance on the
7 Constitutional Tribunal's 2004 Decision on--that's the
8 one that endorsed a voluntary dollarization scheme.

9 You remember that on cross-examination, Dr. Hundskopf,
10 who initially had put much emphasis on that, admitted
11 that after finally reading the Decision in depth,
12 which I guess he hadn't done before he wrote his
13 Report, he had realized that it had an important
14 qualification; namely, that the Tribunal's holding was
15 that the Emergency Decree's dollarization proposal was
16 constitutional because it was a "voluntary option,"
17 just as Gramercy and its Experts had said all along.

18 So, this voluntary option about another
19 proposal in no way, again, creates uncertainty about
20 Gramercy's legal entitlement.

21 And consequently--and that's it. Those are
22 Perú's arguments on this point. And if you really

1 read through them, what you see is the following:
2 That there was no existential uncertainty, as Perú
3 contends, and Gramercy's investment in the Land Bonds,
4 therefore, was not just some gamble or an option as
5 Perú now misleadingly attempts to characterize it. In
6 fact, Perú's Expert, Dr. Hundskopf, to whom the gamble
7 and option quotes trace back, actually walked back
8 that testimony on the stand. In his own words, he
9 conceded that that was not the most accurate way of
10 characterizing it. He admitted that there could, in
11 fact, be no doubt about Perú's obligation to pay the
12 Land Bonds and that, at least after the 2001 Decision,
13 any bondholder had a clear right to payment at current
14 value.

15 Therefore, while Gramercy could not be
16 certain about whether it would succeed in helping
17 forge the win-win global consensual restructuring that
18 it envisioned, it was right to be highly certain that,
19 either by some kind of negotiation or legislation or,
20 if necessary, litigation in Peruvian Court, it would
21 ultimately be paid current value and that this value
22 could be determined by using CPI and adding interest.

1 Now, having addressed you on Gramercy's legal
2 entitlement, we now turn to Perú's breaches of the
3 Treaty.

4 Perú's campaign to wipe out Gramercy's Land
5 Bonds for a tiny fraction of their true current value
6 violates four of Treaty's substantive protections.
7 First, it violates Article 10.7 through its unlawful
8 expropriation; second, it violates Article 10.5 by
9 failing to accord Gramercy the Minimum Standard of
10 Treatment under international law; third, it violates
11 Article 10.4, the Most Favored Nation obligation, by
12 depriving Gramercy of effective means to assert claims
13 and enforce rights; and, finally, it violated
14 Article 10.3 by according Gramercy treatment less
15 favorable than the treatment Perú accorded to Peruvian
16 nationals.

17 Now I want to discuss each of those in turn.

18 First, Perú has expropriated Gramercy's
19 investment. It is worth just refreshing ourselves on
20 what the Treaty actually says because Perú's arguments
21 are sort of penumbral extensions of it. Article 10.7
22 is pretty clear. It prohibits expropriation, either

1 direct or indirect, except when carried out for a
2 public purpose in a nondiscriminatory manner, with
3 prompt, adequate, and effective compensation, and in
4 accordance with due process of law. And then
5 Annex 10(b), which the Parties have focused on,
6 identifies three factors relevant to what is clearly a
7 fact-specific analysis of whether an indirect
8 expropriation has occurred.

9 Economic impact, interference with distinct,
10 reasonable, investment-backed expectations, and the
11 character of the Government action. All three factors
12 show that Perú expropriated Gramercy's investment.

13 I want to start with the economic impact
14 argument. Both Parties for this agree with and rely
15 on the Tza Yap Shum Tribunal's holding that a State
16 can commit an indirect expropriation when its measures
17 lead to a total or substantial deprivation of
18 value--total or substantial deprivation of value.
19 Here, that sort of deprivation is a mathematical
20 certainty under any iteration of the Ministry's
21 updating formulas, whether we look at the
22 February 2014 formula or the August 2017 one.

1 Now, the first one is pretty easy to
2 establish. Perú's own Quantum Experts called the
3 valuation in the first formula, miniscule, and they
4 were right. It returns a valuation of a grand total
5 of \$861,000 for all of Gramercy's nearly 10,000 Land
6 Bonds. That is about one-tenth of 1 percent or less
7 than the total value of those Land Bonds under any of
8 the potential valuations that Mr. Riehl will discuss
9 later.

10 Now, let's pause for a moment, for a moment,
11 just to think about the implications of Perú's
12 admission that its first formula yielded this
13 miniscule valuation of about \$861,000; but, first, it
14 must disprove Perú's contention that the Bonds were
15 worthless and that the bondholder process somehow
16 imparted value to the bonds, for, if that were true,
17 Perú could have simply stopped at the first formula
18 which would have provided the hair extension. It was
19 a lot more than \$.20. And if that's really the
20 measure, then why bother to change it at all? But I
21 think even Perú recognized that they could not get
22 away with theft that brazen.

1 Second, the miniscule valuation was the only
2 offer that the Government had made by the time
3 Gramercy had to decide whether to exercise its Treaty
4 rights. That was the program in force. While Perú
5 appeared to offer something like current value, then,
6 in its February 2017 Supreme Decree, so much so that
7 another Gramercy fund invested in additional Land
8 Bonds, Perú then withdrew that offer, and so it came
9 off the table.

10 That brings us to the Ministry's August 2017
11 formula, and that still results in a deprivation of
12 value so substantial as to be expropriatory. The Tza
13 Yap Shum Tribunal found Perú liable for expropriation
14 when the challenged measures caused the investors' net
15 sales to fall by an equivalent of 96 percent. And
16 Perú's deprivation here is actually on the same order
17 of magnitude. The \$34 million that Perú claims
18 Gramercy could have received through the bondholder
19 process is less than 2 percent of the \$1.8 billion of
20 value that Professor Edwards showed and a mere
21 4 percent of the \$840 million of value that Mr. Riehl
22 will present later.

1 Moreover, even taking Perú's case at its
2 highest, \$34 million is not and never was a real
3 number. Perú never actually offered that amount to
4 Gramercy. It never said: "Here, you can have
5 \$34 million." Instead, the "offer" on the table was
6 for Gramercy to commit to submitting all of its Land
7 Bonds to the unproven and dilatory Bondholder
8 Process--which we'll talk much more about later--in
9 which, just to give some highlights, the Ministry
10 would have near-total discretion in how and when to
11 pay whatever it chose to award and in which Gramercy
12 was the last in line to receive payment.

13 Gramercy would, therefore, have had to
14 subject its investment to the whim of a government
15 ministry that had shown great antipathy to bondholders
16 generally and to Gramercy, in particular, and had not
17 abided by the requirements of Peruvian law in creating
18 the process, and that was already on its third set of
19 economically indefensible valuation formulas, with no
20 promise new ones wouldn't come later. And to do so,
21 to do so, to take up that offer, Gramercy would have
22 had to at the outset waive in advance all of its

1 rights, including its rights under the Treaty. So,
2 Perú's offer that Gramercy could submit to its process
3 is not an offer of \$34 million or any other amount of
4 actual payment.

5 Furthermore, since Gramercy has exercised its
6 Treaty rights, the fact is that Perú now offers no
7 procedure through which Gramercy could receive any
8 value on its Land Bonds, let alone current value. So,
9 the value on the table right now for Gramercy is
10 actually zero, even less than the original miniscule
11 valuation.

12 As for the second factor of those Annex 10B
13 factors, I already explained earlier--and it's in our
14 papers--why Gramercy at the time of making the
15 investment legitimately expected that Perú would
16 eventually pay its Land Bonds at a value that
17 reflected their original purchasing power plus
18 interest. That was, after all, Perú's constitutional
19 obligation, and I dealt with that in the legal
20 entitlement section.

21 Now, the third Annex 10B factor looks at the
22 nature of the Government action. When we get in a few

1 moments to the Minimum Standard of Treatment analysis,
2 we will address at considerable length the arbitrary
3 and unlawful character of the Government's conduct in
4 creating and implementing the Bondholder Process. So,
5 all of that is relevant to the expropriation analysis
6 as well.

7 For the moment, I simply want to show how
8 mistaken Perú is to rely on the Treaty's language
9 about--saying that, for nondiscriminatory actions
10 designed to protect legitimate public welfare
11 objectives such as public health, safety, and the
12 environment, those will rarely be indirect
13 expropriations.

14 Now, on its face, that provision, of course,
15 bars no claims. I think it acknowledges that even
16 nondiscriminatory measures to protect public health,
17 safety, and the environment can, in fact, be
18 expropriatory, depending on the particular facts and
19 circumstances of a case. Moreover, as we will show
20 later, Perú's conduct did discriminate--it wasn't
21 nondiscriminatory--against Gramercy.

22 Moreover, the objectives Perú invoke here are

1 not like those public health, safety, and the
2 environment type objectives. Perú itself
3 characterizes the aim of the Bondholder Process as
4 resolving a long-standing domestic dispute, promoting
5 the general welfare, providing basic services, and
6 ensuring fiscal balance and sustainability. Those are
7 its characterization of the purpose.

8 None of those are obviously public health or
9 safety measures; but, even taken at face value, these
10 fiscal objectives do not justify an expropriation.
11 They are so general and broad that, if accepted, they
12 would entirely swallow the rule against expropriation;
13 right?

14 I mean, on Perú's view, a State could simply
15 always state the self-evident conclusion that taking
16 more money or value for the State will improve fiscal
17 objectives of the State and ensure balance and--fiscal
18 balance and sustainability. But that obviously can't
19 excuse a taking. Tribunals like *Siemens v. Argentina*
20 and others have expressly rejected that kind of claim.

21 Perú has effectively deprived Gramercy of
22 all, or substantially all, at least, of the value of

1 the bonds through means that fall below the minimum
2 standard with the sole aim of not paying bondholders
3 what Perú's Constitution and law entitle them to
4 receive. That is, under our Treaty, more than enough
5 to constitute an unlawful expropriation.

6 So, I now turn to the Minimum Standard of
7 Treatment. We have already explained in our Briefs
8 what the Minimum Standard of Treatment requires, and I
9 don't want to dwell on the Legal Arguments here.

10 Suffice it to say for today's purposes, the Minimum
11 Standard of Treatment is a flexible and open-textured
12 standard that often depends on the facts of a
13 particular case, and it includes conduct that is,
14 among other things, arbitrary, grossly unfair, unjust,
15 idiosyncratic, completely lacking candor and
16 transparency, and that frustrates investor reliance on
17 State representations.

18 To quote Perú's Expert Professor Reisman in
19 his academic writings, the Minimum Standard of
20 Treatment "is an evolving concept whose contents
21 overlap if they have not become congruent with the
22 Fair and Equitable Treatment Standard." And many

1 Tribunals, including Biwater and CMS, have observed
2 that the content of the Minimum Standard of Treatment
3 is not materially different from the Fair and
4 Equitable Treatment Standard; hence, the Minimum
5 Standard of Treatment under our Treaty also includes
6 the quintessential elements of fair and equitable
7 treatment, such as protection of legitimate
8 expectations, consistency, transparency, and
9 rationality in decision-making.

10 Now, Perú's conduct fell below that minimum
11 standard in at least the following five ways: First,
12 the Ministry improperly interfered with the
13 Constitutional Tribunal's decision-making process;
14 second, the Ministry, in purporting to implement the
15 2013 Constitutional Tribunal Order, disregarded key
16 provisions of that order; third, the Ministry adopted
17 arbitrary and irrational valuation formulas in the
18 Supreme Decrees themselves, all of them; fourth, the
19 Ministry issued Supreme Decrees in violation of Perú's
20 own administrative law; and, finally, the Ministry's
21 bondholder process is, in its operation, arbitrary,
22 discriminatory, and a failure.

1 So, let me begin with the Ministry's
2 intervention in the Constitutional Tribunal's
3 decision-making process. So, first let's consider
4 this issue. And some basic facts of what happened in
5 July of 2013 are well-established, and this set of
6 facts, I believe, is undisputed. The Constitutional
7 Tribunal had deliberated on this issue for about
8 two years. In mid-July 2013, a four-Justice majority
9 agreed on a decision confirming that the Land Bonds
10 should be updated in the totally conventional way that
11 courts had been using--that is, CPI plus interest.

12 But then there were some last-minute ex parte
13 meetings with high-ranking members of the Executive.
14 On the very day that the court was, again, meeting in
15 plenary session to sign the CPI Decision, three
16 Justices suddenly had a change of heart. A new
17 opinion emerged, and three Justices signed this
18 hastily prepared new opinion with dollarization.

19 Justice Mesia, who was one of the original
20 four Justices, objected and invoked his right under
21 the Court's rules to have 48 hours to prepare a
22 dissent. But the Chief Justice overrode that right,

1 and he or someone else that day transformed the
2 original majority opinion--which he hadn't written;
3 Justice Eto had carriage of the issue until then--but
4 transformed the original majority opinion into Justice
5 Mesia's opinion by using whiteout, by whitening out
6 signatures and typing in, instead of "This is the
7 Decision of the Court," saying "This is my dissent,"
8 which then enabled the Chief Justice to declare a 3-3
9 tie and to use his casting vote to ram through this
10 new Decision as the formal opinion of the Tribunal
11 over three dissents.

12 That's an undisputed sequence of events, and
13 it is shocking if you just step back. I don't want to
14 lose sight of how shocking it is. We are not aware of
15 a responsible judicial system that would tolerate the
16 use of whiteout to falsely create a dissent at the
17 apex court of the country and submit to you that that
18 alone probably, once we know about the internal
19 workings of it, is below the Minimum Standard of
20 Treatment.

21 But there is much more than that too because
22 the situation, as we've discovered it through the

1 arbitration, has turned out to be much more
2 pernicious, where the evidence has also shown that
3 this about-face in these last days by three Justices
4 of the Constitutional Tribunal was the product of the
5 Ministry peddling false information to the
6 Constitutional Tribunal.

7 You will recall that in sworn testimony to
8 Perú's Congress, Justice Eto, who was the person who
9 had carriage of the issue for all of those years--he
10 was the lead Justice on this case--testified to
11 having, in those last days, a historic meeting in the
12 Ministry during which The Ministry of Economy himself
13 told the Justices that the debt, if updated using CPI
14 plus interest, might reach the stratospheric amount of
15 \$18.5 billion.

16 And Justice Eto explained that that is
17 the--that that fact moved the Justices to change their
18 opinion because they were concerned, obviously, about
19 the impact of \$18 billion on Perú's budget.

20 Perú has denied that this kind of meeting
21 happened. We submit to you that the weight of the
22 evidence shows that it did, if you look at it

1 objectively, and we submit the following six points
2 for you to consider.

3 First, there was no reason for Justice Eto to
4 lie. This was not some casual story told at a dinner
5 party or even to a reporter in a newspaper. This was
6 sworn testimony in Congress in the presence of the
7 other Justices. This is the last place where a
8 Justice of the country's highest court would make up
9 some fantastical story.

10 Second, Minister Castilla's hearing testimony
11 about this episode was remarkably evasive. You'll
12 recall that he kept insisting that he didn't have any
13 official meetings with the plenary of the Justices.
14 He eventually, and somewhat grudgingly, acknowledged
15 that he did meet at the very least with Chief Justice
16 Urviola during those last fateful days and that they
17 probably discussed the land bonds as a topic.

18 Third, Minister Castilla's contemporaneous
19 statements to the media actually confirmed that he had
20 inside information about the outcome of the Decision.
21 During the long deliberation period, the Minister was
22 rigorous about taking a no-comment position as he did

1 repeatedly in the press, and we showed you one of
2 those during the cross-examination.

3 Yet, in those last few days before the
4 Constitutional Tribunal issued its Decision in the
5 period of time in between the original majority
6 opinion and the new opinion suddenly emerging,
7 Min. Castilla was quoted in the press, in language he
8 didn't deny, suddenly stating that he was confident
9 that the Constitutional Tribunal would reach a
10 decision consistent with the Constitutional concept of
11 budgetary balance, confident.

12 And that, of course, is remarkable because it
13 is exactly what the putative majority Decision said it
14 was doing. Minister Castilla had been confident about
15 the Justices' premise, their abandonment of the
16 established legal framework of CPI plus interest on
17 the need to balance the State's various budgetary
18 obligations. That's the central idea animating the
19 Decision and what Justice Eto told you made them
20 change their mind.

21 Think about this for a second. Five days
22 before the Constitutional Tribunal issued its Decision

1 and after the original Decision had already been
2 written, Minister Castilla knew not only that the
3 Court was about to issue a decision but he also said
4 that he was confident about the specific principle
5 upon which that Decision would be premised.

6 Fourth, the July 2013 Order clearly indicates
7 that the Justices now understood that CPI plus
8 interest would be so expensive as to threaten Perú's
9 very fiscal stability. As the Order itself says:

10 "Any CPI calculation will suppose an amount that is
11 unaffordable for the debtor and would generate severe
12 impacts on the budget of the Republic, to the point of
13 making impracticable the very payment of the debt."

14 So, it was clear from what the Tribunal wrote
15 in its Decision that it really was animated by some
16 concern that paying the debt as it was really owed
17 would somehow break the Bank of Perú and cause
18 financial ruin. That really was on their minds, and
19 you can see it in what they wrote.

20 Fifth, the Constitutional Tribunal adopted an
21 approach in its Decision that include elements, and a
22 combination of elements, that could only have come

1 from the Ministry. That's because there is a
2 combination of elements that basically has the
3 fingerprints of Professor Seminario's work. You'll
4 recall he's the economist who the Ministry hired back
5 in 2001, and he prepared a report that was supposed to
6 be part of a draft bill. But you'll recall Minister
7 Castillo's testimony in his Witness Statement which
8 was that that bill never went anywhere, never made it
9 outside the MEF. So, this was just within the MEF at
10 that point. We think about it today, but at that time
11 nobody had known about Professor Seminario's work.

12 But let's look at what--compare what's in
13 Seminario to what's in the Constitutional Tribunal
14 Decision. The first of these shared features is the
15 erroneous belief that CPI is unreliable in times of
16 hyperinflation. That idea was not unique, in fairness
17 to Professor Seminario. It had been in the
18 intellectual history of this before, but it certainly
19 was a major and driving feature of his analysis, just
20 as it was for the Constitutional Tribunal.

21 The next two elements though are a little bit
22 more unique. The second shared feature was the use of

1 a parity exchange rate. And it's striking that both
2 the Constitutional Tribunal order and the Seminario
3 Report adopted precisely the same reasoning that the
4 official rate didn't express Market Value. Parity
5 exchange rate.

6 The third shared feature was that the
7 Constitutional Tribunal and the Seminario Report both
8 updated the value. Now, they're updating value here,
9 which is an inflation adjustment, but they did it
10 using U.S. Treasury bond yields. To the best of our
11 knowledge, this unique combination of elements has no
12 antecedent in the more than a decade of analysis and
13 consideration on this issue. If it did not come from
14 Professor Seminario's work, where did it come from?

15 One way or another, whether directly or
16 indirectly, it must have come from the Ministry.

17 And, sixth, the Ministry's interference was
18 affirmed not only by Justice Eto but also by his
19 colleagues. Justice Urviola, for example, stated in
20 the press that he met with Min. Castilla and Prime
21 Minister Jiménez in the days immediately leading up to
22 the Tribunal's Decision. On cross, Minister Castilla

1 said that he would not question that public statement.

2 Similarly Justice Alvarez in his testimony
3 described in memorable terms how the Justices
4 basically threw up their hands at the end and ceded
5 authority to the Executive on this monetary point. He
6 explained that the Justices were unsure of the
7 consequences of the various updating methods and,
8 thus, simply in his words "withdrew and Liquid Paper
9 was used."

10 The weight of the evidence is clear, and Perú
11 has no answer to most of those points and none to the
12 combined weight of them. Instead, Perú's defenses
13 purposely miss the point. First, they cite to select
14 portions of Minister Castillo's testimony and of the
15 Congressional testimony as alleged evidence that the
16 MEF didn't have these communications, but the
17 testimony Perú cites really addresses an entirely
18 different allegation that has been cause célèbre in
19 Perú, which is that the Ministry actually wrote the
20 purported majority opinion. We are not submitting our
21 case on that basis, but that is mostly what the
22 testimony they cite in the Post-Hearing Brief responds

1 to.

2 Second, Perú cites to the Ministry's request
3 for clarification after the 2013 CT Order as alleged
4 evidence that the MEF did not agree with the Order.
5 They might not have agreed with the Order in all its
6 respects. None of those challenged the valuation
7 method, and both of those were efforts to either tell
8 the Constitutional Tribunal "don't make us do anything
9 at all" or "give us a lot more time to do it." But
10 none of them in any way undermine the story that we've
11 just told you that they provided false information to
12 the Court to make them move off of CPI plus interest
13 as the basic rule.

14 Finally, Perú claims that the Constitutional
15 Tribunal confirmed the validity of the July 2013
16 Resolution through subsequent resolutions later that
17 year, but, of course, by that--later in that year and
18 the next few months, they would have no reason to
19 believe that the information they had been provided
20 about the \$18.5 billion figure was false. So, of
21 course, they would have continued in the same vein.

22 In conclusion, this order came about because

1 of false information that arose through unilateral
2 last-minute intervention that bondholders had no
3 chance to rebut. So far as we can tell, nobody ever
4 came to the bondholders and said, Hey, we've heard
5 that your method will cost \$18.5 billion. What do you
6 say to that? Nobody believed that.

7 The Order was promulgated hastily in
8 contravention of the Tribunal's own procedural rules
9 and normal practices of apex courts. And it created a
10 pretty important reversal of the existing legal
11 framework about CPI plus interest engineered through
12 these misrepresentations and scare tactics. And we
13 submit that that, if that's what you find the facts to
14 be, that clearly falls below the Minimum Standard of
15 Treatment and is a breach the Treaty.

16 I now move on to our second point, that the
17 Ministry didn't even comply with this 2013 Order, and
18 it didn't do so in two really important respects.

19 First, the Ministry did not follow the
20 Tribunal's balancing instruction. As we saw above, a
21 central principle of the 2013 Order was balancing
22 competing imperatives, and Min. Castilla conceded that

1 the Ministry had to carry out the implementation of
2 that Order in a manner that would ensure there would
3 not be a serious sacrifice of either element of the
4 balance, paying the bondholders or fiscal
5 sustainability.

6 So, you would think that what the Ministry
7 should do with it, if Min. Castilla's testimony was
8 accurate--we think it was--that they had to follow
9 that in implementing it, that they would have thought
10 about: What is this balance that the Constitutional
11 Tribunal has directed us to do? They told us to use a
12 method. We have discretion about how to carry it out.
13 How do we do that? The MEF never did anything of the
14 kind, and they didn't even try to.

15 For his part, Minister Castilla admitted that
16 he didn't read the Order in detail and he dismissed
17 the 2014 Supreme Decree that established the
18 bondholder process as one of many Decrees that I would
19 sign on a daily basis.

20 Okay. He was Minister, maybe he was busy,
21 but that approach seems to have pervaded the whole
22 Ministry. Minister Castilla and Vice Minister Sotelo

1 confirmed that the Ministry did not engage in any
2 balancing analysis at all.

3 As the Tribunal will recall, Perú has also
4 adduced no evidence to the contrary. It presented no
5 analyses purporting to assess how much bondholders
6 would receive, how that amount compared with the true
7 current value of the outstanding debt, or what the
8 impact on Perú's fiscal budget would be under any
9 version of its formula or any alternative method.

10 Without doing any of that work, the Ministry simply
11 couldn't have implemented the 2013 Order in the way
12 that the Constitutional Tribunal intended and,
13 importantly, the way that Minister Castilla
14 acknowledged it was required to do.

15 Now, that's the kind of qualitative approach
16 about the work that they didn't do, but I want to now
17 talk about a very important second failure to carry
18 out the Tribunal's order and that has a very material
19 and specific identity. That is, that the Ministry
20 failed to include payment of compensatory interest.

21 As we saw before, the Courts in Perú have
22 always awarded bondholders compensatory interest in

1 addition to principal updating. And the 2013
2 Constitutional Tribunal Order itself reaffirmed that
3 the Ministry should do the same, it should update the
4 principal to bring it to current value and add the
5 interest. "Plus the interest," they said. A 2015
6 Opinion of a CT Justice that sort of referenced this
7 2013 Order similarly observed that the Tribunal had
8 ordered the Ministry to pay the full updated amount
9 plus interest. And Perú's Supreme Court has confirmed
10 that obligation to add interest on at least five
11 occasions since the 2013 Order: in 2015, 2016, 2017,
12 and twice in 2018.

13 And you will recall that Dr. Hundskopf
14 himself submitted four of these Decisions into the
15 record with his Rejoinder Report and a fifth one
16 reaching the same conclusion is Exhibit CE-654.

17 The Tribunal will recall one of these cases,
18 in particular, Cassation Appeal Number 1139/2016 from
19 the year 2018, which the Parties discussed at the
20 Hearing. In that case, the Supreme Court actually
21 reversed the lower court's Decision precisely for the
22 failure to add interest.

1 Dr. Hundskopf's endorsed that case as an
2 example of how Peruvian Courts applied the 2013
3 Constitutional Tribunal Order. He agreed that after
4 updating with the method determined by the Tribunal in
5 July 2013, "in addition to this--in addition to this,
6 compensatory interest is added." He also accepted
7 that the compensatory interest owed is the interest
8 rate preestablished on the bond, which, as the Supreme
9 Court made clear, applies on top of treasury bond
10 yield updating.

11 In fact, Dr. Hundskopf stated that this
12 judgment "reflects the essence of the provisions of
13 the Resolution in 2013 by applying dollarization and
14 clearly interest," he said. And he declared that the
15 result is "highly coherent" under Peruvian law.

16 Now, Perú has really no response to this
17 evidence. It has even dodged the Tribunal's direct
18 question in Procedural Order 11 about the legal
19 consequences of the Supreme Court Decision. Perú
20 devotes one sentence to the subject in its
21 Post-Hearing Brief, and here's what it says because it
22 really deserves some scrutiny. It says: "While some

1 local courts in Perú may have applied compensatory
2 interest in this manner, the application of
3 compensatory interest has been specifically rejected
4 in other fora."

5 This is a remarkably misleading and
6 dismissive statement for such an important point.
7 This is not some local court that we are talking
8 about. This is the Peruvian Supreme Court, the
9 highest court in the land on non-constitutional
10 matters, and the other fora to which Perú refers is
11 the futile internal appeal process to the MEF itself
12 in its own bondholder process. Neither Dr. Hundskopf
13 nor Perú has brought you a single case from a Court of
14 Perú, at least after the Supreme Court Decisions, that
15 held to the contrary.

16 The legal situation is, therefore, clear and
17 unequivocal. The law of the land in Perú is that what
18 the Constitutional Tribunal meant in 2013 was what it
19 said, and that the Ministry was obligated to pay
20 compensatory interest in addition to updating
21 principal, update the principal plus the interest.
22 However, despite bondholders' clear entitlement to

1 interest, the Ministry never included it in its
2 formulas, not even with the last Supreme Decree of
3 August 2017, which postdated two of the Supreme Court
4 Decisions. It's simply not in there.

5 So, the Ministry just ignored the binding
6 order of the Constitutional Tribunal and, in 2017,
7 clear legal precedent of the Supreme Court. And, by
8 doing so, it wrote off decades of interest, the single
9 most important component of the compensation due to
10 bondholders given the fact that this debt has been
11 unpaid for 40 or 50 years.

12 And what's Perú's justification for this
13 blatant omission? They initially seem to argue that,
14 well, no, it is in there, compensatory interest is
15 accounted for because it is somehow built into the
16 U.S. Treasury Bonds. But that is both legally and
17 economically wrong. Legally, as we just saw, that is
18 obviously not what either the Constitutional Tribunal
19 or the Supreme Court understand. The Constitutional
20 Tribunal said use U.S. Treasuries to update plus
21 interest, and the Supreme Court has confirmed that
22 interest has to be put on top of the conversion using

1 the U.S. Treasury yields. So, it's not the law of
2 Perú.

3 And, economically, it is wrong. The one-year
4 U.S. Treasuries do not provide the compensatory
5 interest required by Peruvian law. It is true that
6 technically there is some real rate of interest
7 embedded in a U.S. Treasury. It is not just
8 inflation. There is a strip of interest above it.
9 But Professor Edwards showed that the treasury yield
10 on the one-year bond that the Ministry uses--and,
11 remember, they use a one-year treasury in their
12 updating method--includes a real component of a mere
13 0.77 percent on average. That's 14 times less than
14 the average Rate of Return on capital in Perú for this
15 period.

16 Perú simply ignores this economic reality.
17 Perú's Experts admitted that they did not even attempt
18 to determine the real rate above inflation in the
19 Treasuries. In their words, they had no idea. Hadn't
20 even occurred to them to think about that.

21 Consequently, as Professor Edwards explained,
22 the Ministry's use of a one-year U.S. Treasury for

1 these very long-term--updating these very long-term
2 Peruvian obligations is essentially a proxy for
3 inflation updating. It does not include the
4 compensatory interest Peruvian law requires.

5 In its Post-Hearing Brief, Perú makes one
6 other last-ditch attempt to respond. It cites the
7 Quantum Expert's Opinion that the Ministry's formula
8 was, as they put it, more than fair because the
9 Treasury yields were 10 to 20 times higher than the
10 stated coupon rates in the Bonds of 4, 5, or
11 6 percent.

12 But it's remarkable that they would rely on
13 that testimony from their Experts' Report because you
14 may remember that, during the Hearing, we
15 cross-examined them on that, and Perú's Quantum
16 Experts completely misunderstood how the Bonds work.
17 And so on cross-examination, they admit--admitted that
18 their assumptions and opinions about the Bonds'
19 interest component were wrong, the effective annual
20 interest rates were wrong, the principal discounts
21 were wrong, and the effective face values were wrong.
22 Perú obviously cannot rely on this completely

1 discredited report that its authors admitted was wrong
2 in this very respect. But without that, Perú has
3 nothing to rely on at all.

4 So, failing to carry out the core elements of
5 the 2013 Constitutional Tribunal Order, engaging in a
6 thoughtful balancing exercise and paying compensatory
7 interest alone also show that the Ministry violated
8 the Minimum Standard of Treatment. It didn't even
9 comply with the mandate the Tribunal had given it.

10 But, as we will now see, the Ministry also acted
11 arbitrarily and irrationally in many other ways as
12 well.

13 With that, I want to turn to our third point,
14 which is that the Ministry's formulas are irrational
15 and arbitrary.

16 So, we just looked at what the Ministry did
17 not do in implementing the 2013 Order, those failures
18 of omission. Now let's look at some of their failures
19 of commission. What they did do was promulgate three
20 valuation formulas in as many years, each of which is
21 arbitrary and irrational.

22 The Ministry's first attempt came with the

1 February 2014 Supreme Decree. Now, imagine for a
2 second that you're a bondholder like Mr. S.,
3 94-year-old man whose--had 10 children, his farm had
4 been expropriated from him many years ago. He just
5 heard about this great new compensation scheme that
6 the Ministry has published and wants to figure out how
7 much you are going to get paid. So, you pick up a
8 copy of El Peruano and you see this.

9 Now, these complex equations with such
10 seeming precision issued by the venerated Ministry of
11 Economy and Finance to carry out a landmark decision
12 of the Constitutional Tribunal. Even if you couldn't
13 make sense of it, you would assume it was the product
14 of careful consideration, thoughtful analysis, sound
15 economic principle, and a commitment to doing justice.
16 That is what the Ministry is supposed to do, not just
17 rob bondholders who had had their land taken from
18 them. But given the stakes, Gramercy and every other
19 bondholder were right to expect no less than that.

20 But, in fact, it had none of those
21 characteristics; far from it. The evidence exhibited
22 in this Arbitration revealed that it was actually cut

1 and pasted from a desktop study that a local
2 professor, Bruno Seminario, had prepared three years
3 earlier over less than a week for the purpose
4 basically of finding a way to pay less than current
5 value that the Constitution required. That was his
6 mandate.

7 Vice Minister Sotelo testified that no one at
8 the Ministry critically reviewed Professor Seminario's
9 work, and that, instead, the Ministry just accepted
10 what he had concluded. Maybe that's because they
11 rushed the job. The evidence showed that the Ministry
12 waited until December, almost six months after the
13 Order issued, to start working on the Supreme Decree
14 to implement it, which it had to do by mid-January.

15 And it's a pity that no one at the Ministry
16 actually reviewed this formula before dropping it into
17 the Supreme Decree, or, remarkable idea, tested what
18 effect it would have on actual bond values.

19 But, thankfully, you had Professor Edwards to
20 do that. When he did, it became clear that it not
21 only produces obscenely low values, but it is also
22 total economic gibberish. I say that advisably. I'm

1 not making that up. It really is gibberish.

2 Among many, many other flaws, which we don't
3 have time to talk about today, it reduces to the
4 mathematical impossibility of X equals X squared.
5 Now, what could be more arbitrary than that, and, yet,
6 this is the formula that the Ministry not only
7 promulgated at the direction of the Constitutional
8 Tribunal, it then vigorously defended this formula,
9 despite robust criticism for the better part of
10 three years.

11 Now, of course, both the Ministry and Perú's
12 own Experts disown it. At the Hearing, Vice Minister
13 Sotelo admitted that the formula was not correctly
14 stated. Perú's Quantum Experts said they wouldn't
15 carry out the formula and try to make sense of the
16 result because doing so would be "nonsensical,"
17 nonsensical.

18 Pause on that for a minute. This nonsensical
19 formula was the law of the land when Gramercy had to
20 decide whether to assert its Treaty rights. And the
21 Ministry never solved that problem. The February 2017
22 version at least offered the promise of much more

1 realistic values, which Gramercy initially took as a
2 promising sign, based on that plus other information
3 that they were hearing at the time from within Perú.

4 And those much higher values, including
5 values of over \$2 billion for Gramercy Bonds
6 illustrate--and this is very important--how apparently
7 minor changes to the equation's parameters can have a
8 massive impact on value. The precisions themselves
9 drove value from 861,000 to over \$2 billion.

10 But the February 2017 formula also, frankly,
11 included some fundamental irrationalities, such as
12 saying that an index, Consumer Price Index, CPI, which
13 is a number, should be expressed in a currency, soles
14 de oro. Rather than clarify what it meant by that,
15 the Ministry simply abandoned this formula too.

16 And that brings us to the August 2017
17 formula, which itself is arbitrary and irrational. A
18 central element of this formula is, of course, the
19 Parity Exchange Rate. We already saw that small
20 changes in the equation can have big consequences on
21 value. But the Ministry's Parity Exchange Rate,
22 again, makes no sense.

1 First, the Ministry constructed the parity
2 exchange rate in a way that contravenes the whole
3 purpose of having a parity exchange rate in the first
4 place.

5 As Professor Edwards explained, to do that,
6 to make a parity exchange rate, you have to anchor the
7 calculation to a base period when the two economies
8 are in parity. That's why it's a parity exchange
9 rate. To do so, economists typically use a long
10 average of exchange rates over a long period during
11 periods when the economies are actually in parity with
12 each other and that becomes kind of the base.

13 Professor Edwards described this completely
14 sensible idea as the basic rule of calculating parity
15 exchange rates, and Mr. Kaczmarek admitted that he
16 doesn't have the expertise to argue to the contrary.
17 He said parity exchange rates aren't something he
18 spends time thinking about.

19 The rule is so basic that even Professor
20 Seminario, who got so much wrong, warned when he did
21 his original Report--he said: "Don't use a single
22 year during a turbulent time. Instead, use a parity

1 exchange rate rather than an actual exchange rate."

2 But the MEF then completely blew it. In
3 their August 2017 Decree, they used to calculate the
4 parity exchange rate--they used as the base period a
5 single month in 1969 as the anchor period. That's
6 obviously just one moment, not a long period, and it
7 certainly is not a stable time when the economies of
8 Perú and the United States were in parity.

9 There was massive instability in Perú, a
10 coup, currency controls, and many other problems. And
11 this is a big problem for the rationality of the
12 formula. It makes the parity exchange rate much too
13 high, 2.5 to 3 times too high compared to Professor
14 Edwards' calculation of what a parity exchange rate
15 could be. And a higher parity exchange rate makes the
16 updated bond values much lower.

17 Second, the Ministry then made matters much
18 worse by using this distorted parity exchange rate
19 inconsistently. It used it to convert from soles into
20 U.S. dollars in the first case, but then switched and
21 used the actual exchange rate to convert back from
22 U.S. dollars to soles. This inconsistent treatment

1 locks in artificially low bond values and led
2 Professor Edwards to call it a "second expropriation."

3 Third, the Ministry's formula is tremendously
4 hypocritical. Remember, the whole intellectual
5 justification for dollarization instead of CPI was
6 Professor Seminario's belief that CPI becomes
7 unreliable during periods of hyperinflation.
8 Professor Edwards showed that that is simply not true
9 if you use CPI correctly. His CPI calculations use
10 CPI before and after the hyperinflationary period but
11 not during it.

12 But one of the peculiarities of the
13 August 2017 MEF formula is that it uses Peruvian CPI
14 during the hyperinflationary period as part of its
15 equation. That would seem to make it impossible for
16 this formula to cure the purported disease that it led
17 everyone down this misguided path in the first place.

18 Fourth, the August 2017 formula also converts
19 to U.S. dollars, not at the date the debt was issued
20 but at the date that somebody happened to clip their
21 last coupon, which is irrational. It makes two Bonds
22 that are exactly the same principal, issued exactly

1 the same day, of completely different values, and
2 Professor Castillo explained that, given the nature of
3 the obligation that had to be updated, that is about
4 as sensible as updating from the date of the last
5 solar eclipse.

6 So, what's the justification for these latest
7 economically irrational and wrong Decisions? What is
8 it that Perú and its Experts have told you about where
9 they got all this from? Well, nobody knows.

10 If we are to believe Perú's document
11 production, there are no work papers showing where
12 this formula or the anchor date came from. It
13 apparently just fell out of the sky. The Ministry
14 apparently just made it up with no study, analysis,
15 consultation, testing or validation. It does not even
16 have the imprimatur of Professor Seminario or any
17 other economist.

18 Perú tried to say they got the parity
19 exchange rates from the Peruvian Central Bank. That
20 is not true. The Bank provided some data that it does
21 keep about real interest rates, which is a factor that
22 goes into this equation, but it doesn't publish parity

1 exchange rates as such and it refused to provide them.

2 And in writing back to the Ministry, the
3 Central Bank even cautioned the Ministry that a parity
4 exchange rate would be sensitive to the anchor year
5 chosen. Ministry obviously ignored that warning;
6 hence, the Ministry's exchange with the Central Bank
7 is not a defense of the August 2017 Decree. It is
8 instead just one more confirmation of its
9 arbitrariness and irrationality.

10 Now, Perú's frankly utter disregard for
11 integrity and rationality with respect to the formulas
12 is shocking. These formulas are not just some
13 academic exercise. They really shouldn't be relegated
14 to a \$10,000 desktop study to generate some ideas.
15 They are the single most important element of the
16 Supreme Decrees for Gramercy or any other Bondholder.

17 They determine Bondholders will, at long
18 last, four or five decades after having their farmland
19 expropriated, finally receive just compensation, or
20 whether they will instead receive the kind of
21 insulting and derisory amounts that the Bondholder
22 Process has, in fact, been paying to many.

1 Yet, even now, after more than six years and
2 three attempts and our hearing, Perú not only
3 continues to rely on a formula that is nonsensical and
4 upends basic economic principles, but it has not
5 deigned to produce evidence that even attempts to
6 explain why any of these formulas make sense, how the
7 Ministry arrived at them, or what other alternatives
8 or factors they even considered.

9 Just like we anticipated in our Hearing--in
10 our Opening, the Hearing confirmed that Perú has
11 offered no Witness who dares to defend any of formulas
12 and indeed they all ran away from them whenever we
13 asked them about it.

14 Lacking justification and contrary to basic
15 economic principles, the formulas epitomize arbitrary
16 decision-making.

17 With that, I would like to hand the floor to
18 Dr. Recena Costa to address the Peruvian
19 administrative law issues.

20 MR. RECENA COSTA: Mr. President, Members of
21 the Tribunal, I will briefly address Perú's violations
22 of its own laws, a matter that you will recall was the

1 subject of Expert Reports and testimony by Professor
2 Bullard and Dr. García-Godos, and I will also talk
3 about the relevance of those violations to this
4 proceeding.

5 Now, having diligently reviewed the record
6 that Perú describes in its Post-Hearing Brief as the
7 voluminous file of documentation that supports the
8 Supreme Decrees, Professor Bullard concluded that
9 those Supreme Decrees violated--

10 (Interruption.)

11 MR. RECENA COSTA: Among other things, the
12 MEF--yeah, the first baby of the Hearing.

13 Among other failures, the MEF.

14 PRESIDENT FERNÁNDEZ ARMESTO: We may have
15 more. That is unavoidable in these hearings. I
16 sometimes have a dog which starts barking. So, we
17 must be patient with these minor mishaps. It's a
18 miracle that we can all be together and seeing each
19 other, so we have to live with these small
20 difficulties.

21 MR. RECENA COSTA: Certainly, Mr. President,
22 I'm a dog owner myself. I've been guilty as charged

1 many times on Zoom calls.

2 But just recapping, then, Professor Bullard
3 concluded that these Supreme Decrees violated very
4 basic principles of Peruvian Administrative Law.

5 Among other failures, the MEF skirted legal
6 requirements including the obligation to pre-publish
7 draft decrees for comment; second, it didn't justify
8 or explain the various formulas in the manner in which
9 it was legally required to do; and, third, it even
10 went as far as to evade a mandatory external control
11 mechanism that obligates the Executive Branch agencies
12 and Ministries to submit Supreme Decrees for prior
13 approval.

14 As a result, as Professor Bullard told you,
15 the Supreme Decrees are illegal, unreasonable, and
16 inapplicable.

17 Perú doesn't really deny any of these
18 underlying facts, instead it asks the Tribunal to
19 dismiss these transgressions as being somehow
20 irrelevant because, in Perú's assessment, the core
21 legal requirements that the MEF chose to ignore were
22 nothing but "hyperformalisms." In other words, what

1 Perú tells you is that it really should just get away
2 with it because it doesn't matter much at all. But
3 that is wrong. And it's wrong as a matter both of
4 domestic and international law.

5 Perú's Submission fundamentally ignores that
6 the Peruvian Administrative Law and its central tenets
7 of legality and reasonableness seek to guard against
8 exactly the same sort of arbitrary conduct that is
9 proscribed by the Treaty and, in fact, by the Minimum
10 Standard of Treatment more generally, as the Tza Yap
11 Shum Tribunal explained.

12 And tribunals--many tribunals, in fact, often
13 considered the State's disregard for its own laws and
14 its own procedures as indicative of arbitrary conduct
15 in breach of Treaty obligations.

16 So, yes, while a treaty--while a domestic law
17 violation doesn't automatically amount to a treaty
18 breach, it may do so when domestic and international
19 legal standards overlap as they do with respect to
20 core values of the rule of law like transparency,
21 reasonableness in decision-making and non-arbitrary
22 conduct.

1 Perú's undisputed failure to pre-publish the
2 draft Supreme Decrees for comment is actually highly
3 illustrative of that very overlap. Remarkably, Perú
4 continues to assert that the MEF did not need to pre-
5 publish the Decrees because no law, in the very
6 technical sense of a norm of a statutory rank required
7 so.

8 But its Expert, Dr. García-Godos, conceded
9 that the legal obligation to pre-publish actually
10 arises pursuant to the U.S.-Perú Trade Promotion
11 Agreement, so the very Treaty under which we are
12 engaged, which, as an international treaty, was
13 incorporated into Peruvian law with the force of a
14 statute and, thus, supplies the requirement that Perú
15 claims is missing.

16 The Supreme Decree that Perú, thus, seeks to
17 downplay as inconsequential is actually just
18 implementing legislation enacted precisely to give
19 effect to the Treaty's objectives. So, here we see
20 not only commonality of goals between domestic and
21 international law but actual identity of obligations.

22 Moreover, the evidence shows that the many

1 other violations Professor Bullard identified, are
2 not, as Perú alleges, trivial. The legal requirement
3 to state reasons, for instance, is designed, in
4 Dr. García-Godos's own words, "to ensure transparency
5 so as to avoid arbitrariness," and these are goals
6 that I think we can all agree are at the heart of the
7 minimum standard of treatment.

8 Now, under Peruvian law, a legally compliant
9 Statement of Reasons must contain a cost-benefit
10 analysis, which, again, to quote Dr. García-Godos, is
11 "a tool of the utmost importance." Perú says that
12 what it did was sufficient, but, as Professor Bullard
13 showed, the MEF's identically worded cost-benefit
14 analyses, used indiscriminately for all of the Supreme
15 Decrees, despite the fact that, as Mr. Friedman
16 showed, each contained a very different valuation
17 formula, were just boilerplate.

18 According to a normative guide that applies
19 to the Executive Branch, they were literally a
20 textbook example of what not to do, and Perú's own
21 Ministry of Justice criticized them, but to no avail.

22 Indeed, a serious cost-benefit analysis could

1 not possibly have been done here because, as
2 Ms. Sotelo confirmed, the MEF never ran the
3 calculations that would have been required to support
4 any serious quantitative analysis of that kind.

5 But Perú's determination in pushing through
6 these Supreme Decrees at basically any cost goes even
7 further. It is also undisputed that the MEF never
8 submitted Reports for prior approval by what is called
9 the "Multisectoral Commission," thus, bypassing a
10 mandatory external control that Legislative
11 Decree 1310 establishes as a condition of validity for
12 the Supreme Decrees and administrative procedures.

13 Perú's justification for this basal failure
14 hinges on a single argument that the Decrees were
15 somehow not norms of a general character, and to back
16 that up, Perú cites no authority other than a two-page
17 legal Memorandum the MEF itself prepared.

18 As the Tribunal will recall, however, during
19 the cross-examination of Dr. García-Godos that
20 argument just fell apart. It became clear that it was
21 contrary to Peruvian legislation and to secondary
22 sources, including the sources Dr. García-Godos

1 himself had cited, and it was inconsistent even with
2 Dr. García-Godos's own opinions on related matters.

3 The Hearing testimony also reviewed--also
4 revealed that the MEF's self-serving legal Memorandum
5 simply cannot be credited as anything but an ex post
6 cover up.

7 So, what we have here, if we take a step
8 back, is the situation where a Ministry thinks it can
9 arrogate to itself the prerogative of choosing whether
10 or not to comply with legal requirements, in fact,
11 defeating the entire purpose of having a mandatory
12 external control over its actions. This, we submit,
13 is the very definition of arbitrary conduct. It is
14 conduct that flouts the law, evades accountability and
15 is based on whim or caprice.

16 To wrap up Perú's cumulative breaches of its
17 own laws and its failure to follow even its own
18 procedures, reveals the sort of systematic and utter
19 disregard for the applicable rules that rises to the
20 level of a breach of international law too. Rather
21 than being insignificant or trivial as Perú portrays
22 them, these facts provide further evidence of Perú's

1 violation of the Treaty's Minimum Standard of
2 Treatment.

3 With that, I will cede the floor to my
4 colleague, Ms. Lavaud.

5 MS. LAVAUD: Mr. President, Members of the
6 Tribunal, I will discuss how the Bondholder process
7 constitutes further evidence of Perú's violation of
8 the Minimum Standard of Treatment under the Treaty.

9 As the evidence shows, the process is not only
10 arbitrary by design but also a massive failure in
11 practice, including for the following six reasons.

12 First, Perú imposed the process on
13 Bondholders with absolutely no consultation or
14 transparency. Not once in any of Perú's multiple
15 attempts to establish either the formula or the
16 process did Perú offer any opportunity for Bondholders
17 to be heard.

18 Second, this process requires Bondholders to
19 blindly give up their right to obtain the current
20 value of their Bonds in local courts without even
21 knowing how much they will receive and how long it
22 will take.

1 Third, it is a process that is unnecessarily
2 complex and moves extremely slowly. In fact, based on
3 Perú's own evidence, it takes on average over
4 4.5 years to obtain payment. And at the pace that it
5 had been going, it would take decades to bring all
6 pending claims to conclusion.

7 Fourth, this process leaves complete
8 discretion to the MEF to decide when and how to pay
9 Bondholders.

10 Fifth, it provides no effective recourse to
11 Bondholders who are unhappy with the result, as it
12 doesn't even allow them to challenge the MEF's
13 formula.

14 And, finally, it pays practically nothing.
15 As Vice Minister Sotelo testified, six years into the
16 process, Perú had only paid in cash the equivalent of
17 USD 300,000. Let me repeat that, USD 300,000. It is,
18 therefore, not surprising that the Bondholder process
19 has attracted only a tiny fraction of the outstanding
20 Land Bond debt, and that it has only resolved so
21 little of that debt.

22 As Professor Olivares-Caminal estimated, only

1 about 8.7 percent of the total outstanding principal
2 had been submitted to the process, and only 0.3 had
3 been resolved as of August 2019.

4 Now, I will submit that these numbers look
5 very small, but they will look even smaller when you
6 compare them to the fact that a successful bond
7 resolution typically engages a 90 percent
8 participation rate.

9 Now, at the Hearing, you will recall that
10 Minister Castilla could not even bring himself to
11 defend the results of the Bondholder process.
12 Instead, he admitted that they are, and I quote,
13 "disappointing." And he was not the only one.

14 Even Dr. Wühler, the Expert that Perú hired
15 to rubber-stamp the Bondholder process as effective
16 and functioning, also refused to validate the results
17 of that process. He, indeed, conceded that most
18 observers would consider the amount paid so far as a
19 "pitiful result."

20 It is, therefore, also not surprising that
21 the dropout rate has been so high, in fact, three out
22 of five Bondholders chose not to request payment after

1 finding out how much they would receive from the MEF.
2 In other words, those are Bondholders who went through
3 the process for several years, and after having gone
4 through that process decided not to request payment.

5 And if Perú had opted to cross-examine the
6 Bondholders who submitted evidence in these
7 proceedings, those who actually went through the
8 process themselves, they too would have confirmed the
9 unfair and arbitrary nature of the process.

10 For example, Mr. Friedman mentioned Mr. S.
11 earlier, a 91-year-old twice-widowed father of ten.
12 He would have explained that the process was, and I
13 quote, an "insult" and a "joke" after he received
14 USD 240 for the expropriation of 56 hectares of land
15 some 45 years ago.

16 Ms. L., who received just USD 67 for her
17 family's farm would have described the process for you
18 as "a scam and a trap for Bondholders seeking to
19 deprive them of fair compensation."

20 So, together, those two Bondholders received
21 less than what Perú paid Dr. Wühler for just one hour
22 of his time, one hour of his time. Sadly, the

1 experience of these Bondholders is not an anomaly but
2 is illustrative of how the process works in practice.
3 These results are simply appalling, and as Professor
4 Olivares-Caminal testified, are unsurprising in light
5 of the fundamental flaws in the design of the process.

6 Now, while certain elements of it, taken in
7 isolation, may appear to have their own logic, the
8 process as a whole completely fails to achieve the
9 objective for which it was allegedly created. It
10 contains none of the hallmarks of an effective process
11 for resolving sovereign debt obligations.

12 So, what does Perú have to say in response to
13 all of this? Well, Perú is asking that you turn a
14 blind eye to this testimony and that you take at face
15 value its claim--and I'm sure you will no doubt hear
16 this tomorrow--that the process is advancing, that
17 Bondholders are being paid, and that the process
18 allegedly comports with some international norms.

19 But the results of the process are entirely
20 inconsistent with Perú's claims. Even Dr. Wühler was
21 incapable of articulating how the Bondholder complied
22 with those international norms.

1 For example, he could not explain how the
2 payment mechanism worked in practice. He also was not
3 able to explain what the formula meant. In fact, you
4 will recall that he admitted that he did not even
5 consider the formula at all. He also admitted that he
6 cited to the two Bondholder Witnesses, to which I
7 referred earlier, as evidence that the process was
8 functioning without giving any consideration at all as
9 to the amount that they received from the MEF.

10 In other words, Dr. Wühler's testimony was
11 entirely based on the existence of some kind of
12 bureaucratic process, no matter how arbitrary,
13 unreasonable and grossly unfair the results. But
14 Perú's attempt to elevate form over substance fails.
15 Under international law, the mere existence of a
16 process does not excuse injustice. In this case, the
17 Bondholder process is not a defense of, but the very
18 basis of Perú's violation of the Minimum Standard of
19 Treatment.

20 Thank you for your kind attention. I now
21 turn the floor back to Mr. Friedman.

22 PRESIDENT FERNÁNDEZ ARMESTO: Thank you,

1 Ms. Lavaud.

2 MR. FRIEDMAN: I will now very briefly touch
3 on effective means of national treatment, although we
4 mostly refer you simply to our briefs on the subject.

5 First, with respect to effective means, I
6 would just draw your attention to the fact that the
7 Treaty MFN provision in Article 10.4 obviously applies
8 to substantive protections, which is reinforced by
9 carving out one procedural issue, which is other
10 Dispute Resolution Clauses, and that Gramercy's case
11 on this is actually fairly simply expressed as
12 follows: That through the August 2013 Constitutional
13 Tribunal resolution, the one that made the Bondholder
14 process the MEF would create mandatory, and the
15 Supreme Decrees, that what the Constitutional Tribunal
16 and the MEF did was reverse what had previously been
17 the case, that was optional mechanisms for
18 dollarization from the 2014 Order and, instead, impose
19 a solution that deprived Gramercy of the right that it
20 had up till that moment to go to Peruvian Courts and
21 get CPI plus interest, and, in that, which was an
22 effective means, and then substituted for it an

1 ineffective means of the Bondholder process, what
2 we've submitted on our papers on the other legal
3 issues.

4 With respect to national treatment under
5 Article 10.3, I simply want to point out to you that
6 the evidence really has confirmed that there
7 definitely was a discriminatory animus against
8 Gramercy in this Bondholder process, and indeed in the
9 treatment of the Bondholder issues. You'll recall
10 that in the 2014 Supreme Decrees, Perú introduced a
11 provision that places legal entities that bought the
12 Bonds for so-called "speculative ends" very last in
13 the queue for payment.

14 There was no evidence of where this came from
15 or why from the Witnesses, neither Minister Castilla
16 nor Vice Minister Sotelo had any explanation for it,
17 and then when pressed--and when said, "well, look,
18 you've called Gramercy a speculator many times before,
19 this must be a provision about them. Is it about them
20 or anybody else?

21 Vice Minister Sotelo resisted giving any
22 further answer because she was under oath.

1 It is pretty plain from the evidence that
2 this Decree and the treatment of Bondholders generally
3 was motivated, at least in part, by animus against
4 Gramercy. From the outset of this arbitration, Perú
5 has accused Gramercy of being what it called a "hedge
6 fund speculator," clearly putting Gramercy in that
7 last payment priority bucket.

8 When Gramercy commenced this arbitration
9 after years of seeking to reach a global consensual
10 resolution of the Land Bond Debt, then-President of
11 Perú, Pedro Pablo Kuczynski, publicly declared that,
12 "I don't think we owe (Gramercy) anything."

13 Again, last year, then-chief Justice Urviola
14 urged Congress not to pay anything to what he called
15 the "vulture Gramercy." That was the Chief Justice of
16 the Constitutional Tribunal. And in its Post-Hearing
17 Brief, Perú reiterated that Gramercy is entitled to
18 nothing. Nothing.

19 Accordingly, we suggest that although this is
20 just about cash payment priorities, that and the other
21 evidence in the case reveal a clear discriminatory
22 animus in the treatment of the whole Bondholder issue

1 against Gramercy, which is forbidden by Article 10.3
2 of the Treaty.

3 And with that, Mr. President, we propose to
4 conclude our submissions on merits and take a break
5 before turning to quantum and jurisdiction. If that's
6 acceptable to you.

7 PRESIDENT FERNÁNDEZ ARMESTO: Absolutely. If
8 there is no question from my colleagues.

9 ARBITRATOR DRYMER: Not for me. Thank you,
10 sir.

11 PRESIDENT FERNÁNDEZ ARMESTO: And from
12 Professor Stern?

13 ARBITRATOR STERN: Maybe I wait for the end.

14 PRESIDENT FERNÁNDEZ ARMESTO: Very good.

15 ARBITRATOR STERN: I might have some
16 questions.

17 PRESIDENT FERNÁNDEZ ARMESTO: Excellent.

18 So, it is now here in Spain 16:43. Shall we
19 come back at 17:00 Spanish time, which should
20 be--Marisa, can you help he?

21 ARBITRATOR DRYMER: 11:00 a.m. Eastern.

22 SECRETARY PLANELLIS-VALERO: 11:00 a.m., yes.

1 PRESIDENT FERNÁNDEZ ARMESTO: 11:00 a.m. We
2 will be back at 11:00 a.m. Thank you very much.

3 (Brief recess.)

4 PRESIDENT FERNÁNDEZ ARMESTO: Welcome back.

5 We resume the Hearing, and I now give the
6 floor back to Claimant.

7 MR. RIEHL: Thank you, Mr. President. And
8 good morning and good afternoon, Mr. President and
9 Professor Stern and Mr. Drymer.

10 I will be addressing quantum. Quantum here
11 is really quite straightforward. As Mr. Friedman
12 described, the Land Bonds have an intrinsic legal
13 value mandated by Perú's constitution and laws.
14 Perú's Treaty breaches deprived Gramercy of that
15 value, and so the obvious remedy and, in fact, the
16 only remedy that will provide full reparation is to
17 order Perú to pay Gramercy what it owes, namely, the
18 full intrinsic value of Gramercy's Land Bonds under
19 Peruvian law.

20 And if we could get our slides up, that would
21 be good.

22 As Mr. Friedman described, that full

1 intrinsic value consists of value of the unpaid
2 principal updated for inflation in today's currency
3 plus compensatory interest on that updated principal.
4 That full intrinsic value was that \$841 million in May
5 2018; and, of course, it is even higher today because
6 of accumulating interest. That's clearly the value if
7 the Constitutional Tribunal's 2013 Order breached the
8 Treaty and Gramercy is entitled to CPI updating from
9 issuance, but it's also the value even if the 2013
10 Order was proper and the breach was limited to the
11 MEF's arbitrary and irrational implementation of that
12 order.

13 In my remarks today, I will first review why
14 Gramercy is entitled to the full intrinsic value of
15 its Bonds as a legal matter.

16 And could I have the next slide, please.

17 Then I will address why that value was at
18 least \$841 million, whether or not the 2013 CPI Order
19 breached the Treaty.

20 To determine the proper measure of damages,
21 the starting point is the applicable legal standard,
22 and here that is undisputed. It is undisputed that

1 the full reparation standard applies. Within that
2 context, though, Perú attempts two categories of Legal
3 Arguments: first, that Gramercy has not met its burden
4 of proof; and, second, that the measure of damages
5 should be the Bonds' Market Value rather than their
6 intrinsic legal value. Neither of Perú's arguments is
7 right.

8 Perú's purported arguments about quantum
9 legal standards actually just rehash Perú's merits
10 arguments. If Perú is wrong on the merits, those
11 arguments also fail, and that is clear right from the
12 start of the damages section of Perú's Post-Hearing
13 Brief.

14 Perú begins by arguing that Gramercy is
15 seeking "more than is available under Peruvian law"
16 and then it cites the Bondholder process as the
17 authoritative determinant of Peruvian law. That is
18 just a restatement of Perú's merits case. Perú's
19 primary defense on the merits is that current value
20 means whatever the MEF says it means, but that is
21 simply not the case for the reasons that Mr. Friedman
22 has described. But Perú's burden of proof arguments

1 just repeat that same claim over and over again in
2 different guises.

3 As shown here, Perú's argument that Gramercy
4 has not met its burden of proof with respect to
5 damages is an obviously incorrect merits argument.
6 Perú argues that all it owes is the nominal value of
7 the Bonds without any change to their terms, but that
8 is exactly the argument the Constitutional Tribunal
9 rejected in its 2001 Decision. So, it's not only a
10 merits argument. It is an obviously incorrect merits
11 argument. It does not cast any doubt on the certainty
12 of Gramercy's proof of its damages if Gramercy is
13 right on the merits.

14 Perú's causation argument is more of the same
15 and fares no better. Perú again just repeats the
16 obviously wrong claim that Perú is not required to pay
17 more than the original nominal terms of the Bonds and
18 then repeats its merits argument that the law is
19 whatever the MEF says it is.

20 The bottom line on Perú's burden of proof and
21 causation arguments is that they actually don't
22 address either the burden of proof or causation at

1 all. In fact, Perú has not shown or even attempted to
2 show any inaccuracies in Gramercy's computation of the
3 damages if it is owed--I'm sorry, if Gramercy is right
4 about the merits.

5 Perú's only actual quantum argument is this
6 claim that Gramercy is entitled only to the Market
7 Value of its Land Bonds and not their full intrinsic
8 value. That is a damages argument, but it just
9 doesn't make sense. What Gramercy has been deprived
10 of is the full amount of money Perú is obligated to
11 pay and not some lesser amount that Gramercy might be
12 able to get it if sold its Bonds. If Gramercy has the
13 legal right to be paid X, it would be irrational to
14 award less than X based on Market Value.

15 Now, Perú's argument that intrinsic legal
16 value is a quantification that is not recognized under
17 international law is simply wrong. Gramercy has cited
18 without rebuttal several cases in which international
19 arbitral tribunals and courts have adopted the
20 intrinsic value of debt obligations as the proper
21 quantification of damages, and that includes landmark
22 judgments by the Permanent Court of International

1 Justice that upheld gold clauses to preserve the value
2 of inflation-eroded Bonds.

3 Tribunals only look to Market Value when you
4 need to do that. That happens when the asset that was
5 taken doesn't have an independent objective value,
6 but, here, what was taken was a right to be paid a sum
7 certain, a certain sum of money. These authorities
8 and the additional authorities in our Briefs show that
9 in that situation Tribunals and courts have not
10 hesitated to award the full amount of obligation.

11 And that totally makes sense. Otherwise,
12 sovereign debtors could unilaterally reduce the value
13 of their obligations and stiff investors just by
14 creating uncertainty about their willingness to pay in
15 order to depress the market value of their Bonds.

16 So, in sum--

17 PRESIDENT FERNÁNDEZ ARMESTO: Mr. Riehl--

18 MR. RIEHL: Yes.

19 PRESIDENT FERNÁNDEZ ARMESTO: --I am getting
20 urgent messages for you that you are going too fast.

21 MR. RIEHL: Ah, yes. Thank you.

22 Mr. President.

1 PRESIDENT FERNÁNDEZ ARMESTO: If you could
2 please--let's give it now 10 seconds for the poor
3 Interpreters and Court Reporters to catch breath
4 again, and you must go slower.

5 MR. RIEHL: Yes. My apologies,
6 Mr. President, and the Tribunal, to you, and to the
7 Reporters. I will proceed at a slower pace.

8 Is it okay to proceed, Mr. President?

9 PRESIDENT FERNÁNDEZ ARMESTO: Of course,
10 Mr. Riehl. Thank you.

11 MR. RIEHL: So, to sum up this point, in
12 order for Gramercy to be restored to the same position
13 it would have been in but for Perú's Treaty breaches,
14 Gramercy must be awarded the full intrinsic legal
15 value of the Land Bonds.

16 I'll turn now to what that full intrinsic
17 value is. Gramercy's Bonds were worth at least
18 \$841 million in May 2018. That is undisputedly true
19 if Perú breached the Treaty, either through the MEF's
20 interference with the CT's deliberations and the whole
21 2013 Order dollarization scheme or by cutting off
22 Gramercy's access to Perú's courts.

1 But it's also true if Gramercy is wrong about
2 those breaches, and you instead find that the CT's
3 2013 Order and the MEF's intervention to procure it
4 did not violate the Treaty. Let's look at each of
5 those scenarios, in turn.

6 First, if Gramercy is right that the 2013 CT
7 Order is invalid, we know what the but-for world would
8 have been. In fact, this case is quite unique in that
9 there's a document that specifically describes that
10 but-for world. That is the original majority opinion
11 before it was transformed with whiteout. But for the
12 MEF's intervention, that opinion would have issued as
13 the majority opinion and would have definitively
14 stated Perú's legal obligations under the Land Bonds.

15 Consistent with the 2001 CT Decision's
16 interpretation of Perú's Constitution, the value of
17 the Land Bonds under that original CT majority opinion
18 would have been calculated by adjusting for inflation
19 using CPI from issuance and then adding compensatory
20 interest at the original coupon rates.

21 Professor Edwards presented the formula to do
22 that, and that is shown on this slide. Perú has never

1 challenged the mathematical accuracy either of this
2 formula or of Professor Edwards' computation that it
3 would value Gramercy's Land Bond at \$841 million as of
4 May 31, 2018.

5 Now, we also know that Gramercy would have
6 likely obtained that same value computed in exactly
7 the same way in Perú's courts if the CT had not
8 terminated its access to the courts by making the
9 Bondholder process the exclusive remedy for
10 Bondholders.

11 Perú's Quantum Experts confirmed at the
12 Hearing that the operative Expert Report in the
13 Pomalca Case valued Gramercy's Land Bonds at issue the
14 same way as the CT's original majority opinion did.
15 It used Perú's CPI to update for inflation from
16 issuance and then added compensatory interest to that
17 updated amount at the original coupon rate. Perú
18 can't escape that Pomalca provides the best evidence
19 of the value Gramercy would have received for its Land
20 Bonds in court.

21 Perú tries to suggest that Gramercy was not
22 actively pursuing litigation, but that is false.

1 Gramercy had submitted conciliation requests, which
2 was a mandatory step prior to filing a lawsuit, for
3 all of its Bonds, 100 percent. It was thus actively
4 seeking judicial determination for its entire
5 portfolio before Perú shut down that possibility.

6 There were only 44 Bonds, Gramercy Bonds,
7 involved in the Pomalca Case, but those Bonds were
8 big, and they represented more than a quarter of
9 Gramercy's portfolio by value. And Gramercy had other
10 active cases in addition to that case.

11 So, whether using CPI is based on the but-for
12 world in which the illegal 2013 CT Order had not
13 issued or, instead, on the value of Gramercy likely
14 would have achieved in litigation, if Gramercy is
15 right that the CPI method applies, it is undisputed
16 that its Bonds were worth 840--I'm sorry--\$841 million
17 in May of 2018.

18 All right. Do I need to go even more slowly,
19 Mr. President? I will try.

20 Let's look now at the other scenario, the one
21 where we assume the 2013 CT Order did not breach the
22 Treaty, notwithstanding the MEF's improper

1 intervention to procure it on false pretenses. Even
2 in that scenario, the evidence at the Hearing
3 established that Gramercy would have received about
4 the same amount under the CT's 2013 Order as it would
5 have under the CPI method if the MEF had implemented
6 the 2013 Order in an economically reasonable manner.

7 Unfortunately, that's not what the MEF did.
8 As Mr. Friedman described earlier, the MEF instead
9 imposed arbitrary, irrational, and expropriatory
10 valuation formulas. Those formulas fell far short of
11 what the 2013 CT Order required in two fundamental
12 ways.

13 First, the MEF's arbitrary Parity Exchange
14 Rate formulas produce irrationally high Parity
15 Exchange Rates that strip the Land Bonds of much of
16 their value. And the MEF compounded the effects of
17 that error by illogically applying the Parity Exchange
18 Rate to convert from soles to dollars before inflation
19 updating, but then using the much lower nominal
20 exchange rate to convert back from dollars to soles
21 after the inflation updating. The second error is
22 that the MEF's Supreme Decrees do not add the

1 compensatory interest that the CT's 2013 Order clearly
2 mandates.

3 At the Hearing, Professor Edwards described
4 how these two errors can be corrected to obtain a
5 valuation that is consistent with the 2013 CT Order.
6 The Parity Exchange Rate errors can be corrected in
7 one of two ways: first, by using an economically
8 rational Parity Exchange Rate formula; or, second, by
9 using the MEF's formula consistently, applying it to
10 both currency conversions instead of starting with the
11 Parity Exchange Rate in one direction and then
12 shifting to the lower nominal rate after the inflation
13 updating to convert back. The omission of
14 compensatory interest is, of course, easily corrected.
15 You just add the compensatory interest in.

16 Professor Edwards calculated the values of
17 Gramercy's Land Bonds under each of these two methods
18 for fixing the MEF's Parity Exchange Rate errors. In
19 each case, he calculated compensatory interest using
20 the original coupon rates, which is what Perú's
21 Supreme Court has done in its multiple Decisions
22 implementing the 2013 CT Order.

1 The formulas that Professor Edwards used are
2 shown here. It is a lot of math. Sorry about that.
3 They were also included in Gramercy's Post-Hearing
4 Briefs. Professor Edwards started with the formulas
5 in the August 2017 Supreme Decree and then made the
6 corrections that are shown here in red that
7 corresponds to what I've described in words.

8 Perú has not disputed either the mathematical
9 accuracy of these formulas or the valuations that
10 Professor Edwards calculated using them. If there
11 were any questions about that, though, the Tribunal
12 could deal with that by asking both Parties' Experts
13 to jointly corroborate these equations and their
14 results.

15 So, what this all shows is that regardless of
16 whether you find Perú's Treaty breach included the
17 wider set of events, including the CT 2013 Decision,
18 or you exempt that Decision and determine that Perú's
19 Treaty breach was limited to the MEF's implementation
20 of that Decision, either way, you come out with the
21 same number, about \$840 million as of May 2018.

22 Now, that \$840 million is the amount Gramercy

1 would have received from Perú's courts or under a
2 proper implementation of the 2013 Order, but it's
3 actually not enough to effect full reparation.

4 Gramercy's Land Bonds are worth almost
5 \$1 billion more if compensatory interest is calculated
6 at a rate that fully compensates Land Bondholders for
7 the Actual Value of their lost opportunities. That is
8 the 7.22 percent rate Professor Edwards estimated.
9 The only difference between the \$841 million number
10 I've been describing and Professor Edwards'
11 \$1.8 billion valuation is using that 7.22 rate instead
12 of the original coupon rate as the compensatory
13 interest rate, which is the variable R in the CPI
14 method formula shown here.

15 The interest rate has a very large impact on
16 value, and that's really just what you would expect.
17 Compensatory interest has been accumulating for
18 several decades, up to 50 years or even more, for some
19 of the Bonds.

20 Now, we understand that \$1.8 billion is
21 obviously a big number, but there's nothing
22 exaggerated about it. There is nothing illegitimate

1 about it. The 7.22 percent rate used to calculate it
2 is actually a conservative estimate of the actual
3 historical Rate of Return in Perú. That's the Rate of
4 Return that Peruvians, on average, actually earned on
5 their investments in Perú during the time since the
6 Land Bonds issued.

7 Professor Edwards used a well-established
8 econometric method to estimate that Rate of Return.
9 He made consistently conservative assumptions in his
10 calculations. The MEF itself used exactly the same
11 method in 2011 and reached a similar result. The
12 MEF's 11.6 figure shown here is the estimate of the
13 overall Return on Capital; whereas, Professor Edwards'
14 7.22 is the Return on Debt, which is typically lower
15 than the Return on Capital overall.

16 You will likely recall Professor Edwards'
17 testimony that he reached the higher 11 percent
18 estimate of the Return on Capital but used the lower
19 7.22 to be conservative, the 7.22 Return on Debt.

20 So, the \$1.8 billion obtained using that
21 7.22 percent rate is what would be required to effect
22 full reparation. But even if you do not view full

1 reparation through that lens and you instead look to
2 Gramercy's entitlement, either but for the 2013 CT
3 Order or under economically rational implementation of
4 that order, Gramercy's damages were at least
5 \$841 million as of May 2018.

6 Perú tries to evade this analysis by accusing
7 Gramercy of advancing "inconsistent damages claims"
8 and by suggesting that considering what the CT
9 actually ordered in 2013, it would somehow deny Perú
10 due process. Those claims are just not true. There
11 is no inconsistency in the damages claims Gramercy has
12 asserted. From the start of the Arbitration, Gramercy
13 has always argued that it is entitled to an award of
14 the full intrinsic legal value of its Land Bonds. Nor
15 is there any inconsistency in Gramercy's arguments
16 about the computation or amounts of that intrinsic
17 legal value.

18 As shown here, in each of its Pleadings and
19 in its Opening Argument at the Hearing, Gramercy has
20 consistently argued that the intrinsic value consists
21 of inflation updating using CPI from issuance and then
22 adding interest to compensate for foregone

1 opportunities. And Gramercy has consistently asserted
2 that the intrinsic value of its portfolio as of
3 May 2018 was \$1.8 billion if computed using the
4 7.22 percent rate, and \$841 million using the original
5 coupon rate.

6 Perú's attempt to paint Gramercy's claims as
7 inconsistent center on Figure 1 from its merits and
8 quantum Post-Hearing Brief, which is reproduced on the
9 next slide.

10 This figure is misleading, but by in any
11 event, it actually confirms that Gramercy has
12 consistently argued for CPI updating plus compensatory
13 interest. The Edwards I line shows CPI adjusting plus
14 compensatory interest at the 7.22 percent rate.
15 Gramercy has never claimed the damages shown in the
16 Edwards II line. That was an illustration from
17 Edwards' Report.

18 Alternatives 1, 2, and 3 are all actually the
19 same computation. As clearly shown in the figure
20 itself, all three update for inflation using CPI, all
21 three update from issuance, all three use Lima CPI,
22 and all three apply compensatory interest at the

1 original coupon rates. That's because, as Gramercy
2 described in its Brief, all three of these purported
3 alternatives were computed using exactly the same CPI
4 method formula. They are different alternatives only
5 in the sense that the same approach was used both in
6 the CT's original majority opinion and by the expert
7 in Pomalca. And Gramercy discussed both of those in
8 its Reply.

9 And then in its Post-Hearing Briefs, it
10 corrected the valuation they produced to incorporate a
11 minor correction that Professor Edwards identified
12 during his hearing testimony.

13 Now, I want to pause briefly on the method
14 from the CT's original majority opinion. Perú, as you
15 see here, lists that method in its Figure 1 as
16 something that Gramercy argued in its Reply. But then
17 elsewhere in its Post-Hearing Brief, Perú claims that
18 method is inadmissible based on the false allegation
19 that Gramercy's reliance on the CT's original majority
20 opinion is "an entirely new damages claim that
21 Gramercy allegedly introduced for the first time in
22 its Post-Hearing Brief." That is just not true.

1 As shown on the next slide, Gramercy
2 explained and relied on this approach in its Reply,
3 and Professor Edwards computed and presented the value
4 of Gramercy's Land Bonds under this approach in his
5 Second Expert Report, which Gramercy submitted with
6 its Reply prior to the Hearing.

7 Returning back to Perú's Figure 1, the last
8 two valuations are Alternatives 4 and 5. Those are
9 just the two different ways I have described that
10 Professor Edwards corrected the arbitrary aspects of
11 the MEF's Supreme Decrees to eliminate their
12 inconsistencies with the CT's 2013 Order.

13 Alternative 4 uses Professor Edwards Parity
14 Exchange Rate formula, and Alternative 5 applies the
15 MEF Parity Exchange Rate consistently. Those are not
16 damages calculations that Gramercy has asserted as
17 part of its Case-in-Chief, and they do not show any
18 inconsistency in the damages claims Gramercy has
19 asserted as part of that case. Rather, they show what
20 the value of Gramercy's Bonds would be if you were to
21 find that the CT's 2013 Order did not breach the
22 Treaty but under an economically rational

1 implementation of that order.

2 Perú also tries to argue that it was
3 procedurally improper for Gramercy to introduce those
4 calculations in its Post-Hearing Brief. Perú
5 characterizes them as "belated submissions of
6 alternative Damages Claims." But that is also just
7 inaccurate. They are actually directly responsive to
8 evidence Peru submitted for the first time with its
9 Rejoinder and to a question that the Tribunal asked
10 the Parties to answer based on that evidence and
11 testimony about it at the Hearing.

12 In an expert report that Perú submitted with
13 its Rejoinder, Dr. Hundskopf introduced and relied on
14 a number of Supreme Court cases applying the 2013 CT
15 Order that had not previously been in the record.

16 At the Hearing, Dr. Hundskopf testified that
17 those cases applied the 2013 Order correctly. In its
18 Post-Hearing questions, the Tribunal invited the
19 Parties to address the legal consequences of one of
20 those cases, and in response to that question, but in
21 any event, in light of Perú's new evidence, it was
22 entirely appropriate for Gramercy to provide the

1 Tribunal with computations to the value of its
2 portfolio under the 2013 CT Order, as informed by
3 those later Supreme Court cases.

4 Moreover, even without Dr. Hundskopf's
5 late-breaking evidence, it would have been appropriate
6 for Gramercy to submit these calculations. If you
7 were to conclude, based on the evidence at the
8 Hearing, that the 2013 CT Order did not breach the
9 Treaty but the MEF's implementation did, you would
10 have to figure out damages under that scenario; and
11 those damages would equal the intrinsic legal value of
12 Gramercy's Bonds under a proper implementation of the
13 2013 CT Order.

14 It would be well within the scope of your
15 discretion in that circumstance to order the very
16 computations Gramercy has submitted. When Gramercy
17 submitted these computations, it did not include--I'm
18 sorry, it did not introduce any new evidence. It
19 merely applied math to the existing evidence.

20 It, thus, did no violence to Peru's
21 procedural rights for Gramercy to present those
22 computations in its Post-Hearing Brief in a manner

1 that gave Perú ample opportunity to review them and to
2 contest their accuracy if it had chosen to do so.

3 In short, Perú's efforts to tar Gramercy's
4 damages claims as inconsistent or procedurally
5 improper are grounded in misrepresentations of the
6 record and in no way undermine the legitimacy of those
7 claims.

8 I would like to close out the damages
9 presentation with the observation that none of the
10 damages methodologies I've been discussing would
11 generate the severe budget impacts that the CT worried
12 about in its 2013 Order, even if they were applied
13 generally to all of the Land Bonds that are still
14 outstanding.

15 In Procedural Order 11, you reminded the
16 Parties of your interest in knowing the amount of Land
17 Bond debt that remains outstanding. The best evidence
18 in the record suggests that the total outstanding
19 unpaid principal is \$2.52 billion soles de oro.
20 Remarkably, it was Gramercy and not Perú that has
21 assisted the Tribunal in ascertaining that number.
22 This slide shows Professor Olivares-Caminal's estimate

1 based on documents in the record.

2 For its part, Perú continues to claim that
3 there is no record of the outstanding Bonds, and it
4 says that such records "disappeared." But Perú has
5 not disputed the accuracy of Professor
6 Olivares-Caminal's calculation. Even if none of the
7 coupons supporting that 2.52 billion have been lost or
8 destroyed, which is a very conservative assumption,
9 paying the full updated value of that entire unpaid
10 principal will not have any severe effect on Perú's
11 budget.

12 Professor Edwards estimated that the full
13 updated value all of the outstanding principal would
14 be about \$5.6 billion if it were updated using the
15 dollarization method specified in the 2013 Order, but
16 with the parity exchange rates that Professor Edwards
17 calculated and compensatory interest at the original
18 coupon rates. The figure would be very similar using
19 the CPI method from the CT's original Majority Opinion
20 in the Pomalca Case, since the value of Gramercy's
21 portfolio is very similar using that method.

22 It is undisputed that Perú could easily pay

1 that amount, and that has been independently confirmed
2 by the Moody's rating agency, which Minister Castilla
3 testified is one of the ratings that--ratings agencies
4 that Perú itself pays to rate its sovereign debt.
5 Moody's estimated the total outstanding debt to be
6 \$5.1 billion as of the end of 2014 and expressed
7 confidence that Perú could finance that level of
8 payout in a way that would not materially affect its
9 fiscal dynamics or creditworthiness.

10 Now, the potential impact on Perú's budget if
11 the determination here were applied more generally is
12 not, strictly speaking, relevant to damages. But the
13 Tribunal can nevertheless take comfort that Gramercy
14 is not seeking a level of damages that would place
15 Perú in dire straits if the same valuation were
16 applied to all Land Bondholders.

17 Gramercy has amply demonstrated that Perú was
18 obligated to pay at least \$841 million on its Land
19 Bonds whether or not the 2013 CT Order breached the
20 Treaty. The MEF's Supreme Decrees would have paid
21 only about 4 percent of that amount at most. They
22 clearly breached the Treaty. Under the full

1 reparation standard, Perú must now, at long last, be
2 compelled to pay what it owes.

3 And with that, I'll turn things over to
4 Ms. Popova to address jurisdiction.

5 PRESIDENT FERNÁNDEZ ARMESTO: Thank you,
6 Mr. Riehl.

7 And now we will give the floor to Ms. Popova.

8 MS. POPOVA: Thank you, Mr. President. Good
9 afternoon, Mr. President, Members of the Tribunal.

10 Ms. Birkland and I will keep our remarks
11 short, because the last Brief on Jurisdiction was
12 Gramercy's Post-Hearing Brief, and we haven't yet
13 heard Perú's Closing on its own jurisdictional
14 objections. But we will, of course, be happy to
15 answer any questions that you have for us tomorrow.

16 What's remarkable, though, is that the
17 Hearing so thoroughly undermined Perú's objections
18 that the whole house of cards has now collapsed.
19 Faced with testimony that, across the board, destroys
20 every single one of its objections, Perú has ended up
21 pivoting to two admissibility objections whose very
22 premise is that jurisdiction otherwise exists: First,

1 denial of benefits and, second, abuse of process.

2 Now, neither of those can help Perú, but it
3 goes to show that Perú's manifold jurisdictional
4 objections are not really based on a principled
5 interpretation of the clear terms of the Treaty. Time
6 and again, Perú either ignores or mischaracterizes the
7 key legal issues and evidence.

8 Underlying all of Perú's arguments on
9 jurisdiction is, instead, a thinly veiled ideological
10 proposition that investment management firms and the
11 financial products in which they invest do not deserve
12 Treaty protection. But nothing in international law
13 compels such a result, and under this particular
14 Treaty, with its express terms, its structure, and its
15 specific historical circumstances, nothing could allow
16 such a result.

17 For good order, we will deal first with
18 Perú's objections as they have been and then briefly
19 with denial of benefits and abuse of process.

20 Now, in the interest of time, I will skip
21 temporal jurisdiction. There is really no question
22 that you have jurisdiction over breaches occurring

1 several years after the Treaty came into force, and I
2 would refer you to our Briefs on that point.

3 So, beginning, first, with the material
4 jurisdiction, the Hearing confirmed that Gramercy made
5 a covered investment. In the extensive evidence that
6 you heard from both Parties' Treaty negotiators, as
7 well as a documentary record of the Treaty's
8 negotiation and the context and purpose of the Andean
9 FTA from which it arose, that whole rich tapestry of
10 evidence about what the State Parties here intended to
11 achieve, you will not find a single thread that says
12 that this kind of bond, this kind of public debt, this
13 kind of restructuring of a long-stagnant State debt in
14 the interest of both the State and the whole class of
15 bondholders, that this was somehow silently excluded
16 from the open-ended and deliberately broad coverage of
17 all forms of public debt except state-to-state loans.

18 First, Perú had originally argued at some
19 length that the Land Bonds were not debt, that they
20 were not Bonds in the first place, that they didn't
21 have the same features as other kinds of sovereign
22 bonds.

1 Well, that fell apart at the Hearing. An
2 immediate giveaway for that is that, in its
3 Post-Hearing Brief, all that Perú says about this is
4 one single sentence to the effect that: "The fact
5 remains that they are not Bonds or debt," with no
6 citation. And that's because nothing in the Hearing
7 testimony supports that view.

8 Perú's Witness Vice Minister Sotelo readily
9 admitted that the Land Bonds are internal domestic
10 public debt. Perú's Expert Professor Guidotti readily
11 admitted that they met his Expert definition of the
12 essential characteristics of a bond, and both he and
13 Professor Olivares-Caminal destroyed Perú's argument
14 that these bonds were somehow radically different in
15 nature from all other kinds of State-issued Bonds. As
16 Professor Olivares-Caminal put it, a 1969 Chevy Camaro
17 is still a car, even though it has no airbag like a
18 Tesla does.

19 So, instead, Perú turns to Professor Reisman,
20 who, of course, is not an expert on sovereign finance.
21 In his Reports, Professor Reisman had disputed the
22 fact that the Bonds were public debt, based on what he

1 called "the common understanding of public debt in the
2 investment context," he said, and also what he called
3 "the U.S. understanding."

4 But he admitted on cross-examination that, of
5 course, one would also have to look to Perú's
6 understanding of whether the Bonds were public debt,
7 not just the United States, and that he had not done
8 that. And, instead, what he had done is to turn to
9 things like the mission statement for a now-defunct
10 U.S. internal agency, or a paper that he wrongly
11 attributed to the IMF, or the caption to a table about
12 GDP, produced, again, by the United States' CIA or, of
13 course, the website www.economicdiscussion.net.

14 Now, you remember we looked at that together,
15 and I'll spare us from looking at it again. But
16 Professor Reisman admitted, among other things, that
17 it was essentially a platform for people to upload
18 their own papers, which has no academic affiliation or
19 peer review of any kind, and that the text that he'd
20 relied on was written by somebody whose identity or
21 credentials he didn't know and which merely popped up
22 on the internet late at night. And he ultimately

1 admitted, of course, that one should not in fact rely
2 on sources of this kind in interpreting the U.S.-Perú
3 Treaty.

4 Moreover, Perú has never attempted to
5 distinguish this case and this Treaty from all of the
6 other cases in which Tribunals have found that
7 Government Bonds and other forms of State debt are,
8 indeed, investments; cases likes FedEx, Abaclat,
9 Alemanni, Ambiente Ufficio. There is even another
10 recent Decision to that effect earlier this year.

11 Conversely, Perú has not denied that the
12 U.S.-Perú Treaty is radically different in its text
13 from the Treaty at issue in Poštová, which is the only
14 case in the record to find that Government Bonds were
15 not a covered investment.

16 Now, indeed, Perú's suggestion that the Bonds
17 and Gramercy's investment in them did not have the
18 characteristics of an investment also fell apart at
19 the Hearing. Now, of course, an asset only qualifies
20 for protection if it has those characteristics. The
21 Treaty essentially says an investment is every kind of
22 asset that is an investment as long as it's owned or

1 controlled by an investor. And this Treaty's use of
2 "all," not "and," means that no particular
3 characteristic of investment is actually required.
4 And Ambassador Allgeier, you'll remember, told you
5 that the reason that they had done it that way, the
6 whole point is to make the Treaty purposefully broad
7 and flexible over time.

8 The assets on the Treaty's illustrative list,
9 like Bonds, like debt instruments, are the ones that
10 the State parties agreed are more likely to have those
11 characteristics. They are presumed to have them, and
12 as he put it in the context of the Bonds, in some
13 cases it is more obvious than in others.

14 Now, State-issued Bonds fall into the "more
15 obvious" category. That's why States issue Bonds in
16 the first place. That is why Footnote 12 of this
17 Treaty confirms that Bonds are the kind of debt
18 instrument that is more likely to be protected.
19 That's why Annex 10F and Footnote 13 of this Treaty
20 confirm that public debt is protected. That's why
21 this Treaty covers not just Bonds issued by a company
22 or debt instruments between private parties but,

1 effectively, all kinds of Peruvian State debt owned by
2 private investors.

3 And that makes perfect sense. Long-term debt
4 is a quintessential form of investment, and long-term
5 debt issued by a State is a quintessential form of
6 investment in the State. If you stop Madam Lander on
7 the street, whether it be Main Street or Wall Street,
8 and you ask her: "What's an investment?" She would
9 likely say, "You know, stocks and bonds." That's the
10 ordinary meaning of the term which, after all, is the
11 whole point of the treaty interpretation exercise in
12 the first place.

13 And what's more, here we are not just dealing
14 with a passive investment and a handful of financial
15 instruments or a couple of shares in a company. We
16 are dealing with a considered strategy to leverage
17 Gramercy's unique expertise and proven track record in
18 order to resolve a whole category of stagnant debt to
19 improve Perú's credit ratings, to attract more foreign
20 direct investment, to create a secondary market, to
21 bring liquidity to thousands of individual
22 bondholders, as Gramercy had successfully done in many

1 other emerging markets.

2 So, there is really no dispute, again, that
3 in making that investment with that strategy in mind,
4 Gramercy committed capital or other resources. In
5 fact, it did both. Gramercy didn't only commit
6 \$33 million in capital but also significant other
7 resources over the years to develop and implement its
8 reverse inquiry bond swap proposal, which
9 Mr. Koenigsberger testified about at length and which
10 Perú has essentially completely ignored.

11 Of course, in developing that strategy,
12 Gramercy believed it would make a profit, not just for
13 itself, but for all bondholders, in catalyzing a
14 consensual restructuring, as Mr. Koenigsberger
15 explained; and, if that principal strategy did not
16 work, Gramercy believed it could always have the
17 safety net of recovering the current value of its
18 Bonds through the Peruvian Courts. And, of course,
19 like any investment management firm, it stood to gain
20 management and performance fees on its investment.

21 Now, the flip side of that is that Gramercy
22 also assumed risk. As Mr. Herrera confirmed and the

1 Treaty says, buying State debt entails commercial
2 risk, and Gramercy took noncommercial risks, too, such
3 as opportunity costs, reputational risks, loss of
4 fees, and Perú didn't really cross-examine any of
5 Gramercy's executives about that testimony on that
6 front.

7 And, finally, although this is actually
8 irrelevant as a legal matter, Gramercy's investments
9 in the Bonds also have the characteristic of
10 contributing to Perú's economic development, that
11 long-lost fourth prong of Salini.

12 Now, here, too, I refer you to our Briefs for
13 the doctrinal point: Perú cannot use the preamble as
14 a proverbial red pen to write this additional
15 requirement into the Treaty in this UNCITRAL
16 Arbitration, contrary to cardinal principles of public
17 international law, to Ambassador Allgeier's testimony,
18 to decades of arbitral jurisprudence, and even, as
19 you'll remember, to Professor Reisman's own academic
20 writings, as I explored with him on cross.

21 In any event, on the facts, that requirement
22 doesn't help Perú, either. Again, Mr. Koenigsberger

1 explained how Gramercy's investment in the Land Bonds
2 would help Perú achieve what he called "a virtuous
3 circle of creditworthiness, the end of the era of
4 default for Perú, better ratings than they might have
5 had otherwise, and foreign direct investment that is
6 mutually beneficial." He says, "I've been doing this
7 32 years. It is always beneficial to the State." And
8 he gave you some specific examples of that, which
9 Perú, again, did not challenge. He describes how
10 Gramercy has had great success working consensually
11 with states to resolve claims that seemed otherwise
12 unable to be resolved.

13 And, consistent with that strategy, Gramercy
14 sent Perú several proposals for exactly that, for a
15 reverse inquiry debt swap proposal that explained the
16 benefits of the proposal for Perú and proposed a
17 reinvestment program. You see here a passage from a
18 presentation that Gramercy sent to President García
19 outlining those benefits.

20 Now, Professor Olivares-Caminal corroborated
21 those macro- and microeconomic benefits. He testified
22 about how Gramercy's investment created a secondary

1 market, injected new foreign direct investment, had a
2 multiplier effect, and would have catalyzed a hugely
3 beneficial restructuring, had Perú not stubbornly
4 refused to even talk to Gramercy about that. And Perú
5 did not challenge, did not even want to hear, Mrs. G's
6 firsthand account of the microeconomic benefits that
7 Gramercy's infusion of capital had for her and all of
8 the other bondholders that sold to Gramercy.

9 Now, Mr. Herrera, who, remember, was the
10 former Head of Perú's investment promotion agency
11 Proinversión, he readily agreed that bond swaps and
12 productive restructurings are beneficial for Perú, and
13 that is exactly what Gramercy was proposing.

14 Finally, Perú's suggestion that this
15 particular kind of bond or bond restructuring was
16 nevertheless somehow intended to be excluded also fell
17 apart at the Hearing.

18 Now, of course both Treaty negotiators, and
19 even Professor Reisman, agreed that what defines the
20 coverage is, of course, the text--it certainly can't
21 be the silence--of Perú's own negotiating minutes, as
22 Mr. Herrera had suggested in his statement. And the

1 contrary approach, you'll remember, would make Hegel
2 blush, Professors Reisman said.

3 Now, the Treaty negotiators agreed that,
4 after extensive negotiations, the only kind of State
5 debt here that was excluded was state-to-state loans.
6 In fact, both Treaty negotiators specifically
7 confirmed that the Land Bonds were not excluded from
8 the Treaty's scope.

9 The Parties didn't put the Bonds on the
10 negative list. Mr. Herrera agreed that the Treaty
11 protects assets unless a reservation is expressly
12 stipulated, and there is no such express exclusion for
13 the Bonds. He even agreed that sui generis kinds of
14 Bonds, like the Brady Bonds, those were covered under
15 the Treaty, even though they, too, like the Land
16 Bonds, were not expressly mentioned either in the
17 Treaty or the negotiating minutes.

18 And Ambassador Allgeier said that nowhere in
19 the Agreement is there an express exclusion of the
20 kind that would have been required. Perú could easily
21 have carved out the Bonds from the Treaty's broad
22 coverage the way that it did other forms of public

1 debt, or other kinds of assets, or other kinds of
2 State measures that it found particularly politically
3 sensitive; things like bullfighting or tuna fishing
4 for the U.S. There was a mechanism in the Treaty to
5 do that, and the State Parties here did not.

6 And what's more, Perú did not do that for the
7 Land Bonds, not because it couldn't have anticipated
8 that, at some later point in the future, there would
9 be this form of investment that was the Land Bonds.
10 It didn't do that in a context in which it knew--as
11 Mr. Herrera and Dr. Hundskopf conceded, it knew that
12 the Bonds could be acquired by U.S. investors, and
13 that disputes could arise about them.

14 In fact, disputes did had arisen about them,
15 some of which were so important that Professor--
16 Ambassador Allgeier, who is the senior U.S. official
17 personally dealing with this political issue at the
18 time, he described them as "the proverbial Damocles
19 sword" over the whole enterprise. And what's more,
20 Perú did not exclude them, even though the treaty's
21 coverage of all forms of public debt except U.S.-Perú
22 state-to-state loans got the blessing of Perú's own

1 agency dealing with internal public debt, the DGETP,
2 the very same body within the MEF that was responsible
3 for the Land Bonds.

4 And as we saw in this timeline, and
5 Mr. Herrera and Dr. Hundskopf confirmed, all of that
6 was unfolding against efforts by these very same
7 Peruvian agencies to come up with an administrative
8 process for finally resolving the Land Bonds debt, and
9 all of this was unfolding while the Constitutional
10 Tribunal issued several more high-profile Decisions
11 reminding the Government that it had to clean up its
12 internal public debt that it still hadn't paid, that
13 it had to pay the Land Bonds at their full current
14 value and to allow the bondholders to access the
15 Courts in order to do that.

16 There is no dispute about those facts. And
17 for those reasons, the Hearing confirmed that this
18 Treaty covers the Land Bonds and Gramercy's investment
19 in them.

20 With that, I will turn to Ms. Birkland to
21 address why Gramercy is, indeed, the U.S. investor who
22 made that investment.

1 MS. BIRKLAND: Thank you, Ms. Popova.
2 Members of the Tribunal, I'll be brief because here,
3 again, the Treaty language is clear.

4 All the Treaty requires is that the investor
5 be a U.S. national that made an investment in Perú.
6 And the ordinary meaning of "to make" is simply to
7 cause something to exist or to give rise to something,
8 and covered investments are ones that an investor owns
9 or controls, directly or indirectly.

10 GPH and GFM clearly meet this test. They are
11 both indisputably U.S. companies, there is no serious
12 dispute that they, in fact, own and control the Bonds,
13 and they undoubtedly made an investment when they
14 developed a strategy to resolve Perú's agrarian reform
15 debt and bought millions of dollars' worth of Bonds as
16 part of that strategy.

17 Either ownership or control is enough. The
18 Treaty requires nothing more. It doesn't require an
19 active contribution or some alternative test of a
20 contribution of one's own or some other misreading of
21 the Treaty, although Gramercy would, of course, meet
22 all those tests if they did apply.

1 Ambassador Allgeier confirmed this, and he
2 wasn't crossed on it. And in its Post-Hearing Brief,
3 all Perú can muster is to continue to rely on cases
4 that we have already said are inapposite, and one of
5 which has, in fact, been annulled, precisely because
6 it misread the Treaty in the way Perú urges.

7 Let's consider each Claimant in turn. First,
8 GPH. The Hearing testimony confirmed that GPH owns
9 the Bonds. Professor Bullard and Perú's Expert
10 Dr. Hundskopf agreed that GPH validly acquired title
11 to the Bonds as a matter of Peruvian law, and
12 Mr. Koenigsberger testified that GPH has owned the
13 Bonds since Day 1 and has done so continuously ever
14 since.

15 As Mr. Lanava explained, GPH financed the
16 Bond purchases through its own capitalization.
17 Gramercy's clients subscribed to equity and funds with
18 interest in GPH, and those funds were equitized
19 through capital contributions to GPH. After
20 capitalization, GPH had a running balance which it
21 used to buy the Bonds. There's nothing unusual about
22 any of that.

1 (Interruption.)

2 I was just muted by the host. And that
3 background noise was not on my end. Sorry.

4 (Audio interference.)

5 ARBITRATOR DRYMER: A second baby during this
6 Hearing, maybe.

7 MS. BIRKLAND: Yeah, none of them are mine.
8 Not so far, anyway. We'll hope it continues that way.

9 All right. So, that was GPH. Let's turn to
10 GFM now.

11 The Hearing testimony confirmed that GFM
12 controls the Bonds through its control of GPH.
13 Mr. Koenigsberger and Mr. Lanava testified about how
14 GFM makes investment decisions about the Bonds, about
15 their monetization and distributions. Consistent with
16 GPH's Operating Agreement, any monetization of the
17 Bonds will flow exclusively to GPH, and GFM
18 exclusively decides whether and when to make
19 distributions to upstream stakeholders. Those
20 distributions are not automatic.

21 As Mr. Koenigsberger testified--and I'll
22 quote him--"Gramercy is the only entity that owns and

1 controls." He continued: "So, it's Gramercy, through
2 the investment manager GFM, that is the only one that
3 can make all the decisions relative to the Bonds. And
4 it's a Gramercy vehicle"--and by that, of course, he
5 meant GPH--"that owns the Bonds and has title, and,
6 therefore, it's the only owner and the only one that
7 can make ownership decisions."

8 So, not only did the testimony confirm that
9 Gramercy owns and controls the Bonds, but also that it
10 is the only one who owns and controls them.

11 With that, I turn the floor back to
12 Ms. Popova. Thank you.

13 PRESIDENT FERNÁNDEZ ARMESTO: Thank you very
14 much.

15 Ms. Popova?

16 MS. POPOVA: Thank you, Mr. President.

17 Now, I want to open a parenthesis here to
18 briefly mention denial of benefits. For the very
19 first time, in Perú's Post-Hearing Brief on
20 Jurisdiction, Perú sought to deny the benefits of the
21 Treaty to Gramercy under Article 10.12. Now, we
22 addressed this at Paragraphs 47-49 of our Post-Hearing

1 Brief. In sum, this objection is simply precluded
2 under both the UNCITRAL Rules and your Procedural
3 Order Number 1; and, as a result, you cannot consider
4 it, because Gramercy has not been afforded an
5 opportunity to respond to it or to lead any evidence
6 to rebut it. And that's no doubt the reason why Perú
7 only raised it now. It's because it knows that this
8 argument is meritless, because Gramercy's nationality,
9 its U.S. nationality, is not one of convenience.

10 Gramercy is based in Connecticut. It does
11 all of its business there, and, as Mr. Lanava told
12 you, its beneficial owners are overwhelmingly millions
13 of U.S. pensions.

14 So, we don't know what Perú will say about
15 this tomorrow, but it's never denied that it's
16 procedurally improper to bring a threshold
17 jurisdictional admissibility objection two years after
18 the deadline in the UNCITRAL Rules and five months
19 after the end of the evidentiary Hearing. Instead,
20 adding insult to injury, Perú claimed that we
21 shouldn't even be allowed to tell you that their
22 objection is precluded and meritless, and they seek to

1 strike our response and the associated Authorities
2 about that.

3 Now, you have the Parties' letters about
4 this, and all I will say here is that Perú's
5 remarkable approach is really symptomatic of the
6 lengths to which it has to go to avoid the fact that
7 Gramercy is an investor that made an investment and
8 both are protected by the Treaty.

9 So, that leaves Perú's kitchen sink
10 objections about consent and abuse of process. Now, I
11 will deal with waiver and timeliness of claims
12 together because they are only relevant together.

13 First, Perú has conceded, finally, that it
14 has no time bar or waiver objection with respect to
15 GFM. So, if you agree that GFM is a covered investor
16 with a covered investment, then Perú's waiver and
17 time-bar objections become completely irrelevant,
18 because they have no effect on any of the issues that
19 you need to decide.

20 Second, Perú's residual time-bar objection to
21 just GPH's claims depends on when GPH's claims are
22 deemed to have been submitted to arbitration for

1 purposes of the three-year time bar in
2 Article 10.18.1.

3 And the answer to that question is June 2,
4 2016, for the reasons that we explained in our Briefs,
5 and there are two independent analyses that lead to
6 the same outcome on this question. First, a qualified
7 waiver is perfectly consistent with the Treaty; and,
8 second, even if it weren't, an imperfect waiver is
9 still enough to stop the clock on the time bar. And
10 either one of these approaches means that all of GPH's
11 claims are timely.

12 Now, Perú has no answer to either of those
13 arguments. Again, it has objected to putting into the
14 record a decision, just months ago, on this very
15 question under this very Treaty against Perú itself
16 and even argued by the same Counsel. And, again, that
17 just goes to show that their only defense strategy is
18 not to address the substance of the issues but to
19 dodge them and try to prevent you from considering
20 them.

21 And, third, even if you reject both of these
22 analyses and nevertheless conclude that June 2--the

1 June 2 submission of Claimants did not stop the clock,
2 Perú's time-bar objection still fails because it
3 doesn't actually affect any of GPH's claims.

4 Now, again, Perú hasn't actually done the
5 claim-by-claim analysis that Article 10.18.(1) of the
6 Treaty requires. Instead, it claims that GPH knew or
7 should have known that both a breach had occurred and
8 that it had suffered loss from that breach by no later
9 than 16 July of 2013 with respect to all of its
10 claims. But that is not actually true with respect to
11 any of GPH's claims. And you can see that on the next
12 timeline.

13 Now, in August--in July 2013, GPH didn't know
14 about the August 13 Constitutional Tribunal
15 Resolution. It didn't know that this resolution
16 foreclosed access to the Courts that had existed for
17 decades in which the Constitutional Tribunal itself
18 had protected in its 2004 Decision. It didn't know
19 about the January 2014 Supreme Decrees issued six
20 months later or, for that matter, the February and
21 August 2017 Decrees, about four years later. It
22 didn't know about the arbitrary formulas in those

1 Decrees. It didn't know that the process they created
2 would be Byzantine and confiscatory. It didn't know
3 that they would put Gramercy and Gramercy alone last
4 in the line for payment.

5 And it didn't know that the MEF, in issuing
6 those Decrees, defied its own basic rules of legality
7 and reasonableness, facts that were only discovered in
8 the course of this arbitration. And it didn't know
9 that the July CT Order itself had been doctored to
10 turn the majority opinion into a dissent with whiteout
11 and based on false pretenses, a fact that Gramercy
12 didn't learn until the scandal broke in 2015. And it
13 didn't know about the MEF's Eleventh-hour interference
14 with that Decision or the testimony of the CT Justices
15 themselves years later in an investigation that
16 continues to this day.

17 Again, there is no dispute about any of those
18 facts, and they mean that none of GPH's claims are
19 time-barred. As the recent Decisions in Mobil and
20 Resolute Forest Products confirm, which Perú does not
21 address, knowledge of breach for an expropriation
22 cannot possibly occur until there has actually been a

1 substantial deprivation of value. It's an integral
2 element of the breach itself. And here there was no
3 such deprivation until the MEF issued its Supreme
4 Decrees with their value destroying formulas at the
5 earliest.

6 And GPH's other claims, Minimum Standard of
7 Treatment, National Treatment, Most Favored Nation,
8 all arise out of conduct that occurred or was
9 discovered only later.

10 Now, that's the right analysis as a legal
11 matter and at the Hearing, Mr. Koenigsberger's
12 evidence about what he and other Gramercy executives
13 actually understood and believed at the time
14 resoundingly confirmed that analysis.

15 And so, too, does the documentary record
16 which we, again, address in our Briefs and which,
17 again, Perú ignores. For example, Mr. Koenigsberger's
18 testified that Gramercy only appreciated that
19 something had gone awry, sometime after analyzing the
20 formulas in the January Decrees. Now, sure, when the
21 July 16, 2013, Order was issued, Gramercy was
22 surprised, as Mr. Koenigsberger explained. So, was

1 everyone else. Gramercy, like everyone else, expected
2 the CT Order--the CT to confirm the 2001 Decision.
3 Now, it understood that what the CT had ordered in
4 July 2013 was something different.

5 It understood it might have an adverse impact
6 on its investment, but the extent of that impact
7 wouldn't become clear until months later. The Order
8 itself said that the MEF had to implement it within
9 six months. And for that reason, as Mr. Koenigsberger
10 explained, of course, without waiving legal privilege,
11 he believed it would have been premature to commence
12 arbitration at that point. In fact, two years later,
13 in 2015, the CT itself said that a bondholder
14 challenge to the order was premature because the MEF
15 had not yet implemented the relevant Decrees.

16 And, moreover, until the later resolutions,
17 Gramercy believed it could still get relief from the
18 national courts. So, in fact, it is probably
19 indicative of Gramercy's world view that
20 Mr. Koenigsberger believed that the CT Order actually
21 created what he called in his December 2013 letter "a
22 historic opportunity for the MEF to actually put in

1 place the kind of global resolution that Gramercy had
2 been urging for years."

3 And consider also Perú's own conduct. We've
4 not heard a peep about that, but the Hearing exposed
5 that not even Perú apparently had the crystal ball
6 that it says Gramercy had on the 16th of July in 2013.
7 Perú itself issued five different formulas purportedly
8 implementing one and the same Decision, formulas that
9 Professor Edwards showed you could be interpreted
10 about a dozen different ways. Even the two
11 highest-ranking members of the MEF didn't understand
12 those formulas, couldn't explain to you how they
13 related to the CT Order. Even Perú's Economic
14 Experts, who Perú hired presumably to defend those
15 formulas, told you they were nonsense.

16 And even the Supreme Court had a different
17 view from the MEF about what the CT Order actually
18 mandated. Because, as you know, the Supreme Court
19 repeatedly awarded compensatory interest at the coupon
20 rates, even after the CT Order Decision. And we know
21 that that interest is a highly valuable component of
22 these 40-year old Bonds.

1 And when I crossed Dr. Hundskopf about those
2 Decisions, he readily agreed that they were perfectly
3 consistent. He said there'd been a forum, they were
4 just an example, and that all of the Decisions went
5 that way.

6 So, not only were the consequences of the CT
7 Order patently unclear from its face, but the way in
8 which the MEF later implemented that Order was itself
9 unpredictable, arbitrary, and irrational. And that is
10 something--that cannot be something that Gramercy knew
11 or should have known standing months and years
12 earlier. So as a result, Perú's waiver and time-bar
13 objections with respect to GPH, are both pointless and
14 meritless.

15 Now, this leads Perú's argument of last
16 resort, bad faith. In its Post-Hearing Brief, this is
17 being promoted to Perú's first argument under the
18 cloak of abuse of process.

19 Mr. Koenigsberger's evidence was the nail in
20 the coffin for that theory. Let's come back to basics
21 for a moment. Perú's attempts to dilute the high
22 threshold that it must meet to succeed on this

1 argument cannot work. It remains one of bad faith.
2 That is the underlying doctrinal, conceptual
3 justification for this clause échappatoire this theory
4 that could disqualify Gramercy from exercising rights
5 it undoubtedly has and which the State Parties, in
6 this Treaty, nowhere contemplated as a defense in the
7 express text, and bad-faith is and must be an
8 exceedingly high and fact-based standard. Perú surely
9 would agree, it's very, very rarely applied. And in
10 its Briefs, it relies on the Phoenix Action Decision,
11 with which, of course, Professor Stern will be quite
12 familiar, and which found it was abusive to internally
13 reorganize the Claimant after the breaches had already
14 occurred and after the damage had already occurred,
15 and only for the purpose of bringing litigation rather
16 than any legitimate economic reason.

17 And even Professor Reisman said that, in his
18 view, there must be a high threshold of near certainty
19 that there was a reorganization for the purpose of
20 benefiting from Treaty protection.

21 Now, his opinion on whether or not the
22 partial facts that he was instructed by Perú to assume

1 meet that standard is really neither here nor there.
2 But, however, you look at it, none of the various
3 articulations of abuse of process can possibly be met
4 on the facts of this case. There is no evidence on
5 the record that Gramercy invested in Perú in 2006 so
6 as to bring a treaty arbitration 10 years later
7 arising out of events that only occurred seven years
8 later.

9 Perú does not even try to show you that its
10 breaches were remotely foreseeable, let alone near
11 certain, back in 2006 and 2008 when Gramercy invested,
12 and Perú has not even attempted to establish that
13 Gramercy invested in Perú and spent months finding
14 Bonds and paid \$33 million for them because it saw all
15 of those things coming and it thought, gee, I better
16 add a U.S. investor into the mix.

17 Perú does none of that. Instead, Perú now
18 claims in its Post-Hearing Brief that Gramercy was "a
19 third-party funder," it says, "for a dispute that had
20 already arisen," and it cites a 2006 email that
21 contains the word "claims."

22 Mr. Koenigsberger told you that just means

1 the Bonds themselves, claims to payment of current
2 value under Peruvian law. Now, that's obvious from
3 the document itself if you read it, as well as from
4 all of the other documents, again, discussed in our
5 Briefs. And Mr. Koenigsberger, in fact, strongly
6 rejected the notion that there was any uncertainty or
7 dispute affecting the entitlement under the Bonds at
8 the time that Gramercy invested. There was no
9 question that Perú was bound to pay them. No doubt,
10 as Dr. Hundskopf put it when he was pressed to retract
11 his gamble comment.

12 So, Perú's argument seems merely to be that
13 Perú hadn't yet paid the Bonds in 2006 when Gramercy
14 invested. And that's both obvious and irrelevant.
15 Perú's abuse of process argument is really derivative
16 of its misguided defense on the merits that the Bonds'
17 value was uncertain, that Gramercy's investment was,
18 therefore, speculative, and that that is somehow the
19 reason why Gramercy's claims are now abusive.

20 And Perú continues to ignore the extensive
21 evidence of the real reasons why Gramercy invested,
22 which Mr. Koenigsberger has explained at length and on

1 which, again, he was not meaningfully crossed. Perú
2 did not put a dent in his testimony that Gramercy
3 invested because it saw an opportunity to resolve the
4 Land Bonds' debt in a consensual and mutually
5 beneficial way. It didn't cross him on why he
6 believed that a reverse inquiry credit swap would be
7 beneficial for Perú. It didn't meaningfully cross him
8 on his belief that the time was right to do that for
9 Perú, about how he had watched Perú's success story,
10 and he had seen how Perú had restructured its Paris
11 Club obligations and the Brady Bond debt, or about how
12 the 2001 and 2004 Constitutional Tribunal Decisions
13 meant that this was the time for Perú to finally clean
14 up this Land Bonds debt, except to try to challenge
15 the accuracy of Gramercy's due diligence memorandum
16 which, as you'll remember, fell apart when it became
17 clear that Perú was itself confused about the dates of
18 its Decisions.

19 And it did not cross Mr. Koenigsberger on the
20 wealth of contemporaneous documents proving how
21 Gramercy actually put that strategy into practice over
22 the long term. That is what Gramercy told its

1 investors back in 2008. That's what it proposed to
2 the Peruvian Government in May and June 2009, and
3 again in December 2013 and again in April 2014 and as
4 late as September 2017 after the 2014 Supreme Decrees.

5 Perú's abuse of process claim cannot succeed
6 because it requires you to find that all of these
7 contemporaneous proposals to Perú were disingenuous.
8 It requires you to find that Gramercy misled its
9 investors about what its investment strategy was for
10 the better part of a decade. And it requires you to
11 find that Mr. Koenigsberger was lying on the stand,
12 that he was lying, not just about what Gramercy's
13 strategy was when he decided to invest in Perú in
14 2006, not just about the efforts that Gramercy
15 deployed over the 14 years since then, but also when
16 he said that a consensual resolution to the Land
17 Bonds' debt remains Gramercy's hope even today.

18 Mr. Koenigsberger still extends his hand to
19 Perú. He still hopes that Perú will do the right
20 thing for all bondholders. Regrettably, it may now
21 take your award to that make that happen.

22 Thank you for your attention. I will now

1 return the floor to Mr. Friedman to briefly conclude.

2 MR. FRIEDMAN: In concluding, I wish only to
3 make the briefest remarks but to amplify some of the
4 themes that Ms. Popova was just developing and address
5 head on the underlying motif of Perú's entire case,
6 namely, that Gramercy, this investor, is nothing more
7 than a rapacious hedge fund speculator, a vulture, and
8 consequently deserves neither your sympathy nor an
9 award in its favor.

10 But that kind of base prejudicial demagoguery
11 could not be more wrong or hypocritical. In
12 principle, there is absolutely nothing wrong, dirty,
13 immoral, illegal, or otherwise disabling about the
14 fact that Gramercy is an asset manager and that it
15 invests seeking profits. All investors do. It is how
16 states attract foreign capital and why they sign
17 investment treaties in the first place. And our
18 Treaty even has a whole section encouraging trade and
19 investment by U.S. financial services firms.

20 So, trying to demonize Gramercy because it is
21 in the business of investing for profit, gets Perú
22 nowhere.

1 But more importantly even than that, this
2 whole vulture narrative could not be more inapt given
3 the facts of this particular case and this particular
4 asset manager. The labels imply trying to take unfair
5 advantage of another's misfortune. That is not
6 remotely what Gramercy did. As Ms. Popova just
7 described, it is that Gramercy had a completely
8 different motive.

9 Now, it is true that Gramercy bought Bonds at
10 a discount to their intrinsic value from bondholders
11 who had received nothing for decades, but Gramercy was
12 always up front with them, and you even had evidence
13 from one of them who explained that she was satisfied
14 with what Gramercy had done, considered they were
15 honest, and put the money to good productive use. The
16 Sellers agreed to sell to Gramercy because Gramercy
17 paid them fairly, tens of millions of dollars, when
18 the Government had done nothing but rebuff them for
19 decades.

20 And then Gramercy sought the most amicable
21 and consensual solution, with the stated goals that
22 they wanted to help create a solution that benefited

1 everyone, all the bondholders equally, not just
2 Gramercy, and even Perú itself at a time when that
3 kind of validation could have sped its economic
4 recovery. This is not the conduct of a vulture.

5 In contrast, who can defend the conduct of
6 the Peruvian Government in this whole affair? It was
7 the Government that confiscated land the size of
8 Portugal and did not pay for it. It was the
9 Government that drove the economy into the ground and
10 initially undercut the value of debt. It was the
11 Government that refused to make good on the debt even
12 after the Constitutional Tribunal held that it had to
13 be paid at current value. It was the Government that
14 manipulated the Constitutional Tribunal, ignored its
15 own laws, and created a bondholder process with
16 arbitrary and irrational payment formulas. It is the
17 Government that is paying Mr. S and Ms. L and other
18 bondholders just like them absolutely trivial amounts
19 of money of which the society should be ashamed. And
20 it is the Government that says, even today, that it
21 owes Gramercy nothing, nothing, on its nearly 10,000
22 Land Bonds. The Government is just trying to, at long

1 last, get away with and get your vindication of what
2 must be one of the largest uncompensated
3 expropriations in history.

4 Fortunately, international law protects
5 against that kind of manifest injustice and under our
6 Treaty, it will now be in your hands to apply that
7 law. For obvious reasons, Gramercy is the only
8 bondholder that is a party to this arbitration and the
9 only Party for whom you can order relief. But the
10 Decision you make here will undoubtedly have
11 reverberations in Perú and be looked to by all
12 bondholders seeking at last some kind of justice.

13 And so, it should be; for that is precisely
14 the kind of righting the balance pursuant to
15 international principles that International Investment
16 Law should always aspire to achieve.

17 With that, Mr. President, Members of the
18 Tribunal, we conclude our submissions for today and
19 thank you for your careful attention.

20 PRESIDENT FERNÁNDEZ ARMESTO: Thank you,
21 Mr. Friedman. Let me get a time check from the
22 Secretary first.

1 SECRETARY PLANELLIS-VALERO: Thank you,
2 Mr. President. The Claimants have used two hours and
3 33 minutes.

4 PRESIDENT FERNÁNDEZ ARMESTO: So, perfectly
5 within time. Thank you for adhering to the time slot.

6 Let me now see if my esteemed colleagues have
7 some questions, and shall I turn first to--I see
8 Mr. Drymer making himself ready to put some question
9 or to say that he has no question.

10 ARBITRATOR DRYMER: It was rather the latter.
11 I just wanted to be sure that my microphone was on.

12 No, nothing for the moment. Thank you.

13 PRESIDENT FERNÁNDEZ ARMESTO: Professor
14 Stern.

15 ARBITRATOR STERN: I have a few questions.

16 QUESTIONS FROM THE TRIBUNAL

17 ARBITRATOR STERN: I have a few questions on
18 what we heard today, but, before all that, I would
19 like to clear up my mind on our two Claimants. In the
20 Claimant Third Amendment and Statement of Claim in
21 Paragraph 28 and 29, it is stated that GFM is a
22 limited liability company, organized under the law of

1 the United--of the State of Delaware, United States;
2 and, 29, GPH is a limited liability company organized
3 under the law of the State of Delaware, United States.

4 Now, I have been looking, trying to
5 understand because it is a little complicated,
6 Document C-703, which is Perú's structure charts of
7 Gramercy. [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

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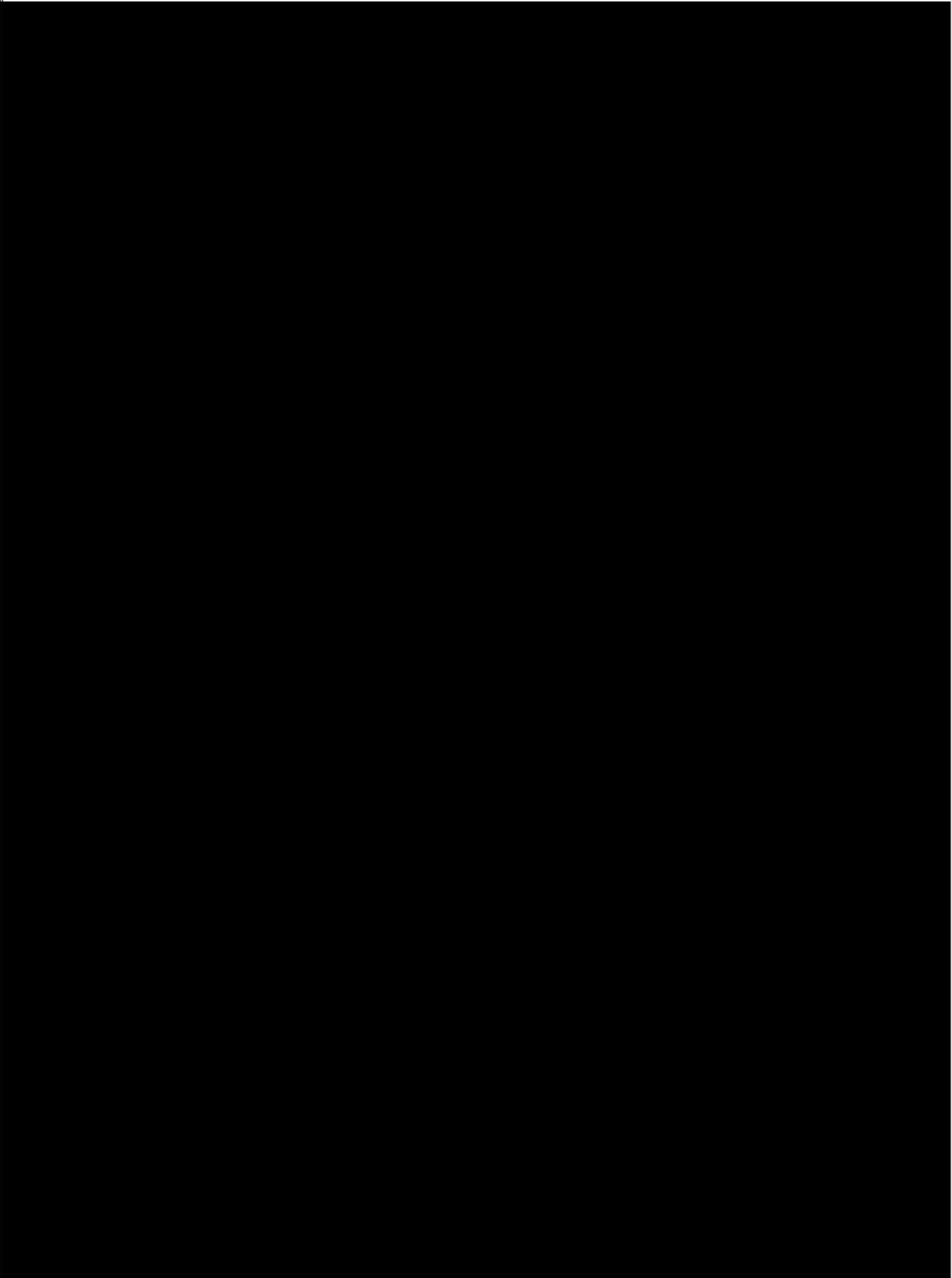
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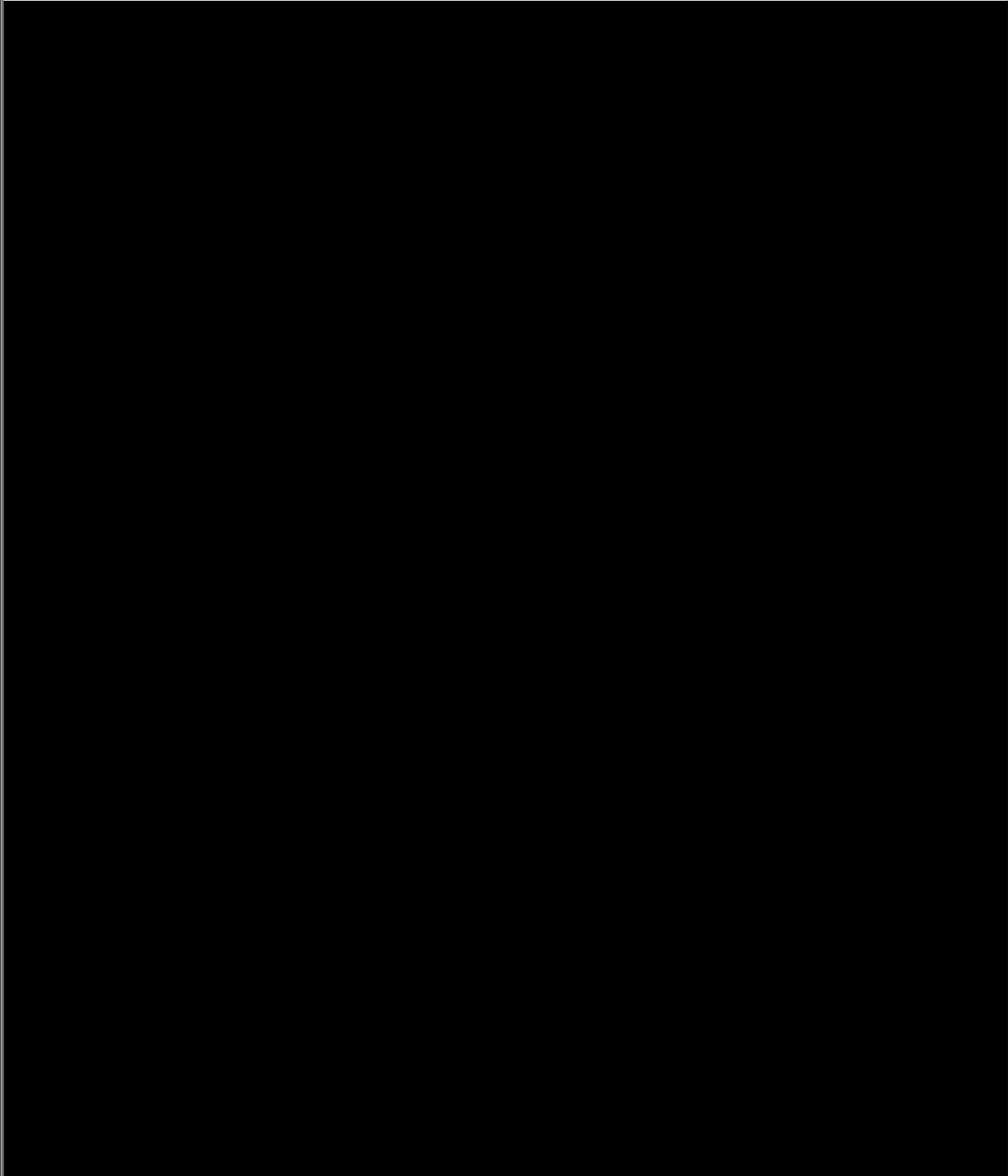
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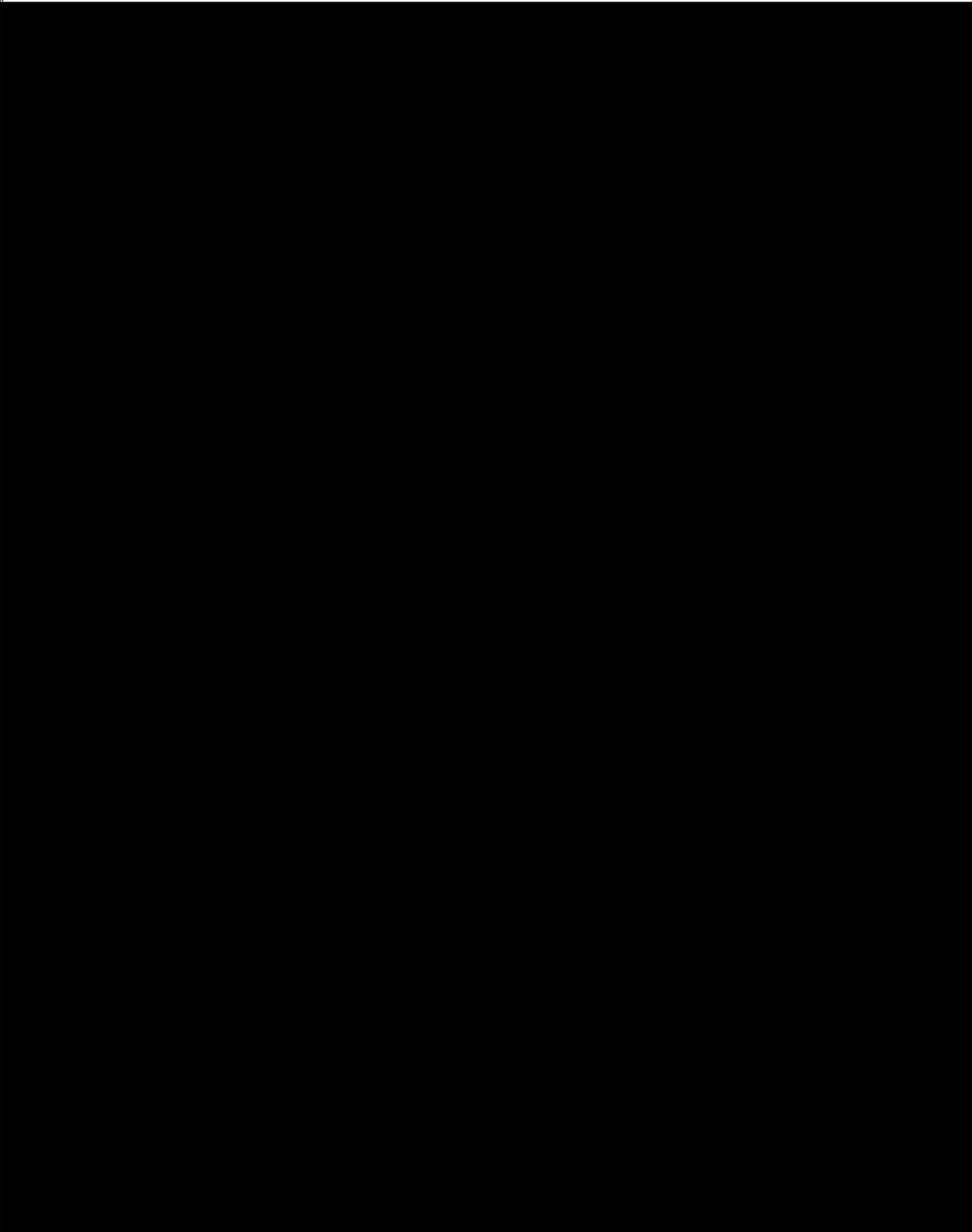


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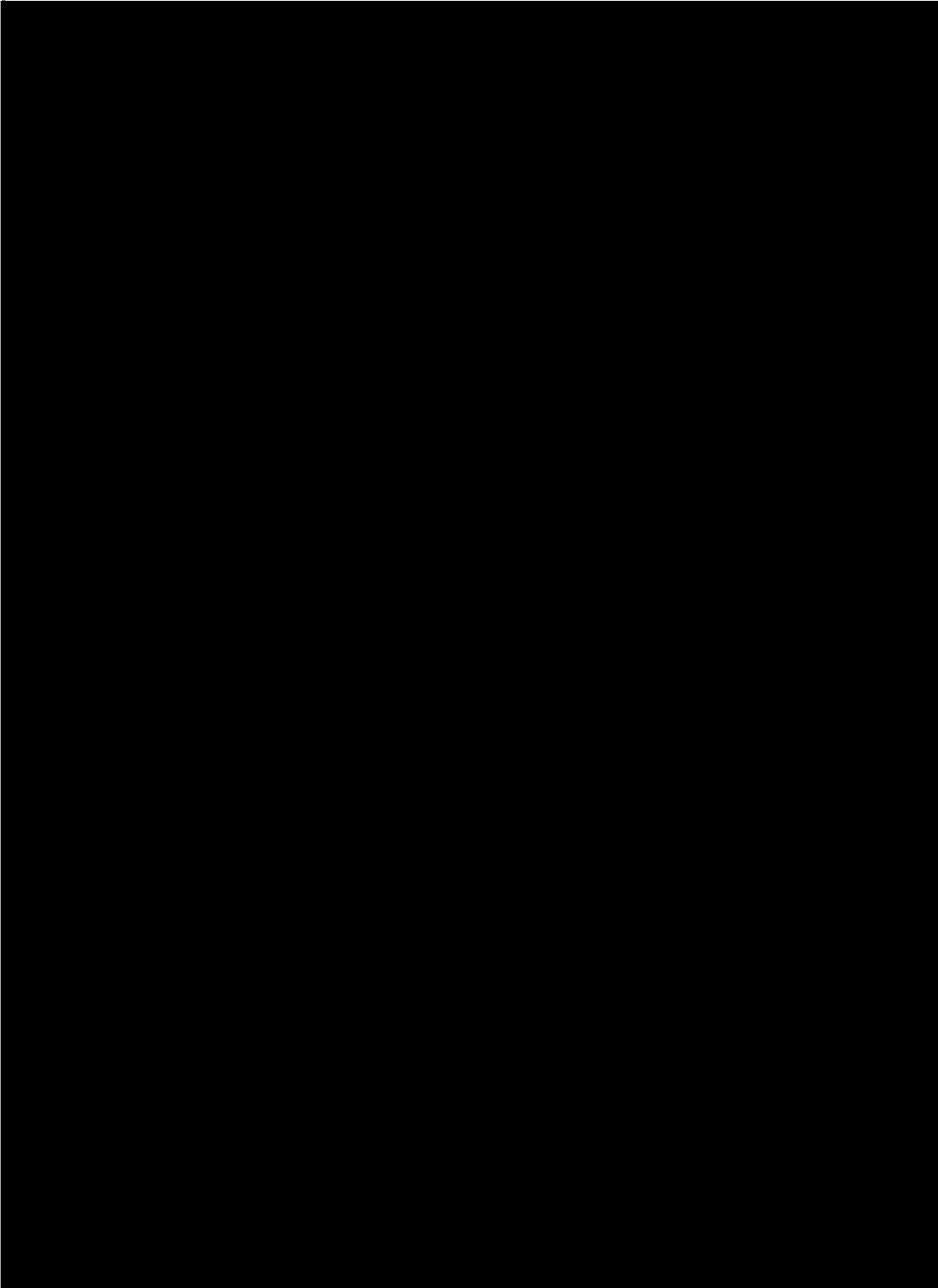


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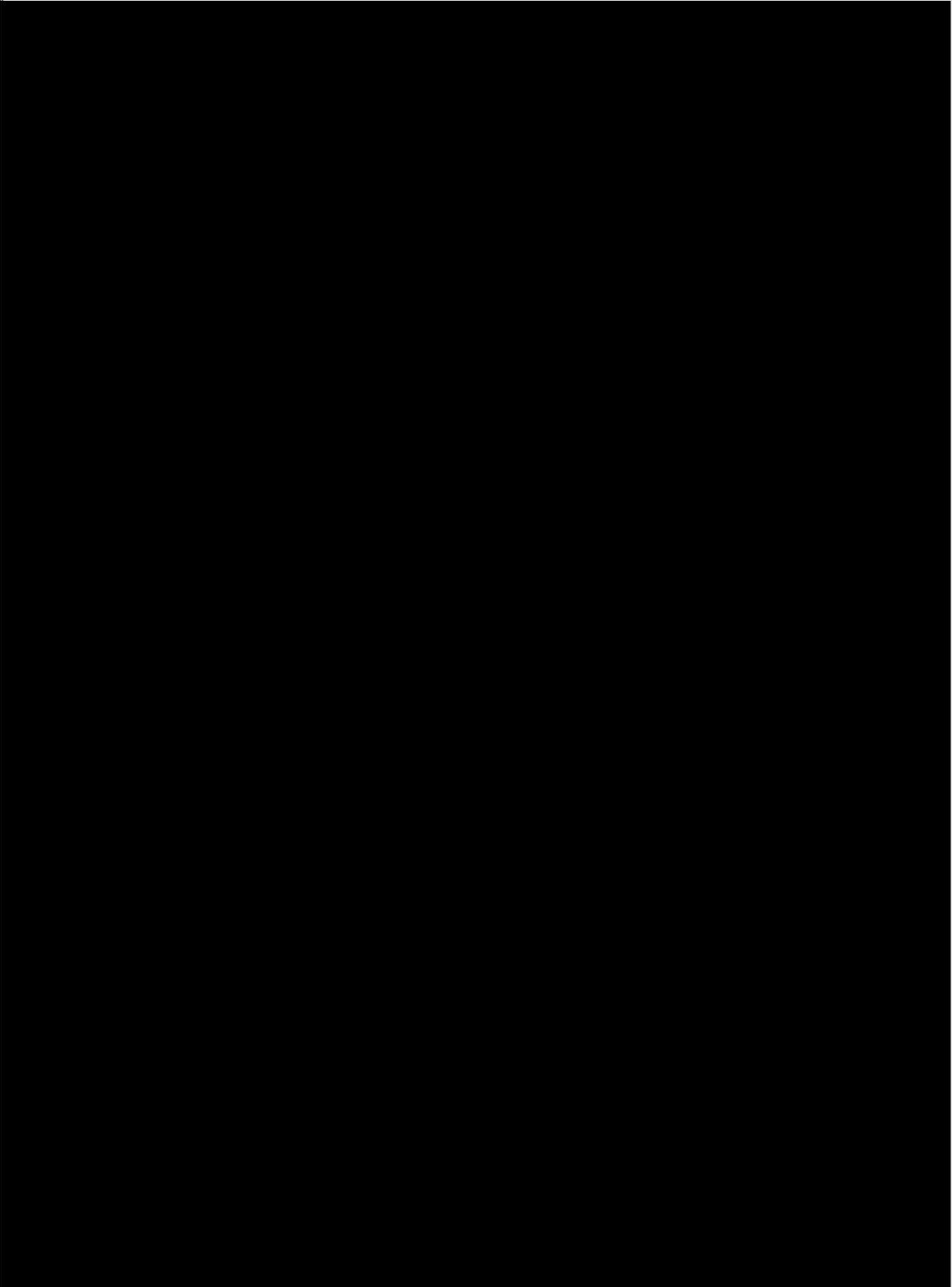
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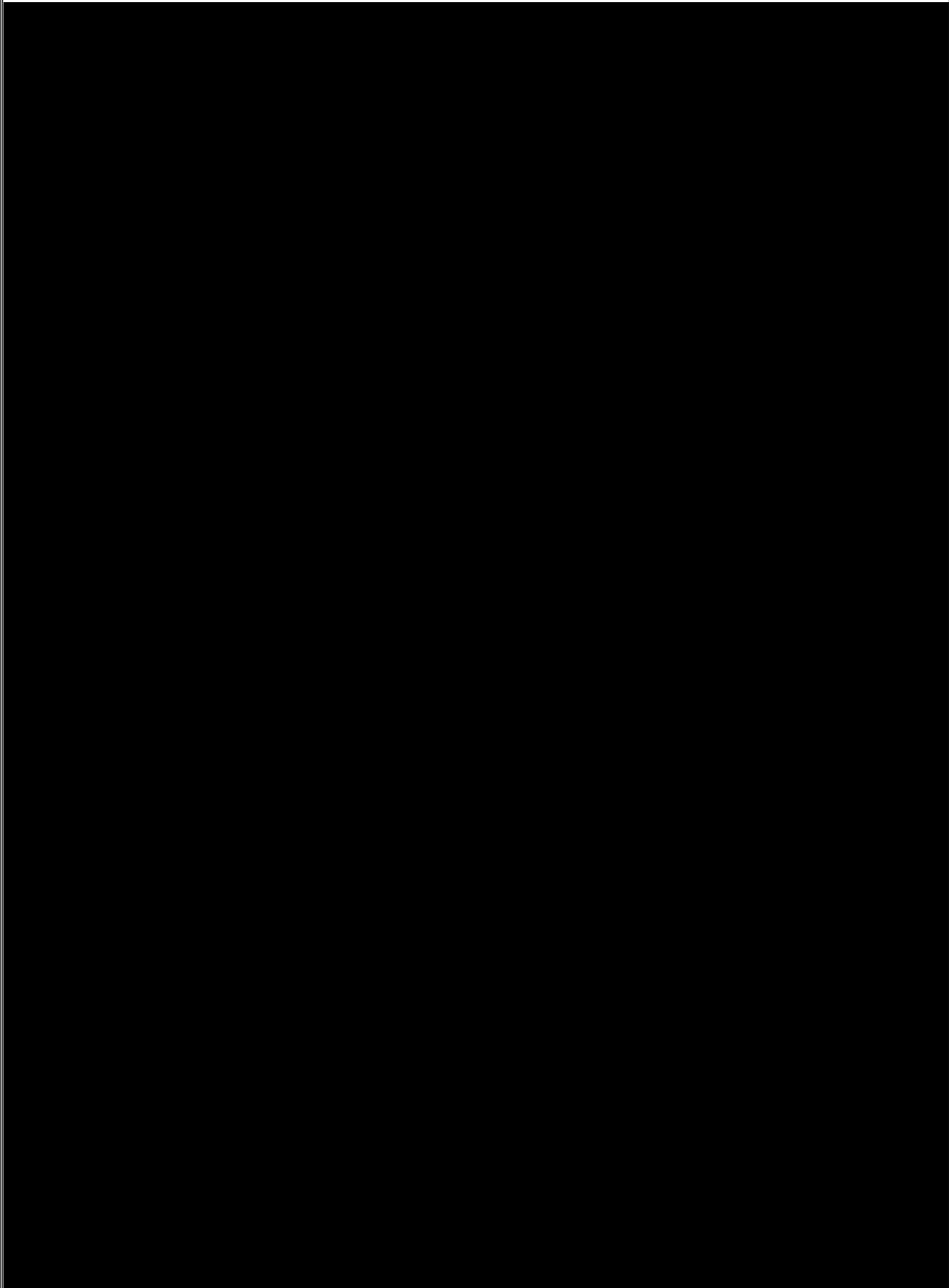


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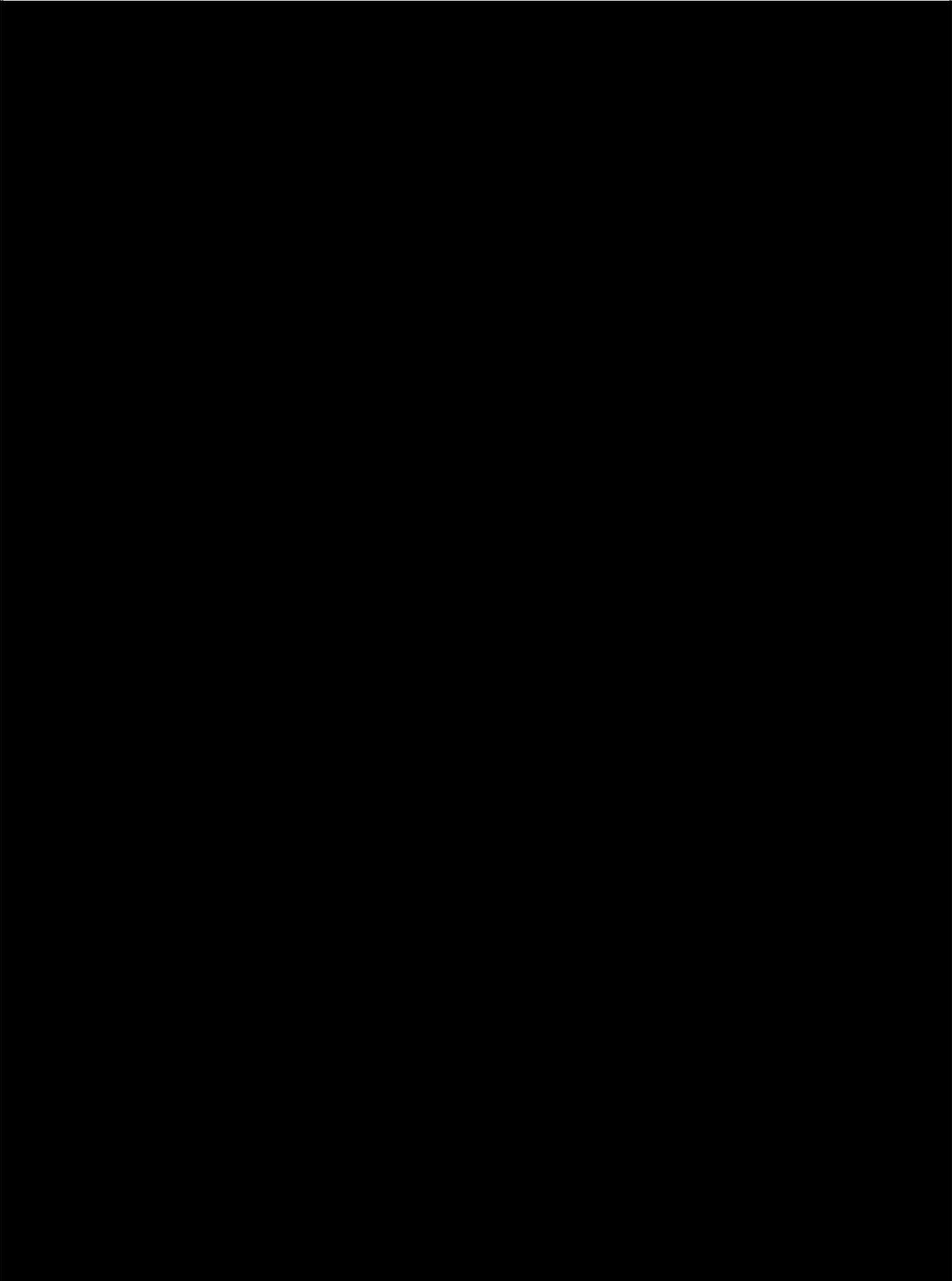
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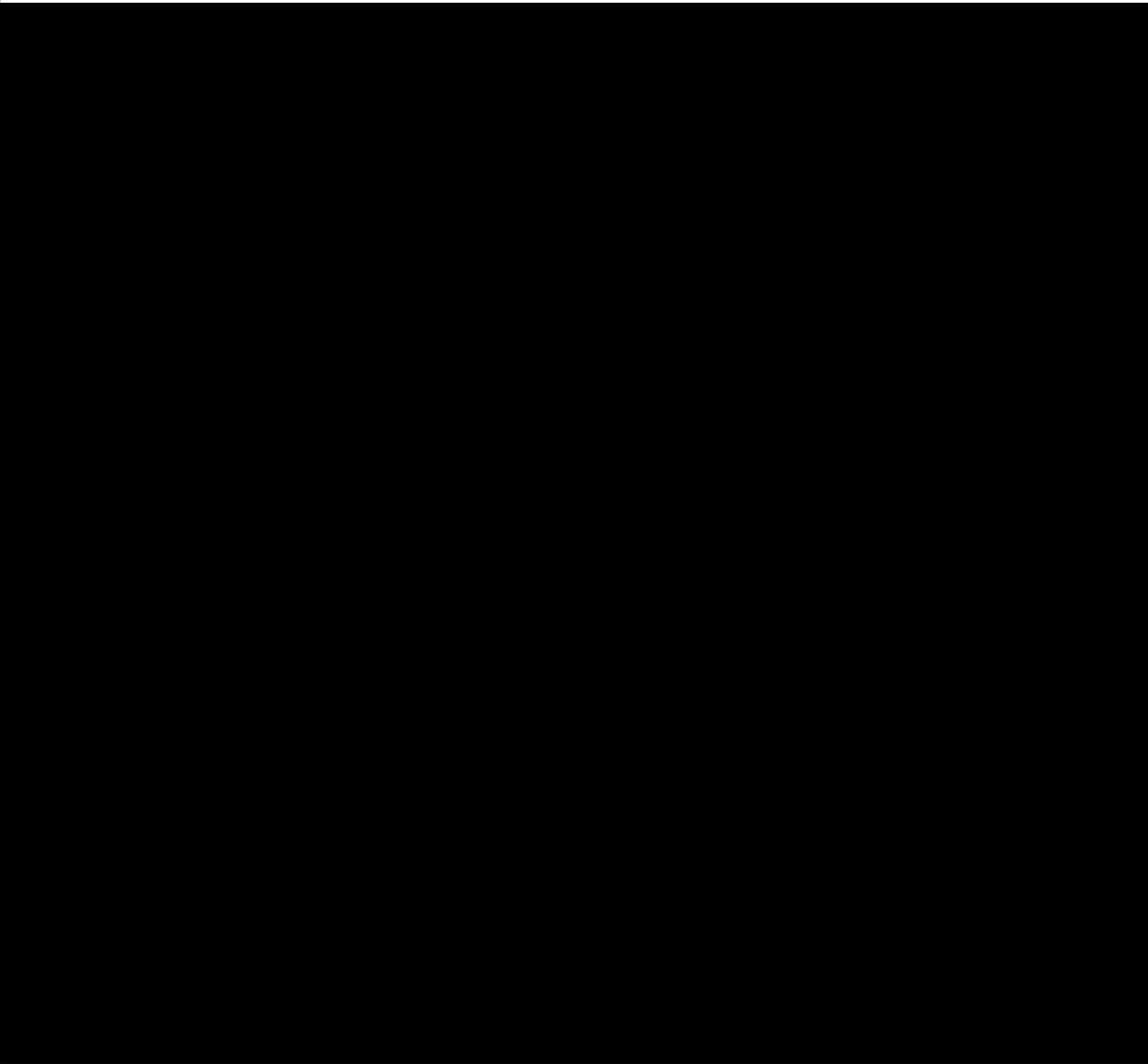


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PRESIDENT FERNÁNDEZ ARMESTO: Thank you.
Thank you, Mr. Friedman.
I give back the floor to Professor Stern.
ARBITRATOR STERN: Thank you. So, my first
question is to you to, Mark Friedman, we know that
Gramercy bought the Land Bonds between 2006 and 2008,
I mean the one which we are concerned here. And in

1 your presentation, you said that CPI was a general
2 rule before 2013, as well as the payment of interest.
3 And I cite you--you say there was no uncertainty at
4 the time, none at least if you went to call the
5 current value of the Land Bond and it did so in many,
6 many, many, cases overwhelming. And then you added
7 there was also no uncertainty about interest, at least
8 at the stated coupon rates. None.

9 And what you complain about is precisely not
10 to have received the value based on CPI and interest,
11 but why didn't you go to court before 2013? Because
12 you say yourself in Slide 48--43 of your Statement
13 that in the Peruvian Court you would have obtained
14 841 million, which is what you ask alternatively in
15 your Statement of Reply, in the alternative of the
16 1.8 billion, you ask 842 million. So, why didn't you
17 go to the Courts?

18 MR. FRIEDMAN: Gramercy did go to the Courts.
19 So, let me just--

20 ARBITRATOR STERN: Just for a few, but, I
21 mean, for 44 Bonds.

22 MR. FRIEDMAN: 44 Bonds that represented

1 a--but there were 44 by number, but by value, they
2 represented more than 25 percent of the value of
3 Gramercy's portfolio. I think to fully answer that
4 question, I think it would credit and take seriously
5 Mr. Koenigsberger's testimony that the whole idea of
6 Gramercy investing was not simply to "let's buy low,
7 then run off to court and enforce our legal rights."

8 Instead, the idea was, let's invest and let's
9 build this virtual circle whereby we create a global
10 solution for everybody that will enhance the
11 creditworthiness of the Country, bring in the other
12 Bondholders, and that will be a more durable solution
13 than just trying to pick off our Bonds and go into
14 court.

15 And that's what they diligently pursued for
16 several years, but there was the financial crisis in
17 2008 in which people were focused on other things, and
18 I think Gramercy was clear about that. So, it wasn't
19 thinking about this investment especially hard in the
20 period of 2008 to 2009. But then when other efforts
21 at trying to create that global solution weren't
22 gaining the traction, that came very close on a couple

1 of occasions, but then got vetoed by the Executive and
2 died at the last pitch.

3 And at that point in 2011, Gramercy submitted
4 those conciliation requests to the Peruvian Ministry
5 of Economy and Finance. Now, those conciliation
6 requests you will recall are all those documents that
7 Mr. Hamilton brought to the Hearing last time and said
8 that Gramercy was hiding all of the Bonds. In fact,
9 it provided all of those documents, copies of all of
10 the Bonds and all of the acquisition documents to the
11 Peruvian Government in 2011 as part of this
12 conciliation process.

13 The conciliation process is a necessary prior
14 step to being able to assert litigation over the
15 Bonds. But it put 100 percent of the Bonds into the
16 conciliation process. Conciliation was obviously
17 rejected by the Peruvian Government, and then Gramercy
18 sought to do at least a test case by saying, look, we
19 think we'll get to a global solution, eventually.

20 But we'd like to have that so, you know, but
21 it seems we need to get some attention paid to us.
22 Let us bring a lawsuit and enforce our legal rights in

1 courts, which had never been their primary objective
2 in--primary method of trying to realize recovery. And
3 that was the Pomalca case. And so, it's not
4 surprising that in that case--and these cases are
5 broken down based on the original land acquisitions.
6 That's why there are 44 Bonds in that case.

7 It is because that related to a particular
8 parcel of land for which the Government had given
9 those 44 Bonds. Those 44 Bonds, because of their
10 characteristics, happened to be really good and
11 valuable Bonds. They were basically no-clipped
12 coupons, and they were, from an early time, and they
13 had an appropriate interest rate. And so, Gramercy
14 said, well, this is a good place for us to litigate.
15 So, why don't we litigate over these. They are very
16 substantial amount by value of our portfolio.

17 And then there was the--from 2011 to 2013,
18 the Engineers Bar Association in Perú brought the
19 Claim at the Constitutional Tribunal. Nobody thought
20 that process would take two years. People were
21 optimistic that because of the clarity of the 2001
22 Constitutional Tribunal Decision, that this new, this

1 revived case, it was actually an Application from the
2 2001 case that the engineers brought, and what they
3 were seeking was not a new Claim.

4 They were just seeking to have the
5 Constitutional Tribunal issue an enforcement judgment
6 on the 2001 case because it hadn't--they hadn't done
7 anything in a decade.

8 And it was--I think the entire society and
9 all the Bondholders at that point had some
10 considerable hope that the Constitutional Tribunal,
11 which it had been protective of Bondholder rights,
12 would continue to be and would issue some kind of
13 binding order that would eliminate the need for
14 everybody to bring their own individual cases and
15 hundreds or thousands of cases in dozens or hundreds
16 of courts all across the country. And so, Gramercy
17 shows--yes.

18 PRESIDENT FERNÁNDEZ ARMESTO: Can I--the
19 Secretary is asking me, there is no objection, I would
20 assume, for the United States to come back into the
21 room.

22 MR. FRIEDMAN: Correct.

1

SECRETARY PLANELLS-VALERO: Thank you.

2

(End of Attorneys' Eyes Only session.)

1 OPEN SESSION

2 MR. FRIEDMAN: So, I think that the answer to
3 your question is if you are asking about--

4 (Overlapping speakers.)

5 MR. HAMILTON: I would suggest we actually
6 wait for the United States Government to come back in
7 the room, Perú doesn't agree with their exclusion,
8 but, in any event, let's give them a chance to return.
9 And thank you for the observation, Mr. President.

10 SECRETARY PLANELLIS-VALERO: They are back in
11 the room. Thank you.

12 MR. FRIEDMAN: So, I just--

13 PRESIDENT FERNÁNDEZ ARMESTO: Let us welcome
14 them back. Thank you for your patience, and
15 Mr. Friedman has the floor.

16 MR. FRIEDMAN: Yes. So, Professor Stern, I
17 think that there is--your question is sort of a
18 historical one, why did Gramercy make certain
19 Decisions about litigating at the time that it did,
20 and on the Bonds that it did, and not about the others
21 in that sequence.

22 And I hope I have provided for you some of

1 the context about which Gramercy--that informed
2 Gramercy's view about how and when to assert those
3 legal rights in Peruvian Courts that they always
4 thought that they had. But I think if you look at it,
5 they were patient and tried to pursue their investment
6 hypothesis for a while.

7 When that wasn't moving forward, they did
8 take the step necessary for all of their Bonds to be
9 able to revive cases and move them forward in courts.
10 They then did take a quarter of the value of the Bonds
11 and pursue it actively, getting favorable opinions
12 from the Court-appointed Experts in that case that was
13 consistent with the Decisions in almost all of the--in
14 all of the other cases and core principles, while
15 waiting for the Constitutional Tribunal to render its
16 Decision, which it ultimately did in July 2013.

17 So, I think it's the implication of your
18 question was that Gramercy was somehow neglectful or
19 negligent, I just--I don't think that that can be
20 justified on the facts.

21 ARBITRATOR STERN: I was not saying that you
22 were negligent, I was wondering why you did not take

1 this opportunity to go to the Court and, in fact,
2 waiting for the law to change, and not using the law
3 as it was. But maybe my next question is for Mr. Carl
4 Riehl. I don't see him. Does he hear me?

5 MR. RIEHL: Yes, here I am.

6 ARBITRATOR STERN: Yeah. Okay. Now I see
7 you.

8 You spoke a lot about the intrinsic value of
9 the Bonds. I would like to understand in which world
10 you find this intrinsic value for the 1.8 billion,
11 then the 840 million. How do you reconcile, I mean,
12 these figures in particular?

13 How do you reconcile these figures with what
14 Mr. Koenigsberger stated in his Second Amended Witness
15 Statement in Paragraph 21, which is the face value of
16 Land Bonds as denominated in Soles de Oro was
17 worthless even in 2005?

18 MR. RIEHL: Yes, thank you, Professor Stern.
19 The operative phrase there is the face value. Right?
20 So, that was a reference to the face value or the
21 nominal value, which is explicitly the value that the
22 Constitutional Tribunal in 2001 explicitly said would

1 be a constitutional violation to pay that value.

2 ARBITRATOR STERN: Okay. And how do you
3 reconcile these figures with what you paid for the
4 Bonds, the intrinsic value?

5 MR. RIEHL: Yes. Professor Edwards has given
6 testimony about that, and there is other evidence in
7 the record. At the time of purchase, there was
8 considerable uncertainty as to whether Perú would pay
9 the Bonds fully, and would pay their full value, and
10 there was considerable uncertainty about the timing of
11 that value.

12 Professor Edwards gave testimony that, as the
13 uncertainty diminishes the--that value reduced for the
14 risk of payment that was not full or prompt, would
15 converge to the intrinsic value, and you may recall as
16 well, there was an exhibit in Professor Edwards'
17 presentation at the Hearing showing how that intrinsic
18 value has increased over time.

19 So, even to the extent you want to hold up
20 the intrinsic value in comparison to the value at some
21 other prior point in time, \$841 million was in 2018,
22 which is a decade or more later. And the intrinsic

1 value had grown during that time.

2 ARBITRATOR STERN: And the 1.8 billion, where
3 does that come from?

4 MR. RIEHL: That also includes compensatory
5 interest, is a substantial part of that. The
6 difference between the 1.8 and the 841 million is
7 entirely a result of what interest rate is applied.
8 So, the 1.8 billion uses the 7.22 percent, which is
9 based on the actual historical Rate of Return.

10 Peruvians have actually seen everyone who had
11 money in their pocket in Perú to invest was able to
12 invest it and received that rate or more; whereas, the
13 Bondholders obviously didn't have the money, and that
14 interest continued to accumulate. The 841 million is
15 calculated using the lower original coupon rates.

16 ARBITRATOR STERN: Okay. Well, thank you for
17 all the clarification.

18 Well, maybe I have also a question or two for
19 Ms. Popova. Okay? Yes.

20 You were dealing with the definition of
21 "investment," and you said, well, if you ask in the
22 street, whether it's Wall Street or an ordinary

1 street, you will have an answer.

2 Well, I'm a little surprised by such a
3 comment from a sophisticated lawyer, and also, I am
4 not sure that you read completely the definition,
5 because you said "investment" means every asset, and
6 that, as there is a reference to all assets--well, it
7 was "every" and "all"--it means there are no
8 characteristics of investments, but you didn't read
9 the rest, "including such characteristics." So, I
10 just couldn't follow you.

11 MS. POPOVA: So, we've never disputed that an
12 asset must have the characteristics of an investment
13 in order to be covered by the Treaty. I don't think
14 there is any dispute between the Parties about that.
15 I think what is undisputed, though, and it's also
16 clear from the text of the Treaty, is that those
17 characteristics that are identified in the Treaty are
18 not mandatory and they are not cumulative.

19 And the other thing that is clear, and on
20 which all of the Experts and Mr. Herrera also agreed,
21 is that the list of forms that an investment may take
22 are the kinds of assets that the State Parties

1 contemplated would, in fact, have the characteristics
2 of an investment. And at the end of the day, if we go
3 back to the interpretation of the Treaty, we must
4 begin with the ordinary meaning of its terms, read in
5 good faith and in context.

6 ARBITRATOR STERN: Well, I mean, if they say
7 "including such characteristics," it does not
8 necessarily mean that they do all include it, then. I
9 mean, I think you have read, as I did, Note 12, which
10 means that some might be an investment and some might
11 not be. So, I think you were a little bit quick on
12 that definition. But let's go--okay.

13 MS. POPOVA: Sorry. Footnote 12 says that
14 some forms of debt are more likely to be investments,
15 and it specifically calls out Bonds.

16 ARBITRATOR STERN: Okay. But if they have
17 the characteristic, which means that not all of them
18 have it. Okay.

19 MS. POPOVA: Absolutely. But, in this case,
20 the Bonds had all of the ones that are listed and
21 more.

22 ARBITRATOR STERN: Okay. And at one point

1 you mentioned, quite rightly, that in Annex 10(f) it
2 is stated that a public debt entails commercial risk.
3 This is absolutely correct. This citation is correct,
4 contrary to the other one. And I wonder whether you
5 simulate the commercial risk with an investment risk,
6 which can be called an operational risk.

7 For me, a commercial risk is a risk inherent,
8 in the fact that one of the Parties might default on
9 its obligation. But you know that an operational risk
10 is a risk coming from an economic operation whose
11 result is unknown. So, do you make a difference
12 between commercial risk and investment risk as some,
13 you know, cases do, which you probably know?

14 MS. POPOVA: I think in this case, Professor
15 Stern, there is no difference, because there
16 is--however you want to define the risk, it existed
17 here. And if you take the view that a financial
18 investment, like a debt or--let's take even a share,
19 share ownership in a company, or futures, options,
20 derivatives, other debt instruments that this Treaty
21 protects, if you take the view that they don't carry
22 risks, then they would never be protected under this

1 kind of Treaty, and we know that that can't be true.

2 ARBITRATOR STERN: But the value of the share
3 depends on the results and the profits made by the
4 Company, which is very different.

5 MS. POPOVA: But the shareholder is not
6 necessarily the one that drives that performance. And
7 here, Gramercy did invest, not just to passively hold
8 debt instruments, but actually to realize the real
9 value, the inherent value, of not just its own
10 instruments, but also those of all the other
11 bondholders in Perú, and we have unchallenged
12 testimony about that.

13 ARBITRATOR STERN: But could you give me a
14 definition of the investment operation in which
15 Gramercy entered . . .

16 MS. POPOVA: Absolutely.

17 ARBITRATOR STERN: . . . to create value

18 MS. POPOVA: I think Mr. Koenigsberger has
19 given several definitions that are probably much
20 better than the ones I can give here. But what
21 Gramercy invested in is the hope and the expectation
22 that it would be able to help Perú resolve its

1 stagnant Land Bonds debt, and that in doing so, it
2 would not only achieve the current value of the debt
3 instruments that it itself held, but also that it
4 would achieve the benefits that it had seen that it
5 could achieve for other countries over time.

6 And I really--I don't think that there's the
7 requirement of sort of this--some particular
8 qualification of the risk, of the kind of risk that is
9 required for an asset to qualify as an investment.

10 I'm not sure that calling it operational or defining
11 that in any particular way is particularly helpful,
12 frankly. And, again, as I say, on the facts of this
13 case, those kinds of distinctions don't help us.

14 ARBITRATOR STERN: Okay. Life is a risk
15 inherently. Okay.

16 So, I think I have finished my questions.

17 PRESIDENT FERNÁNDEZ ARMESTO: Thank you.
18 Thank you, Professor Stern.

19 I do have some questions, but I think we
20 have--for tomorrow after the presentation by
21 Respondent we have scheduled some time. And I would
22 rather hear the position of Respondent and then maybe

1 we can have--it is more meaningful to have the
2 questions then. So, I will postpone them for
3 tomorrow.

4 So, assuming that there is no further
5 business for the day, Mr. Hamilton?

6 MR. HAMILTON: Mr. President, thank you very
7 much for the attention of the Tribunal.

8 Just a brief note for the record that the
9 Republic of Perú reiterates its objection to
10 references to materials that are not in the record and
11 that have not been addressed by the Republic of Perú,
12 nor by the Non-Disputing Party, the United States
13 Government, which is also pertinent. We also
14 reiterate our objection to the exclusion of the United
15 States Government from any of the components of this
16 proceeding, and we also maintain an objection related
17 to the characterization of the presentation of
18 Gramercy documents that were withheld over time, and
19 we will address that in due course.

20 Simply note that for the record, and
21 otherwise, I look forward to everyone having a night
22 of sleep, being able to emerge, like emerging from the

1 wardrobe, leaving the fantastical world of Narnia and
2 coming back to reality. And we will address--we will
3 address many issues tomorrow.

4 Thank you for your attention.

5 PRESIDENT FERNÁNDEZ ARMESTO: Thank you,
6 Mr. Hamilton.

7 Mr. Friedman, do you have any comments?

8 MR. FRIEDMAN: No. Thank you. We just, once
9 again, want to express our thanks to the Tribunal.

10 PRESIDENT FERNÁNDEZ ARMESTO: Very good. So,
11 we will be meeting tomorrow at the same time as today.

12 I thank the Interpreters and the Court
13 Reporters. It must have been a difficult day for them
14 because there were quite some substantial
15 presentations. But now we have all some time to rest
16 and come fresh again tomorrow.

17 So, thank you very much to all of you, and we
18 meet tomorrow.

19 MR. FRIEDMAN: Thank you.

20 MR. HAMILTON: Thank you very much.

21 SECRETARY PLANELLIS-VALERO: Thank you,
22 Mr. President.

1 (Whereupon, at 12:47 p.m., (EDT) the Hearing
2 was adjourned until 9:00 a.m. the following day.)

CERTIFICATE OF REPORTER

I, Dawn K. Larson, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.


Dawn K. Larson